

SUPREME COURT CASE NO. 94580-2
COURT OF APPEALS, DIVISION THREE, CASE NO. 34971-3-III

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

FEDERAL HOME LOAN MORTGAGE CORPORATION,

Respondent.

v.

PAMELA S. OWEN, ET AL.

Petitioner,

**PETITIONER'S REPLY TO RESPONDENT FEDERAL HOME LOAN MORTGAGE
CORPORATION'S RESPONSE TO PETITION FOR REVIEW**

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I. NEW ISSUE RAISED BY RESPONDENT.

“Review of *Fed. Home Loan Mortg. Corp v. Owen*, No. 47566-9-II (October 16, 2015) is Time-Barred.” Answer at 3.

Rules of Appellate Procedure (RAP), Rule 13.4(d) governs the

Answer and Reply and provides in relevant part 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. A reply to an answer should be limited to addressing only the new issues raised in the answer.

Respondent set up its new issue by intentionally omitting facts and misrepresenting the procedures below, and states in relevant part that:

“Owen refused to vacate the Property and on March 6, 2015, Freddie Mac served Owen with a Summons and Complaint for Unlawful Detainer. CP 1-6. The trial court entered a default judgment April 3, 2015. Appellant’s Brief at 4; Supplemental CP 82-86.” Answer at 2-3.

What Respondent intentionally omitted from its pleading is the fact that the summons and complaint served on March 6, 2015 had not been filed in any court of this State. The Summons and Complaint appearing at CP 1-6 were filed on April 2, 2015. Respondent has made no effort to personally serve these documents after being filed on this date.

Further, the trial court’s default judgment was entered, *ex parte*, on April 3, 2015, less than 24 hours after the Summons and Complaint were filed. Respondent does not guide this Honorable Court to any case law supporting jurisdiction of this kind. To the extent Respondent relies on Petitioner having notice of its complaint which further was not pending in

any court, this argument was rejected by this Court in *Interior Warehouse Co. v. Hays*, 91 Wash. 507, 512, 158 P. 99 (1916) and it remains rejected by Wash. Const. art. 1, § 3.

Moreover, Respondent aggravated the unconstitutional conditions when it returned to the trial court and obtained an Order Reissuing the [Ex Parte] Writ of Restitution which was filed on May 20, 2016. CP at 69-70.

More importantly, a void default judgment, issued *ex parte*, is never barred by time. “First and basic to any litigation is jurisdiction. First and basic to jurisdiction is service of process.” *In re Logg*, 74 Wn. App. 781, 786, 875 P.2d 647 (1994) (quoting *Painter v. Olney*, 37 Wn. App. 424, 427, 680 P.2d 1066 (Div. One, 1984), review denied, 102 Wn.2d 1002 (1984)).

When a trial court lacks in personam jurisdiction over a party, any judgment entered by the court against that party is void. *Mid-City Materials, Inc. v. Heater Beaters Custom Fireplaces*, 36 Wn. App. 480, 486, 674 P.2d 1271 (1984).

Respondent’s new issue changes nothing because a trial court has a mandatory duty to vacate a void judgment “regardless of the lapse of time.” *Scott v. Goldman*, 82 Wn. App. 1, 6, 917 P.2d 131 (1996); *Allstate Ins. Co. v. Khani*, 75 Wn. App. 317, 323-24, 877 P.2d 724 (1994) (citing *In re Marriage of Leslie*, 112 Wn.2d 612, 618-19, 772 P.2d 1013 (1989)). See also: *John Hancock Mut. Life Ins. Co. v. Gooley*, 196 Wash. 357, 370-

71, 83 P.2d 221 (1938) (A default judgment entered without valid service is void and may be vacated when the want of jurisdiction is established, regardless of the passage of time.).

II. DEMAND FOR SANCTIONS.

The criteria for imposing sanctions against Respondent and its Counsel are met. In addition to misrepresenting the facts, evidence and procedural timeline, Respondent further argued that:

There was no error, no conflict with decisions of this Court or the Court of Appeals; and no significant questions of law or issues of substantial public interest were involved.” Answer at 3.

“Finally, constitutional law is not implicated.... No significant questions of law or issues of substantial public interest were involved.” Answer at 6.

It is obvious from the aforementioned statements that Respondent is arguing a position that is wholly inconsistent with the fact that the Federal District Court justified its avoidance of Petitioner’s constitutional due process issues by ruling in part that:

“While due process generally requires notice before deprivation of property, Owen was not deprived of her property rights based on the ex parte unlawful detainer action because Freddie Mac cancelled the forceful eviction.” Petition at 11-12, CP at 19, lines 16-22.

While it is true Petitioner remains in possession of her home, Petitioner no longer possesses title. The Federal District Court filed the above Order on April 13, 2016. CP at 16.

On April 22, 2016, notwithstanding the Federal Court's April 13, 2016 Order, Respondent filed a "Motion for Order Reissuing Writ of Restitution." CP at 7-9.

On May 12, 2016, Petitioner perfected a timely appeal with the United States Court of Appeals for the Ninth Circuit, Cause No. 16-35398. Petition at 12; CP at 51. Respondent did not appeal or cross-appeal the Federal Court's decision.

On May 20, 2016, the Superior Court entered its Order Reissuing Writ of Restitution directing the Sheriff of Clark County to "break and enter" and place Respondent in possession, CP at 69-70, notwithstanding the Federal Court's April 13, 2016 Order finding no constitutional due process issues because Respondent had previously canceled the "forceful eviction." Petition at 11-12, CP at 19, lines 16-22.

The misconduct of Respondent and its attorneys is obvious, extensive and has damaged public confidence in the legal profession and the legal system as a whole.

Rule 3.3 of the Rules of Professional Conduct (RPC) governs a lawyer's duty of "candor toward the tribunal" and enumerates nine mandatory obligations.

RPC Rule 8.4 governs "misconduct" and a lawyer's duty towards "maintaining the integrity of the profession," which, in pertinent part, expressly provides that it is professional misconduct for a lawyer to

“violate or attempt to violate the Rules of Professional Conduct...” RPC
8.4(a).

Under Wash. Const. Art. IV, courts in this State have a
constitutional duty to protect the public from harm.

Respectfully submitted,

Dated: July 6, 2017



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