(Division I appeal #69194-5-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SCOTT C TOWNLEY and STEPHANIE A TASHIRO-TOWNLEY,
Defendants/Appellants/Petitioners

vs.

BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK,
TRUSTEE FOR CERTIFICATE HOLDERS CWABS, INC. ASSET BACKED CERTIFICATES, 2005-10, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AND OCWEN LOAN SERVICING LLC
Plaintiffs/Respondents

PETITIONERS' RESPONSE TO RESPONDENTS' ANSWER TO PETITION FOR REVIEW

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Petitioners, Mr. Scott C Townley and Mrs. Stephanie A. Tashiro-Townley, and their children (hereinafter referred to as Townleys) submit their reply. In addition, Townleys submit corrections and clarifications consistent with RAP 13.4(b).

I. CLARIFICATIONS/CORRECTIONS OF RESPONDENTS' FACTS

Here, for the sake of brevity and to clarify, Townleys point out the factual inconsistencies and false information presented in Respondents' Answer. Note, the same inconsistencies/false information was presented to the fact finding court and review court.

Please see attached documentations addressing issues Respondents raises regarding documents that were not part of the record in the state court, as such, those documents are presented as appendixes hereto. The documents show the correct facts, procedural history and stand contrary to Respondents' misinformation, etc. First Appendix hereto is the "First Amended Complaint" (the final complaint filed in the federal court). (See, Appendix pages marked A1 to A13); next is the Memorandum from Ninth Circuit dated January 27, 2014 (See, Appendix pages marked A14 to A16), and finally the Order from Federal District Court Judge staying the resolution of issues pending the outcome of Washington Court review, dated September 30, 2014, (See, Appendix pages marked A17 to A19).

A. Complaints from Federal District and state case show only

pre-eviction CPA claims subject to res judicata or claim preclusion while remaining claims are first time in litigation.
Townleys filed the First Amended Complaint in the Federal District Court March 2011. (See Appendix, pages A1 to A13) The CPA claims only related to facts up to and through March 2011. Counter and Cross Complaint, filed in the state, (CP 16) added additional (new) CPA violation claims & Common Law Fraud claims that are supported by direct evidence of fraud, creation of false document in order to include the illusion of normal course of business and interests in a note affiliated with the subject proper that did not legally exit in order to illegal take Townleys home and it worked, yet, the fact they accomplished the deception does not validate the taking was legal, etc. The facts (forming said deception, etc.) were introduced as new evidence. (See, CP 11, Exhibit A (Affidavit of forensic expert and whistle blower Lynn Szymoniak) and Exhibit B, (Declaration of Cheye Larson Certified Forensic and Securitization Auditor)). Not only were the acts of fraud worked on Townleys artfully hidden by Respondents' and Respondents' many actors; these facts were discovered by a forensic auditor after their case was dismissed.

Townleys' mortgage related information was presented by a certified forensic auditor; these facts were not available at the time of filing the federal petition (discovered by a whistle blower). Said facts were not available at the time Townleys' case was dismissed by way of a CR 12 (b) (6) motion, which

cut the legs off their discovery. Note, the bad act of claiming the sale was on hold, when that communication was simply a trick, etc., worked to deceive Townelys from obtaining a stay. (See, CP 11 Exhibit A and B)

When Townleys were asked to address any claim preclusions by the Division I Court—(July 28, 2014) Townleys stated the pre-eviction CPA violations appeared precluded by the Ninth Circuit.. (See Appendix pages A14 to A16). However, the new facts of fraud etc., expanded remedies available and stand separate. Since CPA claims related to the eviction were not foreseeable in 2011, the merit of the issue they form are unique and form foundation for denial of due process, thus, it is proper to allow proper review by trial court and review court; to hold otherwise, denies due process given RCW 61.24 and RCW 59.12 is to be construed in favor of the homeowner (Townleys).

Division I ruling stated they believed Townleys obtained the affidavit of fraud earlier (See CP11, Exhibit A). This statement is wholly incorrect. Facts were trickling in regarding the mechanics of mortgage fraud across the nation and in this state, was new and slowly being discovered in 2011. In March 2012, Ms. Szymoniak was awarded $18 million dollars in a whistleblower case where she assisted the Justice Department in recovering millions from large banks who committed acts against the public through the use of documents by acts called "robo signing". It was discovered (direct evidence)

such robo signers were used to create false documents in the case in Townleys' documents.[1]

The direct evidence could not be obtained prior to the 12(b)(6) dismissal of the Federal District Court. Experts and acknowledgment of such fraud, etc., was not available in 2011.

B. Relevant Corrections to Respondents' Statement of the Case

Townleys will only address obvious omissions and incorrect statements by Respondents.

1. Facts ignored by Bank of New York Mellon's attorney, where the prior attorney wrote and Litton Loan stated Townleys' sale was "on hold" then lifted the alleged hold 3 days before the sale without any notice—this is unethical and deemed illegal forming foundation for relief—Townleys did not seek stay because they were told sale was on hold.

Respondents omitted facts surrounding Bank of New York Mellon attorney's letters to the Townleys prior to the sale stating it was "on hold" which was echoed by Litton Loan in their letter dated the same day, November 8, 2010. (CP 12, Exhibit A) The second letter from the attorney on November 30, 2010 (CP 12, Exhibit B), gave the Townleys only three days—too late because it was two days beyond the statutorily required five day time period; to wit, RCW 61.24.130(2) states that the trial court cannot give a stay without the statutory five day notice. This is relevant and stands clear in the record showing Respondents acting in bad faith in order to trick Townleys and it worked yet, the case is still active the error is correctable by

[1] U.S. v. Bank of America Corp., 12-00361, U.S. District Court, District of Columbia (Washington) – National bank settlement between Justice Department and Bank of America, JPMorgan, Wells Fargo & Co., Citigroup Inc. and Ally Financial Inc.

placing Townleys (at a minimum) back to pre-eviction status. Of note their home sits vacate in disrepair having never changed hands beyond the foreclosing party. In other words there is no innocent 3rd party who bought the house, this is a unique fact that warrant potential 1st impression issue. (This issue #2 was presented in the opening Petition). Townleys' home was taken by illegally manipulation and fraudulent documents.

These facts sound of improper and deceptive acts—bad faith—a reasonable person would agree Townleys were misled by the illusion of "a hold" on the sale. One could extrapolate Respondents' knowledge of the fraudulent and deceptive documents caused their push of deception regarding the illusion of the sale being on hold.

2. BOYNM (infra) ignored judge's request to file the original Note showing valid ownership

Since 2010, during bankruptcy proceedings, Townleys objected to the standing of Bank of New York Mellon (BONYM) requesting to see the Note. The Honorable Chief Judge Overstreet stated, "You have objected to the standing of the bank. And I agree with you. The bank's standing has not been proven, Bank of New York standing has not been proven." (CP 73, Motion for Reconsideration of Denial of Petition for Declaratory Judgment, Declaration in Support of Motion, pg 2, (certified transcript 6/11/2010, pg 7, LL12-15). Her order was placed in as a minute order stating, "The Bank will get a certified copy of the original note holder with a declaration and file it

with the Court and send a copy to the debtors." (CP 11, Declaration of Stephanie Tashiro-Townley in Support, Exhibit A, 6/11/2010 Minute Ruling / Order) Unfortunately, the presiding judge was changed and the respondents ignored the court's order; in short, the Note was never filed into the record or produced as ordered. Since that time, documents claimed as notes that stand challenged as fraudulent, several different versions were filed in various courts.

3. Relevant to validity of valid interest in subject note or property the Townleys looked for the existence of the Pooling and Servicing Agreement for CWL, Inc. 2005-10 Trust after they filed Notice of Appeal to Ninth Circuit only to find the trust did not exist per Securities and Exchange Commission stance.

After the appeal of the CR 12 ruling to the Ninth Circuit in October 2011, Townleys continued researching and contacted Securities and Exchange Commission (SEC) regarding the claimed Pooling and Servicing Agreement for CWL, Inc. 2005-10. The SEC could not locate the trust. An email and letter was sent by the SEC representative—procured during the normal course of SEC business. (CP 65, Exhibit B and Exhibit C). CWL, Inc. 2005-10 was a trust claimed by BONYM and enumerated stated in the Notice of Default (CP12, Exhibit E) and the subsequent Notice of Sale and Notice of Amended Sale as well as the Appointment of the Successor Trustee (CP12, Exhibit G) and the Assignment of the Deed of Trust (CP12, Exhibit F). This document did not exist and most favorable to Respondent the time line, duties

and obligations owed as expressly stated in the agreement were never performed. In other words, if it did in fact exist (which evidence shows it did not) transferred of interests was never legally had, thus, transfer of its interest stands void.

The email and letter from the SEC filed (that stands in the record) were not disputed and show Respondents was noticed and thus, legally concurred the trust never existed. The documents were filed for litigation purposes to show standing in state court and go to the heart of "right of possession". This fact is challenged and forms a fraudulent eviction stemming from a fraudulently obtained judgment regarding the subject property. The issues raised go to the heard of legal possession and to ignore the issue denies fundamental principles of due process and allows a privileged business entity (Respondent) to take an individual's home (the Townleys') illegally. Acts of this nature are contrary to public interests, Title RCW 18, RCW 61.24 and RCW 59.12; plus, under the facts criminal acts were worked on the Townleys. Fraud is not authorized as a proper business model.

II. Restatements (attempt to clarify) of Issues of Petition

1. Whether a review court can apply res judicata where the prong test fails, i.e. no final judgment, the claims in the complaints are not identical and an injustice is committed against Townleys per *Shoemaker v. City of Bremerton*, 109 Wn. 2d 504 , 745 P.2d 858 (1987)?

2. Whether the cumulative irregularities and violations of RCW 61.24 et seq., the undisputed direct evidence establishing unfair, deceptive and fraudulent business acts combined with unethical practices by a third party, support a first impression issue based on public interest?

3. Whether the review court further denied Townleys due process and remedies of RCW 61.24.127 when Common Law Fraud claims in the counter complaint represented equitable defenses and Townleys stood procedurally proper before the trial court and consistent with the court's holding in *Munden v. Hazelrigg*, 711 P.2d 295 (Wash. 1985)?

4. Could the trial court hear and rule on the Petition for Declaratory Judgment given the property interest involved and the "injury in fact," economic or otherwise that would result if the trial court did not hear the matter?

5. Is it contrary to the prohibitive language of the Wash Const. Article 1, § 21 regarding right to trial for the homeowner when a timely and proper request for jury trial per RCW 59.12.130 was made and issues of fact concerning "right of possession" stand clear and invoked?

6. Whether it is proper to conclude that documents filed into the land record, i.e. Assignment of Deed of Trust and Appointment of Successor Trustee, are void since MERS is an improper beneficiary per the *Bain* (infra) decision resulting in a voidable foreclosure sale and since the foreclosure was not legally commenced given lack of proper beneficiary where vacating the resulting foreclosure judgment (Writ of Restitution) is proper because, under the facts, the trial court lacked jurisdiction given the the judgement was obtained improperly, thus, the unlawful detainer was illegal?

7. Was it proper for the trial court to leave the record incomplete, which includes the review court's failure to remand back to the fact finding court the issue addressing the Findings of Facts and Conclusions of Law given the overall facts, issues, and procedural steps taken, as established by *WESCO DISTRIBUTION v. MA Mortenson Co.,* 88 Wn. App. 712, 946 P.2d 413 (1997)?

8. Whether irregularities in the sale of Townleys' home, as defined by *Bain v. Metropolitan Mortgage Group* (2012) (infra), *Udall v. TD Escro Services, Inc.* (2007) (infra), *Albice v. Premier Servs. Of Washington, Inc.* (2012) (infra), *Walker v. Quality Loan Service Corp* (2013) (infra), and *Schroeder v. Excelsior Management Group* (2013) (infra), are considered violations of the strict compliance language of Washington's Deed of Trust Act?

9. Was it proper for the Washington review courts to accept the Ninth Circuit's interpretation of Washington state law, specifically *Plein v. Lackey* 149 Wn.2d 214, 67 P.3d 1061 (2003), while more recent cases show failure

to seek a stay is no longer fatal to the action as held in *Albice* (infra) and *Udall* (infra)?

10. Whether it is allowable for any entity to violate Title 5 (RCW 5.45.010, RCW 5.45.020, RCW 5.46.010, and RCW 5.46.020) to commit fraud on the trial court but still benefit from utilizing courts and statutes though all direct and corroborating evidence establish fraud, deception, false documents, etc., showing the foreclosing party entity held no valid interest in the note associated with the subject property?

III. REASONS WHY REVIEW SHOULD BE ACCEPTED

A. Contrary to Respondents' arguments; whereas, Respondents misrepresent the record & the review court's misapplied Res Judicata doctrine—the required elements are not present

Reviewing the two Complaints (state and federal) referenced by Respondents in light of facts, wordings, etc., they show the documents are not identical –

The review court improperly holds res judicata applies. In addressing the totality of the two decisions appealed: Review of Commissioners Papers (Writ of Restitution and Counter and Cross Complaint) and the Motion for Reconsideration (Petition for Declaratory Judgment and Motion to move from Limited to General Proceedings). The ruling cited the doctrine of res judicata for the Counter and Cross complaint and mooted any additional review of the rest of the appeal including Constitutional violations.

No final judgment exists (resolution is pending in federal court) plus, issues of Common Law Fraud, raised in State Court allow for remedies outside the scope of CPA remedies

Townleys present the complaints showing distinctly different claims except for CPA violations that are pending (active—not final) in Federal District Court (#C10-1720); pursuant to remand by the Ninth Circuit Court of

Appeals. (See, Appendix, A1-A13, First Amended Complaint appealed and CP 16 Counter and Cross Complaint)

Townleys filed a FRCP60 regarding the newly discovered facts, and within a week filed the complaint in state court (CP 16) that raised a Common Law Fraud claim supported by admissible direct evidence of fraudulent documents used in the taking of their home and relevant corroborating evidence. There was no second "bite of the apple by way of the Affidavit of facts establishing (inter alia) Fraud by Fraud expert examiner Lynn Szymoniak (CP 11 Exhibit A) or the corroborating evidence (CP 11 Exhibit B); the facts could not be brought sooner into any case. Townleys properly sought remedies procedurally available to them ensuring proper preservation of the facts and claims—to allow Respondents to benefit from fraud, deceptions, etc., is not proper in Washington.

Third element of res judicata is present in this case - The complaint (CP16) brings in a new claim of common law fraud claim that is supported by direct and corroborative evidence used by Respondents to accomplish acts defined as criminal in the taking of Townleys' home. The direct evidence (showing fraud, etc.) was not disputed in the state court or in the state review court. Facts presented by Townleys and the damages worked on Townleys allow for remedies beyond CPA claims and form expanded CPA beyond the claims in the Appendix: Frist Amended Complaint.

Fourth element of res judicata shows an injustice was clearly worked on Townleys .

The fourth requirement of re judicata fails because the "doctrine must not work an injustice on the party against whom the doctrine is to be applied". (Accord, *Shoemaker v. City of Bremerton*, supra) Townleys were homeowners, individuals, and parents of four young children who sadly experienced the distress caused by the injustice worked by Respondents' unethical, fraudulent, deceptive, etc., acts. In addition, it is relevant to note, said damages worked was bases on an eviction order rendered two weeks before the *Bain* (supra) decision—Bain was ignored in the review court.

Note, Respondents began the eviction proceedings while Townleys were still in the Ninth Circuit review process, so the use of *Schoeman v. New York Life Ins. Co.*, 106 Wn 2d 855, 726 P.2d 1, (1986) is not on point given the facts and unique claims herein. It is plain for the review court to apply the res judicata doctrine since all four requirements were not present.

B. Respondents' view the Petition does not identify any conflicts between the ruling and decisions out of this Court or the appellate courts Petition does meet the standard of review per RAP 13.4(b)(1) and 13.4(b)(2) is not a proper view of Washington law and the facts

It is proper to apply relevant decisions, yet, the state review Court nor the Ninth Circuit did apply relevant case law to this case.

On May 26, 2012, the *Albice v. Premier Mortg. Servs.*, 174 Wn. 2d 560, 276 P.3d 1277 (2012) decision was rendered citing *Udall v. TD Escrow Services, Inc.* 159 Wn. 2d 903, 154 P.3d 882, (2007), which held and focused

on the strict compliance of RCW 61.24. After *Albice* (infra), the *Bain v. Metropolitan Mortgage Group* 175 Wn.. 2d 83, 285 P.3d 34 (2012) decision determined MERS is an improper beneficiary and the business practices asssociated thereto were steeped in deception. The nature of deceptive used regarding MERS and the associated business practices fulfill the first requirement of a CPA claim. Then the *Walker v. Quality Loan Service Corp.* 176 Wn. App. 294, 308 P.3d 716 (Ct. App. 2013) and *Schroeder v. Excelsior Management Group* 297 P.3d 677, 177 Wn.2d 94 (2013) were rendered that set the importance of the strict statutory application of the Deed Trust Act. The facts here show MERS was an improper beneficiary (inter alia).

Townleys properly filed supplemental authorities into the Ninth Circuit presenting recent rulings Washington state Supreme Court and Appellate courts from 2011 through 2014 (including *Bain*—Townleys did the same with Division I during review.] Still, the Ninth Circuit used the outdated *Plein v. Lackey* (supra) to support their decision to affirm the waiver of claims by failing to seek stay, when *Albice (supra)* sets a different standard that failing to file does not waive, therefore, failing to seek a stay is not fatal. *Albice (supra),* states, quoted in relevant part,

> "Waiver, however, cannot apply to all circumstances or types of postsale (sic) challenges. RCW 61.24.040(1)(f)(IX) provides that "[f]ailure to bring ... a lawsuit may result in waiver of any proper grounds for invalidating the Trustee's sale" (emphasis added). The word "may" indicates the legislature neither requires nor intends for courts to strictly apply waiver. Under the statute, we apply waiver

> only where it is equitable under the circumstances and where it serves the goals of the act."

Id *Albice v. Premier Mortg. Servs.*, 174 Wn. 2d 560, 276 P.3d 1277 (2012)

. In the Motion for Reconsideration to the Ninth Circuit, Townleys quoted *Schroeder v. Excelsior Management Group*, showing the Ninth Circuit did not properly apply Washington case law properly; *Schroeder (Id.)* quoted in relevant part,

> "We conclude that the respondents' reliance on *Plein* is misplaced. It is well settled that the trustee in foreclosure must strictly comply with the statutory requirements. *Albice*, 174 Wash.2d at 568, 276 P.3d 1277 (citing *Udall*, 159 Wash.2d at 915-16, 154 P.3d 882). A trustee in a nonjudicial foreclosure may not exceed the authority vested by that statute."

Id. 297 P.3d 677, 177 Wash. 2d 94 (2013)

Applicable for this Court's consideration is in Townleys' case the trustee did not have the legal authority bestowed to them act as they did in the taking of the subject home as required of RCW 61.24.010 since MERS (inter alia) was an improper beneficiary per *Bain* (supra) as enumerated of RCW 61.24.005. MERS, not being a proper beneficiary, did not hold the authority to transfer the Deed of Trust to Respondent Bank of New York Mellon nor could they transfer any authority to the Northwest Trustee in the Appointment of Successor Trustee to legally preside over the foreclosure sale. Plus, the documents presented were fraudulent—created out of thin air by document factories as the experts showed—thus, appointed Trustee did not hold the authority to govern the sale. Northwest Trustee could not

validate the transfer of the Deed of Trust post sale violating RCW 61.24.040 and 61.24.050, therefore, voiding the foreclosure per *Schroeder v. Excelsior Management Group* (supra). Plus, 61.24.127 allows post sale remedy. RCW 59.12's eviction proceeding were not and could not be legally commenced under the facts presented in this case when said facts formed foundation for claims and went directly to the issue of possession of the subject property; plus, given the irregularities by Respondents of RCW 61,24, the cumulative error screams miscarriage of justice and illegal taking of Townleys' home.

The facts and issue of law raised established the trial court lacked jurisdiction to grant Respondents' relief requested of the unlawful detainer proceedings; thus, requiring vacating the Writ of Restitution in this case and placing Townleys in pre-eviction status. Note, because there is no innocent 3rd party who purchased the subject house these facts are unique (i.e. placing Townleys back in their home) and form a 1st impression issue for this Court.

The Ninth Circuit committed reversible (plain) error when it only applied the CPA portion of the *Bain* (supra) decision but not the impact and fact that there was no legal beneficiary in the foreclosure as required of Washington's Deed Trust Act; this resulted in a wrongful foreclosure. (See Appendix, A14-A16)

Townleys properly invoked RCW 59.12.130 when cumulative facts, (not allegations) of direct evidence (inter alia) showed Respondents used fraudulent documents, deceptive claims, etc., to work a fraud on the courts and Townleys.

Townleys argued to the review court the (State) trial court lacked jurisdiction to rule on the unlawful detainer proceeding when facts showed violations of RCW 61.24; thereby, preventing proper invocation of RCW 59.12., by Respondents.

Division I's ruling was plain error when the ruling ignored irregularities contrary to strict compliance requirement of RCW 61.24, RCW 59.12 and the guidance of this Court's rulings as noted above. The issues raised went to the heart of "right of possession". Of note, is the declaration by the certified forensic and securitization auditor that stated, quoted in relevant part,

> "Finally, I declare after my review of all relevant documentation that it is my opinion that I could find no proof of legal affiliation by Bank of New York Mellon nor the trust."

CP 11 – Declaration of Cheye Larson, Certified Forensic and Securitization Auditor (emphasis added)

Given the facts the trial court erred when it denied Townleys a jury trial given Washington holds RCW 59.12.130 requires an unlawful detainer action to be tried to a jury if the pleadings in the action present an issue of fact. The facts challenged here are extensive and go to the heart of right of possession; thus, at a minimum, granted review of the facts by jury was proper in this case.

Townleys brought experts who showed the production of the documents used were void of RCW Title 5 normal course of business mandates as was the standard at that time; in order to circumvent said statutory requirements regard business records, documents were created out of thin air by fraudulent means. Direct evidence was presented showing acts of fraud and deception by privileged entities (Respondents) contrary to public interests, thereby voiding judgments obtained contrary of RCW 61.24 and RCW 59.12 proceedings; thus constitute a public interest issue per RAP 13.4(b)(4).

Furthermore, as stated in *Munden v. Hazelrigg* below,

> "We create today not another exception, but a rule which is collateral to the general rule: Where the right to possession ceases to be at issue at any time between the commencement of an unlawful detainer action and trial of that action, the proceeding may be converted into an ordinary civil suit for damages, and the parties may then properly assert any cross claims, counterclaims, and affirmative defenses."

Id. 105 Wn. 2d 39, 711 P.2d 295 (1985).

Not allowing, in the unlawful detainer proceedings, Townleys' Counter and Cross Complaint to stand given the facts and civil suit proceed because issues of fact addressing the heart of the right of possession, etc., where presented was plain error. The Petition needs to be accepted to allow (inter alia) the right of possession to be briefed.

Request for Declaratory Judgment remedy was properly before the trial because when the factual prongs were met

The case law cited holds remedy in Petition for Declaratory Judgment was available to Townleys. The decisions in this case concerning conflicts with

standing Washington decisions. The facts and issues raised meets Declaratory judgment criteria and thus, form the requirements of RAP 13.4(b)(1) and RAP 13.4(b)(2). In addition, the procedural steps Townleys used to insure there was no conflict; namely their motion to move from limited to general proceedings (CP 41) raises interesting questions, and form a reasonable basis for this Court's guidance.

The *Grant City Fire Prot. Dist. v. City of Moses Lake* (2004) (infra), case sets out the prong test—Townleys meet said test—quoted in relevant part,

> This court has established a two-part test to determine standing under the UDJA. The first part of the test asks whether the interest sought to be protected is "`arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" *Save a Valuable Env't v. City of Bothell,* 89 Wn.2d 862, 866, 576 P.2d 401 (1978) (quoting *Ass'n of Data Processing Serv. Orgs., Inc.* v. Camp, 397 U.S. 150, 152-53, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970)). The second part of the test considers whether the challenged action has caused "`injury in fact,'" economic or otherwise, to the party seeking standing. Id. at 866, 576 P.2d 401. Both tests must be met by the party seeking standing.

Accord, 150 Wn. 2d 791, 83 P.3d 419.

Townleys meets the above prong test showing UDJA was a proper remedy available to them and the court did in fact have jurisdiction including the Constitutional property interests involved. Next the areas of interests enumerated of RCW 61.24 and RCW 59.12 hold remedy of UDJA was

proper. No reasonable person would dispute that eviction from their home would not cause "injury in fact" to the Townleys.

Furthermore, the case of *Fallahzadeh v. Ghorbanian* (2004) (infra), shows that court heard the declaratory judgment request. This case shows the trial court in the Townleys' case did in fact possess jurisdiction to hear the Declaratory Judgment motion; quoted in relevant part,

> .... Fallahzadeh filed an unlawful detainer action. Ghorbanian's answer raised several defenses, including the illegality of the agreement. He also filed a partition action and a declaratory judgment action to declare the lease invalid. The trial court consolidated the unlawful detainer and the declaratory judgment actions, but denied Ghorbanian's request to consolidate the partition action.

Id. 119 Wn. App. 596, 82 P.3d 684, (2004)

It follows then from these cases the trial court did in fact possess jurisdiction to hear Townleys' Petition for Declaratory Judgment. It was plain error for the trial court to hold it did not possess jurisdiction and the ruling worked prejudice of Constitutional magnitude on Townleys. Of note, Townleys filed a motion to move from limited to general proceedings in the event the judge did not understand *Fallahzadeh v. Ghorbanian* (Id.).

B. Contrary to Respondents' claims the review court applied settle law to undisputed claims, review court mooted remaining issues on appeal and made sweeping generalization based on assumption not fact that evidence of fraud could have been obtained earlier

The Doctrine of Mootness cannot be applied when Townleys' home is standing vacant adding more injury to the property and family and there is a high probability that *Respondents* will repeat patterns again

This Court has considered cases that were "mooted" by the appellate court as in the case of *Sorenson v. Bellingham*, quoted in relevant part,

> The Supreme Court may, in its discretion, retain and decide an appeal which has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved.
> ..... Criteria to be considered in determining the "requisite degree of public interest are the public or private nature of the question presented, the desirability of an authoritative determination for the future guidance of public officers, and the likelihood of future recurrence of the question."
> ..... This exception to the general rule obtains only where the real merits of the controversy are unsettled and a continuing question of great public importance exists.

Id., 80 Wn. 2d 547, 496 P.2d 512, (1972).

The issues are not moot given the issues raised in the State Court.

VI. Respondents have violated truthfulness, misconduct Rules of Professional Conduct (RPC 4.1 and 8.4) in three fact finding courts and four review courts, including this Court

Under the facts, Townleys good faith and diligent efforts to seek relief Respondents' request attorney fees is improper, contrary to the record and not warranted. (See, *Dempere v Nelson* 76 Wn. App. 403, (1994). The Appellants' Reply brief enumerates the various misrepresentations and omissions designed to mislead and sway the courts.[2] The facts support RPC violations in sections 1.2d, 4.1a, 4.1b, and many of the sections under 8.4.[3] (See similar rule violations *In re Discipline of Ferguson,* 200,719-8 (2011). The bad faith supported by facts in the record in various courts outlined in

[2] Appellants' Reply Brief filed in Division I court on February 25, 2013, pg 22-24.
[3] Fucile, Mark. "Rules of Professional Conduct (updated April 14, 2015)." *Rules of Professional Conduct*. Washington State Bar Association, 14 Apr. 2015. Web. 29 June 2015.

Appellants' Reply Brief presents a foundation for Townleys to recover fees. Townleys refer the Court back to section I above where undisputed facts showing acts of bad faith were used to con/trick Townleys into believing they sale was a stayed—on hold.

In addition, *Dempere v. Nelson* states,

"Washington cases mention four recognized equitable grounds for awards of attorney fees: " [B]ad faith conduct of the losing party ... .." (Italics ours.) Miotke v. Spokane, 101 Wn.2d 307, 338,678 P.2d 803(1984). Dempere contends she is entitled to attorney fees under the bad faith theory. We agree that if a defendant's bad faith tortious conduct entitled a plaintiff to recover attorney fees, Dempere would be entitled to such a recovery under the egregious facts of this case.
Id. *supra*

If a party is warranted an award it is Townleys given the acts of bad faith, misleading, etc., and case law; Respondents should receive nothing.

VII. Conclusion

Townleys strict reply includes corrections to facts and procedures presented in Respondents' Answer and shows res judicata doctrine fails. The plain error and other errors stand cumulative to deny Townleys due process. It is proper court given the issues for this case to be reviewed of RAP 13.4(b)(1), (2) and (4) so Townleys can brief issues..

Respectfully submitted on this 6th day of July, 2015,

Stephanie Tashiro-Townley, For Petitioners / Appellants Townley

APPENDIX

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THE HONORABLE JOH C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

STEPHANIE A. TASHIRO-TOWNLEY and SCOTT C. TOWNLEY, as husband and wife Plaintiffs, v. BANK OF NEW YORK MELLON f/k/a BANK OF NEW YORK AS TRUSTEE FOR CERTIFICATEHOLDERS CWL, NC. 2005-10; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and DOES 1-100 Defendants.	Case No.: 2:10-CV-01720-JCC **FIRST AMENDED COMPLAINT FOR DECLARATORY RELIEF, INJUNCTIVE RELIEF, VIOLATIONS OF THE CONSUMER PROTECTION ACT, AND OTHER RELIEF**

Plaintiffs, STEPHANIE A. TASHIRO-TOWNLEY and SCOTT C. TOWNLEY, through undersigned counsel and pursuant to prior Orders of this Court granting Plaintiffs' Motion for Leave to Amend Complaint, sue Defendants BANK OF NEW YORK MELLON f/k/a BANK OF NEW YORK AS TRUSTEE FOR CERTIFICATEHOLDERS CWL, INC. 2005-10, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,

and DOES 1-100 for declaratory relief, injunctive relief, violations of the Consumer Protection Act, and other relief, and state:

A. Parties and Jurisdiction

1. This is an action for declaratory, injunctive, violations of the Consumer Protection Act, and other relief which is properly within the jurisdiction of this Court as provided by applicable statutes and rules of court.
2. Plaintiff STEPHANIE A. TASHIRO-TOWNLEY is and was at all times material hereto a *sui juris* citizen and resident of the State of Washington who was one of the legal owners of residential real property the subject of this action. (hereafter the "Property").
3. Plaintiff SCOTT C. TOWNLEY is and was at all times material hereto a *sui juris* citizen and resident of the State of Washington who was one of the legal owners of Property.
4. Defendant BANK OF NEW YORK MELLON f/k/a BANK OF NEW YORK AS TRUSTEE FOR CERTIFICATEHOLDERS OF CWL, INC. 2005-10 (hereafter "BONYTE") is and was at all times material hereto a Wall Street bank which purported to act as a "trustee" of a securitized mortgage loan trust (that being CWL, INC. 2005-10, hereafter the "Trust") which was formed incident to the marketing and sale of a series of mortgage-backed securities (the "certificates", series 2005-10) which securities were collateralized, in part, by the Trust which itself purported to hold myriad mortgage loans which had been sold and resold from the originating lender to one or more third parties

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for the purposes of aggregating the loans for further placement within one or more tranches within the Trust.

5. Defendant MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (hereafter "MERS") is and was at all times material hereto an entity which electronically tracked the transfer of mortgage loans. Pursuant to Defendant MERS' own Terms and Conditions, the MERS system may not be used to either create or transfer interests in mortgage loans, and pursuant to admissions of Defendant MERS' own counsel set forth in published decisions, Defendant MERS does not own mortgage loans, does not extend credit, does not collect mortgage loan payments, and has no ownership interest in mortgage loans.

6. Defendants DOES 1-100 are named for purposes of adding any additional Defendants as this litigation progresses and as a result of matters which may be revealed in formal discovery.

7. Jurisdiction and venue are proper in this Court as the Property is situate within the jurisdiction of this Court and as there is complete diversity pursuant to 28 USC sec.1332, and this Court is permitted to adjudicate the state law claims pursuant to pendent/supplemental jurisdiction.

B. Material Facts Common to All Counts

8. Plaintiffs previously purchased the Property, having executed a deed of trust and Note in connection therewith in favor of non-party Countrywide Home Loans on or about July 26, 2005.

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9. The CWL, Inc. 2005-10 securitized mortgage loan trust was formed in 2005 and, pursuant to the Pooling & Servicing Agreement (hereafter "PSA") which governed the terms, conditions, and restrictions as to conveyance of mortgage loans into the Trust, provided that all loans to be conveyed to the trust be so conveyed through a series of explicit procedures, including an unbroken chain of indorsements as to the note from the original lender to the Seller to the Depositor to the Trustee, and an unbroken chain of assignments in recordable form from the originating lender to the Seller to the Depositor to the Trustee. Defendants BOYNTE and MERS have not provided any evidence of compliance with these express conditions of conveyance.

10. The provisions of the Trust also provide that all such mortgage loans to be conveyed to the Trust be so conveyed by the Closing Date (or, at the latest, the Delay Delivery date, which is shortly after the Closing Date) in order for the transfers to be legal and proper pursuant not only to the trust documents, but also pursuant to the laws, rules, and regulations of the Securities and Exchange Commission and the "true sale" provisions of IRS Rule 860.

11. The provisions of the trust also preclude the transfer or assignment of non-performing or defaulted (a/k/a "toxic") loans into the Trust.

12. As admitted by Defendants BOYNTE and MERS in their various filings in this action, Defendant MERS purported to transfer, by assignment, the mortgage loan the subject of this action to Defendant BONYTE on July 17, 2009, which was approximately four (4) years after the Closing Date of the

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Trust, which is legally impermissible rendering the purported assignment void as a matter of law, rule, and regulation.

13. As such, any further action by Defendant BONY in attempting to appoint a successor trustee was null, void, and without any legal authority as well, and thus any purported attempt by the alleged "successor trustee" to schedule a foreclosure sale was without legal authority and was itself null and void.

14. Defendants BOYNTE and MERS have also admitted, in their various filings in this action, that Plaintiffs were claimed to be in default on the loan as of July 8, 2009, and as such, the loan, which was toxic as of that date, could not, as a matter of laws, rules, and regulations, be transferred to the Trust, and Defendants' purported attempt to do so was void at inception and thus of no force or effect.

15. Further, the attempted assignment was by Defendant MERS which was not the originating lender and never had any interest in the Note, was never the "beneficiary", and could not, as a matter of its own self-imposed limitations, either create an interest in the note or transfer such non-existent interest, and as it could not transfer any such non-existent interest in the note, it also could not transfer the security instrument (the Deed of Trust) incident to the note.

16. RCW 61.24.040(1)(b)(i) requires that a party seeking to foreclose a deed of trust against a borrower both record a notice, in the form described in RCW 61.24.040(1)(f), in the office of the auditor of each county in which the deed of trust is recorded ***and*** to serve, at least ninety (90) days before the trustee's sale by both first-class and either certified or registered mail, return receipt requested, a

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copy of the notice of sale upon the borrower. Said notice is required by statute in order to afford the borrower the opportunity to exercise their rights to challenge the sale.

17. Defendants BONYTE and MERS have admitted, in their filings in this matter, that their agent Northwest Trustee's Services recorded its Amended Notice of Trustee's Sale on September 14, 2010, and conducted a Trustee's Sale on December 3, 2010, which is less than 90 days after the Notice was recorded thus constituting an absolute violation of RCW 61.24.040.

18. Further, Defendants BOYNTE and MERS have admitted that Plaintiffs filed their original action (which challenged, albeit in inartful *pro se* form, the foreclosure sale which had not yet occurred) on November 16, 2010.

19. Defendants BOYNTE and MERS engaged in their improper and unlawful actions for the sole and express purpose of manufacturing an alleged waiver by the Plaintiffs of their rights to challenge the sale and forfeit their rights to assert such challenge, which requires a lawsuit to restrain the sale to be filed prior to the sale pursuant to 61.24.130.

COUNT I: DECLARATORY RELIEF

20. Plaintiffs re-allege and reaffirm paragraphs 1 through 19 hereinabove as if set forth more fully hereinbelow.

21. This is an action for declaratory relief which is brought pursuant to RCW 7.24 and CR 57.

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22. Pursuant to RCW 7.24.010, this Court has the power and authority to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

23. RCW 7.24.120 provides that the chapter is declared to be remedial and its purpose to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations, and is to be liberally construed and administered.

24. Plaintiff and Defendants BOYNTE and MERS are "persons" within the meaning of RCW 7.24.130.

25. RCW 7.24.020 expressly provides that a person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract, or franchise and obtain a declaration of rights, status, or other legal relations thereunder.

26. Plaintiffs are persons who have an interest under a deed to the Property and whose rights and status have been affected by the Defendant BOYNTE's and Defdendant MERS' violations of and noncompliance with RCW 61.24.040. Plaintiffs are thus entitled to have determined the question of their rights and status as to the Property and obtain a declaration of rights and status.

27. RCW 7.24.050 provides that the enumeration in RCW 7.24.020 and .030 does not limit or restrict the exercise of the general powers conferred in RCW 7.24.010 in any proceeding where declaratory relief is sought.

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28. Plaintiffs have requested further relief in the form of injunctive and other relief. RCW 7.24.080 provides that further relief based on a declaratory judgment or decree may be granted whenever necessary or proper, and that the application for such relief shall be made to a court having jurisdiction to grant the relief. This Court has such jurisdiction pursuant to the doctrine of pendent or supplemental jurisdiction.

29. RCW 7.24.190 provides that the court, in its discretion and upon such conditions and with or without such bond or other security as it deems necessary and proper, may stay any ruling, order, or any other court proceedings and may restrain all parties involved in order to secure the benefits and preserve and protect the rights of all parties to the court proceedings.

30. As set forth above, Plaintiffs' rights and legal status as to the Property have been affected by Defendant BOYNTE's and Defendant MERS' intentional and express violations of RCW 61.24.040, which has resulted in the Property being wrongfully and illegally foreclosed and wrongfully and illegally transferred to Defendant BOYNTE.

31. Plaintiffs thus requests that this Court issue and decree that the foreclosure sale initiated and conducted by Defendants BOYNTE and MERS was illegal, improper, and unlawful and that such sale be hereby rescinded and declared to be null, void, and of no force or effect. As Defendants BOYNTE and MERS never had any legal or other authority to engage in their actions *ab initio*, the entire foreclosure and sale process was void and illegal, and thus said Defendants cannot

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be permitted to assert any alleged "waiver" by Plaintiffs especially as said Defendants have admitted that Plaintiffs filed their original action prior to the sale.

32. As Defendant BOYNTE is presumably intending to sell or convey the Property which was wrongfully acquired by said Defendant, Plaintiffs requests that this Court enjoin any such sale or conveyance.

33. As Defendant BOYNTE wrongfully acquired title to the Property in express and deliberate violation of RCW 61.24.040 and as said Defendant willfully and intentionally violated the Statute for the express purpose of manufacturing an alleged waiver of Plaintiffs' rights to challenge the sale, no bond should be required of Plaintiffs as a precondition of the requested relief being granted, and as Defendant BOYNTE was never the original lender and is owed no monies from Plaintiffs, Plaintiffs should not be required to make any deposits into the registry of the Court pending the full disposition of this action on the merits, and as such requirement would frustrate the very relief requested herein.

WHEREFORE, Plaintiffs request that this Court enter a decree that the foreclosure sale conducted by Defendant BOYNTE and MERS was illegal, improper, and unlawful; that the subject foreclosure sale is void and of no force and effect; and that all post-sale proceedings be enjoined pending the final disposition of this action for the reasons set forth, and for any other and further relief which is just and proper including any attorneys' fees and costs as permitted or provided by law.

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COUNT II: INJUNCTIVE RELIEF

34. Plaintiffs re-allege and reaffirm paragraphs 1 through 19 hereinabove as if set forth more fully herein below.

35. This is an action for injunctive relief which is brought pursuant to RCW 7.40 and CR 65.

36. RCW 7.40.020 provides in pertinent part that when it appears by the complaint that the plaintiff is entitled to the relief demanded and the relief, or any part thereof, consists in restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff; or when during the litigation, it appears that the defendant is doing, or threatened, or is about to do, or is procuring, or is suffering some act to be done in violation of the plaintiff's rights respecting the subject of the action, or where such relief, or any part thereof, consists in restraining proceedings upon any final order or judgment, an injunction may be granted to restrain such act or proceedings until the further order of the court.

37. As set forth above, Defendant BOYNTE illegally "acquired" the Property and is continuing with its possession of the wrongfully acquired property which was acquired in violation of the trustee's sale Statute and violation of the Plaintiffs' rights pursuant to said Statute.

38. Plaintiffs thus have a clear legal right to seek the issuance of injunctive relief.

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39. Plaintiffs have no adequate remedy at law to redress the irreparable harm which will ensue from the wrongful disposition of their real property if the relief requested herein is not granted.

40. The relief requested by Plaintiffs is in the public interest.

41. Under the circumstances where Defendant BOYNTE has intentionally violated Washington Statutory law for the express purpose of wrongfully acquiring the Plaintiffs' real property with the specific intent to profit from such wrongful conduct, no bond should be required of Plaintiffs as a precondition to the granting of the relief requested herein; where Defendant BOYNTE was never the originating lender and is owed no money from Plaintiffs; and where the imposition of any significant bond would frustrate the relief requested herein.

WHEREFORE, Plaintiffs requests that this Court immediately issue an injunction precluding Defendant BOYNTE from continuing with any proceedings to secure possession of the Property and to enjoin any disposition of the Property pending the disposition of this action for the reasons set forth, and for any other and further relief which is just and proper under the circumstances including any attorneys' fees and costs as permitted or provided by law.

COUNT III: VIOLATIONS OF CONSUMER PROTECTION ACT

42. Plaintiff re-alleges and reaffirms paragraphs 1 through 19 hereinabove as if set forth more fully herein below.

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43. This is an action for violations of the Washington Consumer Protection Act, RCW 19.86.010 *et seq.*

44. Plaintiff and Defendants MERS and BOYNTE are "persons" within the scope of RCW 19.86.010(1).

45. The transaction the subject of this action involves "trade and commerce" within the meaning of RCW 19.86.010(2).

46. The residential real property the subject of this action is an "asset" within the meaning of RCW 19.86.010(3).

47. The actions and conduct of Defendants BOYNTE and MERS as set forth above wherein said Defendants intentionally violated RCW 61.24.040 to the detriment and damage of the property of the Plaintiffs constitutes an unfair and deceptive act and practice in the conduct of trade or commerce within the meaning of RCW 19.86.020.

48. The actions and conduct of Defendants BOYNTE and MERS as set forth above also constitutes and unfair and deceptive act and practice pursuant to RCW 61.24.135.

49. Pursuant to RCW 19.86.090, Plaintiffs are thus entitled to bring this action for violations of the Consumer Protection Act to enjoin further violations; to recover actual damages sustained; and costs of suit including reasonable attorneys' fees against Defendants BOYNTE and MERS.

50. Under the circumstances where Defendants BOYNTE and MERS intentionally, willfully, and wantonly violated RCW 61.24.040 in an apparent attempt to steal

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the Plaintiffs' real property and such intent was coupled with an intent manufacture an alleged waiver of said right, Plaintiffs requests that this Court, pursuant to RCW 19.86.090, award threefold actual damages as provided by the Statute.

WHEREFORE, Plaintiffs request that this Court grant the relief requested herein for the reasons set forth including enjoining further violations of the Consumer Protection Act by Defendants BOYNTE and MERS; an award of actual damages or threefold actual damages as provided by the Statute together with costs of suit, attorneys' fees, and any other and further relief which is just and proper under the circumstances.

DEMAND FOR JURY TRIAL

Plaintiff demands trial by jury of all matters so triable as a matter of right and pursuant to law.

DATED THIS 25th DAY OF MARCH, 2011.

Respectfully submitted,

John A. Sterbick, WSBA #17805
Local Counsel for Plaintiff

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(counsel to seek admission PHV)
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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 27 2014

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

STEPHANIE TASHIRO-TOWNLEY; SCOTT C. TOWNLEY,

Plaintiffs - Appellants,

v.

BANK OF NEW YORK MELLON, as Trustee for the Certificateholders CWL, Inc. Asset Backed Certificates, Series 2005-10, FKA Bank of New York; et al.,

Defendants - Appellees.

No. 11-35819

D.C. No. 2:10-cv-01720-JCC

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
John C. Coughenour, District Judge, Presiding

Submitted January 21, 2014**

Before: CANBY, SILVERMAN, and PAEZ, Circuit Judges.

Stephanie Tashiro-Townley and Scott C. Townley appeal pro se from the district court's judgment dismissing their action challenging the foreclosure sale of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

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their residence. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). We affirm in part, vacate in part, and remand.

The district court properly dismissed plaintiffs' post-sale claims for injunctive and declaratory relief because plaintiffs waived those claims by failing to bring an action to enjoin the foreclosure sale. *See Plein v. Lackey*, 67 P.3d 1061, 1067 (Wash. 2003) ("[W]aiver of any postsale contest occurs where a party (1) received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale.").

However, Washington law provides an exception to the waiver doctrine for claims for damages alleging violations of the Washington Consumer Protection Act ("CPA"). *See* Wash. Rev. Code § 61.24.127(1)(b). After the district court dismissed plaintiffs' CPA claim, the Washington Supreme Court decided *Bain v. Metropolitan Mortgage Group, Inc.*, 285 P.3d 34, 51 (Wash. 2012), which held that a plaintiff may meet the public interest element of a CPA claim by alleging that Mortgage Electronic Registration System Inc. was unfairly or deceptively characterized as the beneficiary of a deed of trust. *See id.* at 49 (elements of a CPA claim). Because the district court did not have the benefit of *Bain* when it issued

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its order of dismissal, we remand to allow the court to reconsider plaintiffs' CPA claim.

Defendants' request to strike portions of plaintiffs' excerpts of record, set forth in their answering brief, is denied. Defendants' request to strike plaintiffs' citations of supplemental authority, filed on November 8, 2013, is denied.

Each party shall bear its own costs on appeal.

AFFIRMED in part, VACATED in part, and REMANDED.

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STEPHANIE TASHIRO-TOWNLEY AND SCOTT C TOWNLEY, Plaintiffs, v. BANK OF NEW YORK MELLON, *et al.*, Defendants.	CASE NO. 10-1720-JCC ORDER GRANTING MOTION TO STAY PENDING WASHINGTON STATE APPEAL

This matter comes before the Court on Plaintiffs' motion to stay (Dkt. No. 129), Defendants' response in opposition (Dkt. No. 138), and Plaintiffs' reply (Dkt. No. 140). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby GRANTS the motion for the reasons explained herein.

I. BACKGROUND

Plaintiffs filed this action on November 16, 2010, after non-judicial foreclosure proceedings were initiated based upon Plaintiff's default on their home loan. (Dkt. No. 10) On June 29, 2011, the Court dismissed all claims in this case that were unrelated to the Washington Consumer Protection Act ("CPA") on the grounds that Plaintiffs' failure to restrain the trustee's sale waived challenges to the sale of their home. (Dkt. No. 86) The Court also dismissed the CPA claims due to Plaintiffs' failure to allege a public interest impact. (Dkt. No. 86) Plaintiffs appealed to the Ninth Circuit on September 30, 2011. *See* Dkt. No. 93.

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On February 24, 2012, Defendant Bank of New York Mellon, f/k/a Bank of New York as Trustee for Certificateholders CWL NC. 2005-10 ("BONY") initiated an action for unlawful detainer against Plaintiffs. Plaintiffs filed "counter and cross complaints" against BONY and other defendants. (Dkt. No. 16) Plaintiffs were eventually denied relief in the unlawful detainer, and a writ of restitution was issued. *See* Exhibit A, Dkt. No. 138. Plaintiffs filed an appeal to Division One of the Court of Appeals of the State of Washington ("COA"). (Dkt. No. 129-1.) On January 27, 2014, the Ninth Circuit issued its judgment. The decision affirmed dismissal of the declaratory and injunctive requests for relief based upon Plaintiff's waiver for failing to bring an action to enjoin the sale. *See* Dkt. No. 116. However, the Ninth Circuit vacated the dismissal of the CPA claim in order for this Court to have the opportunity to reconsider the claim in light of the newly-decided *Bain v. Metro. Mortgate Grp., Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012).

Plaintiffs' CPA claim is the only remaining claim pending before this Court. Plaintiffs now seek to stay the matter pending the resolution of their state court appeal.

Discussion

A. Prejudice to Defendants

The litigation in this matter has prevented BONY from disposing of the property and recovering its losses, while BONY continues to pay property taxes and other fees related to the property. *See* Dkt. No. 138 at 5. The costs to BONY mount as the litigation progresses. Some of these costs will accrue regardless of whether a stay is issued by this Court, so long as the COA appeal is pending. Nevertheless, a stay will prolong the litigation, and will therefore prejudice the Defendants. For this reason, a stay will only be granted if Plaintiffs can establish hardship or inequity. *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936) ("[Plaintiffs] must make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which [they] pray will work damage to someone else.").

B. Plaintiffs' Hardship

In their COA appeal, Plaintiffs allege a series of errors based on the Federal Constitution

and Washington state law. They request remand to state court for a jury trial and repossession of their home. Plaintiffs state that the state litigation has required them to expend considerable time and resources gathering relevant evidence. (Dkt. No. 140. at 3) These difficulties would be compounded by having to proceed simultaneously in this Court. Should they be granted relief in their state court proceedings, their discovery burdens would only increase. There is, therefore, sufficient hardship to merit a stay.

II. CONCLUSION

For the foregoing reasons, Plaintiffs' motion for a stay (Dkt. No. 129) is GRANTED. IT IS HEREBY ORDERED THAT the above-captioned action – including, but not limited to, all pending motions, discovery, and the case schedule – are hereby stayed pending a decision in the Court of Appeals of the State of Washington Division One case, No. 69194-5-1.

DATED this 30th day of September 2014.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

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OFFICE RECEPTIONIST, CLERK

To: Stephanie Tashiro-Townley; Bob Norman; Lauren D. Humphreys; Emilie K. Edling; Kaitlyn Q. Thinh
Subject: RE: #91625-0 - Tashiro-Townley v. Bank of New York Mellon et al - Reply to Respondents' Answer to Petition for Discretionary Review

Received 7/6/2015.

Supreme Court Clerk's Office

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Stephanie Tashiro-Townley [mailto:zoemom4@gmail.com]
Sent: Monday, July 06, 2015 4:56 PM
To: OFFICE RECEPTIONIST, CLERK; Bob Norman; Lauren D. Humphreys; Emilie K. Edling; Kaitlyn Q. Thinh
Subject: #91625-0 - Tashiro-Townley v. Bank of New York Mellon et al - Reply to Respondents' Answer to Petition for Discretionary Review

To Whom It May Concern:

This filing of the Reply to the Respondents' Answer to Petition for Discretionary Review includes the main document (petition) and the 19 page Appendix, The reply meets the 20 page limit and follows RAP 10.4 and 13.4 for formatting and content.

Hard copies are being sent to the attorneys as well by my process server today per our agreement.

Thank you.
Stephanie Tashiro-Townley
for Petitioners Townleys
#69194-5-I - Tashiro-Townley v. Bank of New York Mellon et al
425-413-2637
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CC: Robert Norman (Respondents attorney), Houser & Allison
Lauren Humphreys (associate), Houser & Allison
Emilie Edling (associate), Houser & Allison