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SUPREME COURT
STATE OF WASHINGTON
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NO. 99340-8

SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 53241-7-II
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DAVID W. DEVIN,

Petitioner,

v.

MTC FINANCIAL, INC., *et al.*,

Respondents.

ANSWER OF RESPONDENT MTC FINANCIAL, INC., D/B/A
TRUSTEE CORPS TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The Respondent presenting this Answer to the Petition for Review is MTC Financial, Inc., d/b/a Trustee Corps (“MTC”), which was one of the Respondents in the Court of Appeals and one of the Defendants in the underlying Superior Court action.

II. CITATION TO COURT OF APPEALS DECISION

The relevant Court of Appeals decisions are the unpublished opinion filed in the matter of *Devin v. MTC Financial, Inc., et al.*, 13 Wn. App.2d 1142, 2020 WL 4334990, and the subsequent Order Denying Motion for Reconsideration in the same case, dated November 20, 2020.

III. ISSUE PRESENTED FOR REVIEW BY MR. DEVIN

Petitioner David W. Devin (“Mr. Devin”) does not clearly state the issue or issues he is presenting for review, but read charitably, his Petition for Review asks this Court to review whether the Court of Appeals properly dismissed his appeal pursuant to RAP 2.4.¹

IV. MTC’S RE-STATEMENT OF THE CASE

Mr. Devin’s Notice of Appeal is of course in the record on review. CP 254-257. The Notice of Appeal states that Mr. Devin “seek[s] review

¹ See, e.g., Petition for Review, at pp. 1-2 (attempting to re-argue his claims before the trial court), and p. 4 (asserting in subhead that “Appellant did Indeed File a Proper Notice of Appeal”).

by [the] Washington State Appellate Court Division II, District 2 of the ORDER entered on January 3, 2019 denying his Motion for Rule 59 Relief in this matter.” CP 255. The Notice of Appeal asserts that “[a] copy of the decision is attached to this notice.” CP 255. The order attached to the Notice of Appeal is entitled “Order on Reconsideration,” and states in part:

THIS MATTER came before the Court upon Plaintiff David Devin’s Motion for the Court to Reconsider” (“Motion”). Mr. Devin seeks reconsideration of Judge Olsen’s Order denying his prior Motion for Reconsideration, issued December 20, 2018.

CP 257. The trial court denied the Motion for Reconsideration on January 3, 2019. CP 257. The same day, the trial court issued two Omnibus Orders respectively granting MTC’s Motion for Summary Judgment (CP 249-251) and BONYM’s Motion for Summary Judgment (CP 326-328).

In its Brief of Respondent MTC Financial Inc. (“MTC’s Response Brief”), filed in the Court of Appeals on September 12, 2019, MTC noted that Mr. Devin’s Notice of Appeal had failed to designate the final judgment in the case, and argued for dismissal of Mr. Devin’s appeal based on RAP 2.4(b) and (c).² MTC’s Response Brief also, however, addressed the merits of Mr. Devin’s appeal, and showed why all of his

² MTC’s Response Brief, at pp. 8-11.

claims failed as a matter of law.³

In its Opinion in this matter dated July 28, 2020, the Court of Appeals did not address the substance of Mr. Devin’s claims.⁴ Instead it agreed that “Devin does not appeal the summary judgment orders dismissing his claims,” and dismissed the appeal.⁵ Mr. Devin moved for reconsideration, which was denied. Mr. Devin then filed the Petition for Review currently before the Court.

**V. ARGUMENT WHY THE COURT SHOULD DENY
MR. DEVIN’S PETITION FOR DISCRETIONARY REVIEW**

The contents of a petition for review must conform to the requirements of RAP 13.4. RAP 13.4(b) states in pertinent part as follows:

A petition for review will be accepted by the Supreme Court only:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.⁶

³ *Id.*, at pp. 11-17.

⁴ See *Devin v. MTC Financial, Inc., et al.*, 13 Wn. App.2d 1142, 2020 WL 4334990.

⁵ *Id.*

⁶ RAP 13.4(b).

Mr. Devin’s Petition for Discretionary Review never cites RAP 13.4(b), nor does it make any argument that any of the criteria stated by the rule are satisfied in this case. Mr. Devin’s Petition for Review should be denied for this reason alone.

Rather than attempt to show that his Petition for Review satisfies RAP 13.4(b), Mr. Devin claims that the Court of Appeals made a mistake. Mr. Devin even calls the Court of Appeals’ reasoning “patently bogus.”⁷ But it was Mr. Devin, not the Court of Appeals, who stated in his Notice of Appeal that he was seeking “review . . . of the ORDER entered on January 3, 2019 *denying his Motion for Rule 59 Relief in this matter.*” CP 255 (emphasis added). And it was Mr. Devin, not the Court of Appeals, who appended to his Notice of Appeal only an Order on Reconsideration concerning prior motions to stay, compel, and amend. CP 257, CP 184-187, 235, and 237-243. The Court of Appeals made no factual mistake about the actual contents of Mr. Devin’s Notice of Appeal.

Moreover, the Court of Appeals’ decision to rely on the plain terms of RAP 2.4 to support dismissal of Mr. Devin’s appeal did not conflict with any case by this Court or the Court of Appeals known to counsel for

⁷ Petition for Review, at p. 4.

MTC.⁸ Since there is no such conflict, Mr. Devin could not satisfy either of the first two criteria of RAP 13.4(b), even if he had attempted to do so. Mr. Devin also did not, and could not, demonstrate either a “significant question of law under the Constitution of the State of Washington or of the United States,” or that his Petition “involves an issue of substantial public interest that should be determined by the Supreme Court.”⁹ Mr. Devin’s Amended Complaint raises no constitutional claims. CP 45-50.¹⁰ And the issue of whether the non-judicial foreclosure of Mr. Devin’s rental property can properly proceed does not become a matter of “substantial public interest” simply because Mr. Devin claims to have been “an innocent property owner . . . wronged in the ongoing fallout from the 2008 financial crisis that was caused by corrupt banks and mortgage companies.”¹¹

VI. CONCLUSION

Because Mr. Devin’s Petition for Review does not and cannot show that this matter satisfies RAP 13.4(b), this Court should deny review.

⁸ See *Devin v. MTC Financial, Inc., et al.*, 13 Wn. App.2d 1142, 2020 WL 4334990 at * 3.

⁹ RAP 13.4(b)(3) and (4). Mr. Devin’s Complaint raises no constitutional claims (CP 1-7)

¹⁰ See also Petition for Review (making no argument about any alleged constitutional issue).

¹¹ Petition for Review, at pp. 2-3. See also CP 48, at ¶ 16 (acknowledging that the property at issue has not yet been sold), and CP 87-90.

DATED this 15th day of March 2021.

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CERTIFICATE OF SERVICE

I hereby certify, under penalty of perjury under the laws of the State of Washington, that on March 15, 2021, I caused to be served a true and correct copy of the foregoing **ANSWER TO PETITION FOR REVIEW BY RESPONDENT MTC FINANCIAL, INC., D/B/A TRUSTEE CORPS** in the manner noted below, to the following parties:

David Devin	<input type="checkbox"/>	Via Facsimile
So 3B Ngach 50, Ngo 1194	<input type="checkbox"/>	Via U.S. First Class Mail
Duong Lang, Quan Dong Da	<input type="checkbox"/>	Via Messenger
Hanoi, Vietnam	<input checked="" type="checkbox"/>	Via Electronic
Email:		Transmission
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William G. Fig	<input type="checkbox"/>	Via Facsimile
Sussman Shank, LLP	<input type="checkbox"/>	Via U.S. First Class Mail
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DATED: March 15, 2021, at Bellevue, Washington.

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