

FILED
SUPREME COURT
STATE OF WASHINGTON
12/9/2020 2:10 PM
BY SUSAN L. CARLSON
CLERK

SUPREME COURT OF THE STATE OF WASHINGTON

No. 98932-0

SANDRA M. MERCERI,
Petitioner,

vs.

THE BANK OF NEW YORK
MELLON FKA THE BANK OF
NEW YORK, AS TRUSTEE FOR
THE CERTIFICATEHOLDERS
OF THE CWALT, INC.
ALTERNATIVE LOAN TRUST
2006-OA19, MORTGAGE PASS-
THROUGH CERTIFICATES,
SERIES 2006-OA19,

Respondent.

REPLY IN SUPPORT OF

PETITIONER

**SANDRA MERCERI'S
MOTION TO CONTINUE
THE COURT'S PENDING
CONSIDERATION OF HER
PETITION FOR REVIEW**

AND

**PETITIONER'S
MOTION TO CONSOLIDATE
CASE NO. 99267-3 WITH THIS
CASE**

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In its response (“Response”), the Bank offers nothing to dissuade the Court from consolidating these two appeals, where consolidation will save time, money, and judicial resources.

The Bank is confused as to the history of this case and perpetuates a false narrative to this Court. Contrary to the Bank’s representation at page 2 of its Response, the Bank did not have a money judgment in April 2019. What the Bank sought and what it obtained in April 2019 was a judgment of dismissal (“2019 Judgment of Dismissal”) which ended the trial court’s jurisdiction. Mtn. to Consolidate, **Appendix 1**.

The same day the Bank obtained its 2019 Judgment of Dismissal, the Bank proceeded with nonjudicial foreclosure by recording a Notice of Trustee Sale.¹ **Appendix 3**, subjoined. It is undisputed that in October 2019, the Bank’s trustee nonjudicially sold Mrs. Merceri’s home and the Bank recovered over \$546,000 in sales proceeds.

Almost a year later, the Bank sought supplemental proceedings in an effort to obtain additional monies from the former homeowner. Chief Civil Judge Regina Cahan rejected the Bank’s Motion for Supplemental Proceedings, telling the Bank that the Bank did not have money judgment

¹ The Bank could not record its Notice of Trustee Sale while the court case was still pending. RCW 61.24.030(4) precludes concurrent actions “on an obligation secured by the deed of trust in any court . . .” It is undisputed that the Bank’s April 26, 2019 Notice of Trustee’s Sale certified that no action was pending in any court.

against the former homeowner, that the Bank was not a judgment creditor, and that the Bank was not entitled to supplemental proceedings. *See Appendix 4*, subjoined. The Bank did not contest or appeal Judge Cahan’s ruling that the Bank did not have a money judgment. Instead, the Bank went back to the trial judge, whose jurisdiction ended in April 2019 with the entry of the Judgment of Dismissal. The Bank sought a deficiency money judgment, notwithstanding Washington’s anti-deficiency law, RCW 61.24.100.²

The former homeowner specially appeared for the purpose of objecting to the court’s lack of jurisdiction and objecting to the proposed deficiency judgment/judgment summary. The court, acting without jurisdiction, rendered the November 20, 2020 deficiency judgment (“2020 Deficiency Judgment”) in the Bank’s favor.³ It is this void deficiency judgment which has brought us to the Supreme Court on a request for direct review, Case No. 99267-3.

Due to the Bank’s confused representations about the procedural history in this case, a true chronology is attached as **Appendix 5**.

² *Gardner v. First Heritage Bank*, 175 Wn.App. 650, 661, 303 P.3d 1065 (2013) (“[D]eficiency judgment’ under RCW 61.24.100 means a money judgment sought by a trust deed beneficiary *following a trustee’s sale* that fails to satisfy the obligation secured by the deed of trust.”) (Emphasis added.)

³ There has been no appellate review of this attorney fee money judgment because the only money judgment ever rendered was on November 20, 2020.

The Bank does not seriously dispute that consolidation would save time, expense, and judicial resources in reviewing the November 2020 Deficiency Judgment with the trial court’s earlier failure to order the Bank to show cause as to the newly discovered evidence of full acceleration, the subject of the pending Petition for Review in this case.⁴

A. Consolidation of two appeals arising from the same case is not only appropriate, it is expected.

RAP 3.3(b) provides that “[a] party should move to consolidate two or more cases if consolidation would save time and expense and provide for a fair review of the cases.” RAP 3.3(b). RAP 3.3(b) contemplates consolidation of these two appellate cases: this Petition for Review (No. 98932-0) and the request for direct review of the November 20, 2020 Deficiency Judgment (No. 99267-3.)

Consolidating appeals in the same case saves time, money, and judicial resources. *Pagnotta v. Beall Trailers of Oregon, Inc.*, 99 Wn.App. 28, 30 n. 1, 991 P.2d 728 (2000) (consolidating appeals in the same underlying case). As the court said in *Skagit County v. Skagit Hill*, “We suggest that in the future, the parties consolidate their cases in order to receive a comprehensive decision that best uses judicial resources.” *Skagit*

⁴ The record reflects that the Bank never answered the Petition for Review in this case and did not even file a response to the Northwest Consumer Law Center’s amicus brief. The Bank’s failure on both counts speaks volumes.

County v. Skagit Hill Recycling, Inc., 162 Wn.App. 308, 321 n. 13, 253 P.3d 1135 (2011), applying RAP 3.3(b).

B. Preliminarily, it is important to note that the trial court lacked jurisdiction to render the November 20, 2020 money judgment and such deficiency judgment was also rendered in violation of RCW 61.24.100, Washington’s anti-deficiency law.

The merits of petitioner’s request for direct review in Case No. 99267-3 will be fully addressed when the stay is lifted on filing the grounds for review and potential motion for discretionary review.⁵

In its Response, the Bank makes representations to the Court that are less than candid. Contrary to the Bank’s representation, the Bank did not have a money judgment in 2019. More than a year after the Bank successfully nonjudicially foreclosed on the homeowner in October 2019, the Bank obtained for the first time a money judgment (the November 2020 Deficiency Judgment), more than 18 months after the trial court’s jurisdiction ended. *See* the attached chronology. The November 2020 Deficiency Judgment, rendered without jurisdiction, was also in violation of Washington’s anti-deficiency statute, RCW 61.24.100.

⁵ The deadlines for filing the grounds for direct review and the motion for discretionary review in Case No. No. 99267-3 are currently stayed, per Supreme Court Clerk Susan Carlson’s December 1, 2020 letter. Once the stay is lifted, the petitioner will follow the Court’s direction and timely file the appropriate grounds for review.

Not only was there no money judgment entered in April 2019, but Chief Civil Judge Cahan ruled in September 2020 that:

The award of attorneys' fees to defendant BONY and its attorneys have not been reduced to a judgment in the format required by RCW 4.64.030. Therefore BONY is not a judgment creditor and is not entitled to engage in supplemental proceedings proscribed in RCW 6.32.

Appendix 4, subjoined. The Bank did not appeal Judge Cahan's ruling.

Contrary to the Bank's representations in its Response, the only money "judgment" is the November 2020 Deficiency money Judgment. If the Bank already had a money judgment, there would have been no need to render a money judgment in November 2020.⁶⁷

The Bank's decision to seek a deficiency judgment, 18 months after the trial court's jurisdiction ended, resulted in the Bank obtaining a void money judgment, since the trial court lost jurisdiction when it entered the 2019 Judgment of Dismissal. *Cork Insulation Sales Co., Inc. v. Torgeson*, 54 Wn.App. 702, 705, 775 P.2d 970 (1989) ("Entry of a judgment after the order of dismissal exceeds the jurisdiction of the

⁶ The court's signing of a judgment is a judicial act, not a ministerial act. *Beetchenow v. Bartholet*, 162 Wash. 119, 122, 298 P. 335 (1931), accord *Johns v. Erhart*, 85 Wn.App. 607, 611, 934 P.2d 701 (1997).

⁷ To date, there is no evidence the trial court ever conducted the required lodestar analysis. The Bank has never proposed, and the trial court has never entered, the required findings of fact and conclusions of law. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632, 966 P.2d 305 (1998).

court.”) As a result, the 2020 Deficiency Judgment is void *ab initio*.

Wesley v. Schneckloth, 55 Wn.2d 90, 93-4, 346 P.2d 658 (1959):

A constitutional court cannot acquire jurisdiction by agreement or stipulation. Either it has or has not jurisdiction. If it does not have jurisdiction, any judgment entered is void *ab initio* and is, in legal effect, no judgment at all.

The 2020 Deficiency Judgment was rendered more than a year *after* the Bank’s successful nonjudicial foreclosure sale. Mtn. to Consolidate **Appendix 2**. Clearly this 2020 Deficiency Judgment was rendered after the 2019 trustee’s sale, in violation of RCW 61.24.100, making it a deficiency judgment rendered without jurisdiction, causing it to be void *ab initio*. *Cork Insulation Sales Co., Inc. v. Torgeson*, 54 Wn.App. at 705, *supra*; *Wesley v. Schneckloth*, 55 Wn.2d at 93-4, *supra*.

A continuance and consolidation of the two appeals will ensure a more economical and fair review of the trial court’s refusal to enter a mandatory show cause order on the Bank’s acceleration (No. 98932-0) and the trial court’s rendering an illegal 2020 Deficiency Judgment without jurisdiction to do so. (No. 99267-3).

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CONCLUSION

Since both appeals originate from the same case and share common facts and procedural history, consolidation of these two appellate cases promotes an economical, fair review of the issues presented. RAP 3.3(b). Consolidating and continuing consideration of the Petition for Review will allow a comprehensive review that saves time, money, and best uses judicial resources. The motions should be granted.

Respectfully submitted this 9th day of December 2020.

/s/ Gordon Arthur Woodley

Gordon Arthur Woodley

WSBA 7783

P.O. Box 53043

Bellevue, WA 98015

(425) 425-1400

/s/ Susan Lynne Fullmer

Susan Lynne Fullmer

WSBA 43747

6523 California Ave. SW #275

Seattle, WA 98136

(206) 567-2757

Attorneys for Petitioner

Instrument Number: 20190426000320 Document:NTS Rec: \$101.00 Page-1 of 3

Record Date:4/26/2019 10:36 AM

Electronically Recorded King County, WA



WHEN RECORDED MAIL TO:
Quality Loan Service Corp. of Washington
108 1st Ave South, Suite 202,
Seattle, WA 98104

Trustee Sale No.: **WA-13-589367-SH** SPACE ABOVE THIS LINE FOR RECORDER'S USE
Title Order No.: **190713409-WA-MSI**

NOTICE OF TRUSTEE'S SALE

Pursuant to the Revised Code of Washington 61.24, et seq.

Reference Number of Deed of Trust: **Instrument No. 20061129001519**
Parcel Number(s): **073100-0070**
Grantor(s) for Recording Purposes under RCW 65.04.015: **SANDRA MERCERI , WHO ACQUIRED TITLE AS SANDRA M MERCERI , AN UNMARRIED WOMAN**
Current Beneficiary of the Deed of Trust and Grantee (for Recording Purposes under RCW 65.04.015): **Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificates Series 2006-OA19**
Current Trustee of the Deed of Trust: **Quality Loan Service Corporation of Washington**
Current Loan Mortgage Servicer of the Deed of Trust: **Bayview Loan Servicing, LLC**

I. **NOTICE IS HEREBY GIVEN** that Quality Loan Service Corp. of Washington, the undersigned Trustee, will on 9/6/2019, at 9:00 AM At the Main Entrance to the King County Administration Building, 500 4th Avenue, Seattle, WA 98104 sell at public auction to the highest and best bidder, payable in the form of credit bid or cash bid in the form of cashier's check or certified checks from federally or State chartered banks, at the time of sale the following described real property, situated in the County of KING, State of Washington, to-wit:

LOT 7, BENBROOK ESTATES, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 126 OF PLATS, PAGES 62 THROUGH 64, RECORDS OF KING COUNTY, WASHINGTON.

More commonly known as: **10827 NE 183 RD CT, BOTHELL, WA 98011**

Subject to that certain Deed of Trust dated 11/20/2006, recorded 11/29/2006, under Instrument No. 20061129001519 records of KING County, Washington, from SANDRA MERCERI , WHO ACQUIRED TITLE AS SANDRA M MERCERI , AN UNMARRIED WOMAN, as grantor(s), to RAINIER TITLE, as original trustee, to secure an obligation in favor of MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AS NOMINEE FOR COUNTRYWIDE BANK, N.A., Its Successors and Assigns, as original beneficiary, the beneficial interest in which was subsequently assigned to Bank of New York Mellon, f/k/a The Bank of New York, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificates Series 2006-OA19, the Beneficiary, under an assignment recorded under Auditors File Number 20110608001571

II. No action commenced by the Beneficiary of the Deed of Trust as referenced in RCW 61.21.030(4) is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust/Mortgage.



Instrument Number: 20190426000320 Document:NTS Rec: S101.00 Page-2 of 3
Record Date:4/26/2019 10:36 AM King County, WA

III. The default(s) for which this foreclosure is made is/are as follows: Failure to pay when due the following amounts which are now in arrears: **\$276,203.39**.

IV. The sum owing on the obligation secured by the Deed of Trust is: The principal sum of **\$509,802.40**, together with interest as provided in the Note from **2/1/2010** on, and such other costs and fees as are provided by statute.

V. The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. Said sale will be made without warranty, expressed or implied, regarding title, possession or encumbrances on **9/6/2019**. The defaults referred to in Paragraph III must be cured by **8/26/2019** (11 days before the sale date), or by other date as permitted in the Note or Deed of Trust, to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before **8/26/2019** (11 days before the sale), or by other date as permitted in the Note or Deed of Trust, the default as set forth in Paragraph III is cured and the Trustee's fees and costs are paid. Payment must be in cash or with cashiers or certified checks from a State or federally chartered bank. The sale may be terminated any time after the **8/26/2019** (11 days before the sale date) and before the sale, by the Borrower or Grantor or the holder of any recorded junior lien or encumbrance by paying the principal and interest, plus costs, fees and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI. A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower(s) and Grantor(s) by both first class and certified mail, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. The list of recipients of the Notice of Default is listed within the Notice of Foreclosure provided to the Borrower(s) and Grantor(s). These requirements were completed as of **1/20/2015**.

VII. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII. The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX. Anyone having any objections to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

X. NOTICE TO OCCUPANTS OR TENANTS – The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060.

THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.

You have only 20 DAYS from the recording date of this notice to pursue mediation.

DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

Instrument Number: 20190426000320 Document: NTS Rec: S101.00 Page-3 of 3
Record Date: 4/26/2019 10:36 AM King County, WA

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission: Toll-free: **1-877-894-HOME (1-877-894-4663)** or Web site: http://www.dfi.wa.gov/consumers/homeownership/post_purchase_counselors_foreclosure.htm

The United States Department of Housing and Urban Development: Toll-free: **1-800-569-4287** or National Web Site: <http://portal.hud.gov/hudportal/HUD> or for Local counseling agencies in Washington: <http://www.hud.gov/offices/hsg/sfh/hcc/fe/index.cfm?webListAction=search&searchstate=WA&filterSvc=dfc>

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys: Telephone: **1-800-606-4819** or Web site: <http://nwjustice.org/what-clear>

Additional information provided by the Trustee: If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the noteholders rights against the real property only. The Trustee's Sale Number is WA-13-589367-SH.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

Dated: 4/25/19 
Quality Loan Service Corp. of Washington, as Trustee
By: Maria Montana, Assistant Secretary

Trustee's Address:
Quality Loan Service Corp. of Washington
108 1st Ave South, Suite 202, Seattle, WA 98104

For questions call toll-free: (866) 925-0241 Trustee Sale Number: WA-13-589367-SH

Sale Line: 800-280-2832 or Login to: <http://wa.qualityloan.com>

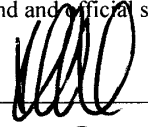
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

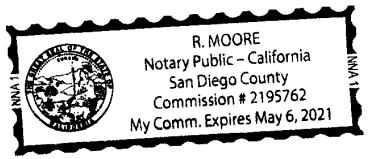
State of: California
County of: San Diego

On APR 25 2019 before me, R. MOORE a notary public, personally appeared Maria Montana, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (Seal)

Signature 
R. MOORE



APPENDIX 4

Hon. Chief Civil Judge Regina Cahan
Hearing Date: August 20, 2020
Without oral argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

SANDRA M. MERCERI, a single woman,
Plaintiff,

vs.

THE BANK OF NEW YORK MELLON, a national banking association, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificate Series 2006-OA19; and THE BANK OF NEW YORK, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificate Series 2006-OA19; and BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, as trustee, on behalf of the holders of the Alternative Loan Trust 2006-OA19, Mortgage Pass Through Certificate Series 2006-OA19,

Defendants.

No. 16-2-24904-3 SEA

**ORDER DENYING
DEFENDANT THE BANK OF NEW
YORK MELLON’S MOTION FOR
DEBTOR’S EXAMINATION AND
INTERROGATORIES**

THIS MATTER came before the undersigned Judge of the above-entitled Court on Defendant The Bank of New York Mellon’s (“BONY”) Motion for Debtor’s Examination and Interrogatories to Plaintiff Sandra Merceri. The Court considered the following:

1. Defendant BONY’s Motion for Debtor’s Exam and Interrogatories;

- 1 2. Declaration of Anthony Soldato in Support of BONY's Motion for Debtor's Exam and
2 Interrogatories;
- 3 3. Plaintiff Sandra Merceri's Response and Opposition to BONY's Motion for Order
4 Authorizing Supplemental Proceedings;
- 5 4. BONY's Reply in Support of Motion for Order Authorizing Judgment Debtor
6 Examination;
- 7 5. Declaration of Anthony Saldato in Support of BONY's Reply in Support of Motion for
8 Debtor's Exam, and exhibits.

9 The award of attorneys' fees to defendant BONY and its attorneys have not been reduced
10 to a judgment in the format required by RCW 4.64.030. Therefore, BONY is not a judgment
11 creditor and is not entitled to engage in supplemental proceedings proscribed in RCW 6.32.

12
13 NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that
14 Defendant The Bank of New York Mellon's Motion for Debtor's Exam and Interrogatories is
15 DENIED.

16
17 DATED this 25th day of September, 2020.

18
19
20 *Electronic Signature Attached*

21 _____
22 HON. CHIEF CIVIL JUDGE REGINA CAHAN
23
24
25
26
27
28

King County Superior Court
Judicial Electronic Signature Page

Case Number: 16-2-24904-3
Case Title: MERCERI VS BANK OF NEW YORK MELLON
Document Title: ORDER RE DENYING D'S MOTION FOR DEBTOR'S EXA
Signed by: Regina Cahan
Date: 9/25/2020 10:23:55 AM



Judge/Commissioner: Regina Cahan

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: AB8C2D4446EBEB4BB439ECF0CC0EE090B63DC727
Certificate effective date: 7/16/2018 1:46:58 PM
Certificate expiry date: 7/16/2023 1:46:58 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Regina Cahan:
GoGvw4r95BGhF7dmH11GsA=="

APPENDIX 5

Merceri v. Bank of New York Mellon et al

CHRONOLOGY OF RELEVANT PROCEDURAL HISTORY

The following chronology also emphasizes the different orders and judgments in the case.

Date	Event
March 15, 2017	The trial court entered summary judgment in favor of the homeowner quieting title in favor of the homeowner, granting summary judgment to her and denying summary judgment to the Bank.
April 13, 2017	The Bank appealed, claiming it had never accelerated the loan, notwithstanding the letter to the homeowner that the loan “will be” fully accelerated if she did not cure the defect by March 18, 2010. Case No. 76706-2-I.
April 19, 2017	On the homeowner’s motion for attorney fees, the trial court entered a money judgment, judgment summary, and findings of fact and conclusions of law in favor of the homeowner.
August 13, 2018	The Court of Appeals overturned <i>Glassmaker v. Ricard</i> , 593 P.2d 179, 23 Wn.App. 35 (1979) and ruled that the banking industry practice of advising homeowners of acceleration was not proof of that the homeowner was clearly advised of the acceleration. The Court of Appeals created a new requirement that there must be “additional evidence” that the Bank actually accelerated beyond the statement that the loan would be accelerated if the default was not cured. Case No. 76706-2-I. The

	<p>Court of Appeals reversed the trial court’s judgments, mandating that the trial court enter summary judgment in favor of the Bank.</p>
<p>March 14, 2019</p>	<p>At the Bank’s request, the trial court followed the Court of Appeals mandate and rendered a declaratory judgment and order granting summary judgment to the Bank.</p> <p>Pursuant to the mandate, Mrs. Merceri was not entitled to appeal the Declaratory Judgment.</p>
<p>April 16, 2019</p>	<p>The Bank moved for attorney fees, presenting a proposed order requesting merely that the court grant its motion and enter judgment of dismissal.</p>
<p>April 26, 2019</p>	<p>Without addressing Mrs. Merceri’s lodestar objections, the trial court granted the Bank’s motion for attorney fees, but the Bank never presented a proposed judgment, judgment summary, or findings of fact and conclusions of law. <i>See</i> Mtn. to Consolidate, Appendix 1. The April 26, 2019 order was a bare order with nothing more and no sum certain. In the same one-page order, the trial court granted the Bank’s judgment of dismissal. The order stated:</p> <p style="text-align: center;">IT IS HEREBY ORDERED that Defendant The Bank of New York Mellon’s Motion for Attorney Fees and Costs After Mandate and Judgment of Dismissal is GRANTED.</p>
<p>April 26, 2019</p>	<p>On the same day, the Bank recorded its Notice of Trustee Sale. <i>See</i> Appendix 3, subjoined. The Bank could not record its Notice of Trustee Sale while the court case was still pending. RCW 61.24.030(4), the single action statute, precludes concurrent actions “on an obligation secured by</p>

	the deed of trust in any court . . .” The Bank’s April 26, 2019 Notice of Trustee’s Sale certified that no action was pending. Appendix 3.
August 1, 2019	Mrs. Merceri received newly discovered evidence, sent spontaneously by the Bank’s servicer, that the Bank had fully accelerated the loan.
October 10, 2019	Mrs. Merceri promptly moved to vacate the judgment of dismissal under CR 60(b)(3), filing the required motion and affidavit under CR 60(e)(1). In accordance with the procedures set forth in CR 60(e)(2), she requested a show cause order.
October 16, 2019	The trial court refused to issue the mandatory show cause order required by CR 60(e)(2).
October 16, 2019	Mrs. Merceri appealed to the Court of Appeals. Case No. 80654-8-I.
October 19, 2020	The Bank successfully completed its foreclosure of Mrs. Merceri’s home, obtaining over half a million dollars in proceeds.
June 15, 2020	The Court of Appeals issued its opinion stating it would not reverse the trial court’s failure to issue the mandatory show cause order. Case No. 80654-8-I.
July 29, 2020	Almost a year after it foreclosed on Mrs. Merceri’s home on October 19, 2019, the Bank sought supplemental proceedings in an effort to obtain additional monies from the former homeowner.
August 21, 2020	Mrs. Merceri petitioned the Supreme Court for Review of the Court of Appeals’ refusal to reverse the trial court’s failure to issue the show cause order required by CR 60(e)(2). Case No. 98932-0.

September 25, 2020	<p>Chief Civil Judge Regina Cahan rejected the Bank’s Motion for Supplemental Proceedings, telling the Bank that it did not have a money judgment against the former homeowner, was not a judgment creditor, and was not entitled to supplemental proceedings. <i>See Appendix 4</i>, subjoined.</p> <p>The Bank did not contest or appeal Judge Cahan’s ruling that the Bank did not have a money judgment.</p>
October 29, 2020	<p>The Bank filed a “Notice of Presentation” before the trial court judge, seeking to enter judgment by way of a judgment summary.</p>
November 20, 2020	<p>Without jurisdiction, the trial court rendered a money judgment, signing the “Bank’s Judgment Summary Pursuant to RCW 4.64.030.”¹ <i>See Mtn. to Consolidate, Appendix 2.</i>² This is the only money judgment entered in the Bank’s favor.</p>
November 23, 2020	<p>Mrs. Merceri filed her Notice of Appeal to the Supreme Court regarding the November 20, 2020 judgment, now assigned Case No. 99267-3.</p>
December 1, 2020	<p>Supreme Court Clerk Susan Carlson issued a letter to the parties requesting comment on whether the appeal (No. 99257-3) is an appeal of right under RAP 2.2 or seeks discretionary review under RAP 2.3, which letter stayed the deadlines for the grounds for direct review and any potential motion for discretionary review.</p>

¹ To date, there is no evidence the trial court ever conducted the required lodestar analysis. The Bank has never proposed, and the trial court has never entered, the required findings of fact and conclusions of law. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632, 966 P.2d 305 (1998).

² There has been no appellate review of this attorney fee money judgment because the only money judgment ever rendered was on November 20, 2020.

SUSAN L. FULLMER, ATTORNEY AT LAW

December 09, 2020 - 2:10 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98932-0
Appellate Court Case Title: Sandra Merceri v. Bank of New York Mellon, et al.

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