

Supreme Court Case No. 94214-5

Court of Appeals Case No. 73406-7-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FRANK BUCCI

Appellant,

v.

NORTHWEST TRUSTEE SERVICES, INC. et al.

Respondents.

**ANSWER TO PETITION FOR REVIEW
OF RESPONDENTS NORTHWEST TRUSTEE SERVICES, INC.
AND RCO LEGAL, P.S.**

Submitted By:
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I. IDENTITY OF ANSWERING PARTY

Respondents Northwest Trustee Services, Inc. (“NWTS”) and RCO Legal, P.S. (“RCO”) hereby answer the Petition for Review of Appellant Frank Bucci as follows below.

II. STATEMENT OF RELIEF SOUGHT

NWTS and RCO request that the Washington Supreme Court decline to accept review of the decision in *Bucci v. NWTS et al.*, 197 Wn. App. 318, 387 P.3d 1139 (2016) (published in part).

III. STATEMENT OF THE CASE

A. Factual History.

1. Bucci Receives a Loan and Secures Its Repayment With Real Property as Collateral.

On May 22, 2007, Bucci executed a promissory note (the “Note”) in the amount of \$1,530,000.00, payable to Washington Mutual Bank, FA (“Washington Mutual”). CP 568-575. In the Note, Bucci agreed that if he did “not pay the full amount of each monthly payment on the date it is due,” he would be in default. CP 571, ¶ 7(B).

Bucci also executed a Deed of Trust securing the Note. CP 577-601. The recorded Deed of Trust encumbers real property commonly known as 8102 155th Ave. S.E., Newcastle, WA 98059 (the “Property”).

*Id.*¹ Bucci agreed that the Note and security instrument could be sold one or more times without notice to him. CP 588, ¶ 20.

2. Bucci Defaults on the Loan.

Between 2007 and 2009, Bucci made payments to Washington Mutual, and then JPMorgan Chase Bank, N.A. (“Chase”). CP 683 (Bucci Dep.) at 29:19-30:16; CP 722 at 271:19-21. Chase acquired servicing rights to the loan after the F.D.I.C. receivership of Washington Mutual’s assets. *See also* CP 683-684 at 29:24-30:16. During this time, no one sought to foreclose on the Property. CP 701 at 166:25-167:3.

In March 2009, Bucci voluntarily stopped paying the loan. CP 720 at 252:9-253:1; CP 723 at 276:13-19. No one from either NWTS or RCO ever told Bucci to stop making payments. CP 686 at 44:12-17.

3. Foreclosure Activities Proceed, But No Sale Occurs.

On or about June 26, 2009, a foreclosure referral to NWTS identified the Loan Trust as the foreclosing entity. CP 1295-1296, ¶¶ 7-8;

¹ On July 10, 2009, an Assignment of Deed of Trust was recorded with the County Auditor in favor of Bank of America, N.A. as Trustee as successor by merger to Lasalle Bank, National Association as Trustee for WaMu Mortgage Pass-Through Certificates Series 2007-OA6 Trust (the “Loan Trust”). CP 770.

CP 1303-1305.² The referral information and documentation also included confidential, non-public data and documents such as a copy of the Note and loan payment history. *See* CP 563-564, ¶¶ 5, 6. NWTS' business practice was to conduct Washington State foreclosures in the beneficiary's name. CP 1299, ¶ 19.

On or about June 26, 2009, NWTS also ordered a Trustee's Sale Guarantee from First American Title Insurance Company, which provided NWTS with information that is routinely relied upon to process a non-judicial foreclosure referral. CP 1296, ¶ 9. The Trustee's Sale Guarantee assured NWTS of the correctness of information contained therein, it identified the record owners and lists all exceptions of record against a secured property, and it provided the names of those individuals or businesses who should receive foreclosure notices. *Id.* The Trustee's Sale Guarantee received in connection with the subject foreclosure identified the beneficiary of the subject loan as the Loan Trust. CP 1307-1316.

On or about June 28, 2009, as a result of Bucci's default, he was

² According to NWTS's corporate representative, the Loan Trust was known as a securitized trust, meaning that the loan had been deposited and pooled into it, and Bank of America, N.A. was serving as its trustee. In addition, Chase was identified as servicing the loan at the time of the foreclosure referral. CP 1295-1296, ¶ 7.

sent a Notice of Default. CP 607-608. The Notice informed Bucci of the arrearage amount, then exceeding \$34,000. CP 608. The Notice also identified the Loan Trust as the creditor to whom the debt was owed. *Id.*

On July 10, 2009, an Appointment of Successor Trustee was recorded with the County Auditor, naming NWTS as the successor trustee under the Deed of Trust. CP 610; *see also* CP 707 at 150:4-8 (admitting NWTS is the trustee).

On August 14, 2009, a Notice of Trustee's Sale was recorded with the County Auditor, setting a sale date for the Property. CP 615-619. That sale was subsequently discontinued. CP 623-627.

On September 14, 2009, NWTS received an endorsement from First American Title Insurance Company confirming the Loan Trust's identification in the public record as the beneficiary. CP 1322-1324.

On November 10, 2009, December 7, 2009, and February 4, 2010, Chase provided NWTS with bidding instructions that again identified the beneficiary as the Loan Trust. CP 1326-1328.

On July 8, 2010, a second Notice of Trustee's Sale was recorded with the County Auditor, setting a sale date of October 8, 2010. CP 636-640. That sale was also later discontinued. CP 644-645. Between late 2010 and early 2013, Bucci tried to apply for a loan modification, and no

foreclosure activity occurred. CP 734-758.

On May 12, 2011, NWTS was notified via a secure messaging platform that U.S. Bank, N.A. became the successor in interest to Bank of America with respect to serving as trustee of the Loan Trust. CP 565, ¶ 16. The trust itself stayed the same. *Id.*

4. Foreclosure Activities Continue, But Remain Uncompleted.

On March 11, 2013, NWTS completed a checklist that was both internally prepared and audited, stating that NWTS had confirmed the beneficiary's identity. CP 1333.

On or about March 12, 2013, Bucci was sent a new Notice of Default. CP 647-650. This Notice informed Bucci that the arrearage amount now exceeded \$336,337.22. *Id.* Bucci had no reason to doubt the veracity of that information, and did not attempt to contact anyone named in the Notice. CP 699-700 at 117:25-119:10. The Notice identified the Loan Trust as the Note's owner and Chase as the loan servicer. *Id.*

On April 9, 2013, Bucci was referred to mediation under the Washington Foreclosure Fairness Act. CP 652-659. That referral listed the beneficiary as the Loan Trust, which was consistent with the beneficiary as known to NWTS. *Id.* Bucci then suddenly cancelled the

mediation process. CP 1299-1300, ¶ 22; *see also* CP 728 at 324:8-24.

On June 25, 2013, a third Notice of Trustee's Sale was recorded with the County Auditor, setting a sale date for the Property. CP 663-667. The sale was postponed, but did not occur. CP 671.

In August 2013, servicing of the loan transferred to Select Portfolio Servicing, Inc. ("SPS"). CP 684 at 31:16-32:9.

On or about October 24, 2013, NWTS was again informed via secure message that U.S. Bank, in its capacity as trustee for the Loan Trust, was still the beneficiary. CP 566, ¶ 22. No trustee's sale of the Property occurred during Bucci's litigation. *Id.*, ¶ 25.

B. Procedural History.

On August 16, 2013, Bucci filed suit against NWTS, its counsel RCO, Chase, and U.S. Bank. CP 1849-1914. On January 10, 2014, Bucci filed an Amended Complaint which added SPS as a defendant. CP 1-57.

On February 27, 2015, NWTS and RCO moved for summary judgment. CP 538-561. On March 2, 2015, Bucci moved for partial summary judgment against NWTS. CP 1139-1163.

On March 27, 2015, after hearing oral argument, the Hon. Judge Tanya Thorp of the King County Superior Court granted summary judgment in favor of both NWTS and RCO. CP 1843-1844. Bucci

appealed this ruling. Judge Thorp also denied Bucci's partial summary judgment motion, which was not appealed. CP 1839-1840.³

On December 27, 2016, the Court of Appeals, Division One, affirmed the decision below. 197 Wn. App. 318, 387 P.3d 1139 (2016) (published in part).

IV. RESPONSE ARGUMENT

A. Standard of Review.

The discretionary acceptance of a decision terminating review may only be granted pursuant to the criteria set forth in R.A.P. 13.4(b). Bucci contends the Court of Appeals' decision conflicts with other case law, and presents "an issue of substantial public interest." Pet. for Review at 8. However, the record does not support further review for either reason.

B. Bucci's Petition Does Not Mention Issues Related to NWTS and RCO.

"An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that there [is] no reasonable possibility of reversal." *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 905, 969 P.2d 64 (1998), *citing* R.A.P. 18.9(a).

³ Additionally, the Superior Court granted summary judgment to the other defendants in separate orders. CP 1099-1100; CP 1841-1842.

Examples of frivolous appeals include “[f]ailing to cite applicable authority in support of arguments in the brief,” “[a]ppeal of purely discretionary rulings simply because the appellant disagrees with them, without making a debatable showing of abuse of discretion,” and “[a]ppeals based solely on issues which have not been raised below or properly preserved for appeal.” Wash. State Bar Ass’n, *Appellate Practice Deskbook* § 26.3(1) (3d ed. 2005). “Pursuing a frivolous appeal justifies the imposition of terms and compensatory damages.” *Eugster v. City of Spokane*, 139 Wn. App. 21, 34, 156 P.3d 912 (2007), citing *Green River Cmty. Coll. Dist. No. 10 v. Higher Educ. Pers. Bd.*, 107 Wn.2d 427, 442-43, 730 P.2d 653 (1986).

Here, Bucci’s entire brief attacks the terms of the Note he executed, but fails to articulate a basis for reviewing summary judgment in favor of NWTS and RCO.⁴ In fact, neither party is referenced anywhere in Bucci’s arguments. Pet. for Review 8-19.

Consequently, the Supreme Court should deny Bucci’s Petition, and additionally find that Bucci’s continued inclusion of NWTS and RCO as litigants in this matter is patently frivolous.

⁴ In the Court of Appeals, Bucci’s briefing likewise failed to raise a substantive argument concerning the law firm of RCO.

C. Bucci's Assertion of an Invalid Note is Without Merit.

Concerning the issue Bucci does present, the Court of Appeals correctly held that the Note described Bucci's obligations "on its face." 197 Wn. App. at 331. Bucci was plainly aware of his "rights, duties, and obligations," making the Note a negotiable instrument. *See, e.g., Alpacas of Am., LLC v. Groome*, 179 Wn. App. 391, 317 P.3d 1103 (2015), *citing* RCW 62A.2-106; *see also* RCW 62A.3-104(a), RCW 62A.3-112(b); Lawrence's Anderson on the Uniform Commercial Code, 6B Anderson U.C.C. § 3-104:17 (3d ed.) (a fixed amount of principal "may be increased by the addition of interest or other charges that are set forth in the instrument.")

For instance, Bucci admitted that he would not have been able to build a house without the subject loan. CP 682 at 22:9-17. Bucci further understood that he was required to repay \$1,530,000.00 plus amounts added under Section 4(G) of the Note. *Id.* at 23:19-24. Bucci knew the consequence of non-payment was default. *Id.* at 25:10-16.

In sum, the Court of Appeals' decision properly analyzes the evidence in light of Washington's version of the Uniform Commercial Code. NWTs could initiate a non-judicial foreclosure of the Property after Bucci defaulted on his secured loan.

V. CONCLUSION

Bucci's Petition for Review does not raise any substantive challenges involving either NWTs as a foreclosure trustee or RCO as a law firm. Moreover, there is neither a "significant question of law" nor "issue of substantial public interest" presented.

The Court of Appeals' decision should be left to stand, and Bucci's Petition for Review must therefore be denied.

DATED this 4th day of April, 2017.

RCO LEGAL, P.S.



By: /s/ Joshua S. Schaer
Joshua S. Schaer, WSBA #31491
Attorneys for Respondents
Northwest Trustee Services, Inc. and
RCO Legal, P.S.

Declaration of Service


The undersigned makes the following declaration:

1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.
2. On April 4, 2017 I caused a copy of the **Answer to Petition for Review of Respondents Northwest Trustee Services, Inc. and RCO Legal, P.S.** to be served to the following in the manner noted below:

<p>Joshua B. Trumbull Emily A. Harris JBT & Associates, P.S. 106 E. Gilman Ave. Arlington, WA 98223 Attorneys for Appellant</p>	<p><input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: josh@jbtlegal.com emily@jbtlegal.com ashley@jbtlegal.com</p>
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 4th day of April, 2017.



Kristine Stephan, Paralegal