No. 93556-4

SUPREME COURT
OF THE STATE OF WASHINGTON

4518 S. 256th LLC,

Appellant

v.

KAREN L. GIBBON, P.S., Trustee; RECONTRUST, N.A, Trustee; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS") acting as nominee for COUNTRYWIDE HOME LOANS, INC., a Beneficiary; THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, as Trustee for the certificateholders of the CWABS, Inc. Asset-backed Certificates, Series 2006-7,

Respondents

ON APPEAL FROM DIVISION I OF THE COURT OF APPEALS
(NO. 73834-8-I)

RESPONDENTS MERS AND BONY'S ANSWER TO APPELLANT'S PETITION FOR REVIEW

John S. Devlin III, WSBA No. 23988
Abraham K. Lorber, WSBA No. 40668
Attorneys for Respondents MERS and BONY

LANE POWELL PC
1420 Fifth Avenue, Suite 4200
P.O. Box 91302
Seattle, WA 98111-9402
Telephone: 206.223.7000
Facsimile: 206.223.7107

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I. INTRODUCTION

Pursuant to RAP 13.4(d), Respondents BONY and MERS[1] respectfully submit this answer to Appellant 4518 S. 256th LLC's ("Appellant") Petition for Discretionary Review.

Appellant's Petition contends that the Supreme Court must accept discretionary review of this case because the issue substantially affects the public interest. BONY and MERS disagree. This matter presents factually unique circumstances and is in fact a lingering relic of the 2008/2009 financial crisis. As such, a repetition of this factual pattern is highly unlikely. Equally unlikely is the risk of future borrowers being confused or uncertain because of the Court of Appeals' decision (as Appellant contends). Thus, the Petition for Review should be denied.

II. STATEMENT OF THE CASE

For the purposes of this motion practice, BONY and MERS are satisfied by the statement of the case laid out in Appellant's Petition. BONY and MERS reserve the right to present a more complete factual recitation in the event the Court accepts review.

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[1] "BONY" is Respondent The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-7.
"MERS" is Respondent Mortgage Electronic Registration Systems, Inc.

III. ARGUMENT AGAINST DISCRETIONARY REVIEW

A. Legal Standard

The Washington Rules of Appellate Procedure provide that the following considerations govern whether the Supreme Court will accept a petition for review:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Here, Appellant contends that review should be accepted on the basis of a substantial public interest.[2] Thus, while Appellant certainly disagrees with the Court of Appeals ruling, it does not contend that the ruling is in conflict with any binding authority.

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[2] Pet. p. 20.

B. The Public Interest Will Not be Served By Accepting Review of this Factually Unique Case.

The overwhelming bulk of Appellant's Petition is devoted to arguing with the reasoning of the Court of Appeals in affirming the trial court's ruling. Despite this, Appellant does not contend that the Court of Appeal's ruling conflicts with one of its own rulings or a ruling of this Court. BONY and MERS will not reargue the appeal here – their position on the merits of the case is fully set forth in their appellate briefing and the transcript of oral argument.

Rather, Appellant contends that this Court must accept appeal because the public interest requires it. Specifically, Appellant contends that the current ruling will allow lenders to "abandon foreclosure efforts for decades with impunity" and to "evade the statute of limitations for decades."[3]

These arguments ignore the fact that no secured lender has an incentive to abandon both payment and collateral for any extended length of time. Indeed, an in-default borrower whose lender opts not to foreclose would receive a benefit in that they continue to have title to and possession of the property despite their non-payment. As to Appellant's position that a 36-year statute of limitations is unfair, BONY and MERS

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[3] *Id.*

point out that the loan at issue was a 30-year mortgage.[4] This loan required payments in year one, year six, year 17, and year 30 – indeed, in every year during the life of the loan. Thus, it only makes sense that a lenders action to enforce the loan might accrue in year one, year six, year 17, and year 30 or during any year during the life of the loan, with a lawsuit to be filed six years later.

Moreover, the uniqueness of the facts presented here dramatically undercuts Appellant's contention that the matter affects the public interest. In order for the public interest to be affected, Appellant would have to demonstrate that there are other borrowers in Appellant's same circumstances who could benefit from the ruling. That is, Appellant would need to show the existence of other borrowers who had an uncompleted foreclosure without explicit acceleration over six years ago. Appellant has failed to show a significant number of borrowers in similar circumstances. Despite the fact that Washington property records are freely searchable online, Appellant presents no such information to the Court. Indeed, the foreclosure history of this loan is a product of the 2008/2009 foreclosure crisis, during which the foreclosure process was stayed or discontinued for many in-default loans. It is now 2016, seven to

[4] CP 107-108.

eight years removed from those unfortunate events. To the extent that any other loans might have been in the same situation as the loan at issue here, the chance that statute of limitations-based litigation will arise regarding such loans diminishes with each passing day.

To the extent there was any public interest in the result of this appeal, Appellant has failed to show that such interest was ever actually substantial. In any event, any interest decreases as time goes on because we move farther and farther away from the 2008/2009 foreclosure crises.

IV. CONCLUSION

The Court of Appeals' decision in this case was correct and it does not conflict with any other Washington appellate decisions. The public interest is not affected by this case due to the unique factual posture. Thus, the Appellant has not satisfied any of the RAP 13.4(b) and its Petition for Review should be denied.

RESPECTFULLY SUBMITTED this 10th day of October, 2016.

LANE POWELL PC

By: _____

John S. Devlin III, WSBA No. 23988
devlinj@lanepowell.com
Abraham K. Lorber, WSBA No. 40668
lorbera@lanepowell.com
Telephone: 206.223.7000
Facsimile: 206.223.7107

Attorneys for Respondents MERS and the SLS Investor, The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-7

CERTIFICATE OF SERVICE

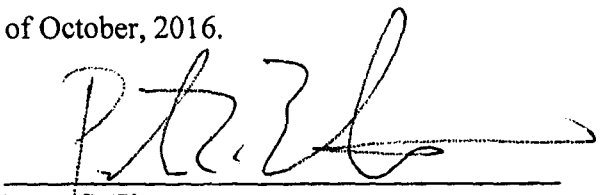
I hereby certify under penalty of perjury of the laws of the State of Washington that on the 10th day of October, 2016, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

Thomas L. Dickson
Elizabeth Thompson
Daniel J. Frohlich
Dickson Law Group, PS
1201 Pacific Avenue, Suite 1401
Tacoma, WA 98402-4337
253-572-1000
tdickson@dicksonlegal.com
ethompson@dicksonlegal.com
dfrohlich@dicksonlegal.com

Karen L. Gibbon
Law Offices of Karen L. Gibbon, P.S.
3409 McDougall Avenue, Suite 202
Everett, WA 98201
425-212-3277
kgibbon@gibbonlaw.com

Via e-mail and U.S. mail

DATED this 10th day of October, 2016.



Peter C. Elton

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