FILED
SUPREME COURT
STATE OF WASHINGTON
1/28/2022 3:10 PM
BY ERIN L. LENNON
CLERK

NO. 100511-3

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

John Earl Erickson and Shelley Ann Erickson,

Appellants

v.

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

Respondent

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Court of Appeals, Div. I, No. 81648-9-I

Vanessa Soriano Power, WSBA #30777
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
206.624.0900

Attorneys for Respondent

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. STATEMENT OF THE CASE 4

- A. 2010 Federal Court Action 4
- B. 2015 Foreclosure Judgment 5
- C. 2019 CR 60 Action to Vacate Foreclosure Judgment 6

III. ARGUMENT 8

- A. The Court of Appeals' Decision is Not in Conflict with Appellate Decisions 8
- B. The Ericksons' Petition Does Not Raise Significant Constitutional Issues 11
- C. The Ericksons' Petition Does Not Raise an Issue of Substantial Public Interest 14

IV. CONCLUSION 16

TABLE OF AUTHORITIES

Cases

Burlingame v. Consol. Mines & Smelting Co.,
106 Wn.2d 328, 722 P.2d 67 (1986) 10

In re Ch. 13 Bankruptcy Petition of John Erickson,
U.S. Bankruptcy Court, W.D. Wash. Case No.
19-14143-CMA 7

In re Ch. 13 Bankruptcy Petition of Shelley Erickson,
U.S. Bankruptcy Court, W.D. Wash. Case No.
19-12026-TWD 7

Deutsche Bank National Trust Company, as Trustee et al. v. Erickson, King County
Superior Court Case No. 14-2-00426-5; 197
Wn. App. 1068 (2017) (unpublished), *rev. denied* 188 Wn.2d 1021 (2017)..................................... 1, 5, 6

Erickson v. Deutsche Bank as Trustee,
King County Superior Court Case No. 19-2-12664-7, 2021 WL 5564415, Case No. 81648-9-I (Wash. Ct. App. Nov. 29, 2021)
(unpublished).. 1

Erickson v. Long Beach Mortg. Co.,
473 F. App'x 746 (9th Cir. 2012) 5

Erickson v. Long Beach Mortg. Co.,
No. 10-cv-1423 MJP, 2011 WL 830727 (W.D. Wash. Mar. 2, 2011), *aff'd*, 473 F. App'x 746
(9th Cir. 2012) 1, 4

114049571.1 0052161-09747

Erickson v. Power,
King County Superior Court Case No. 20-2-08633-9 1

Fireside Bank v. Askins,
195 Wn.2d 365, 460 P.3d 157 (2020) 9, 10

Geonerco, Inc. v. Grand Ridge Props. IV, LLC,
159 Wn. App. 536, 248 P.3d 1047 (2011) 10

Hadley v. Maxwell,
144 Wn.2d 306, 27 P.3d 600 (2001) 15

Hanson v. City of Snohomish,
121 Wn.2d 552, 852 P.2d 295 (1993) 15

McAfee v. Select Portfolio Servicing, Inc.,
193 Wn. App. 220, 370 P.3d 25 (2016) 12

Singh v. Federal Nat'l Mortgage Ass'n,
4 Wn. App.2d 1, 4-5, 428 P.3d 373 (2018) 12

Wiese v. Cach LLC,
189 Wn. App. 466, 358 P.3d 1213 (2015) 11

Rules

CR 12(b)(6) 7, 11, 12

CR 56 .... 7, 12

CR 60 .... passim

CR 60(b) 10

CR 60(b)(5) 9

RAP 13.4 3

Constitutional Provisions

Washington Constitution.. 11

I. INTRODUCTION

Appellants John and Shelley Ericksons' petition for review should be denied. The Court of Appeals properly affirmed the trial court's order granting summary judgment in favor of Respondent Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 (the "Trust").

Since 2010, the Ericksons have pursued legal actions in state and federal trial and appellate courts against the Trust that held their mortgage loan, and most recently, the Trust's servicer and counsel. All are based on the same facts and assert the same legal theories. All have failed.[1]

---

[1] *See Erickson v. Long Beach Mortg. Co.*, No. 10-cv-1423 MJP, 2011 WL 830727 (W.D. Wash. Mar. 2, 2011), *aff'd*, 473 F. App'x 746 (9th Cir. 2012); *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; 197 Wn. App. 1068 (2017) (unpublished), *rev. denied* 188 Wn.2d 1021 (2017); *Erickson v. Deutsche Bank as Trustee,* King County Superior Court Case No. 19-2-12664-7; 2021 WL 5564415, Case No. 81648-9-I (Wash. Ct. Appeals Nov. 29, 2021) (unpublished); *Erickson v. Power*, King County

There is no dispute that the Ericksons have not made a mortgage payment since July 2009. The Trust secured a judgment and decree of judicial foreclosure in 2015. The foreclosure judgment was affirmed on appeal, and this Court declined review in 2017. In an attempt to circumvent that judgment, the Ericksons filed the underlying complaint under CR 60. In seeking to attack the foreclosure judgment against them, however, the Ericksons assert the very same issues and defenses asserted before in prior proceedings.

The Ericksons asserted five claims: (1) relief from the foreclosure judgment for alleged fraud upon the court; (2) declaratory judgment that the foreclosure judgment is void; (3) common law fraud; (4) breach of the implied covenant of good faith and fair dealing in the underlying loan documents; and (5) relief from the foreclosure judgment based on alleged lack of jurisdiction. All of the claims are premised on the theory that the

---

Superior Court Case No. 20-2-08633-9; currently pending appeal as Case No. 82755-3-I.

Trust does not hold the authentic, endorsed-in-blank Note. This argument fails because the record evidence shows that the Trust possesses the original Note endorsed in blank. The Trust thus had standing to enforce the Note and secure entry of the foreclosure judgment.

The Court of Appeals correctly held that "[b]ecause the Ericksons seek affirmative relief not available under CR 60, seek relief more than one year after the judgment was entered, and bring claims barred by the doctrine of collateral estoppel," the trial court's dismissal of the action was proper. The Ericksons' assertion that review should be granted under RAP 13.4(b)(1), (2), (3), and (4) is without merit. The Court of Appeals' ruling is not contrary to any existing Washington authority, nor does the case present an issue of substantial public interest or involve a significant question of constitutional law. Review should be denied.

114049571.1 0052161-09747

II. STATEMENT OF THE CASE

This case stems from the Ericksons' ongoing attempts for more than 10 years to challenge enforcement of a mortgage loan they entered into in 2006. On March 3, 2006, the Ericksons entered into a mortgage loan with Long Beach Mortgage Company (the "Note"). CP 561-64. The Note was secured by a Deed of Trust. CP 566-77. There is no dispute that the Ericksons have made no payments on the Note since July 2009.

A. 2010 Federal Court Action.

In 2010, the Ericksons sued the Trust in King County Superior Court, which was removed to federal court as *Erickson v. Long Beach Mortg. Co.*, No. 10-1423 MJP, 2011 WL 830727 (W.D. Wash. Mar. 2, 2011). The Ericksons claimed the Trust could not produce the Ericksons' original Note and therefore lacked standing to foreclose. CP 443-49. The District Court rejected the Ericksons' standing argument, finding "[the Trust] provide[d] evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge." CP 445. The

Ninth Circuit affirmed. *Erickson v. Long Beach Mortg. Co.*, 473 F. App'x 746 (9th Cir. 2012).

B. 2015 Foreclosure Judgment.

In 2014, the Trust filed a foreclosure action against the Ericksons in King County Superior Court to foreclose on the Note and Deed of Trust. *Deutsche Bank National Trust Co. as Trustee v. Erickson, et al.,* King County Superior Court Case No. 14-2-00426-5 KNT. At the summary judgment hearing, the Trust produced the original Note. CP 476:10-19 (Transcript of Hearing). The hearing was continued to allow the Ericksons' forensic expert to inspect the Note. CP 484:13 – 485:22; CP 512:4-19. After the Ericksons' forensic expert inspected the Note, the hearing resumed a week later. CP 516:15 – 517:17. Tellingly, the Ericksons offered no evidence refuting the authenticity of the Note. In 2015, judgment and a decree of foreclosure was entered. CP 694-99.

The Ericksons appealed the foreclosure judgment and the Court of Appeals affirmed. *Deutsche Bank v. Erickson*, 197 Wn.

App. 1068 at *7-8 (2017) (unpublished) (holding collateral estoppel barred the Ericksons from arguing the Trust did not hold the original Note and finding "[e]ven if the Ericksons were not collaterally estopped from their substantive arguments, a holder of a note endorsed in blank is entitled to enforce that note" and because the Trust "presented an original, signed, endorsed in blank note at the summary judgment hearing, it was entitled to summary judgment and to enforce the note against the Ericksons."). This Court then denied review. *Deutsche Bank v. Erickson*, 188 Wn.2d 1021 (2017).

C. 2019 CR 60 Action to Vacate Foreclosure Judgment.

On May 13, 2019, the Ericksons filed a complaint in King County Superior Court seeking to set aside the Foreclosure Judgment under CR 60 and restrain a foreclosure sale. CP 1-35. The complain asserted claims under CR 60, including common-law fraud, fraud upon the court, lack of subject matter jurisdiction in a prior judgment, and breach of an implied duty of good faith and fair dealing. On May 24, 2019, the trial court

denied the Ericksons' request for a preliminary injunction. CP 928. The case was then stayed from May 30, 2019 until September 26, 2019, during the pendency and until dismissal of Shelley Erickson's bankruptcy filing. *See In re Ch. 13 Bankruptcy Petition of Shelley Erickson,* U.S. Bankruptcy Court, W.D. Wash. Case No. 19-12026-TWD. On October 17, 2019, the Trust filed a motion to dismiss under CR 12(b)(6), relying in part on the documents the Ericksons themselves filed with their complaint. CP 1495-1510. On November 13, 2019, John Erickson filed for bankruptcy, which stayed the case until dismissal of Mr. Erickson's bankruptcy on April 16, 2020. *See In re Ch. 13 Bankruptcy Petition of John Erickson*, U.S. Bankruptcy Court, W.D. Wash. Case No. 19-14143-CMA.

On June 16, 2020, the trial court heard oral argument on the Trust's dispositive motion. CP 1802-05; RP 24-60. The trial court converted the Trust's motion to dismiss to a motion for summary judgment under CR 56 and dismissed the Ericksons' complaint in its entirety, with prejudice. CP 1804. The trial

court found that, "[c]onstruing the facts in the light most favorable to the [Ericksons], the Court holds that there is no dispute of material fact." *Id.* The Court specifically held that "to the extent this case seeks relief under CR 60, it was not timely filed and seeks affirmative relief not appropriate under CR 60," and further found that "the issues raised in the Complaint are barred by collateral estoppel and that the King County Superior Court who granted the Foreclosure Judgment in 2015 had subject matter jurisdiction." *Id.*

The Court of Appeals affirmed, and this petition followed.

III. ARGUMENT

A. The Court of Appeals' Decision is Not in Conflict with Appellate Decisions.

The Ericksons argue that the Court of Appeals' decision is in conflict with both Washington Supreme Court decisions and published Court of Appeals decisions related to CR 60. *See* Pet. at 13-19. The Ericksons are in error. The Court of Appeals correctly found that the Ericksons are not entitled to affirmative relief under CR 60.

The Ericksons filed an action to vacate the foreclosure judgment under CR 60(b)(5) "for fraud on the court" and to deem the foreclosure judgment void under CR 60(b)(5) for lack of subject matter jurisdiction. In addition, they tacked on a cause of action for an injunction and declaratory judgment, for "damages from common law fraud," and for breach of the implied covenant of good faith and fair dealing. The Ericksons appeared to believe that because they filed a separate action to vacate the foreclosure judgment, as opposed to a motion in the underlying action, they were entitled to seek additional, affirmative relief. The Court of Appeals found that the trial court correctly construed the complaint as seeking relief under CR 60 and that, as a matter of law, the Ericksons are not entitled to affirmative relief.

The Ericksons misread applicable law in arguing that the Court of Appeals' decision conflicts with precedent. CR 60 "is a limited procedural tool that governs relief from final judgments." *Fireside Bank v. Askins*, 195 Wn.2d 365, 161, 460

114049571.1 0052161-09747

P.3d 157 (2020) citing *Burlingame v. Consol. Mines & Smelting Co.*, 106 Wn.2d 328, 336, 722 P.2d 67 (1986). "No matter the circumstances, however, the only relief that may be ordered pursuant to CR 60 is relief '*from* a final judgment, order, or proceeding,' not any entitlement *to* affirmative relief." *Fireside Bank*, 195 Wn.2d at 162 citing CR 60(b). "Thus, 'Rule 60(b) is available only to set aside a prior judgment or order; courts may not use Rule 60(b) to grant affirmative relief in addition to the relief contained in the prior order or judgment.'" *Fireside Bank*, 195 Wn.2d at 162 quoting *Geonerco, Inc. v. Grand Ridge Props. IV, LLC,* 159 Wn. App. 536, 542, 248 P.3d 1047 (2011). Indeed, the *Fireside Bank* Court made clear that "on a CR 60(b) motion, a trial court cannot order additional obligations outside the original judgment, such as an award of monetary damages." *Fireside Bank,* 195 Wn.2d at 162, citing *Geonerco,* 159 Wn. App. at 541.

The Court of Appeals' decision is consistent with both *Fireside Bank*. Regardless of the *procedural* nature of the

Ericksons' filing – as a new action versus a motion to vacate – the Court of Appeals properly ruled that the *substance* of the Ericksons' request for additional relief under CR 60 falls short. Nor does the Court of Appeals decision conflict with *Wiese v. Cach LLC*, 189 Wn. App. 466, 358 P.3d 1213 (2015). *Wiese* addressed whether an action to vacate judgments in collection cases was subject to arbitration or could be filed as an independent suit under CR 60, and has no bearing here. In sum, the Court of Appeals' decision does not conflict with precedent.

B. The Ericksons' Petition Does Not Raise Significant Constitutional Issues.

The Ericksons' petition does not raise significant issues under the Washington Constitution. Their belief that the trial court committed a due process violation when the Trust's CR 12(b)(6) motion was converted to a motion for summary judgment is misplaced. Indeed, it was the Ericksons' own submission of material that caused the conversion.

"When a party submits documents that were not contained in the original complaint for consideration by the court in

assessing a CR 12(b)(6) motion, those submissions generally convert the motion to dismiss into a motion for summary judgment under CR 56." *Singh v. Federal Nat'l Mortgage Ass'n*, 4 Wn. App.2d 1, 4-5, 428 P.3d 373 (2018) citing *McAfee v. Select Portfolio Servicing, Inc.*, 193 Wn. App. 220, 226, 370 P.3d 25 (2016). That is precisely what occurred here. RP 53:20-54:3 ("There was quite a bit of collateral information submitted by the opposing party, which I think does convert it to a summary judgment motion, and I am applying that standard. So applying that standard, I am considering whether construing this evidence in the light most favorable to the Ericksons, there are any genuine issues of material fact."). In filing the complaint, the Ericksons sought judicial notice of 18 documents totaling hundreds of pages. The Trust did not object.

The Ericksons had ample notice of the Trust's motion to dismiss, and the fact that it relied on the Ericksons' own, voluminous exhibits filed with the complaint. To wit, the Trust's motion was filed in October 2019, but because the case was

stayed pending Mr. Erickson's bankruptcy filing, hearing on the motion did not occur until a full eight months later, in June 2020. Finally, despite making a vague argument asserting violation of their rights, the Ericksons identify no additional evidence that the trial court did not already have before it that would have been relevant to the Court's consideration of the motion.

The Court of Appeals correctly ruled that the trial court's conversion of the motion to dismiss into a motion for summary judgment was proper. The Court of Appeals noted that the "Ericksons filed 31 documents and four motions over the course of the 13 months between the denial of their motion for a preliminary injunction and the hearing on [the Trust's] motion to dismiss." Opinion at 4. In their petition, beyond making a vague assertion that conversion to summary judgment violated their due process rights, the Ericksons point to no specific evidence that they were unable to rely upon to defend their claims. There is no significant constitutional issue before the Court.

C. The Ericksons' Petition Does Not Raise an Issue of Substantial Public Interest.

The Ericksons' articulation of the purported substantial public interest at issue is but a reiteration of their other arguments related to CR 60 and conversion of the motion to dismiss into a motion for summary judgment. The Ericksons had ample opportunity to present their case and be heard. And that is just what occurred here.

The Court of Appeals correctly concluded that the Ericksons are not entitled to affirmative relief under CR 60, and that conversion of the Trust's motion to dismiss into a motion for summary judgment did not violate the Ericksons' rights. The Ericksons appear to indirectly take issue with the Court of Appeals' determination that the Ericksons' claims are separately barred on collateral estoppel grounds by arguing that they have asserted an "independent action" for fraud. *See* Pet. at 22, n. 9. That argument is baseless and fails under the doctrine of collateral estoppel.

The Court of Appeals correctly found that collateral estoppel bars the Ericksons' claims because the claims rely on the same allegation, previously litigated multiple times, that the Trust does not hold the original Note and does not have standing to foreclose. Collateral estoppel prevents re-litigation of an issue after the party estopped has had a full and fair opportunity to present its case. *Hanson v. City of Snohomish,* 121 Wn.2d 552, 561, 852 P.2d 295 (1993). Collateral estoppel requires four elements: (1) identical issues; (2) a final judgment on the merits; (3) same parties or parties in privity; and (4) application of the doctrine must not work an injustice on the party against whom it is to be applied. *Hadley v. Maxwell,* 144 Wn.2d 306, 311-12, 27 P.3d 600 (2001).

The Court of Appeals found:

- The Ericksons "present identical issues as they did in a federal proceeding in 2010, and again in a superior court action in 2014," namely that the Trust "does not possess the valid, original note and therefore did not

have standing to foreclose on their home." Opinion at 7.

- "[B]oth prior adjudications ended on a valid, final judgment on the merits." *Id.*
- The "Ericksons were parties to both the federal proceeding and the superior court proceeding." *Id.* at 8.
- Collateral estoppel "will not work an injustice against the Ericksons. This is the third time the Ericksons have raised an identical claim. They have had more than a full and fair opportunity to litigate their case in both state and federal court." *Id.*

As the Court of Appeals concluded, "application of collateral estoppel is appropriate here, where the Ericksons bring a third identical claim against the same party." *Id.* 9.

IV. CONCLUSION

The Court of Appeals properly affirmed the trial court's order granting summary judgment in favor of the Trust, and

dismissing the Ericksons' complaint with prejudice on multiple grounds. The Ericksons provide no valid basis for this Court to grant review. The Trust respectfully requests that the Court deny the Ericksons' petition.

DATED: January 28, 2022.

STOEL RIVES LLP

Vanessa Soriano Power

Attorneys for Appellee
Deutsche Bank National
Trust Company as Trustee
for Long Beach Mortgage
Trust 2006-4

STOEL RIVES LLP

January 28, 2022 - 3:10 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,511-3
Appellate Court Case Title:	John Erickson and Shelley Erickson v. Deutsche Bank National Trust Company

The following documents have been uploaded:

- 1005113_Answer_Reply_20220128150840SC749676_3202.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was 2022.01.28 Answer to Petition for Review.pdf

A copy of the uploaded files will be sent to:

- accesslegalservices@gmail.com
- shelley206erickson@outlook.com

Comments:

Sender Name: Vanessa Power - Email: vanessa.power@stoel.com
Address:
600 UNIVERSITY ST STE 3600
SEATTLE, WA, 98101-3197
Phone: 206-386-7553

Note: The Filing Id is 20220128150840SC749676