CASE NO. 91928-3

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

(Court of Appeals Division III, Case No 32315-3-III)

MICHAEL URIBE and HELEN URIBE husband and wife,

Appellants,

v.

LIBEY, ENSLEY & NELSON, PLLC, a Washington professional limited liability company; GARY LIBEY and JANE DOE LIBEY, husband and wife and the marital community comprised thereof, RANDALL RUPP AND LUZ DARYL-RUPP, husband and wife and the marital community comprised thereof; and 7HA FAMILY, LLC, a Washington limited liability company,

Respondents.

RESPONDENT GARY LIBEY AND LIBEY, ENSLEY & NELSON, PLLC'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW

Paul E. Fogarty, WSBA #26929
Dearmin Fogarty PLLC
705 Second Avenue, Suite 1050
Seattle, WA 98104
(206) 826-9400
Fax: (206) 826-9405

Attorneys for Respondents Gary Libey and Libey, Ensley, & Nelson PLLC

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I. INTRODUCTION

Respondents Gary Libey and Libey, Ensley & Nelson, PLLC ("Libey"), as trustee, conducted non-judicial foreclosure sales arising out of the defaulted loans of Michael and Helen Uribe ("the Uribes"), appellants. The loans were made by the Bank of Whitman. The loans were cross-collateralized, with both loans being secured by real property in Benton County and Franklin County Washington, and secured by certain personal property.

The trial court and court of appeal's decisions follow all the precedent of the Supreme Court and the courts of appeals relating to the waiver issue under the Deed of Trust Act including RCW 61.24.040(1)(f)(IX), following, for example, the analysis set forth in *Albice v. Premier Mortgage Servs. of Wash.* 174 Wn.2d 560, 276 P.3d 1277 (2012).

The trial court and court of appeal's decisions follow all the precedent of the Supreme Court and the courts of appeals relating to the cross-collateralization and back-to-back sale issue, following, for example, the analysis set forth in *Donovick v. Seattle-First Nat'l Bank,* 111 Wn.2d 413, 757 P.2d 1378 (1988). As to the "full satisfaction" issue, *Udall v. T.D. Escrow Svcs.*, 159 Wn.2d 903, 154 P.2d 882 (2007) is irrelevant. Unlike in *Udall* where the auctioneer accepted the buyer's bid at the sale to form a contract, the trustee deeds were not drafted until days later, long after both

sales had occurred.

Regarding the foreclosure sales, the Uribes received adequate notice of the sales. Prior to the sales, the Uribes never sought to restrain the sales or otherwise raise any pre-sale issues, including their lawsuit-constructed hyper-technical arguments that Libey's appointment as trustee was recorded approximately two hours after the notices of sale were filed, despite the Uribes' admission that "Uribe obviously had 'constructive notice that the trustee [allegedly] misrepresented his authority when he recorded the Notice of Trustee's Sale." Petition at 20. Libey had full power to conduct the sales. The Uribes' did not bring this lawsuit until almost a year after the sales.

Additionally, in the Court of Appeals, the Uribes abandoned their claims relating to the issues of collusive bidding, conspiracy and chilled bidding. Appellants' Brief at 20. When they abandoned their collusion claims, they abandoned their CPA claim.

II. STATEMENT OF FACTS

On May 31, 2002, Bank of Whitman Loan Number 560005091 was made to the Uribes in the amount of $1,655,185.50, which will be referred to as the "Franklin loan." CP 136-139, 198-270. This Franklin loan was secured by a first priority deed of trust on the Franklin County property located in Pasco, Washington, and a first priority mortgage on the Benton

County property. *Id.* In addition, the loan was also secured with personal property that the Uribes used in their excavation business under the company name Uribe, Inc. CP 936-942. This was a commercial loan secured by unimproved real property and business equipment. *See, e.g.*, Appellants' Opening Brief in Court of Appeals at 2-4; CP 66, 272-274, 278, 462-482.

On September 7, 2007, Bank of Whitman Loan Number 560005006 was made to the Uribes in the amount of $571,000, which will be referred to as the "Benton loan." CP 136-193. This Benton loan was secured by a second priority deed of trust on the Benton County property, and a second priority mortgage on the Franklin County property. *Id.* In addition, as with the Franklin loan, the Benton loan was also secured with personal property that the Uribes used in their excavation business under the company name Uribe, Inc. CP 943-957. This deed of trust also included a cross-collateralization clause linked to the 2002 Franklin Loan. This was a commercial loan secured by unimproved real property and business equipment. *See, e.g.*, Appellants' Opening Brief in Court of Appeals at 2-4; CP 66, 141-147, 272-274, 278, 462-482.

On June 26, 2009, the Uribes filed a Chapter 11 bankruptcy case. On June 30, 2010, the Bankruptcy Court entered an order granting the Bank of Whitman's Motion for Relief from Automatic Stay as to Real and Personal

Property. CP 281-286. In its order, the Bankruptcy Court incorporated earlier findings of fact that the balance owed to the Bank of Whitman was $2,770,854.18 and that the total value of Debtors' real and personal property (subject to the deeds of trust at issue) was $2,550,171.00, listing the value of each as follows: Equipment ($403,950.00); Benton County Land ($1,500,000.00); Pasco/Franklin County property ($646,221.00). Based on these findings of the Bankruptcy Court, the Uribes owed the Bank of Whitman a total of $2,770,854.18 as of June 10, 2010, on both loans, and the assets securing those loans only totaled $2,550,171.00. Thus, there was a deficiency of approximately $220,683.18 between the amount owed by the Uribes and the value of those secured assets (Benton property, Franklin property, and personal property).

With the automatic stay lifted, Bank of Whitman began foreclosure proceedings on both the Benton and Franklin County properties and also began replevin proceedings to obtain the Uribes' personal property. Libey was originally acting as counsel for Bank of Whitman in the replevin proceedings, but was asked to withdraw and was authorized to act as successor trustee to conduct the foreclosures of the Benton and Franklin County properties. CP 932 at ¶5. After that, Libey had no involvement in the actual sales or auctions of the Uribes' personal property. *Id.* and CP

287-305.[1] Libey was, therefore, never in possession of any of the proceeds from these personal property-related sales or auctions. CP 932 at ¶5. Accordingly, he could not have converted any of the proceeds.

On September 7, 2010, Notices of Trustee's Sale and Foreclosure for Franklin and Benton County properties were sent to the Uribes by certified mail. CP 1000, 1030-1031, 1013-1019.

On September 8, 2010, at 9:09 a.m., Notice of Trustee's Sale of Franklin County properties was filed with Franklin County Auditor. CP 306-312. At 11:37 a.m., the Resignation of Chicago Title and Appointment of Successor Trustee (Libey) was filed with Franklin County Auditor. CP 313-319. At 1:57 p.m., Notice of Trustee's Sale of Benton Properties was filed with Benton County Auditor. CP 320-327. At 4:02 p.m., Resignation of Chicago Title and Appointment of Successor Trustee (Libey) was filed with Benton County Auditor. CP 328-334.

On September 13, 2010, a process server posted Notices of Trustee's Sale on Franklin and Benton County properties. CP 1000, 1022-1029, 1003-1013.

On December 17, 2010, non-judicial foreclosure sales held. At 10:00 a.m., the Bank of Whitman bid a portion of the Uribes' debt—$390,000—

[1] Booker's declaration demonstrates that he was in contact with Tom Hammons and that he transferred all funds to the Bank of Whitman, not Libey.

for the Franklin County property. CP 876-886. There were no other bidders present, so the Bank of Whitman was the successful bidder and acquired the Franklin County property. *Id.* At 11:00 a.m., Bank of Whitman bid a portion of the Uribes' debt—$1,200,000—for the Benton County property. CP 887-898. There were no other bidders present, so the Bank of Whitman was the successful bidder and acquired the Benton County property. *Id.*

Eleven days later, on December 28, 2010, the Trustee's Deed for Franklin County properties was recorded and filed in the Franklin County Auditor's office. CP 335-340. On December 30, 2010, the Trustee's Deed for Benton County properties was recorded and filed in the Benton County Auditor's office. CP 341-347.

III. ARGUMENT

A. THE TRIAL COURT CORRECTLY FOUND THAT LIBEY WAS PROPERLY APPOINTED AND THE URIBES WAIVED THEIR PRE-SALE CHALLENGES TO THE TRUSTEE'S SALES.

At the outset, it bears noting that in any case involving the application of the Deeds of Trust Act ("DTA"), the Court should consider the three goals of the act: (1) that the non-judicial foreclosure process be efficient and inexpensive, (2) that parties have an adequate opportunity to prevent

wrongful foreclosure, and (3) that the stability of land titles be promoted. *Plein v. Lackey,* 149 Wn.2d 214, 225 67 P.3d 1061 (2003).

The Uribes claim that certain pre-sale aspects of the foreclosure process were improper, including the (1) timing of recording Libey's appointment as successor trustee approximately two hours after the Notices of Sale were recorded and (2) an issue with the notarization on the prior trustee's withdrawal as trustee. CP 363-386. The Uribes failed to raise these issues prior to the sales.

a) The Uribes waived the time-gap issue.

The Uribes' claims to set aside, vacate, or void the sale should be dismissed because the Uribes have admitted they were on notice of the alleged issue, and therefore under the DTA, they should have sought to restrain the sale. Not seeking to restrain the sale was a waiver of their right to do so in this case. *See Frizzell v. Murray,* 179 Wn. 2d 301, 306-7, 313 P.3d 1171 (2013); *Plein v. Lackey*, 149 Wn.2d 214, 229 (2003).

In the Uribes' answers to interrogatories in this case, they testified in relevant part:

> ***The world, including Rupp and 7HA, were put on actual notice of Libey's lack of authority to sell the Benton County Property when the instruments for the non-judicial foreclosure were recorded*** *Strong v. Clark,* 56 Wn.2d 230 (1960) (When an instrument involving real property is properly recorded, it becomes notice to all the world of its contents (citations omitted)). Therefore and notwithstanding actual knowledge of a procedural irregularity in the

> trustee's sale, Rupp and 7HA proceeded to acquire the Benton County Property from the BW [Bank of Whitman] for a price less than what the Benton County Property was worth, which according to the bankruptcy court, was worth $1.5 million.

CP 348-362 (emphasis added). If the Uribes are claiming that the current owners of the Benton County property, the Rupp Defendants, were on notice, then the Uribes were also on notice. Because the Uribes admittedly had notice, they should have sought to restrain the sale before it occurred, and because they did not seek to restrain the sale (or even contact Libey to address the alleged issue), the Uribes waived their right to raise the issue now.

For their argument that the DTA requires strict compliance with the DTA, that the waiver issue is irrelevant, and that the inquiry ends if strict compliance does not occur, the Uribes rely on *Albice v. Premier Mortgage Servs. of Wash.* 174 Wn.2d 560, 276 P.3d 1277 (2012).

In Albice, the trustee did not conduct the sale within 120 days, and accordingly, the Court held that trustee did not strictly comply with the DTA. *Albice* at 568-569. However, the Uribes fail to address the next part of the *Albice* analysis which is the waiver issue.

Despite finding a procedural irregularity with the sale, the Supreme Court then addressed the next part of the analysis regarding whether Albice ("Tecca") waived her right to raise the issue by not raising the issue prior to

the sale in accordance with RCW 61.24.040(1)(f)(IX) ("Anyone having any objection to the sale ***on any grounds whatsoever*** will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. ***Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the trustee's sale.***")(emphasis added). *See Albice* at 569-572. The *Albice* Court reasoned:

> We have found waiver in a foreclosure setting where the facts support its application. In Plein [*Plein v. Lackey,* 149 Wn.2d 214, 67 P.3d 1061 (2003)], we established that waiver of any postsale challenge 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.

Albice at 569. The *Albice* court conducted the waiver analysis and found that Tecca rightly assumed the sale would be cancelled because she had made her payments (late) under the parties' forbearance agreement and therefore, she would have had no reason to think she needed to file a lawsuit to stop the sale, a sale she rightly assumed would be cancelled. The Court found that it would be inequitable to apply waiver to the facts of the case. *Albice* at 569-572.

If the law is as the Uribes state, that failure to strictly follow the DTA ends the analysis, then there would have been no reason for the Supreme

Court to engage in the waiver analysis in *Albice*. Essentially, the Uribes' argument guts the waiver statute, rendering it meaningless.

Unlike the debtors in *Albice*, the Uribes received notice of the sale, knew when the sale would take place, and were on notice of the alleged defects at issue in this case. Yet, they did not bring a lawsuit to restrain the sale, and instead, allowed the sale to proceed and did not file their post-sale lawsuit until 11 months after the sale. The Court of Appeals in this case conducted the same analysis as the Supreme Court did in *Albice*. Just because the *Albice* facts favored non-waiver and the Uribe facts favored waiver does not mean that the Court of Appeals analysis conflicts with the Supreme Court's analysis.

Similarly, the Uribes misplace reliance on *Bavand v. OneWest Bank* 176 Wn.App. 475, 309 P.3d 636 (Div 1, 2013). In *Bavand*, the purported trustee that conducted the non-judicial foreclosure NEVER had the authority to conduct the foreclosure because it was not properly appointed. *Id.* at 488-490. This Uribe case is distinguishable from *Bavand*. Libey became authorized to act as the trustee when he filed his appointment with the County Clerk two hours after filing the notices of sale. Accordingly Libey was a properly appointed trustee and was authorized to conduct the foreclosure sale.

Similarly, the Uribes reliance on *Schroeder v. Excelsior Management Group, LLC,* 177 Wn.2d 94, 297 P.3d 677 (2013) is misplaced. Schroeder involved the non-judicial foreclosure of agricultural land. The Court held that agricultural land could not be the subject of a non-judicial foreclosure under the DTA and therefore, the trustee lacked the statutory authority to foreclose nonjudicially. *Id.* at 111-112. The waiver issue is irrelevant.[2]

In *Steward v. Good,* 51 Wn. App. 509, 754 P.2d 150 (1988), an action was brought against the purchaser of a foreclosed property, seeking to set aside the trustee sale based in part on allegations that the trustee failed to file the notice of sale until approximately 30 days before the sales took place, despite the statutory requirement that the notice of sale be recorded 90 days before the actual sale. *Id.* at 515. The Court held that despite the technical flaw in filing times, the sale was not void because there was no harm to the debtor, particularly where the debtor had notice of the flaw and failed to restrain the sale. *Id.*

The Uribes cannot show that that recording issue had any effect on the sales or harmed them in any way. Mr. Libey was properly appointed by the Bank of Whitman and everything he did after the RAST was recorded was properly authorized, including the sales.

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[2] Similarly, in *Merry v. Northwest Trust Services*, 2015 WL 3532992 (June 4, 2015), the Court of Appeals followed the Supreme Court's two step analysis in *Albice*, finding the equities favored waiver.

b) The notarization issue is irrelevant relating to Resignation of the Prior Trustee in the Resignation and Appointment of Successor Trustee, and the Uribe waived the issue.

The Uribes are claiming that the notary's signature predates the signature of the Chicago Title trustee and, therefore, the resignation of Chicago Title as trustee was invalid. While this argument was similarly waived, it is irrelevant because the original trustee does not need to resign in order for a successor trustee to be appointed. RCW 61.24.010(2)("The trustee may resign at its own election or be replaced by the beneficiary"). The Uribes' argument fails.

c) No damages claims survive.

Next, as an apparent back-up position, the Uribes argue that even if their failure to obtain presale relief under RCW 61.24.040(1)(f)(IX) results in the waiver of their attempt to invalidate the trustee sales, they did not waive their claims for damages, citing *Frizzell v. Murray*, 179 Wn.2d 301, 310-313 (2013) and RCW 61.24.127 (Failure to bring civil action to enjoin foreclosure--Not a waiver of claims).

RCW 61.24.127 does not apply to this case ***for any one of the following reasons***.

First, the statute does not apply to commercial loans. RCW 61.24.127 (4). In this case, the deeds of trust secured commercial loans (development of unimproved real property; construction of a pipeline).

See, e.g., Appellants' Opening Brief in Court of Appeals at 2-4; CP 66, 462-482

Second, the statute only applies to foreclosure of owner-occupied residential real property. RCW 61.24.127(3). Libey is not aware of any evidence in the record that the foreclosed real property was owner-occupied residential real property. Instead, the real property was unimproved land.

Third, the statute only saves the following claims, none of which are asserted or viable in this case. Under RCW 61.24.127(1)(a)-(d), the only saved claims are (1) "common law fraud or misrepresentation" (The Uribes allege no claims for fraud or misrepresentation, CP 62-84): (2) "a violation of Title 19 RCW (when the Uribes abandoned their claims for alleged collusive bidding, conspiracy and chilled bidding, they abandoned their CPA claim, Appellant's Court of Appeals Brief at 20, CP 78 (third cause of action); (3) "failure of the trustee to materially comply with the provisions of this chapter [DTA]" (the alleged defects are hyper-technical at most and did not damage the Uribes); or (4) "a violation of RCW 61.24.026" (inapplicable in this case).

B. THE BACK-TO-BACK SALES FORECLOSING ON THE CROSS-COLLATERALIZED LOANS WERE PROPER (NO DEFICIENCY JUDGMENT), AND NO CONTRACT TO THE CONTRARY WAS CREATED AT THE TRUSTEE'S SALE.

The Franklin loan was secured by a first priority deed of trust on the Franklin County property located in Pasco, Washington, and a first priority mortgage on the Benton County property. CP 136-139, 198-270. In addition, the loan was also secured with personal property that the Uribes used in their excavation business under the company name Uribe, Inc. CP 936-942.

Similarly, the Benton loan was secured by a second priority deed of trust on the Benton County property, and a second priority mortgage on the Franklin County property. CP 136-193. In addition, as with the Franklin loan, the Benton loan was also secured with personal property that the Uribes used in their excavation business under the company name Uribe, Inc. CP 943-957. This deed of trust also included a cross-collateralization clause linked to the 2002 Franklin Loan.

Citing *Udall v. T.D. Escrow Svcs.*, 159 Wn.2d 903, 154 P.2d 882 (2007),[3] the Uribes seem to be alleging that the "full satisfaction" language that appears in the trustee's deeds demonstrates that after the first sale took place at 10:00 a.m. for the Franklin County property, the proceeds of the second Benton County property sale should go to the Uribes because the

[3] *Udall* is irrelevant to the "full satisfaction" language in the trustee's deeds. *Udall* addresses an issue where the trustee accepted a third party bidder's offer at the auction. The "full satisfaction" in the Uribe case did not occur until all real properties and personal property were sold to satisfy the Uribe's cross-collateralized debt.

deed indicates that their debt had been fully satisfied. A parallel claim by the Uribes is that the nature of the sales—being held back-to-back—was somehow improper. They also allege that because the Trustees' Deeds state that the bids were made in "cash" that the cash proceeds from the Benton County sale should be given to the Uribes because of the "full satisfaction language" and/or because the sales were allegedly held improperly. CP 363-386.

However, the Uribes' claims overlook three critical facts: (1) the Trustee's Deeds were executed several days after the actual sales took place, not at the sales themselves; (2) per *Donovick v. Seattle-First Nat'l Bank,* back-to-back sales are an appropriate way to liquidate collateral under two separate deeds of trust; and (3) the Uribes had no equity in the property.

Significantly, the Trustee's Deeds were not drafted or executed at the sales themselves. Instead, ***several days after the sales took place*** when the Trustee's Deeds were being drafted, the "full satisfaction" language was included to indicate that the Bank of Whitman was not going to go after the Uribes for any deficiency, despite the fact that there were two mortgages still in place. CP 933 at ¶8. The non-judicial foreclosures and the personal property sales were in "full satisfaction" of the Uribes' obligations, despite the fact that the Bank of Whitman only recovered approximately $1.8

million on the Uribes' approximately $2.7 million debt owing and that there were mortgages on both properties.

Additionally, while the Trustee's Deeds indicate that the bids were in "cash," they were not. *Id.* At both the Franklin and Benton County property sales, a portion of the Uribes' debt was bid by the Bank of Whitman, not cash. *Id.* Therefore, there is no cash to deposit or to have been wrongfully withheld by the Bank of Whitman.

Regardless of the language in the Trustee's Deeds, the Uribes are also alleging that the sales themselves were improperly held, and thus, the second sale of the Benton property should be vacated or void. Contrary to the Uribes' arguments, the back-to-back sales are proper, as established in *Donovick v. Seattle-First Nat'l Bank,* 111 Wn.2d 413, 757 P.2d 1378 (1988).

In *Donovick*, the Washington Supreme Court upheld Seattle-First National Bank's right to non-judicially foreclose on a second deed of trust where there were two separate deeds of trust on separate properties, securing one financial obligation. *Id.* at 416. The Court held that the bank's first foreclosure on a first deed of trust was irrelevant to the status of the second. *Id.* "Any other result would 'give an unjustified, unwarranted windfall to the debtor—a windfall completely without merit in logic or equity in principle.'" *Id.; see also Beal Bank, SSB v. Sarich,* 161 Wn.2d

544, 553, 167 P.3d 555 (2007). The *Donovick* Court emphasized that the Deed of Trust Act does not preclude a creditor bank from realizing upon the entire security given by debtors. 111 Wn.2d at 416. In fact, the Court stated that "the Deed of Trust Act does not mandate or even contemplate that the entirety of the security must be sold in gross as a single parcel." *Id.* at 415.

In this case, the larger of the Uribes' two loans, the 2002 Franklin loan, was secured by some of Plaintiff's personal property, a first priority deed of trust on the Franklin property, and a first priority mortgage on the Benton County property. CP 136-139, 198-270. The second loan, the 2007 Benton loan, was secured by some of the Uribes' personal property, a second priority deed of trust on the Benton County property, and a second priority mortgage on the Franklin County property. CP 136-193. Notably too, the second 2007 loan included a cross-collateralization clause back to the 2002 Franklin loan.[4] CP 200. Just as in *Donovick* where the Court allowed the bank to conduct back-to-back foreclosure sales to recover the debt owing, here, holding back-to-back foreclosure sales to recover the debt owing on two separate deeds of trust was the proper way for the bank to attempt to recover on the Uribes' exceptionally large debt under both

[4] "Collateral" states "Borrower acknowledges this Note is secured by all previous Mortgages" and includes both the first priority mortgage on the Benton county property and the first priority deed of trust on the Franklin County property).

loans. Notably too, the fact that there were two loans in this case versus one loan in the *Donovick* case is an irrelevant distinction, as the cross-collateralization clause permits the Bank of Whitman to realize upon all collateral secured under the loans, as they did.

The Deed of Trust Act contemplated what the *Donovick* Court called a "quid pro quo between the lenders and borrowers," where the borrower has no right to redemption (RCW 61.24.050) and the secured party has no right to a deficiency judgment (RCW 61.24.100). *Id.* "***By giving up the right to a deficiency judgment, however, the secured party did not also give up the right to realize upon the security given.***" *Id.* (emphasis added)

In this case, the Uribes owed Bank of Whitman over $2.7 million, which was secured by both real and personal property valued at approximately $2.5 million as of June 2010, which was approximately 6 months before the sales were held. CP 281-286. While the bank was not allowed to go after the Uribes directly for any deficiency after the foreclosure sales, the bank is allowed, as recognized in *Donovick*, to liquidate any additional collateral that secured that debt. 111 Wn.2d at 415-16. The cross-collateralization clause found in the 2007 Benton County loan allowed the lender to realize upon multiple pieces of collateral, including the Benton County property and the Uribes' personal property, in order to satisfy the Uribes' full obligation. *See* RCW

61.24.030 (4); RCW 61.24.100; *see also* 27 Wash. Prac., Creditors' Remedies—Debtors' Relief §3.37 (2d ed.) (amendments to the Deed of Trust Act clarify that cross collateralization clauses—which "are frequently found in commercial loan documents"—"allow recovery against all of the collateral held on any of the obligations"). The Uribes' claim, that this process was improper, is without merit.

Furthermore, the Uribes had no equity in the property and, thus, cannot prove that they were damaged by the conduct of the sales. The Benton County property was subject to ***both a deed of trust and a mortgage***. To set aside, vacate, or void the Benton county property foreclosure under the deed of trust would still leave the Uribes with a property subject to a mortgage under the first 2002 loan. CP 136-139, 198-270. Without equity in the property, the Uribes cannot prove that they were damaged by the non-judicial foreclosure sale of the Benton County property.

IV. NO DAMAGES

Regardless of the liability issues, the Uribes cannot prove damages on any of their claims given the debt owing on their loans (approximately $2.7 million) and the amount recovered by the Bank of Whitman on those debts (approximately $1.8 million), as well as the fact that the Benton County property was still subject to a first priority mortgage, which leaves the Uribes with no equity in the property. Thus, irrespective of any potential

liability, the Uribes cannot prove damages.

As the Bankruptcy court found before any of the underlying facts that gave rise to this case occurred, the Uribes owed more to the Bank of Whitman than their secured assets covered. At the time, back in 2010, the Uribes owed the Bank of Whitman approximately $2.7 million, but their secured assets were valued at approximately $2.5 million, including both Franklin and Benton County properties as well as their personal property. CP 281-286. And, in fact, as a result of the sales of all of their secured property, Bank of Whitman only recovered $1.8 million. Further, the Uribes' property was not only subject to the Deeds of Trust, but also to two mortgages. The Benton County property (the sale of which the Uribes are seeking to set aside) was encumbered not just by a deed of trust, but also by a first priority mortgage under the first, larger 2002 Franklin loan. Thus, the Uribes had no equity in the Benton County property.

V. CONCLUSION

For the foregoing reasons stated above, Libey requests the Uribes' petition for review be denied.

Respectfully submitted this 30th day of July, 2015.

DEARMIN FOGARTY PLLC

Paul E. Fogarty

Paul E. Fogarty, WSBA No. 26929

CERTIFICATE OF SERVICE

I hereby certify that on July 30, 2015, I caused to be served a true and correct copy of RESPONDENTS GARY LIBEY AND LIBEY, ENSLEY & NELSON, PLLC'S ANSWER TO PETITION FOR REVIEW by US Mail and email (per email agreement between all parties) to the following:

Bernard G. Lanz
The Lanz Firm PS
216 1st Ave S Ste 333
Seattle, WA 98104-2534
bglanz@thelanzfirm.com
Counsel for Plaintiff

Robert Michael Seines
Attorney at Law
PO Box 313
Liberty Lake, WA 99019-0313
rseines@msn.com
Counsel for Plaintiff

Michael C. Simon
Landerholm, P.S.
PO Box 1086
Vancouver, WA 98666-1086
michael.simon@landerholm.com
Counsel for Randall Rupp and Luz Dary-Rupp

John Graham Schultz
Leavy Schultz Davis & Fearing PS
2415 W Falls Ave
Kennewick, WA 99336-3068
jschultz@tricitylaw.com
Counsel for Randall Rupp

s/Kiyomi Mathews
Kiyomi Mathews, Paralegal

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Subject: 91928-3 - Michael Uribe, et ux. v. Libey, Ensley & Nelson, PLLC, et al: Libey's Answer to Petition for Review

Dear Sir or Madam:

Attached please find **Respondent Gary Libey and Libey Ensley & Nelson PLLC's Answer to Petition for Discretionary Review** for filing with the Court in the matter of Michael Uribe, et ux. v. Libey, Ensley & Nelson, PLLC, et al; Case No. 91928-3.

Kiyomi Mathews
Paralegal
DEARMIN | FOGARTY PLLC
705 Second Avenue, Suite 1050, Seattle, WA 98104
206.826.9410 (direct) 206.826.9400 (main)
206.826.9405 (fax) www.dearminfogarty.com