INDEX TO APPENDIX
(Page One)

INDEX TO APPENDIX
(Page Two)

Appendix 1

FILED
SUPREME COURT
STATE OF WASHINGTON
10/12/2022
BY ERIN L. JOHNSON
CLERK

THE SUPREME COURT OF WASHINGTON

JOHN ERICKSON et ano., Petitioners,	)	No. 101047-8 ORDER
v.	)	Court of Appeals
STOEL RIVES, LLP, et al., Respondents.	)	82755-3-I

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis, considered at its October 11, 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 "Respondents' Motion to Strike Appellant's Reply and Request for Judicial Notice" is granted and the petition for review is denied.

DATED at Olympia, Washington, this 12th day of October, 2022.

For the Court

/s/ González, C.J.

CHIEF JUSTICE

Appendix 2

FILED
4/25/2022
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. VANESSA POWER, STOEL & RIVES, SELECT PORTOFOLIO SERVICING, JOHN GLOWNEY, WILL EIDSON, THOMAS REARDON, LANCE OLSEN HOLTHUS & MCCARTHY Respondents.	No. 82755-3-I DIVISION ONE UNPUBLISHED OPINION

VERELLEN, J. — This is the third appeal before this court regarding John and Shelley Erickson's 2009 default on their mortgage. The trial court granted summary judgment against the Ericksons, concluding collateral estoppel barred relitigation of their claims. Because the unrebutted evidence established that the Ericksons are attempting to relitigate the same issues previously resolved in several final prior adjudications, the trial court did not err by granting summary judgment.

The Ericksons argue the trial court erred by denying their CR 56(f) motion to continue the summary judgment hearing. Because the Ericksons failed to establish good cause existed to delay the hearing, the trial court did not abuse its discretion.

For the first time on appeal, the respondents request that we find the Ericksons to be vexatious litigants. Because this presents a fact-specific question affecting the Ericksons' ability to file claims in trial court, such a request should be pursued in trial court.

Therefore, we affirm.

FACTS

The Ericksons purchased a house in 2006 with a loan secured by a deed of trust from Long Beach Mortgage Company, which was part of Washington Mutual.[1] Long Beach soon sold the loan into a trust, and Deutsche Bank National Trust Company was the trustee.[2] When Washington Mutual failed, its assets were purchased by JP Morgan Chase.[3]

The Ericksons defaulted in 2009.[4] They brought a lawsuit against Deutsche Bank in August of 2010 (Erickson I).[5] The suit was removed to federal court.[6] The Ericksons sought an

injunction against foreclosure, arguing the bank lacked standing to enforce the note because it was not the original creditor and could not

1 Deutsche Bank Nat'l Tr. Co. for Long Beach Mort. Loan Tr. 2006-4 v. Erickson, No. 73833-0-I, slip op. at 2 (Wash. Ct. App. Feb. 13, 2017), http://www.courts.wa.gov/opinions/pdf/738330.pdf (Erickson II).

2 Id.

3 Id.

4 Id. at 3.

5 Erickson v. Deutsche Bank Nat'l Tr. Co. for Long Beach Mort. Loan Tr. 2006-4, No. 81648-9-I, slip op. at 2 (Wash. Ct. App. Nov. 29, 2021) http://www.courts.wa.gov/opinions/pdf/816489.pdf (Erickson III).

6 Id.

produce the original note.[7] The court granted summary judgment in favor of Deutsche Bank, concluding it held the note.[8]

In 2013, J.P. Morgan Chase assigned its interest in the Erickson's loan to Deutsche Bank, and Deutsche Bank filed suit in King County Superior Court to foreclose on the note (Erickson II).[9] Deutsche Bank moved for summary judgment, arguing that it was entitled to foreclosure because it held the note.[10] In 2015, the trial court granted

summary judgment in favor of Deutsche Bank.[11] This court affirmed, concluding both that collateral estoppel prevented the Ericksons from relitigating whether Deutsche Bank held the note and that, regardless, as a matter of law, Deutsche Bank held the note.[12]

In 2019, the Ericksons filed a CR 60 motion in superior court to vacate the 2015 superior court judgment (Erickson III).[13] The trial court granted summary judgment for Deutsche Bank, dismissing the Erickson's claims.[14] This court affirmed,[15] concluding collateral estoppel barred the Ericksons from "present[ing]

7 Erickson v. Long Beach Mortg. Co., No. 10-1423 MJP, 2011 WL 830727, at *3 (W.D. Wash. Mar. 2, 2011) (Erickson I).

8 Id.

9 Erickson III, No. 81648-9-I, slip op. at 2.

10 Erickson II, No. 73833-0-I, slip op. at 3.

11 Id.

12 Id. at 7.

13 Erickson III, No. 81648-9-I, slip op. at 2.

14 Id. at 3.

15 Id. at 1.

identical issues as they did in a federal proceeding in 2010, and again in a superior court action in 2014."[16]

The law firm Stoel Rives, LLP, and several of its attorneys represented Deutsche Bank in both Erickson II and Erickson III. In May of 2020, the Ericksons filed a 190-page complaint and accompanying appendix of over 1,500 pages in superior court against Stoel Rives and the attorneys who worked on those past cases.[17] The Ericksons alleged "OUR ENTIRE RESIDENCE IS BEING SEIZED, AND TRESPASSED BY FRAUDS WITH A WRONGFUL FORECLOSURE AND SALE AT AUCTION BY FRAUDS WITH NO PERMISSION TO REPRESENT ANOTHER FRAUD WHOM NEVER HELD OUR NOTE."[18]

Stoel Rives moved for summary judgment, arguing collateral estoppel barred the Ericksons from relitigating whether Deutsche Bank held the note securing their loan. The Ericksons filed a CR 56(f) motion to continue, arguing more time was required to depose Jess Almanza, a former Washington Mutual employee whose signature appears on the back of the note, indorsing it in his capacity as a vice president of Long Beach. The trial court denied the CR 56(f) motion and granted summary judgment for Stoel Rives.

The Ericksons appeal.

16 Id. at 7.

17 We refer to defendants collectively as "Stoel Rives."

18 Clerk's Papers (CP) at 3-4.

ANALYSIS

I. CR 56(f) Motion to Continue

The Ericksons contend the trial court relied upon inadmissible evidence to deny their motion to continue.[19] We review denial of a CR 56(f) motion for abuse of discretion.[20] A court abuses its discretion when it acts based on untenable evidentiary grounds or on untenable legal reasons.[21]

Under CR 56(f), a court can grant a continuance to provide a party opposing summary judgment more time to conduct discovery.[22] The court can deny the motion when "(1) the requesting party fails to offer a good reason for the delay, (2) the requesting party does not state what evidence is desired, or (3) the desired evidence will not raise a genuine issue of material fact."[23] In Coggle v. Snow, this court held a trial court abused its discretion by denying a CR 56(f) motion.[24] A patient sued his doctor for malpractice, alleging a particular mixture of drugs caused a respiratory problem.[25] The doctor filed for

19 Appellant's Br. at 15, 35-37.

20 MRC Receivables Corp. v. Zion, 152 Wn. App. 625, 629, 218 P.3d 621 (2009) (citing Coggle v. Snow, 56 Wn. App. 499, 504, 784 P.2d 554 (1990)).

21 Coggle, 56 Wn. App. at 507 (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

22 Bavand v. OneWest Bank, 196 Wn. App. 813, 821-22, 385 P.3d 233 (2016).

23 Kozol v. Wash. State Dep't of Corr., 192 Wn. App. 1, 6, 366 P.3d 933 (2015) (citing Tellevik v. 31641 W. Rutherford St., 120 Wn.2d 68, 90, 838 P.2d 111 (1992)).

24 56 Wn. App. 499, 504, 784 P.2d 554 (1990).

25 Id. at 501.

summary judgment and included an affidavit from a respiratory physician who declared that the doctor was not negligent for administering the drugs.[26] Less than one week later, the patient's counsel filed a CR 56(f) motion for a 15-day continuance.[27] The patient's counsel explained a continuance was necessary because, first, the patient's original counsel was retiring and he had replaced him days earlier, and, second, he had just met the patient's new physician and needed more time to file a declaration rebutting the respiratory physician's affidavit.[28] The trial court denied the motion and granted summary judgment for the doctor.[29] This court reversed, explaining good cause existed under CR 56(f) for the continuance because the patient's first counsel was "dilatory" in conducting discovery, the patient's new counsel associated after the summary judgment motion was filed, and the new counsel needed more time to gather the evidence necessary to rebut the respiratory physician's affidavit.[30]

In Bavand v. OneWest Bank, by contrast,

this court affirmed the trial court's denial of a CR 56(f) motion.[31] A borrower fell behind on her payments, and her bank sent a notice of default.[32] The borrower filed a complaint against her bank in

26 Id. at 501-02.
27 Id. at 502.
28 Id.
29 Id. at 503.
30 Id. at 508.
31 196 Wn. App. 813, 821, 385 P.3d 233 (2016).
32 Id. at 820.

superior court, alleging federal claims and a state claim.[33] The case was removed to federal court, and it dismissed all of the federal claims on summary judgment.[34] The state claim was remanded to the superior court, and the bank moved for summary judgment.[35] The borrower requested a continuance under CR 56(f).[36] The superior court denied the CR 56(f) motion and granted summary judgment.[37] This court affirmed. It explained the borrower failed to explain why good cause existed for a continuance requested almost four years after first filing her complaint and more than two years after the federal court granted summary judgment.[38] And the borrower failed to explain why she had been unable to discover the evidence identified in her motion.[39]

Here, the trial court denied the Erickson's CR 56(f) motion because, among other reasons, they "did not exercise diligence in seeking any such discovery."[40] On January 19, 2021, the Ericksons requested a continuance of the summary judgment hearing scheduled for January 29 [41] in order to depose former

[33] Id. at 821.
[34] Id.
[35] Id.
[36] Id.
[37] Id.
[38] Id. at 822-23.
[39] Id. at 823.
[40] CP at 3513.
[41] The hearing was continued to March of 2021 because the judge set to hear the motion recused herself.

Washington Mutual employee Almanza.[42] But their motion fails to explain why they could not have located and deposed him earlier. In their opposition to summary judgment, the Ericksons admitted they first learned of Almanza and his potential significance to their legal theory during

their 2015 case against Deutsche Bank.[43] In another opposition to summary judgment, the Ericksons explained they "discovered that Jess Almanza was never employed by and was never 'Vice President' of Long Beach Mortgage Company" in August of 2018 when they found his LinkedIn profile.[44] And in a November 31, 2020 filing from the instant case, the Ericksons listed Almanza as a potential witness, explaining he was "expected to testify that he was never a Vice President of or even an employee of Long Beach Mortgage Company."[45] Despite learning his significance in 2015, finding him on LinkedIn in 2018, and concluding by November 2020 that he could be a witness,

[42] CP at 2389-90.

[43] CP at 3237-38.

[44] CP at 2297. The Ericksons allege the trial court erred because it took judicial notice of LinkedIn's messaging functions and based its decision on that fact. Appellant's Br. at 15, 35-36; Reply Br. at 28-29. The record does not support them. Before the trial court mentioned LinkedIn, it denied the CR 56(f) motion, explaining the Erickson's did not "identify a single thing that you haven't been able to obtain in discovery [or] explain why you haven't been able to obtain it in discovery." Report of Proceedings (Mar. 26, 2021) at 9, 11. The court mentioned the messaging function on

LinkedIn merely to illustrate the Ericksons' failure to explain their alleged inability to depose Almanza. The Ericksons fail to establish the court took judicial notice of a fact and, even if it did, that the court relied on that fact to make its decision.

45 CP at 1929-30.

the Ericksons did not serve Almanza with a deposition subpoena until February 5, 2021.[46] Unlike the patient in Coggle and like the borrower in Bavand, the Ericksons knew of Almanza's potential significance and of his potential testimony years before requesting a continuance. Like Bavand, their motion failed to explain what prevented them from deposing Almanza or, at least, obtaining a declaration from him between August of 2018 and January of 2021. Indeed, Almanza provided a declaration only a few weeks after being served.[47] Contrary to the Erickson's belief,[48] CR 56(f) requires more than belated diligence. The party requesting a continuance must offer a good reason for the delay in discovering their desired evidence.[49] Because the Ericksons did not do so, they fail to show the trial court abused its discretion by denying the CR 56(f) motion.[50]

II. Summary Judgment

The trial court granted summary judgment for Stoel Rives and dismissed the Ericksons claims with prejudice because "the issues raised in the Complaint

46 CP at 2892.

47 Id.

48 Reply Br. at 29.

49 Kozol, 192 Wn. App. at 6 (citing Tellevik, 120 Wn.2d at 90).

50 Because we affirm on this basis, we do not reach the trial court's conclusion that Almanza's declaration did not present a genuine issue of material fact. See Bavand, 196 Wn. App. at 825 ("We may affirm on any basis supported by the record.") (citing First Bank of Lincoln v. Tuschoff, 193 Wn. App. 413, 422, 375 P.3d 687 (2016)).

are barred by collateral estoppel."[51] We review a grant of summary judgment de novo.[52] Summary judgment is proper when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."[53] "'A genuine issue of material fact exists if reasonable

minds could differ on the facts controlling the outcome of the litigation.'"[54] We review de novo whether collateral estoppel bars relitigation of an issue.[55] "The doctrine of collateral estoppel prevents relitigation of an issue after the party estopped has had a full and fair opportunity to present its case."[56] Collateral estoppel, also called issue preclusion, "promotes judicial economy and prevents inconvenience or harassment of parties"[57] by "'preventing needless litigation.'"[58] The party asserting collateral estoppel must establish four elements:

51 CP at 3512.

52 Bavand, 196 Wn. App. at 825 (citing Ranger Ins. Co. v. Pierce Cty., 164 Wn.2d 545, 552, 192 P.3d 886 (2008)).

53 CR 56(c).

54 Bavand, 196 Wn. App. at 825 (quoting Knight v. Dep't of Labor & Indus., 181 Wn. App. 788, 795, 321 P.3d 1275 (2014)) (internal quotation marks omitted).

55 Schibel v. Eymann, 189 Wn.2d 93, 98, 399 P.3d 1129 (2017) (citing Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299, 305, 96 P.3d 957 (2004)).

56 Hanson v. City of Snohomish, 121 Wn.2d 552, 561, 852 P.2d 295 (1993) (citing Malland v. Dep't of Retirement Sys., 103 Wn.2d 484, 489, 694 P.2d 16 (1985); Beagles v. Seattle-First Nat'l Bank, 25 Wn. App. 925, 929, 610 P.2d 962 (1980)).

57 Schibel, 189 Wn.2d at 98 (citing Christensen,

152 Wn.2d at 306).

58 State Farm Fire & Cas. Co. v. Ford Motor Co., 186 Wn. App. 715, 722, 346 P.3d 771 (2015) (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)).

> (1) the issue sought to be precluded is identical to that involved in the prior action; (2) the issue was determined by a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.[59]

The Ericksons dispute that any of the four elements were met.

To satisfy the first element and establish that the issues were identical, Stoel Rives had to show "substantial similarity between the facts in this case and the prior cases" and that "the controlling legal rules are the same in this case and the prior cases."[60] The basis of the Ericksons' present complaint against Stoel Rives is that it perpetrated

fraud upon the court by representing entities without the authority to foreclose because the note was not properly held by Deutsche Bank.[61]

In Vanessa Power's declaration in support of summary judgment,[62] Stoel Rives presented unrebutted evidence that this is the same issue presented and resolved already in Erickson I and Erickson II. In Erickson I, the federal court concluded Deutsche Bank held the note and had the authority to foreclose.[63] In

59 Id. (citing Hadley v. Maxwell, 144 Wn.2d 306, 311-12, 27 P.3d 600 (2001)).

60 Id. at 723 (citing Thompson v. Dep't of Licensing, 138 Wn.2d 783, 791-92, 982 P.2d 601 (1999); LeMond v. Dep't of Licensing, 143 Wn. App. 797, 805-06, 180 P.3d 829 (2008); Cloud v. Summers, 98 Wn. App. 724, 730-31, 991 P.2d 1169 (1999)).

61 CP at 49-50; see also CP at 8 ("Stoel and Rives have made false pleadings from the start of their case in [Deutsche Bank National Trust Company] v. Ericksons [Erickson II]. Defendants mislead the courts. Misleading the courts to be defending a false defendant with false jurisdictional pleadings is no mistake and it VOIDS THEIR CASES FILED.").

62 CP at 2022-24.

63 CP at 2069-70 (Erickson I decision).

Erickson II, this court applied Washington law and concluded Deutsche Bank held the note and had the authority to foreclose.[64] And after the trial court granted summary judgment in the instant case, this court considered Erickson III and concluded the issues presented were identical to those decided in Erickson II.[65] Stoel Rives clearly established the first element for collateral estoppel.

As to the second element, the Ericksons contend Stoel Rives failed to establish final judgments were entered in the previous cases because "[n]o judgment on the merits has ever entered on the allegations of fraud arising from the concealed identity of [Select Portfolio Servicing, Inc.], the actual client of the STOEL RIVES attorneys."[66] But the basis of this argument is that Deutsche Bank and its agents committed fraud by foreclosing without holding the note. Final judgments entered in the previous cases already resolved this issue. The Ericksons also argue no final judgments were ever entered because no "court ever heard or determined the new evidence discovered in the course of the proceedings in the action on appeal."[67] But the Ericksons presented evidence and argument about Almanza's signature in their Erickson III complaint to allege Deutsche

Bank committed fraud.[68]

64 CP at 2270-71 (Erickson II decision).

65 No. 81648-9-I, slip op. at 7.

66 Appellant's Br. at 25-26.

67 Id. at 26.

68 CP at 1517-19 (Nora Decl.); CP at 2040-42 (complaint). Even if the Erickson III litigation had not already considered the Almanza evidence, the Ericksons fail to explain why new evidence of an issue already resolved should be considered in new litigation rather than in a CR 60 motion. Indeed, Erickson III was a CR 60 motion, and the Ericksons fail to explain why the Almanza

Stoel Rives established final judgments were entered in Erickson I, Erickson II, and Erickson III.

For the third element, the Ericksons contend collateral estoppel does not apply because there was not privity between Stoel Rives and Deutsche Bank or other parties to past cases.[69] But they misunderstand this requirement. Washington law used to require mutuality of parties, "meaning there had to be identity or privity of parties in the same antagonistic relationship in both proceedings."[70]

But it now requires that only the party being estopped be the same, or, at least, be in privity with another party in both proceedings.[71] Because it is undisputed that the Ericksons were party to each of the past proceedings and they are the party being estopped, Stoel Rives established this element.

As to the fourth element, the Ericksons contend application of collateral estoppel would be unjust because no court has held a full hearing based upon the Almanza declaration.[72] But the Almanza declaration is merely an extension of the same argument and evidence presented in Erickson III. And, unlike the defendant

declaration should be considered now when, without explanation, they failed to obtain it after recognizing Almanza's alleged significance in 2018 before filing Erickson III.

[69] Appellant's Br. at 30-31; Reply Br. at 26-27.

[70] State v. Mullin-Coston, 152 Wn.2d 107, 113, 95 P.3d 321 (2004) (citing Owens v. Kuro, 56 Wn.2d 564, 568, 354 P.2d 696 (1960)).

[71] Id. at 113-14 (citing Kyreacos v. Smith, 89 Wn.2d 425, 428-30, 572 P.2d 723 (1977); Nielson v. Spanaway Gen. Med. Clinic, Inc., 135 Wn.2d 255, 258, 269, 956 P.2d 312 (1998)).

[72] Appellant's Br. at 32-34.

in State Farm Fire & Casualty Co. v. Ford Motor Co.,[73] the Ericksons are being defensively, rather than offensively, collaterally estopped after having addressed a legally and factually identical issue in several past cases that included the opportunity to discover and present the Almanza evidence. Stoel Rives satisfied the fourth element.

Because Stoel Rives provided unrebutted evidence to establish the four elements of collateral estoppel, the trial court did not err by granting summary judgment on that basis.[74]

III. Vexatious Litigation

For the first time on appeal, Stoel Rives requests that we find that the Ericksons are vexatious litigants.

Courts have the inherent discretion to "place reasonable restrictions on any litigant who abuses the judicial process."[75] When a court limits a vexatious litigant's ability to file claims, it imposes an injunction on the litigant.[76] Under CR 65(d), a party seeking such an injunction must demonstrate a "'specific and detailed showing of a pattern of abusive and frivolous litigation.'"[77] Accordingly, "CR 65(d)

requires every injunction to set forth the reasons for its issuance."[78]

[73] 186 Wn. App. 715, 725-27, 346 P.3d 771 (2015).

[74] Because we can affirm on this ground alone, we decline to reach the question of whether the Ericksons failed to establish fraud.

[75] Yurtis v. Phipps, 143 Wn. App. 680, 693, 181 P.3d 849 (2008) (citing In re Marriage of Giordano, 57 Wn. App. 74, 78, 787 P.2d 51 (1990)).

[76] Whatcom County v. Kane, 31 Wn. App. 250, 253, 640 P.2d 1075 (1981).

[77] Yurtis, 143 Wn. App. at 693 (quoting Kane, 31 Wn. App. at 253).

[78] Kane, 31 Wn. App. at 253.

Whether to impose an injunction is a fact-specific question,[79] and the typical role of an appellate court is to review trial court actions and not to take or weigh evidence.[80] Unlike Yurtis v. Phipps, where an appellate court enjoined a litigant shown to be abusing the appellate judicial process,[81] Stoel Rives seeks to restrict the Ericksons' ability to file in trial court. Despite an ample record of the Ericksons' repetitive claims, a trial court is best positioned to make the fact-specific determination

about whether they are vexatious litigants. We decline to consider Stoel Rives's request.

We affirm the trial court's grant of summary judgment and decline to consider Stoel Rives's vexatious litigants motion.

/s/_____
Verellen, J.

WE CONCUR:

/s/_____
Bowman, J.

/s/_____
Smith, J.

79 See Proctor v. Huntington, 169 Wn.2d 491, 503, 238 P.3d 1117 (2010) (court's equitable power to enter an injunction "is inherently flexible and fact-specific") (citing Young v. Young, 164 Wn.2d 477, 495, 191 P.3d 1258 (2008)).

80 Bale v. Allison, 173 Wn. App. 435, 458, 294 P.3d 789 (2013) (quoting Quinn v. Cherry Lane Auto Plaza, Inc., 153 Wn. App. 710, 717, 225 P.3d 266 (2009)).

81 143 Wn. App. 680, 181 P.3d 849 (2008).

Appendix 3

FILED
5/24/2022
Court of Appeals
Division 1
State of Washington

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

JOHN ERICKSON and SHELLEY ERICKSON, Petitioners, v. VANESSA POWER, STOEL & RIVES, SELECT PORTOFOLIO SERVICING, JOHN GLOWNEY, WILL EIDSON, THOMAS REARDON, LANCE OLSEN HOLTHUS & MCCARTHY Respondents.	No. 82755-3-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellants filed a motion for reconsideration of the court's April 25, 2022 opinion. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that the appellants' motion for reconsideration is denied.

FOR THE PANEL:
/s/_____
Verellen, J.

Appendix 4

Judge Ken Schubert

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

JOHN AND SHELLEY ERICKSON, In Propria Persona, Plaintiffs, v. VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON AND LANCE OLSEN HOLTHUS AND MCCARTHY, Defendants.	No. 20-2-08633-9-KNT KNT PRELIMINARY DECLARATION OF JESS G. ALMANZA

Jess G. Almanza declares under penalty of perjury pursuant to RCW 9.72.085:

1. I am an adult resident of the State of California.

2. I am fully competent to make this Declaration of my own personal knowledge and to the best of my ability to recollect this information.

3. If called to testify at trial, I would testify under oath to the best of my ability to recollect the facts as best as I remember set forth below.

4. I was employed by Washington Mutual Bank from August, 1995 until July, 2006.

1

5. I was Vice President of Washington Mutual Bank for Capital Markets/National Post Closing Operations.

6. From August, 1995 until July, 2005, I worked for Washington Mutual Bank (“WaMu”) in Stockton, California.

7. I was offered and accepted a non-working retainer for a period of twelve (12) months in July,

2005 after having been notified the Stockton, CA Post Closing Operation was to have been closed and I was to be laid off; however during this time the bank (WaMu) reserved the right to call me in the office and perform various operational duties in support of the ordinary course of business or business as usual ("BAU") process and the pending closure of this operational site.

8. Payments to me from Washington Mutual Bank under the non-working retainer terminated in July, 2006.

9. After July, 2005, I performed no work for Washington Mutual Bank and was not physically present in the Stockton, California location.

10. At the time of my pending layoff, the bank (WaMu) offered all employees who were

slated for a layoff vendor assistance creating resumes, profiles, training and posting these in LinkedIn; over the years I updated my profile periodically but I have not had the need to do so since I have not had the need for new employment, I authorized the creation of my LinkedIn profile, which has been published at https://www.linkedin.com/in/jess-almanza-6645456/.

2

11. I have reviewed a copy of my LinkedIn profile is attached hereto as Exhibit 1 and compared it to the information retrievable at https://www.linkedin.com/in/jess-almanza-6645456/.

12. Exhibit 1 is an accurate screenshot of the information on the LinkedIn profile.

13. When I worked for Washington Mutual Bank in Stockton, California, I managed a team that performed a systemic data field review, comparing a limited of loan data information from the Servicing system against various imaged documents one of which included the Mortgage Note for the stated loan terms and details at the Stockton, California location; this information was performed on all loans what were originated and also as a basis of a QA check in support of loan sales. Any discrepancies were queued to the corresponding Servicing departments which were responsible for fixing the noted issues and also to the origination centers in order for the loans to meet the terms and conditions as required by the investor selling guidelines and/or contractual terms.

14. The system used to perform the Quality Assurance ("QA") review was proprietary to

Washington Mutual Bank. To my recollection, this review was uploaded with new origination information into I believe to have been an MS Access based system for the selected loan fields granting the Post Closing Operations team the ability to perform the QA limited loan field review and compare against the corresponding imaged documents for validation. If any discrepancies were found related to the terms of the Notes, these were queued to the Servicing Modification Department for resolution.

15. I signed many documents while employed by Washington Mutual Bank in accordance of the transaction authority terms given to me as a bank officer but I never placed my signature on any Notes to the best of my recollection. I did rendered assistance to the

Document Custodian at times at their request with signing various documents and forms in the capacity as an officer or WaMu; however the Document Custodian was ultimately responsible

for all the document maintenance, transfer and management supporting all loan sales transactions and new originations.

16. At the time I was interviewed by the investigator for Attorney Scott E. Stafne of the State of Washington on February 5, 2021, in advance of making this Declaration, I did not know what she meant by the term "endorsement".

17. Although it has been more than fifteen (15) years since I worked for Washington Mutual Bank, I do not recall ever being asked to provide and I do not recall ever having provided a sample

of my signature for the purpose of creating a signature stamp to be used to endorse Notes.

18. I was sent five (5) documents in PDF format by Attorney Stafne's investigator for review which are titled "Note" (Exhibits 3 and 5) or "Fixed/Adjustable Rate Note" (Exhibits 2, 4, and 6) which are attached hereto.

19. I was told by Attorney Stafne's investigator that endorsements appear on the last page of each PDF document titled "Note"or "Fixed/Adjustable Rate Note" attached hereto as Exhibits 2, 3, 4, 5, and 6.

20. While my signature is displayed on what appear to be signature stamps on the last page of each PDF document titled "Note" attached hereto as Exhibits 2, 3, 4, and 6 and on the bottom of page 3 of Exhibit 5, I did not place the

endorsement stamps on Exhibit 2, 3, 4, 5 or 6.

21. I do not recall giving give anyone permission to use my signature to create a stamp displaying my signature as “Vice President” of Long Beach Mortgage Company.

22. I do not recall giving anyone permission to place what appears to be a

signature stamp displaying my signature on the documents attached hereto as Exhibits 2, 3, 4, 5, and 6 or any other Note.

23. The custodian of the loan documents would have been responsible for placing

endorsements on the Notes and the key document transfer process supporting any corresponding loan sale.

24. Washington Mutual Bank acquired a number of financial institutions during the period of my employment.

25. I recall the names of Bank United, Dime Bank Savings Bank, HomeSide Lending and Long Beach Mortgage Company all of which were synonymous with WaMu and integrated as part of Washington Mutual Bank Post Closing process during my employment.

26. In the course of all the bank integrations and acquisitions, my title carried over as a Vice

President to all companies which became part of Washington Mutual Bank during the term of my employment; this is to the best of my recollections since Washington Mutual Bank acquired several banks and mortgage companies during my tenure.

27. Other employees of Washington Mutual Bank were also given the title of Vice President of those companies.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

Dated at Lodi, California this 21 day of February, 2021.

/s/ Jess Almanza

Jess G. Almanza

Appendix 5

HONORABLE KEN SCHUBERT

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CASE #: 20-2-08633-9 KNT

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

JOHN and SHELLEY ERICKSON, In Propria Persona, Plaintiffs, v. VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON, AND LANCE OLSEN HOLTHUS, AND MCCARTHY, Defendants.	) No. 20-2-08633-9 KNT)) ORDER)) (1) GRANTING) DEFENDANTS') MOTION FOR) SUMMARY) JUDGMENT) (2) DENYING) PLAINTIFFS') MOTION TO STRIKE) POWER) DECLARATION) (3) DENYING) PLAINTIFFS' CR) 56(f) MOTION) (4) DENYING) PLAINTIFFS') MOTION TO) CONTINUE TRIAL) AS MOOT

) (5) DENYING
) DEFENDANTS'
) MOTIONS TO QUASH
) AND FOR
) PROTECTIVE
) ORDER AS MOOT
_____)

This matter came before the Court with oral argument on March 26, 2021 on the Motion for Summary Judgment of Defendants Select Portfolio Servicing, Inc., Stoel Rives LLP, Vanessa Power, Will Eidson, and John Glowney ("Defendants"). Also pending before the Court are multiple other motions. The Court considered the arguments of Plaintiffs John and Shelley Erickson and Defendants. The Court also considered the pleadings and records on file, including:

1. Defendants' Motion for Summary Judgment;

2. Declaration of Vanessa Power in Support of the Motion for Summary Judgment;

3. Plaintiffs' Response and Opposition to Summary Judgment;

4. Declaration of John Erickson in Response and in Opposition to Motion to Summary Judgment;

5. Declaration of Shelley Erickson in

Response and in Opposition to Motion for Summary Judgment;

6. Declaration of Wendy Alison Nora in Response and in Opposition to Motion for Summary Judgment;

7. Plaintiffs' Index of Exhibits in Response and Opposition to Motion for Summary Judgment;

8. Defendants' Reply in Support of Motion for Summary Judgment;

9. Plaintiffs' Supplemental Declaration of Shelley Erickson in Response and in Opposition to Motion for Summary Judgment;

10. Plaintiffs' Correction of Errata in Response and Opposition to Motion for Summary Judgment;

11. Plaintiffs' Amended Declaration of Wendy Alison Nora in Response and in Opposition to Motion for Summary Judgment;

12. Plaintiffs' Supplemental Declaration of Wendy Alison Nora in Opposition to Motion for Summary Judgment;

13. Plaintiffs' Declaration of Jess G. Almanza;

14. Plaintiffs' Supplemental Response and Opposition to Motion for Summary Judgment;

15. Plaintiffs' Declaration of Wendy Alison Nora in Support of Supplemental Response and Opposition to Motion for Summary Judgment;

16. Plaintiffs' List of Exhibits in Support of Plaintiffs' Supplemental Response and Opposition to Motion for Summary Judgment;

17. Plaintiffs' Motion to Strike the January 25, 2021 Declaration of Vanessa Power;

18. Plaintiffs' Motion to Defer, Deny or Continue Motion for Summary Judgment Pursuant to CR 56(f);

19. Defendants' Response to Motion to Defer, Deny or Continue Summary Judgment Pursuant to CR 56(f);

20. Declaration of Vanessa Power in Support of Defendants' Response to Motion to Defer, Deny or Continue Summary Judgment Pursuant to CR 56(f);

21. Defendants' Motion to Quash Deposition Subpoena of Jess Almanza;

22. Declaration of Vanessa Power in Support of Defendants' Motion to Quash Deposition Subpoena of Jess Almanza;

23. Defendants' Reply in Support of Motion to Quash Deposition Subpoena of Jess Almanza;

24. Defendants' Motion to Quash Depositions of Defendants

25. Declaration of Vanessa Power in Support of Motion to Quash Depositions of Defendants;

26. Plaintiffs' Response in Opposition to Motion to Quash Deposition Subpoena of Jess Almanza;

27. Plaintiffs' Exhibit List in Support of Response in Opposition to Motion to Quash Deposition Subpoena of Jess Almanza;

28. Plaintiffs' Errata regarding Plaintiffs' Response in Opposition to Motion to Quash Deposition Subpoena of Jess Almanza;

29. Plaintiffs' Motion to Extend Discovery

Cutoff Date and Continue Trial Date;

30. Plaintiffs' Exhibit List in Support of Motion to Extend Discovery Cutoff Date and Continue Trial Date;

31. Plaintiffs' Exhibit List of Discovery Documents;

32. Defendants' Motion for Protective Order Quashing Plaintiffs' Discovery Requests;

33. Defendants' Omnibus Response to Plaintiffs' Supplemental Response to Summary Judgment; Motion to Continue Trial and Supplemental Request for CR 56(f) Relief; and Motion to Strike January 25, 2021 Declaration of Vanessa Power;

34. Plaintiffs' Combined Response in Opposition to Motion to Quash Notices of Defendants' Depositions and Plaintiffs' Written Discovery;

35. Defendants' Combined Reply in Support of Defendants' Motion to Quash Deposition Subpoena of Jess Almanza; Motion to Quash Depositions of Defendants; and Motion to Quash and for Protective Order Limiting Plaintiffs' Discovery Requests;

36. Plaintiff Shelley Erickson's New Discovery Supplemental Declaration in Support of to [sic] Extend Discovery Cutoff Date and Continue Trial Date Pursuant to LCR 40(e) and in Opposition to Quash Non-Party Deposition Subpoena and Declaration of Service; and

37. Plaintiffs' Notice of Filing of Exhibit 2 to Combined Response in Opposition to Defendants' Motion to Quash Plaintiffs' Notices of Defendants'

Depositions and Written Discovery.

The Court notes that although Plaintiffs filed numerous submissions after the deadlines under CR 56 and LCR 7, and without leave of Court to supplement filings, the Court has reviewed and addressed all pending matters.

Being fully advised, it is ORDERED:

1. Defendants' Motion for Summary Judgment (Dkt. 60) is GRANTED. The Complaint is DISMISSED in its entirety, with prejudice. Construing the facts in the light most favorable to Plaintiffs, the Court finds and concludes that there is no genuine issue as to any material fact and that Defendants are entitled to a judgment as a matter of law.

a. Specifically, the Court holds that the issues raised in the Complaint are barred by collateral estoppel. This case presents the same issues previously litigated in at least Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, King County Superior Court Case No. 14-2-00426-5 KNT; 197 Wn. App. 1068 (2017) (unpublished), rev. denied 188 Wn.2d 1021 (2017) and Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-

4, King County Superior Court Case No. 19-2-12664-7 KNT. Final judgment on the merits was entered against Plaintiffs in both cases. The Court finds there is privity between Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 (the "Trust") and Defendants here, as agents and service providers for the Trust. Finally, the Court concludes that application of collateral estoppel would not work an injustice here, where Plaintiffs have already had full and fair opportunity to present their claims.

b. Even if reaching the merits, Plaintiffs fail to satisfy the nine elements of fraud, which requires a representation of an existing fact; its materiality; its falsity; the speaker's knowledge of its falsity or ignorance of its truth; intent that it should be acted upon by the person to whom it is made; ignorance of its falsity on the part of the person to whom it is made; the latter's reliance on the truth of the representation; his/her right to rely upon it; and his/her consequent damage. c. The Declaration of Jess Almanza does not create a material issue of fact. Overton v. Consolidated Ins. Co., 145 Wn.2d 417, 429-33, 38 P.3d 322 (2002).

2. Plaintiffs' Motion to Strike the January 25, 2021 Declaration of Vanessa Power (Dkt. 75) is DENIED.

3. Plaintiffs' Motion to Defer, Deny or Continue Motion for Summary Judgment of Defendants Pursuant to CR 56(f) (Dkt. 65) is

DENIED. The Court finds that Plaintiffs

failed to satisfy the elements under CR 56(f) because: (a) Plaintiffs did not submit an affidavit setting forth outstanding discovery; (b) Plaintiffs did not exercise diligence in seeking any such discovery; and (c) Plaintiffs did not establish that any discovery sought would lead to a disputed issue of material fact.

4. Plaintiffs' Motion to Extend Discovery Cutoff and Continue Trial Date (Dkt. 152) is DENIED as moot.

5. Defendants' Motion to Quash the Deposition Subpoena of Jess Almanza (Dkt. 110); Motion to Quash Depositions of Defendants (Dkt. 127); and Motion to Quash and for Protective Order Limiting Plaintiffs' Discovery (Dkt. 156) are DENIED as moot.

SO ORDERED this 26th day of March, 2021.

E-signature on last page.

_____

HONORABLE KEN SCHUBERT

Presented by:
STOEL RIVES LLP
s/ Vanessa Power
Vanessa Soriano Power, WSBA No. 30777
vanessa.power@stoel.com
Anne Dorshimer, WSBA No. 50363
anne.dorshimer@stoel.com
600 University Street, Suite 3600
Seattle, WA 98101
Attorneys for Defendants Select Portfolio Servicing, Inc., Stoel Rives LLP, Vanessa Power, Will Eidson, and John Glowney

ORDER GRANTING SUMMARY JUDGMENT
AND RULING ON MOTIONS- 6

CERTIFICATE OF SERVICE- 1

King County Superior Court
Judicial Electronic Signature Page
Case Number: 20-2-08633-9
Case Title: ERICKSON ET ANO VS POWER ET AL
Document Title: ORDER RE GRANTING MTN FOR SUMMARY JUDGMENT
Signed By: Kenneth Schubert
Date: March 26, 2021

/s/ Kenneth Schubert
Judge: Kenneth Schubert

This document is signed in accordance with the provisions in GR 30.

Certificate Hash:
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Appendix 6

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

ERICKSON et ano,) King County Superior Court
Plaintiffs,) No. 20-2-08633-9 KNT
v.)
)
POWER, et al,)
Defendants.)

Verbatim Transcript from Recorded Proceedings
Before The Honorable KEN SCHUBERT

March 26, 2021
Maleng Regional Justice Center
Kent, Washington
APPEARANCES:
For the Plaintiffs: For the Defendants:
John Erickson and Vanessa Power
Shelley Erickson, pro se Stoel Rives LLP
600 University St., Suite 3600
Seattle, WA 98101
contact: Leslie Lomax
leslie.lomax@stoel.com
TRANSCRIBED BY: Grace Hitchman, AAERT, CET-663

March 26, 2021
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. . .
3 THE COURT: Well, the endorsement -- all they're
4 really saying is that the endorsement signature
was --
5 looking at the facts in light most favorable to
them and, if
6 I consider Mr. Almonza's (phonetic) declaration,
he is
7 saying that's not my signature. That I didn't
authorize a
8 signature block to be used or stamp to be used on
the back
9 of that -- that note. But that doesn't make -- I
don't
10 understand why that would make the note
invalid or something
11 that is not enforceable by the note holder. I don't
-- I
12 didn't understand that.
13 MS. POWER: We're in agreement with that,
Your
14 Honor. The -- at best, even assuming that the
Court takes
15 into consideration today these late filed
pleadings and this
16 late filed Almonza declaration, it doesn't create
that
17 genuine issue of fact, because the declaration
itself even
18 if taken at face value at best calls into question
the
19 endorsement. At best. We don't believe it even
does

20 specifically what they're arguing. It simply says he
21 doesn't recall whether there was authority. He doesn't
22 recall whether he authorized this stamp to be used.
23 But, again, taking it in the light most favorable to
24 the plaintiffs, the Ericksons here, that doesn't create a
25 genuine issue of fact that would preclude summary judgment.

1 And that is because the trust does still have -- and it's in
2 my safe here at Stoel Rives today -- the original note.
3 Still is the holder of the note. This is this same note
4 that was at issue in the 2010 federal action, in the 2014
5 foreclosure action, in which Judge Darvas reviewed that
6 original note during the summary judgment hearing in which
7 the Ericksons sought an extension of that hearing so that
8 they could have their forensic expert review that note. The
9 same note that was at issue in the last action in 2019 to
10 seek to vacate that judgment and, again, same note that's at

11 issue here.
12 So even if that endorsement is called into question,
13 it doesn't change the effectiveness of the note. And this
14 is based on reference to the Renata v Flagstar case that we
15 referenced for Your Honor most recently in our omnibus
16 response that was filed on Monday of this week. And that
17 specifically had a similar fact pattern, where the borrower
18 argued that the endorser, the apparent endorser, submitted
19 the declaration saying that, you know, that wasn't my
20 signature. The Court said the note is still effective.
21 That's because even if that were not the individual's
22 signature, it's not proof that the endorsement was
23 ineffective. And that's because in that instance, as here,
24 the trust and the bank in that instance was still the holder
25 of the note. Here as there, there was ratification.

1 Now ratification is governed by the UCC. There is
2 evidence in particular in multiple prior judgments that the
3 loan here was held into a securitized pool of

loans. And
4 that's what -- the Long Beach mortgage trust, that's the
5 trust at issue here. And there's evidence through all those
6 cases on which all of the prior judges have also relied to
7 show that the trust is the holder of the note.

Appendix 7

NO. 82755-3
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.
VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON, AND LANCE OLSEN,
Defendants/Respondents

APPELLANTS' MOTION FOR RECONSIDERATION

On Appeal from King County Superior Court
No. 20-2-08633-9 KNT
Judge Ken Schubert Presiding

John Earl Erickson and
Shelley Ann Erickson, in propria persona
5421 Pearl Ave S.E.
Auburn, Washington 98092
(206) 255-6324
Email: Shelleystotalbodyworks@comcast.net

TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

Appellants John Earl Erickson (Mr. Erickson) and Shelley Ann Erickson (Ms. Erickson), collectively, the Ericksons, move for reconsideration of the April 25, 2022 Opinion of the Court of Appeals (the Opinion) pursuant to Rule 12.4 of the Rules of Appellate Procedure (RAP). Grounds for this Motion for Reconsideration are set forth at RAP 12.4(c),which provides:

> (c) Content. The motion should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised.

This Motion for Reconsideration is submitted within 20 days after the filing of the Opinion and is

timely under RAP 12.4(b).

II. ISSUES OVERLOOKED AND/OR MISAPPREHENDED

The points of law or fact which the Court of Appeals overlooked or misapprehended are set forth below:

1. The April 25, 2022 Opinion of the Court of Appeals misapprehended the record of the proceedings for summary judgment in the Superior Court because the Superior Court did not grant summary judgment based on its denial of the Ericksons' CR 56(f) Motion to Continue Summary Judgment Proceedings.

2. The Court of Appeals overlooked the procedural fact that the Superior Court considered the February 21, 2021 Declaration of Jess G. Almanza and concluded that the Declaration did not present a material issue of fact.

3. As a matter of law, the Court of Appeals deprived the Ericksons' of their Due Process Rights by affirming the Superior Court on a basis that is not supported by the record and then disposing of the appeal on the grounds of collateral estoppel when the Ericksons presented newly discovered evidence of fraud on the court.

a. Concealment of identity of Respondent Selective Portfolio Servicing, Inc. (SPS), the party actually represented by Respondent STOEL RIVES, LLP (STOEL RIVES)

deprived the Ericksons of full and fair proceedings in the Foreclosure Action required by the Due Process Clause of the Fourteenth Amendment.

(1) False statements regarding the party represented by STOEL RIVES prevented a full and fair determination of the underlying issues in the foreclosure action.

(2) False statement regarding the entity in possession of the purported original "Note" precluded a full and fair determination of the issues in the underlying

2

Foreclosure Action.

b. Evidence that the endorsement of Jess G. Almanza is a forgery created a material issue of fact was considered by the Superior Court, albeit contrary to the requirement that the Ericksons were entitled to all reasonable inferences, but was then ignored and completely disregarded by the Court of Appeals.

III. STATEMENT OF THE CASE PERTINENT TO RECONSIDERATION

By their Independent Action recognized under CR 60(c) filed on May 13, 2019, titled Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4, King County Superior Court

Case No. 19-2-12664-7 KNT (the Independent Action), the Ericksons sought relief from the July 17, 2015 Order Granting Summary Judgment in Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, King County Superior Court Case No. 14-2-00426-5 KNT (the Foreclosure Action) based upon fraud on the court.

The Court of Appeals affirmed the Superior Court in No.

3

81648-9 on November 29, 2021; the Ericksons' Petition for Review was filed on December 29, 2021 and is pending before the Washington Supreme Court.

On April 27, 2020, Erickson v. Power, et al., King County Superior Court No. 20-2-08633-9 against Defendants Vanessa Power ("POWER"), STOEL RIVES, Select Portfolio Services, Inc. ("SPS"), EIDSON and GLOWNEY (hereinafter the "Respondents") was filed by the Ericksons, on their own behalf, against the concealed real party in interest, SPS, and the agents for SPS, STOEL RIVES and the named lawyers employed by STOEL RIVES, who the Ericksons learned in the course of the Independent Action, were actually representing SPS in the Foreclosure Action and the Independent Action.

After years of communicating with numerous homeowners who had been affected by the appearance of endorsement displaying the initials of one Jess Almanza, purporting to be an officer of

more than one entity including,

4

but not limited to, Washington Mutual Bank and Long Beach Mortgage Company, the Ericksons were unable to obtain contact information for the individual identified as Jess Almanza, who was purportedly one of the endorsers of the document purported to be the Ericksons' March 3, 2007 "original Note". CP 2445-2447.

In August, 2018, the Ericksons were informed by a Minnesota homeowner that an individual named Jess Almanza had a LinkedIn profile, identifying him as being employed by Bank of America in Simi Valley California. The Ericksons obtained the Nora Declaration dated August 18, 2018 (CP 2338-2442) and provided it to Attorney Mary C. Anderson, who was investigating their allegations of fraud on the court.

Attorney Anderson filed the Ericksons' Independent Action on May 13, 2019 but was compelled to withdraw when the Superior Court Judge in the Independent Action threatened her with sanctions for raising the issue of fraud on the court in

5

seeking relief from the Foreclosure Action. The Ericksons proceeded on their own behalf. On June

4, 2019, Ms. Erickson received an email from Ronaldo Reyes, an officer of Deutsche Bank National Trust Company, purported Plaintiff in the Foreclosure Action and the resulting Defendant in the Independent Action, informing her that STOEL RIVES was representing SPS in the Independent Action, notwithstanding Respondent Power's appearance on behalf of Deutsche Bank National Trust Company. See CP 233.

The Ericksons were unsuccessful in their efforts to reorganize their indebtedness in Chapter 13 proceedings in 2019 and 2020 and returned to litigation in the Superior Court.

On April 27, 2020, the Ericksons filed Erickson v. Power, et al. On June 4, 2020, the Defendants SPS, STOEL RIVES, Power, Eidson, and Glowney answered the Ericksons' April 27, 2020 Complaint and admitted that STOEL RIVES represented SPS in the Foreclosure Action and the Independent Action. CP

2333-2336 at 2333, line 21-2334, line 3. The June 4, 2020 admission of the actual representation of SPS by STOEL RIVES and its named attorneys is a judicial admission and binding in the subject proceedings.

Thereafter, the Ericksons located a private

investigator who had special investigative tools available, not available in the public domain. The private investigator was successful in locating Jess G. Almanza who was residing more than 5 hours from Simi Valley, California. See CP 2445-2447. According to Jess Almanza, his LinkedIn profile, retrieved in August, 2018 had not been updated since he was no longer seeking employment. Almanza Declaration, ¶10. CP 2496.

IV. SUMMARY OF THE ARGUMENT FOR RECONSIDERATION

The Court of Appeals misapprehended the proceedings in the Superior Court when it affirmed the Order Granting Summary Judgment on the basis that the Superior Court had

denied the Ericksons' Rule 56(f) Motion on March 26, 2021 thereby preventing the Ericksons from presenting evidence obtained from the Declaration of Jess G. Almanza. ("Because the Ericksons did not [show cause for delay in discovering evidence regarding the Almanza endorsement] . . ., they fail to show the trial court abused its discretion by denying the CR 56(f) motion.50. . . FN 50 reads "Because we affirm on this basis, we do not reach the trial court's conclusion that Almanza's

declaration did not present a genuine issue of material fact.") It is an undisputed procedural fact, that the Superior Court considered the Almanza Declaration. The basis for affirming the Superior Court is unsupported by the record.

The issue of whether or not the Almanza Declaration created a genuine dispute of material fact was plainly before the Court of Appeals which ignored and disregarded the error in the conclusion that the Almanza Declaration did not create a genuine dispute of material fact. The Almanza Declaration

establishes that Mr. Almanza was not working at the location of Washington Mutual Bank in Stockton, California when the endorsement was placed on the Ericksons' purported "original Note"and he did not place the endorsement on the Ericksons' purported "original Note". CP 2496, ¶9 and CP 2497, ¶20.

V. ARGUMENT FOR RECONSIDERATION

A. The April 25, 2022 Opinion of the Court of Appeals misapprehended the record of the proceedings for summary judgment in the Superior Court because the Superior Court did not grant summary judgment based on its

denial of the Ericksons'CR 56(f) Motion to Continue Summary Judgment Proceedings.

> In its Opinion, the Court of Appeals wrote:
> [T]he Ericksons knew of Almanza's potential significance and of his potential testimony years before requesting a continuance. Like Bavand, their motion failed to explain what prevented them from deposing Almanza or, at least, obtaining a declaration from him between August of 2018[1] and January of

[1] The Ericksons learned of the existence of Mr. Almanza's LinkedIn profile in August, 2018. CP 2338-2242: Declaration of Nora

> 2021[2]. Indeed, Almanza provided a declaration only a few weeks after being served.47 Contrary to the Erickson's belief,48 CR 56(f) requires more than belated diligence. The party requesting a continuance must offer a good reason for the delay in discovering their desired evidence.49 Because the Ericksons did not do so, they fail to show the trial court abused its discretion by denying the CR 56(f) motion.50
> 46 CP at 2892.[3]
> 47 Id.

48 Reply Br. at 29.

49 Kozol, 192 Wn. App. at 6 (citing Tellevik, 120 Wn.2d at 90).

2 Mr. Almanza was finally located by a private investigator hired by the Ericksons. The Ericksons are the first homeowners to have ever been able to locate Mr. Almanza due to the misleading contents of his LinkedIn profile which reported the location of his employment more than 5 hours distance from what was ultimately discovered to be his residence. CP 2445-2447. Mr. Almanza admitted that his LinkedIn profile had been created years earlier and had not been updated. CP 2496, Declaration of Jess G. Almanza at ¶10.

3 The Court of Appeals excerpted CP 2892 from the Ericksons' Motion to Extend Discovery Date and Continue Trial which does not directly pertain to the Ericksons' 56(f) Motion. CP 2892 is derived from CP 2890-3419 which was the Ericksons Motion for Extension of Discovery Schedule and for Continuance of Trial. That is not the document which explains the delay in locating Jess Almanza. The documents which explain the delay are the January 19, 2021 Declaration of Shelley Ann Erickson (CP 2385-2386), authenticating Exhibits 1 and 3-9 at CP 2303-2384; the January 25, 2021 Supplemental Declaration of Shelley Ann Erickson (CP 2445-2464); the Declarations of Wendy Alison Nora (CP 2387-2388 and CP 2492-2494); and the Declaration of Jess G. Almanza (CP 2496, at ¶10).

> 50 Because we affirm on this basis, we do not reach the trial court's conclusion that Almanza's declaration did not present a genuine issue of material fact. See Bavand, 196 Wn. App. at 825 ("We may affirm on any basis supported by the record.") (citing First Bank of Lincoln v. Tuschoff, 193 Wn. App. 413, 422, 375 P.3d 687 (2016)). (Emphasis added.)

Denial of the Ericksons' CR 56(f) Motion was not the basis of the Superior Court's March 26, 2021Order Granting Summary Judgment. The Superior Court specifically considered the February 21, 2021 Declaration of Jess G. Almanza and, therefore, affirming the Superior Court's Order Granting Summary Judgment on the basis that it denied the Ericksons' CR 56(f) Motion is not a basis supported by the record.

B. The Court of Appeals overlooked the procedural fact that the Superior Court considered the February 21, 2021 Declaration of Jess G. Almanza and concluded that the Declaration did not present a material issue of fact.

The Transcript of the March 26, 2021 Hearing on the Motion for Summary Judgment is

in the record and clearly

11

shows that the Superior Court considered and erroneously concluded that the February 21, 2021 Declaration of Jess G. Almanza (the Almanza Declaration) did not raise a genuine dispute of material fact.

Tr. 40:10-16 demonstrates that the Almanza Declaration was considered by the Superior Court and reads:

> 10 Ms. Power will send the Court a proposed order that sets
> 11 forth -- and it can go ahead and set forth all the
> 12 supplemental materials, please, that the parties filed --
> 13 that the plaintiffs filed -- frankly, without authorization
> 14 in contravention of the court rules -- but since I did read
> 15 those and review them, I would ask please that Ms. Power add
> 16 those to her proposed order.

See also the March 26, 2021 Order Granting Summary Judgment, CP 3508-3515, CP 3508, line 23, ". . . The Court also considered the pleadings and records on file . . ." and CP 3506, line 18, item 13: "Plaintiffs' Declaration of Jess G. Almanza."

The Superior Court considered the Declaration of Jess G. Almanza and the Ericksons were entitled to the benefit of all reasonable inferences arising from the Almanza

Declaration as nonmovants in the proceedings for summary judgment.

Whether or not the Almanza Declaration establishes a material issue of fact requiring trial was plainly before the Court of Appeals. The denial of the Ericksons's Rule 56(f) Motion prevented the taking of the deposition of Jess G. Almanza under the questionable circumstances of suddenly claiming he was unavailable due to a funeral service which was not scheduled for the agreed upon date and, upon information and belief, did not occur. See CP 3428-3432. But that does not preclude consideration of the Almanza Declaration which was, in fact, considered by the Superior Court.

As the nonmoving parties, the Ericksons were entitled to all reasonable inferences from the Almanza Declaration (CP 2495-2525); the Declaration of Shelley Ann Erickson (CP 2385-2386, authenticating Exhibits 1 and 3-9 at CP 2303-2384; the Supplemental Declaration of Shelley Ann Erickson CP

2445-2464) and the Declarations of Wendy Alison Nora (CP 2387-2388 and CP 2492-2494). See Moore v. Pay'N Save Corp., 20 Wn.App. 482, 484, 581 P.2d 159 (Wash. App. 1978) in the proceedings for summary judgment. The Court of Appeals held:

> Summary judgment should be granted only if, after considering all the pleadings, affidavits, depositions, and all reasonable inferences therefrom in favor of the nonmoving party, a trial court determines that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. LaPlante v. State, 85 Wash.2d 154, 531 P.2d 299 (1975); Wilber Dev. Corp. v. Les Rowland Constr., Inc., 83 Wash.2d 871, 523 P.2d 186 (1974); Balise v. Underwood, 62 Wash.2d 195, 381 P.2d 966 (1963). Summary judgment should not be used as a means to "cut litigants off from their right to a trial . . ." Bernal v. American Honda Motor Co., 87 Wash.2d 406, 416, 553 P.2d 107 (1976). However, when a moving party demonstrates that there is no material issue of fact, the nonmoving party may not rest on the allegations in the pleadings but must set forth specific facts demonstrating that there is a material issue of fact. LaPlante v. State, supra;

Matthies v. Knodel, 19 Wash.App. 1, 573 P.2d 1332 (1977). (Emphasis added.)

Moore v. Pay'N Save Corp., 20 Wn. App. at 484.

The Opposition to the December 31, 2020 Motion for

Summary Judgment, the Declarations in Opposition to the Motion for Summary Judgment, the Supplemental Response to Summary Judgment and the Supplemental Declarations in opposition to the Motion for Summary Judgment were timely filed under CR 56 and LCR 7 (in effect in 2020) because the hearing set for March 26, 2021 on the Motion for Summary Judgment was rescheduled upon the recusal of Judge Andrea Darvas and the reassigned to another judge who was not a witness to the fraud on the court committed before Judge Darvas. (CP 2474-2479).

The Motion to Disqualify Judge Darvas was filed on January 19, 2021 (CP 2396-2405) after Judge Darvas was added to the Ericksons' Witness List by Addendum on December 30, 2020 (CP 1936-2004) before the Motion for Summary Judgment was filed on December 31, 2020 (CP 2005-2018, exclusive of Exhibits). The Superior Court Judge was correct to consider the Declaration of Jess G.

Almanza and

15

the Ericksons' complete opposition to the Motion for Summary Judgment but was in error to find that the Ericksons were required to seek leave of court because their filings were in compliance with CR 56 and LCR 7 (2020). Moreover, the Respondents waived their objection to the consideration of the Almanza Declaration and the reasonable inferences arising therefrom by not filing a cross appeal. The Almanza Declaration cannot be avoided or ignored on the basis that the Ericksons' Rule 56(f) Motion was denied.

The Almanza Declaration is properly before this Court on appeal. The reasonable inferences from the Almanza Declaration are detailed in the Ericksons' Opening Brief and again in their Reply Brief, establishing that Mr. Almanza was never in the office of Washington Mutual Bank from months before or after the date displayed on the document purporting to be the Ericksons' "original Note" (March 3, 2007) making the endorsement by Mr. Almanza impossible. As to the notion

16

of "ratification" there is an absence of any evidence of "ratification" of the Almanza endorsement and no evidence of negotiation and transfer as required

by RCW 62A.3-201 in the Foreclosure Action, the Independent Action or the present Action. Long Beach Mortgage Company had ceased to exist on July 3, 2006. See Ericksons' Request for Judicial Notice, Exhibit 12, CP 1171-1197. There is no evidence that "the Trust" is a party entitled to enforce the document purporting to be the "original Note" in the Foreclosure Action, the Independent Action or the present action under RCW 62A.3-301, except the argument of Respondent Power, without evidence, that the document purporting to be the "original Note" is in the possession of STOEL RIVES. If the Almanza endorsement is a forgery, the purported "original Note" is not endorsed in blank and has never been negotiated as required by RCW 62A.3-201 or transferred as required by RCW 62A.3-203 to any party.

17

C. As a matter of law, the Court of Appeals deprived the the Ericksons' of their Due Process Rights by affirming the Superior Court on a basis that is not supported by the record and then disposing of their appeal on the grounds of collateral estoppel when the Ericksons presented newly discovered evidence of fraud on the court.

1. Concealment of identity of Respondent Selective Portfolio Servicing, Inc. (SPS), the party actually represented by Respondent STOEL RIVES, LLP (STOEL RIVES) deprived the Ericksons of full and fair proceedings in the Foreclosure Action required by the Due Process Clause of the Fourteenth Amendment.

Joinder of the real party in interest is required under CR 17. By concealing the fact that it was SPS, not Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4, the Ericksons were deprived of their right to litigate against the party actually proceeding against them. SPS is a necessary party to the action because Deutsche Bank National Trust Company executed a Limited Power of Attorney to JPMorgan Chase Bank, as purported servicing agent for the purported trust identified as the Plaintiff in the Foreclosure Action and JPMorgan Chase Bank had delegated its authority

to SPS as subservicer on behalf of the purported Trust. See Ericksons' Request for Judicial Notice, Exhibit 13, CP 1198-1208.

a. False statements regarding the party represented by STOEL RIVES prevented a full and fair determination of the underlying issues in the Foreclosure Action.

As admitted by the email of Ronaldo Reyes to Ms. Erickson, SPS was represented by Respondents STOEL RIVES and its named attorneys and Deutsche Bank National Trust Company in its capacity as Trustee of Long Beach Mortgage Loan Trust 2006-4 did not appear in the action and was not represented by counsel who represented SPS. (CP 233). This fact was judicially admitted in the Respondents' June 4, 2020 Answer. See CP 2333-2336 at CP 2333, line 21-CP 2334, line 3.

By misrepresenting the true identity of the party proceeding against the Ericksons, SPS and its law firm and

named attorney agents committed fraud on the court and on the Ericksons. The Ericksons were prevented from pleading their counterclaims against the real party in interest, SPS, represented by STOEL RIVES and its named attorneys, as the result of fraud on the court.

b. False statements regarding the entity in possession of the purported original "Note" precluded a full and fair determination of the issues in the underlying Foreclosure Action.

The concealment of the identity of the real party in interest in the Foreclosure Action and the pretense that STOEL RIVES attorney Vanessa Power represented "the Trust"[4] rather than STOEL RIVES' actual client, SPS, in the Independent

[4] Respondent Power consistently referred to "the Trust" as the party she represented as an employee of STOEL RIVES and declared under penalty of perjury that she represented "the Trust" in the Independent Action. (CP 288-289 at ¶¶1-2.) "The Trust" was intended to be taken to mean Long Beach Mortgage Loan Trust 2006-4 of which Deutsche Bank National Trust Company is the purported Trustee, but not only is there no evidence that STOEL RIVES and its named attorneys represented "the Trust" but the only admissible evidence is that STOEL RIVES and its named attorneys represented SPS. CP 233 and CP 2333-2336 at CP 2333, line 21-CP 2334, line 3.

Action prevented the Ericksons from having a full and fair hearing on facts known only to SPS,

STOEL RIVES, and its named attorneys. The Ericksons filed the present action based on newly discovered evidence of the actual identity of the party appearing by counsel in the Foreclosure Action and the Independent Action: the June 4, 2019 email from Ronaldo Reyes to Ms. Erickson (CP 233) and the June 4, 2020 Answer of the Respondents (CP 2333-2336 at CP 2333, line 21-CP 2334, line 3). The party in actual possession of the Ericksons' "original Note" was then claimed, in Respondent Power's argument only without evidence, to be STOEL RIVES, counsel for SPS, contrary to the evidence that STOEL RIVES represented SPS and not "the Trust". CP 233 and CP 2333-2336 at CP 2333, line 21-CP 2334, line 3. The principal-agent relationship between SPS and Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 was never pleaded and the party actually proceeding

against the Ericksons in the Foreclosure Action and defending against the Independent Action was concealed from the Ericksons, their counsel and the Superior Court in the Foreclosure Action and in the Independent Action.

According to a series of memoranda issued between 2007 and 2010 from Deutsche Bank on

behalf of Deutsche Bank National Trust Company and Deutsche Bank Trust Company Americas to servicing agents (servicers) of securitization trusts (CP 338-348) prohibit servicers from concealing the identity representative capacity of the servicers in commencing foreclosure actions in the name of the purported securitization trusts of which Deutsche Bank National Trust Company or Deutsche Bank Trust Company Americas. At CP 340, part of the October 8, 2010 "URGENT AND TIME-SENSITIVE MEMORANDUM" reads:

> The pooling and servicing agreements or other governing documents for the Trusts (collectively, the "Governing Documents") provide that the Servicer is soley
>
> 22
>
> responsible for the performance of all loan-level remedial collection activity on behalf of the beneficiaries of the Trusts, including without limitation, all foreclosure activity and all maintenance and sales of resulting REO properties. The Governing Documents typically require the Trustee to furnish the Servicer with powers of attorney that allow the Servicer to sign documents and institute legal actions including foreclosure proceeding in the name of the Trustee on behalf of the Trusts in connection with these

> servicing activities. The Governing Documents also provide that the Trustee shall not be responsible for the acts or omissions of the Servicer, including acts or omissions relating to the use or misuse of such powers of attorney.

In the Foreclosure Action, STOEL RIVES through Respondents Eidson and Glowney, specifically misidentified the capacity of the purported Plaintiff. The servicing capacity of SPS was concealed in the Foreclosure Action and no power of attorney was referenced in the pleadings in the Foreclosure Action, although SPS retained STOEL RIVES to commence and continue the Foreclosure Action. In the Independent Action, Respondent Power of STOEL RIVES, specifically identified herself as the attorney representing “the Trust”

without disclosing that she and STOEL RIVES were actually representing SPS, as the Ericksons learned from Ronaldo Reyes on June 4, 2019 (CP 233). Without disclosing the identity of SPS as the party actually being represented in the Foreclosure Action, which would have required the production of the power of attorney, STOEL RIVES and its named attorneys failed to establish that the Foreclosure Action had been commenced with the

consent of the purported Trust.

RCW 9.62.020 provides:

RCW 9.62.020. Instituting suit in name of another.

Every person who shall institute or prosecute any action or other proceeding in the name of another, without his or her consent and contrary to law, shall be guilty of a gross misdemeanor.

STOEL RIVES never produced any evidence that the purported "Trust" consented to the commencement and continuation of the Foreclosure Action. SPS was responsible for the actions taken against the Ericksons in the Foreclosure

Action and was required to hold the purported "Trust" harmless for the Ericksons' damages from the servicing activities.

Therefore, SPS was the real party in interest in the Foreclosure Action and the Independent Action in which the Ericksons sought to defend their property from foreclosure based on suspected forged documents including the January 31, 2013 Assignment of Deed of Trust (CP 254 and CP 261-263) in which JPMorgan Chase Bank, N.A. (JPMorgan Chase) falsely claimed to have acquired the Ericksons' Deed of Trust "by purchase" from the FDIC[5] and the suspected forgery suddenly

appearing in SPS' Motion for Summary Judgment for the first

5 The is no evidence of that JPMorgan Chase purchased the document purporting to be the Ericksons' "original Note" and Deed of Trust other than the falsely claimed capacity of "successor in interest by purchase"appearing on the January 31, 2013 Assignment of Deed of Trust. The reasonable inference from the Ericksons' evidence, discovered after judgment was entered in the Foreclosure Action, is that JPMorgan Chase only purchased the "servicing rights" to the Ericksons' purported mortgage loan. (CP 540-583 at CP 551 at 3.1: Notwithstanding Section 4.8, the Assuming Bank specifically purchases all mortgage servicing rights and obligations of the Failed Bank.") The false claimed capacity appearing on the Assignment of Deed of Trust appears to violate RCW 9A.60.020.

time in the Foreclosure Action. (CP 276-278).

2. Evidence that the endorsement of Jess G. Almanza is a forgery created a material issue of fact was considered by the Superior Court, albeit contrary to the requirement that the Ericksons were entitled to all reasonable inferences, but was then ignored and completely disregarded by the Court of Appeals.

The new evidence that Mr. Almanza was not physically present at the office of Washington Mutual Bank in Stockton California after July, 2005 and did not place his endorsement on the Ericksons' purported "original Note"[6] creates a reasonable inference that the Superior Court's conclusion that the document purporting to be the "original Note" is a forgery contrary to RCW 62A.1-201(b)(19) and (41) and in violation of

[6] The Almanza Declaration states at ¶¶9 and 20:
9. After July, 2005, I performed no work for Washington Mutual Bank and was not physically present in the Stockton, California location.
. . .
20. While my signature is displayed on what appear to be signature stamps on the last page of each PDF document titled "Note" attached hereto as Exhibits 2, 3, 4, and 6 and on the bottom of page 3 of Exhibit 5, I did not place the endorsement stamps on Exhibit 2, 3, 4, 5 or 6.

RCW 9A.60.010(3) and RCW 9A.60.020. It is a denial of due process rights guaranteed by the Fourteenth Amendment to the Constitution of the United States to use forged evidence in proceedings affects rights to life, liberty or property. Cf. McDonough v. Smith, 139 S. Ct. 2149, 2155, 204 L. Ed. 2d 506 (2019) and Napue v. Illinois, 360 U.S. 264, 269, 79 S.Ct. 1173,

3 L.Ed.2d 1217 (1959).

Res judicata and, the related doctrine of collateral estoppel, do not apply to independent actions for relief from judgments procured by the use of forged documents. In Marshall v. Holmes, 141 U.S. 589, 12 S. Ct. 62, 35 L. Ed. 870 (1891), where a judgment was alleged to have been procured based on forged documents, the United States Supreme Court recited the rule, citing Johnson v. Waters, 111 U. S. 640, 111 U. S. 667:

. . . the court . . . will scrutinize the conduct of the parties and, if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of

27

the benefit of it and of any inequitable advantage which they have derived under it.

The bifurcation of the Ericksons' Independent Action from the present case, into which the present action was initially consolidated (CP 1920-1921), has resulted in the continuing attempted enforcement of a judgment procured by fraud perpetrated by SPS, its law firm and the named attorneys, on the Ericksons and the Superior Court in the Foreclosure Action and in the Independent Action in violation of the Ericksons' Due Process Rights.

Summary judgment was granted in error in

the present action by the Superior Court failing to provide the Ericksons with all reasonable inferences that the endorsement displaying the initials of Jess G. Almanza was not authorized and was never ratified by Mr. Almanza or Long Beach Mortgage Company, arising from the Declaration of Jess G. Almanza.

The Ericksons are entitled to trial by jury because "Summary

28

judgment should not be used as a means to "cut litigants off from their right to a trial . . ." Bernal v. American Honda Motor Co., 87 Wash.2d 406, 416, 553 P.2d 107 (1976).

VI. CONCLUSION

The Ericksons respecfully request reconsideration of the April 25, 2022 Opinion of the Court of Appeals, for a determination that the Almanza Declaration created a genuine dispute of material fact as to the authenticity of the document purporting to be the Ericksons' "original Note" because there is a reasonable inference that the endorsement is a forgery which has not been ratified, and remand the action to the Superior Court for trial by jury (CP 2439) timely requested by the Ericksons in accordance with the Scheduling

Order. (CP 146.)

29

Dated this 12th day of May, 2022 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
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Dated this 12th day of May, 2022 at Auburn, Washington.
E-signed: /s/ Shelley Ann Erickson

_____

Shelley Ann Erickson, in propria persona
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30

CERTIFICATE OF COMPLIANCE

The foregoing Motion for Reconsideration complies with RAP 18.17 in that is produced using a word processing program, is prepared in 14 point font, double-spaced except as otherwise allowed, and I am informed that the Motion for

Reconsideration consists of 5,089 words, inclusive of footnotes and exclusive of the cover page, Table of Contents, Table of Authorities, signature blocks and Certifications according to the word count tool for the word processing program with which it has been prepared.
E-signed: /s/ Shelley Ann Erickson
Shelley Ann Erickson, in propria persona

CERTIFICATE OF SERVICE

I hereby certify that on May 12, 2022, I caused a true and correct copy of this Motion for Reconsideration to be served via E-Filing as set forth below:

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

DATED this 12th day of May, 2022 in Auburn, Washington.

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

Appendix 8

NO. 101047-8
IN THE SUPREME COURT OF WASHINGTON

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

VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON, AND LANCE OLSEN,
Defendants/Respondents

APPELLANTS' AMENDED PETITION FOR REVIEW OF APRIL 25, 2022 DECISION OF COURT OF APPEALS, DIVISION ONE, RECONSIDERATION DENIED, MAY 24, 2022

On Appeal from King County Superior Court
No. 20-2-08633-9 KNT
Judge Ken Schubert Presiding

John Earl Erickson & Shelley Ann Erickson,
in propria persona
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

I. INTRODUCTION

John Earl Erickson (Mr. Erickson) and Shelley Ann Erickson (Ms. Erickson), collectively, Petitioners or the Ericksons, hereby petition the Supreme Court of Washington for review of the April 25, 2022 UNPUBLISHED Decision of the Court of Appeals (Decision), Appendix 1, pursuant to Rule 13.4 of the Rules of Appellate Procedure (RAP). The Petition for Review was timely under RAP 13.4(a). It was submitted within 30 days after the filing of the May 24, 2022 Order Denying the Ericksons' Motion for Reconsideration (Order), Appendix 2. The Petition for Review was over-length. Leave to file a Petition

for Review in compliance with the word count limit was granted by Clerk's Letter dated June 27, 2022.

II. ISSUES PRESENTED FOR REVIEW

Review should be granted under RAP 13.4(b)(3) and (4) for the reasons set forth below:

1

I. Review should be granted pursuant to RAP 13.4(b)(4) because it is of substantial public interest that the use of forged documents in litigation is fraud on the court which must be rejected.
II. Review should be granted pursuant to RAP 13.4(b)(3) because the demonstrated violations of Petitioners' Due Process Rights by the Superior Court and the Court of Appeals raise significant questions of law under Article One, Section 3 of the Constitution of the State of Washington and the Fourteenth Amendment to the Constitution of the United States.

III. STATEMENT OF THE CASE

Petitioners' Independent Action recognized in CR 60(c) was filed on May 13, 2019, titled Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4, King County Superior Court Case No. 19-2-12664-7 KNT (the Independent Action) in accordance

2

with Wiese v. CACH, LLC, 189 Wash.App. 466, 478, 358 P.3d 1213 (Wash. App. 2015) citing Corporate Loan & Sec. Co. v. Peterson, 64 Wn.2d

241, 243-244, (Wash. 1964), the Ericksons sought relief from the July 17, 2015 Order Granting Summary Judgment in Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, King County Superior Court Case No. 14-2-00426-5 KNT (the Foreclosure Action) based upon fraud on the court.

Wiese v. CACH, LLC, 189 Wash.App. at 478, ¶27, acknowledged the availability of independent actions to obtain relief from judgments and orders procured by fraud. ("¶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.")

On June 16, 2020, the Superior Court granted summary

judgment against the Petitioners in the Independent Action, without notice that the Motion to Dismiss would be converted to a Motion for Summary Judgment to allow Petitioners to respond under CR 56, applying the time bar of one year under CR 60(b) and invoking the doctrines of res judicata/collateral estoppel. The Court of Appeals affirmed the Superior Court's Order Granting Summary Judgment in the Independent Action in No. 81648-9 on November 29, 2021. The Ericksons' Petition for Review was filed on December 29, 2021 and is pending before this

Court.

New evidence was ultimately discovered, when, after years of communicating with numerous homeowners who had been affected by the appearance of endorsement displaying the initials of one Jess Almanza, purporting to be an officer of more than one entity including, but not limited to, Washington Mutual Bank and Long Beach Mortgage Company, the Ericksons and all other affected homeowners were unable to

locate the individual identified as Jess Almanza. Mr. Almanza was purportedly one of the endorsers of the document purported to be the Ericksons' March 3, 2007 "original Note". CP 2445-2447.

In August, 2018, the Ericksons were informed by a Minnesota homeowner that an individual named Jess Almanza had a LinkedIn profile, identifying him as being employed by Bank of America in Simi Valley California. The Ericksons obtained the Nora Declaration dated August 18, 2018 (CP 2338-2442) and provided it to Attorney Mary C. Anderson, who was investigating their allegations of fraud on the court.

Attorney Anderson filed the Ericksons' Independent Action on May 13, 2019 but was constrained to withdraw when the Superior Court Judge in the Independent Action threatened her with sanctions for raising the issue of fraud on the court in seeking relief from the Foreclosure Action. The Ericksons then sought to reorganize

their financial affairs in Chapter 13
5

bankruptcy proceedings. The Ericksons were unsuccessful in their efforts to reorganize their indebtedness in Chapter 13 proceedings in 2019 and 2020 and returned to litigation in the Superior Court. The Ericksons proceeded on their own behalf.

On June 4, 2019, Ms. Erickson received an email from Ronaldo Reyes, an officer of Deutsche Bank National Trust Company, purported Plaintiff in the Foreclosure Action and the resulting Defendant in the Independent Action, informing her that STOEL RIVES, LLP (STOEL RIVES) was representing SPS in the Independent Action, notwithstanding Respondent Power's appearance on behalf of Deutsche Bank National Trust Company. See CP 233. Deustche Bank National Trust Company, in its purported capacity as Trustee, was, in actuality not represented by counsel. The identity of SPS as the corporate party actually represented by counsel appearing in the name of Deutsche Bank National Trust Company as Trustee of Long Beach Mortgage Loan Trust 2006-4 was concealed
6

from Petitioners and the Superior Court, depriving the Ericksons of the opportunity to counterclaim in the Foreclosure Action or bring claims in the Independent Action against SPS.

On May 7, 2020,1 on their own behalf, the

Ericksons filed Erickson v. Power, et al., King County Superior Court No. 20-2-08633-9 against Defendants Vanessa Power ("POWER"), STOEL RIVES, Select Portfolio Services, Inc. ("SPS"), Will Eidson ("EIDSON") and John Glowney ("GLOWNEY") (hereinafter the "Respondents"). The Ericksons learned on June 4, 2019, in the course of the Independent Action, that STOEL RIVES and the named lawyers employed by STOEL RIVES were actually representing SPS in the Foreclosure Action and the Independent Action. See CP 233.

On June 4, 2020, the Defendants SPS, STOEL RIVES, Power, Eidson, and Glowney appeared by STOEL RIVES and

1 The Ericksons' Motion for Reconsideration in this appeal erroneously stated that the present action was filed on April 27, 2020.

answered the Ericksons' May 7, 20202 Complaint and admitted that STOEL RIVES represented SPS in the Foreclosure Action and the Independent Action. CP 2333-2336 at 2333, line 21-2334, line 3.

The June 4, 2020 admission of the actual representation of SPS by STOEL RIVES and its named attorneys is a judicial admission and is binding in the subject proceedings. The entity identified as

Thereafter, the Ericksons located a private investigator who had special investigative tools available, not available in the public domain. The private investigator was successful in locating Mr. Almanza who was residing more than five (5) hours from Simi Valley, California. See CP 2445-2447. According to Jess Almanza, his LinkedIn profile, retrieved in August, 2018 had not been updated since he was no longer seeking employment. See Almanza Declaration, ¶10. CP 2496.

The Court of Appeals misapprehended the proceedings

[2] Id.

in the Superior Court when it affirmed the Order Granting Summary Judgment misstating that the Superior Court had denied the Ericksons' Rule 56(f) Motion on March 26, 2021 thereby preventing the Ericksons from presenting evidence obtained from the Almanza Declaration. The Court of Appeals wrote, "Because the Ericksons did not [show cause for delay in discovering evidence regarding the Almanza endorsement] . . ., they fail to show the trial court abused its discretion by denying the CR 56(f) motion. [FN 50]. . . " FN 50 reads "Because we affirm on this basis, we do not reach the trial court's conclusion that Almanza's

declaration did not present a genuine issue of material fact."

It is an undisputed procedural fact that the Superior Court did indeed consider the Almanza Declaration. The Ericksons were entitled to the benefit of all reasonable inferences arising from the Almanza Declaration as nonmovants in the proceedings for summary judgment. Tr.

9

40:10-16 (Appendix 13) demonstrates that the Almanza Declaration was considered by the Superior Court. See also the March 26, 2021 Order Granting Summary Judgment, CP 3508-3515, CP 3508, line 23, ". . . The Court also considered the pleadings and records on file . . ." and CP 3506, line 18, item 13: "Plaintiffs' Declaration of Jess G. Almanza." The Court of Appeals' stated grounds for affirming the Superior Court that is entirely unsupported by the record, to wit, that Summary Judgment was granted because Petitioners' CR 56(f) Motion was denied.

The issue of whether or not the Almanza Declaration created a genuine dispute of material fact was plainly before the Court of Appeals which ignored and disregarded the Superior Court's error of law in concluding that the Almanza Declaration did not create a genuine dispute of material fact. The Almanza Declaration establishes that Mr.

Almanza was not working at the location of Washington Mutual Bank in
10

Stockton, California when the endorsement was placed on the Ericksons' purported "original Note"and he did not place the endorsement on the Ericksons' purported "original Note". CP 2496, ¶9 and CP 2497, ¶20.

Reasonable inferences arise from the Almanza Declaration that the endorsement which suddenly appeared in the summary judgment proceedings in the Foreclosure Action is a forgery in violation of RCW 9A.60.010(3) and (4) and RCW 9A.60.020 and is an invalid endorsement under RCW 62A.1-201(b)(19) and RCW 62A.1-201(b)(41). The Almanza Declaration is newly discovered evidence that the document purporting to be Petitioners' "original Note" was not lawfully endorsed and transferred under RCW 62A.3-201(b) and RCW 62A.3-203, a process known as negotiation, and could not be lawfully enforced under RCW 62A.3-301 by the alleged "holder" of the instrument based upon evidence that the Almanza "endorsement-in-blank" is a forgery.
11

In McDonough v. Smith, 139 S. Ct. 2149, 2155, 204 L. Ed. 2d 506 (2019), the United States

Supreme Court recognized that Due Process Rights are violated by the use of fabricated evidence. The Ericksons maintain that violations of their Due Process Rights by the use of forged documents and perjured declarations, reinforced by false statements by officers of the court were apparent in the record on appeal and deprived them of their property rights. Respondents entirely failed to address the violation of the Ericksons' Due Process Rights by the use of forged documents authenticated by perjured declarations in the previous and present actions.

IV. ARGUMENT

A. Review should be granted pursuant to RAP 13.4(b)(4) because it is of substantial public interest that the use of forged documents in litigation is fraud on the court which must be rejected.

The application of Washington law defining fraudulent instruments and the applicable provisions of the Washington

Uniform Commercial Code in cases involving debt instruments purportedly secured by real estate is an issue of substantial public interest because the

use of forged documents for the fraudulent purpose of claiming the right to the remedy of foreclosure must be rejected in the public interest.

Jess G. Almanza's Declaration (CP 2495-2525 at ¶¶6, 7, 8, 9, and 20 and Exhibit 2) establishes, on his personal knowledge, that he did not sign or authorize the signing of the endorsement appearing on the document purporting to be the Ericksons' "original Note." Accordingly, the Almanza Declaration raises material issues of fact as to whether or not the endorsement on the document purporting to be the Ericksons' original Note is a forgery. RCW 9A.60.010(3) and (4), set forth in Appendix 5, defines fraudulent instruments.[3] RCW 9A.60.020(1)(a) and

[3] RCW 9A.60.010 defines fraudulent instruments as prohibiting acts:
(3) To "falsely alter" a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument . . . or

(b), set forth in Appendix 6, makes it a crime to commit forgery and to uttered forged documents as genuine.4 As to the documents at issue, the definitions in the Washington Uniform Commercial Code at RCW 62A.1-201(b)(19) and (41), set forth in Appendix 7, define a genuine instrument as

being free of forgery and unauthorized signatures, reiterating that unauthorized signatures include forgeries.

There is a genuine dispute of material fact as to whether the document purporting to be the Ericksons' "original Note" is a genuine and whether the use of Mr. Almanza's initials was authorized. Summary judgment cannot be granted when

(4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it; . . .(Emphasis added.)

4 RCW 9A.60.020(1)(a) and (b) provide:
Forgery.
(1) A person is guilty of forgery if, with intent to injure or defraud:
(a) He or she falsely makes, completes, or alters a written instrument or;
(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

evidence of a genuine dispute of material fact is submitted by the nonmoving party.

In the face of evidence of forgery, Respondents produced no evidence. Assertions

made by in the Foreclosure Action and the Independent Action by argument or by declaration without personal knowledge (i.e., the Eidson Declaration CP 1009-1016) that the entity identified as the Plaintiff in the Foreclosure Action and named as Defendant in the Independent Action was in possession of the "original Note" are not admissible evidence.

Whether or not the document is the "original Note", the issue of fact as to whether the entity is in possession of the document and entitled to enforce it, requires negotiation and transfer in accordance with Article Three of the Uniform Commercial Code.

RCW 62A.3-201, set forth in Appendix 8, provides, in part, that "negotiation requires transfer of possession of the

instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone."

There is no evidence in the record of any litigation between the Ericksons and the purported foreclosure claimant that the document purporting to be the original Note was lawfully endorsed. There is newly discovered evidence that the endorsement appearing on the document was not authorized by the purported endorser and is, therefore, a forgery. There is no evidence in the

record of the prior proceedings and in the proceedings for which review is sought that the "original" Note was endorsed and transferred[5] to Deutsche Bank National Trust

[5] RCW 62A.3-201(b) provides that negotiation requires endorsement and transfer of the instrument when the instrument was originally payable to an identified person. Here, the identified person is Long Beach Mortgage Company, not Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4. There is no evidence of negotiation and transfer to the "Trust" in the record of the Foreclosure Action in which judgment was entered on the basis of a forged endorsement and an attorney's claim of possession, without personal knowledge.

Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 as required by RCW 62A.3-201(b).

RCW 62A.3-203, set forth in Appendix 9, provides, in part:

> Transfer of instrument; rights acquired by transfer.
>
> (a) An instrument is transferred when it is delivered by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument.

> . . .
> (c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.
> (Emphases added.)

There is no evidence in the present action or the actions which preceded the present action that the instrument purporting to be the Ericksons' "original Note" was lawfully endorsed and transferred. To avoid the evidence of forgery, Respondents argued that the Almanza endorsement was

"ratified" but there is no evidence in the record that Long Beach Mortgage Company (the original payee) or Washington Mutual Bank (WaMU) as its purported successor in interest ratified the Almanza endorsement which Almanza did not himself authorize. WaMU was closed by the FDIC on September 25, 2008. CP 542-583. There is no evidence that the FDIC as purported successor in interest to Washington Mutual Bank, ratified the purported endorsement of the "original Note" by Jess Almanza.

Respondents relied on the unpublished decision in Renata v. Flagstar Bank, FSB (Wash. App. 2015) (Appendix 12). Renata appears to permit ratification of an unauthorized (forged) endorsement, but there is no evidence of ratification in the record of the Foreclosure Action, the Independent Action or this case on appeal nor has the entity with the authority to ratify a forged endorsement ever been identified.

RCW 62A.3-204(d), Appendix 10, provides, in part:

18

Indorsement.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection. (Emphasis added.)

As the parties against whom the instrument purporting to be the "original Note" is sought to be enforced, the Ericksons are not only entitled to require a valid endorsement before their homestead of over 40 years is foreclosed for payment of the instrument, but Washington law imposes a duty on the Ericksons to insist on the

lawful endorsement of the instrument under Koppler v. Bugge, 168 Wash. 182, 184-185, 11 P.2d 236 (Wash. 1932). In Koppler v. Bugge, supra, this Court held:

> Where one advances money to an alleged agent of the holder to satisfy a mortgage and the notes which such mortgage secures, it is his duty at his peril to see that the person whom he pays as agent is either (a) in possession of the instruments, or (b) has special authority to receive payment, or (c) has been represented by the owner and holder of the securities to have such authority. (Emphasis added.)
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> 19

The person entitled to enforce the instrument is described in RCW 62A.3-301, set forth in Appendix 11. The person with the right to enforce the instrument was not correctly identified in the Foreclosure Action and did not appear in the action as a corporate entity represented by counsel. The Respondent law firm and named attorneys have judicially admitted that they represented SPS in the Foreclosure Action and appeared on behalf of SPS in the Independent Action in the Respondents' June 4, 2020Answer (CP 2333-2336). The authorized agent, Ronaldo Reyes, of Deutsche Bank National Trust Company, identified as

(purported) Trustee of Long Beach Mortgage Loan Trust 2006-4, admitted that SPS is the party represented by the Respondent law firm and named lawyers (CP 233). The identity of the entity appearing by counsel in the previous matters, SPS, was concealed by the Respondents, preventing the Petitioners for obtaining a full and fair adjudication of their claims and

defenses in both actions.

The use of forged documents to establish the right to a remedy, uttered and fraudulently authenticated by counsel for the prevailing party in civil actions, is fraud on the court and must be rejected as a matter of law. Renata v. Flagstar Bank, FSB (unpublished), produced as Appendix 12, is not precedential for a very good reason. Renata holds that an unauthorized endorsement, i.e., a forgery, can be ratified. That proposition is contrary to precedential Washington law. See Ritterhoff et al. v. Puget Sound Nat. Bank of Seattle, 37 Wash. 76, 79, 79 P. 601, (Wash. 1905) which affirmed . . .“ a decree . . . rendered in accordance with the prayer of the complaint, adjudging said note, as against respondents, to be false, fraudulent, a forgery, and null and void, and forever enjoining and restraining appellant from asserting any demand against respondents, or either of them, upon said pretended note, and from

transferring or dealing with said pretended note
21
as against respondents, or either of them." See also Klem v. Wash. Mut. Bank, 176 Wash.2d 771, 295 P.3d 1179 (Wash. 2013) in which this Court held:

> We hold that, consistent with due process, RCW 4.28.185(1)(b) encompasses the tortious actions of nonresident notaries when a notarized forgery is affixed to a document affecting interests in immovables. (Emphasis added.)

But in Renata, it appears that the argument for ratification was upheld by the Court of Appeals. Perhaps there was evidence of ratification in Renata, but here, there is none. Instead, there is evidence of fraud on the court.

Discovery of new evidence of fraud on the court renders collateral estoppel inapplicable. In State Farm Fire & Cas. Co. v. Ford Motor Co., 186 Wash.App. 715, 722, ¶ 14, 346 P.3d 771 (Wash. App. 2015) recited the doctrine of collateral estoppel, citing Hadley v. Maxwell, 144 Wash.2d 306, 27 P.3d 600 (2001). For purposes of this Petition for Review, the fourth factor, "(4) application of the doctrine must not work an
22
injustice on the party against whom the doctrine is to be applied", is sufficient. "The failure to establish

any one element is fatal to the proponent's claim. LeMond v. Dep't of Licensing, 143 Wash.App. 797, 805, 180 P.3d 829 (2008) . . ." State Farm Fire & Cas. Co. v. Ford Motor Co. 186 Wash.App. at 722, ¶ 14.

Respondents relied on Renata v. Flagstar Bank, FSB, an unpublished opinion of the Court of Appeals, Appendix 12, and argued that Jess Almanza's unauthorized signature had been "ratified" without any evidence of negotiation under RCW 62A.3-201 in the Foreclosure Action, in the Independent Action or in the present action. See Tr. 18:14-19; Tr. 18:23-25; 19:12-25, Appendix 13. In the present case, there was no evidence of ratification whatsoever in the Foreclosure Action, the Independent Action or the present action against SPS and the named law firm and lawyers.

The judge in the Foreclosure Action relied on Eidson's

May 19, 2015 Declaration (CP 1009-1016) in support of the Motion for Summary Judgment and his representation at the hearing on the Motion for Summary Judgment that the document purporting to be the Ericksons' Note displayed a valid endorsement, that Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 was in possession of the Note (a negotiable instrument under RCW 62A.3-201, et

seq.) The judge in the Independent Action granted Summary Judgment under the doctrine of Collateral Estoppel based on the judgment in the Foreclosure Action without notice of conversion of the Motion to Dismiss to the Motion for Summary Judgment, in violation of Petitioners' Due Process Rights.

In determining whether application of collateral estoppel will work an injustice, " 'Washington courts focus on whether the parties to the earlier proceeding had a full and fair hearing on the issue.' " Hadley, 144 Wash.2d at 311, 27 P.3d 600

24

(quoting Neff v. Allstate Ins. Co., 70 Wash.App. 796, 801, 855 P.2d 1223 (1993)).

In State Farm Fire & Cas. Co. v. Ford Motor Co., 186 Wash.App. at 725-726, 346 P.3d 775-776 (Wash. App. 2015), the Court of Appeals examined the equitable principle of the doctrine of collateral estoppel requiring "focus on whether the parties to the earlier proceeding had a full and fair hearing on the issue[s]".

In this case, there is newly discovered evidence of fraud on the court which was not available to the Ericksons due to the concealment of the identity of the Plaintiff in the Foreclosure Action and the true identity of Defendant in the Independent Action, combined with the difficulty in

locating Jess Almanza, whose Declaration is evidence that his endorsement on the instrument is a forgery, it would be unfair to deny the Ericksons damages resulting from fraud on the court.

25

The Court of Appeals in State Farm Fire & Cas. Co. v. Ford Motor Co., 186 Wash.App. 725-726, 346 P.3d 775-776 explained at ¶ 23, ". . . A number of courts have concluded that the opportunity to introduce evidence not before the fact finder in the prior action is a new procedural opportunity that precludes application of collateral estoppel. See e.g. Rye v. United States Steel Mining Co., 856 F.Supp. 274, 279 (E.D.Va.1994) ('Because the defendants were unable to or precluded from introducing evidence which may have affected the Court's ruling [in the prior case] ... the Court does not believe it would be appropriate to preclude this issue from being litigated in [later] actions.); Strietmatter v. Procter & Gamble Co., 657 F.Supp. 548, 550 (D.N.M.1983). . .' "

Newly discovered evidence of the concealed identity actual client of the STOEL RIVES Defendants and the new discovery of the fact that Jess Almanza was never in the offices of Washington Mutual Bank at any time at or after the time that

26

the Ericksons' refinancing occurred, and his unequivocal statement that he did not endorse the Ericksons' "original Note" makes the application of the doctrine of collateral estoppel fundamentally unfair.

B. Review should be granted pursuant to RAP 13.4(b)(3) because the demonstrated violations of Petitioners' Due Process Rights by the Superior Court and the Court of Appeals raise significant questions of law under Article One, Section 3 of the Constitution of the State of Washington and the Fourteenth Amendment to the Constitution of the United States.

Petitioners' Due Process Rights were violated by the Superior Court's March 26, 2021 Order Granting Summary Judgment when the Petitioners were denied the benefit of all reasonable inferences arising from the Almanza Declaration to which they were entitled in proceedings under CR 56. There is more than sufficient evidence of fraud on the court in the record on appeal which gives rise to genuinely disputed issues of material fact to warrant a trial by jury for damages.

The Ericksons lawfully and constitutionally preserved

their right to trial by jury by timely filing their Demand for Trial by Jury of Twelve Persons and paying the fees for the trial by jury (CP 2439). Furthermore, the Ericksons contend that, as a matter of law, fraud on the Court by the production of a document displaying a forged endorsement-in-blank resulted in a foreclosure judgment which deprived them of their property rights in violation of their Due Process Rights. McDonough v. Smith, supra; Klem v. Wash. Mut. Bank, supra, which recognize that Due Process Rights are violated by the use of fabricated evidence to deprive a party of liberty (McDonough v. Smith) or property (Klem v. Wash. Mut. Bank).

The Ericksons maintain that violations of their Due Process Rights by the use of forged documents and perjured declarations, reinforced by false statements by officers of the court are apparent in the record on appeal and, if not corrected on appeal, will deprive them of their property rights. Respondents entirely failed to address the violation of the

Ericksons' Due Process Rights in their Brief to the Court of Appeals.

The April 25, 2022 Decision of the Court of Appeals misapprehended the record of the proceedings for summary judgment in the Superior

Court because the Superior Court did not grant summary judgment based on its denial of the Ericksons'CR 56(f) Motion to Continue Summary Judgment Proceedings. The Superior Court considered the Almanza Declaration and erred by failing to give the Ericksons, as the nonmoving parties, the benefit of all reasonable inferences arising therefrom as required in proceedings under CR 56.

The Court of Appeals overlooked the procedural fact that the Superior Court considered the February 21, 2021 Declaration of Jess G. Almanza and concluded that the Declaration did not present a material issue of fact. As a matter of law, the Court of Appeals deprived the Ericksons' of their Due Process Rights by affirming the Superior Court on a basis

that is not supported by the record and then disposing of the appeal on the grounds of collateral estoppel when the Ericksons presented newly discovered evidence of fraud on the court.

Concealment of identity of Respondent SPS, the party actually represented by Respondent STOEL RIVES and its named attorneys, deprived the Ericksons of full and fair proceedings in the Foreclosure Action required by the Due Process Clause of the Fourteenth Amendment and Article One, Section 3 of the Constitution of the State of

Washington by committing fraud on the court. Evidence that the endorsement of Jess G. Almanza is a forgery created a material issue of fact was considered by the Superior Court in the present case. The Superior Court deprived the Ericksons, as nonmovants, all reasonable inferences arising from the Almanza Declaration. The Ericksons Due Process Rights were then ignored and

completely disregarded by the Court of Appeals when the Court of Appeals disposed of Petitioners' appeal on grounds completely unsupported by the record.

Review must be granted to provide the Ericksons with their Due Process Rights which have thus far been violated by the use of and allowing or ignoring the use of fabricated evidence in all previous court proceedings. Collateral estoppel cannot override the Ericksons Due Process Rights.

V. CONCLUSION

The Ericksons respectfully submit this Petition for Review and urge its acceptance by the Washington Supreme Court because the use of forged documents misrepresented as genuine and authentic in litigation by the Respondent officers of the court and agents of the concealed real party

in interest is fraud on the court.

Failure to grant relief from fraud on the court when evidence of the fraud is brought to the attention of the court is a violation of Petitioners' Due Process Rights,

31

whose rights were subjected to adjudication on fraudulent documents.

The Petition for Review must be granted to address the significant public interest that forged documents cannot be the basis for a judgment upon which substantial property rights consisting of real estate in the State of Washington and will not be allowed. Due Process Rights forbid such an outcome. Klem, supra; McDonough, supra.

32

Dated this 6th day of July, 2022 at Auburn, Washington.

E-signed: /s/ John Earl Erickson

_____

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Dated this 6th day of July, 2022 at Auburn, Washington.

E-signed: /s/ Shelley Ann Erickson

_____

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CERTIFICATE OF COMPLIANCE

The foregoing Amended Petition for Review complies with RAP 18.17 in that is produced using a word processing program, is prepared in 14 point font, double-spaced except as otherwise allowed, and I am informed that the foregoing Petition for Review consists of 5,000 words, inclusive of footnotes and exclusive of the cover page, Table of Contents, Table of Authorities, signature blocks and Certifications according to the word count tool for the word processing program with which it has been prepared.

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

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2022, I caused a true and correct copy of the Petition for Review to be served via Efiling as set forth below:

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

Dated this 6th day of July, 2022 in Auburn, Washington.

E-signed: /s/ Shelley Ann Erickson
Shelley Ann Erickson, in propria persona
35

Appendix 9

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.