FILED
SUPREME COURT
STATE OF WASHINGTON
8/17/2018 4:26 PM
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Supreme Court No. 95863-7
(Court of Appeals No. 75593-5-I)
Division I

SUPREME COURT OF THE STATE OF WASHINGTON

RYAN HOWARD,

Plaintiff/Petitioner,

v.

OCWEN LOAN SERVICING, LLC,

Defendants/Respondents.

ANSWER TO AMENDED PETITION FOR REVIEW

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I. INTRODUCTION AND SUMMARY OF THE ARGUMENT

Howard has been resisting foreclosure on the subject property since 2011 through a revolving door of litigation and appeals. (Petition at 2.) In 2015, Defendants offered Howard a settlement that involved a loan modification. Howard accepted the loan modification's terms, but then failed to comply with those terms, which required clear title on the property securing the modified loan. Howard sued Defendants to enforce the modification in spite of his failure to perform. The Trial Court appropriately dismissed, and the Court of Appeals affirmed. Howard's Petition fails to explain how this case falls within this Court's criteria for review under the Washington Rules of Appellate Procedure ("RAP"), Rule 13.4(b), and also fails to demonstrate any error in the proceedings below.

II. COUNTERSTATEMENT OF THE ISSUES

1. Does Howard raise any error or basis under RAP 13.4(b), for this Court to accept discretionary review of his case?

III. COUNTERSTATEMENT OF THE CASE

A. Howard Sues, Stipulates to Foreclosure, then Appeals the Judgment

In 2011, Howard sued to halt nonjudicial foreclosure efforts on a loan he had executed in August 2007 in the amount of $960,000, which was secured by property located in Seattle, Washington (the "Property").

Howard v. Pierce Commercial Bank, 186 Wn. App. 1016, 2015 WL 1034148, at *1 (2015). The Defendant and holder of the Note, Deutsche Bank National Trust Company as Trustee for IndyMac INDA Mortgage Loan Trust 2007-AR7, Mortgage Pass-Through Certificates Series 2007-AR7 (the "Trust"), counterclaimed for judicial foreclosure. *Id*. The parties settled at mediation, agreeing to a stipulated judgment of foreclosure in exchange for waiver of the Trust's right to obtain a deficiency. *Id*. Pursuant to the settlement, judgment was entered in June 2013 and the Property was sold at auction to the Trust. *Id*. at *2.

In spite of Howard's agreement to allow judgment, Howard filed a Notice of Appeal. *Howard*, 2015 WL 1034148. The Court of Appeals affirmed, and Howard filed an untimely Petition for Review before this Court. (CP 208). The Washington Supreme Court issued a letter advising Howard to file a motion for an extension of time to file his Petition for Review. (CP 227.) Ultimately, it is unlikely Howard could have prepared a motion showing extraordinary circumstances for his delay existed, but the Supreme Court gave Howard a deadline of June 10, 2015 to do so. (CP 227.) The Supreme Court advised Howard that such motions were normally not granted. (CP 227.)

B. Howard Agrees to Settle for a Loan Modification and Release Requiring Clear Title

Shortly thereafter, Howard and Defendants reached a settlement agreement resolving the case. The planned settlement consisted of a

Settlement and Release Agreement (CP 58-70) and Loan Modification Agreement (CP 71-78) (collectively, the "Agreements"). Howard received the full written terms of the Agreements on May 21, 2015, twenty days before his deadline to file a Motion for Extension with the Supreme Court. (CP 3, ¶ 9.) Under the Agreements, if Howard satisfied a condition precedent of clear title (CP 72, ¶ 2), among other conditions, Howard's loan would have been reinstated and modified and the litigation resolved. (CP 59, ¶¶ 1, 2; CP 67-69).[1]

On June 10, 2015, Howard wrote Defendants' counsel to advise that he had reviewed the Agreements and planned to proceed with execution. (CP 87.) Howard also emailed the Court to advise that he did not plan to file a motion for extension. (CP 87, 8, ¶31.) When Howard did not file a motion for extension, the Court dismissed his Petition for Review as untimely on June 11, 2015. (CP 215.)

C. Howard Fails to Comply with the Terms of the Settlement Agreements

For the purpose of the instant appeal, the terms of the Agreements contemplated by Howard and Defendants are undisputed because Howard submitted unexecuted copies of the Agreements as exhibits to his

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[1] Howard's Petition represents that Howard had lawsuits and appeals pending at this time and that he was "intentionally tricked . . . into dismissing all of his pending claims." (Petition at 2, 6.) To the contrary, the litigation between the parties had been resolved by the Court of Appeals' decision affirming the judgment. *Howard*, 2015 WL 1034148. The only pending proceeding was Plaintiff's untimely Petition for Review to the Washington Supreme Court (No. 929572). (CP 227.)

Complaint, indicating that he had agreed to and signed the Agreements.[2] (CP 15, ¶ 56; CP 58-78.) The Agreements state that they were drafted and negotiated by all the parties and should be interpreted as having been drafted jointly. (CP 62, ¶ 9.c.) Importantly, the Agreements specify that clear and marketable title was a condition precedent to the Agreements becoming effective. The Loan Modification Agreement stated: "This Modification is subject to clear title and will be effective on July 1, 2015, on condition that a clear and marketable title policy can be issued." (CP 72, ¶ 2.) These terms were incorporated into the Settlement and Release Agreement. (CP 59, ¶ 1.)

On July 17, 2015, Defendants' counsel notified Howard that a Lien and Encumbrance Search obtained on the Property revealed that title was not clear, and that Howard would have to clear title to the Property in order to proceed with the Agreements. (CP 4-5, ¶ 19; CP 85.) A Lien and Encumbrance Search (the "Report") obtained from a title company disclosed no fewer than five judgments existed against the Property, with a net value of $1,257,055.09. (CP 91-96.) The Report identified valid liens

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[2] Plaintiff filed his Complaint on September 3, 2015. (CP 1.) On the following day, he filed forty-two pages of documents (CP 55-96), indicating that they were exhibits to his Complaint. (CP 55. *See also* VR 20:19-23.) Although his filings were marked "sealed," he did not go through the appropriate channels to seal the documents, and they are not sealed. The documents include a Settlement and Release Agreement as Exhibit A to the Complaint (CP 58-70), and a Loan Modification Agreement (CP 71-78). Plaintiff's Complaint indicated he agreed to the terms of these agreements (CP 15, ¶¶ 57-58); therefore the contents within are judicial admissions. *Smith v. Saulsberry*, 157 Wash. 270, 275, 288 P. 927 (1930).

against the Property resulting from tax liens (CP 92) and from Judgments against Howard an in favor of other entities, in an amount exceeding $1,240,000 (CP 92-94).

Howard's Statement of the Case section of his Petition makes blatant misrepresentations about the discussions that followed between the parties regarding the clear title condition. Howard asserts that (1) the judgment liens on the Report had no effect on the Property because they were foreclosed (Petition at 5); (2) Defendants' counsel admitted in an email exchange "that Ocwen was complaining about alleged property tax arrears, even though it was Ocwen was (sic) supposed to be paying them" (Petition at 6); (3) Defendants' counsel "admitted that one of the 'title issues' was a Lis Pendens that had been filed by [the Trust] and which [Defendants] refused to release . . . ." (Petition at 6); and (4) that the Report was not an actual "title report." (Petition at 4.) To the contrary, as noted by the Washington Court of Appeals, the record shows that Defendants' counsel "agreed that neither the taxes nor lis pendens were problematic, but stated that the prior liens were not foreclosed unless the sheriff's deed was recorded, which did not, and would not, occur if the parties proceeded with loan modification." *Howard v. Ocwen Loan Servicing, LLC*, No. 75593-5-I, 2018 WL 1152012, at *2 (Wash. Ct. App. Mar. 5, 2018). (*See also* CP 82.) Further, the Report shows undisputed

liens on the Property (CP 91-96) that would continue to exist if the loan modification was allowed, regardless of the name of the Report.[3]

Howard also asserts the Report was erroneous because it listed Howard as vested in title. (Petition at 4.) Howard raised that issue to Defendants' counsel, who explained that the Report understandably did not show the Trust as being in title because the Sheriff's Deed from the sale had not yet been recorded in light of the possibility of the loan modification completing, in which case the sale would be set aside. (CP 82.)

Ultimately, the record shows that Defendants' counsel responded to Plaintiff's inquiries and were willing to make accommodations to clear title defects within their control (such as by recording a release of *lis pendens*), but also explained that the liens on the Property totaling over one million dollars were a substantial defect that required action by Howard; *i.e.*, the negotiation or payment of those liens. (CP 80-87.) Defendants gave Howard thirty days to cure title, even though Defendants were under no obligation to do so. (CP 85.) Alternatively, Defendants' "counsel offered to collaborate on a stipulation that would enable him to

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[3] Howard improperly argues in the Statement of the Case that "Ocwen . . . falsely contend[ed] that junior liens somehow prevented Deutsche, a first position lienholder, from having clear title to the property." (Petition at 3.) As discussed below, there is ample legal authority that such liens created a title issue and a risk regarding whether the Trust could have a first position lien on the modified loan. *See infra* Section IV.B.3. Howard failed to address these arguments in a Reply Brief before the Washington Court of Appeals (he filed none), and fails to address them in his Petition for Review.

seek an extension of the time to file a petition for review and proceed with his appeal." *Howard*, 2018 WL 1152012, at *2. (CP 85.)

Howard refused to clear title and never accepted an offer to file a stipulation with the Washington Supreme Court. (CP 5, ¶ 21; CP 31, ¶ 120; CP 80.) Therefore, the payments Howard submitted in anticipation of the Loan Modification Agreement were returned to him. (CP 7, ¶ 25(a); CP 89.) The Court of Appeals' decision was sent by Mandate to the Superior Court on September 9, 2015. (CP 323-331.)

D. Howard Sues Defendants for Breach of Contract and Other Claims

In September 2015, Howard filed his forty-six page Complaint in the instant action, asserting eleven causes of action against Defendants for their refusal to proceed with performance under the Agreements when Howard indicated he would not satisfy the explicit clear title condition. (CP 1-46; CP 3-6, ¶¶ 12, 19-21, 23.) On April 1, 2016, Defendants filed Motions to Dismiss, which were set for hearing on June 10, 2016. (CP 358, ¶ 5; 138-146; CP 231-254.) In spite of the lengthy gap between filing the motions and the hearing, Plaintiff failed to file an opposition to the motions. On the day of the hearing, Howard filed a motion to continue. (VR 2:16-20.) The Court denied the motion, commenting to Howard that the motion "wasn't timely filed, as I'm sure you know from the amount of litigation that you've been involved in." (VR 2:19-23.)

At the hearing, Defendants' counsel summarized their position, explaining that even if the Trial Court assumed that the parties completed the Agreements (as Howard alleged in his Complaint), Howard's Complaint indicated on its face that Howard had failed to satisfy a condition precedent to the agreement (i.e., clear title), and therefore there was no basis to modify the loan. (VR 9:4-18.) In response, Howard made only two substantive arguments: (1) the condition precedent requiring clear title was not valid because the liens complained of were not valid liens and because title had always been in Howard's name (VR 18:5-18) and (2) paying the judgments to clear title would have been futile because the Trust refused to remove a *lis pendens* filed during the prior judicial foreclosure. (VR 21:21-22:7.)[4]

The Court granted the Motions to Dismiss based on the clear language of the Agreements as alleged in Plaintiff's Complaint and attached as exhibits thereto. (VR 24:7-13.) The Court noted that there was nothing before the Court indicating that the liens were not valid liens. (VR 18:17-18.) Further, the record established that Defendant had been willing to remove its *lis pendens* if Plaintiff planned to clear the judgments that created a substantial defect in the title. (VR 23:17-24; CP 82.) Accordingly, the Court commented in making its ruling, "it's clear on the

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[4] Howard also made a confusing argument that Defendants could not agree, for the purpose of the Motion to Dismiss, to the facts as alleged in the Complaint (VR 13:10-25; 14:6-10) and he asserted that an unspecified question of fact existed. (VR 14:17-15:8.)

face of the agreement that a condition precedent was the clearing of title. And the Complaint acknowledges that title has not been cleared, and so there is no basis for the loan modification agreement." (VR 23:17-24.)

E. Howard's Appeal and Petition for Review

Howard filed a Notice of Appeal on August 3, 2016 (CP 432), and his newly retained counsel attempted to raise arguments not raised to the Trial Court. *Howard*, 2018 WL 1152012, at *1. The Court of Appeals affirmed in an unpublished decision. *Id*. The Court noted that the only argument Howard asserted "on appeal that appears to be related to his arguments below [was] his contention that he substantially performed his obligations by making payments under the loan modification agreement and [was] therefore entitled to enforce the agreement." *Id*. at *4. The Court declined to consider Howard's unpreserved arguments. *Id*. As to the question of whether Howard had performed under the Agreements and satisfied the clear title condition, the Court noted that Howards' argument was partly based "on his subjective understanding of the obligation to 'clear title' and his opinion about whether satisfying preexisting liens was necessary to protect [Defendants'] position as the superior lienholder." *Id*. at *4.

Ultimately, the Court found that the Agreements were subject to a condition of clear title; that the Property did not have clear title; and that nothing in the record suggested this condition was a minor or technical

and trivial one such as would be necessary for Howard to benefit from the doctrine of substantial performance. *Howard*, 2018 WL 1152012, at *5.

Howard filed an untimely Petition for Review on May 17, 2018.

IV. REASONS WHY REVIEW SHOULD BE DENIED

This Court should deny Howard's Petition. The Petition was untimely and extraordinary circumstances do not exist. Rather, Howard failed to point to an error, raise a legitimate issue warranting reversal, or show that this Court's criteria for review are satisfied.

A. Howard's Petition for Review was Untimely and Should Be Denied on that Basis

It is undisputed that Howard's Petition for Review was untimely. This Court allows untimely Petitions "only in extraordinary circumstances and to prevent a gross miscarriage of injustice . . . ." RAP 18.8(b). The "standard set forth in RAP 18.8(b) is rarely satisfied." *State v. Hand*, 308 P.3d at 589 (internal citations omitted). Here, Howard has raised a sympathetic argument for an extension because his Petition was only three hours late under this Court's rules. RAP 18.6. However, the Petition was improper and was followed by two amended petitions, the last of which was received June 5, 2018, 18 days after Howard's deadline. More importantly, Howard's explanation for the untimely Petition is puzzling and incomplete. Howard explains that he did not make a decision on whether to proceed with the Petition or retain counsel to do so until May 9, 2018, seven days before the Petition was due and only three days before

his counsel was scheduled to go on a week-long vacation. (June 4, 2018 Motion for Extension at 2.) Howard is aware from a prior Petition to this Court that this Court imposes a strict deadline for Petitions for Review. (CP 227.) Howard fails to explain why he did not retain an attorney earlier to allow adequate time for the preparation of the Petition. Combined with the fact that the Petition has no merit, fails to address the relevant legal arguments as to why clear title is important for a modified loan (just as those arguments were ignored when Howard failed to file a Reply Brief), makes misrepresentations of fact, and does not discuss this Court's criteria for review under RAP 13.4(b), Howard has failed to show a gross miscarriage of justice that would arise to the level of "extraordinary circumstances" warranting an extension of time.

B. Howard's Petition for Review is Unsupported by Authority and Raises No Legitimate Legal Issue

Even if this Court considers the Petition on the merits, the Petition fails to establish error in the proceedings below. Howard has waived his right to assert arguments not asserted to the trial court, which include all arguments other than his claim of "substantial performance." *Howard*, 2018 WL 1152012, at *1; *Holder v. City of Vancouver*, 136 Wn. App. 104, 107, 147 P.3d 641 (2006). As discussed further below, he has failed to show any grounds for liability against Defendants.

1. Howard's own complaint documented his failure to satisfy a contract condition

The Washington Court of Appeals correctly held that Howard's loan modification agreement was expressly made subject to clear title, a condition precedent that Howard did not perform. *Howard*, No. 75593-5-I, 2018 WL at *4. A plaintiff cannot "maintain an action on a contract" unless he first complies "with the conditions precedent contained therein." *Ross v. Harding*, 64 Wn. 2d 231, 240-41, 391 P.2d 526 (1964). Here, the Loan Modification Agreement explicitly stated it was "subject to clear title and will be effective on July 1, 2015, on condition that a clear and marketable title policy can be issued." (CP 72, ¶ 2.) The use of the language "on condition" is unambiguous and, as a matter of law, this language establishes a condition precedent to performance under the contract. *Tacoma Northpark, LLC v. NW, LLC*, 123 Wn. App. 73, 80, 96 P.3d 454 (2004). Plaintiff's own Complaint and exhibits acknowledged that he was unable or unwilling to remove the liens on the Property. (CP 80.) The refusal to clear substantial defects in title was a failure of a condition precedent, which excused Defendants from performing.

2. Howard's subjective belief of the meaning of "clear title" is irrelevant; nor did Howard "substantially perform"

Howard contends that he had a reasonable belief that the Trust would have clear title to the Property after the Loan Modification was implemented, and that his "substantial performance" of the contract terms

was sufficient to require completion of the contract. (Petition at 16.) Howard was not entitled to, for the first time on appeal, offer evidence or conclusory statements regarding his subjective belief about the terms of the contract – nor could Howard have offered such evidence to the trial court. *Go2Net, Inc. v. C I Host, Inc.*, 115 Wn. App. 73, 84, 60 P.3d 1245, 1251 (2003). Admissible extrinsic parol evidence does not include evidence of a party's unilateral or subjective intent as to the meaning of a contract word or term or evidence that modifies the written contract. *Id. Accord Olympia Police Guild v. City of Olympia*, 60 Wn. App. 556, 559, 805 P.2d 245, 247 (1991) ("Unilateral and subjective beliefs about the impact of a written contract do not represent the 'intent of the parties"' and are not admissible). Rather, Washington law applies an "objective theory of contract interpretation," in which the courts ascertain the intent of the parties "from the ordinary meaning of the words within the contract." *Nye v. Univ. of Washington*, 163 Wn. App. 875, 882-83, 260 P.3d 1000, 1004 (2011). Washington Courts give "words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent." *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn. 2d 493, 503-04, 115 P.3d 262, 267 (2005).

The condition of "clear title" already has an established definition under Washington law. It requires marketable title to property, or in other words, title that is "free from reasonable doubt and such as reasonably well informed and intelligent purchasers, exercising ordinary business

caution, would be willing to accept." *Hebb v. Severson*, 32 Wn.2d 159, 168, 201 P.2d 156, 159, 166 (1948). *See also In re Britt*, 385 B.R. 800 (B.A.P. 9th Cir. 2007) ("clear title means that the goods are not subject to a valid security interest or a valid claim of title of a third person that would expose the buyer to a lawsuit to protect its title."); 77 Am. Jur. 2d Vendor and Purchaser § 81 (2017 West) ("With respect to a purchaser's right to marketable title in real property, the terms 'good title,' 'marketable title,' 'clear title,' and 'perfect title' ordinarily are considered synonymous and indicative of the same character of title.") (citing *Hebb*, 32 Wn. 2d 159). *See also* 77 Am. Jur. 2d Vendor and Purchaser § 81, at n. 2 ("A 'clear title' means a good title, and 'good title' means a marketable title."). Plaintiff cannot substitute his own subjective understanding of a term in order to defeat the ordinary and common meaning of the term. *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695, 974 P.2d 836, 842 (1999).

Further, Howard did not substantially perform the condition precedent of clear title – indeed, he did not perform the condition at all. Rather, Washington Courts hold that a condition of "clear title requires the seller to deliver marketable title *before* the contract will be enforced." *Barber v. Peringer*, 75 Wn. App. 248, 252, 877 P.2d 223, 226 (1994) (citing cases). Further, the "doctrine of substantial performance is applied in rare instances where only 'minor and relatively unimportant deviations' remain to accomplish full contractual performance." *Taylor v. Shigaki*, 84 Wn. App 723, 729, 930 P.2d 340 (1997) (quoting 17A Am. Jur. 2d

Contracts, § 634 (1991)). Where the Loan Modification Agreement envisioned that the Property would secure a debt for over one million, but reduced in the agreement to $736,250.00 (CP 72, ¶ 3.a.), providing clear title cannot be said to have been a minor or unimportant requirement.

3. Howard's interpretation of the term "clear title" is contrary to Washington law and would render the term meaningless

Howard's belief that this Court should ascribe a "reasonable meaning" to the clear title condition because the Trust would have a first position lien after the Agreements were completed (Petition at 18) is erroneous. Under Washington law, a refinance or modification – as envisioned by the Agreements – creates a new obligation that may be deemed inferior to other liens. *Columbia Cmty. Bank v. Newman Park, LLC*, 177 Wn.2d 566, 582, 304 P.3d 472, 479 (2013). A lender that enters into a modification of its deed of trust or mortgage runs the risk of having its lien subordinated to other lienholders already on title. *Id.* The refinancing lender enjoys no automatic right of priority; rather, a refinancing lender must satisfy the requirements of equitable subrogation in order to obtain the same lien priority. *Id.* Priority can be denied by courts if any change in the loan terms is materially prejudicial to the interests of the junior lienholders, *Kim v. Lee*, 145 Wn. 2d 79, 89-90, 43 P.3d 1222 (2001), or if "prejudice to any innocent person will result . . . ." *Columbia Cmty. Bank*, 177 Wn.2d at 582. Whether a loan is prejudicial to others and/or entitled to equitable subrogation has and will be a subject of

litigation in numerous cases. *See, e.g., Kim*, 145 Wn. 2d at 90 (finding equitable subrogation prejudicial). *See also Bel Air & Briney v. City of Kent*, 190 Wn. App. 166, 178, 358 P.3d 1249, 1254-55 (2015), *rev. denied*, 185 Wn. 2d 1008, 366 P.3d 1243 (2016) (discussing parties' argument regarding whether equitable subrogation was prejudicial).

Even if the Agreements in this case satisfied the requirements for equitable subrogation, the ability of a party modifying a loan to establish a right to equitable subrogation through litigation is not the same thing as having clear title on a property. Rather, clear title is title that is *not* likely to be the subject of litigation. *Hebb*, 32 Wn.2d at 166 (noting clear title enables the holder to hold land in peace from suit); *Wilson v. Korte*, 91 Wash. 30, 33, 157 P. 47, 49 (1916) (noting marketable title is title "free from hostile claims and possible litigation."). In *Miller v. Calvin Philips & Co.*, for instance, the Supreme Court of Washington equated the term "marketable title" with "indubitable title," noting that a party entitled to marketable title "cannot be compelled to buy a lawsuit, or a title that will involve him in litigation, but that he has a right to a title which will enable him to hold possession of his land in peace and security." 44 Wash. 226, 229, 87 P.264, 265 (1906). Here, the Property was encumbered by over a million dollars in judgments owed by Plaintiff, and the priority of the Trust's title would have had to be litigated and determined by the courts in order to establish seniority over these debts. This is not clear title. Indeed, Plaintiff's interpretation of clear title would render the term

meaningless, as it would offer no security to the Trust that its new modified loan in excess of $700,000 had priority, but instead open the Trust to litigation to determine priority.

4. Defendants did not breach a duty of good faith and fair dealing

Howard's argument that Defendants breached the duty of good faith and fair dealing (Petition at 19) misunderstands the law and blatantly misrepresents the record. The doctrine of good faith and fair dealing may not be used to add or contradict express contract terms and the duty only arises where a contract allows one party discretionary authority over a term, such as the determination of price or quantity. *Rekhter v. State, Dep't of Soc. & Health Servs.*, 180 Wn.2d 102, 113, 323 P.3d 1036, 1041 (2014). "By contrast, no implied duty of good faith and fair dealing exists where a party has unilateral authority to do or not do something under a contract," *New Vision Programs Inc. v. State, Dep't of Soc. & Health Servs.*, 193 Wn. App. 1011 (2016), such as require compliance with conditions precedent. Accordingly, the duty is inapplicable to the Trust's decision not to proceed with an Agreement containing a condition precedent unfulfilled by Plaintiff, and which would jeopardize the Trust's first priority lien status of a substantial debt.

Further, there was no unfair conduct toward Howard. Howard asserts that Defendants intentionally delayed "as long as possible in order to have the Mandate issued in the Court of Appeals case, which would allow them to seek attorneys' fees and costs against him, but also to

induce him to file dismissals of his claims, before telling him that their agreements were not valid." (Petition at 12.) This is completely false. Plaintiff's Petition for Review to this Court was dismissed because Plaintiff chose not to file the requested motion for extension by June 10, 2015, a date that preceded generation of the Lien and Encumbrance Search. (CP 91.) Howard had full disclosure of the contents of the Agreements before execution and before he abandoned his Petition (CP 87), and the Agreements did not require him to do. (CP 59, ¶ 2). Moreover, Defendants did not file any additional motion for fees and had no control over when the mandate would issue. Indeed, on July 23, 2015, Defendants offered to stipulate to an extension that would reactive Howard's appeal before this Court (CP 84), well before the mandate issued on September 9, 2015. (CP 323-331.) Finally, the Agreements did not induce to Howard dismiss any claims; rather, a stipulated dismissal was prepared in conjunction with the Agreements (CP 59, ¶2) and it was never filed due to abandonment of the Agreements. Indeed, it was Howard who demanded that the stipulated dismissal be filed in spite of his inability to clear title. (CP 81.)

Finally, Defendants are not responsible for Plaintiff's misinterpretation of plain and ordinary contract terms, or his failure (if this occurred) to thoroughly read the Agreements. "The whole panoply of contract law rests on the principle that one is bound by the contract which

he voluntarily and knowingly signs." *Nat'l Bank of Washington v. Equity Inv'rs*, 81 Wn. 2d 886, 912, 506 P.2d 20, 36 (1973).

C. Howard's Petition Does Not Satisfy any Requirement for Acceptance of Review

Howard's Petition fails to satisfy this Court's requirements for review under RAP 13.4(b). The Petition fails to even identify the relevant criteria, let alone explain how they are satisfied. Rather than satisfy any criteria or present legal authority showing error, this Petition merely presents another delay tactic to avoid a final resolution of the case.

V. ENTITLEMENT TO ATTORNEY FEES

The Trust respectfully requests that the Court award reasonable attorney's fees and costs pursuant to RAP 18.1(a) and the Agreements Howard claims he executed, which allow an award of fees. *Howard*, 2018 WL 1152012, at *5. (CP 59, ¶ 3.)

VI. CONCLUSION

For the reasons set forth above, the Trust requests that this Court deny Howard's Petition for Review.

RESPECTFULLY SUBMITTED this 17th day of August, 2018.

By: *s/ Emilie Edling*
Emilie Edling, WSBA #45042
E-Mail: eedling@houser-law.com
Attorneys for Defendant-Respondents

DECLARATION OF SERVICE

I the undersigned declare as follows: I am over the age of 18 and am not a party to this action. I certify under penalty of perjury in accordance with the laws of the State of Washington that on August 17, 2018, I caused ANSWER TO AMENDED PETITION FOR REVIEW to be served by email and U.S. Mail, to the following address:

Melissa A. Huelsman, WSBA 30935
705 Second Avenue, Suite 601
Seattle, WA 98104
Attorney for Appellant Ryan Howard

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 17th day of August, 2018, at Seattle, WA.

s/ Shawn K. Williams
SHAWN K. WILLIAMS
Legal Assistant

HOUSER & ALLISON, APC (SEATTLE

August 17, 2018 - 4:26 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	95863-7
Appellate Court Case Title:	Ryan R. Howard v. Ocwen Loan Servicing, LLC, et al.
Superior Court Case Number:	15-2-21740-2

The following documents have been uploaded:

- 958637_Answer_Reply_20180817162415SC457954_0505.pdf
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