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IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

MARK AND DAINA CARTER

Appellant

v.

PNC BANK,

Respondent.

ON APPEAL FROM
THE SUPERIOR COURT FOR KING COUNTY
STATE OF WASHINGTON

The Honorable Judge Johanna Bender

PETITION FOR REVIEW OF THE COURT OF APPEALS
DECEMBER 20, 2021 DECISION IN CARTER V. PNC BANK
COA # 81698-5-I

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E. The Court of Appeals found the Carters paid the lien in full, which released the lien, yet awarded PNC attorney’s fees under the instrument. This is an issue of substantial public interest. 20

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I. IDENTITY OF THE PETITIONER

Petitioners Mark and Daina Carter, through their attorney of record, Mary C. Anderson, asks this court to accept review of the Court of Appeals decision designated in Part II below.

II. COURT OF APPEALS DECISION

The Carters request a review of the Court of Appeals December 20, 2021 ruling, its order denying reconsideration, the commissioner's ruling granting attorney's fees, and the Court of Appeals' order denying Carters' Motion to Modify the Commissioner's ruling on Attorney's fees.

III. ISSUES PRESENTED FOR REVIEW

A. Does re-opening a bankruptcy petition and vacating the closure spring back the automatic stay under 11 U.S.C. § 362 (c)(2)(A)?

B. Can the trial court order a consumer to pay the face value of a mortgage lien in full when: (a) that consumer's personal liability on the underlying debt was discharged in bankruptcy; (b) the creditor's only surviving right is the in rem remedy of foreclosure, and (3) the creditor has not brought an action for a foreclosure?

C. When a consumer brings a quiet title action on the grounds the statute of limitations has run on a creditor's in rem right of foreclosure,

does the trial court's finding that the statute of limitations had not run make the lien valid and enforceable?

D. Can the Court of Appeals refuse to review a trial court's order for legal error stating the issue is moot when the consumer would be entitled to the remedy of reimbursement or restitution if the trial court's order was issued in error?

E. Can the Court of Appeals consider the issue of voluntary payment for the first time on appeal but deny the appellant consumer the opportunity to add evidence to establish the payment was involuntary?

F. Can the Court of Appeals award attorney's fees to a bank under Deed of Trust, when the underlying lien was paid in full, according to the Court of Appeals; thus, the lien is extinguished?

IV. STATEMENT OF THE CASE

The facts relevant to this motion are set forth in Appellants' opening brief, and motions attached as an appendix and are incorporated by reference herein. In addition, the following facts are relevant:

Mark and Daina Carter filed a chapter 7 bankruptcy on April 27, 2012, in U.S. Bankruptcy Court Western District (Seattle). CP 155. This triggered an automatic stay. 11 U.S.C. § 362 (c)(2)(A). The Bankruptcy Court closed the bankruptcy without discharge on August 14, 2012. CP 166.

Because PNC held a Deed of Trust to their property, the court notified PNC. CP 155, 157-61, 163.

On August 20, 2012, the Bankruptcy Court reopened the bankruptcy, vacated the Order Closing Case Without Discharge, and discharged the Carters' *personal* liability on the debt owed to PNC. CP 135-36. PNC did nothing for the six years following the Carters' bankruptcy closure and personal discharge. CP 156.

On February 5, 2019, the Carters filed a quiet title action against PNC, which held the Deed of Trust. CP 1, 155-56. PNC did not file a counterclaim for judicial foreclosure. CP 381-84.

PNC conceded that closing and re-opening a bankruptcy does not spring back the automatic stay. CP 181. Instead, it argued that vacating a closed bankruptcy was somehow different than re-opening, so it sprung back the automatic stay. CP 181, 196-97. The trial court overlooked the closed bankruptcy to conclude the statute of limitations had not run and opined the stay persisted through the Carters' bankruptcy closure as a matter of law. CP 368. The Carters timely appealed that decision as a legal error on July 22, 2020. CP 323.

In 2020, the COVID-19 pandemic devastated the Carters' catering business, deprived the Carters of their only source of income, and compelled them to sell their home to avoid foreclosure by the first lienholder. CP 358-59.

Because PNC never commenced a foreclosure action, the trial court did not issue a judgment, so the Carters motioned for permission to post alternate security under RAP 8.1(b)(4) to preserve the status quo pending appeal. CP 353-56. The Carters requested to deposit the proceeds of the pending sale of their property into the court registry in exchange for PNC releasing its lien. CP 353-56.

On July 31, 2020, the trial court not only denied that motion but stated “a private sale would presumably generate funds sufficient to *pay Defendant's lien in full* and allow for *the anticipated costs of the appeal* to be placed in the court registry,” then ordered the Carters to meet and confer to develop a plan to pay PNC the face value of the lien. CP 377-78 (Emphasis added). The trial court did not allow the Carters an opportunity to raise any defense to the amount of the lien.

On August 21, 2020, the Carters amended their appeal to include review of the July 31 order. CP 386-91.

Pursuant to the trial court's July 31 order, PNC demanded payment of the face value of the lien plus additional expenses and interest for a total of \$355,236.19. Appendix 1, Exh.2. The Carters paid that amount to PNC, but PNC also required Plaintiff's counsel to hold in her trust account additional security of \$45,000 pending "court determination" before releasing the lien. *Id.* at Exh.2.

Thus, all parties involved knew and understood: (a) the Carters only paid the \$355,236.19 to facilitate the sale; (b) the Carters only paid PNC directly because the trial court ordered them to; (c) the Carters intended to preserve their right to appeal, and (d) the Court of Appeals would finally determine the parties' rights. However, nothing that transpired after the July 31 order is in the record on appeal.

The Carters moved to add this evidence, but the Commissioner denied the motion because "the proposed additional evidence would have no bearing on the question of whether the trial court erred in entering the challenged orders but could only be relevant to [sic] remedy should the Carters succeed in their appeal – a question that would likely be left to the trial court on remand." Appendix 2. The Court of Appeals declined to modify that ruling. Appendix 3. Therefore, the record on appeal does not

contain any evidence the Carters are no longer the title holders or that they paid PNC any amount toward the lien.

However, the Court of Appeals found the case is moot because “the Carters sold the property and they are not the title holders...” *Carter v. PNC Bank, Nat'l Ass'n*, No. 81698-5-I, 2021 Wash. App. LEXIS 3030, at *5 (Ct. App. Dec. 20, 2021) (Hereinafter the “Opinion”). Moreover, although the Court of Appeals declined to admit evidence of the circumstances surrounding the Carters’ payment, the Court of Appeals found the Carters are not entitled to any remedy because they “failed to meet their burden by a preponderance of the evidence that they made an involuntary payment. Opinion at *10-11.

The Carters' timely move this Court to accept review.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. Standard of Review

RAP 13.4 sets forth the criteria for accepting review of a Court of Appeals decision. Here, three of those four criteria apply: This case raises a significant question of law under the Constitution of the State of Washington and the United States, both the trial court’s orders and the Court of Appeals Opinion involve an issue of substantial public interest that the

Supreme Court should determine. This decision conflicts with this Court's precedent. RAP 13.4(b) (1), (3), (4).

B. The Ninth Circuit held in *In re Kayne*, 2011Bankr. LEXIS 1448 *1 (9th Cir. 2011) that the automatic bankruptcy stay imposed under 11 U.S.C. § 362 (c)(2)(A) terminates when the bankruptcy closes and revoking the closure does not revive it. The effect of the Court of Appeals' ruling, in this case, is that a trial court can ignore well-established federal bankruptcy law. Yet, the consumer may be left without a remedy because the Court of Appeals can simply refuse to review the case for legal error. This is an issue of substantial public interest and is contrary to this Court's application of RAP 12.8 in *State v. A.N.W Seed Corp.*, 116 Wn.2d 39 (1991).

Whether closing a bankruptcy terminates the automatic stay and whether vacating a bankruptcy closure springs back the automatic stay is an issue of substantial public interest. Thousands of Washingtonians are affected because the bankruptcy stay affects the tolling period under RCW 4.16 and provides guidance on when a foreclosure can and must be enforced.

The six-year statute of limitations to enforce a deed of trust commences from the date the last payment on the note was due prior to the discharge of a borrower's personal liability in bankruptcy. *Jarvis v. Fannie Mae*, 726 F. App'x 666, 667 (9th Cir. 2018) (citing *Edmundson v. Bank of America*, 194 Wn. App. 920, 925, 378 P.3d 272 (2016)).

However, filing a bankruptcy petition automatically stays the creditors' right to enforce the debt both personally and in rem. 11 U.S.C. § 362(a); 11 U.S.C. § 541(a). In Washington, this automatic stay tolls the six-year statute of limitations until the bankruptcy stay is lifted. *Merceri v. Deutsche Bank AG*, 2 Wn. App.2d 143, 144-45, 408 P.3d 1140, (2018).

Federal law is clear, and PNC conceded below that the automatic stay is terminated when the bankruptcy court closes the case or grants a discharge. CP 181; 11 U.S.C. § 362 (c)(2)(A)-(C); *In re Trevino*, 78 B.R. 29, 37 (1987) (the stay continues until the property is no longer property of the estate (11 U.S.C. § 362(c)(1)), which may occur when the case is closed, dismissed, or until a discharge is granted or denied. (citing *Matter of Solar Equipment Corp.*, 19 B.R. 1010 (Bankr.W.D.Lo.1982)).

Federal law also clarifies that revoking or vacating the closure does not revive the automatic stay. *In re Kayne*, 2011Bankr. LEXIS 1448 *1. To the contrary, "to the extent that the automatic stay expire[s] in conjunction with the closing, it does not automatically spring back into effect. If protection is warranted after a case is reopened, then an injunction would need to be imposed." *Id.* (quoting *In re Menk*, 241 B.R. 896, 914 (9th Cir.BAP1999)); See also *In re Phenylpropanolamine Prods. Liab. Litig.*, U.S. Dist. Lexis 51756 (2006) (The automatic stay under § 362 ended when

the bankruptcy case was closed, and there is no authority for the proposition that re-opening the case re-imposes the stay); *In re Burke*, 198 B.R. 412 (S.D. Ga. Bankr. 1996) (the automatic stay expired upon the debtors' discharge and was not reinstated upon the re-opening of the bankruptcy case although the court could enjoin the collection efforts upon re-opening.).

Further, Congress intended that when the bankruptcy is closed, dismissed, or discharged that the bankruptcy case is unwound "as far as practicable, and restore all property rights to the position in which they were found at the commencement of the case." *In re Weston*, 110 B.R. 452, 456 (E.D.Cal.1989), citing *H.R.Rep.* No. 95-595 (1977); *S.Rep.* No. 95-989 (1978), reprinted in *U.S.Code Cong. & Admin.News*, 5787, 5835, 6294; *In re de Jesus Saez*, 721 F.2d 848, 851 (1st Cir.1983); *Nicholson v. Nagel*, 245 B.R. 657 (D. Ariz. 1999).

Here, despite case law on point, the trial court erroneously found the stay persisted through the closure. And despite the trial court's clearly erroneous ruling, the Court of Appeals refused to review it because it found the issue was moot when the Carters sold their property and paid PNC. Opinion at *6.

This is contrary to RAP 12.8 and this Court's decision in *State v. A.N.W. Seed Corp.*, 116 Wn.2d 39, 802 P.2d 1353 (1991).

RAP 12.8 provides:

If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution. An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.

RAP 12.8.

In *A.N.W.*, the defendant failed to file a supersedeas bond, so the state sold the defendant's property pending appeal, but the sale did not render the appeal moot. Instead, the Court of Appeals properly reviewed the issue for legal error and vacated the underlying judgment. *A.N.W.* then moved the trial court, pursuant to RAP 12.8 for restitution. This Court approved of that process. *A.N.W. Seed Corp.*, 116 Wn.2d at 42-43.

In fact, the Court of Appeals Division One expressed this rule and procedure in a recent unpublished opinion in a different case. In *Phillips v. Smith*, 2020 Wash. App. LEXIS 2840, at *10 (Ct. App. Nov. 2, 2020), the Court of Appeals explained that “when a purchaser in good faith has acquired the property before the decision on appeal, the purchaser's interest “shall not be affected by the reversal or modification,” but the trial court

“shall take steps to restore to the appellant ‘the value of the property, or in appropriate circumstances, provide restitution.” *Id.*

Had the Court of Appeals reviewed the underlying order, it would have concluded that closing the bankruptcy terminates the automatic stay under well-established federal law, and vacating the closure does not spring it back. Therefore, under Washington law, the statute of limitations did not toll under RCW 4.16 after the bankruptcy court discharged the Carters’ liability on the debt on August 20, 2012. PNC failed to commence a foreclosure action timely, so the Carters were entitled to quiet title in their favor.

But instead of reviewing the trial court’s orders for legal error, the Court of Appeals considered the involuntary payment doctrine and whether the Carters met the elements of restitution for the first time on appeal without affording the Carters an opportunity to build the record or present any evidence in their favor. Opinion at *10-11.

This Court should accept review because, without guidance from this Court, many consumers may lose their homes by default because they erroneously believe the automatic stay persists through closure. On the other hand, many creditors, relying on federal case law, may inadvertently

subject themselves to liability by moving forward with foreclosure upon a bankruptcy closure or after the closure has been vacated.

Further, if this decision is allowed to stand, the Court of Appeal can simply refuse to rule on any case adverse to creditors by findings the issue is moot. This case demonstrates this has already happened. In *Phillips*, which was not adverse to a creditor, the Court of Appeals cited to RAP 12.8 to show that even though the property was sold, the defendant has a remedy other than filing a lis pendens pending appeal; here, where the great weight of federal law was against the creditor, the Court of Appeals ignored RAP 12.8 and stated the Carters had no remedy, therefore the case was moot.

C. When a consumer's personal liability on the underlying debt is discharged in bankruptcy, the creditor's only surviving right is the in rem remedy of foreclosure. Thus, the trial court has no authority to order a consumer to pay the full value of a mortgage lien. This is an issue of significant public interest that this Court should determine.

After a chapter 7 discharge on the debt, the only remedy a lender may pursue is *in rem*, not payment on the debt. *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S. Ct. 2150, 2154, 115 L. Ed. 2d 66 (1991).

On summary judgment, PNC conceded that the statute of limitations to enforce its Deed of Trust was six years from when the Carters' personal

liability was discharged in bankruptcy. CP 195 (citing *Edmundson*, 194 Wn. App. at 931). The only disputed issue was the tolling period. CP 195., The statute of limitations was never tolled after August 20, 2012, the date Carters' personal liability on the underlying debt was discharged. PNC's only remedy was to foreclose, but it failed to do so within six (6) years of the discharged debt. Thus, the Carters were entitled to quiet title in their favor. RCW 7.28.300.

Here, both the trial court and Court of Appeals disregarded the effect of discharging a consumer's personal liability on the underlying debt.

A deed of trust creates a security interest in real property. *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 515, 359 P.3d 771 (2015). A note is a separate obligation from the deed of trust. *Boeing Emps.' Credit Union v. Burns*, 167 Wn. App. 265, 272, 272 P.3d 908 (2012). The note represents the debt, whereas the deed of trust is the security for payment of the debt. *Id.* The security instrument follows the note that it secures. *Deutsche Bank Nat'l Trust Co. v. Slotke*, 192 Wn. App. 166, 177, 367 P.3d 600 (2016). "The holder of the promissory note has the authority to enforce the deed of trust because the deed of trust follows the note by operation of law." *Winters v. Quality Loan Serv. Corp. of Wash., Inc.*, 11 Wn. App. 2d 628, 643-44, 454 P.3d 896 (2019).

Because the note was discharged, PNC only had a lien on the property. Nothing in the Deed of Trust entitles PNC to payment from the Carters – its only remedy after bankruptcy is to foreclose on the lien. The Court of Appeals explained in its recent unpublished decision, *Luv v. W. Coast Servicing, Inc.*, No. 81991-7-I, 2021 Wash. App. LEXIS 1924, at *6 (Ct. App. Aug. 2, 2021), after discharge, no future installment payments are due and owing on the note or deed of trust. Therefore, when the trial court found the statute of limitations had not run, it did not revive the Carters’ personal liability on the underlying debt, nor did it make the lien valid and enforceable, as the Court of Appeals opined. Opinion at 11. The Court of Appeals’ statement that “PNC was not obligated to release the lien without full payment” is simply incorrect and ignores the fundamental principles of due process. Opinion at *11.

To the contrary, PNC had to prove its lien was valid and enforceable before it could foreclose. *Alprin v. City of Tacoma*, 139 Wn. App. 166, 171, 159 P.3d 448, 451 (2007) (Plaintiff bears the burden of proof of each element by a preponderance of the evidence). The Carters could have raised any applicable defenses. For example, PNC concedes that the Carters borrowed \$350,000 on August 29, 2006, and the Carters alleged they made payments until March 2012. CP 21-22. Therefore, had PNC properly moved

for foreclosure, the Carters could have argued to reduce the lien by the amount of payments made. But because PNC did not file a counterclaim for judicial foreclosure, the Carter had no notice that being ordered to pay the full value of the lien, *which was more than originally borrowed after making eleven years' worth of payments*, was even a possibility. And they had no opportunity to challenge the amount of the lien or raise any defenses because the trial court denied the Carters' motion for alternate security under RAP 8.1(b)(4).

Had the trial court granted that motion for alternate security, the Carters would have placed the money in the court registry, and the status quo would have been preserved until the Court of Appeal finally determined whether the statute of limitations had run. And under those circumstances, even if the Court of Appeals found the statute of limitation had not run, the Carters would have still had an opportunity to be heard on the amount purportedly owed. Instead, the trial court deprived the Carters of their property without any notice or an opportunity to be heard, violating the most fundamental due process principles under the Fourteenth Amendment and Article I Section 3. But even worse, because the Carters obeyed the trial court's order, and paid the security directly to PNC, the Court of Appeal

determined that was a voluntary payment and then refused to review the trial court's underlying order for legal error.

This Court should accept review to clarify that finding the statute of limitations has not run does not automatically make the bank's lien valid and enforceable, and it certainly does not preclude a consumer from raising applicable defenses.

This issue will affect thousands of consumers in Washington and is likely to recur. If this decision is allowed to stand, banks are no longer obligated to bring a foreclosure action. Banks will be allowed to sit on their rights and wait for a consumer to move to quiet title. Then, if the trial court rules against the consumer, the bank can collect the full value of the lien without judicial oversight. Thus, creating an unequal balance of power in favor of the Banks.

D. During the pendency of this case, in *Copper Creek*, Division One suddenly re-interpreted its holding in *Edmundson*. Before *Copper Creek*, the creditor only had six years from the date of discharge to enforce its right to foreclose. Now, Division One has held a creditor has six years from the date each installment becomes due, even though no installments become due after a bankruptcy discharge. This is contrary to the purpose of the statute of limitations and Division One's very recent decision in *Luv*, which held the opposite. It also renders the bankruptcy discharge meaningless. This is an issue of substantial public concern that this Court should determine.

Until *Copper Creek*, it was well-established that a creditor's right to foreclose on a deed of trust does not extend beyond the limitation period for enforcement of the underlying debt. *Walcker v. Benson and McLaughlin*, P.S., 79 Wn. App. 739, 740-41, 904 P.2d 1176 (1995); *Edmundson*, 194 Wn. App. 920 (six-year statute of limitations to enforce a deed of trust commences from the date the last payment on the note was due prior to the borrower's personal liability discharge in bankruptcy); *Jarvis*, 726 F. App'x at 667) (Citing to *Edmundson* to find the statute of limitations to foreclose on the deed of trust ran from the last installment due before the Jarvises' bankruptcy discharge in February 2009 and expired before the Jarvises brought their quiet-title action nearly seven years later in February 2016).

In 2021, Division One re-iterated in an unpublished opinion, “We adhere to our decision in *Edmundson v. Bank of America*, 194 Wn. App. 920, 378 P.3d 272 (2016), and hold that the six-year statute of limitations to enforce a deed of trust commences from the date the last payment on the note was due prior to the discharge of a borrower's personal liability in bankruptcy.”). *Luv*, 2021 Wash. App. LEXIS 1924, at *1 unpublished. The Court in *Luv* went on to explain:

... it is against public policy to allow a deed of trust to be enforced without limits. Statutes of limitations promote justice and ensure

fairness by ‘preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.’ *Langlois v. BNSF Ry. Co.*, 8 Wn. App. 2d 845, 862, 441 P.3d 1244 (2019). “[T]hese goals are generally applicable in foreclosure proceedings, whether based on mortgages or deeds of trust.” Walcker, 79 Wn. App. at 746 (stating that “the goals are to eliminate the fears and burdens of threatened litigation and to protect a defendant against stale claims.”) Here, WSC purchased Luv's debt in 2018, nine years after his bankruptcy discharge. Public policy disfavors allowing homeowners to indefinitely face the specter of foreclosure following bankruptcy discharge.

Luv, 2021 Wash. App. LEXIS 1924, at *9.

However, in *Copper Creek (Marysville) Homeowners Ass'n v. Kurtz*, No. 82083-4-I, 2022 Wn. App. LEXIS 58, at *23 (Ct. App. Jan. 18, 2022), Division One held the statute of limitations commences for each installment on the date the installment payment became due. While this has been the law regarding enforcing payment of the note, it has not been the law regarding enforcing a creditor's in rem rights after a consumer's personal liability is discharged. Division One adhered to this sudden reversal in *Merritt v. USAA Federal Savings Bank*, No. 82162-8-I(Consolidated with 82163-6-I, 82164-4-I, 82165-2-I), slip opinion at 1-2 (Feb. 7, 2022). The reasoning in *Copper Creek* conflicts with well-settled principles of real property, mortgage, and contract law.

As Division One previously pointed out in *Luv*, once a debt is discharged through bankruptcy, the debt no longer exists; Thus, no future

payments become due. *Luv*, 2021 Wn. App. LEXIS 1924, at *6. It logically follows, and case law supports that the deed of trust is a lien on the real property; therefore, it is a contract between the mortgagee and mortgagor. Because the promissory note did not survive the bankruptcy, it no longer secures the deed of trust, so the statute of limitations begins to accrue the date the promissory note is extinguished. A deed of trust is not an installment contract because no future payments ever become due. Instead, it is a *lien* against the property for the amount owing. There are limitations on the enforcement of liens. RCW 4.16.040(1). Other liens in Washington also have statutes of limitation. For example, a construction lien must be enforced within eight months after being recorded regardless of whether the underlying debt was payable in installments or on demand.

While not directly at issue here, because PNC conceded the statute of limitations commenced when the Carters' personal liability was discharged in bankruptcy (CP 195), the Court of Appeals' sudden re-interpretation of well-settled law will affect thousands of consumers in Washington.

This case is an example of what can happen when the trial court disregards the statute of limitations – the creditor will be paid more than what it is entitled to without even filing a cause of action. Under the

reasoning in *Copper Creek*, the statute of limitations began to run on each payment individually from its due date because a bankruptcy discharge does not automatically accelerate the obligation on an installment note. *Copper Creek*, Wn. App. LEXIS 58, at *22-23. Thus, even if this Court adopted the new rule in *Copper Creek*, PNC was only entitled to enforce the installment payments that became due six years before the de facto foreclosure that took place on July 31, 2020. Appendix 1, Exh. 2. The trial court did not conduct any analysis. Instead, it held PNC was entitled to the entire amount without requiring PNC to prove the lien was valid, to deduct the amount of installments already paid, or to deduct any amounts barred by the statute of limitations. Instead, it granted PNC a remedy it did not request without filing a claim.

This Court should accept review to determine whether the statute of limitations on a creditor's in rem rights commence when the consumer's personal liability is discharged in bankruptcy. Without guidance from this Court, creditors will sit on their rights and then collect more than they are entitled to collect. This is of substantial public interest because it affects thousands of Washingtonians.

E. The Court of Appeals found the Carters paid the lien in full, which released the lien, yet awarded PNC attorney's fees under the instrument. This is an issue of substantial public interest.

This Court should accept review of this issue to clarify that a creditor cannot be awarded fees under a paid and then extinguished Deed of Trust. Washington Courts follow the American Rule in which each party pays his or her own attorney's fees unless there is a fee-shifting clause in a contract or statute or a recognized ground in equity. *King County v. Vinci Construction Grands Projects/Parterson RCI/Frontier-Kemper, JV*, 188 Wn.2d 618, 398 P.3d 1093 (2017). RAP 18.1(a) also authorizes attorney's fees and costs "[i]f applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court." RAP 18.1.

The Court of Appeals awarded PNC attorneys' fees under the deed of trust, which limits attorney's fees to the bankruptcy proceeding and expressly states that the instrument and all obligations are extinguished when released. Opinion at *11 (citing CP 390 at ¶ 10).

The Court of Appeals found that PNC's lien was paid in full. Opinion at *11-12. If that is true, it logically follows that the Security Instrument was released when PNC was paid. CP 12 at ¶ 10.

Thus, the Security Instrument, under which fees were requested and granted, was extinguished on or about July 31, 2020, before PNC requested

attorney fees in its response brief filed June 17, 2021. When the Deed of Trust extinguished, all terms within that document had no legal effect. *Id.*

This is a matter of substantial public interest because most if not all Deeds of Trust have an attorney fees provision. It is of great public importance whether the court can award fees to a lender after the lien is paid in full and released before any request for attorney fees. CP 190-98.

VI. CONCLUSION

Appellants Mark and Daina Carter request that this Court accept review under RAP 13.4(b)(1), (3), and (4).

Respectfully submitted this 23rd day of February 2022

A handwritten signature in black ink, appearing to read "M. Anderson". The signature is fluid and cursive.

Mary Anderson, WSBA No. 44137
Attorney with Appellant

I certify that this petition has 4,854 words in compliance with RAP 18.17(c)(10).

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on February 23, 2022, I caused the foregoing PETITION FOR REVIEW AND APPENDIX WITH EXHIBITS ATTACHED THERETO to be served VIA the Washington Supreme Court efile portal upon:

Aldridge Pite, LLC
The Ogdan Building
9311 SE 36th Street, Suite #100
Mercer Island, WA 98040
Peter J. Salman, WSBA 31382
Kimberly Hood, WSBA 42903
Attorney for Respondent

Frederick A. Haist
Davis Right Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104
Frederick A. Haist, WSBA 48937
Chava Brandriss, Pro Hac Vice

Dated this 23rd day of February 2022 at Everett, WA

A handwritten signature in black ink, appearing to read "M. Anderson". The signature is fluid and cursive, with a large initial "M" and a stylized "A".

Mary C. Anderson

GUIDANCE TO JUSTICE LAW FIRM, PLLC

February 23, 2022 - 1:33 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Mark and Daina Carter, Appellants v. PNC Bank, National Association, Respondent (816985)

The following documents have been uploaded:

- PRV_Other_20220223132913SC991155_8341.pdf
This File Contains:
Other - Appendix
The Original File Name was 2022.02.23 Appendix.pdf
- PRV_Petition_for_Review_20220223132913SC991155_2894.pdf
This File Contains:
Petition for Review
The Original File Name was 2022.02.23 Carters Petition for Review.pdf

A copy of the uploaded files will be sent to:

- chavabrandriss@dwt.com
- christinekruger@dwt.com
- frederickhaist@dwt.com
- khoo@aldridgepite.com
- marshajohnson@aldridgepite.com
- psalmon@aldridgepite.com

Comments:

Sender Name: Mary Anderson - Email: mary@guidancetojustice.com

Address:

19125 N CREEK PKWY STE 120

BOTHELL, WA, 98011-8000

Phone: 425-818-8077

Note: The Filing Id is 20220223132913SC991155

FILED
SUPREME COURT
STATE OF WASHINGTON
2/25/2022 9:29 AM
BY ERIN L. LENNON
CLERK

NO. 100679-9

IN THE SUPREME COURT OF THE STATE OF
WASHINGTON

MARK AND DAINA CARTER

Appellant

v.

PNC BANK,

Respondent.

ON APPEAL FROM
THE SUPERIOR COURT FOR KING COUNTY
STATE OF WASHINGTON

The Honorable Judge Johanna Bender

PETITION FOR REVIEW OF THE COURT OF APPEALS
DECEMBER 20, 2021 DECISION IN CARTER V. PNC BANK
COA # 81698-5-I

APPENDIX

Mary C. Anderson, WSBA No. 44137
GUIDANCE TO JUSTICE LAW FIRM
19125 North Creek Parkway, Suite 120
Bothell, WA 98011
(425) 818-8077

No.	Description	Date
1	RAP 9.11 Motion to Add Additional Evidence on Review and Motion to Accept Opening Brief Citing to This New Evidence for Filing	December 4, 2020
2	Notation Ruling Denying Appellant's RAP 9.11 Motion to Add Additional Evidence on Review	January 28, 2021
3	Order Denying Motion to Modify	May 6, 2021
4	Unpublished Opinion Affirming Summary Judgment	December 20, 2021
5	Order Denying Motion for Reconsideration and Granting Motion to Accept Over Length Motion to Reconsider	January 25, 2022
6	Commissioner's Ruling Awarding Attorney Fees and Costs* Motion to Modify is pending review	January 26, 2022

Appendix 1

Appellants further request this Court accept for filing their opening brief citing to this new evidence.

III. FACTS RELEVANT TO MOTION

This matter is an appeal from a quiet title action the Appellants brought against PNC who held the deed of trust on their property. On April 27, 2012 the Carters filed bankruptcy, which triggered an automatic stay under 11 U.S.C. 362(a). CP 155, 158-160. On August 14, 2012 the bankruptcy court closed the bankruptcy which terminated the automatic stay. CP 166; 11 U.S.C. §362 (c)(2)(A). Although the bankruptcy was re-opened on August 20, 2012, the Carters never moved for injunctive relief to stop PNC from enforcing its rights. CP 155.

The single issue below was the purely legal question of whether the automatic stay was terminated on August 14, 2012 when the bankruptcy court closed the Carters' bankruptcy. CP 146, 346. PNC conceded that it was. CP 180-81. However, PNC argued the stay was sprung back on August 20, 2012 when the court vacated the closure. CP 180-81, 196-97.

It was undisputed that PNC chose not to non-judicially foreclose on the Carters' property and when the Carters brought the quiet title action PNC chose not to bring a counterclaim for judicial foreclosure. CP 383.

MOTION TO
ADD NEW
EVIDENCE-2

GUIDANCE TO JUSTICE LAW FIRM, PLLC

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BOTHELL, WASHINGTON 98011
Ph. (425) 818-8077; FAX (425) 903-3733
Email: mary@guidancetojustice.com

The trial court denied the Carters' motion for summary judgment concluding the stay persisted through the closure and dismissed their complaint. CP 347-47. Dismissing the quiet title action created a de facto judgment against the property for the amount of the lien because the Carters could not sell the property without paying the lien in full. CP 359-60. The Carters appealed this decision on July 22, 2020. CP 323. Then on July 24 they moved the trial court for an order authorizing alternate security as a supersedeas bond under RAP 8.1 by depositing the sale proceeds into the court registry. CP 353-56. On July 31, 2020 the trial court denied the Carters' motion and instead ordered the parties to meet and confer about how PNC would be paid the full face value of the lien out of the private sale proceeds. CP 377-78.

After the court denied the Carters' motion their counsel met and conferred with PNC's counsel to arrange the payoff. See **Exh. 2** attached. PNC added interest, fees, and costs for a total payoff amount of \$355,236.19. See **Exh. 1** attached. The Carters paid that amount in full out of the sale proceeds. **Exh. 2**.

In addition to the full face value of the lien PNC also demanded the Carters' counsel hold back an additional \$45,000 for PNC's attorney's fees and costs on appeal to be held in her trust account. **Exh. 2**. However, PNC

MOTION TO
ADD NEW
EVIDENCE-3

GUIDANCE TO JUSTICE LAW FIRM, PLLC

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Email: mary@guidancetojustice.com

never requested any affirmative relief below including attorney's fees and costs and was not awarded cost or fees below. CP 346, 384. Plaintiffs' counsel complied.

IV. ARGUMENT AND AUTHORITY

The appellate court has the authority to determine whether a matter is properly before it, and to perform all acts necessary or appropriate to secure the fair and orderly review of a case. RAP 7.3. This Court may direct that additional evidence be taken before a decision of a case on review if (1) additional proof of facts is needed to fairly resolve the issue on review, (2) the additional evidence would probably change the decision being reviewed, (3) it is equitable to excuse a party's failure to present the evidence to the trial court, (4) the remedy available to a party through post judgments motions in the trial court is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court. RAP 9.11(a).

1. Additional proof of facts is needed to fairly resolve the issue on review

MOTION TO
ADD NEW
EVIDENCE-4

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Here, one of the issues on appeal is whether the trial court violated the Carters' Fourth Amendment and Article I Section 3 rights to due process when it not only entered a de facto judgment against the Carters, but then immediately enforced it by requiring them to pay PNC the full face value of the lien out of the sale proceeds even though PNC never filed a counterclaim and the Carters were not given the opportunity to raise any defenses.

In order to adequately review this matter and fashion an appropriate remedy this Court needs the evidence attached. Exhibits 1 and 2 show the Carters complied with the trial court's order to pay PNC. It further shows that reversing the summary judgment order and quieting title is not an adequate remedy because the home has already been sold. On appeal, the Carter's request that this Court remand to the trial court with direction to enter a judgment against PNC for \$355,236.19, which is the amount the Carters paid to PNC plus interest and to release the \$45,000 held in the Carters' attorney's trust account. Therefore, these additional facts contained in Exhibits 1 and 2 are necessary in order to fairly resolve these issues.

2. The additional evidence would probably change the decision being reviewed

MOTION TO
ADD NEW
EVIDENCE-5

GUIDANCE TO JUSTICE LAW FIRM, PLLC

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Email: mary@guidancetojustice.com

This additional evidence will definitely change the decision being reviewed because without it this Court would be unaware the Carters have already paid PNC the full face value of the lien. This would lead to an inadequate remedy on appeal. Reversal is not going to be sufficient.

3. It is equitable to excuse a party's failure to present the evidence to the trial court

The facts the Carters seek to add did not occur until after the trial court's July 31 order. At that time there was no pending motion or hearing before the trial court. Therefore, there was no opportunity to put this before the trial court.

4. The remedy available to a party through post judgment motions in the trial court is inadequate or unnecessarily expensive

The additional facts in Exhibits 1 and 2 occurred as a result of the post judgment motion. Exhibits 1 and 2 are relevant for this Court to fashion a remedy on appeal, but there are no other post judgment motions available to the Carters to add this evidence.

5. The appellate court remedy of granting a new trial is inadequate or unnecessarily expensive

Granting a new trial is inadequate because there was no trial. Exhibits 1 and 2 related to a post judgment motion. The payout amount and proof the Carters paid it would not change the outcome of the post judgment

MOTION TO
ADD NEW
EVIDENCE-6

GUIDANCE TO JUSTICE LAW FIRM, PLLC

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order. It would only show they complied with the trial court's order. On appeal the Carters argue the order violated their Fourth Amendment and Article I Section 3 rights to due process and seek reversal of the order itself. But even more, reversal alone is inadequate to cure the trial court's erroneous order because the Carters have already paid the judgment in full. Therefore, the only adequate remedy is to reverse the trial court's de facto judgment against the Carters and to remand with direction to enter a judgment against PNC for the amount the Carters have paid plus interest and to release the \$45,000 held in trust.

6. It would be inequitable to decide the case solely on the evidence already taken in the trial court

It would be inequitable to decide the case solely on the evidence already taken in the trial court because without Exhibits 1 and 2 this Court cannot fashion an appropriate remedy.

Further, this Court should accept for filing the Carter's opening brief which cites to this additional evidence.

VII. CONCLUSION

MOTION TO
ADD NEW
EVIDENCE-7

GUIDANCE TO JUSTICE LAW FIRM, PLLC

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BOTHELL, WASHINGTON 98011
Ph. (425) 818-8077; FAX (425) 903-3733
Email: mary@guidancetojustice.com

This Court should add Exhibits 1 and 2 as new evidence in this appeal under RAP 9.11 and accept for filing the Carter's opening brief which cites to this additional evidence.

DATED this 4th day of December 2020.

Respectfully submitted,

s/ Mary Anderson

MARY ANDERSON, WSBA No. 44137

Attorney for Appellant

MOTION TO
ADD NEW
EVIDENCE-8

GUIDANCE TO JUSTICE LAW FIRM, PLLC

19125 NORTH CREEK PARKWAY, SUITE 120
BOTHELL, WASHINGTON 98011
Ph. (425) 818-8077; FAX (425) 903-3733
Email: mary@guidancetojustice.com

CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on December 4, 2020, I caused the foregoing MOTION TO ADD EVIDENCE UNDER RAP 9.11 to be served VIA the Court of Appeals Division One efile portal upon:

Aldridge Pite, LLC
The Ogdan Building
9311 SE 36th Street, Suite #100
Mercer Island, WA 98040
Peter J. Salman, WSBA 31382
Kimberly Hood, WSBA 42903
Attorney for Respondent

Frederick A. Haist
Davis Right Tremaine LLP
920 Fifth Avenue, Suite 3300
Seattle, WA 98104
Frederick A. Haist, WSBA 48937
Chava Brandriss, Pro Hac Vice

Dated this 4th day of December, 2020 at Bothell, WA

s/ Mary C. Anderson
Mary C. Anderson, Esq.

MOTION TO ADD EVIDENCE-9

GUIDANCE TO JUSTICE LAW FIRM, PLLC

19125 NORTH CREEK PARKWAY, SUITE 120
BOTHELL, WASHINGTON 98011
Ph. (425) 818-8077; FAX (425) 903-3733
Email: mary@guidancetojustice.com

Exhibit 1
ALDRIDGE PITE, LLP

July 31, 2020

Mark A Carter
2923 170th Ave Se
Bellevue WA 98008

Collateral Address
2923 170th Ave SE
Bellevue WA 98008

Re: Payoff Quote
LN [REDACTED]

PLEASE BE ADVISED THAT THIS LAW FIRM MAY BE ACTING AS A DEBT COLLECTOR AND ANY INFORMATION OBTAINED DURING OR AS A RESULT OF THIS COMMUNICATION MAY BE USED FOR THAT PURPOSE.

However, if you are in bankruptcy or have been discharged in bankruptcy, this letter is for informational purposes only and is not intended as an attempt to collect a debt or as an act to collect, assess, or recover all or any portion of the debt from you personally.

This letter responds to your request for a payoff quote of the above referenced loan.

Subject to the good through date and other terms set forth below, the amount required to pay off your loan is **\$355,236.19**, which is detailed below.

These funds required to pay off your loan must be tendered by **August 3, 2020**, the “Good Through Date.” The itemization of the payoff amount is as follows:

[This space intentionally left blank]

Aldridge Pite, LLP
Fifteen Piedmont Center
3575 Piedmont Road, N.E.
Suite 500
Atlanta, GA 30305
P: (404) 994-7400
F: (888) 246-7307

www.aldridgepite.com
8:30am to 5:00pm EST

PRINCIPAL BALANCE	346,975.43
TOTAL INTEREST	6,348.26
FEES AND COSTS	\$1,912.50
TOTAL TO PAYOFF	\$355,236.19

INCLUDE THE LOAN NUMBER [REDACTED]

The payoff figures listed above include items that have been paid by the lender or servicer or incurred by Aldridge Pite, LLP that are currently due. The payoff figures may also include certain amounts that are reasonably expected to be incurred by the Good Through date or are necessary to complete the release of the security interest. Any amounts not actually incurred by the lender or servicer will be refunded. Please understand that the above figures are subject to final verification upon receipt by the lender or servicer. Additional fees and costs may continue to be assessed until the loan is paid in full. Accordingly, before making any payment, we suggest that you contact Aldridge Pite, LLP by telephone at 844-470-8804 to confirm if any additional fees and costs have been incurred which would need to be paid in order to successfully pay off the loan.

IMPORTANT: Please be advised that if the payoff amount tendered is less than the total amount due on the date of your payment, the lender or servicer reserves the right to reject your payment and continue with the legal process or accept the payment amount tendered but require payment of the additional incurred fees and costs prior to releasing its security interest.

PAYMENT INSTRUCTIONS. Payment must be submitted in the form of WIRE TRANSFER(S), certified cashier's check(s), OR money order(s) and must be made payable to PNC.

WIRE TRANSFER FUNDS TO: Reference [REDACTED]

ACCOUNT NAME: ALDRIDGE PITE, LLP ATTORNEY CLIENT TRUST ACCOUNT
BENEFICIARY ACCOUNT #: [REDACTED]
BANK NAME: WELLS FARGO BANK, NA
ROUTING/ABA #: [REDACTED]
BANK ADDRESS: 420 MONTGOMERY STREET
SAN FRANCISCO, CA 94104

Aldridge Pite, LLP
Fifteen Piedmont Center
3575 Piedmont Road, N.E.
Suite 500
Atlanta, GA 30305
P: (404) 994-7400
F: (888) 246-7307

ALDRIDGE PITE, LLP

ATTN:

ALDRIDGE PITE, LLP, CLIENT SERVICES

MAIL CASHIER'S CHECKS & MONEY ORDER PAYMENTS TO:

Please mail your payment (made payable to PNC Bank) to us at the following address. Please mail your payment at least five (5) business days prior to the payoff date to ensure it arrives on time. Mailing to any other address can affect proper processing.

Regular and Overnight Mailing Address:

PNC Bank
Payoff Department
B6-YM14-01-5
3232 Newmark Drive
Miamisburg, OH 45342

Sincerely,

ALDRIDGE PITE, LLP

Aldridge Pite, LLP
Fifteen Piedmont Center
3575 Piedmont Road, N.E.
Suite 500
Atlanta, GA 30305
P: (404) 994-7400
F: (888) 246-7307

www.aldridgepite.com
8:30am to 5:00pm EST

12/3/2020

Guidance To Justice Law Firm, INC Mail - Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank



Mary Anderson <mary@guidancetojustice.com>

Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

Bunich, Christy <Christy.Bunich@fnf.com>
To: Kimberly Hood <KHood@aldridgepate.com>, Mary Anderson <mary@guidancetojustice.com>
Cc: "Phan, Andrew" <Andrew.Phan@fnf.com>

We will wire funds Monday.

Safeguarding the health and safety of our customers and employees is our top priority. We continue to follow guidelines issued by the CDC, WHO, and other state agencies related to safety. As a designated "essential business", our teams remain in service and will continue to handle our customers' transactional requests with expertise and dedication. Please note that our services are available by appointment only. As circumstances continue to rapidly change, please reach out to us directly with any questions regarding your current transaction(s).

Christy Bunich
Branch Manager, AVP, LPO #9276

Team Email: christybunichteam@fnf.com

Email For Loan Docs: fnt19@fnf.com

- [Branch PID #13467749](#)
- [Branch License No. 107604](#)
- [LPO #9276](#)

 **Fidelity National Title**
 7900 SE 28th St., Suite 302 | Mercer Island, WA 98040
 O (206) 892-0222 Direct (206) 892-0221 F (877) 295-8024

 Recommend me
  Facebook
  LinkedIn
  CPL Request
  Online Ordering
  [SmartPortal](#)

WIRE SAFE Inquire before you wire!

FOR YOUR PROTECTION, PLEASE NOTE:
 Changes to wiring instructions will NEVER be requested or accepted via email. **ALWAYS Call to Verify!**



12/3/2020

Guidance To Justice Law Firm, INC Mail - Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

From: Kimberly Hood <KHood@aldridgepите.com>
Sent: Friday, July 31, 2020 2:27 PM
To: Bunich, Christy <Christy.Bunich@fnf.com>; Mary Anderson <mary@guidancetojustice.com>
Cc: Phan, Andrew <Andrew.Phan@fnf.com>
Subject: RE: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Thank you Mary and Christy.

Let me know if PNC will be paid by check or wire so I can be on the lookout for funds.

Kindly,

Kimberly Hood

Attorney

Aldridge | Pite, LLP

9311 SE 36th St. #100

Mercer Island, WA 98040

Direct: 206-707-9603

Fax: 206-232-2655

khood@aldridgepите.com

Alabama | Alaska | Arizona | California | Florida | Georgia | Hawaii | Idaho | Nevada | New Mexico | New York | Oregon | Tennessee | Texas | Utah | Washington

*Admitted in Washington and Oregon

From: Bunich, Christy <Christy.Bunich@fnf.com>
Sent: Friday, July 31, 2020 2:22 PM
To: Mary Anderson <mary@guidancetojustice.com>; Kimberly Hood <KHood@aldridgepите.com>
Cc: Phan, Andrew <Andrew.Phan@fnf.com>
Subject: RE: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

Thank you!

Safeguarding the health and safety of our customers and employees is our top priority. We continue to follow guidelines issued by the CDC, WHO, and other state agencies related to safe business operations. As a designated "essential business", our teams remain in service and will continue to handle our customers' transactional requests with expertise and dedication. Please note that our services are available by appointment only. As circumstances continue to rapidly change, please reach out to us directly with any questions regarding your current transaction(s).

Christy Bunich
Branch Manager, AVP, LPO #9276

Team Email: christybunichteam@fnf.com

Email For Loan Docs: fnt19@fnf.com

Branch PID #13467749

Branch License No. 107604

LPO #9276



7900 SE 28th St., Suite 302 | Mercer Island, WA 98040

O (206) 892-0222 Direct (206) 892-0221 F (877) 295-8024



From: Mary Anderson <mary@guidancetojustice.com>
Sent: Friday, July 31, 2020 2:20 PM
To: Kimberly Hood <KHood@aldridgepите.com>
Cc: Bunich, Christy <Christy.Bunich@fnf.com>; Phan, Andrew <Andrew.Phan@fnf.com>
Subject: Re: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

IMPORTANT NOTICE - This message sourced from an external mail server outside of the Company.

Christy,

Please withhold \$45,000 from the net proceeds, and wire the funds to Guidance to Justice Law Firm's Attorney/ Client IOLTA account:

Account number [REDACTED]

Thank you,

Mary

On Fri, Jul 31, 2020 at 2:16 PM Kimberly Hood <KHood@aldridgepите.com> wrote:

Please see attached payoff for the PNC lien. Instructions for wire are included.

Please confirm there will be the agreed escrow hold back of \$45,000 funds.

Upon lien payment and assurance that the \$45,000 was held back by escrow pending the court determination, I will make sure the lien is released.

Kindly,

Kimberly Hood

Attorney

Aldridge | Pite, LLP

9311 SE 36th St. #100

Mercer Island, WA 98040

Direct: 206-707-9603

Fax: 206-232-2655

khood@aldridgepite.com

Alabama | Alaska | Arizona | California | Florida | Georgia | Hawaii | Idaho | Nevada | New Mexico | New York | Oregon | Tennessee | Texas | Utah | Washington

*Admitted in Washington and Oregon

From: Bunich, Christy <Christy.Bunich@fnf.com>
Sent: Friday, July 31, 2020 1:41 PM
To: Kimberly Hood <KHood@aldridgepite.com>; Mary Anderson <mary@guidancetojustice.com>
Cc: Phan, Andrew <Andrew.Phan@fnf.com>
Subject: RE: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

Awesome!! Thanks so much for your prompt attention to this matter!

Safeguarding the health and safety of our customers and employees is our top priority. We continue to follow guidelines issued by the CDC, WHO, and other state agencies related to protocols and virus protection. As a designated "essential business", our teams remain in service and will continue to handle our customers' transactional requests with expertise and Please note that our offices are currently open by appointment only. As circumstances continue to rapidly change, please reach out to us directly with any questions regarding your cu transaction(s).

Christy Bunich
Branch Manager, AVP, LPO #9276

Team Email: christybunichteam@fnf.com

Email For Loan Docs: fnt19@fnf.com

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 WireSafeSignatureIDEA

From: Kimberly Hood <KHood@aldridgepите.com>
Sent: Friday, July 31, 2020 1:39 PM
To: Bunich, Christy <Christy.Bunich@fnf.com>; Mary Anderson <mary@guidancetojustice.com>
Cc: Phan, Andrew <Andrew.Phan@fnf.com>
Subject: RE: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

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Give me about 30 min, I just got the payoff and need to find the wire instructions.

Thanks,

Kimberly Hood

Attorney

Aldridge | Pite, LLP

9311 SE 36th St. #100

Mercer Island, WA 98040

Direct: 206-707-9603

Fax: 206-232-2655

khood@aldridgepите.com

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From: Bunich, Christy <Christy.Bunich@fnf.com>
Sent: Friday, July 31, 2020 1:10 PM
To: Kimberly Hood <KHood@aldridgepите.com>; Mary Anderson <mary@guidancetojustice.com>
Cc: Phan, Andrew <Andrew.Phan@fnf.com>
Subject: RE: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

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Christy Bunich
Branch Manager, AVP, LPO #9276


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Email For Loan Docs: fnt19@fnf.com

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From: Kimberly Hood <KHood@aldridgepите.com>

Sent: Friday, July 31, 2020 1:09 PM

To: Bunich, Christy <Christy.Bunich@fnf.com>; Mary Anderson <mary@guidancetojustice.com>

Cc: Phan, Andrew <Andrew.Phan@fnf.com>

Subject: RE: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank

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I will be in touch shortly.

Kimberly Hood

Attorney

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From: Bunich, Christy <Christy.Bunich@fnf.com>
Sent: Friday, July 31, 2020 10:49 AM
To: Mary Anderson <mary@guidancetojustice.com>; Kimberly Hood <KHood@aldridgepate.com>
Cc: Phan, Andrew <Andrew.Phan@fnf.com>
Subject: RE: Carter v. PNC Bank | 19-2-03493-9 SEA | Need Payoff Amount from PNC Bank
Importance: High

Thank you, Mary!

Kim, time is of the essence with this as the parties need to close today.

Please provide ASAP.

Thank you

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Christy Bunich
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Team Email: christybunichteam@fnf.com

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Appellate Court Case Title: Mark and Daina Carter, Appellants v. PNC Bank, National Association, Respondent

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- 816985_Motion_20201204155457D1872659_2152.pdf
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Appendix 2

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
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Seattle, WA
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January 28, 2021

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CASE #: 81698-5-1

Mark and Daina Carter, Appellants v. PNC Bank, National Association, Respondent

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on January 28, 2021, regarding Appellant's RAP 9.11 Motion to Add Additional Evidence on Review:

Appellants Mark and Daina Carter have filed a RAP 9.11 motion to submit and cite in their opening brief to evidence of their post-judgment payment to and correspondence with Respondent PNC Bank. The Carters contend the additional evidence (1) is needed to "fashion a remedy"; (2) would avoid "an inadequate remedy on appeal"; (3) is an equitable alternative to their seeking relief in the trial court because no post-judgment motion or hearing was pending before the trial court; (4) is relevant to a remedy and there were "no other post judgment motions available"; (5) eliminates need for trial as to remedy; and (6) is necessary for this Court to "fashion an appropriate remedy." PNC has filed a response pointing out that the Carters have not adequately addressed the requirements of RAP 9.11 and have failed to provide any explanation for their

failure to seek relief in the trial court. Because it appears that the proposed additional evidence would have no bearing on the question of whether the trial court erred in entering the challenged orders but could only be relevant to remedy should the Carters succeed in their appeal - a question that would likely be left to the trial court on remand - the RAP 9.11 motion is denied. The Carters should file an amended brief, if any, by February 8, 2021.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Johnson', with a long horizontal flourish extending to the right.

Richard D. Johnson
Court Administrator/Clerk

LAW

Appendix 3

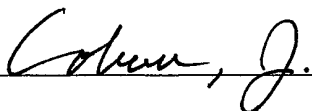
THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

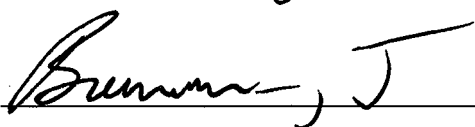
MARK AND DAINA CARTER,)	No. 81698-5-I
)	
Appellants,)	
)	
v.)	ORDER DENYING MOTION
)	TO MODIFY
PNC BANK, NATIONAL ASSOCIATION,)	
)	
Respondent.)	

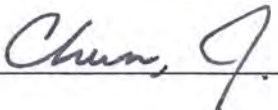
Appellants Mark and Daina Carter (the Carters) move to modify the commissioner’s January 28, 2021 ruling denying their motion to supplement the record pursuant to RAP 9.11. Respondent, PNC Bank, has filed a response, and the Carters have filed a reply. We have considered the motion under RAP 17.7 and have determined that it should be denied. Now, therefore, it is

ORDERED that the motion to modify is denied.

FOR THE COURT:







Appendix 4

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MARK and DAINA CARTER, husband
and wife,

Appellants,

v.

PNC BANK, NATIONAL
ASSOCIATION,

Respondent.

No. 81698-5-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — The Carters sued to quiet title to their home. They sought to extinguish the deed of trust lien held by PNC Bank on the basis that the statute of limitations had run and that the deed of trust was no longer enforceable. The trial court granted summary judgment for PNC Bank. The Carters sold the house and paid off the lien. The Carters seek reversal of the summary judgment quieting title in their favor, and remand to recoup the amount they paid to obtain a release of the lien in order to close the sale. We affirm.

FACTS

Mark and Daina Carter owned their residence on 170th Avenue Southeast in Bellevue, Washington. Using this property as collateral, they took out a second mortgage of \$350,000 with National City Bank. They signed both a promissory note on August 24, 2006 and a deed of trust on August 29, 2006 to secure payment on the note. The recorded deed of trust was a lien on the property. The promissory

note stated a draw period of 10 years, with monthly billings. The deed of trust included a maturity date of August 24, 2036. PNC Bank National Association (PNC Bank) acquired this loan around October 2008.

The Carters filed for Chapter 7 bankruptcy on April 27, 2012 in the United States Bankruptcy Court for the Western District of Washington. The bankruptcy petition included the deed of trust. PNC Bank had not commenced either a judicial or a nonjudicial foreclosure of the property.

The Carters' bankruptcy proceedings closed without discharge on August 14, 2012. They petitioned to reopen the bankruptcy was granted on August 20, 2012.¹ Also on August 20, 2012, the bankruptcy court discharged the debtors. Following the discharge, additional proceedings occurred.

Years after the discharge, on April 4, 2017, the Carters filed a motion to abandon property of the bankruptcy estate. On June 22, 2017, the bankruptcy court granted the motion, finding the property was abandoned from the bankruptcy estate pursuant to 11 U.S.C. § 554(b).

The Carters filed a quiet title action in superior court on February 5, 2019. In the complaint, the Carters state that they made no payments on the debt secured by the deed of trust after the bankruptcy filing. They claim that PNC Bank had failed to enforce its deed of trust within the six year statute of limitations

¹ On August 31, 2012, the clerk reclosed the case a second time due to an administrative error. On its own motion, the court reopened the case on November 8, 2012 due to the administrative error. PNC Bank's lawyer stated the August 31 closing was an administrative error that occurred "because we pressed the wrong button essentially."

following the August 20, 2012 bankruptcy discharge. The Carters and PNC Bank filed competing motions for summary judgment. The Carters also moved to strike a declaration by the bankruptcy trustee's lawyer, Kathryn Ellis, which PNC Bank used for support to show that the property remained part of the bankruptcy estate.² The Carters argued that Ellis's declaration was inadmissible because it contained legal conclusions.

In its motion for summary judgment, PNC Bank argued that the statute of limitations had not run.³ It argued that the statute of limitations was tolled by the bankruptcy filing, and the property remained part of the bankruptcy estate until it was abandoned in 2017.⁴

The court denied the Carters' motion for summary judgment. It concluded that the Carters' quiet title claim to their property failed, because the home remained part of the bankruptcy estate until abandoned in 2017. The court also determined that the statute of limitations had not yet run, thus giving PNC Bank a right to foreclose. The trial court granted PNC Bank's motion for summary judgment on June 22, 2020. The Carters' motion to reconsider was denied on July

² The trial court struck portions of Kathryn Ellis's declaration as inadmissible conclusions of law.

³ PNC Bank also argued that the debt underlying the deed of trust is an installment contract and the statute of limitations runs against each installment payment as it becomes due. Herzog v. Herzog, 23 Wn.2d 382, 388, 161 P.2d 142 (1945).

⁴ To support this, PNC Bank cited to a federal bankruptcy statute to argue that "[t]he stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate." 11 U.S.C. § 362(c)(1).

No. 81698-5-1/4

20, 2020. The Carters appealed the motion for summary judgment on July 22, 2020.

The Carters then asked PNC Bank to remove its lien so the Carters could close the sale on their house and pursue an appeal. The Carters had listed the property for sale because they were “unable to sustain [their] mortgage payments.” Mark⁵ stated in his declaration that PNC Bank had not responded to their request to remove the lien as of the closing date of July 23, 2020. The Carters asked the trial court, on July 28, 2020, to authorize the property sale proceeds to be paid into the court registry in lieu of a supersedeas bond to stay enforcement of the summary judgment. The Carters also asked the trial court to order PNC Bank to release the lien. The trial court denied this request on July 31, 2020, stating, “[T]he Court is unclear about whether [PNC Bank]’s lien is preventing a private sale of [the Carters]’ home. Such a private sale would presumably generate funds sufficient to pay [the Carters]’ lien in full, and allow for the anticipated costs of appeal to be placed in the Court’s registry.” The court also directed the parties to meet and confer on a plan where the Carters would be allowed to sell their home on the private market and pay PNC Bank in full for the lien value.

On August 21, 2020, the Carters amended their appeal to appeal both the summary judgment and the order to meet and confer with PNC Bank. The Carters concede that they have already sold their property and paid PNC Bank.

⁵ Because Mark and Daina share a last name, we refer to Mark by his first name here. We mean no disrespect.

DISCUSSION

I. Quiet Title Claim is Moot

The Carters attempted to quiet title on the Bellevue property on the basis that their deed of trust with PNC Bank was not enforceable. After summary judgment was granted to PNC Bank, the Carters received an offer on their house. The evidence shows the offer had a closing date of July 23, 2020. Mark said, “All paperwork is signed, and the escrow company is prepared to close the transaction.” PNC Bank’s opposition to the Carters’ motion to deposit proceeds and release the lien stated, “The Carters have sold their multi-million dollar home and have significant equity in the property.” The Carters’ say they “have already paid PNC and the property has been sold.”

Because the Carters sold the property and they are not title holders, we cannot quiet title in their favor. Therefore, this issue is moot.⁶

II. Lien Payment

A. Due Process

The Carters asked the court to authorize the property sale proceeds to be paid into the court registry in lieu of a supersedeas bond to stay enforcement of the summary judgment.⁷ In response to this request, the trial court ordered the

⁶ The Carters argue that the trial court abused its discretion in admitting the declaration of Kathryn Ellis, the trustee’s lawyer. Their argument about the declaration directly relates to the quiet title claim. Because the quiet title claim is moot, we decline to review the admissibility of Ellis’s declaration.

⁷ “A supersedeas bond is a means of staying enforcement of a trial court judgment while on appeal.” Guest v. Lange, 195 Wn. App. 330, 338, 381 P.3d 130 (2016).

parties “to meet and confer to develop a plan by which a) [PNC Bank is] paid in full the face value of its lien; and b) [the Carters] are able to sell their home on the private market, which may generate a higher sale price than a sale by foreclosure.” The Carters claim that ordering them “to pay the de facto judgment in full” deprived them of an opportunity to “present a defense to this sua sponte judicial foreclosure,” and violated their right to due process.⁸

The due process clauses of the Fourteenth Amendment and the Washington State Constitution provide that a state cannot deprive any person of life, liberty or property without due process. U.S. CONST. amend. XIV, § 1; WASH. CONST. Art. I § 3. “The fundamental requisites of due process are ‘the opportunity to be heard,’ and ‘notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” Olympic Forest Prods., Inc. v. Chaussee Corp., 82 Wn.2d 418, 422, 511 P.2d 1002 (1973) (citations omitted) (quoting Grannis v. Ordean, 234 U.S. 385, 394, 34 S. Ct. 779, 58 L. Ed. 1363 (1914); Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 94 L. Ed. 865 (1950)).

⁸ The Carters cite State v. Ralph Williams’ North West Chrysler Plymouth, Inc., 87 Wn.2d 327, 335, 553 P.2d 442 (1976), to argue that notice is required for proceedings affecting a party, and the party needs an opportunity to respond. That case refers to proceedings; a meet and confer is not a proceeding. The Carters also cite to In re Henry, 266 B.R. 457,474 (C.D. Cal. 2001), to argue that a bankruptcy discharge eliminates the debtor’s personal liability. However, Henry does not discuss due process.

In granting summary judgment for PNC Bank, the trial court had to have determined that PNC Bank had a valid and enforceable lien on the property. When the court denied the Carters a motion to deposit proceeds into the court registry, it treated PNC Bank's lien as valid. Without filing a supersedeas bond, the Carters did not stay PNC Bank's right to enforce the deed of trust against their property pending the appeal. See Guest, 195 Wn. App. at 338 (“[W]hen a supersedeas bond is filed, the judgment cannot be enforced.”). To pass clear title to a buyer upon sale of the property, the Carters needed to satisfy PNC Bank's lien.⁹ See Carpenter v. Folkerts, 29 Wn. App. 73, 77, 627 P.2d 559 (1981) (“To obtain clear title the Folkerts must satisfy the liens on the property”). Because of the summary judgment, PNC Bank had the right to enforce its lien, and the Carters chose to pay off the lien in order to establish clear title of the property. The bank did not order the Carters to sell their property, or order them to satisfy the lien without selling the property. The order to meet and confer did not take anything away from the Carters or impose any new substantive obligations. The Carters participated fully in the summary judgment proceedings. The trial court's order did not violate due process.

⁹ Alternatively, the lien would be released if the Carters prevailed on appeal.

B. Ultra Vires

The Carters argue that the trial court acted ultra vires,¹⁰ or outside of its authority, by ordering them to pay PNC Bank in full.¹¹ They request “remand to the trial court with directions to enter a judgment against PNC [Bank].” PNC Bank responds by stating that the trial court acted within its authority, as it did not order the Carters to pay PNC Bank, or order a judicial foreclosure. It argues further that the Carters cannot “claw back the amount they paid to satisfy PNC [Bank]’s lien,” as this would be barred by the voluntary payment doctrine.

1. Trial Court’s Authority

Citing RAP 7.2, the Carters argue that the trial court acted outside of its authority.¹² The Carters argue that the trial court did not have authority to order them to pay PNC Bank its lien in full out of the property sale proceeds.

RAP 7.2(e) contains a list of actions that trial courts are authorized to take after appellate review is accepted. RAP 7.2(e)(2) allows the trial court to hear and determine “actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter.” The rule states in part, “[I]f the trial court determination will change a decision then being reviewed

¹⁰ “An ultra vires act is one performed without any authority to act on the subject.” Haslund v. City of Seattle, 86 Wn.2d 607, 622, 547 P.2d 1221 (1976).

¹¹ The Carters allege that the trial court “authorized a security bond despite the judgment being paid in full.” The Carters do not cite to the record, and the record does not otherwise reflect this.

¹² The Carters also argue that RAP 8.1 applies. RAP 8.1 covers supersedeas bonds, which the Carters did not file. Therefore, RAP 8.1 does not apply.

by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision.” Id.

Here, the Carters filed their initial appeal on July 22, 2020. On July 28, 2020, they filed a motion in the trial court to “deposit sale proceeds into the court registry and release the lien.” On July 31, 2020, the trial court denied the motion and ordered the parties to meet and confer.

In ordering the meet and confer, the trial court did not change the decision being reviewed by the appellate court, so it did not need to obtain permission before the formal entry of the decision. The plaintiffs’ motion to deposit proceeds into the court registry and release the lien was a postjudgment motion as authorized under RAP 7.2(e)(2). Denying it did not establish new rights and did not violate RAP 7.2. The trial court acted within its authority in entering the July 31, 2020 order.

2. Voluntary Payment Doctrine

The Carters ask this court to reverse and remand for the trial court to determine a damages award against PNC Bank. PNC Bank argues the voluntary payment doctrine bars the money judgment that the Carters seek in order to “claw back” their payment of the lien.

The voluntary payment doctrine states that “money voluntarily paid under a claim of right to the payment, and with knowledge by the payor of the facts on which the claim is based, cannot be recovered on the ground that the claim was illegal, or that there was no liability to pay in the first instance.” Hawkinson v.

Conniff, 53 Wn.2d 454, 458, 334 P.2d 540 (1959). “[W]hen a payor sues for the restitution of an allegedly involuntary payment, the essential elements are (1) that payment was made, (2) that it was made involuntarily, and (3) that the payee would be unjustly enriched if allowed to retain the payment.” Clark v. Luepke, 60 Wn. App. 848, 851, 809 P.2d 752 (1991), aff’d, 118 Wn.2d 577, 826 P.2d 147 (1992). Under this test, “the payor has the burden of proving each of these elements by a preponderance of the evidence.” Id.

The Carters argue that they did not voluntarily pay PNC Bank. They argue that they needed money after their business lost most of its revenue due to COVID-19. They also argue that PNC Bank would not release the lien and allow the sale to close without being paid, and that the trial court ordered them to pay the lien in full despite their pending appeal. PNC Bank does not dispute that it would not release the lien to facilitate the sale, but correctly argues, “[t]here are no facts in the record showing that the Carters suddenly needed to sell the Property to pay off PNC’s lien because PNC did anything, or for any other reason.”

As noted above, the Carters were not forced by the court to pay a debt they did not owe. In granting summary judgment for PNC Bank, the trial court determined the lien was valid and enforceable. The Carters failed to file a supersedeas bond to stay enforcement of the deed of trust pending appeal of the summary judgment order. PNC Bank was under no obligation to release the lien without being paid.

PNC Bank never moved for foreclosure. The Carters listed their home for sale and chose to close the sale. Being able to pass clear title to a willing buyer is the only reason apparent from the record for the Carters to pay the lien. That payment was the Carters' choice, presumably one they found advantageous.

The Carters failed meet their burden to show by a preponderance of the evidence that they made an involuntary payment. As a result, the voluntary payment doctrine applies to the funds paid to PNC Bank. The Carters fail to establish a basis for their claim to damages.

III. Attorney Fees

The Carters argue that, because title on the property should have been quieted in their favor, they are entitled to attorney fees and costs under RAP 18.1. “[W]here a prevailing party is entitled to attorney fees below, they are entitled to attorney fees if they prevail on appeal.” Sharbono v. Universal Underwriters Ins. Co., 139 Wn. App. 383, 423, 161 P.3d 406 (2007). The Carters do not prevail on appeal. They are not entitled to fees.

PNC Bank seeks attorney fees and costs under the deed of trust as the prevailing party. The deed of trust contains language granting attorney fees: “Grantor agrees to pay all costs and expenses incurred by Lender in collecting, enforcing or protecting Lender’s rights and remedies under this Security Instrument. This amount may include, but is not limited to, attorney fees, court costs, and other legal expenses.”¹³

¹³ The Carters argue that PNC Bank did not ask for fees at the trial court level and RAP 2.5 precludes its request on appeal. However, PNC Bank

Well-settled state law provides that contract provisions providing attorney fees in an action include both fees at trial and those on appeal. Boyd v. Davis, 127 Wn.2d 256, 264, 897 P.2d 1239 (1995); Granite Equip. Leasing Corp. v. Hutton, 84 Wn.2d 320, 327, 525 P.2d 223 (1974). Because the deed of trust provides for attorney fees and costs to be awarded to the prevailing party, PNC Bank is awarded its attorney fees and costs on appeal.

We affirm.

Lippelwick, J.

WE CONCUR:

Coburn, J.

Dunne, J.

requested fees at trial court level. In its prayer for relief, it included that the “Defendant [should] be awarded its attorneys’ fees and costs incurred in defending against the Plaintiffs claims pursuant to the terms of the Note and Deed of Trust and applicable statutes and/or common law.”

Appendix 5

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

MARK and DAINA CARTER, husband
and wife,

Appellants,

v.

PNC BANK, NATIONAL
ASSOCIATION,

Respondent.

No. 81698-5-I

ORDER DENYING MOTION
FOR RECONSIDERATION
AND GRANTING MOTION TO
ACCEPT OVER LENGTH
MOTION TO RECONSIDER

The appellants, Mark and Daina Carter, filed a motion for reconsideration and a motion to accept for filing appellants' over length motion to reconsider. The court has considered the motions pursuant to RAP 12.4, and a majority of the panel has determined that the motion to accept the over length motion should be granted and the motion for reconsideration should be denied; now, therefore, it is hereby

ORDERED that the motion to accept the over length motion is granted; it is further

ORDERED that the motion for reconsideration is denied.


Judge

Appendix 6

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

MARK and DAINA CARTER, husband)	No. 81698-5-I
and wife,)	
)	COMMISSIONER'S RULING
Appellants,)	AWARDING ATTORNEY FEES
)	AND COSTS
v.)	
)	
PNC BANK, NATIONAL)	
ASSOCIATION,)	
)	
Respondent.)	
_____)	

On December 20, 2021, this Court issued an unpublished opinion affirming a summary judgment order dismissing appellants Mark and Daina Carter's quiet title claim and an order directing them to meet and confer with respondent PNC Bank. This Court awarded attorney fees and costs on appeal to respondent PNC Bank under the deed of trust. On January 25, 2022, this Court denied the Carters' motion for reconsideration.

Meanwhile, PNC Bank filed a declaration of counsel and a cost bill, requesting attorney fees in the amount of \$50,897 and costs in the amount of \$226.99, totaling \$51,123.99. The Carters filed an objection to the attorney fees, and PNC Bank filed a reply.

Reasonable attorney fees are based on the number of hours reasonably spent, multiplied by a reasonable hourly rate. Berryman v. Metcalf, 177 Wn.

App. 644, 660, 312 P.3d 745 (2013). This calculation does not turn solely on what the prevailing party's firm can bill. Nordstrom, Inc. v. Tampourlos, 107 Wn.2d 735, 744, 733 P.2d 208 (1987). "Courts must take an *active* role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel." Berryman, 177 Wn. App. at 657 (quoting Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632, 966 P.2d 305 (1998)).

At the outset, the Carters object to this Court's award of attorney fees to PNC Bank. But their objection to the award itself must be directed to the panel in their motion for reconsideration. This Court denied their motion for reconsideration. The Carters may not object to this Court's award of attorney fees through an objection to PNC Bank's declaration of counsel under RAP 18.1.

The Carters argue PNC Bank failed to detail the work performed, so this Court cannot decide whether the requested fees (\$50,897) are reasonable. The hourly rates of PNC Bank's attorneys are high (\$550 and \$860). Attorney Frederick Haist spent 141.6 hours at his \$550 hourly rate, and attorney Chava Brandriss spent 64.3 hours at her \$860 hourly rate, which would have totaled \$133,178. But they billed a fixed fee of \$50,000 (\$45,000 for merits briefing and motions practice and \$5,000 for oral argument), essentially charging their time spent on this appeal at a blended hourly rate of \$243. They billed their time spent preparing the declaration and cost bill (2.3 hours) at a \$390 hourly rate, resulting in additional fees of \$897. Considering the work required in responding to this appeal, including filing a brief of respondent, preparing for and presenting

oral argument, and responding to the Carters' unsuccessful RAP 9.11 motion to add additional evidence, unsuccessful motion to modify, and unsuccessful motion for reconsideration, the requested fees are reasonable, and I reject the Carters' contrary argument. See Nordstrom, 107 Wn.2d at 744 ("instead of merely relying the billing records," a court "should make an independent decision as to what represents a reasonable amount of attorney fees").

As to the cost bill, costs of \$226.99 for copies of clerk's papers are allowed under RAP 14.3(a). Thus, attorney fees in the amount of \$50,897 and costs in the amount of \$226.99, totaling \$51,123.99 are awarded to PNC Bank.

Therefore, it is

ORDERED that attorney fees and costs in the amount of \$51,123.99 are awarded to respondent PNC Bank. Appellants Mark and Daina Carter are jointly and severally liable for this award and shall pay this amount.

Masako Hanzawa, Commissioner

GUIDANCE TO JUSTICE LAW FIRM, PLLC

February 25, 2022 - 9:29 AM

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