NO. 100401-0

(Court of Appeals No. 81968-2-I)
(Snohomish County Superior Court No. 19-2-09262-31)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

RYAN HOWARD,

Petitioner,

v.

JPMORGAN CHASE BANK, N.A. *et al.*,

Respondents.

RESPONDENT JPMORGAN CHASE BANK, N.A.'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION AND ARGUMENT SUMMARY.

Instead of timely petitioning this Court for review, Petitioner Ryan Howard filed a "Motion to Stay Issuance of Mandate and for Extension of Time" ("Extension Motion") to extend his deadline to file a review petition. The Court of Appeals correctly denied his Extension Motion. Howard now appeals that ruling and seeks to use that appeal as a basis to also review the Court of Appeals' Opinion affirming summary judgment for Respondent JPMorgan Chase Bank, N.A. ("Chase"). Howard may not use the Court of Appeals' denial Order as a vehicle to surreptitiously seek untimely review of the Court of Appeals' Summary Judgment Opinion. Regardless, Howard's Petition does not satisfy any of the bases for review under RAP 13.4. The Court should deny review because:

First, Mr. Howard fails to show the Court of Appeals abused its discretion when it denied his Extension Motion.

Second, Mr. Howard fails to satisfy the RAP 13.4 considerations that govern review.

II. IDENTITY OF RESPONDENT.

Chase is a Respondent and a Defendant in this case.

III. STATEMENT OF THE CASE.

A. Relevant Procedural History.

After Chase started a non-judicial foreclosure, Mr. Howard filed this lawsuit in October 2019, alleging claims for quiet title, fraud, and violation of the Consumer Protection Act ("CPA"). CP 723-734. Chase filed a motion for summary judgment, arguing that claim and issue preclusion from his 2013 lawsuit barred his claims and the evidence showed his claims failed. CP 42-514. The Superior Court granted Chase summary judgment and Mr. Howard appealed. CP 11-14.

Mr. Howard, through his counsel, Nicholas Fisher, filed an Opening Brief in the Court of Appeals. Chase timely filed its Answering Brief on February 18, 2021. On March 22, 2021, Mr. Howard, representing himself, filed a motion to extend his time to file a Reply Brief. In his brief, he claimed he could not contact Mr. Fisher. On April 26, 2021, Mr. Howard again filed

a motion to extend his time to file a reply to June 21, 2021, which the Court of Appeals granted.

Mr. Howard, again representing himself, timely filed his Reply Brief. At no time during the appeal did he file a motion to substitute himself for Mr. Fisher, nor did he substitute in new counsel. Mr. Fisher remained counsel of record at all times.

The Court of Appeals issued its Opinion on August 2, 2021, affirming summary judgment in Chase's favor. On September 2, 2021, Mr. Howard, again representing himself—even though Mr. Fisher was still counsel of record—filed his Extension Motion and added himself to the e-mail service list. The Court of Appeals denied his Extension Motion on October 20, 2021.

Mr. Howard (rather than his counsel of record, Mr. Fisher) filed this Petition.

B. Factual Background.

1. Mr. Howard Executes a Note and Deed of Trust on His Bothell Property.

Mr. Howard obtained a $520,000.00 Home Equity Line of Credit (the "Bothell Note") from Washington Mutual Bank, F.A. ("WaMu"), secured by a Deed of Trust on his Bothell Property (Bothell Deed of Trust), with a loan number ending in 8993 (Bothell Loan). *See* CP 91-108, 419 (¶ 1), 476-477 (¶¶ 10-11), 724 (¶ 3.1). (Chase acquired this loan from the FDIC, acting as receiver, after WaMu's failure. CP 476 (¶ 6).) The Bothell Note matures in 2037 and is an installment Note, repaid over time, rather than all at once: "Payments for both Variable Rate Advances and any Fixed Rate Loans are due monthly." *See* CP 91 (§ I), 94 (§ VI.4.), 476 (¶ 10).

Mr. Howard admits he defaulted on the Bothell Loan in 2009 and Chase serviced the loan (collected payments, contacted him about loss mitigation, and conducted default-related activities). *See* CP 110-114, 419 (¶ 1), 421 (¶ 16), 477 (¶ 12), 726 (¶ 3.15). At no point has Chase ever declared the

entire loan balance due and payable (*i.e.*, accelerated) on Mr. Howard's Bothell Loan. *See* CP 480 (¶ 22).

2. Mr. Howard Sues Chase in 2013, Unsuccessfully Challenging Its Foreclosure and the Bothell Loan.

In 2013, Mr. Howard filed a Complaint against Chase (2013 Lawsuit) alleging fraud, CPA, and injunctive-relief claims, and he sought to stop a foreclosure sale. *See* CP 384-398, 477 (¶ 13). That suit acknowledged the Bothell Loan, alleged wrongful foreclosure, raised issues with the Bothell Loan origination, and raised issues with Chase's billings and recorded documents—all of which duplicate allegations in the current Complaint. *Cf.* CP 385-388 (¶¶ 2.5-2.7), 391 (¶¶ 2.11-2.11.4), 393 (¶¶ 2.17, 2.19-2.19.3), 394 (¶ 2.21) and CP 724-726 (¶¶ 3.3-3.11, 3.13), 730-731 (¶¶ 4.3, 5.5).

In the 2013 Lawsuit, the Court dismissed some claims on a motion to dismiss and granted summary judgment on the rest, dismissing all claims with prejudice against Chase. CP 402-408, 477 (¶ 13), 726 (¶ 3.11). Mr. Howard did not appeal.

3. Chase Continues to Communicate with Mr. Howard, Disclosing Potential Foreclosure on the Bothell Loan and Deed of Trust.

With the 2013 Lawsuit over, Chase continued to contact Mr. Howard about the default on the Bothell Loan between September 2014 and December 2015. *See* CP 477-478 (¶ 14). On January 8, 2016, Chase offered to modify the Bothell Loan, but Mr. Howard did not accept the offer. *See* CP 116-125, 477-478 (¶ 14). Because of Mr. Howard's continued loan default, Chase informed Mr. Howard it might initiate foreclosure on the Bothell Loan. *See* CP 127-137, 477-478 (¶ 14).

4. In 2017, Chase Informs Mr. Howard It Credited Amounts on His Bothell Loan.

Rather than risk litigation over whether Mr. Howard remained liable for ***all*** past-due payments stemming from his 2009 default, Chase in 2017 chose to credit his account for any payments more than six years past due, issued various tax forms associated with those credits, and explained these actions to Mr. Howard. *See* CP 139-168, 478-479 (¶¶ 15-18).

5. In 2018 and 2019, Chase Informs Mr. Howard It Credited His Loan.

In response to questions from Mr. Howard regarding the credits applied to the Bothell Loan, on April 18, 2018, Chase responded that the Bothell Loan remained valid and provided a transaction history (which also listed the 2017 credits). *See* CP 170-219, 479 (¶ 19). Chase sent similar letters on June 27 and August 7, 2018. CP 221-323, 479 (¶ 19). Chase sent yet another letter on April 25, 2019, with a payment history, which again informed Mr. Howard about credits Chase applied to the account for payments beyond the six-year limitations period. *See* CP 328-382, 479 (¶ 21). With no modification and a continued default, foreclosure resumed and the foreclosure trustee recorded a June 2019 Notice of Trustee's Sale, which it later rescinded in October 2019 after Mr. Howard filed this case. *See* CP 410-417, 725 (¶ 3.8), 730-731 (¶¶ 4.1, 4.3).

IV. ARGUMENT AND AUTHORITY.

Mr. Howard lists eight issues (several with sub-issues) for the Court to review, but largely ignores them. Instead, he

seeks review of the ruling on his Extension Motion and the Opinion affirming Chase's summary judgment. This Court should deny review because the Court of Appeals did not abuse its discretion when it denied his Extension Motion. He did not show the extraordinary circumstances required to extend his time to file a review petition. And even if the Court of Appeals abused its discretion (it did not), Mr. Howard fails to present a proper basis for this Court to review Chase's judgment because he does not show any constitutional issue or case-law conflict.

A. The Court of Appeals Correctly Denied Mr. Howard's Extension Motion.

"Because decisions to … grant an extension of time, or waive the appellate rules are within the discretion of the Court of Appeals, we review the court's decision here for an abuse of discretion." *State v. Graham*, 194 Wn.2d 965, 970 (2019). Denial of the Extension Motion was not an abuse of discretion.

RAP 18.8(b) allows extensions "'only in extraordinary circumstances and to prevent a gross miscarriage of justice' and

clearly favors the policy of finality of judicial decisions over the competing policy of reaching the merits in every case." *Reichelt v. Raymark Indus., Inc.*, 52 Wn. App. 763, 765 (1988). Mr. Howard's Extension Motion failed to show any extraordinary circumstance that would merit an extension.

Mr. Howard's Extension Motion failed procedurally because he did not support it with an accompanying declaration. Mr. Howard made several factual assertions in his Motion but failed to file a RAP 17.4(f) declaration made under penalty of perjury supporting those assertions. The Court of Appeals correctly denied his Extension Motion because he failed to show the required "extraordinary circumstances."

Even if Mr. Howard had supported his Extension Motion with a declaration, his substantive arguments fail. He claimed he did not timely receive the appellate court opinion. But he ignores that the Court of Appeals served his counsel with its opinion—counsel who remained of record because Mr. Howard did not file any substitution. The Court is "compelled to apply

the same rules as if he were represented by an attorney." *City of Seattle v. Torkar*, 25 Wn. App. 476, 478 (1980). Mr. Howard could have monitored the docket online for free. *See, e.g.*, https://dw.courts.wa.gov/. His "lack of diligence in monitoring entry of an order on a pending motion does not amount to 'extraordinary circumstances.'" *Bostwick v. Ballard Marine, Inc.*, 127 Wn. App. 762, 776 (2005). And he could have added himself to the Court of Appeals' electronic service list in March, April, or June 2021 but neglected to do so. (He later rectified his omission, showing he knew how to do so.)

Indeed, Mr. Howard's claim strains credulity considering his actions—he closely monitored his appeal and represented himself when his attorney did not. When his Reply Brief was due, he filed a Motion for Extension of Time on March 22, 2021, and a second Motion for Extension of Time on April 26, 2021, to extend his time to file a Reply Brief to June 21, 2021. (Mr. Howard received the Court's Orders on his extension motions because he filed his Reply Brief on June 21, 2021.)

His failure to timely obtain the opinion is a "lack of 'reasonable diligence,' [which] does not amount to 'extraordinary circumstances.'" *Beckman ex rel. Beckman v. State, Dep't of Soc. & Health Servs.*, 102 Wn. App. 687, 695 (2000).

Mr. Howard also included a laundry list of unfortunate events he claimed prevented him from timely filing a petition. Among other things, he claimed an Amazon driver damaged his septic system *21 days in the future* from when he filed his Extension Motion. But he ignores he had plenty of notice to avoid these issues or take appropriate action to mitigate them. He knew Mr. Fisher was not responding to him since March 2021, when he filed his first extension motion. And he could have hired a new attorney between March and September 2021. Mr. Howard failed to show any extraordinary circumstances meriting an extension. "The standard set forth in the rule [RAP 18.8(b)] is rarely satisfied." *Shumway v. Payne*, 136 Wn.2d 383, 395 (1998). The Court of Appeals did not abuse its discretion in refusing to extend his petition deadline.

B. Mr. Howard Fails to Satisfy the RAP 13.4 Review Considerations.

Under RAP 13.4(b), Mr. Howard must show the appellate court's opinion conflicts with case law, or there is a significant constitutional question or public interest issue raised in the case. He did not do so. Distilled to their essences, Mr. Howard's arguments claim: (1) there was a constitutional due process issue in filing his Motion (even though the appellate court received and considered it); and (2) the Court of Appeals' decision was wrong (it was not). Pet. p. 1-2. His arguments do not satisfy the RAP 13.4(b) considerations.[1]

1. There Was No Due Process Issue.

Mr. Howard claims the Court of Appeals violated procedural due process because it failed to serve him with the opinion and there were problems in filing his Motion. Pet. p. 1, 4-5. But neither action violates due process.

[1] Mr. Howard cites issues regarding jurisdiction on tax claims, disputed facts, post-judgment facts, procedural issues, and a stay (issues 2, 4, 5, 6, 7, and 8). Pet. p. 1-2. But he waived review on these issues by not arguing them before. *See Aiken v. Aiken*, 187 Wn.2d 491, 499 fn.3 (2017).

"The fundamental requirement of due process is an opportunity to be heard upon such notice and proceedings 'as are adequate to safeguard the right for which the constitutional protecting is invoked. If that is preserved, the demands of due process are fulfilled.'" *Miller v. City of Sammamish*, 9 Wn. App. 2d 861, 872 (2019), *rev. den.*, 194 Wn.2d 1024 (2020) (*quoting Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 246 (1944)); *see also Yim v. City of Seattle*, 194 Wn.2d 682, 688 (2019), *as amended* (2020). Here, Mr. Howard had sufficient procedural process—the Rules of Appellate Procedure give him the opportunity to be heard. He fully briefed his appeal, and he had the opportunity to make his notice argument in his Exception Motion. There was no due process violation when the Court of Appeals denied his Exception Motion, otherwise, every failed motion would be a constitutional violation.

Mr. Howard did not suffer a due-process violation when he (personally) failed to receive the August 2, 2021 Court of Appeals Opinion. Again, he had counsel and the Court of

Appeals served his counsel. He only claims ***he*** did not receive the opinion, even though he never substituted himself into the case. His lack of diligence does not constitute a due-process violation. *See Beckman*, 102 Wn. App. at 695. And he had the opportunity to be heard—which is all that due process requires. *Miller*, 9 Wn. App. 2d at 872.

Mr. Howard's claim that the Court of Appeals' e-mail system rejected his initial filing is irrelevant. He admits he was able to file his Exception Motion on his second attempt, and he did not claim he missed the Court of Appeals' ruling. *See* Pet. p. 4-5. And his claim that the Court of Appeals' server is on a spam list such that he did not receive confirming emails (see Pet. p. 4) does not matter because the record shows the Court of Appeals did consider his Exception Motion, and he received the Court of Appeals' decision on his Exception Motion.

Mr. Howard also argues the unconsummated foreclosure somehow unconstitutionally deprives him of his property and income. Pet. p. 6. He does not argue Chase performed any

unconstitutional act when it asked the Trustee of the Deed of Trust to initiate foreclosure, and no sale has occurred. In any event, Mr. Howard's admitted default gives Chase the right to non-judicially foreclose. CP 91-108, 476-477 (¶¶ 10-11), 724 (¶ 3.1), 726 (¶3.15). The Deed of Trust Act, RCW 61.24 *et seq.*, "does not constitute significant 'state action' and, therefore, it is neither violative of the due process clause of the Fourteenth Amendment nor of article 1, section 3 of the Washington State Constitution." *Kennebec, Inc. v. Bank of the W.*, 88 Wn.2d 718, 726 (1977); *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 848-849 (2015) (citing and affirming *Kennebec*); *see also Larson v. Snohomish Cnty.*, 2021 WL 5768514, *18–19 (Wash. Ct. App. Dec. 6, 2021) (nonjudicial foreclosure statues do not violate article IV, section 6 of the Washington Constitution). Mr. Howard's due process argument fails and there is no reason to accept review.

2. The Court of Appeals Followed the Law in Granting Chase Summary Judgment.

Mr. Howard alleged fraud, quiet title, and CPA claims against Chase.[2] He has waived review of his CPA claim by not challenging that decision in the Court of Appeals. Mr. Howard's arguments as to fraud and quiet title claims fail for a few reasons. First, he fails to address the claim and issue preclusion arguments that doomed is claims below, thereby waiving any defense. Second, instead of showing that the Court of Appeals' opinion conflicts with another Court of Appeals decision or this Court's decisions, he simply disagrees with the Court of Appeals, which is insufficient.

a. Mr. Howard Waived Review on His CPA Claim Because He Did Not Challenge the Decisions Below.

Mr. Howard waived review on his CPA claim. He conceded his CPA claim failed when he abandoned his

[2] Mr. Howard also sought injunctive-relief, but the trial court properly granted judgment on it because "an injunction is a remedy, not an independent cause of action. Dismissal with prejudice was proper." *Markoff v. Puget Sound Energy, Inc.*, 9 Wn. App. 2d 833, 851 (2019), *recon. den.* (2019).

arguments on it in the Superior Court. CP 30-40. "Generally, this court will not review any claim of error that was not raised in the trial court." *State v. Strine*, 176 Wn.2d 742, 749 (2013); *Wilcox v. Basehore*, 187 Wn.2d 772, 788 (2017) ("Failure to raise an issue before the trial court generally precludes a party from raising it on appeal"); RAP 2.5. Mr. Howard further waived review because he did not cite it as an issue for review in his Court of Appeals brief. *See* August 2, 2021 Op. p. 5; *Aiken*, 187 Wn.2d at 499 fn.3. And his current petition omits arguments claiming the Superior Court erred by granting Chase judgment on his CPA claim. He therefore waived review here. "However, the private plaintiffs present no argument in their opening brief on any claimed assignment. . . . Accordingly, the assignment of error is waived." *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809 (1992); *State v. Donaghe*, 172 Wn.2d 253, 263 fn.11 (2011) ("We do not review issues inadequately briefed or mentioned in passing").

b. Mr. Howard Did Not Challenge the Lower Courts' Claim and Issue Preclusion Decisions, Waiving Review.

Mr. Howard waived review of the Superior Court's dispositive ruling that claim and issue preclusion barred him from challenging Chase's loan in his quiet title and fraud claims. He did not cite the doctrines as issues presented for this Court's review, therefore waiving review. *Aiken*, 187 Wn.2d at 499 fn.3. And he did not raise the issue with the Court of Appeals, waiving review there. August 2, 2021 Op. p. 5; *Cowiche*, 118 Wn.2d at 809; *Donaghe*, 172 Wn.2d at 263 fn.11.

c. The Court of Appeals Correctly Affirmed Chase's Judgment.

The Court of Appeals' decision follows well-settled case law, obviating any need for review.

There are No Factual Disputes. Mr. Howard claims there was a factual dispute regarding whether Chase's loan was on his Bothell Property and that there were issues with his Deed of Trust. Pet. p. 5-7. He argues his loan and Deed of Trust

were retired, but he fails to point to any evidence in the record supporting his assertion. He also argues that an unauthorized WaMu person signed or indorsed his Deed of Trust (Pet. p. 5), but only Mr. Howard signed it.[3] CP 101-108. He did not make these arguments before the Court of Appeals, therefore waiving them. *Aiken*, 187 Wn.2d at 499 fn.3. He failed to submit ***any*** evidence to oppose Chase's summary judgment motion, which is fatal to his appeal. He "may not rest upon mere allegations or denials, but must instead set forth specific facts showing the existence of a genuine issue for trial." *McBride v. Walla Walla Cnty.*, 95 Wn. App. 33, 36 (1999), *as amended,* 990 P.2d 967

[3] WaMu indorsed Mr. Howard's Note in blank. But the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), 2 U.S.C. § 1821 *et seq.* requires Mr. Howard to make a claim with the FDIC first (which he failed to do) before the courts have jurisdiction to hear such claims. *See Rundgren v. Wash. Mut. Bank, FA*, 760 F.3d 1056, 1060 (9th Cir. 2014). His speculation over an indorsement also fails: "Here, instead of pleading facts, Plaintiffs speculate that the indorsement is forged, because they appear not to have facts as to why or when the indorsement was made. Such pleading-by-guesswork is improper." *Drobny v. JP Morgan Chase Bank, NA*, 929 F. Supp. 2d 839, 847 (N.D. Ill. 2013).

(1999). Chase provided evidence showing Mr. Howard's claims failed. CP 42-481. He did not rebut Chase's evidence. Thus, his claim that there are disputed facts fails because he did not provide ***any facts*** below.

Mr. Howard's Fraud Claim Fails. Mr. Howard, in the lower courts, claimed Chase fraudulently credited his loan. But he failed to show: (1) a misrepresentation of an existing fact; (2) materiality; (3) falsity; (4) the speaker's knowledge of its falsity; (5) intent of the speaker that it should be acted upon by the plaintiff; (6) plaintiff's ignorance of its falsity; (7) plaintiff's reliance on the truth of the representation; (8) plaintiff's right to rely upon it; and (9) damages suffered by the plaintiff. *Stiley v. Block*, 130 Wn.2d 486, 505 (1996).

Chase's statements were correct, so they were not fraudulent. *Elcon Constr., Inc. v. E. Wash. Univ.*, 174 Wn.2d 157, 167 (2012); *Siver v. CitiMortgage, Inc.*, 830 F. Supp. 2d 1194, 1202 (W.D. Wash. 2011). As Mr. Howard admitted, Chase told him it credited his account and sent him payment

histories and documents showing those credits. *See* CP 731 (¶ 5.3), 478-479 (¶¶ 15-19, 21), 147-323, 328-382. Fraud requires a false statement, but Chase made no false statement, so Mr. Howard's claim fails. *Chen v. State*, 86 Wn. App. 183, 188 (1997); *Adams v. King Cnty.*, 164 Wn.2d 640, 662 (2008).

Even if Mr. Howard could establish Chase misrepresented something—which he did not—he was not damaged. Mr. Howard benefitted from the credits to his account. *See, e.g.*, CP 147; August 2, 2021 Op. p. 1, 7-8. Indeed, Mr. Howard *agreed* he was not damaged, admitting "[t]he objection to a balance reduction is not the issue." Court of Appeals OB 9; CP 37 (p. 8:2-4). Mr. Howard did not explain what damage he had. If he argues the facts support his fraud claim, they are irrelevant because he lacks damages. August 2, 2021 Op. p. 1, 7-8. "A complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial." *Repin v. State*, 198 Wn. App. 243, 262 (2017).

Mr. Howard's Quiet Title Claim Fails. Mr. Howard cannot generally quiet title against Chase's Deed of Trust because a Deed of Trust is ***not*** a claim against title but rather, a lien. *Hummel v. Nw. Tr. Servs., Inc.*, 180 F. Supp. 3d 798, 806, 809 (W.D. Wash. 2016); *OneWest Bank, FSB v. Erickson*, 185 Wn.2d 43, 63 (2016). Quiet title actions are "designed to resolve competing claims of **ownership** … [or] **the right to possession** of real property." *Kobza v. Tripp*, 105 Wn. App. 90, 95 (2001) (emphasis added). Mr. Howard fails to argue any basis for quieting title against Chase and he does not explain how the Court of Appeals' opinion contradicts any law.

To the extent the Court construes his quiet-title claim as arising under RCW 7.28.300—which he did not argue—on the theory that the statute of limitations made the Deed of Trust unenforceable, that argument also fails. Chase's Note calls for installment payments, so the statute of limitations runs separately for each missed payment up to the 2037 maturity date and does not fully run until 2043. *Herzog v. Herzog*, 23

Wn.2d 382, 388 (1945); *Cedar W. Owners Ass'n v. Nationstar Mortg., LLC*, 7 Wn. App. 2d 473, 484-85 (2019); CP 91 (§ I), 94 (§ VI.4.), 476 (¶ 10). The Court of Appeals followed this law. August 2, 2021 Op. p. 9-10.

Mr. Howard repeatedly refers to Chase re-commencing foreclosing on his Property, somehow implying that it cannot do so. Pet. p. 1 fn.1, 4, 6. His admitted default gives Chase the right to foreclose under his Deed of Trust. CP 91-108, 476-477 (¶¶ 10-11), 724 (¶ 3.1), 726 (¶ 3.15). In Mr. Howard's appellate Opening Brief, he argued he could quiet title because Chase accelerated the loan more than six years earlier and the statute of limitations barred foreclosure. OB 9-10, 14-15. But both here and in the lower courts, he did not provide any evidence Chase accelerated his loan because it did not. *See* CP 480 (¶ 22); August 2, 2021 Op. p. 10-11. And Chase's various foreclosures efforts did not accelerate the loan. *4518 S. 256th, LLC v. Karen L. Gibbon, P.S.*, 195 Wn. App. 423, 445 (2016); *Terhune v. N. Cascade Tr. Servs., Inc.*, 9 Wn. App. 2d 708, 719

(2019), *rev. den.*, 195 Wn.2d 1004 (2020). The Court of Appeals followed this law, and correctly affirmed dismissal of Mr. Howard's quiet title claims. August 2, 2021 Op. p. 10-11.

V. CONCLUSION.

The Court should deny Mr. Howard's Petition. Mr. Howard fails to show the Court of Appeals abused its discretion when it denied his Extension Motion. And even if the Court of Appeals did abuse its discretion (it did not), he fails to satisfy any of the Rule of Appellate Procedure 13.4 bases for review.

RESPECTFULLY SUBMITTED this 17th day of December, 2021.

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This brief contains 4,169 words, excluding the parts of the document exempted from the word count by RAP 18.17(b).

DECLARATION OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the state of Washington that on this day he electronically filed the foregoing document with the Washington State Court of Appeals, Division I, which will send notification of such filing to the parties of record listed below:

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The undersigned further declares under penalty of perjury under the laws of the state of Washington that on this day he served the foregoing document on the parties of record, via UPS, overnight mail, at the following addresses:

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December 17, 2021 - 12:58 PM

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