

No. _____

BEFORE THE UNITED STATES
SUPREME COURT

JOHN EARL ERICKSON AND
SHELLEY ANN ERICKSON,

Petitioners,

v.

VANESSA POWER, STOEL & RIVES, SELECT
PORTOFOLIO SERVICING, JOHN GLOWNEY,
WILL EIDSON,

Respondents.

THOMAS REARDON¹, LANCE OLSEN
HOLTHUS & MCCARTHY²,

Named Defendants Not Participating

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

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QUESTIONS PRESENTED FOR REVIEW

I. Does fraud on the court committed by officers of the court in civil proceedings violate due process requiring relief from judgments fraudulently procured on false pleadings supported by forged documents submitted by opposing counsel?

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

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

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

The Respondents named in the case caption are Select Portfolio Servicing, Inc. (“SPS”), a Utah corporation; Stoel Rives, LLP (a law firm) and its attorneys Vanessa Power (“Power”) John Glowney (“Glowney”) and Will Eidson (“Eidson”). The action against the Respondents is referred to as the STOEL RIVES/SPS Action. Defendant Reardon was never served with process in the STOEL RIVES/SPS Action and Defendant Attorney Lance Olsen of McCarthy and Holthus, LLP represented SPS in bankruptcy proceedings was dismissed from the action without prejudice by stipulation with the Ericksons.

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

In the course of the Independent Action, Petitioners learned from a judicial admission that the entity identified as “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4” was not represented by the law firm and lawyers appearing in the Foreclosure Action or in the Independent Action. Part of the fraud on the court alleged to have been committed by officers of the court was the false identification of Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 as a Delaware corporation.

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

The case from which this Petition arises was consolidated into the Independent Action commenced against “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4” on May 13, 2019 in the Superior Court for King County, Washington in

Case No. 19-2-12664-7 KNT because that is name of the Plaintiff in the Foreclosure Action titled Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, et al., Case No. 14-2-00426-5 KNT, commenced against the Petitioners in King County Superior Court on January 3, 2014. Summary Judgment was granted in the Foreclosure Action in the name of the purported Plaintiff on July 17, 2015. Judgment and Decree of Foreclosure was obtained in that name on August 27, 2015. On May 13, 2019, relief from the said Order and Judgment was sought by the Independent Action.

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

The Ericksons' Petition for Writ of Certiorari

to the Washington Supreme Court in No. 22-499 was denied by this Court on February 21, 2023. Rehearing may be requested because of the relationship between the continuing Foreclosure Action now on appeal from the Order Confirming Sheriff's Sale, the Independent Action for fraud on the court and the STOEL RIVES/SPS Action from which this current Petition arises.

LIST OF RELATED ACTIONS

Pursuant to Rule 14.1(b)(ii)

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

THE FORECLOSURE ACTION

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

The Foreclosure Action is now pending on appeal to the Washington Supreme Court from the December 12, 2022 Order Confirming Sheriff's Sale based on the Sheriff's acceptance of an unlawful credit bid submitted by a nonparty to the judgment in the Foreclosure Action.

THE INDEPENDENT ACTION

Proceedings recognized under Washington Rules of Superior Court at CR 60(c) and other causes of action was the subject of the Petition for Writ of Certiorari before this Court as No. 22-499. The Independent Action was commenced on May 13, 2019 and styled Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 in King County Superior Court Case No. 19-2-12664-7 KNT. Summary Judgment was granted in favor of the Respondent was granted on June 16, 2021 without advance notice and opportunity to be heard. Petitioners timely appealed to the Washington Court of Appeals in Appeal No. 81648-9. The Washington Court of Appeals affirmed the Superior Court's Order and Judgment on November 29, 2021.

The Ericksons timely filed their Petition for Review at the Court of Appeals to be transmitted to the Washington Supreme Court on December 28, 2021 and proceeded in the Supreme Court of Washington as Appeal No. 10511-3. The Washington Supreme Court denied the Petition for Review on May 4, 2022.

The Ericksons' Petition for Certiorari was accepted for filing by this Court as No. 22-499. The Petition for Writ of Certiorari was denied on February 21, 2023 and rehearing may be requested due to the relationship between the Independent

Action and this current Petition.

THE STOEL RIVES/SPS ACTION

John Earl Erickson and Shelley Ann Erickson v. Vanessa Power and Stoel and Rives and Select Portfolio Servicing, John Glowney and Will Eidson, Thomas Reardon¹, and Lance Olsen², (Erickson v. Power, et al.), was commenced in King County Superior Court, Case No. 20-2-08633-9 on May 7, 2020, referred to as the STOEL RIVES/SPS Action, was filed by the Ericksons on May 7, 2020 while the Independent Action was pending.

A motion for consolidation of the STOEL RIVES/SPS Action into the Independent Action was filed by counsel for the Respondents by a nonparty attorney employed by Defendant STOEL RIVES, LLP. The Motion to Consolidate was granted and the STOEL RIVES/SPS Action was consolidated into the Independent Action. When Summary Judgment was granted at oral argument on Respondent's Motion to Dismiss

¹ Thomas Reardon was never served with the Summons and Complaint in the STOEL RIVES/SPS Action and did not participate in the proceedings.

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

the Independent Action and memorialized in writing on June 16, 2020 the cases were de-consolidated.

Summary Judgment in the STOEL RIVES/SPS Action was granted in favor of the Respondents on March 26, 2021. The Ericksons timely appealed to the Washington Court of Appeals in Appeal No. 82755-3. The Court of Appeals affirmed the Order Granting Summary Judgment. The Ericksons' Petition for Review by the Supreme Court of Washington as Appeal No. 101047-8 was denied on October 12, 2022, giving rise to this current Petition for Writ of Certiorari.

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Petitioners John Earl Erickson and Shelley Ann Erickson, by their attorney, Wendy Alison Nora, respectfully petition for a writ of certiorari to review the April 25, 2022 Opinion and Order of the Washington Court of Appeals (Appendix 2) following denial of their Petition for Review by the Supreme Court of Washington on October 12, 2022 (Appendix 1).

OPINIONS BELOW

On March 26, 2021, the King County, Washington Superior Court granted Summary Judgment in this action in favor of the Respondents Vanessa Power (“Power”), Stoel Rives, LLP (“STOEL RIVES”), Select Portfolio Servicing, Inc. (“SPS), John Glowney (“Glowney”) and Will Eidson (“Eidson”) at oral argument on Respondents’ Motion for Summary Judgment and on related motions by Petitioners and Respondents (Appendix 5) notwithstanding the discovery of new evidence of fraud on the Court in the Foreclosure Action (Appendix 4). The Ericksons timely appealed from the Order Granting Summary Judgment and disposing of their pending motions to the Washington Court of Appeals.

On April 25, 2022, the Washington Court of Appeals affirmed the Judgment of Dismissal in an unpublished Opinion submitted herewith at Appendix 2. The Ericksons sought reconsideration of the April 25, 2022 unpublished Opinion on May 12, 2022 (Appendix 7), which was denied on May

24, 2022 (Appendix 3). The Ericksons sought review of the Court of Appeals' Opinion at the Washington Supreme Court which denied the Petition for Review and terminated the review proceedings on October 12, 2022 (Appendix 1).

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The Washington Supreme Court entered Order denying the Ericksons' Petition for Review (Appendix 1) of the April 25, 2022 unpublished Opinion and Order of the Washington Court of Appeals on October 12, 2022. This Petition for Writ of Certiorari is filed within 150 days of the Washington Supreme Court's October 12, 2022 Order under Rules 13.1 and 29.2 of this Court as allowed by Order of this Court extending the time for filing this Petition which was granted for good cause shown under Rule 13.5 on January 11, 2023 in Docket No. 22A625.

The October 12, 2022 Order of the Washington Supreme Court terminated the proceedings for review and is the final judgment of the Washington Supreme Court within the meaning of 28 U.S.C. sec. 1257. Jurisdiction of this Court arises under 28 U.S.C. sec. 1257(a).

CONSTITUTIONAL AMENDMENTS
AND RULES OF COURT INVOLVED

This Petition for Writ of Certiorari to the Supreme Court of Washington is based on the violation of the Ericksons' Due Process Rights guaranteed under Section 1 the Fourteenth Amendment to the Constitution of the United States in the King County, Washington Superior Court and the Washington Court of Appeals which the Supreme Court of Washington declined to review. Section 1 of the Fourteenth Amendment to the Constitution of the United States (Appendix 9) guarantees the Ericksons' rights to due process in state court proceedings before they are deprived of ownership to their home of over 40 years (property rights). No "state [may] deprive any person of life, liberty, or property, without due process of law (Due Process Rights).

STATEMENT OF THE CASE

The violations of the Ericksons' Due Process Rights in the action which give rise to this Petition arises from the use of a false Complaint and fabricated evidence presented by Respondents Eidson and Glowney of STOEL RIVES, purporting to represent the plaintiff named in the Foreclosure Action. A copy of the document purporting to be the "original Note" was attached to the January 3, 2014 Complaint and was identified by Respondents Eidson and Glowney as "true and correct" when the copy of the document attached to the Complaint did

not display any endorsement.

An endorsement on the document purporting to be the Ericksons' "original Note" suddenly appeared as an attachment to the May 19, 2015 Declaration of Will Eidson in support of the named plaintiff's Motion for Summary Judgment. Eidson claimed that the endorsed copy of the document was a true and correct copy of the "original Note". The Superior Court accepted the explanation that the January 3, 2014 version of the copy of the document was identical to the May 19, 2015 copy of the document at the hearing on the July 2, 2015 Motion for Summary Judgment except for a failure to copy the reverse side of the document which was then attached to the January 3, 2015 Complaint.

The Superior Court judge did not compare the document presented to her at the hearing on the Motion for Summary Judgment to the copy of the document attached to the Complaint. The January 3, 2014 version of the copy of the document displayed a stamp on the first page which read "Certified Copy" which did not appear on the May 19, 2015 copy of the document and presumably did not appear on the document produced at the hearing on the Motion for Summary Judgment, although a copy of the document produced at the hearing on the Motion for Summary Judgment and examined by the Superior Court judge was made.

The Ericksons, like many other homeowners

who had copies of Notes purportedly endorsed by an individual named Jess Almanza, tried to locate the endorers of the document purporting to be the “original Note.” The Ericksons were finally able to locate Jess G. Almanza through a private investigator who had access to propriety tools not available to the general public. Mr. Almanza specifically denied endorsing the document purporting to be the Ericksons’ “original Note” which was attached to his February 21, 2021 Declaration as Exhibit 2 (Appendix 4, ¶20). Mr. Almanza was not even physically present at the location of Washington Mutual Bank in Stockton, California at the time the document purporting to be the Ericksons’ “original Note” would have been acquired (March 3, 2006). See Appendix 4, ¶¶ 7, 8, and 9.

Petitioners brought an Independent Action, recognized under Rule 60(c) of the Washington Rules of Civil Procedure (“CR”), and for other causes of action on May 13, 2019 in Superior Court. Petitioners concurrently moved for a temporary restraining order (“TRO”) to prevent the sale of their home of more than 40 years. The Superior Court denied the Motion for TRO. On May 24, 2019, hearing was held on the Petitioners’ Motion for Preliminary Injunction. The Motion for Preliminary Injunction was also denied and their attorney was threatened with sanctions for seeking relief from the judgment in the Foreclosure Action by Independent Action and was compelled to withdraw as Petitioners’ counsel.

Petitioners sought relief in bankruptcy proceedings in an effort to establish the identity of the entity entitled to the benefit of the payments on

the Note purportedly secured by the Deed of Trust, ultimately proposing to sell the real estate for the benefit of the entity entitled to enforce the claim made against them based on the document purporting to be the “original Note”. Although the Ericksons continue to reside in the home they built with their own hands almost 40 years ago, their efforts to obtain relief in have thus far been unsuccessful¹ and the King County Sheriff’s Office has executed on the judgment in the Foreclosure Action by selling the Ericksons’ home. The redemption period of one year under RCW 6.23.020 commenced on October 14, 2023,² unless the Order Confirming Sheriff’s Sale is reversed on appeal.

While the Independent Action was pending, the Ericksons, then proceeding without the benefit of counsel commenced another action against the Respondents for fraud on the court (the STOEL RIVES/SPS Action). In 2018, the Ericksons had discovered evidence that Mr. Almanza, one

¹ Dismissal of John Earl Ericksons’ most recent Chapter 13 Petition has been appealed to the Ninth Circuit Bankruptcy Appellate Panel in No. 22-1186 and has been fully briefed. Oral argument is scheduled for March 23, 2023.

² Notice of Appeal from the Order Confirming Sheriff’s Sale was timely filed with the Washington Court of Appeals and is pending because a credit bid was unlawfully accepted from a nonparty to the Foreclosure Action. See List of Related Actions, *supra*.

of the individuals who purportedly endorsed a document which purported to be the “original Note” issued on March 3, 2006 was not employed by Long Beach Mortgage Company (the ostensible payee of the Note) and that the endorsement-in-blank could be a forgery. The Ericksons were finally able to locate Mr. Almanza in January, 2021 and obtained his Preliminary Declaration dated February 21, 2021 (Appendix 4). In the Independent Action, the Ericksons had also alleged that the recorded Assignment of Mortgage was executed in a false capacity by an employee of JPMorgan Chase Bank, N.A. which did not acquire the Ericksons’ Note and Mortgage by purchase from the FDIC as claimed as the authority for the execution of the Assignment of Deed of Trust.

In the STOEL RIVES/SPS Action which was initially consolidated into the Independent Action, the Ericksons alleged that by producing and uttering documents endorsed and executed without lawful authority in the Foreclosure Action, counsel purporting to represent the Respondent and their actual client, SPS, violated RCW 9A.60.10(4), (5), and (6) and RCW 9A.60.20(1) which prohibit forgery and uttering.

Forged documents are unenforceable, have confer no legal rights and are void. See, e.g., WFG Nat'l Title Ins. Co. v. Wells Fargo Bank, N.A., 51 Cal.App.5th 881, 887, 264 Cal.Rptr.3d 717, 722 (Cal. App. 2020). The use of forged documents in litigation violates the Due Process Rights of the

opposing party. See *McDonough v. Smith*, 139 S. Ct. 2149, 204 L. Ed. 2d 506 (2019).

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

This Court denied the Ericksons' Petition for Writ of Certiorari (No. 22-499) in the Independent Action on February 21, 2023. Rehearing may be sought in accordance with Rule 44 because the bifurcation of the previously consolidated Independent Action from the STOEL RIVES/SPS Action affects the disposition of this current Petition for Writ of Certiorari.

SUMMARY OF THE ARGUMENT

The King County Superior Court and the Washington Court of Appeals violated the Ericksons' Due Process Rights by holding that

collateral estoppel, also known as issue preclusion, barred the Ericksons from obtaining relief from the judgment in the Foreclosure Action which was alleged to have been procured by fraud on the court committed by officers of the court of which they were not aware until after judgment was entered in the Foreclosure Action.

Fraud on the court by officers of the court representing the concealed agent of the prevailing party included, but was not limited to:

- (1) Misrepresentations regarding the authenticity and genuineness of the document purporting to be the “original Note”;
- (2) Misrepresentations regarding the corporate capacity of the purported plaintiff in the Foreclosure Action;
- (3) Misrepresentations regarding the authority for the 2013 Assignment of the Deed of Trust;
- (4) Misrepresentation of the identity of client represented by the attorneys for the prevailing party; and

(5) Misrepresentation of the law of the State of Washington (and every other state) that the validity of the “endorsement of the note” does not affect a claimant’s right to enforce the document purporting to be the “original Note”.

The misrepresentations by counsel at the direction of their concealed actual client, SPS, is an unconscionable scheme to obtain the Judgment of Foreclosure and to prevent the Ericksons from being fully and fairly heard in defense of their property rights.

ARGUMENT

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

Rule 10(c) provides the considerations for allowing this Petition. The state court decided an important question of federal law that has not been, but should be, settled by this Court and decided an important question of federal law in a way that conflicts with the relevant decisions of this Court. This Court found in McDonough v. Smith, *supra*, that a cause of action for violation of a party

litigant's Due Process Rights may be brought under 42 U.S.C. sec. 1983 where the state prosecutor used forged documents in a criminal case. The use of forged documents in civil proceedings produced and uttered by officers of the court must also be found to violate Due Process Rights in civil proceedings because courts rely on the representations of officers of the court as to the validity and authenticity of documents presented as evidence in litigation.

Amicus curie filed briefs in support of the McDonough Petition for Writ of Certiorari, alerted this Court to the all too common phenomenon of forged evidence being submitted in criminal cases. See amicus curiae briefs in McDonough v. Smith, supra, in Supreme Court (SC) No. 18-485. Likewise, countless homes have been taken in judicial and nonjudicial foreclosure proceedings throughout the nation by the use of forged assignments of mortgages and deeds of trust and notes displaying forged endorsement resulting from the process of securitization which became widespread before the Residential Foreclosure Crisis of 2008-2009. This Court has yet to grant certiorari to review the ubiquitous practice of production and uttering of forged documents into evidence in civil litigation, despite previous efforts of counsel for homeowners to obtain review of the use of forged documents in

foreclosure litigation. See, for example, Alexander v. Bayview Loan Servicing, LLC, SC No. 18-624; Bank of New York Mellon v. Marin, SC No. 18-711; Rodriguez v. Bank of America, N.A., SC No. 18-723; and Hernandez v. PNMAC Mortgage Opportunity Fund, et al., 20-112.

Press reports suggest that a new round of foreclosures may be imminent. Respect for the Rule of Law is threatened in what is becoming a divided nation. Allowing this Petition and addressing the use of forged documents in civil litigation will have a beneficial effect on restoring respect for the Rule of Law to say nothing of the individual lives which will benefit from an end to what is an ongoing crime spree in which innumerable homeowners are being rendered homeless based on forged documents produced as evidence in litigation and filed in the public record which has been persistent since 2009.

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

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

this Court granted relief from a judgment procured by fraud 12 years earlier and vacated the judgment, reasoning:

. . . [T] ampering with the administration of justice in the manner indisputably shown here involves far more than an injury to a single litigant. 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 the good order of society. Surely it cannot be that preservation of the integrity of the judicial process must always wait upon the diligence of litigants. The public welfare demands that the agencies of public justice be not so impotent that they must always be mute and helpless victims of deception and fraud.

In *Hazel-Atlas*, this Court relied on the inherent power of courts of equity to deny relief to a party which committed fraud on the court and cited *Keystone Co. v. General Excavator Co.*, 290 U.S. 240, 246, 54 S.Ct. 146, 148, 78 L.Ed. 293 which recited the governing principle of equitable relief from judgments obtained by fraud on the court at 290 U.S. 245:

The governing principle is 'that whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.' Pomeroy, *Equity Jurisprudence* (4th Ed.) § 397. This court has declared: 'It is a principle in chancery, that he who asks relief must have acted in good faith. The equitable powers of this court can never be exerted in behalf of one who has acted fraudulently, or who by deceit or any unfair means has gained an advantage. To aid a party in such a case would make this court the abetter of iniquity.' *Bein v. Heath*, 6 How. 228, 247, 12 L.Ed. 416. And again: 'A court of equity acts only when and as conscience commands; and, if the conduct of the plaintiff be offensive to the dictates of natural justice, then, whatever may be the rights he possesses, and whatever use he may make of them in a court of law, he will be held remediless in a court of equity.' *Deweese v. Reinhard*, 165 U.S. 386, 390, 17 S.Ct. 340, 341, 41 L.Ed. 757.

This Court, in *Hazel-Atlas*, also cited *Marshall v. Holmes*, 141 U.S. 589, 592, 12 S.Ct. 62, 35 L.Ed. 870 (1891) in which this Court acknowledged the right to seek equitable relief from a judgment procured based on false testimony and forged evidence in a civil action. Relief from the use of false pleadings, forged documents, perjured testimony and misrepresentations of fact and law by officers of the courts in civil litigation must be granted upon clear and convincing evidence of fraud on the courts in order to preserve the integrity of the judicial process. *Hazel-Atlas*, *supra*.

The Washington courts, by refusing relief from judgment in the Foreclosure Action sought by the Independent Action and the STOEL RIVES/SPS Action based on issue preclusion violated the Ericksons' Due Process Rights. The Ericksons raised the constitutional issue in their November 1, 2021 Opening Brief on appeal to the Washington Court of Appeals. The Respondents did not address the issue of the violation of the Ericksons' Due Process Rights at all in their December 1, 2021 Brief in Response. The Ericksons' Reply Brief addressed the violation of their Due Process Rights again and pointed out that the Respondents had not addressed the violation of their Due Process Rights by obtaining judgment in the Foreclosure Action by the

attorneys for their concealed client, SPS, based on false pleadings, supported by forged documents and perjured testimony, when the existence evidence of which the Ericksons were unaware until 2018 and for which they finally obtained evidence by the February 21, 2021 Preliminary Declaration of Jess G. Almanza. Their effort to obtain Mr. Almanza's deposition was denied as moot upon the entry of the Order Granting Summary Judgment (Appendix 5).

The Ericksons raised the issue of violation of their Due Process Rights in their May 12, 2022 Petition for Reconsideration (Appendix 7), which was denied on May 24, 2022 (Appendix 3) and on July 6, 2022 they again raised the issue of violation of their Due Process Rights in their Petition for Review to the Washington Supreme Court (Appendix 8). The Ericksons' Petition for Review to the Washington Supreme Court was denied on October 12, 2022 (Appendix 1). The Ericksons respectfully submit that the constitutional issue was raised below, was preserved and may be considered by this Court in the present Petition for Writ of Certiorari.

C. Petitioners' Due Process Rights were violated throughout in the state court proceedings by an unconscionable scheme to commit fraud on the court.

This Court applies “the maxim requiring clean hands only where some unconscionable act of one coming for relief has immediate and necessary relation to the equity that he seeks in respect of the matter in litigation.” *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 245, 54 S.Ct. 146, 78 L.Ed. 293 (1933).

The evidence in the instant case constitutes an unconscionable scheme to obtain judgment in the Foreclosure Action by the use of false pleadings, forged documents, perjured testimony and misrepresentations of fact and law by officers of the court for the benefit of their concealed client, SPS. The use of the doctrine of issue preclusion by the Washington state courts to refuse to grant relief from the judgment in the Foreclosure Action by Independent Action and the STOEL RIVES/SPS Action violated the Ericksons' Due Process Rights.

CONCLUSION

This Court should allow the Petition for Writ of Certiorari and issue the Writ to the Washington Supreme Court in order to settle the issue that the ubiquitous use of forged documents in foreclosure proceedings throughout the nation is violates homeowners' Due Process Rights and to clearly establish the Due Process Rights of litigants in state court proceedings by allowing them to obtain relief from judgments and orders procured by fraud on the court based on clear and convincing evidence obtained after the entry of foreclosure judgments.

Dated at Madison, Wisconsin this 10th day of March, 2023.

/s/ Wendy Alison Nora

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