IN THE SUPREME COURT OF WASHINGTON
CASE NO:
99340-8

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ON APPEAL FROM THE WASHINGTON STATE
COURT OF APPEALS, DIVISION II
No. 53241-7-II

MTC FINANCIAL, INC. d/b/a TRUSTEE CORPS, trustee, BANK OF NEW YORK MELLON, f/k/a THE BANK OF NEW YORK, as trustee for THE CERTIFICATE HOLDER OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2005-17,

Respondent,

V.

DAVID W. DEVIN,

Petitioner.

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# PETITION FOR REVIEW

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DAVID W. DEVIN,
ATTORNEY PRO SE

David W. Devin
So 3B Ngach 50, Ngo 1194 Duoung Lang
Quan Dong Da Hanoi
Vietnam 0000

A. IDENTITY OF PETIONER

Petitioner is Washington citizen residing in Viet Nam where he works in Education. He is also a residential landlord and Titled Owner of the Subject Premises.

B. COURT OF APPEALS DECISION

The original unpublished Court of Appeals Decision and the Decision denying reconsideration are attached at Appendix A. They are dated July 80, 2020 and November 20, 2020 respectively.

C. INTRODUCTION AND ISSUES PRESENTED FOR REVIEW

Plaintiff-Appellant issued a brief summary of the issues in a Supplemental briefing before the Court. In it, he noted, *inter alia*:

> My four points are:
>
> 1. My whole appeal is because the lower court did not compel Mr. Fig to answer my 21 interrogatories after I answered to the best of my ability all 27 of his interrogatories. If Mr. Fig would have provided me and the court complete and true answers to my questions the Court would have found four compelling reasons to decide this case in my favor. They are:
>
> A. The BoA illegally took possession of my property in February 2009 and then gifted it back to me without asking for any money or for me to sign a new note and then then walked away and have never to this day contacted me again except to give me my loan file in January of this year=2020 which contains not one letter to me demanding payment from February 2009 to April 13, 2016. So they clearly gifted me property a fact which the lower court and the Appeals Court both refused to consider.
>
> B. The BONYM does not have the original note and deed of trust which they must have in order to foreclose. The reason I know this is because the BoA did not have it in February of 2009. Again both the Superior Court of Kitsap County and the Appeals Court refused to consider this very valid and should be compelling point.
>
> C. The Assignment of the Note and Deed of Trust is a fraudulent document in which the BoA and the BoNYM colluded to cover up that fact that it was not an arm's length legitimate sale of my note and deed of trust

but a reverse sale- an illegal payment to the BoNYM by the BoA to take not only my note but hundreds if not thousands of uncollected notes off the books of the BoA.
This fact as well as the fact that the person who signed this fraudulent document of behalf of MERS, Mr. Wayne Choe did not even work for MERS but was a low level employee of the BoA. This has been proved in other courts of law so I should not have to prove it to you. I assume that this court is well aware of this fact and that the reason that both the lower court and now this court have refused to sign my proposed orders is you do not want to open this can of worms and expose the truth for the world to see.

D. Mr. Deleo's Clients illegally tacked a notice of Default to the Front and back door or my house on April 13, 2016 and then organized a Trustee Sale of my property which they scheduled for January 7, 2017 without so much as sending me one notice of the sale properly served on me to the e-mail and mailing addresses which I gave them by both phone and e-mail two months prior. They sent me both e-mails and at least one package to my Hanoi address prior to this. So they have absolutely no excuse for not following the Washington State Consumer Protection Act to send me proper notice of this Trustee Sale. . So my question is: Why is this court totally ignoring the many instances of law breaking by the defendants?

My second point is that the Summary Judgment was concocted by Mr. Fig because he did not want to deal with my four solid legal arguments for deciding this case in my favor. So he somehow cleverly but dishonestly convinced the lower court judge and now this court that my case rests solely on the statute of limitations- which it clearly doesn't and since I "failed to prove that my loan had been accelerated".....

With that in mind we turn to the sole reason given for the dismissal of the Appeal based on a purported lack of Jurisdiction:

D. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

In this case we have a manifest injustice at hand with foreclosing entities operating behind a known robosigner (Wayne Choe) who was identified in a State-sponsored investigation in Florida. We have a Notice of Appeal that directly references the only Omnibus Order that was given by the Trial Court so that no one sustained any prejudice whatsoever. But yet we have a Court rejecting a case in which an innocent property owner

was wronged in the ongoing fallout from the 2008 financial crisis that was caused by corrupt banks and mortgage companies.

https://www.theatlantic.com/magazine/archive/2015/09/how-wall-streets-bankers-stayed-out-of-jail/399368/

BUSINESS

How Wall Street's Bankers Stayed Out of Jail

The probes into bank fraud leading up to the financial industry's crash have been quietly closed. Is this justice?

WILLIAM D. COHAN
SEPTEMBER 2015 ISSUE

> Since 2009, 49 financial institutions have paid various government entities and private plaintiffs nearly $190 billion in fines and settlements, according to an analysis by the investment bank Keefe, Bruyette & Woods. That may seem like a big number, but the money has come from shareholders, not individual bankers. (Settlements were levied on corporations, not specific employees, and paid out as corporate expenses—in some cases, tax-deductible ones.) In early 2014, just weeks after Jamie Dimon, the CEO of JPMorgan Chase, settled out of court with the Justice Department, the bank's board of directors gave him a 74 percent raise, bringing his salary to $20 million.
>
> The more meaningful number is how many Wall Street executives have gone to jail for playing a part in the crisis. That number is one. (Kareem Serageldin, a senior trader at Credit Suisse, is serving a 30-month sentence for inflating the value of mortgage bonds in his trading portfolio, allowing them to appear more valuable than they really were.) By way of contrast, following the savings-and-loan crisis of the 1980s, more than 1,000 bankers of all stripes were jailed for their transgressions (Appendix B).

F. ARGUMENT

I. Appellant did Indeed File a Proper Notice of Appeal.

The Lower Court held:

> The order denying reconsideration did not relate to the summary judgment dismissal of his claims. Thus, RAP 2.4(c)(3) does not apply to allow this court to review the trial court's orders granting summary judgment dismissal of Devin's claims.

The Notion that Appellant did not Appeal the proper Order is patently bogus; a mistake of fact at best and a sophistry at worst:

The only ORDER the lower Court issued was an Omnibus Order that is in the Court Record and appears herein at Appendix A. It is an Omnibus Order addressing EVERYTHING PENDING, including not only the Reconsideration of the Motion to Compel, but the Summary Judgment issue.

The rule reads, in pertinent part:

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(c) Final Judgment Not Designated in Notice. Except as provided
in rule 2.4(b), the appellate court will review
a final judgment not designated in the notice only if the notice
designates an order deciding a timely motion based on
(1) CR 50(a) (judgment as a matter of law), (2) CR 52(b) (amendment of
findings), (3) CR 59 (reconsideration, new
trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment),
or (5) CrR 7.5 (new trial).
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In this instance it is patently clear that the Notice of Appeal referred to an Order that included the Dismissal on the Merits. Here is a screen capture of the Final Order:

Regarding BONYM's Motion for Summary Judgment, the court considered the following pleadings:

- Plaintiff's Amended Complaint;
- BONYM's Motion for Summary Judgment;
- Declaration in support of BONYM's Motion for Summary Judgment;
- Plaintiff's Response to BONYM's Motion for Summary Judgment; and
- BONYM's Summary Judgment Reply Brief.

The court, having reviewed the above referenced pleadings and the briefing filed by the parties, having heard the oral argument of the parties, and otherwise being fully advised in the premises, hereby ORDERS that:

1. Plaintiff's Motion for Reconsideration is GRANTED.
2. Plaintiff's Motion to Compel against BONYM is DENIED.
3. Plaintiff's Motion to Stay the hearing BONYM's Summary Judgment Motion is DENIED.

It is further ORDERED & ADJUDGED that the BONYM's Motion for Summary Judgment is GRANTED. Plaintiff's claims against BONYM are dismissed with prejudice.

DATED this 3 day of January, 2019.

Superior Court Judge

The Order addressed multiple issues including, *inter alia*, the fact that "It is further ORDERED & ADJUDGED that the BONYM's Motion for Summary Judgment is GRANTED. Plaintiff's claims against BONYM are dismissed with Prejudice.

Again:

II. Application of Law in the Current Legal and Social Context.

The Lower Court's reliance on talismanic requirements does not move us towards adjudication on the merits of this case, which is completely unfair given:

a) The general history of the financial/mortgage crisis as noted above at Appendix B;

b) The specific history of this case, including unfounded (and more importantly unproved) threats from Attorney Fig that he would make Plaintiff "eat crow" regarding an original Note that Fig never even produced. So we have the missing Note, the empty threats from opposing Counsel, the Florida investigation of Wayne Choe, and the walkaway from the house for seven (7) years. These are a perfect trifecta in and of themselves that merits a Remand from this Honorable Court. Meanwhile the cities of Seattle, Tacoma and Washington State in general continue to experience unheralded amounts of homelessness and misery.

As noted above, what else is a Plaintiff to do?

G. Conclusion.

The Lower Courts did not do substantial Justice in this case. Given the backdrop of the mortgage industry as well as the backdrop of this particular case, there is simply no way for this Court to overlook the injustice: On Remand this Court must instruct the lower Courts that this minor confusion and semantic morass does not merit ignoring the material issues at stake. It really is that simple. No longer will these banks and mortgage companies receive carte blanche to run rampant over innocent consumers and homeowners.

Respectfully submitted,

DAVID W. DEVIN
Pro Se Appellant
December 21, 2020

CERTIFICATE OF SERVICE

I the undersigned swear that I served a copy of the foregoing MOTION by email and regular mail to:

William G. Fig
1000 SW Broadway
Suite 1400
Portland, Oregon 97205
This 21st Day of December, 2020

DAVID DEVIN

And to:

Michael S. DeLeo
10900 NE 4th Street
Suite 1850
Bellevue, WA 98004-8341
This 21st Day of December, 2020

DAVID DEVIN

APPENDIX A

KITSAP COUNTY OMNIBUS ORDER
ADDRESSING ALL OUTSTANDING ISSUES

JANUARY 3, 2020

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DIVISION TWO UNPUBLISHED OPINION

JULY 28, 2020

Hearing Date: 12/14/18
Hearing Time: 1:30 p.m.
Judge: Hon. Sally F. Olsen, Dept. 8



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

FOR THE COUNTY OF KITSAP

| | |
|---|---|
| DAVID W. DEVIN,<br><br>Plaintiff,<br>vs.<br><br>MTC FINANCIAL, INC., *et. al.*,<br><br>Defendants. | Case No. 17-2-00144-1<br><br>BANK OF NEW YORK MELLON, NA'S ~~[PROPOSED]~~ OMNIBUS ORDER |

On December 14, 2018, the following motions came before the court:

1. Plaintiff's Motion for Reconsideration.
2. Plaintiff's Motion to Compel against Bank of New York Mellon, NA ("BONYM").
3. Plaintiff's Motion to Stay the Hearing on BONYM's Motion for Summary Judgment.
4. BONYM's motions to strike plaintiff's Revised Complaint and plaintiff's Response to BONYM's Summary Judgment Reply.
5. BONYM's Motion for Summary Judgment and Motion to Strike hearsay testimony in plaintiff's Sworn Statement dated October 17, 2017.

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Regarding BONYM's Motion for Summary Judgment, the court considered the following pleadings:

- Plaintiff's Amended Complaint;
- BONYM's Motion for Summary Judgment;
- Declaration in support of BONYM's Motion for Summary Judgment;
- Plaintiff's Response to BONYM's Motion for Summary Judgment; and
- BONYM's Summary Judgment Reply Brief.

The court, having reviewed the above referenced pleadings and the briefing filed by the parties, having heard the oral argument of the parties, and otherwise being fully advised in the premises, hereby ORDERS that:

1. Plaintiff's Motion for Reconsideration is GRANTED.
2. Plaintiff's Motion to Compel against BONYM is DENIED.
3. Plaintiff's Motion to Stay the hearing BONYM's Summary Judgment Motion is DENIED.

It is further ORDERED & ADJUDGED that the BONYM's Motion for Summary Judgment is GRANTED. Plaintiff's claims against BONYM are dismissed with prejudice.

DATED this 3 day of January, 2019.

Sally F. Olson
Superior Court Judge

Presented By:

SUSSMAN SHANK, LLP

By _____
William G. Fig, WSBA 33943
Attorneys for Bank of New York Mellon, NA



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# IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

## DIVISION II

| | |
|---|---|
| DAVID W. DEVIN, an individual,<br><br>Appellant,<br><br>v.<br><br>MTC FINANCIAL, INC., d/b/a TRUSTEE CORPS, trustee; THE BANK OF NEW YORK MELLON f/k/a THE BANK OF NEW YORK, as trustee for THE CERTIFICATE HOLDERS OF CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2005-17,<br><br>Respondents. | No. 53241-7-II<br><br>UNPUBLISHED OPINION |

LEE, C.J. — David W. Devin appeals from the trial court's denial of his motion for reconsideration of a prior denial of a motion for reconsideration of certain lower court rulings in his lawsuit against MTC Financial, Inc. (MTC) and Bank of New York Mellon (BONYM). Although the trial court dismissed Devin's claims on summary judgment, Devin does not appeal the trial court's summary judgment dismissal of his claims. Because Devin does not appeal the summary judgment orders dismissing his claims, MTC and BONYM move under RAP 2.4(b) and (c) and RAP 17.4(d) to dismiss this appeal. We grant MTC and BONYM's motions to dismiss Devin's appeal.

## FACTS

In 2005, Devin borrowed money to purchase property in Bremerton. Devin's loan was secured by a deed of trust. Bank of America was the servicer of the loan and Landsafe Title was the trustee. Later, the beneficial interests were assigned to BONYM.

In 2007, Devin defaulted on his loan. He later moved to Vietnam and began using the property as a rental. Several trustee sales were attempted in 2008 and 2009, but those attempts were unsuccessful. MTC then became the successor trustee on the deed of trust.

In 2016, MTC posted a notice of default on the property and arranged for a trustee sale. Devin filed a complaint against MTC and BONYM, and obtained an order restraining the sale of the property.

On October 10, 2018, BONYM filed a motion for summary judgment dismissal of Devin's claims. Devin then filed a "Motion to Stay Review of Defendant's Bad Faith Motion for Summary Judgment." Clerk's Papers (CP) at 332. The same day he filed his motion to stay, Devin filed a "Motion to Compel Production of Good Faith Responses to Plaintiff's Interrogatories." CP at 91. On November 16, 2018, MTC filed a motion for summary judgment dismissal of Devin's claims.

On November 30, 2018, the trial court heard Devin's motions to stay and compel discovery. Devin did not appear. The court denied his motions.

Devin filed a motion for reconsideration, arguing a telephone glitch was the reason he failed to appear at the November 30, 2018 hearing. On December 14, 2018, the trial court heard argument on Devin's motion for reconsideration, granted the motion, and allowed him to provide argument to support his motions to stay and compel discovery. At the same hearing, the trial court also heard argument on MTC and BONYM's motions for summary judgment.

The trial court ultimately denied Devin's motions to stay and compel discovery. The trial court also struck a "Revised Complaint" Devin filed right before the summary judgment hearing. CP at 165. And the trial court took MTC and BONYM's motions for summary judgment under advisement.

Devin again moved for reconsideration of the trial court's denial of his motions to stay and compel discovery. The trial court denied Devin's motion for reconsideration on December 20, 2018. On December 31, 2018, Devin filed another motion for reconsideration of the trial court's decision on his motions to stay and compel discovery, asking the trial court to reconsider its December 20, 2018 order. This was now Devin's third motion for reconsideration of the trial court's denial of his motions to stay and compel discovery. The trial court denied Devin's motion for reconsideration on January 3, 2019.

Separately, on January 3, 2019, the trial court entered two orders granting MTC and BONYM's motions for summary judgment dismissal of Devin's claims.

On February 1, 2019, Devin filed a notice of appeal with this court. Devin sought review of "the ORDER entered on January 3, 2019 denying his Motion for Rule 59 Relief in this matter." CP at 255. The notice of appeal states that "[a] copy of the decision is attached to this notice." CP at 255. Devin then attached the trial court's January 3, 2019 order denying reconsideration of the trial court's previous order denying reconsideration of Devin's motions for stay and compel discovery based on Devin's failure to provide a sufficient "basis for reconsideration under CR 59." CP at 257.

## ANALYSIS

Devin contends that (1) Bank of America violated the statute of limitations or had gifted the house to him when the initial foreclosure proceedings in 2009 were terminated, (2) MTC and BONYM failed to establish chain of title, (3) the trial court erred in its prior discovery rulings, and (4) the trial court erred in failing to find that MTC and BONYM violated the Deeds of Trust Act

(DTA), chapter 61.24 RCW and Consumer Protection Act (CPA), chapter 19.86 RCW.[1] MTC and BONYM both move to dismiss Devin's appeal under RAP 2.4(b) and (c) and RAP 17.4(d) because he did not appeal from the order dismissing his complaint. We agree with MTC and BONYM, and grant their motions to dismiss.

The Rules of Appellate Procedure (RAPs) govern the procedures a party must comply with to appeal a decision or order that the party believes is erroneous. RAP 1.1(a). We will generally review only "the decision or parts of the decision" the appellant designates in the notice of appeal. RAP 2.4(a); see also RAP 5.3(a)(3) (notice of appeal must designate decision for review). Further, RAP 2.4(a) governs the scope of our review, and it limits our review to the "decision" listed in the notice of appeal. However, RAP 2.4(b) sets forth exceptions for when we will review *orders or rulings* not designated in the notice of appeal, and RAP 2.4(c) sets forth exceptions for when we will review *final orders* not designated in the notice of appeal. A party may include in his or her brief a motion to dismiss. RAP 17.4(d).

MTC and BONYM moved for dismissal, arguing that none of the exceptions in RAP 2.4(b) and (c) apply. All of Devin's arguments in his briefs relate to, or are impacted by, the summary judgment orders, which were not designated in his notice of appeal.

---

[1] Devin appears to move for reconsideration of this court's May 10, 2019 letter rejecting the attachments to his original opening brief because they were not part of our record. Because this motion is untimely under RAP 17.7(a) and because all documents attached to a party's brief must be a part of this court's record under RAP 10.3(a)(8), we deny Devin's motion.

We also decline to consider the attachments to Devin's Reply Brief to BONYM, with the exception of the "Sworn Statement of the Plaintiff," which is in our record, based on RAP 10.3(a)(8). CP at 194. Similarly, we decline to consider the multiple filings from Devin regarding his "transcript" for oral argument and questions for the court and supplemental post hearing memorandum.

A summary judgment order dismissing a complaint is a final order. *DeYoung v. Cenex Ltd.*, 100 Wn. App. 885, 892, 1 P.3d 587 (2000), *review denied*, 146 Wn.2d 1016 (2002). Therefore, we look to RAP 2.4(c) to see if an exception applies or whether the matter should be dismissed.

Devin argues that under RAP 2.4(c)(3), he can appeal the summary judgment dismissal orders because he designated an order denying reconsideration under CR 59 in his notice appeal. We disagree.

RAP 2.4(c)(3) states that "the appellate court will review a final judgment not designated in the notice only if the notice designates an order deciding a timely motion based on . . . CR 59 (reconsideration, new trial, and amendment of judgments)[.]" Under RAP 2.4(c), an appeal from an order deciding a CR 59 motion to reconsider allows us to consider the propriety of the "underlying" order. *Davies v. Holy Family Hosp.*, 144 Wn. App. 483, 492, 183 P.3d 283 (2008), *abrogated on other grounds by Frausto v. Yakima, HMA, LLC*, 188 Wn.2d 227, 393 P.3d 776 (2017).

Here, the orders granting summary judgment dismissal are not underlying orders. The order on appeal was a third denial of a motion for reconsideration of the trial court's rulings on the motions to stay and compel discovery. The order denying reconsideration did not relate to the summary judgment dismissal of his claims. Thus, RAP 2.4(c)(3) does not apply to allow this court to review the trial court's orders granting summary judgment dismissal of Devin's claims.

Because Devin did not appeal from the summary judgment orders dismissing his complaint and the undesignated summary judgment orders are not underlying orders to the order denying Devin's motion to stay and compel discovery, there is no exception that allows us to review the summary judgment orders. Devin's briefs do not address issues related to the order he appealed

and address only issues relating to an order he did not appeal. Therefore, we grant MTC and BONYM's motions to dismiss.

We dismiss Devin's appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Lee, C.J.

We concur:

Glasgow, J.

Cruser, J.

# APPENDIX B

THE ATLANTIC

BUSINESS

How Wall Street's Bankers Stayed Out of Jail
The probes into bank fraud leading up to the financial industry's crash have been quietly closed. Is this justice?

**WILLIAM D. COHAN**

SEPTEMBER 2015 ISSUE

ON MAY 27, in her first major prosecutorial act as the new U.S. attorney general, Loretta Lynch unsealed a 47-count indictment against nine FIFA officials and another five corporate executives. She was passionate about their wrongdoing. "The indictment alleges corruption that is rampant, systemic, and deep-rooted both abroad and here in the United States," she said. "Today's action makes clear that this Department of Justice intends to end any such corrupt practices, to root out misconduct, and to bring wrongdoers to justice."

Lost in the hoopla surrounding the event was a depressing fact. Lynch and her predecessor, Eric Holder, appear to have turned the page on a more relevant vein of wrongdoing: the profligate and dishonest behavior of Wall Street bankers, traders, and executives in the years leading up to the 2008 financial crisis. How we arrived at a place where Wall Street misdeeds go virtually unpunished while soccer executives in Switzerland get arrested is murky at best. But the legal window for punishing Wall Street bankers for fraudulent actions that contributed to the 2008 crash has just about closed. It seems an apt time to ask: In the biggest picture, what justice has been achieved?

Since 2009, 49 financial institutions have paid various government entities and private plaintiffs nearly $190 billion in fines and settlements, according to an analysis by the investment bank Keefe, Bruyette & Woods. That may seem like a big number, but the money has come from shareholders, not individual bankers. (Settlements were levied on corporations, not specific employees, and paid out as corporate expenses—in some cases, tax-deductible ones.) In early 2014, just weeks after Jamie Dimon, the CEO of JPMorgan Chase, settled out of court with the Justice Department, the bank's board of directors gave him a 74 percent raise, bringing his salary to $20 million.

The more meaningful number is how many Wall Street executives have gone to jail for playing a part in the crisis. That number is one. (Kareem Serageldin, a senior trader at Credit Suisse, is serving a 30-month sentence for inflating the value of mortgage bonds in his trading portfolio, allowing them to appear more valuable than they really were.) By way of contrast, following the savings-and-loan crisis of the 1980s, more than 1,000 bankers of all stripes were jailed for their transgressions.

At an event at the National Press Club last February, Holder said the virtual absence of convictions (or even prosecutions) this time around did not result from a want of trying. "These are the kinds of cases that people come to the Justice Department to make," he said. "The inability to make them, at least to this point, has not been as a result of a lack of effort." Preet Bharara, the U.S. attorney for the Southern District of New York, made a similar argument to me. The evidence, he said, does not show clear misconduct by individuals. It's possible that Bharara is correct about that: Wall Street bankers make it their daily business to figure out ways to abide by the letter of the law while violating its spirit. And to be sure, much of the behavior that led to the crisis involved recklessness and poor judgment, not fraud. But even so, in light of various whistle-blower allegations—and the size of the settlements agreed to by the banks themselves—this explanation strains credulity. The Justice Department's ethos regarding Wall Street, and the *way* the department went about its business, appear to be a large part of the story.

ANY NARRATIVE OF how we got to this point has to start with the so-called Holder Doctrine, a June 1999 memorandum written by the then–deputy attorney general warning of the dangers of prosecuting big banks—a variant of the "too big to fail" argument that has since become so familiar. Holder's memo asserted that "collateral consequences" from prosecutions—including corporate instability or collapse—should be taken into account when deciding whether to prosecute a big financial institution. That sentiment was echoed as late as 2012 by Lanny Breuer, then the head of the Justice Department's criminal division, who said in a speech at the New York City Bar Association that he felt it was his duty to consider the health of the company, the industry, and the markets in deciding whether or not to file charges.

In the aftermath of the crash, the Justice Department did not refrain from prosecutions altogether. In 2009, the U.S. attorney for the Eastern District of New York tried two Bear Stearns hedge-fund managers—Ralph Cioffi and Matthew Tannin—who had effectively run their $1.6 billion fund into the ground in the spring of 2007, an event that many believe was the canary in the coal mine of the financial crisis. But a jury acquitted the two men in November 2009. Added to the general fear that the economy was extraordinarily fragile, the unexpected acquittal seemed to put a deep freeze on Wall Street prosecutions for close to three years.

A serious national investigation of the practices of Wall Street's pre-crash mortgage-banking activities did not begin in earnest until mid-2012—at least five years after the worst of the bad behavior had occurred—following President Obama's call to action in the State of the Union address that January and the issuance of subpoenas to Wall Street's biggest banks. The five-year statute of limitations for ordinary criminal fraud charges had passed while the Justice Department dithered, but civil prosecution of banks and individual bankers, which has a 10-year statute of limitations under a particular banking law, was still a possibility. Holder gave his various U.S. attorneys around the country responsibility for investigating.

A team led by Benjamin Wagner, the U.S. attorney for the Eastern District of California, investigated alleged wrongdoing at JPMorgan Chase, for instance. In many ways, Wagner's investigation was typical of the Justice Department's approach: hoover up hundreds of thousands of pages of e-mails and documents, interview current and former employees about their business practices, and use the findings as a cudgel to extract a financial settlement. Wagner and his team drafted—but did not file—a complaint against the firm in September 2013 that reportedly detailed how JPMorgan Chase itself (not merely Bear Stearns or Washington Mutual, two banks that it bought at the height of the crisis) knowingly packaged shoddy mortgages into securities that did not meet its credit standards and then sold them off to investors. As part of its investigation, Wagner's team had deposed Alayne Fleischmann, a JPMorgan Chase banker turned whistle-blower, who'd told the team about what was going on. She had also detailed how, before the crash, her warnings about continuing to package up the bad mortgages into securities and sell them off as investments had gone unheeded by her superiors. After sharing her concerns with her boss in a 13-page letter, Fleischmann had been marginalized and then fired. (Disclosure: JPMorgan Chase also fired me, as a managing director, in 2004, and I am in litigation with the bank resulting from a soured investment I made in 1999.) In November 2013, as part of a deal that kept Wagner's complaint from becoming public—and the specifics of Fleischmann's revelations from being widely disseminated—JPMorgan Chase agreed to a $13 billion settlement with various federal and state agencies, then the largest of its kind. Holder heralded the settlement as an important moment of accountability for Wall Street. But extracting large settlements paid with shareholders' money is not the same as bringing alleged wrongdoers to justice. Instead of presenting a detailed picture of JPMorgan Chase's misdeeds—as would have happened had Wagner's

complaint been filed and the matter adjudicated in court—the government and the bank negotiated an anodyne 11-page "Statement of Facts" that glossed over many of the details of the behavior Fleischmann was trying to stop, and did not name any JPMorgan Chase bankers.

The Justice Department reached agreements with other Wall Street banks, among them Citigroup and Bank of America, using a similar playbook: Threaten public disclosure of behavior that looks criminal and then, in exchange for keeping it sealed, extract a huge financial settlement. No one individual, or group of individuals, is held accountable. No predawn raids of Park Avenue apartments are made. No one gets arrested. No one gets publicly shamed.

IN FEBRUARY, SHORTLY before Lynch succeeded him, Holder gave federal attorneys and their staffs a deadline: they had 90 days to bring any new prosecutions against individual bankers, traders, or executives on Wall Street before probes against them would be closed. That deadline came and went in May. Lynch, since her elevation, has been largely silent about Wall Street misconduct leading up to the crash; certainly she's said nothing, in a major public forum, that's comparable to the zeal and determination she expressed in her statement about bringing FIFA executives to justice. But in fairness, it's not clear how much she could do anyway: the peak of bad behavior on Wall Street seemed to occur in 2005 and 2006, about 10 years ago, meaning the statute of limitations is just about up. And new cases take time to make.

Holder, meanwhile, along with his old colleague Lanny Breuer, has returned to the white-shoe law firm that he left in order to join the Justice Department—Covington & Burling, which counts among its clients Bank of America, Citigroup, and Wells Fargo. (The firm reportedly kept his office for him.) The sums Holder exacted from Wall Street banks earned him plenty of praise in the media. But without holding real people on Wall Street accountable for their wrongdoing in the years leading up to the financial crisis, the message that their behavior was unacceptable goes undelivered. Instead a very different message is being sent: for financiers, justice is just a check someone else has to write.

*We want to hear what you think about this article. Submit a letter to the editor or write to letters@theatlantic.com.*

**WILLIAM D. COHAN** *is a special correspondent for* Vanity Fair. *He is the author, most recently, of* Why Wall Street Matters *and* The Price of Silence.

**DAVID DEVIN - FILING PRO SE**

**December 21, 2020 - 2:41 PM**

**Filing Petition for Review**

**Transmittal Information**

| | |
|---|---|
| **Filed with Court:** | Supreme Court |
| **Appellate Court Case Number:** | Case Initiation |
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Petitioner's Petition for Review with Appendices A and B.

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