

SUPREME COURT NO. 94093-2

Court of Appeals No 74264-7-I

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

Robert and Doris Cummings, husband and wife,

Appellants,

v.

Northwest Trustee Services of Washington, Mortgage Electronic
Registration Systems, Inc., and Deutsche Bank National Trust Co., as
Trustee for the Registered Certificate Holders of First Franklin Mortgage
Loan Trust, Asset-Backed Securities Series 2006-FF8,

Respondents.

**RESPONDENTS' MOTION TO STRIKE CUMMINGS REPLY
BRIEF**

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I. MOVING PARTIES

Respondents¹ file this motion to strike the Cummings' Reply to Answer, dated March 15, 2017.

II. RELIEF SOUGHT

Respondents ask the Court to strike the Cummings' Reply to Answer under RAP 13.4(d), which provides that "A party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review."

III. RELEVANT PORTIONS OF RECORD

The relevant portions of the record are the Appellant Cummings' Petition for Review; Respondent Northwest Trustee Services Inc.'s Answer to Petition for Review; Respondents' Answer to Appellants Cummings' Petition for Review; Cummings' Reply to Answer.

IV. GROUNDS FOR THE RELIEF SOUGHT AND ARGUMENT

On March 15, 2017, the Appellants Cummings filed a 15-page "Reply to Answer" in this case. Under RAP 13.4(d), "[a] party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review." Neither these Respondents nor

¹ Mortgage Electronic Registration Systems, Inc., and Deutsche Bank National Trust Co., as Trustee for the Registered Certificate Holders of First Franklin Mortgage Loan Trust, Asset-Backed Securities Series 2006-FF8.

Northwest Trustee Services Inc. sought review of any issues not raised in the Cummings' petition for review. Because no answering party sought review of any issues not raised by the Cummings' petition, no reply brief is permitted. Therefore, the Cummings' Reply to Answer is improperly filed and should be stricken.

Respondent's counsel raised this issue with the Cummings' counsel by email before filing this motion, and requested that the reply brief be withdrawn. Mr. Wexler, the Cummings' counsel, refused and argued that Respondents had raised a "new key issue."

RAP 13.4(d) permits a reply to be filed only if the answering party "seeks review of issues not raised in the petition for review." A responding party may ask the Court to grant review of some issue that a petitioner has not sought to have reviewed, in which case the petitioner is permitted to file a reply brief addressing that request.

But Respondents have not identified any basis under RAP 13.4(b)(1)-(4) for this Court to accept review of some other issue. To the contrary, Respondents have argued the Court of Appeals was correct and that *no review of any issue* in the Supreme Court is appropriate or necessary in this case. Accordingly, no reply brief is authorized under RAP 13.4(d).

RAP 13.4(d) does not authorize a reply brief because counsel believes a key new issue is raised in the argument. Such an interpretation would make the rule almost pointless, since petitioners' counsel could always argue that they should be permitted to reply to what they perceive as a new argument, and the rule would devolve into endless disputes over what constitutes a new argument.

Moreover, Respondents' answer repeats arguments Respondents previously made in its brief submitted to the Court of Appeals. Likewise, Petitioners' lengthy reply brief repeats their argument that the Washington Supreme Court has misinterpreted the rule that the "security follows the note." A reply brief is permitted to allow a petitioner to respond to a respondent's request for review of a new issue. It is not permitted to allow a petitioner to attempt to bolster its argument in its petition as Petitioner Cummings' attempts to do here. Whether review will be accepted is to be determined based upon the petition and answers thereto.

V. NO HEARING

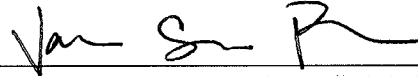
Respondents request that the Court decide this motion without oral argument.

VI. CONCLUSION

Appellant's Reply to Answer is not authorized by RAP 13.4(d). Respondents respectfully request the Court to strike the reply brief.

Respectfully submitted this 27 day of March 2017.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that I caused **Respondents' Answer to the Appellants Cummings' Petition for Review** to be filed with the Supreme Court (original and one copy); and caused a true and correct copy of same to be served upon the party listed below by email/pdf and via U.S. mail:

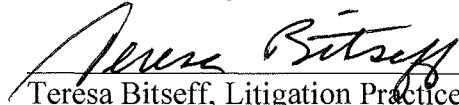
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DATED: March 27, 2017 at Seattle, Washington.



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