

No. 94551-9

SUPREME COURT OF THE STATE OF WASHINGTON

CONCEPCION HERMOSILLO,

Petitioner,

v.

ELIAS HAYDARI AND AMIR BAHANDARI,

Respondents

RESPONDENTS ELIAS HAYDARI AND AMIR BAHANDARI'S

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

Respondents Elias Haydari and Amir Bahandari (together Haydari or Respondents) purchased a house together for the purpose of investment.

II. DECISION OF COURT OF APPEALS

On April 24, 2017, the Court of Appeals Division I filed the unpublished opinion terminating review of the decision of the Superior Court of Snohomish County. On May 26, 2017 Petitioner Concepcion Hermosillo filed a Petition for review by the Supreme Court. Leave to extend the deadline for filing the Petition was granted.

III. ISSUES PRESENTED FOR REVIEW

In Hermosillo's Opening brief to the Court of Appeals Division I she lists two issues: 1. "Whether the Complaint or the trustee's deed provided sufficient factual detail showing QLS was the trustee on December 14, 2015, the date on which QLS executed and issued the trustee's deed" and 2. "Whether [Hermosillo is] Entitled to Jury Trial to Challenge [Haydari's] Right to Possession Claim."

However, in Hermosillo's Petition for review she states a number of issues for which the Court of Appeals did not give an opinion in the Instant Case. Hermosillo states the issues as including whether her

defenses were waived, whether the COA relied too much on *Brown v. Washington State Dept. of Commerce*, 184 Wn.2d 509, 359 P.3d 111 (2015) (a case which was not cited at all in the instant case by the Court of Appeals) and violations of the Deed of Trust Act.

IV. INTRODUCTION

The Petition arises from a Superior Court decision granting Haydari possession of property that was subject to a Deed of Trust granted by Hermosillo. Haydari had purchased the property at foreclosure in December of 2015. Hermosillo remains in possession today due to her challenge of the Superior Court's denial of a jury trial in which she would have, in theory, challenged the validity of the recitals of the Trustee's Deed which grants Haydari possessory rights.

V. STATEMENT OF THE CASE

Haydari and Bahandari are partners in fix and flip ventures. After successfully bidding on Hermosillo's home they originally gave Hermosillo time to vacate because it was the December holidays. Hermosillo did not vacate the home but rather remained in possession and recorded a Lis Pendens on the property on December 22, 2015.

Haydari filed for unlawful detainer and based the complaint on obtaining the Trustee's Deed and reliance on its recitals. Hermosillo challenged the complaint at a show cause hearing but did not present evidence that contradicted the recitals. She requested a jury trial to review the case, but was denied both at the show cause hearing and on her request for revision.

Hermosillo has remained in possession through filing a bond with the Superior Court pursuant to RCW 59.12.100. Haydari on the other hand seeks possession of the property as his business interests are adversely affected by Hermosillo remaining in possession.

VI. ARGUMENT

- a. Review is not justified under RAP 13.4
 - i. The Decision of the Court of Appeals does not conflict with a decision of the Supreme Court

The COA was very concise and clear in handling the only two issues for which Hermosillo had requested review. The COA specifically cites in its opinion a few Supreme Court cases which they followed properly.

The COA properly applied *Albice*. Hermosillo failed to bring any evidence to prove that the Trustee was not proper, to show that any other

recital in the Trustee's Deed was insufficient, nor any other evidence to support her claim that Haydari should have been on notice that Quality was not the Trustee. While it is true the Court voided the Trustee Sale in *Albice*, there is no reason to void the Trustee Sale of the property in question here.

Hermosillo claims that "the factual evidence presented by Respondents in Support of their UD Complaint and Response to Motions for Reconsideration and the Supersedeas bond hearings were refuted in detail." However, Hermosillo fails to explain just what evidence should have been considered that would have refuted anything in favor of Hermosillo's claim for possession based on an improper trustee sale.

Hermosillo claims that Respondents could have inquired about the litigation by searching the Superior Court case filings on the name of the Trustee. However, the purpose of the Lis Pendens is to simplify notice to the entire world – including people who are not attorneys and therefore not savvy as to what case pleadings could entail or how to properly conduct a search at the courthouse.

It was entirely the fault of Hermosillo's counsel that a Lis Pendens was not filed with the Auditor before the sale. A Lis Pendens was prepared and filed by November 4, 2015 *in the Superior Court's clerk's*

files, not with the auditor. The Auditor's office is on the same block in Snohomish County – presumably it is a simple act to properly file a Lis Pendens at the same time of filing the lawsuit. The way Hermosillo argues on page ten of her brief, it would seem that she believes she may record with the auditor subsequent to a Trustee's sale and receive the same benefit of notice. This is not the case as it does not follow logically nor does it follow RCW 4.28.320.

The COA properly followed *Cowiche* in that they did not consider new issues raised in Hermosillo's COA Reply Brief (such as Hermosillo's argument raised in her about whether a Trustee's Deed is a negotiable instrument). In a similar fashion, Hermosillo has raised new issues in her Petition that go beyond the issues of her original appeal.

The COA properly applies *Munden* in that they recognized that the issues of Unlawful Detainer actions are limited to issues of possession, not to the myriad other items that Hermosillo argues.

Review of Hermosillo's appeal is not justified for non-compliance with Supreme Court decisions.

- ii. The Decision of the Court of Appeals does not conflict with a decision of the Court of Appeals

The COA properly applied *Holland* in that "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration..." Hermosillo has consistently failed to present evidence or reasoned argument based on proper evidence.

Furthermore, *Holland* says "trial court briefs cannot be incorporated into appellate briefs by reference" which Hermosillo attempted through mentioning a wide variety of items were not part of the record.

In her Petition for Review, Hermosillo argues that "Respondent had actual notice of the pending issues with notice in their own documentary exhibits for example a title report they acquired before the sale notified them that the title was not warranted for defects or encumbrances..." (Petitioner's brief, page 6). It is important to take note that no such title report was requested prior to sale, no such title report is in the court files, nor does any such report exist whatsoever. If it did, no Lis Pendens would have appeared on it. It might somehow be convenient for Hermosillo if it had existed were the issue of Possession to be decided based solely on adequate notice of pending litigation. Hermosillo's claim of evidence that exists nowhere in the court files or pleadings, or anywhere else, is telling as to the justification of her demand for jury trial.

The COA properly applied *Indigo* in that they stated a property owner must schedule a show cause hearing in order to get a writ of restitution.

The COA properly applied *Savings* in that they limited the questions to those issues that related to Plaintiff's claim of right to possession.

Hermosillo argues that "the possessory issues include all issues where the possession arises from a DTA determination that the trustee never had any interests or the power to convey possession." Then she fails to present evidence that the Trustee was not the proper Trustee or that the Trustee failed an any particular duty. Hermosillo would have the Court ignore RCW 61.24.040(7) which requires the Court to accept the recitals of the Trustee's Deed as "...prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers..." In other words, the Courts are required to accept the Trustee's Deed as correct until proven otherwise. As also noted by the COA, Hermosillo did not challenge whether Respondents were bona fide purchasers (COA decision, page 5).

Review of Hermosillo's appeal is not justified for non-compliance with court of appeal decisions.

iii. The matter does not Involve a Significant Question
of Law Under the Constitution

There is no question of Hermosillo's constitutional rights. Nor has any constitutional right of Hermosillo's been violated. Had Hermosillo provided any inkling of evidence to actually refute claims made in the original complaint it would have been proper to schedule a trial on the merits. However, because there was no "issue of material fact presented by the pleadings" (RCW 59.12.130) there was no need nor right to a trial.

Hermosillo argues that the "trial court erred by finding Hermosillo had no standing to challenge whether or not the trustee was properly appointed and the beneficiary legally acquired possession of the note or owned it." To the contrary, had Hermosillo presented any evidence to contradict the Trustee's Deed by actual presentation of evidence then the Commissioner would have been correct in setting the case for trial pursuant to RCW 59.12.130. Instead of presenting evidence that the Trustee was improper Counsel for Hermosillo made a litany of unsubstantiated claims.

Due to the lack of any violation of Hermosillo's constitutional rights, review is not justified.

iv. This Petition does not involve an Issue of
Substantial Public Interest that Should Be
Determined by the Supreme Court

Hermosillo claims that her appeal involves an issue of substantial public interest in that the *Brown* decision affects the thousands of foreclosure sales. However, she does not explain adequately why the *Brown* decision has anything to do with the instant case. The COA did not cite *Brown* in their decision.

Foreclosures are unfortunate. Foreclosure is a dreadful time in any person's life. However, foreclosure is also adequately handled by the Deed of Trust Act and the surrounding cases. Hermosillo fails to explain in any way why her case in particular has any profound impact on the Public Interest.

Hermosillo argues that "where the borrower challenges that it owes an obligation to the alleged lender then until that is resolved there is no right to foreclose and sell the property." But she fails to cite authority for such a baseless and harmful claim. It is the contractual right and responsibility of the Trustee to execute a foreclosure when a borrower breaches their deed of trust. Barring a court order (such as a temporary restraining order as explained under RCW 61.24.040) the Trustee has no

obligation to pause in its responsibility of enforcing the contract in favor of a beneficiary.

There is no material issue about Hermosillo's case that gives rise to any public concern. Review of Hermosillo's petition is therefore not justified.

b. Additional Argument

Hermosillo asserts arguments regarding waiver of defenses which the Court of Appeals did not address. There was no reliance or citing of the *Ndiaye* case anywhere in the case previous to Hermosillo's Petition for Review. The Court of Appeals did not cite *Brown v. Dep't of Commerce* in their decision in the instant case.

Hermosillo then argues what appears to be an unrelated case mentioning a non-party named Lopez. There are several arguments that Hermosillo raises for the first time that seem entirely unrelated to whether the Court of Appeals correctly denied a jury trial based on the evidence (and lack thereof) as presented.

Haydari is concerned that these obvious errors in Hermosillo's Petition for Review may be viewed and/or argued as mere excusable errors and typos. Opposition to the original unlawful detainer action was

unwarranted. Appealing the decision of the Court of Appeals was damaging and frivolous as there was no merit to Hermosillo's claims. Each additional time delaying action of the Petitioner causes more and more damage to Haydari's business interests.

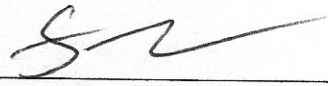
For these reasons, Haydari pleads that the Court deny any subsequent petition to amend Hermosillo's Petition.

VII. CONCLUSION

Review of Hermosillo's appeal is not justified under RAP 13.4.

Mr. Haydari and Mr. Bahandari have patiently dealt with Hermosillo's continual baseless arguments. We humbly petition the Court to reject Hermosillo's Petition for Review.

Dated 7-1-17



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Certificate of Service

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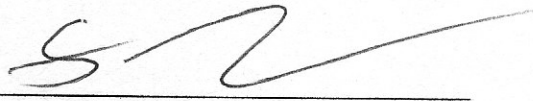
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