NO. 100918-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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COPPER CREEK (MARYSVILLE) HOMEOWNERS ASSOCIATION, a Washington nonprofit corporation,

Petitioner,

v.

SHAWN A. KURTZ and STEPHANIE A. KURTZ, husband and wife and the marital or quasi-marital community composed thereof; QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, a Washington corporation,

and

WILMINGTON SAVINGS FUND SOCIETY, FSB, d/b/a CHRISTIANA TRUST, not individually but as trustee for Pretium Mortgage Acquisition Trust, Selene Finance LP,

Respondents.

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# RESPONDENTS' ANSWER TO NORTHWEST CONSUMER LAW CENTER'S AMICUS BRIEF

Court of Appeals, Div. I, No. 82083-4-I

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## I. INTRODUCTION

The Amicus Brief of Northwest Consumer Law Center ("NWCLC") simply repeats the arguments made by the Petitioner. Because it is well-established that amici curiae must avoid repetition of matters in other briefs, the Court should disregard NWCLC's analysis because it adds nothing to the Petition.

## II. ARGUMENT

An amicus curiae brief must "assist the appellate court." RAP 10.6(a). It must also "avoid repetition of matters in other briefs." RAP 10.3(e). Consequently, an amicus curiae brief "must be more than a mere reiteration" of a party's argument. Joanne S. Abelson et al., *Washington Appellate Practice Deskbook* §§ 19.4(4), 19-6 (4th ed. 2016). NWCLC's brief does not assist the Court in this case because it is nothing more than a reiteration of Petitioners' arguments.

In an attempt to bolster Petitioners' brief, NWCLC argues, just as Petitioners did, that *Edmundson* followed *Herzog* and

*Pratt*[1] and established a rule that, because bankruptcy discharged personal liability on the underlying debt, it also automatically modified the schedule of payments or accelerated the maturity date. Amicus at 7.

However, as Respondents pointed out in their response to Petitioners' identical argument, neither *Pratt*, *Herzog*, nor *Edmundson* enunciated such a rule. *Pratt* merely stands for the proposition that, when a debt is time-barred, no action may be maintained upon the mortgage securing the debt. *Pratt*, 121 Wash. at 303. *Herzog* also does not support NWCLC's position, holding that, for an installment note, the statute of limitations runs against each installment from the time it becomes due. *Herzog*, 23 Wn.2d at 388. In *Edmundson*, the Court of Appeals simply applied the settled law from *Herzog* that the statute of

[1] Full citations to these cases are *Edmundson v. Bank of America*, 194 Wn. App. 920, 378 P.3d 272 (2016); *Herzog v. Herzog*, 23 Wn.2d 382, 161 P.2d 142 (1945); *Pratt v. Pratt*, 121 Wash. 298, 209 P. 535 (1922)

limitations runs on each installment of the installment note from the date it is due. *Edmundson*, 194 Wn. App. at 931.

Further mimicking Petitioner's arguments, NWCLC contends that the *Copper Creek* decision is in "direct conflict with *Edmundson*." Amicus at 4. This argument (made first by Petitioner) ignores the fact that *Edmundson* did not establish the rule that NWCLC and Petitioner advance. As the Court of Appeals in *Copper Creek* explained:

> In *Edmundson*, this court did not say that bankruptcy discharge of liability on an installment note accelerates the maturity of the note. We did not say that the discharge kickstarts the running of the deed of trust's final statute of limitations period. We did not say that discharge is an analog to acceleration and triggers the statute of limitations on the entire obligation. We did not say we were announcing any new rule. . . .
>
> . . . .
>
> *Edmundson* does not stand for the proposition that bankruptcy discharge of personal liability of the debtor accelerates the obligation on an installment note or commences the statute of limitations on both the outstanding balance of the note and on enforcement of the DOT. The trial court erred in relying on *Edmundson* for such a proposition.

*Copper Creek (Marysville) Homeowners Ass'n v. Kurtz*, 21 Wn. App. 2d 605, 624, 508 P.3d 179 (2022). After dispelling the improper interpretation of *Edmundson*, the Court of Appeals followed this Court's precedent in *Pratt* and *Herzog* and ruled that, absent any evidence in the record that Respondents had accelerated the installment note, the trial court erroneously concluded that the homeowners' bankruptcy discharges had accelerated the note or triggered the statute of limitations on enforcing the deed of trust. *Id.* at 624-25. Because the bankruptcy discharge had not accelerated the note, the Court of Appeals concluded that any installment payments on the note that were still within the six-year statute of limitations were enforceable. *Id.*

The only new argument offered by NWCLC is background information about the Great Recession. Specifically, NWCLC contends that, during the Great Recession, many Washington homeowners defaulted on their mortgages and sought bankruptcy as a solution for "obtaining a

financial fresh start." Amicus at 4-6. However, such information is not helpful to this Court because it is irrelevant to the issues presented. There is no dispute about the facts of the Great Recession or the protections bankruptcy may offer, which include discharge of a debtor's "personal liability" on a mortgage. *Copper Creek*, 21 Wn. App. 2d at 614 (citing *Johnson v. Home State Bank*, 501 U.S. 78, 83 n.5, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991)).

NWCLC builds a bridge too far when it states that creditors, like Respondents, will use the *Copper Creek* decision to "collect on debt" from homeowners who had previously defaulted on their mortgages and sought bankruptcy protections during and after the Great Recession. Amicus at 6. This is incorrect. The *Copper Creek* decision followed well-established precedents by the United States Supreme Court regarding lenders' rights to enforce payments *in rem*. "A lien on real property passe[s] through bankruptcy unaffected" and a lender may enforce its lien on the real property through foreclosure.

*Copper Creek*, 21 Wn. App. 2d at 615 (citing *Dewsnup v. Timm*, 502 U.S. 410, 418, 112 S. Ct. 773, 116 L. Ed. 2d 903 (1992)). Within this framework, the *Copper Creek* decision affirmed a lender's option to accelerate the maturity date of an installment note (or not), and enforce payments *in rem*—a homeowner's personal liability on an installment note post-bankruptcy discharge was not affected or altered in any way. In short, the Court of Appeals decision is consistent with both Washington and United States' precedent. It is NWCLC, like Petitioner, which seeks to change the law.

## III. CONCLUSION

Amicus briefs that shed new light on the issues properly before the Court can assist the Court in resolving difficult questions. Amicus briefs that simply repeat arguments already made by parties, however, provide no such help. The NWCLC brief does not assist this Court's determination. For this reason, the Court should decline to adopt any portion of the NWCLC's analysis.

I certify that this document contains 999 words, pursuant to RAP 18.17.

DATED: August 3, 2022. STOEL RIVES LLP

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**Transmittal Information**

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**Comments:**

Respondent's Answer to Northwest Consumer Law Center's Amicus Brief

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