NO. 101047-8

IN THE SUPREME COURT OF WASHINGTON

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

v.

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

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF REPLY TO RESPONDENTS' ANSWER TO PETITION FOR REVIEW

NOW COME Petitioners John Earl Erickson and Shelley Ann Erickson and request judicial notice of the documents attached hereto in support of their Reply to Respondents' Answer to their Petition for Review and show the Court:

RULE ER 201 provides–

JUDICIAL NOTICE OF ADJUDICATIVE FACTS

(a) Scope of Rule. This rule governs only judicial notice of adjudicative facts.

(b) Kinds of Facts. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

(c) When Discretionary. A court may take judicial notice, whether requested or not.

(d) When Mandatory. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(e) Opportunity To Be Heard. A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

(f) Time of Taking Notice. Judicial notice may be taken at any stage of the proceeding.

The Exhibits attached hereto were retrieved from the court records in the actions *Erickson et al. v. Long Beach*

Mortgage Co., et al., United States District Court for the Western District of Washington Case No. 10-cv-1423; *Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson*, King County Superior Court No. 14-2-00426-5 KNT, Appeal No. 73833-0-1; *Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, King County Superior Court No. 19-2-12664-7 KNT, Appeal No. 81648-9, Washington Supreme Court No. 100511-3, and United States Supreme Court No. 22A111 (the "Related Actions").

The Exhibits attached hereto are true and correct copies of documents filed in the United States District Court for the Western District of Washington, in the Superior Court for King County, Washington, and the Supreme Court of the United States and are capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be

questioned. These Requests for Judicial Notice are made to establish the fact that the documents were filed in the Related Actions to which Petitioners' Reply to Respondents' Answer to the their Petition for Review.

EXHIBIT 1: Transcript of June 5, 2020 Oral Argument in *Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, Superior Court No. 19-2-12664-7 KNT

EXHIBIT 2: The Court of Appeals decision affirming Summary Judgment in *Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4* (the Independent Action) in No. 81648-9 on November 29, 2021

EXHIBIT 3: Text Order of Justice Elena Kagan extending time to file Petition for Writ of Certiorari from the Court of Appeals decision in No. 81648-9 to no later than October 1, 2022

EXHIBIT 4: June 8, 2020 Order of the Superior Court consolidating the above-captioned STOEL RIVES/SPS Action with Independent Action titled *Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, King County Superior Court No. 19-2-12664-7 KNT

EXHIBIT 5: Respondents' May 21, 2020 Motion to Consolidate the above-captioned STOEL RIVES/SPS Action with Independent Action titled *Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, King County Superior Court No. 19-2-12664-7 KNT

EXHIBIT 6: March 2, 2011 Opinion on Summary Judgment in *Erickson et al. v. Long Beach Mortgage Co., et al.*, United States District Court for the Western District of Washington Case No. 10-cv-1423

EXHIBIT 7: September 2, 2010 Notice of Removal to the Federal District Court Action behalf of Chase and Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4

EXHIBIT 8: February 13, 2017 decision of the Court of Appeals in *Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson*, Appeal No. 73833-0-1

WHEREFORE, Petitioners request that the sake judicial notice of Exhibits 1, 2, 3, 4, 5, 6, 7, and 8 which are submitted herewith.

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Dated this 19th day of August, 2022 at Auburn, Washington.

E-*signed: /s/ John Earl Erickson*

John Earl Erickson, *in propria persona*
5421 Pearl Ave. S.E.
Auburn, Washington 98092
Telephone: (206) 255-6326
Email: john206erickson@icloud.com

Dated this 19th day of August, 2022 at Auburn, Washington.

E-signed: */s/ Shelley Ann Erickson*

Shelley Ann Erickson, *in propria persona*
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REQUEST FOR JUDICIAL NOTICE
EXHIBIT 1

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

John Erickson and Shelley Erickson Appellant, vs. Deutsche National Trust Company Trustee for Long Beach Mortgage Loan Trust 2006-4 1 Respondent.	Case No. 19-2-12664-7 KNT COA # 81648-9-I

TRANSCRIPT OF PROCEEDINGS

June 5, 2020

BEFORE: THE HONORABLE JOHANNA BENDER

APPEARANCES
FOR THE APPELLANT:
Shelley Erickson, Pro Se

FOR THE RESPONDENT:
K.C. Hovda

TRANSCRIBED BY:
Andie Evered, CCR

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Motion for preliminary injunction

EXHIBITS
NONE

(Whereupon, on June 5, 2020, before The Honorable Bender, Judge in Superior Court for King County, the following commenced:)

6/5/2020 hearing

THE COURT: Please just introduce yourselves on the record, so we know that you're being recorded as well.

(silence)

Are the Ericksons on the line? I see that you're muted.

MS. ERICKSON: Could you hear us?

THE COURT: I un-muted you now. Is this the Ericksons on the line?

MS. ERICKSON: This is Shelley Erickson.

MR. ERICKSON: John Erickson.

THE COURT: Thank you for your patience this morning.

Madam clerk, are you hearing the Ericksons?

THE COURT CLERK: Yes.

THE COURT: Okay, everybody. Thank you very much for your patience this morning, I appreciate it very much.

We are on the record in the matter of the Ericksons versus Deutsche Bank, I'm just going to

put the cause number on the record. It is 19-2-12664-7KNT.

Mr. And Ms. Erickson are on the line and have made their appearance. If I could have counsel for the defense, make your appearance, please.

MS. HOVDA: Yeah. Good morning, Your Honor. K.c Hovda on behalf of the defendant, Deutsche Bank.

THE COURT: And I know that my bailiff and clerk are on the line. Is anybody else on the line this morning?

(Silence)

THE COURT: Okay. Thank you again, everybody for your patience this morning. I appreciate it. I'm going to ask you to stay on mute unless you are called upon by the court to speak. If you'd just give me a minute here, I need to log in to another page on my computer. (inaudible).

We're here today on a number of motions, the defense has brought a motion to -- well, a motion to dismiss, although it was initially filed as a motion for summary judgment; a motion for protective order from a number of discovery

requests; a motion to strike declarations as well submitted by the Ericksons.

The Ericksons have written a tremendous -- have submitted a tremendous number of materials. I'm going to put on the record what I have received and reviewed so that the Ericksons can correct me if I am missing anything that I should have also reviewed.

They were -- they provided a motion for void judgment of select portfolio servicing on Deutsche Bank National Trust Company for Long Beach Mortgage Loan Trust, which I am construing as a responsive pleading. Plaintiffs invoke cause of objection to defendant's motion for dispositive motion to strike plaintiffs' complaint without a jury trial; a substantive motion to strike, motion to dismiss. I understand that to be a motion to strike the motion to dismiss. Plaintiffs' motion for production of authority to action, which I construe as a response brief. Plaintiffs supplemental reply, objecting to Vanessa's void moot dispositive motion to dismiss an omnibus motion and combined reply brief in support of motion to dismiss and omnibus motion for protective order and to strike plaintiffs'

declarations and moot miscellaneous, which I construe as a response brief. Plaintiffs reply, objection to Stole and Reeves authority to act and objection and reply motion to strike Vanessa Power declaration and motion for omnibus motion and omnibus motion for protective order and to strike plaintiffs declarations and all motions filed, which I construe as a motion to strike the motion to dismiss. And I -- and then finally plaintiffs reply and objection and motion to strike defendant's reply motion in support of motion to consolidate and reassign. I can't, frankly, tell if that is an untimely filed response brief. To the extent that it is, I am striking it and disregarding it. Or, if it is a motion that was not accompanied by a note for motion, which is also improper and will be stricken. So in either event, I am not considering that brief.

Let me ask the Ericksons, was there anything else that you filed that I should be considering?

MS. ERICKSON: I believe that's it.

THE COURT: Okay. Thank you, very much.

So the way this is going to work this morning, is I will hear from Deutsche Bank first,

and then I will hear from the Ericksons and then I will allow brief reply from Deutsche Bank. I do want to just clarify, Ms. Hovda, that in your motion to strike declarations, you referred to quite a few declarations. Two of them, I didn't see in the materials that I received. And it could be that they were buried and I just didn't find them. The pleadings that were submitted by the Ericksons were very difficult to parse through because it was hard to tell what was an exhibit to a declaration versus a standalone declaration. But you did reference the Paatalo and Nora documents, and I didn't see those. So if you want to point me to where I should have been looking, I apologize if I simply overlooked them.

MS. HOVDA: I believe, Your Honor, that both of those declarations were filed very early in the case. But I -- they also may have been exhibits to other declarations. We also had a difficult time determining what was an exhibit versus a standalone declaration. So I -- I think they -- it could be that we misinterpreted them as standalone declarations. For example, I think the King declaration may have actually been an Exhibit. I -- and I apologize. I don't have the

docket in front of me to cite the date, but I could pull it up. But I believe those -- to the extent that they were independent declarations, they were filed quite early on in the case before the protective order was heard -- or the TRO was heard.

THE COURT: I just found them. I didn't realize I was going that far back in the record to look for them. So just give me one moment to review them, and then I'll hear your argument.

(Silence)

Madam Bailiff, our e-document reader ECR -- oh, it's finally loading, maybe. If not, I'm going to ask you to e-mail me those documents.

(Silence)

Madam Bailiff, I'm trying to pull up sub six and sub 13 from the Erickson file and ECR is not loading this morning. Are you able to e-mail me those documents?

(Silence)

Madam Bailiff?

(Silence)

THE COURT: All right. For -- because apparently Murphy's Law is governing our lives this morning, I can't pull that up electronically

either. My bailiff's going to try to send them to me. I apologize for all the chaos this morning.

In the meantime, let me invite you, Ms. Hovda, to present any argument that you'd like to be heard.

MS. HOVDA: Thank you, Your Honor. I'll refer to my client, the Deutsche Bank Trust just as the trust. And we're here today, as you said, on two motions, brought by the defense, a motion to dismiss and an omnibus motion that the Court only needs to reach in the event it doesn't grant the motion to dismiss.

For the motion to dismiss, we divided it into basically three buckets of claims that are raised in the complaint. Turning to the first bucket, claim one, is a CR -- a claim for -- based on 60 (b)(4) seeking to satisfy the 2015 foreclosure judgment based on fraud. This claim fails for three reasons, at least three reasons. First, a motion under CR 60 (b)(4) must be brought within quote, "within a reasonable time." And that actually was filed four years after the foreclosure, the 2015 foreclosure judgment, with no explanation about why the delay. Second, there's simply no evidence or possible allegations

of fraud here, much less clear and convincing evidence -- or allegations (inaudible) with particularity. Many courts -- every court to address this issue has held that the note in this case is valid. And there's simply no evidence that the trust does not have standing to foreclose. And third, this is an argument that really applies to all of the claims. This claim seems to seek affirmative relief beyond what is available under CR 60 (b). 60 (b) can only be used to grant relief in the form of vacating the judgment. No other affirmative relief is available. We filed a notice of supplemental authority back in April citing a new Supreme Court case, Adkins, that reiterates this principle.

So for those three reasons, the claim one based on 60 (b)(4) should be dismissed as feudal. The second bucket of claims, claims two, three, four, are all claims really seeking affirmative relief outside of CR 60. This is a declaratory relief claim, a common-law fraud claim and a breach of duty of good faith and fair dealing claim.

Again, to the extent these were actually brought as some sort of CR 60 argument, they

failed because affirmative relief is not available, that's the Atkins case. But to the extent these are independent new claims outside of CR 60, they are clearly barred by collateral estoppel and fail on the merits as well.

THE COURT: And just to clarify -- sorry. Wouldn't setting aside the fraud judgment be barred by collateral estoppel also since it's been decided?

MS. HOVDA: Yes, Your Honor. I think there is some case law that suggests that if somebody comes forward with affirmative evidence of fraud in a CR 60 (b) motion, that, not always, would be barred by collateral estoppel. But, yes, we also think on the merits as far by collateral estoppel because essentially it's a fraud argument to the extent. We understand it is that the trust and its counsel submitted fraud on the court by producing an inauthentic note. And that has been decided by federal courts, you know, the -- the Western District of Washington, the Ninth Circuit, this court, King County Superior Court and the Washington Court of Appeals. So, yes, we would argue collateral estoppel applies because it's really, actually, not a CR 60 argument. It's more

of a merit argument.

So turning back to the claims two through four, seeking -- explicitly seeking affirmative relief, they are barred by collateral estoppel. I am happy to march through the four elements of collateral estoppel, but they're clearly met here. The Court of Appeals found they were met in 2017. And the issues are identical here.

Again, the heart of both cases is the same. This is (inaudible) not producing enough evidence to show it had ownership of the original note and that it cannot foreclose. Same parties to each case. Final judgment. We have all the elements here. And then again on the merits, all arguments questioning the standing of the (inaudible) to foreclose are unpredicted by the record and pure speculation. There's simply no evidence that's been provided to support that.

Turning to the last claim, claim five, which is (inaudible) -- CR 60 (b)(5) claim to set aside the foreclosure judgment based on lack of jurisdiction. The theory here seems to be the -- the foreclosure court lack's subject matter jurisdiction to hear the foreclosure action, and because the trust lacks standing to enforce the

note, so sort of the same argument again. Again, all of them show the trust as holder of the note. It is and has been and this has been addressed by many courts. Further, the law in Washington is that Superior Courts have the authority to conduct foreclosure proceedings, RCW 61.12. And this, again, seems to be really a merit question going back to that same issue, which is collaterally estopped from being raised here. But there has (inaudible) don't seem to contradict these or -- or respond in a substantive way to these merits, arguments, other than arguing that pro se pleadings should be liberally construed, and, you know, providing some more speculation that there's some conspiracy going on here, but that is simply insufficient on summary -- on summary judgment or even at the motion to dismiss is at an (inaudible) motion to dismiss (inaudible).

We are fine if this court needs to construe this and convert it as a motion for summary judgment. However, all the documents cited are actually based on a request for judicial notice submitted by the Ericksons and we would maintain are all judicially noticeable documents and the court doesn't need to look further and --

and make this a CR (inaudible) motion. But we -- we maintain we would prevail under either standard and the claims are futile. And so for that reason, we request that they be dismissed with prejudice.

On the omnibus motion, I'll just go over sort of the three categories of relief we're seeking there, but I think I'll just rest on the briefing unless the Court has any specific questions. We're seeking first a protective order quashing the discovery request issued by the plaintiff. Second, an order striking the numerous declaration filings. And third, an order just striking or disregarding the various other moot and not noted filing that we weren't sure what to do with.

So with that, I -- I'd just like to conclude and say the motion to dismiss should be granted with prejudice. The claim fails in a matter of law in ways that couldn't be cured by amendment. This issue has been heard again and again by courts. And we ask that the Court dismiss with prejudice today. And alternatively, in the event that the Court does not, we ask that our omnibus motion be granted. And I'm happy to

answer any questions.

THE COURT: I don't have any questions at this time. Thank you very much.

If you could put yourself on mute. Thank you.

I'm going to take the Ericksons off of mute at this time and invite argument from you.

MS. ERICKSON: Okay. This case is an independent case. It's filed under Rule 60 (c) and not under Rule 60 (b)(4), contrary to what the defendant's falsely claim. Due to fraud upon the court and the administration of justice or finality, independent actions under Rule 60 (c) are reserved for those cases of injustice, which in certain instances that are deemed sufficiently gross to demand a departure from rigid adherence to the doctrine of res judicata.

Defendants do not disclose the contract law they claim to represent through evidence, and they have filed this case in the name of Deutsche Bank National Trust trustees, whom is not a party to the PSA and suffers no loss, no harm, and no injuries (inaudible) -- intent to the contract they claim to represent.

Washington State has no duty to retreat

law as precedent in the state in State vs Judd, 1990 and State versus Renaldo Radman (phonetic), 2003, when the court found that there's no duty to retreat when a person is assaulted in a place where he or she has a right to be. I'm being assaulted on my property and it's being seized by people without authority to seize it.

This case is a coverup to (inaudible) securitization failure of the Ericksons' loan pursuant to trust contract governing documents at no fault of the Ericksons. A borrower is standing to challenge a foreclosure sale ordered by a party with no authority to do so. Yvanova, supra, 62 Cal.4th at p. 943.

Long Beach Mortgage sold our deed of trust to unknown third parties two years before Chase assumed it as assets. That cannot be easy -- so easily dismissed. The trial court relied on the P&A agreement between Chase and the FDIC. To conclude the Chase Home Loan Financing parent company obtained the right to the Erickson deed trust, but the legal meaning of P&A is that Chase obtain whatever assets WAMU possessed as of September 2008. It does not exhaustedly list what assets those were. The P&A agreement sheds no

light on whether WAMU sold the Erickson deed of trust in 2006. Thomas Reardon's declaration in 2010 states, the Erickson mortgage is governed by the trust contract. Assuming, as you must, at that stage that the allegations of the operative complaint are true, it would mean that Chase was never WAMU's successor in interest as to the Erickson deed of trust. And at most, (inaudible) to transfer an asset, it never owned to Deutsche Bank National Trust in 2012 and 2013, and was fraud upon the court and fault. As a result, the party's no legitimate claim to the Erickson deed of trust foreclosed on our house and was wrongfully granted SMJ by Judge Pechman and Judge Darvas. A second assignment was fabricated from SPF to Deutsche Bank National Trust and back to SPF in 2018 when Deutsche Bank National Trust is a non-party to the trust. The assignment in 2012, 2013, and 2018, are forbidden by the trust contract language the defendants agreed to and claimed to represent.

This is precisely the kind of injury in addition in the (inaudible), which held that a borrower has standing to challenge a foreclosure sale ordered by a party with no authority do to

so. Yvanova, supra, 62 Cal. 4th at p. 943. The borrower owes money not to the world at large, but to a particular person or institution, and only the person or institution entitled to (inaudible) may enforce the debt by the foreclosing of the party. ID at P 89 38 by (inaudible).

The claim that Chase may have inherited servicing rights and responsibilities from Long Beach Mortgage or WAMU does not erase the Ericksons' injury as a party with no beneficial interest in our loan, directed foreclosure on our house. Yet Chase was claiming ownership and authority over the loan under those circumstances and claimed it was a false claim. Also seeing November 19th Deutsche Bank versus Barclay Bank PLC in New York, court law Court of Appeals, the highest court in New York.

Why would this court permit parties to obtain a decision from this court by presenting an argument that has no basis whatsoever in the complaints or contracts. Deutsche Bank National Trust and Long Beach Mortgage 2004 trust contracts have agreed with each other to be under New York law. A familiar and eminently sensible proposition of law is that when parties set down

their agreement in a clear, complete document, the writing should be, as a rule, enforced according to its terms under WW Associates, Inc, and Giantontieri 72 in New York, 2d 157, (inaudible) 1990.

The Washington constitution protects contract law. The contraction expressed intentions of the parties must account for something. The trust is the contract law that is concealed from the court by the defendants. And the majority of the courts turn a blind eye to this specific contract law. Defendants have to be of the know. They are continually, constantly, willfully, intentionally violating their own governing contract law with every (inaudible) they made concealing and never disclosing the contract plain language. They are governed by the courts and that covers them and the courts and tried to conceal it from the courts by falsely claiming the Ericksons cannot question the PSA trust contract law that affects the wrongful foreclosure on her home by unauthorized parties that govern -- that the defendants and this court, that evidence is (inaudible) failure of the Ericksons' mortgage and evidence a non-party without authority is

foreclosing on our home. See the MBA letter that I sent and filed with the court that is addressed to the Honorable Minutiae (phonetic), the services related to (inaudible) certificate holders in full whether the borrower is or not. The certificate holders suffer no loss, no harm, no injury.

We have filed this case under the administration of justice over finality case, Hazel-Atlas Company versus Hartford Company 322 U.S, 238 from the Supreme Court in 1944, the U.S. Supreme Court. There is no res judicata for motions for void judgments and motions for administration of justice outweighs the important interest in finality of litigation.

The defendant lacks a complete absence of jurisdiction and standing and has no permission to litigate in Deutsche Bank's name. Deutsche Bank has a memorandum out that's on their site, so it should be -- I ask that to be put under judicial notice.

I'm asking the servitors to stop litigating in Deutsche Bank National Trust's name because that is also part of their contract agreement. Debtor's allegations are not (inaudible) by the administration of justice

outweighs the important interests of finality, and a void judgment is not time (inaudible). It is a wrong against the institutions set up to protect and safeguard the public. Institutions in which fraud cannot complacently be tolerated consistently with a good order of society. This case -- case violates Article III. There are no lenders, no creditors, no losses, either by Deutsche Bank nor the certificate holders, the certificate holders whom are only the beneficiaries of the trust contract. Deutsche Bank is not a party to the trust but only to the MLPA contract only -- Deutsche Bank can only sue the issuer and the depositor, not the borrowers; both suffer no loss. See the MBS letter to (inaudible) again, severe -- the servitor guaranteed payments to the certificate holders, whether or not the borrower pays the mortgage. So the servitor -- certificate holders suffer no loss either. By definition, the trustee is not injured by the diminishment of a trust corpus because the trustee's role is to maintain the trust for the exclusive benefit of the certificate holders who retain the beneficial interests, whom holds the assets, but cannot sue the borrower -- whom cannot

hold assets but cannot see the borrower.

The recognition in law is that a trustee holds fair or legal title to the trust corpus is shorthand for (inaudible) by which law separates the holding of the title from the enjoyment of gain or injury or loss. To say the trustee suffered the injury would be a fiction directly at odds with centuries of trust law. See Cashmere Valley Bank versus Washington Department of Revenue. The certificate holders cannot sue the borrower. The borrower has no obligation to pay the certificate holders and the certificate holders are guaranteed payment by the servitor, whether or not the borrower pays the mortgage. (Inaudible) which also supports the MBS letter to the Honorable Minutiae. All U.S. jurisdictions have adopted a matter of law and public policy, Article 9, 203 UCC, that remedy will only be granted to the one who paid value for the underlying obligation.

The contract this party pretends to represent specifically states this under Article UCC 9. Article III mandates the party must suffer a loss. This constitutional (inaudible) it under Article III for the existence of standing are that

the plaintiff must personally have: One, suffered some actual or threatened injury. Two, that injury can be fairly traced to the challenged action of the defendant. And three, that the injury is likely to be redressed by a favorable decision.

The defendants' claim to represent -- the defendants' claim to represent the contract law that governs them in this court but fails to present it to the Court. The Court has not read the language of the contract law. In a contract breach it is important to note who made what promises to whom and what in that contract. When the contract defendants alleged they represent -- what they represent was breached, the plaintiffs (inaudible) all of those details by refusing to identify and file the contract with the court to conceal the fraud they commit (inaudible) the Ericksons in this court. The plaintiffs fail to identify what assets JP Morgan Chase purchased as a result of the PAA (sic). Failing to recognize that the court (inaudible) are deposited here in the favor of the Ericksons. The breach to Deutsche Bank National Trust in this trust contract were actions. Long Beach Mortgage and

Security and Long Beach Mortgage made to the trustee at no fault of the Ericksons, and they're the only one that Deutsche Bank National Trust has the authority to sue -- and that's on a secure statute of limitations. These two parties reached their present -- representatives (inaudible) to Deutsche Bank, not the Ericksons and are the only party Deutsche Bank can sue with a clear (inaudible) of (inaudible), not the Ericksons.

All parties are New York contracted parties. This is wholly irrelevant to the Ericksons and this trust where they are not parties to the Erickson mortgage. Deutsche Bank National Trust is not party to the trust nor the Erickson mortgage. This is a complaint and contract issue.

Deutsche Bank National Trust is a trustee who, by definition, holds only fair legal title without equitable -- equitable interests and is not injured by a diminished trust corpus. The certificate holders bear the injury, but -- bear the injury. But one, only if the Erickson mortgage was assigned to the trust within the strict guidelines of their own trust contract, the governing document -- documents, which it was not

-- but a breach by the -- by Long Beach Mortgage and Long Beach Securities Corporation, not the Ericksons and all assignments after the date are forbidden by the trust contract and are in contradiction of this trust contract law. They are void. Fraudulent, forged, false, void, aberrational assignments. The certificate holders have to hold assignment -- held assets and they cannot pursue their own trust corpus. The certificate holders have to suffer a loss to claim harm and injury, but are guaranteed full payments by the servitors who was one who breached their warranty and representations and assignments and guarantee by the servitors, not the Ericksons. Fanny Mae -- they're also guaranteed by Fannie Mae, the Economic Stabilization Act of 2008 known as the bailing. The only valid assignment the Erickson mortgage to this trust -- the only valid assignment of the Erickson mortgage to this trust is omitted and missing in action and is assigned to nobody.

Defendants continually threatened wrongful foreclosure and threats of wrongful sale at auction filing and disseminating fabricated -- false, fabricated and forbidden documents,

including the note and the assignment. The wrongdoing is continual there for tolls -- the fraud told by active concealment. See U.S. Supreme Court, McDonough versus Smith (inaudible) the Supreme Court answers an important section, 1983, fabrication of evidence or (inaudible) question. The statute of limitations does not start until after the litigation's done, successful or not. Res judicata consequences will not be applied to avoid -- to avoid judgment, which is one which from its inception is complete (inaudible) and without legal effect. Alcott versus Alcott 437 N.E. 2d 392, 3rd at appellate court, third district, 1982. A void judgment is not entitled to the respect according to a valid adjudication that may be entirely disregarded or declared inoperative in any tribunal in which effect is sought to be given. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficiency for any purpose or at any place. It is not entitled to enforcement. All proceedings founded on the void judgment are, themselves, regarded as invalid 30 (a) (a)(m) judgments 44, 45. The lawyers violate or (inaudible) to ethics codes. See

Lorenzo versus The Securities and Exchange Commission. In a decision beneficial to the U.S. Securities Exchange Commission, the U.S. Supreme Court has affirmed that those persons who disseminate statements containing material representations or omissions, and I quote, "or omissions" are primarily liable for such misstatements, even if they did not directly make them. To assert claims against secondary actors, including bankers, lawyers, and accountants, who disseminate statements made by others that they allegedly know are materially misleading and the commission is now clear to charge such persons as primary violators without demonstrating that the person who actually made the statement also violated the Federal Securities Law. The court endorsed the (inaudible) approach to scheme liability against those who distributed materially and misleading statements with (inaudible), regardless of whether they are actually the maker of the statement by holding that a (inaudible) can still violate section 17 (a) of the Securities Act and section 10 (b) of the Exchange Act and Rules 10 b-5 thereunder. Lorenzo allows -- also allows to assert claims against secondary actors who the

signator disseminate alleged misstatements made by others. Lorenzo may also further (inaudible) the condition to alleged primary violations against gatekeepers and others who did not make alleged misstatements, but are nonetheless alleged to have been involved in their dissemination. The lawyers in this instant case are in violation of RCW 244.030 and RCW 9.26.02, falsely claiming to represent a trustee of the beneficiary, who is not a beneficiary, who is (inaudible) a nonparty to the PSA contract whom (inaudible) have not given them permission to act in their name. There was no evidence or supporting declaration filed by the Deutsche Bank National Trust employees, whom the court could only speculate as to their existence or their interest in the proceeding. There have been no valid claim of injury, loss or harm by Deutsche Bank National Trust Company, nor the certificate holders, because there is no harm, foreclosure is considered as (inaudible) remedy equivalent to capital punishment. The courts violate Washington constitutional law.

A new case law from the U.S. Supreme Court, (inaudible) versus Indiana, states that state courts are in violation of the Eighth

Amendment when imposing sanctions.

The Washington Supreme Court ruled unanimously (inaudible) losing your home is one of the worst sanctions. Washington, the Supreme Court, rule unanimously (inaudible) that the State cannot impose excessive fines and forfeiture as criminal penalties, the decision, of which united the courts of conservatives and liberals, make clear that the Eighth Amendment prohibition against excessive fines applies to the State and the local localities as well as (inaudible) associate Justice Ruth Bader Ginsberg wrote the majority opinion and announced it from the bench, the protection against excessive fines guards against abuse of government punitive or criminal law enforcement authority. Ginsberg wrote, quoting in part from the court ruling in 2010 that Second Amendment gun rights applied in (inaudible). She said this case, the safeguard we hold is fundamental to our scheme of ordered liberty. The constitution mandates the court protect property owners. The majority opinion incorporated the Eighth Amendment through the 14th Amendment due process clause, which states that, "nor shall any state deprive any person of life,

liberty, or property without due process."

The lawyer's in this case are in violation of -- of this.

THE COURT: All right. Thank you.

MS. ERICKSON: The defendants admit --

THE COURT: Ms. Erickson?

MS. ERICKSON: Yes.

THE COURT: This is Judge Bender speaking. I have given you quite a bit of time for argument. I do have another matter at 10 o'clock and I have to announce my ruling. So I'm going to give you two more minutes to wrap up your comments, please.

MS. ERICKSON: All right.

This is not under res judicata and they are -- the defendants are representing Deutsche Bank National Trust trustees who is a nonparty. And they just admitted in a document they just sent me that they have been paid by a portfolio to do this. I have -- they only -- I just received it in the mail and they have hidden the fact that they're representing SPS. They are not Deutsche Bank National Trust.

THE COURT: All right. Thank you very much, Ms. Erickson.

Ms. Hovda, I don't have any final

questions for you. Was there any brief rebuttal that you wanted to offer?

MS. HOVDA: I guess, just to say it sounded like when Ms. Erickson started that she said, this is an action under CR 60 (c) and I -- and I just urge the Court to ask (inaudible) this case says that no provision of CR 60 is appropriate for affirmative relief in CR 60. She just says you can bring an independent action. And if you bring an independent action, it has to be sufficient; it's subject to collateral estoppel. And so with that, I'll just rest on the briefing (inaudible) and the motions (inaudible).

THE COURT: Thank you very much.

What I'm going to do is rule as follows: Ms. Hovda, I'm going to ask you to take some pretty careful notes of my oral ruling so that you can submit a proposed order to the court that summarizes my oral comments; okay? Thank you.

First of all the motion to dismiss, I am construing as a Rule 56 motion. 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.

I am going to grant the motion on behalf of the defense and dismiss the complaint in its entirety. I do find a number -- I have frankly agreed with each of the issues raised by the defense, that this motion was not timely filed under the standards that govern Rule 60, that to the extent claims two, three and four are claims for affirmative relief, those claims are not properly brought in the context of Rule 60 motion, and that really the entirety of the claims are barred by issue preclusion or collateral estoppel. These are issues that have been fully, carefully, and thoroughly vetted by several courts in Washington State at both the Federal and State Trial and Appellate level, and this Court cannot revisit them. The court clearly, as to claim five, does have subject matter jurisdiction and can make that finding as a matter of law. There is no issue of material fact with respect to those questions. So for all of those reasons, I am granting the motion to dismiss.

I'm going to grant -- with respect to the

omnibus motion, I'm going to rule as follows: The motion for a protective order is moot and therefore stricken. My dismissal obviates the need for any discovery.

I am going to rule on the motion to strike the declarations because I suspect there may be some appellate review of my decision and I want a clear record of what I have relied on with respect to the Paatalo (phonetic) declaration, I am striking all of the opinions set forth in that declaration. There is no foundation for Mr. Paatalo to present expert testimony in the subject area. I am also striking all hearsay statements. I will allow the declaration to the extent that it serves simply as an authentication of the results of online searches. So to the extent that the declaration simply says, "I searched as follows: And this is what I found," I am allowing the declaration. Ms. Erickson's declarations are numerous, and they're almost all dated May 26, 2019. So it's hard to differentiate them for purposes of my record. I am striking her opinion in one of those declarations as to the authenticity of Kimberly Smith's signature.

She has another declaration, also signed

May 26, 2019, where she authenticates an e-mail from the -- or to the e-mail address, uncanduc1; that is hearsay, the e-mail itself. I'm striking all declarations by Ms. Erickson that were not properly executed, of which there were many. The Robertson declaration, I am not striking. It is -- I would note that it's from 2015 and it does not change my ruling with respect to the substance of the motion under CR 56, but I don't see anything about it that's inherently objectionable.

The Nora declaration, I am striking for lack of personal knowledge. The King declaration, I am not striking, except I am striking the statement that Chase is not a successor in interest to WAMU loans. That is either hearsay or improper opinion testimony; and, either way, is inadmissible. That's the May 30th, 2018, King declaration. The April 1st, 2018, King declaration, I am striking portions as follows: Again at paragraph five. The statement that Chase is not a successor in interest to WAMU loans, the hearsay statements contained in paragraph eight, the hearsay statements contained in paragraph 11 and the opinion in paragraph 12.

With respect to the Ericksons' motions,

the document entitled Plaintiff's Invoke Cause of Objection to Defendant's Motion For Dispositive Motion to Strike Plaintiff's Complaint Without a Jury Trial, I construe that as a substantive motion to strike the motion to dismiss, and that is denied. The document titled Plaintiff's Reply, Objection to (inaudible) Reeves Authority to Act and Objection and Reply, Motion to Strike Vanessa Power, Declaration and Motion for Omnibus Motion and Omnibus Motion for Protective Order and to Strike Plaintiff's Declarations on All Motions Filed. I construe that as a motion to strike the motion to dismiss, and it is denied.

I believe I've ruled on all of the issues before the court. Was there anything further from the defense that you wanted clarity on?

MS. HOVDA: No, Your Honor.

THE COURT: Thank you. Anything further from the Ericksons at this time before I disconnect the call?

MS. ERICKSON: Yes. I don't even know if this can apply or not, but it looks -- it appears to the Ericksons that the judge is ruling on hearsay of the JP Morgan Chase having been successor of interest to WAMU loans as well.

THE COURT: I'm sorry, I didn't understand your question.

MS. ERICKSON: It appears to me that your ruling on hearsay of JP Morgan's assets, because it's never been posted that the Erickson mortgage is a part of JP Morgan's assets. They are hearsay that they are successor in interest to WAMU's assets that would -- would have the Ericksons' mortgage on it, that they have not proven that the Ericksons' mortgage is on -- is -- was part of the JP Morgan assets and the WAMU assets, so you're ruling on hearsay.

THE COURT: Well, what I'm -- I'm not reaching the question of Chase's status. What I'm saying is that the evidence that was presented on that topic was not admissible as a matter of law.

So, I'm going to ask Ms. Vota to please write up an order and send it to the Ericksons for their review.

Let me say to Mr. And Ms. Erickson, I know that you may very well not agree with my ruling today, and that's fine. What I would ask you to do is simply indicate to Ms. Hovda whether you approve of my order as to form. And all that means is that while you're preserving your right

to object to any end appeal, my decision, you're simply agreeing that what Ms. Hovda has written down is a correct summary of what I said from the bench, even if you don't agree with it. Do you understand that procedure?

MS. ERICKSON: Yes.

THE COURT: Okay. So I'm going to ask you to do that. You can either sign off on the document or you can just send Ms. Hovda an e-mail indicating that you approve as to form, and she can attach that e-mail to the order that she then sends to me for me to sign and file.

I do need to disconnect the call. I do have some other folks coming on the line at 10 o'clock for another matter.

Go ahead, Ms. Hovda.

MS. HOVDA: One question, sorry. Did the court rule on that motion for proof of authority to act? I believe that there wasn't a ruling on that, but I just wanted to make sure I didn't miss it. I -- I'm not sure if it was noted for hearing today or not, since that was an Erickson motion that may have been noted, but I'm not sure.

Oh, I said the motion -- plaintiff's motion for production of authority to action, I

was construing as a response brief.

MS. HOVDA: That's right. Okay. Thank you for clarifying.

THE COURT: Thank you very much. And if you could make a record, I don't know if you had a chance to jot down everything that I put on the record at the beginning, great.

MS. HOVDA: I'll try. I didn't take the best notes from the beginning, but I'll try. I think I got most of it.

THE COURT: All right. Thank you very much everybody.

MS. ERICKSON: That wasn't a response brief. That was a motion.

THE COURT: Well, I -- that is not how I understood it. That is not how I perceived the issues that were raised. And I am construing it as a responsive pleading.

So we're going to go ahead and end the call at this time. I appreciate everyone's patience with the technology. We're all getting used to proceeding this way. And you were all very gracious about us getting started this morning. So, thank you very much. And I'm going to go ahead and disconnect the Zoom call.

MS. HOVDA: Thank you.

(End of audio recording)

C E R T I F I C A T E

STATE OF WASHINGTON)
) Ss.
COUNTY OF KING)

I, Andie Evered, do hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct

1. That I am an authorized transcriptionist;

2. I received the electronic recording directly from Petitioner.

3. This transcript is a true and correct record of the proceedings to the best of my ability,including any changes made by the Judge reviewing the transcript.

4. I am in no way related to or employed by any party in this matter; and

5. I have no financial interest in the litigation.

Dated in Bend, Oregon, this 24th day of August 2020.

Andie Evered

_____
Andie Evered, CCR
State of Washington CCR #2393

REQUEST FOR JUDICIAL NOTICE
EXHIBIT 2

FILED
11/29/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN EARL ERICKSON and SHELLEY ANN ERICKSON, individuals, Appellants, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR LONG BEACH MORTGAGE LOAN TRUST 2006-4 Respondent.	)	No. 81648-9-I DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, J. — John and Shelley Erickson appeal from a dismissal of their latest claims stemming from issues they have attempted to relitigate in various courts over many years. The Ericksons assert a number of claims under CR 60, including common-law fraud, fraud upon the court, lack of subject matter jurisdiction in a prior judgment, and breach of implied duty of good faith and fair dealing. Because 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, we affirm the trial court's dismissal.

FACTS[1]

John and Shelley Erickson used their home in Auburn, Washington, to secure a loan from Long Beach Mortgage Co. The loan was sold into a pool of loans held in trust, with Deutsche Bank National Trust (Deutsche Bank)[2] serving as trustee. Long Beach Mortgage Co. was part of Washington Mutual, Inc. until it failed.[3] J.P. Morgan Chase (J.P. Morgan) purchased Washington Mutual, Inc.'s assets.

In 2009, the Ericksons sought to modify their loan, but were rejected. The Ericksons brought a claim in King County Superior Court in August 2010, seeking relief. The suit was removed to federal court, which awarded summary judgment in favor of Deutsche Bank. In 2013, J.P. Morgan assigned its interest to Deutsche Bank, who filed suit to foreclose on the Erickson's home in 2014. The trial court awarded summary judgment in favor of Deutsche Bank, which this court affirmed on appeal.

In 2019, the Ericksons again filed suit in King County Superior Court. They sought relief under CR 60 for: (1) relief from the 2015 foreclosure judgment for fraud upon the court; (2) declaratory judgment that the 2015 judgment is void; (3) common-law fraud; (4) breach of the implied covenant of good faith and fair dealing; and (5) relief from the 2015 judgment based on lack of subject matter

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[1] We adopt the facts as set out in the opinion from the direct appeal in this matter. Deutsche Bank Nat. Tr. Co. for Long Beach Mort. Loan Tr. 2006-4 v. Erickson, No.73833-0-I (Wash. Ct. App. Feb. 13, 2017) (unpublished) http://www.courts.wa.gov/opinions/pdf/738330.pdf.

[2] The Ericksons allege counsel for Respondent actually represent a separate entity and are "pretending to appear for Deutsche Bank." With no evidence to support this claim beyond the Ericksons' own accusations, we refer to the parties as the trial court did below.

[3] Deutsche Bank Nat. Tr. Co., No.73833-0-I, slip op. at 2.

jurisdiction. On June 16, 2020, the trial court granted summary judgment in favor of Deutsche Bank, dismissing the Ericksons' claims with prejudice.

The Ericksons appeal.

ANALYSIS

I. Summary Judgment

We review an order of summary judgment de novo, "considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party." Singh v. Fed. Nat'l Mortg. Ass'n., 4 Wn. App. 2d 1, 5, 428 P.3d 373 (2018) (quoting Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015)).

A. Conversion to Summary Judgment from Motion to Dismiss

First, the Ericksons argue that the trial court deprived them of their due process rights by improperly converting Deutsche Bank's motion to dismiss into a motion for summary judgment during the hearing.

"Either party may submit documents not included in the original complaint for the court to consider in evaluating a CR 12(b)(6) motion." McAfee v. Select Portfolio Servicing, Inc., 193 Wn. App. 220, 226, 370 P.3d 25 (2016). However, where "a party submits evidence that was not in the original complaint, such submissions convert a motion to dismiss to a motion for summary judgment." Cedar W. Owners Ass'n v. Nationstar Mortg., LLC, 7 Wn. App. 2d 473, 482, 434 P.3d 554 (2019) (quoting McAfee, 193 Wn. App. at 226).

Here, 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 Deutsche Bank's motion to dismiss. Additionally, the Ericksons failed to object to the conversion of the motion to dismiss into a motion for summary judgment. Generally, this court "may refuse to review any claim of error which was not raised in the trial court." RAP 2.5(a), quoted in, Fireside Bank v. Askins, 195 Wn.2d 365, 374, 460 P.3d 157 (2020). Because the Ericksons' own submissions of significant evidence, beyond what was attached to their complaint, in response to Deutsche Bank's motion to dismiss prompted the conversion to a summary judgment proceeding, and because they failed to object below, the trial court did not err.

B. Merits of Summary Judgment Motion

Next, the Ericksons argue even if conversion into a motion for summary judgment was proper, the trial court erred as a matter of law in granting summary judgment in favor of Deutsche Bank on the merits.

"Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Singh, 4 Wn. App. 2d at 5. The court granted summary judgment on several bases: first, to the extent the complaint sought relief under CR 60, it was not filed timely; second, to the extent the complaint sought relief under CR 60, it sought affirmative relief not appropriate under the court rule; third, the issues raised are barred by collateral estoppel.

The Ericksons argue the trial court erred in treating their "Independent Action" as a CR 60(b) motion. The Ericksons misconstrue the record in two ways. First, the trial court referred to their action as seeking relief under CR 60 generally. Second, the Erickson's complaint does seek relief under CR 60(b) as well as CR 60(c), stating "All Judgments and Orders rendered in the Judicial Foreclosure Action . . . must be vacated under CR 60(b)(5)." The trial court did not err by referring to the Erickson's actions as seeking relief under CR 60, and did not err because the Ericksons did seek relief under CR 60(b) as well as CR 60(c).

1. Timeliness

Under CR 60(b), a motion must be made to vacate the judgment "not more than 1 year after the judgment, order, or proceeding was entered or taken." The Ericksons admit in their complaint that they sought relief from the judgment entered on August 27, 2015. Their CR 60 filing is dated May 13, 2019. Therefore, the trial court did not err in finding that, to the extent the Ericksons sought relief under CR 60(b)(5), the pleading was untimely.

2. Affirmative Relief under CR 60

In Fireside Bank, the Washington State Supreme Court discussed the relief available under CR 60. See 195 Wn.2d at 375–76. While the plaintiffs in Fireside Bank brought a motion under CR 60(b), the court discussed CR 60 broadly. The court held that "CR 60 is a limited procedural tool that governs relief from final judgment," balancing the principles of equity and finality. Id. at 375.

The rule is equitable in nature, "consistent with a court's 'inherent power to supervise the execution of judgments' that have prospective effect." Id. (quoting Pac. Sec. Cos. v. Tanglewood, Inc., 57 Wn. App. 817, 821, 790 P.2d 643 (1990)). However, "[n]o matter the circumstances," the only relief available "pursuant to CR 60 is relief 'from a final judgment, order, or proceeding,' not any entitlement to affirmative relief." Id. at 375–76 (alteration in original) (quoting CR 60(b)).

Even if the Ericksons only sought relief under CR 60(c), the language of subsection (c) mirrors this language. It states "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." CR 60(c) (emphasis added).

The trial court correctly determined that the Ericksons were not entitled to affirmative relief under CR 60.

3. Collateral Estoppel

Next, the Ericksons argue that the trial court erred in granting summary judgment on the basis of collateral estoppel. They argue that "independent actions for fraud on the court are not barred by the doctrines of res judicata or collateral estoppel."

The Ericksons are correct that independent actions under CR 60 are not always subject to res judicata if the claim meets a "demanding standard." See United States v. Beggerly, 524 U.S. 38, 46–47, 118 S. Ct. 1862, 141 L. Ed. 2d 32 (1998) (analyzing Federal Rule of Civil Procedure 60). However, the Erickson's claim was not dismissed based upon res judicata, but upon collateral estoppel. The Ericksons cite no authority for the contention that collateral

estoppel does not apply in an action under CR 60. They cite Corporate Loan & Security Co. v. Peterson, which stated after one year, "the only remedy available for the vacation of a judgment is an independent action in equity or a collateral attack." 64 Wn.2d 241, 244, 391 P.2d 199 (1964). However, the court in Corporate Loan & Security Co. does not hold collateral estoppel did not apply to these independent actions or collateral attacks.

Collateral estoppel prevents litigation of an issue if four elements are met. Hanson v. City of Snohomish, 121 Wn.2d 552, 561–62, 852 P.2d 295 (1993). The four elements are: (1) the issues presented in the previous and current adjudications are identical; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior adjudication; and (4) application of the doctrine does not work an injustice. Id.

Here, the Ericksons present identical issues as they did in a federal proceeding in 2010, and again in a superior court action in 2014. Deutsche Bank Nat. Tr. Co., No.73833-0-I slip op. at 2. In 2017, this court held collateral estoppel precluded the Ericksons' 2014 claim. See Id. at 2–3. We held the Ericksons were precluded from arguing Deutsche Bank does not possess the original note and therefore cannot foreclose. Id. at 3. In the present case, the Ericksons argue Deutsche Bank does not possess the valid, original, note, and therefore did not have standing to foreclose on their home. These issues are identical.

Second, both prior adjudications ended on a valid, final judgment on the merits. "[A] final judgment 'includes any prior adjudication of an issue in another

action that is determined to be sufficiently firm to be accorded conclusive effect.'" In re Dependency of H.S., 188 Wn. App. 654, 661, 356 P.3d 202 (2015). "A grant of summary judgment constitutes a final judgment on the merits and has the same preclusive effect as a full trial of the issue." Brownfield v. City of Yakima, 178 Wn. App. 850, 870, 316 P.3d 520 (2014) (quoting Nat'l Union Fire Ins. Co. of Pittsburgh v. Nw. Youth Servs., 97 Wn. App. 226, 233, 983 P.2d 1144 (1999)). The federal court for the Western District of Washington entered summary judgment against the Ericksons, as did the King County Superior Court in 2014. Deutsche Bank Nat. Tr. Co., No.73833-0-I, slip op. at 3, 6.

Third, the Ericksons were parties to both the federal proceeding and the superior court proceeding. Id. at 6.

Finally, 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. Each time, their claim has failed. During the hearing for a preliminary injunction, the Ericksons' counsel at the time was warned the court was concerned about whether the claim "is a proper use of your role as an officer of the court" and that the court would consider sanctions if counsel continued with the case. Collateral estoppel is designed to promote "judicial economy and serves to prevent inconvenience or harassment of parties. Also implicated are principles of repose and concerns about the resources entailed in repetitive litigation." Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299, 306–

07, 96 P.3d 957 (2004). Application of collateral estoppel is appropriate here, where the Ericksons bring a third identical claim against the same party.

The Ericksons also allege that if this court holds their collateral attack is barred by collateral estoppel, every collateral attack would be barred. They incorrectly anticipate the basis for our decision. Our decision does not rest upon the procedural posture of the Ericksons' claim as a collateral attack on a judgment, but on its substance. The Ericksons allege fraud based on the same facts as their prior litigation, which was decided on the merits. Because of the substance of their claim, it is barred by collateral estoppel. The trial court did not err in so finding.

C. Consideration of Evidence

The Ericksons also allege summary judgment was improper because the superior court never viewed the exhibits and declarations they submitted. This is based on the trial court's statements that it "didn't see" the Paatalo and Nora declarations when seeking to retrieve them within the digital record system. However, the trial court's initial confusion seemed to be because the declarations had been filed early in the life of the case, stating "I didn't realize I was going that far back in the record to look for them." The declarations were attached to the Ericksons' May 13, 2019 complaint, filed long before the hearing on June 6, 2020. There is no reason to believe the trial court neglected to review the declarations in the 13 months between the filing of the complaint and the summary judgment hearing simply because it could not pull up the declarations during the hearing. As Deutsche Bank notes, the trial court made specific rulings with respect to both

declarations in its written order. The Ericksons have brought forth no evidence to suggest that the trial court did not review these declarations prior to making its decision.

Additionally, the court explicitly noted on the record all it had "received and reviewed," before asking the Ericksons if there was "anything else that you filed that I should be considering?"—to which Ms. Erickson responded "I believe that's it." Therefore, any objection is waived by the Ericksons' failure to raise it below. See Fireside Bank, 195 Wn.2d at 374.

The trial court properly ruled there were no genuine disputes of material facts, and Deustche Bank was entitled to judgment as a matter of law. We affirm the trial court's summary judgment award in favor of Deutsche Bank.

II. Evidentiary Determinations

Finally, the Ericksons argue that the trial court erred by striking portions of the Nora declaration. We review evidentiary rulings related to a summary judgment motion de novo. Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 196 Wn.2d 506, 514, 475 P.3d 164 (2020) (quoting Wilkinson v. Chiwawa Cmtys. Ass'n, 180 Wn.2d 241, 249, 327 P.3d 614 (2014)). This is "consistent with the requirement that the appellate court conduct the same inquiry as the trial court." Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

"[E]videntiary error is grounds for reversal only if it results in prejudice." Bengtsson v. Sunnyworld Int'l, Inc., 14 Wn. App. 2d 91, 99, 469 P.3d 339 (2020) (quoting City of Seattle v. Pearson, 192 Wn. App. 802, 817, 369 P.3d 194 (2016)). "An error is prejudicial if 'within reasonable probabilities, had the error not occurred,

the outcome of the trial would have been materially affected.'" Id. The Ericksons have failed to demonstrate a reasonable probability that the outcome would have been different had the Nora declaration not been struck. Based on the court's decisions regarding timeliness and unavailability of affirmative relief under CR 60, as well as its decision on the basis of collateral estoppel, it is unlikely the outcome would have been different had the Nora declaration been admitted. The trial court did not abuse its discretion in excluding the Nora declaration.

The Ericksons fail to demonstrate any reversible error by the trial court below. We affirm the trial court's award of summary judgment in favor of Deutsche Bank.

Affirmed.

WE CONCUR:

REQUEST FOR JUDICIAL NOTICE
EXHIBIT 3

Search documents in this case: Search

No. 22A111

Title:	**John Earl Erickson, et ux., Applicants** **v.** **Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2004-6**
Docketed:	August 9, 2022
Lower Ct:	Court of Appeals of Washington, Division 1
Case Numbers:	(81648-9-1)

DATE	PROCEEDINGS AND ORDERS
Jul 29 2022	Application (22A111) to extend the time to file a petition for a writ of certiorari from August 2, 2022 to October 1, 2022, submitted to Justice Kagan. **Main Document** **Other** **Other** **Proof of Service** **Other**
Aug 09 2022	Application (22A111) granted by Justice Kagan extending the time to file until October 1, 2022.

NAME	ADDRESS	PHONE
Attorneys for Petitioners		
Wendy Alison Nora Counsel of Record	200 East Verona Ave., #13 Verona, WI 53593 accesslegalservices@gmail.com	6123334144
Party name: John Earl Erickson, et al.		

REQUEST FOR JUDICIAL NOTICE
EXHIBIT 4

Chief Civil Department

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

JOHN and SHELLEY ERICKSON, in Propria Persona,

Plaintiffs,

v.

VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON, AND LANCE OLSEN HOLTHUS, AND MCCARTHY,

Defendants.

No. 20-2-08633-9 KNT

ORDER GRANTING MOTION TO CONSOLIDATE AND REASSIGN

[Clerk's Action Required]

Date of Hearing: June 4, 2020
Without Oral Argument

This matter came before the Court on Defendants Select Portfolio Servicing, Inc., Stoel Rives LLP, Vanessa Power, Will Eidson, and John Glowney (collectively, "Defendants")' Motion to Consolidate and Reassign (the "Motion"). The Court has considered the pleadings and records on file herein, including:

1. Defendants Motion to Consolidate and Reassign;
2. Declaration of KC Hovda in Support of the Motion; and
3. Plaintiff's Response,
4. Plaintiff's Declaration
5. Defendants Reply

Based on the foregoing, and being fully advised on the premises, **THEREFORE, THE COURT ORDERS, ADJUDGES, AND DECREES THAT:**

1. Pursuant to CR 42(a), King County Superior Court Case No. 20-2-08633-9 KNT (the "2020 Case") is hereby consolidated for all purposes with the case currently pending before Judge Johanna Bender at King County Superior Court Case No. 19-2-12664-7 KNT (the "2019 Case"). Judge Johanna Bender will preside over this newly consolidated case. All filings going forward should be made in the lowest-number case, the 2019 Case, which shall be designated as the lead case.

DONE this 8 day of June, 2020.

The ~~Honorable~~ Judge Veronica Alicea Galvan

Presented by:

STOEL RIVES LLP

s/ KC Hovda
KC Hovda, WSBA No. 51291
KC.Hovda@stoel.com
600 University Street, Suite 3600
Seattle, WA 98101

Attorneys for Attorney for Defendants Select Portfolio Servicing, Inc., Stoel Rives LLP, Vanessa Power, Will Eidson, and John Glowney

CERTIFICATE OF SERVICE

I, Melissa Wood, certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101.

On May 21, 2020, I caused a copy of the foregoing document to be served upon the following individual(s) in the manner indicated below:

John and Shelley Erickson 5421 Pearl Ave.SE Auburn, WA 98092 Email: shelley206erickson@outlook.com *Plaintiffs, pro se*	☐hand delivery ☐facsimile transmission ☐overnight delivery ☒first class mail ☒efiling/email delivery

Executed on May 21, 2020, at Seattle, Washington.

Melissa Wood, Practice Assistant

REQUEST FOR JUDICIAL NOTICE
EXHIBIT 5

Chief Civil Department

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

JOHN and SHELLEY ERICKSON, in Propria Persona,

Plaintiffs,

v.

VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON, AND LANCE OLSEN HOLTHUS, AND MCCARTHY,

Defendants.

No. 20-2-08633-9 KNT

DEFENDANTS' MOTION TO CONSOLIDATE AND REASSIGN

Date of Hearing: June 4, 2020
Without Oral Argument

STOEL RIVES LLP
ATTORNEYS
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Defendants Select Portfolio Servicing, Inc. ("SPS"), Stoel Rives LLP, Vanessa Power, John Glowney, and Will Eidson (collectively "Defendants") seek reassignment and consolidation of this case with a related action filed by the same plaintiffs based on the same facts. Plaintiffs John and Shelley Erickson (the "Ericksons")' 141-page Complaint filed in this case (the "2020 Case") has common questions of law and fact with the Complaint the Ericksons filed on May 13, 2019 in a separate King County Superior Court Case that is currently pending before Judge Bender (the "2019 Case"). The heart of both actions is the Ericksons' argument that their mortgage holder, Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 (the "Trust") does not have authority to foreclose on their residence, and that counsel for the Trust and the Trust's mortgage servicer, SPS, have misrepresented to past courts that the Trust holds a valid, endorsed-in-blank Note. But the reality is that the Ericksons have not made a mortgage payment since July 2009 and multiple courts – including the Ninth Circuit and Washington Court of Appeals have previously rejected the same arguments the Ericksons make in both the 2019 and 2020 Cases and held the Trust does have standing to foreclose. Judge Bender, who has presided over the 2019 Case for the last year, is familiar with these issues. Thus, given the overlapping subject matter of the 2019 and 2020 Cases, as well as Judge Bender's experience with the 2019 Case, Defendants seek consolidation and reassignment of this 2020 Case with the 2019 Case before Judge Bender.

I. RELIEF REQUESTED

Pursuant to CR 42(a), Defendants seek consolidation and reassignment of this 2020 Case with the 2019 Case pending before Judge Bender.

II. STATEMENT OF FACTS

In 2006, the Ericksons purchased a house with a mortgage loan from Long Beach Mortgage Company (the "Note"). *See* Declaration of KC Hovda in Support of Motion to Consolidate and Reassign ("Hovda Decl."), Ex. C at *1. The Note is secured by a deed of trust ("Deed of Trust"). *Id.* Since July 2009, the Ericksons have been in default on the Note. *Id.*

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A. Courts Confirm in Two Prior Cases That the Trust Has Standing to Foreclose.

The main issue in both the 2019 and 2020 Cases – whether the Trust has standing to foreclose under the Note – has been conclusively decided by federal and state courts in two prior cases.

First, in August 2010, the Ericksons sued the Trust, Long Beach Mortgage Company, Washington Mutual Bank, and Chase Bank 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). *See* Hovda Decl., Ex. A. The Ericksons argued the Trust could not produce the Ericksons' original Note and therefore lacked standing to foreclose. *Id.* The District Court rejected the Ericksons' standing to foreclose argument, finding "[the Trust] provide[d] evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge." *Id.* at *1, 3. The ruling was upheld by the Ninth Circuit. Hovda Decl., Ex. B (*Erickson v. Long Beach Mortg. Co.*, 473 F. App'x 746 (9th Cir. 2012)).

Second, in 2014, the Trust filed a judicial foreclosure action against the Ericksons in King County Superior Court to foreclose on the Note and Deed of Trust. *See* Hovda Decl., Ex. C (*Deutsche Bank Nat'l Tr. Co. for Long Beach Mortg. Loan Tr. 2006-4 v. Erickson*, 197 Wn. App. 1068 (2017) (unpublished)). In that case, the Trust was represented by Stoel Rives and firm lawyers Vanessa Power, John Glowney, and Will Eidson, now named as defendants in the 2020 Case. The Superior Court granted summary judgment to the Trust and entered a judgment and decree of foreclosure ("the Foreclosure Judgment"). The Washington Court of Appeals affirmed the Foreclosure Judgment. The Court of Appeals held that collateral estoppel barred the Ericksons from arguing the Trust did not hold the original Note. *Id.* at p. 7. The Court of Appeals also found that "[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 that 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

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Ericksons." *Id.* at *3. The Court of Appeals also specifically rejected the same argument that the Ericksons make in the 2019 and 2020 Cases – i.e., that the Trust's "failure to originally include the endorsement in blank stamp is evidence that DBNTC is actually not the proper holder of the note." *Id.* at *3, n.1.

B. The 2019 Case is Filed and the Ericksons' Preliminary Injunction is Denied

On May 13, 2019, the Ericksons filed the 2019 Case against the Trust under Case No. 19-2-12664-7, seeking to set aside the Foreclosure Judgment. *See* Hovda Decl., ¶5, Ex. D. At the same time, the Ericksons filed a Motion for Temporary Restraining Order ("TRO") seeking to restrain the foreclosure sale then-scheduled for May 31, 2019. *See id.* at ¶6, Ex. D. A show cause hearing was held on May 24, 2019. *Id.* ¶6, Ex. E. The Trust opposed the injunction. *Id.* At the hearing, the Court heard the arguments of counsel and denied preliminary injunctive relief. *Id.* The Ericksons' counsel withdrew shortly after, and the Ericksons now act *pro se* in the 2019 Case. *Id.*

C. The Ericksons File Multiple Bankruptcies Which Stall the 2019 Case.

The Ericksons have filed multiple bankruptcy actions in the last year, which have operated to stay the 2019 Case for significant periods of time. Hovda Decl., ¶7.

First, on May 31, 2019, shortly after the Ericksons' counsel withdrew and they began acting *pro se* in the 2019 Case, the Ericksons filed a Notice that Shelley Erickson filed a Chapter 13 bankruptcy case in the Bankruptcy Court for the W.D. Washington, styled as Case No. 19-12026-TWD. *Id.* The 2019 Case was stayed from July 26, 2019 to September 26, 2019, until Shelley Erickson's bankruptcy was dismissed. *Id.,* Ex. F. Once the Stay was lifted, the Trust filed a Motion to Dismiss the 2019 Case on October 17, 2019. *Id.* ¶7.

Second, after the Trust's Motion to Dismiss was fully briefed and on the eve of argument, John Erickson filed for bankruptcy, which operated to stay the 2019 Case from November 14, 2019 to March 10, 2020. *Id.* ¶8, Exs. G, H. The March 10, 2020 Order lifting this latest stay

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provides: The "Parties shall note any dispositive motions for June 5, 2020 at 9:00 am." The Trust's Motion to Dismiss the 2019 Case is currently set for hearing on June 5, 2020.

III. STATEMENT OF ISSUES

Under CR 42(a) should this Court consolidate the 2019 and 2020 Cases in the interests of judicial efficiency and consistency, where both cases are brought by the same *pro se* plaintiffs, involve the same set of facts, and the same legal arguments about the Trust's standing to foreclose and *res judicata*?

IV. EVIDENCE RELIED UPON

This motion relies on the pleadings and records on file in this case, and the Declaration of KC Hovda in Support of Motion to Consolidate and Reassign, submitted herewith.

V. AUTHORITY

The 2019 Case and this 2020 Case involve common questions of law and fact. Joint resolution of the cases will ensure consistency in proceedings and avoid unnecessary costs and delay, consistent with Civil Rule 42(a). Civil Rule 42(a) provides:

> If actions before the court involve a common question of law or fact, the court may:
>
> (1) join for hearing or trial any or all matters at issue in the actions;
> (2) consolidate the actions; or
> (3) issue any other orders to avoid unnecessary cost or delay.

Courts have confirmed that Civil Rule 42(a) "confers substantial discretion on trial courts with respect to consolidation of common questions of law or fact." *W.R. Grace & Co. v. Dep't of Revenue,* 137 Wn.2d 580, 590, 973 P.2d 1011 (1999) (affirming trial court's consolidation of related actions). While consolidation is appropriate when there are common questions of law and fact, it is clear that cases need not be identical to be consolidated. *See Angelo v. Angelo*, 142 Wn. App. 622, 639, 175 P.3d 1096 (2008) (upholding consolidation of dissolution action with tort claims involving different standards of proof and different parties). As such, it is within this Court's broad discretion to order consolidation here.

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A. The 2019 and 2020 Cases Involve the Same Set of Alleged Facts, the Same Legal Arguments About the Trust's Standing To Foreclose, and the Same *Res Judicata* Defense.

Both the 2019 and 2020 Case involve the same legal claims, factual theories, and legal defenses. The Ericksons appear to make the bold accusation in both the 2019 and 2020 Cases that the Trust (though its counsel and the Trust's servicer, SPS) engaged in fraud to foreclose without authority on the Ericksons' home. Although it is difficult to understand the exact nature of the Ericksons' claims, it appears that the Ericksons contend in both suits that: (1) the original Note relied on by the Trust to foreclose is a purported forgery;[1] (2) the Trust's counsel has committed fraud by encouraging courts to rely on the forged Note;[2] (3) the Trust lacks standing to foreclose for a variety of reasons,[3] and (4) that prior courts adjudicating this case lack subject matter jurisdiction.[4] Thus, the Erickons' legal theory of harm is the same in both cases. Although the claims in the 2020 case are stated against the Trust's legal counsel and servicer, the heart of the allegations are the same – i.e., that the Trust has allegedly attempted to foreclose without authority based on fraudulent documents and that the defendants named in the 2020 Case helped in these efforts. [5]

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[1] *Compare e.g,* 2020 Complaint at Page 23, ¶22 ("The judges in all cases ruled with no authentic note"); *id.* Page 24, ¶28 (discussing "the forged fraud note"); *with* 2019 Complaint (Hovda Ex. D) at ¶5.16 ("the endorsement in blank on the document purporting to be the original Note was fabricated/forged.")

[2] *Compare e.g,* 2020 Complaint at Page 25, ¶33 ("STOEL AND RIVES & McCarthy and Holthus MISLEADS THE COURT BY CLAIMS DBNTC IS HOLDER IN DUE COURSE.") *with* 2019 Complaint (Hovda Ex. D) at ¶5.16 ("The Ericksons' Note displaying a forged endorsement in blank and the false representations by counsel for DBNTC were relied upon by the trial and appellate Courts.").

[3] *Compare e.g,* 2020 Complaint at Page 32, ¶49 ("Fraud defendants failed at non judicial foreclosure because they did not have the documents or authority to foreclose non judicially."); *with* 2019 Complaint (Hovda Ex. D) at ¶7.4.a.9 (discussing the "misrepresentation of standing"); *see also* Prayer for Relief.

[4] *Compare e.g.* 2020 Compaint at Page 25, ¶31 & Page 41 *with* 2019 Compl. at ¶¶9.8-9.11.

[5] *See e.g.* 2020 Complaint at Page 24, ¶27 ("Stoel and Rives and Holthus and McCarthy are under the limited power of attorney of the servicer SPS that was given by DBNTC who never held the Erickson mortgage., therefore have no authority by the Trust governing documents to

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The Ericksons' flawed legal theory about the Trust's standing in both cases involves the same set of facts – mainly, whether the Note is endorsed-in-blank. Further, the primary defense raised in both cases by the defendants (i.e., the Trust, its counsel, and its servicer) is and will be *res judicata* as the issue of whether the Trust has proper documents to foreclose has already been decided by trial and appellate courts at the federal and state level in Washington. *See* Hovda Decl., Exs. A-C.

In sum, because the 2019 and 2020 Cases involve the same flawed legal theory based on the same set of facts, and because the same dispositive defense of *res judicata* applies to both cases from the face of the pleadings, the actions should be consolidated.

B. Consolidation Would Ensure Consistency in Rulings on Related Matters and Avoid Unnecessary Costs and Delay.

Consolidation of the 2019 and 2020 Cases is appropriate in the interests of judicial efficiency and consistency. The Ericksons filed both cases seeking essentially the same relief, while the Trust has the same dispositive defenses in each case. Consolidation of the cases will help ensure judicial efficiency in handling related matters in the same court and allow for consistent rulings on related legal matters.

In addition, consolidation will avoid unnecessary costs and delay. As noted above, the Ericksons have successfully delayed the 2019 Case for almost a year by filing bankruptcies, while the Trust has always sought, and diligently pursued, a prompt resolution. Judge Bender knows this history and thus would be better equipped to ensure a speedy resolution of both cases. Prosecuting and defending in multiple actions necessarily involves additional time and costs and

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litigate against the Erickson's whom never had their note transferred to this Trust."); *id.* at Page 67 ("Vanessa Power, Stoel and Reves, Will Eidson, John Glowney, Select Portfolio Servicing, Holthus and McCarthy, and Lance Olsen, are engaged in piracy by an illegal fraud securitization ponzi scheme, have no authority to act due to fraud upon the court by a forged note and forged assignments and lack of any valid documents evidencing authority OR PERMISSION.").

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could be easily avoided through consolidation of the cases. Thus, it is the best interests of all parties, and the Court, to consolidate the 2019 and 2020 Cases.

VI. CONCLUSION

For the reasons stated above, Defendants Select Portfolio Servicing, Inc., Stoel Rives LLP, Vanessa Power, Will Eidson, and John Glowney respectfully request that this Court consolidate the 2019 Case and the 2020 Case and assign the 2020 case to Judge Bender.

I certify that this Motion contains 2,279 words, in compliance with Local Civil Rules.

DATED: May 21, 2020.

STOEL RIVES LLP

/s/ *KC Hovda*
KC Hovda, WSBA No. 51291
KC.hovda@stoel.com

Attorney for Defendants Select Portfolio Servicing, Inc., Stoel Rives LLP, Vanessa Power, Will Eidson, and John Glowney

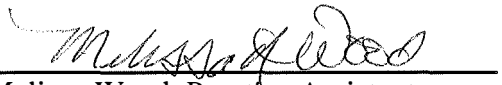
CERTIFICATE OF SERVICE

I, Melissa Wood, certify that at all times mentioned herein, I was and am a resident of the state of Washington, over the age of eighteen years, not a party to the proceeding or interested therein, and competent to be a witness therein. My business address is that of Stoel Rives LLP, 600 University Street, Suite 3600, Seattle, WA 98101.

On May 21, 2020, I caused a copy of the foregoing document to be served upon the following individual(s) in the manner indicated below:

John and Shelley Erickson 5421 Pearl Ave.SE Auburn, WA 98092 Email: shelley206erickson@outlook.com *Plaintiffs, pro se*	☐hand delivery ☐facsimile transmission ☐overnight delivery ☐first class mail ☒efiling/email delivery

Executed on May 21, 2020, at Seattle, Washington.



Melissa Wood, Practice Assistant

REQUEST FOR JUDICIAL NOTICE
EXHIBIT 6

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN E. ERICKSON, SHELLEY A. ERICKSON, and SHELLEY'S TOTAL BODYWORKS DAY SPA/SHELLEY'S SUNTAN PARLOR,

Plaintiffs,

v.

LONG BEACH MORTGAGE CO., WASHINGTON MUTUAL BANK, DEUTSCHE BANK NATIONAL TRUST COMPANY, and CHASE BANK,

Defendants.

CASE NO. 10-1423 MJP

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

This matter comes before the Court on Defendants' motion for summary judgment (Dkt. No. 51), and Plaintiffs' cross motion for summary judgment (Dkt. No. 82). Having reviewed the motions, Plaintiffs' response (Dkt. No. 81) and replies (Dkt. Nos. 67, 70, 72), Defendants' reply (Dkt. No. 73), and all related documents, the Court GRANTS Defendants' motion, DENIES Plaintiffs' motion, and DISMISSES this action.

Background

Plaintiffs John E. and Shelley A. Erickson, husband and wife, used their Auburn home to secure a $476,000 loan currently being serviced by Defendant JP Morgan Chase Bank NA ("Chase"). (Decl. of Thomas Reardon (Dkt. No. 54) at ¶ 4.) Shelley's Total Bodyworks Day Spa and Shelley's Suntan Parlor are sole proprietorships owned by the Ericksons. (Dkt. No. 14. at 2.) Plaintiffs first obtained the loan from Defendant Long Beach Mortgage Co. ("LBMC") on March 3, 2006, and entered into a fixed/adjustable rate note secured by a deed of trust. (Reardon Decl. at ¶ 4.) The loan was then sold into a pool of loans held in trust by Defendant Deutsche Bank National Trust ("DB"). (Id. at ¶ 6.) Defendant Washington Mutual Bank ("WaMu") took over the loan in 2006, when it merged with LMBC, taking over all its rights and obligations. (Id. at ¶ 9.)

After WaMu failed and entered FDIC receivership on September 25, 2008, Chase purchased WaMu assets—including Plaintiffs' loan—under a Purchase and Assumption Agreement ("P & A Agreement"). Purchase and Assumption Agreement Among Federal Deposit Insurance Corporation and JP Morgan Chase Bank, National Association, (Sept. 25, 2008), available at http://fdic.gov/about/freedom/Washington_mutual_p_and_a.pdf. Defendants request the Court follow other district courts in taking judicial notice of the P & A Agreement. (Dkt. No. 51 at 4 n.2.) The Court takes judicial notice of the P & A Agreement "because it is a public record and not the subject of reasonable dispute." Danilyuk v. JP Morgan Chase Bank, N.A., No. C10-0712JLR, 2010 WL 2679843, at *4 (W.D. Wash., July 2, 2010) (collecting cases).

In 2009, Plaintiffs sought to modify their loan through a program provided by Chase. (Id. at ¶ 10.) Plaintiffs claim they were told they must be three months in default to qualify for the

program, but that they avoided falling behind on their loan as long as they could. (Dkt. No. 14 at 34.) Chase delivered a "Trial Modification Package" ("Application Package") to Plaintiffs on May 19, 2009, and claims Plaintiffs submitted a "Home Affordable Modification Trial Period Plan" ("Trial Plan") application and hardship affidavit to Chase, signed May 19, and May 20, 2009. (Reardon Decl. at ¶ 10.) Although Defendants have produced the signed copy of the affidavit Plaintiffs submitted, the couple claims never to have received the Application Package. (Dkt. No. 14 at 47.) Plaintiffs claim an agent had already told them by phone they were approved for modification in April 2009. (Decl. of Shelley Erickson (Dkt. No. 84) at 4.)

The Application Package set out the steps necessary for Plaintiffs to have obtained their loan. It stated generally that Plaintiffs needed to explain their financial hardship, submit required documentation as to income and make timely monthly trial period payments. (Reardon Decl., Ex. E at 56.) The Application Package stated:

> If your income documentation does not support the income amount that you previously provided in our discussions, two scenarios can occur:
> 1) Your monthly payment under the Trial Period Plan may change
> 2) You may not qualify for this loan modification program.

(Id.)

Plaintiffs received a letter from Chase on May 29, 2009 regarding the Trial Plan. (Dkt. No. 7-1 at 2.) The letter instructed Plaintiffs to pay the modified rate instead of the regular rate during the Trial Plan period, and that "If you make all [3] trial period payments on time and comply with all of the applicable program guidelines, you will have qualified for a final modification." (Id.) Plaintiffs paid the modified rate from June through October 2009. (Erickson Decl. at 4.)

On October 13, 2009, Chase sent a letter rejecting Plaintiffs' loan modification due to insufficient credit. (Reardon Decl. at ¶ 11.) Plaintiffs filed suit in King County Superior Court

on August 11, 2010, seeking relief under various state and federal law theories. (Dkt. No. 1 at 2.) Defendants removed under this Court's original and supplemental jurisdiction on September 2, 2010. (Id.)

Analysis

Both parties move for summary judgment pursuant to Fed. R. Civ. P. 56. Plaintiffs' pleadings are vague and difficult to understand, and the Court characterizes the claims as best it can. Plaintiffs' claims fall into two groups: those arising from the March 2006 loan, and those arising after Chase took over servicing the loan in September 2008. The Court only considers the claims in Plaintiffs' second amended complaint, given that Plaintiffs failed to file an amended complaint after having been given leave to file an amended pleading. (Dkt. Nos. 14, 45.) Plaintiffs have failed to provide facts sufficient to establish the elements of any of the claims they pursue. Defendants are entitled to relief on their summary judgment motion.

A. Standard

Summary judgment is appropriate when a party fails to establish the existence of an essential element of their case for which they bear the burden of proof. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When a non-moving party has made no such showing, "the moving party may simply point to the absence of evidence." In re Brazier Forest Prod. Inc., 921 F.2d 221, 223 (9th Cir. 1990). The Ninth Circuit asks courts to give pro se petitioners "the benefit of any doubt" when interpreting their pleadings. Bretz v. Kelman, 773 F.2d 1026, 1027 n.1 (9th Cir. 1985). However, conclusory allegations, even when included in a signed affidavit, will not survive summary judgment. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990).

B. Claims Arising from the 2006 Loan

As best the Court can understand from Plaintiffs' pleadings, Plaintiffs advance three claims traceable to LBMC's allegedly deceptive conduct during the loan process, and the invalidity of the note securing Plaintiffs' loan: (1) rescission under the Truth In Lending Act ("TILA"), (2) declaratory or injunctive relief preventing foreclosure, and (3) damages under TILA or various tort theories. These claims are legally barred or lacking in merit.

1. Rescission

Plaintiffs' rescission claims are time-barred. Claims for rescission under TILA must be brought within three years of a loan's consummation. 15 U.S.C. § 1635(f). The loan from LBMC was consummated in 2006, more than five years before Plaintiffs filed suit in August of 2010. (Reardon Decl. at ¶ 4.) Plaintiff failed to bring suit within three years of their loan's consummation. Plaintiffs cannot pursue a TILA rescission claim. The Court GRANTS Defendants' motion and DISMISSES Plaintiffs' rescission claim under TILA.

2. Declaratory or injunctive relief

Plaintiffs assert Defendants are not entitled to foreclose on their house, and appear to seek either a declaration of Defendants' lack of interest in the property, or an injunction against foreclosure. The Court finds no merit to this claim.

Plaintiffs' argument rests on the contention that Defendants lack standing to foreclose because they are not the original creditors, and cannot produce the original note. Courts "have routinely held that [this] so-called 'show me the note' argument lacks merit." Freeston v. Bishop, White & Marshall, P.S., No. C09-5560BHS, 2010 WL 1186276 (W.D. Wash. Mar. 24, 2010) (quoting Diessner v. Mortg. Elec. Registration Sys., 618 F. Supp. 2d 1184, 1187 (D. Ariz. 2009) (collecting cases)). The Court agrees with these cases. More importantly, Defendants provide evidence demonstrating their ownership of the note, which the Ericksons do not credibly

challenge. The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to claims for a declaration or an injunction against foreclosure. The Court DISMISSES this claim.

3. Damages

Plaintiffs advance TILA and fraud claims for damages arising from the March 2006 loan process. The Court agrees with Defendants that they are not the proper parties to these claims.

When WaMu entered receivership, the FDIC assumed liability associated with borrower claims. Yeomalakis v. F.D.I.C., 562 F.3d 56, 60 (1st Cir. 2009). Chase "assume[d] all mortgage servicing rights and obligations" from the FDIC. P & A Agreement, § 2.1. However, the P & A Agreement provides that

> any liability associated with borrower claims for payment of or liability to any borrower for monetary relief . . . arising in connection with [WaMu's] lending or loan purchase activities are specifically not assumed by [Chase].

Id. at § 2.5. Previous courts considering the P & A Agreement have held that it "reliev[es] Chase of all liability for borrowers' claims relating to loans made by Washington Mutual prior to September 25, 2008." Danilyuk, 2010 WL 2679843, at *4 (collecting cases). The FDIC retains any of WaMu's liability stemming from Plaintiffs' initial loan. Plaintiff has not sued the FDIC, which appears to be the proper party. Plaintiffs have produced no facts supporting claims for damages against DB, and LBMC no longer exists.

The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to all claims for damages relating to the 2006 loan process. The Court DISMISSES these claims for damages.

B. Claims Arising After 2008

Plaintiffs appear to pursue nine claims arising out of Defendants' conduct after Chase assumed WaMu's loan servicing obligations. Plaintiffs assert claims for (1) Racketeering Influenced and Corrupt Organizations ("RICO") Act violations, (2) mail fraud, (3) wire fraud, (4) money laundering, (5) Washington's Criminal Profiteering Act violations, (6) fraud, (7) promissory estoppel, and (8) intentional infliction of emotional distress. Plaintiffs have not shown evidence necessary to sustain these claims in the face of Defendants' summary judgment motion.

1. RICO

Plaintiffs claim Defendants violated RICO by engaging in mail fraud, wire fraud, and money laundering. Plaintiffs have not shown facts supporting a necessary element of a RICO claim.

To state a claim under RICO, a plaintiff "must allege facts tending to show that he or she was injured by the use or investment of racketeering income." Nugget Hydroelectric, L.P. v. Pacific Gas and Elec. Co., 981 F.2d 429, 437 (9th Cir. 1992). Allowing recovery without showing harm from racketeering income would "allow recovery for an injury arising from a mere element of a violation, rather than an actual violation." Id.

Plaintiffs point to no facts in the record showing the necessary element of harm caused by Defendants' use or investment of income. The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to RICO claims. The Court DISMISSES this claim.

2. Mail fraud, wire fraud, and money laundering

Plaintiffs have no legal claim for mail fraud, wire fraud, or money laundering independent of RICO. The federal mail and wire fraud statutes, 18 U.S.C. §§ 1341, 1343, provide no private cause of action for mail or wire fraud. See, e.g., Blake v. Irwin Mortgage, No.

CV-10-2435-PHX-GMS, 2011 WL 98538 (D. Ariz., Jan. 12, 2011). Similarly, there is no individual cause of action for money laundering under 18 U.S.C. §§ 1956, 1957. See, e.g., El Camino Resources, LTD. v. Huntington Nat. Bank, No. 1:07-cv-598, 2010 WL 2651617 (W.D. Mich., July 1, 2010). The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to independent mail fraud, wire fraud, or money laundering claims. The Court DISMISSES these claims.

3. Criminal Profiteering Act

Plaintiffs claim that Defendants violated Washington's Criminal Profiteering Act, Chapter 9A.82 RCW, by engaging in mortgage fraud. This cause of action cannot be advanced.

The Criminal Profiteering Act gives a private remedy to plaintiffs injured by an act of criminal profiteering, including mortgage fraud. RCW 9A.82.100; RCW 9A.82.010(4)(qq). Until July of 2010, mortgage fraud included fraud or deception "in connection with making, brokering, or obtaining a residential mortgage loan." RCW 19.144.080 (2008). The definition of mortgage fraud was extended to include loan modification by an amendment which became effective July 1, 2010. 2010 Wash. Legis. Serv. Ch. 35 § 12 (West). The amendment contains no legislative intent of retroactive application, and thus does not apply before its effective date. See Howell v. Spokane & Inland Empire Blood Bank, 114 Wn.2d 42, 47 (1990).

Because the amendment does not apply retroactively, the Court looks to the statute in effect at the time the allegedly fraudulent behavior occurred. However, during the time Plaintiffs sought and were ultimately denied loan modification, the earlier version of the statute was in effect—which did not apply to loan modification. Thus, Plaintiffs cannot establish a Criminal Profiteering Act claim based on mortgage fraud committed by Defendants during the 2009 loan modification process. Moreover, Plaintiffs have not shown sufficient evidence of deception or

fraud in the modification process, as explained in more detail below. The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to the Criminal Profiteering Act claim. The Court DISMISSES this claim.

4. Tort claims

Defendants argue Washington's independent duty doctrine bars Plaintiffs' tort claims. The Court disagrees with Defendants' broad interpretation of that doctrine.

The independent duty doctrine is a facet of Washington's economic loss rule, which precludes tort recovery for purely economic loss within a contractual relationship unless an independent duty can be established. Eastwood v. Horse Harbor Found., Inc., 241 P.3d 1256, 1264 (Wash. 2010). The rule does not bar claims of misrepresentation, non-economic damage, or claims arising independently of a contract. Id. at 1261. Thus, the economic loss rule does not bar Plaintiffs' claims of (1) fraud, (2) promissory estoppel, or (3) intentional infliction of emotional distress. However, as explained below, there are independent reasons for dismissing all of Plaintiffs' tort claims.

a. Fraud

Plaintiffs claim Defendants engaged in fraud by misleading them into thinking they had been or would be approved for loan modification. Plaintiffs have not shown facts establishing necessary elements of a fraud claim.

A party claiming fraud must show each of nine elements: (1) representation of an existing fact, (2) materiality, (3) falsity, (4) the speaker's knowledge of its falsity, (5) intent of the speaker that it should be acted upon by the plaintiff, (6) plaintiff's ignorance of its falsity, (7) plaintiff's reliance on the truth of the representation, (8) plaintiff's right to rely upon it, and (9) damages suffered by the plaintiff. Steineke v. Russi, 145 Wn. App. 544, 563 (2008) (quoting

Stiley v. Block, 130 Wn.2d 486, 505 (1996)). Plaintiffs' evidence fails to establish the first element.

Plaintiffs claim they were told over the phone they were approved for a modification, but offer no specifics or evidence of the call. This conclusory claim is insufficient to raise a genuine issue of fact for summary judgment purposes. Lujan, 497 U.S. at 888. It is also contradicted by the letters Defendants have submitted that clearly show Plaintiffs were only offered the chance to enroll in the loan modification program, not that they had been enrolled. (Reardon Decl., Ex. E at 56.) Plaintiffs' best argument for fraud is the May 29 letter, which implies that three months' timely payment during the Trial Plan would suffice to qualify them for a loan. However, the letter at best is a promise to modify the loan in the future, not an "existing fact." "A promise of future performance is not a representation of an existing fact and will not support a fraud claim." West Coast, Inc. v. Snohomish County, 112 Wn. App. 200, 206 (2002). Because they have shown at best only a future promise, Plaintiffs have not established the first element of fraud.

Plaintiffs also have not provided or pointed to any specific facts showing their damages, the ninth element of fraud. It may be that they made higher payments under the Trial Plan than they would have otherwise, but they have provided no evidence of this fact. Moreover, it is unclear how payment on an outstanding debt constitutes damages. However, even with evidence of damages, Plaintiff's fraud claim would fail because they have not provided any evidence to support the first element.

The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to the fraud claim. The Court DISMISSES this claim.

b. Promissory estoppel

Plaintiffs claim promissory estoppel based on Defendants' alleged promise of loan modification. Plaintiffs have not shown facts establishing necessary elements of the claim.

A party claiming promissory estoppel must show each of five elements: (1) a promise (2) the promisor should reasonably expect to cause the promisee to change position (3) which does cause the promisee to change position (4) justifiably relying on the promise, in such a manner that (5) injustice can only be avoided by enforcing the promise. Havens v. C & D Plastics, 124 Wn.2d 158, 171–72 (1994). Plaintiffs' evidence fails to establish the first element.

The first element requires a "clear and definite" promise. Id. at 173. A promise which is conditioned on the future signing of documents fails to satisfy this requirement. Pacific Cascade Corp. v. Nimmer, 25 Wn. App. 552, 559 (1980). The defendant in Pacific Cascade executed a letter of intent to enter into a lease, after extended negotiations. Id. at 554–55. Even though the letter clearly expressed the defendant's intent to enter into the lease, the court held it would not support a claim of promissory estoppel. Id. at 559. The court held that even if the letter constituted a promise, "its terms were expressly conditioned upon the subsequent execution of a written document" (the lease), without which the promise was unenforceable. Id.

The Plaintiffs have not provided specific evidence sufficient to establish a service agent made a promise over the phone, as explained above. Plaintiffs' best support for their promissory estoppel claim is the May 29 letter. However, that letter at most promises that Defendants would execute a loan modification if Plaintiffs made all trial period payments on time "and compl[ied] with all of the applicable program guidelines." (Dkt. No. 7-1 at 2.) The loan modification would only become effective "[u]pon execution . . . by the Lender and [Plaintiffs]." (Reardon Ex. E., at 63.) Because any promise in the May 29 letter was conditioned on future execution of the modification documents, it does not establish the first element of promissory estoppel.

Accordingly, the Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to the promissory estoppel claim. The Court DISMISSES this claim.

c. Intentional Infliction of Emotional Distress

Plaintiffs contend Defendants' denial of loan modification constitutes intentional infliction of emotional distress ("IIED"). Plaintiffs have not shown facts supporting the necessary elements of an IIED claim.

A party claiming IIED must show each of three elements: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to plaintiff of severe emotional distress. Kloepfel v. Bokor, 149 Wn.2d 192, 195 (2003). Plaintiffs' evidence fails to establish the first or second element.

"The first element [of IIED] requires proof that the conduct was so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." Robel v. Roundup Corp., 148 Wn.2d 35, 51 (2002). Default and foreclosure proceedings generally do not rise to the level of extreme and outrageous conduct. See, e.g., Thepvongsa v. Regional Trustee Servs. Corp., No. C10-1045 RSL, 2011 WL 307364, at *3–4 (W.D. Wash. Jan 26, 2011). Denying a loan modification which might result in foreclosure is no more "outrageous in character" than actually foreclosing. Because Plaintiffs have provided no specific evidence of Defendants' outrageous conduct beyond loan modification denial, they fail to establish the first element of an IIED claim.

The second IIED element requires intentional or reckless conduct, not mere bad faith or malice. Dicomes v. State, 113 Wn.2d 612, 631 (1989). Because Plaintiffs offer no specific facts showing Defendants' mental state, they fail to establish the second element of IIED.

The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to the IIED claim. The Court DISMISSES this claim.

Conclusion

Plaintiffs are not entitled to pursue any of their claims against the Defendants arising from the 2006 loan process. Plaintiffs have also failed to show evidence supporting necessary elements of each of their claims arising from the 2009 loan modification process. Plaintiffs' motion is DENIED with respect to all claims. Given Plaintiffs' failure to show specific facts supporting elements necessary to each of the claims, Defendants' motion is GRANTED with respect to all claims. The Court DISMISSES Plaintiffs' entire action with prejudice.

The clerk is ordered to provide copies of this order to all counsel and Plaintiffs.

Dated this 2nd day of March, 2011.

Marsha J. Pechman
United States District Judge

REQUEST FOR JUDICIAL NOTICE
EXHIBIT 7

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOHN E. ERICKSON and SHELLEY A. ERICKSON, husband and wife; SHELLEY'S TOTAL BODYWORKS DAY SPA/SHELLEY'S SUNTAN PARLOR, a sole proprietorship, Plaintiffs, v. LONG BEACH MORTGAGE CO., WASHINGTON MUTUAL BANK and CHASE BANK, Agent for Deutsche Bank National Trust, Servicing Agent for Chase Bank, Loan No. 0697646826, Defendants.	No. 2:10-cv-1423 NOTICE OF REMOVAL ***Clerk's Action Required***

TO: Clerk, United States District Court for the Western District of Washington

AND TO: Plaintiffs John E. Erickson and Shelley A. Erickson; Shelley's Total Bodyworks Day Spa/Shelley's Suntan Parlor

Defendants Deutsche Bank National Trust Company ("Deutsche Bank"), as Trustee for Long Beach Mortgage Loan Trust 2006-4, and JPMorgan Chase Bank, N.A. ("Chase") — improperly captioned as "Chase Bank" — as acquirer of certain assets and liabilities of Washington Mutual Bank (which was the successor-in-interest to Long Beach Mortgage Company), from the Federal Deposit Insurance Corporation, acting as Receiver for Washington Mutual Bank (collectively, Deutsche Bank and Chase are referred to herein as "Defendants"), hereby remove the above-captioned cause, originally filed in the Superior

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Court of the State of Washington in and for King County, to the United States District Court for the Western District of Washington. Defendants remove the case pursuant to 28 U.S.C. §§ 1441 and 1446, on the grounds set forth below:

1. On August 11, 2010, Plaintiffs filed this action in the Superior Court of the State of Washington in and for King County under Cause No. 10-2-29165-2. Defendants received a copy of the Complaint via certified mail on August 17, 2010. This Notice of Removal is timely under 28 U.S.C. § 1446(b) as it is being filed within 30 days of receipt of the Complaint. A copy of the complete state court record is attached as Exhibit A to the Verification of State Court Records, which will be filed within ten days of the filing of this Notice of Removal, as required by 28 U.S.C. § 1446(a) and Local Civil Rule 101(b) for the Western District of Washington.

2. The Complaint alleges causes of action under the Racketeer Influenced and Corrupt Organizations Act ("RICO") (Complaint, pp. 11; 15), 18 U.S.C. § 1964, the Money Laundering Act, 18 U.S.C. §§ 1956-1957 (Complaint, p.17), and the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 (Complaint, pp. 7-10). Thus, this is a civil action over which this Court has original jurisdiction under 28 U.S.C. § 1331.

3. This action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441(b) because it is a civil action founded on a claim or right arising under the laws of the United States. This action is removable without regard to the citizenship or residence of the parties.

4. Removal is proper to the Western District of Washington at Seattle because the district and division embrace King County, Washington.

5. All state law claims asserted by Plaintiffs in their Complaint relate to and arise from the same nucleus of operative facts as the federal questions. The state law claims do not raise novel or complex state law issues, and do not substantially predominate over the federal claims. Accordingly, pursuant to 28 U.S.C. §§ 1367(a) and 1441(c), this Court has supplemental jurisdiction to hear and decide all claims asserted by Plaintiffs in the Complaint.

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6. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the King County Superior Court.

WHEREFORE, Defendants respectfully give notice that the above-entitled action is removed from the King County Superior Court to the United States District Court for the Western District of Washington at Seattle.

DATED this 2nd day of September, 2010.

Davis Wright Tremaine LLP
Attorneys for Deutsche Bank National Trust Company and JPMorgan Chase Bank, N.A.

By s/*Josh Rataezyk*

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CERTIFICATE OF SERVICE

I declare under penalty of perjury that on September 2nd, 2010, I caused a copy of the foregoing Notice of Removal to be served upon the Plaintiffs:

John E. Erickson and Shelley A. Erickson 5421 Pearl Ave. SE Auburn, WA 98092	(X) ( ) ( ) ( )	By U. S. Mail By E-Service By Facsimile By Messenger

DATED at Seattle, Washington this 2nd day of September, 2010.

s/ *Josh Rataezyk*
Josh Rataezyk

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REQUEST FOR JUDICIAL NOTICE
EXHIBIT 8

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee for Long Beach Mortgage Loan Trust 2006-4,

Respondent,

v.

JOHN E. ERICKSON AND SHELLEY A. ERICKSON, individuals residing in Washington;

Appellants,

BOEING EMPLOYEES' CREDIT UNION, a Washington corporation; AMERICAN GENERAL SERVICES, INC., a Delaware corporation; TBF FINANCIAL, LLC, an Illinois limited liability corporation; JUSTIN PARK & ROMERO PARK & WIGGINS, PS, a Washington Professional Services Corporation; RANDAL EBBERSON, an individual residing in Washington; THE LAW FIRM OF KEATING BUCKLIN & McCORMACK, INC., PS, a Washington professional services corporation; CITY OF AUBURN, WASHINGTON, a Washington municipality; CHARLES JOINER, an individual residing in Washington; PAUL KRAUSS, an individual residing in Washington; DAN HEID, an individual residing in Washington; SHELLEY COLEMAN, an individual residing in Washington; BRENDA HEINEMAN, an individual residing in

No. 73833-0-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: February 13, 2017

Washington; and THE WASHINGTON CITIES INSURANCE AUTHORITY, a municipal organization of Washington public entities,

Defendants,

JPMORGAN CHASE BANK, N.A., a national banking association; LONG BEACH MORTGAGE LOAN TRUST, 2006-4; JOHN DOES 1-99,

Third Party Defendants.

APPELWICK, J. — Deutsche Bank National Trust Co. (DBNTC) filed suit to foreclose on the Ericksons' home. The Ericksons argue that DBNTC has failed to show that it possesses the original note, and therefore it has no standing to foreclose. DBNTC argues that it is entitled to foreclosure because it produced the original note, and that the Ericksons are collaterally estopped from arguing otherwise. The trial court granted summary judgment in favor of DBNTC. We affirm.

FACTS

John and Shelly Erickson purchased a house in 2006 with a loan from Long Beach Mortgage Company. The Ericksons and Long Beach executed a deed of trust with Old Republic Title Ltd. as trustee. Long Beach was a part of Washington Mutual Inc. Washington Mutual failed and JPMorgan Chase Bank National Association purchased its assets. Shortly after executing the loan, Long

Beach sold the loan into Long Beach Mortgage Loan Trust 2006-4 (LBMLT). DBNTC was the trustee of the LBMLT.

The Ericksons defaulted on their payments in 2009. In 2010, the Ericksons filed suit against Long Beach, JP Morgan Chase, and Deutsche Bank, seeking various forms of relief. Erickson v. Long Beach Mortg. Co., No. 10-1423 MJP, 2011 WL 830727 (W.D. Wash. Mar. 2, 2011), aff'd, 473 F. App'x 746 (9th Cir. 2012). After removal to federal court, that lawsuit was dismissed on summary judgment. Id. at *2. The court held that the defendants provided sufficient evidence to prove their ownership of the 2006 note. Id. at *3.

Later, on January 31, 2013, JP Morgan assigned all beneficial interest under the deed of trust to DBNTC. DBNTC filed this lawsuit seeking foreclosure on the Ericksons' property in January 2014. DBNTC moved for summary judgment, arguing that it was entitled to foreclosure, because it possessed the note. DBNTC presented the original note with an endorsed in blank stamp at the summary judgment hearing. It also attached a copy of this original note to its attorney's declaration. The trial court granted DBNTC's motion for summary judgment and denied the Ericksons' motion for reconsideration. The Ericksons appeal.

ANALYSIS

First, DBNTC argues that collateral estoppel bars the Ericksons from contesting DBNTC's claim that it possesses the original note. Second, the

Ericksons argue that DBNTC has not shown that it possesses the note and therefore is not entitled to foreclosure.

We review summary judgment orders de novo, taking all facts and inferences in the light most favorable to the nonmoving party. Estate of Haselwood v. Bremerton Ice Arena, Inc., 166 Wn.2d 489, 497, 210 P.3d 308 (2009). Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Ranger Ins. Co. v. Pierce County, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). A party resisting summary judgment cannot satisfy his or her burden of production merely by relying on conclusory allegations, speculative statements, or argumentative assertions. Boguch v. Landover Corp., 153 Wn. App. 595, 610, 224 P.3d 795 (2009). Rather, the nonmoving party must set forth specific facts demonstrating a genuine issue of fact. Id.

I. Collateral Estoppel

The Ericksons argue that DBNTC has not shown that it holds the original note. DBNTC responds that the 2010 federal lawsuit collaterally estops the Ericksons' argument that Deutsche Bank has not shown that it possesses the note. In that suit, the Ericksons argued that the defendants did not provide evidence that they held the note. The federal court's entire analysis of this argument was as follows:

> Plaintiffs' argument rests on the contention that Defendants lack standing to foreclose because they are not the original creditors,

> and cannot produce the original note. Courts "have routinely held that [this] so-called 'show me the note' argument lacks merit." Freeston v. Bishop, White & Marshall, *P.S.*, No. C09–5560BHS, 2010 WL 1186276 (W.D.[ ]Wash. Mar.[ ]24, 2010) (quoting Diessner v. Mortg. Elec. Registration Sys., 618 F.Supp.2d 1184, 1187 (D. Ariz. 2009) (collecting cases)[, aff'd, 384 Fed. App'x 609 (9th Cir. 2009)]). The Court agrees with these cases. More importantly, Defendants provide evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge. The Court GRANTS Defendants' motion and DENIES Plaintiffs' motion with respect to claims for a declaration or an injunction against foreclosure. The Court DISMISSES this claim.

Erickson, 2011 WL 830727, at *3 (first alteration in original) (emphasis added).

The doctrine of collateral estoppel prevents relitigation of an issue after the party estopped has had a full and fair opportunity to present its case. Hanson v. City of Snohomish, 121 Wn.2d 552, 561, 852 P.2d 295 (1993). The party seeking collateral estoppel must establish four elements: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the argument is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. Hadley v. Maxwell, 144 Wn.2d 306, 311-12, 27 P.3d 600 (2001). Although the doctrine is usually characterized as an affirmative defense, it is equally available to plaintiffs and may be applied "offensively" to bar a defendant from relitigating issues in a second proceeding. State Farm Fire & Cas. Co. v. Ford Motor Co., 186 Wn. App. 715, 722, 346 P.3d 771 (2015).

All four collateral estoppel elements are satisfied here. First, the issues are identical. Hadley, 144 Wn.2d at 311-12. In the federal case, the Ericksons alleged that the defendants lacked standing to foreclose because they were not the original creditor and could not produce the original note. Erickson, 2011 WL 830727, at *3. The Ericksons' main argument in this appeal is that DBNTC has failed to show that it possesses the original note. The Ericksons make the same argument in both cases: that DBNTC has not produced enough evidence to prove ownership of the original note and therefore cannot foreclose. These issues are identical.

The "final judgment on the merits" element is also met. Id. A final judgment includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect. In re Dependency of H.S., 188 Wn. App. 654, 661, 356 P.3d 202 (2015). The federal court entered summary judgment against the Ericksons on all issues, including their claim on possession of the note, and the Ninth Circuit Court of Appeals affirmed. Erickson, 2011 WL 830727, at *7; Erickson, 473 F. App'x at 746. The resolution of the 2010 suit constitutes a final judgment on the merits.

The Ericksons argue that the identity of party element is not satisfied, because in this case Deutsche Bank is appearing as "Deutsche Bank National Trust Company, a Trustee for Long Beach Mortgage Loan Trust 2006-4," while in the federal case it appeared only as "Deutsche Bank National Trust Company."

(Emphasis added.) But, the standard requires that only the party against whom collateral estoppel is being asserted was a party to the prior case. Hadley, 144 Wn.2d at 311-12. The Ericksons were a party to the federal case. Erickson, 2011 WL 830727, at *1. And, even if the standard required DBNTC to be a party to the prior case, it was. Id. Regardless of whether DBNTC appeared on its own behalf or as a trustee in the federal case, it was clearly "a party to or in privity with a party to the prior adjudication." Hadley, 144 Wn.2d at 311-12. The identical party element is satisfied.

Finally, applying collateral estoppel will not work an injustice against the Ericksons. The Ericksons make no substantive argument on this element. Applying collateral estoppel may seem unjust because the Ericksons were not represented by counsel in the federal case. But, they made the conscious choice to pursue those claims pro se. See Edwards v. LaDuc, 157 Wn. App. 455, 464, 238 P.3d 1187 (2010) ("[T]he trial court must treat pro se parties in the same manner it treats lawyers."). Enforcing collateral estoppel here would not amount to an injustice.

We hold that collateral estoppel bars the Ericksons' arguments that Deutsche Bank does not hold the original note.

II. Possession of the Note

Even 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.

Brown v. Dep't of Commerce, 184 Wn.2d 509, 536, 359 P.3d 771 (2015). Presentation of the original note at a summary judgment hearing is sufficient to prove a party's status as holder of the note. Deutsche Bank Nat. Trust. Co. v. Slotke, 192 Wn. App. 166, 175, 367 P.3d 600, review denied, 185 Wn.2d 1037, 377 P.3d 746 (2016).

DBNTC attached a copy of the note to its attorney's summary judgment declaration. That copy included an endorsement in blank.[1] The summary judgment hearing transcript also shows that DBNTC presented an original copy of the note at the summary judgment hearing. Because DBNTC 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.

The Ericksons make a number of counterarguments. First, the Ericksons argue that DBNTC should not be entitled to foreclosure because it has failed to explain how it came into possession of the note. The Ericksons do not provide any legal support for their argument that, despite possessing the note, DBNTC

[1] The copy of the note attached to the complaint did not include the endorsed in blank stamp. DBNTC attached a copy of the note with the endorsed in blank stamp in support of its summary judgment motion. The Ericksons argue that DBNTC's failure to originally include the endorsement in blank stamp is evidence that DBNTC is actually not the proper holder of the note. But, this argument is merely speculative. See Boguch, 153 Wn. App. at 610 ("[A] party resisting summary judgment cannot satisfy his or her burden of production merely by relying on conclusory allegations, speculative statements, or argumentative assertions. Rather, the nonmoving party 'must set forth' specific facts demonstrating a genuine issue of fact." (citation omitted) (quoting Las v. Yellow Front Stores, Inc., 66 Wn. App. 196 198, 831 P.2d 744 (1992)).

cannot enforce the note if it cannot explain all previous transfers of the note. DBNTC produced the original note endorsed in blank. That alone allows DBNTC to enforce it. RCW 62A.1–201(21)(A) (defining "holder" as "[t]he person in possession of a negotiable instrument."); RCW 62A.3–205(b) ("When [e]ndorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially [e]ndorsed."); see also Brown, 184 Wn.2d at 536 ("As the holder of the note [endorsed in blank], M & T Bank is entitled to enforce the note."); Deutsche Bank, 192 Wn. App. at 173 ("[I]t is the holder of the note who is entitled to enforce it. It is not necessary for the holder to establish that it is also the owner of the note secured by the deed of trust.").

Second, the Ericksons argue that the note was not properly authenticated. DBNTC's attorney submitted the note as an exhibit to his declaration. The note is commercial paper. See United States v. Varner, 13 F.3d 1503, 1508 n.5 (11th Cir. 1994). Under ER 902(i), commercial paper qualifies as a self-authenticating document. See, e.g., Varner, 13 F.3d 1508-09 ("Mere production of a note establishes prima facie authenticity and is sufficient to make a promissory note admissible.") (emphasis added)).

Third, the Ericksons argue that the note constitutes inadmissible hearsay. Statements that have "operative legal effect" are not subject to the prohibition on hearsay. ARONSON & HOWARD, THE LAW OF EVIDENCE IN WASHINGTON § 10.05[2][f] (5th ed. 2016). The note is a legally enforceable promise to pay and it therefore

has independent legal significance. See Kepner-Tregoe, Inc. v. Leadership Software, Inc., 12 F.3d 527, 540 (5th Cir. 1994) (" 'Signed instruments such as wills, contracts, and promissory notes are writings that have independent legal significance and are not hearsay.' " (quoting THOMAS A. MAUET, FUNDAMENTALS OF TRIAL TECHNIQUES 180 (1988)). The promissory note was self-authenticating and not subject to the prohibition on hearsay.

Fourth, the Ericksons argue without citation to authority that notes are tantamount to a conveyance of real property, and therefore should be subject to the statute of frauds'[2] protections. Washington cases involving enforcement of notes have not identified the statute of frauds as an impediment to foreclosure. See, e.g., Slotke, 192 Wn. App. at 173 ("[I]t is the holder of a note who is entitled to enforce it."); Brown, 184 Wn.2d at 535-36 ("M & T Bank is the holder of Brown's note because M & T Bank possesses the note and because the note, having been indorsed in blank, is payable to the bearer."). The statute of frauds does not bar DBNTC's enforcement of the note.

III. Amount of Judgment

The Ericksons also argue that, besides the note itself, DBNTC submitted no evidence to support the monetary judgment entered against them. But, the note is evidence of the debt. The trial court entered a judgment and decree of foreclosure against the Ericksons for the $465,047.67 loan principal and

[2] RCW 64.04.020.

$253,354.11 in interest. The Ericksons do not challenge the mathematical calculation of the amount due under the note, but stress the fact that no additional evidence of the amount was offered. Payment is an affirmative defense under Washington law. U.S. Bank Nat'l Ass'n v. Whitney, 119 Wn. App. 339, 347, 81 P.3d 135 (2003). The Ericksons did not assert any payment defense in their answer. Thus, they cannot now challenge the principal and interest owed under the note.

IV. Attorney Fees

The Ericksons have requested attorney fees. Because we affirm summary judgment against the Ericksons, we deny their request for attorney fees.

We affirm.

WE CONCUR:

SHELLEY ANN ERICKSON - FILING PRO SE

August 19, 2022 - 2:54 PM

Transmittal Information

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