100188-6

Case No. 81991-7

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

WEST COAST SERVICING, INC.,

Appellant,

vs.

PRINCE ERIC LUV,

Respondent.

PETITION FOR SUPREME COURT REVIEW

Joseph Ward McIntosh, WSBA #39470
McCarthy & Holthus, LLP
jmcintosh@mccarthyholthus.com

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I. NAME AND DESIGNATION OF PETITIONER

The petitioner is West Coast Servicing, Inc.

II. CITATION TO COURT OF APPEALS DECISION

Petitioner requests review of the Court of Appeals opinion, *Luv v. W. Coast Servicing, Inc.*, No. 81991-7-I (Wash. Ct. App. Aug. 2, 2021), affirming the superior court and terminating review[1]. Petitioner's motion for reconsideration of the opinion was denied by order dated August 31, 2021[2].

III. ISSUE PRESENTED FOR REVIEW

Whether the Court of Appeals correctly held that a bankruptcy discharge causes future debt installments to become immediately due and enforceable – in other words, whether a bankruptcy discharge "accelerates" installment debt.

The answer is a resounding, no. The Court of Appeal's holding conflicts with established statutes and case law, and review should be accepted.

IV. STATEMENT OF THE CASE

A. *Underlying facts.*

The underlying facts are not in dispute and are set forth in the opinion.

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[1] Appendix A
[2] Appendix B

In 2005, in connection with a loan transaction, Prince Luv gave his original lender a note promising repayment of a debt by way of monthly installments over 20 years. The debt was secured by a deed of trust against Luv's real property.

In 2008, Luv filed a Chapter 7 personal bankruptcy. In 2009, by order of the Bankruptcy Court, Luv's personal liability for repayment of the debt was discharged. The real property was released to Luv following bankruptcy. The deed of trust remained intact against the real property, securing the debt. Petitioner subsequently acquired the note and deed of trust.

B. ***Litigation history***

In 2019, Luv filed the underlying quiet title action against Petitioner. Luv argued his 2009 discharge caused the entire debt, including the future installments, to become fully due and enforceable. As there was no timely enforcement within 6 years of discharge, Luv asserted the deed of trust no longer secured any enforceable installment. The superior court agreed and quieted title in favor of Luv.

Petitioner appealed to the Court of Appeals for Div. 1. Petitioner pointed-out that discharge does not alter a debt's contractual repayment schedule, and that each installment accrues separately in the absence of lender acceleration, which did not occur, here.

The Court of Appeals, in the above-referenced opinion, affirmed the quiet title judgment against Petitioner. The Court's legal analysis in the opinion is contradictory. The Court agrees with Petitioner that discharge does not accelerate

future installments, but then concludes that all future installments are immediately due and enforceable solely as a result of a discharge – the equivalent of saying the debt was "accelerated" by discharge[3]. The opinion offers, for example, the following contradictory analysis:

> *Edmundson*[4] cannot be read to stand for the proposition that bankruptcy discharge eliminates or accelerates the debt; rather, discharge triggers the statutory limitation period during which a creditor may enforce the deed of trust[5].

If the discharge does not eliminate or accelerate the future installments, then what about the discharge triggers their immediate enforcement and the limitation period? The opinion does not answer this question.

C. ***Review sought.***

Petitioner seeks review of the opinion. Review is appropriate under RAP 13.4(b)(1) and (2) because the opinion conflicts with the statute and published case law.

Review is also appropriate under RAP 13.4(b)(4) because the Court of Appeal's novel conclusion that all installment debt is fully and immediately enforceable following discharge profoundly alters the status quo and is an issue of substantial public interest.

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[3] Appendix A
[4] *Edmundson v. Bank of Am., NA*, 194 Wn. App. 920 (2016)
[5] Appendix A

V. ARGUMENT

A. *Review should be granted under RAP 13.4(b)(1) and (2).*

The following propositions of law are firmly established by statute and case law, and were even acknowledged by the Court of Appeals in its opinion.

1. *For installment debt, the statute of limitations runs against each installment from the time it becomes due, unless the debt is accelerated*. *Herzog v. Herzog*, 23 Wn.2d 382, 388, 161 P.2d 142 (1945); RCW 62A.3-118(a) (same rule under state's UCC for installment promissory notes).

2. *Acceleration requires an "affirmative act" by the lender*. *Merceri v. Bank of N.Y. Mellon*, 4 Wn. App. 2d 755, 760 (2018).

3. *A bankruptcy discharge does not accelerate a debt*. *Edmundson v. Bank of Am.*, 194 Wash. App. 920, 932, 378 P.3d 272, 278 (2016).

4. *Nor does a bankruptcy discharge eliminate a debt*. *See* 11 USC 524(a)(2) (discharge merely operates as an injunction against enforcing the debt as a personal liability of the debtor).

Given the above undisputed propositions of law, the correct statute of limitations analysis is as follows. Luv's bankruptcy discharge did not alter the installment nature of the debt. The installments continued to accrue, as contractually scheduled, with the caveat there is no longer personal recourse against Luv. As there has been no lender acceleration of future installments, the deed of trust still secures (1) those installments that have accrued and are still timely

enforceable within 6 years, and (2) all un-accrued installments. Quiet title is therefore inapplicable.

The Court of Appeal's opinion is wrong. The Court's conclusion that all future installments become immediately due and enforceable solely as a result of discharge – the same thing as saying the debt was "accelerated" by discharge – conflicts with the statute and published case law, and is reviewable under RAP 13.4(b)(1) and (2).

Notably, the same Court of Appeals conclusion has been criticized by the bankruptcy judges in this state – the foremost experts on the subject matter – with one bankruptcy judge calling the conclusion de facto "acceleration by discharge" and advocating for review of the issue by the state supreme court[6].

B. ***Review should be granted under RAP 13.4(b)(4).***

Review is also appropriate under RAP 13.4(b)(4) because the Court of Appeal's "acceleration by discharge" rule is profoundly impactful to the public, especially to debtors that wish to continue making their contractual installment payments after discharge. The Court of Appeals dismisses these concerns, speculating that debtors will still be able to successfully make installment payments post-discharge, but nothing in the law compels creditors to accept partial payments on a debt that is fully due and enforceable.

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[6] Appendix C

Furthermore, to the extent the Court of Appeals is concerned about unreasonable enforcement delays by creditors, the law already supplies a remedy under the circumstances-based doctrine of laches. The Court of Appeals is not a legislator that gets to re-write the state's statute of limitations and the Bankruptcy Code to combat what it views as unreasonable delay under the circumstances of this case.

Finally, and as also explained in Petitioner's motion for reconsideration, the Court of Appeal's novel legal conclusion represents a significant shift in the status quo, and creates a myriad of new issues and questions relevant to thousands of loans in this state[7]. The issue is, without question, significantly impactful to the public.

VI. CONCLUSION

It is undisputed a bankruptcy discharge does not terminate or accelerate future debt installments. Under the state's UCC and published case law, the statute of limitations runs against each future installment *from the time it becomes due*. The Court of Appeal's contradictory holding that discharge causes the statute of limitations to run on all future installments conflicts with state law. Review should be accepted.

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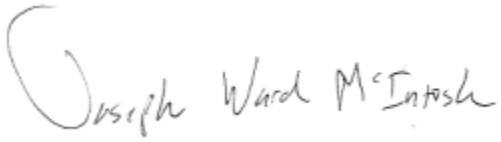
[7] Appendix D

DATED September 6, 2021



Joseph Ward McIntosh, WSBA #39470
Attorney for Petitioner

FILED
8/2/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PRINCE ERIC LUV, Respondent, v. WEST COAST SERVICING, INC., Appellant.	No. 81991-7-I DIVISION ONE UNPUBLISHED OPINION

COBURN, J. — West Coast Servicing, Inc. (WCS) appeals a trial court decision on cross-motions for summary judgment quieting title in Prince Eric Luv. WCS contends that the trial court erred in ruling that the statute of limitations barred foreclosure of the deed of trust that secured Luv's home equity loan. We adhere to our decision in Edmundson v. Bank of America, 194 Wn. App. 920, 378 P.3d 272 (2016), and hold that the six-year statute of limitations to enforce a deed of trust commences from the date the last payment on the note was due prior to the discharge of a borrower's personal liability in bankruptcy. Because WSC initiated foreclosure more than six years after Luv's bankruptcy discharge, the action was time barred. We therefore affirm.

FACTS

On November 18, 2005, Luv opened a home equity line of credit for $38,200 with lender Mortgageit, Inc. secured by a deed of trust against his home in Everett. The deed of trust identifies Landamerica Transnation as the trustee and Mortgage Electronic Registration Systems, Inc. (MERS) as the deed of trust beneficiary. The accompanying

promissory note required Luv to repay any indebtedness in monthly installments over 20 years.

Luv filed for chapter 7 bankruptcy on December 2, 2008. The bankruptcy trustee found no value in the property above the secured debt and the homestead exemption and did not sell the property. On March 11, 2009, the bankruptcy court entered an order discharging Luv's personal liability on his debts, including the home equity loan. Luv made no payments on that debt since prior to his bankruptcy discharge.

On August 9, 2018, MERS transferred its interest in the deed of trust to WSC. WSC then initiated a non-judicial foreclosure against Luv's encumbered property.[1] On April 17, 2019, Luv filed a quiet title action against WSC arguing that the statute of limitations for enforcement of the deed of trust expired six years after the bankruptcy discharge of his personal liability for repayment of the loan under the note. On cross-motions for summary judgment, the trial court ruled in favor of Luv and entered an order extinguishing the deed of trust and quieting title in Luv. WSC appeals.

DISCUSSION

WSC argues that the trial court erred by granting Luv's motion for summary judgment and quieting title in Luv. This is so, WSC contends, because the bankruptcy discharge did not commence the applicable statutory limitation period regarding its ability to enforce payment of Luv's loan obligation. We disagree.

We review a trial court's decision on a summary judgment motion de novo. Merceri v. Bank of N.Y. Mellon, 4 Wn. App. 2d 755, 759, 434 P.3d 84 (2018). Summary

[1] See Notice of Trustee's Sale, publicly recorded under Snohomish County Recorder's No. 201901070138.

judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). When the underlying facts are undisputed, we review de novo whether the statute of limitations bars an action. Bennett v. Comput. Task Grp., Inc., 112 Wn. App. 102, 106, 47 P.3d 594 (2002).

Under RCW 7.28.300, the record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose is barred by the statute of limitations. A promissory note and deed of trust are written contracts that are subject to a six-year statute of limitations. RCW 4.16.040(1); Westar Funding, Inc. v. Sorrels, 157 Wn. App. 777, 784, 239 P.3d 1109 (2010). The six-year period commences "after the cause of action has accrued." RCW 4.16.005. "For a deed of trust, the six-year statute of limitations begins to run when the party is entitled to enforce the obligations of the note." Wash. Fed. v. Azure Chelan, LLC, 195 Wn. App. 644, 663, 382 P.3d 20 (2016); Walcker v. Benson and McLaughlin, P.S., 79 Wn. App. 739, 740-41, 904 P.2d 1176 (1995) (holding a creditor's right of non-judicial foreclosure of a deed of trust does not extend beyond the limitation period for enforcement of the underlying debt).

Under an installment promissory note, the statutory limitation period is triggered by each missed monthly installment payment at the time it is due. Cedar W. Owners Ass'n. v. Nationstar Mortg., LLC, 7 Wn. App. 2d 473, 484, 434 P.3d 554 (2019); Herzog v. Herzog, 23 Wn.2d 382, 388, 161 P.2d 142 (1945) (holding that " 'when recovery is sought on an obligation payable by installments, the statute of limitations runs against each installment from the time it becomes due; that is, from the time when an action might be brought to recover it.' "). In the event that an installment note is accelerated,

the entire remaining balance becomes due and the statute of limitations is triggered for all installments that had not previously come due. 4518 S. 256th, LLC v. Karen L. Gibbon, PS, 195 Wn. App. 423, 434-35, 382 P.3d 1 (2016).

At issue in this case is whether Luv's bankruptcy discharge commenced the running of the statute of limitations on an action to enforce the deed of trust. Our opinion in Edmundson is controlling. In Edmundson, the debtors obtained a loan to purchase real property. The loan was documented by a promissory note payable in monthly installments, and a deed of trust secured the note. 194 Wn. App. at 923. The debtors stopped making payments and subsequently received a chapter 13 bankruptcy discharge. Id. The successor trustee sought to enforce the deed of trust approximately a year after the bankruptcy discharge. Id. The debtors then filed a quiet title action asserting that the lien to the deed of trust was no longer enforceable. 194 Wn. App. at 924. The trial court granted summary judgment to the debtors based on its conclusion that the deed of trust was unenforceable because the discharge of the debtor's personal liability in bankruptcy also discharged the deed of trust lien. 194 Wn. App. at 924.

The Edmundson court began its analysis by noting that a bankruptcy discharge extinguishes only the personal liability of the debtor, but the creditor's right to foreclose on the deed of trust survives the bankruptcy. 194 Wn. App. at 925 (citing Johnson v. Home State Bank, 501 U.S. 78, 82-84, 111 S. Ct. 2150, 115 L. Ed. 2d 66 (1991)). Because the right to foreclose the lien of the deed of trust on the debtors' property was not affected by the bankruptcy discharge, the appellate court held that the trial court erred in granting summary judgment to the debtors. 194 Wn. App. at 926-27.

Of particular significance to this case, the Edmundson court also held that a bankruptcy discharge commences the six-year statutory limitation period for enforcing a deed of trust for an obligation payable in installments. Edmundson, 194 Wn. App. at 930-31 (citing Herzog v. Herzog, 23 Wn.2d 382, 388, 161 P.2d 142 (1945)). The court reasoned that the statute of limitations does not accrue after discharge because, at that point, no future installment payments are due and owing on the note or deed of trust. 194 Wn. App. at 931. Because the debtors' missed payments accrued within six years of the trustee's resort to remedies, the statute of limitations did not bar enforcement of the deed. 194 Wn. App. at 931.

Washington and federal courts have followed the rule announced in Edmundson. See Jarvis v. Fed. Nat'l Mortg. Ass'n, 726 F. Appx. 666, 677 (9th Cir. 2018) ("The final six-year period to foreclose runs from the time the final installment becomes due . . . [which] may occur upon the last installment due before discharge of the borrower's personal liability on the associated note."); Spesock v. U.S. Bank, No. C18-0092JLR, 2018 WL 4613163, at *4 (W.D. Wash. Sept. 26, 2018) (court order) (noting that, "[w]hen a note is discharged in a Chapter 7 bankruptcy, the statute of limitations to enforce the corresponding deed of trust runs from the date the last payment on the note was due prior to the Chapter 7 discharge"); Taylor v. PNC Bank, C19-01142-JCC, 2019 WL 4688804 (W.D. Wash. Sept. 26, 2019) (court order) (holding that "the statute of limitations on Defendant's ability to enforce the deed of trust began to accrue on the last date an installment was due prior to the discharge"); U.S. Bank v. Kendall, No. 77620-7-I, slip. op. at 9 (Wash. Ct. App. 2d July 1, 2019) (unpublished), http://www.courts.wa.gov/opinions/pdf/776207.pdf (noting that although a deed of trust's

lien is not discharged in bankruptcy, the limitations period for an enforcement action nonetheless "accrues and begins to run when the last payment was due" prior to discharge); Hernandez v. Franklin Credit Mgmt. Corp., C19-0207-JCC, 2019 WL 3804138 (W.D. Wash. Aug. 13, 2019) (court order) (applying Edmundson to conclude that the trustee's attempt to enforce the deed of trust was time barred).

Here, Luv received a chapter 7 discharge of his personal liability on the note on March 11, 2009. Under Edmundson, the six-year statute of limitations on the note was triggered on March 1, 2009, the date that Luv's last payment was due prior to his bankruptcy discharge. Enforcement of the deed of trust was thus time barred after March 1, 2015. As of the date of discharge, the creditor could no longer enforce Luv's personal liability, and its only remaining recourse was to foreclose on the property in rem. WSC sought to foreclose more than three years after expiration of the statute of limitations. Accordingly, the trial court did not err in extinguishing the deed of trust and quieting title in Luv.

WSC urges us to reject Edmundson and instead hold that bankruptcy discharge does not trigger commencement of the statute of limitations under an installment note. WSC argues that the Edmundson rule is not rooted in state law; rather, it is the product of inadvertent language from a federal court case that this court copied and pasted into its opinion without any legal citation or analysis. WSC further contends that the Edmundson rule contradicts existing black letter bankruptcy law because it is based on the faulty assumptions that a bankruptcy discharge eliminates or accelerates a secured debt. WSC is incorrect.

The Edmundson court based its reasoning on settled law from the Washington Supreme Court holding that "when recovery is sought on an obligation payable by installments, the statute of limitations runs against each installment from the time it becomes due; that is, from the time when an action might be brought to recover it." 194 Wn. App. at 930 (quoting Herzog, 23 Wn.2d at 388. "A statute of limitation does not invalidate a claim, but rather 'deprives a plaintiff of the opportunity to invoke the power of the courts in support of an otherwise valid claim." Walcker, 79 Wn. App. at 743 (quoting Stenberg v. Pac. Power & Light Co., 104 Wn.2d 710, 714, 709 P.2d 793 (1985)). Edmundson cannot be read to stand for the proposition that bankruptcy discharge eliminates or accelerates the debt; rather, discharge triggers the statutory limitation period during which a creditor may enforce the deed of trust.

WSC also asserts that the Edmundson rule has been criticized by the bankruptcy courts in this state. See In re Plastino, 69 Bankr. Ct. Dec. (LRP) 177 (Bankr. W.D. Wash. Dec. 29, 2020); In re Griffith, No. 18 Bankr. Ct. Nov. (TWD) (Bankr. W.D. Wash. Nov. 2, 2020); Hernandez v. Franklin Credit Mgmt. Corp., No. C19-0207-JCC, 2019 WL 3804138 (W.D. Wash. Aug. 13, 2019) (court order) (rejecting Edmundson and holding that a bankruptcy discharge does not trigger commencement of the statute of limitations under an installment note). These courts reasoned that the Edmundson rule is dicta that need not be followed, and that the rule is inconsistent with the principle that acceleration is not automatic but requires action by the lender. However, on appeal of Hernandez, the United States District Court of the Western District of Washington and the Ninth Circuit Court of Appeals rejected the bankruptcy court's reasoning and ruled that Edmundson is controlling. In re Hernandez, 820 Fed. Appx. 593 (September 8,

2020). The bankruptcy court cases cited by WSC do not persuade us to depart from Edmundson.[2]

WSC further argues that the Edmundson rule serves no policy objective and would be disastrous for secured lending in this state. WSC contends that the rule would have broad implications that bar enforcement of a deed of trust following bankruptcy discharge. But because the statute of limitations does not operate when payments are voluntarily made or when the debtor acknowledges the debt, all mortgage debts will not automatically become uncollectible after discharge. See In re Tragopan Prop, LLC, 164 Wn. App. 268, 273, 263 P.3d 613 (2011) (noting that an untimely action may be maintained under RCW 4.16.280 by a written acknowledgment or promise signed by the debtor that recognizes the debt's existence, is communicated to the creditor, and does not indicate an intent not to pay).

Moreover, we agree with Luv that it is against public policy to allow a deed of trust to be enforced without limits. Statutes of limitations promote justice and ensure fairness by "preventing surprises through the revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have

[2] WSC attached to its reply brief a draft version, though not identified as such, of a recent article summarizing recent case law on this subject. See Jason Wilson-Aguilar, Does a Bankruptcy Discharge Trigger the Running of the Statute of Limitations on Actions to Enforce a Deed of Trust? Creditor Debtor Rights Newsletter, Washington State Bar Association, summer 2019, at 3. WSC offered the draft article as persuasive authority for the proposition that subject matter expert Wilson-Aguilar disagreed with Edmundson. However, the final published version of the article, offered by amicus curiae Northwest Consumer Law Center, differed significantly from the draft version offered by WSC. Most notably, the final published version observed that the United States District Court's decision in Hernandez "plainly deals a serious – perhaps fatal – blow to the legal argument the bankruptcy court approved" in the cases cited by WSC. We therefore strike the draft version offered by WSC.

disappeared." Langlois v. BNSF Ry. Co., 8 Wn. App. 2d 845, 862, 441 P.3d 1244 (2019). "[T]hese goals are generally applicable in foreclosure proceedings, whether based on mortgages or deeds of trust." Walcker, 79 Wn. App. at 746 (stating that "the goals are to eliminate the fears and burdens of threatened litigation and to protect a defendant against stale claims.") Here, WSC purchased Luv's debt in 2018, nine years after his bankruptcy discharge. Public policy disfavors allowing homeowners to indefinitely face the specter of foreclosure following bankruptcy discharge.

Both parties request attorney fees under RCW 4.84.330 and the deed of trust. We may award attorney fees and expenses on appeal under RAP 18.1(a) if applicable law grants to a party the right to recover reasonable attorney fees and if the party requests the fees in compliance with RAP 18.1. RCW 4.84.330 provides:

> In any action on a contract or lease . . . where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Here, the deed of trust provides that the lender "shall be entitled to collect all reasonable fees and costs actually incurred by [the lender] in proceeding to foreclosure or to public sale," including "reasonable attorneys' fees." Because Luv has prevailed on appeal, his reasonable attorney fees and costs incurred on appeal are awarded upon compliance with RAP 18.1.

Affirmed.

Coburn, J.

WE CONCUR:

Brennan, J.

Dwyer, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

PRINCE ERIC LUV,

Respondent,

v.

WEST COAST SERVICING, INC.,

Appellant.

No. 81991-7-I

ORDER DENYING MOTION FOR RECONSIDERATION

The appellant, West Coast Servicing, having filed a motion for reconsideration herein, and a majority of the panel having determined the motion should be denied; now, therefore, it is hereby

ORDERED the motion for reconsideration be, and the same is, hereby denied.

FOR THE COURT:

Coburn, J.

In re Plastino

United States Bankruptcy Court for the Western District of Washington, Seattle Division

December 29, 2020, Entered on Docket

Case No. 17-11760-MLB Adv. No. 20-01012-MLB Chapter 7

Reporter
2020 Bankr. LEXIS 3597 *

In re Pakie Vincent Plastino, Debtor. 01013 MLB In re Ronald G. Brown, solely in his capacity as Chapter Trustee for the Bankruptcy Estate of Pakie V. Plastino, Plaintiff, and James Rigby, solely in his capacity as Trustee of the Bankruptcy Estate of Debra L. Wilson, Plaintiff, v. Deutsche Bank National Trust Company as Indenture Trustee for Impac Real Estate Asset Trust Series 2006 SD1, Defendant.

Core Terms

statute of limitations, acceleration, bankruptcy discharge, installments, default, tolled, limitations period, last payment, restarted, summary judgment, ***trust deed***, acknowledgment, summary judgment motion, automatic stay, limitations, notice, dicta

Opinion

[*1] MEMORANDUM DECISION

MEMORANDUM DECISION - 1

Below is a Memorandum Decision of the Court.

INTRODUCTION

This matter is before me on cross motions for summary judgment in consolidated adversary

proceedings 20-01012-MLB and 20-01013-MLB. Ronald G. Brown and James Rigby (hereafter

collectively the "Plaintiffs") seek to avoid the ***lien*** of Deutsche Bank National Trust Company as

Indenture Trustee for Impac Real Estate Asset Trust Series 2006-SD1 (hereafter the "Defendant") under

U.S.C. 506(d) in property of the bankruptcy estate of Pakie Plastino.

Plaintiffs filed their Motion for Summary Judgment asserting that the statute of limitations on

Defendant's installment note (hereafter the "Note") has run, rendering the Note unenforceable. *See* Dkt.

No. 27. Defendant filed its Motion for Summary Judgment on Ronald G. Brown and James Rigby's

Complaint, seeking a determination that the statute of limitations on the Note it holds has not run. *See*

Dkt. No. 20. Both parties filed responses and replies supporting their positions. *See* Dkt. Nos. 30, 33,

, and 36.

I heard oral argument on December 17, 2020 and took the matter under advisement. Having

reviewed the relevant pleadings and having heard arguments from the **[*2]** parties, and otherwise having

good cause, I conclude that the statute of limitations has not run, and both grant the Defendant's

summary judgment motion and deny the Plaintiffs' summary judgment motion.

JURISDICTION

I have jurisdiction over the parties and the subject matter of this adversary proceeding pursuant

to *28 U.S.C. 157(b)(2)(k)* and *1334*.

FACTS

On September 13, 2002, Mr. Plastino signed the Note in the amount of $1,000,000.00. Dkt. No.

, Exhibit 1. The Note obligation is secured by a ***Deed of Trust*** encumbering real property located at

MEMORANDUM DECISION - 2

Below is a Memorandum Decision of the Court.

11740 Riviera Place NE, Seattle, WA 98125 (hereafter the "Property"). Dkt. No. 20, Exhibit 2.

Defendant assertedly holds the Note secured by the ***Deed of Trust***. 1

On or about September 23, 2003, Mr. Plastino married Olga Stewart. 2 After Mr. Plastino and

Ms. Stewart were married a series of transfers resulted in the property being community property.

On March 24, 2005, Mr. Plastino filed a Chapter 11 bankruptcy, which was later converted to a

Chapter 7 (hereafter "Plastino's 2005 Bankruptcy," Case No. 05-13695-TTG). On February 22, 2007,

Mr. Plastino received a Chapter 7 discharge.

At oral argument, Plaintiffs and Defendant **[*3]** agreed that the last payment on the Note was made

August 2, 2010. On August 27, 2010, Mr. Plastino executed a Loan-Modification Application. Dkt. No.

22, Exhibit 11.

On September 22, 2010, Ms. Stewart filed a Chapter 13 bankruptcy. On November 10, 2010, her

case was converted to a Chapter 11 (hereafter the "Stewart Bankruptcy," Case No. 10-21227-MLB). I

confirmed Ms. Stewart's Chapter 11 Plan on November 27, 2012 (hereafter "Stewart's Chapter 11

Plan"). Under Stewart's Chapter 11 Plan, the automatic stay remained in place post-plan confirmation.

The plan stated that Defendant could enforce its interest in the Property and that the stay would

terminate thirty days after a notice of default to Ms. Stewart and her attorney if any default was not

timely cured. Defendant sent notice of default on November 29, 2016. Ms. Stewart did not cure the

default. Therefore, the automatic stay terminated on December 29, 2016.

Approximately thirty-six days later, on February 3, 2017, Mr. Plastino filed for bankruptcy in the

United States Bankruptcy Court for the Central District of California (hereafter the "California

Bankruptcy"). On March 27, 2017, the California Bankruptcy was dismissed. Approximately twenty- **[*4]**

two days later, on April 18, 2017, Mr. Plastino filed the present bankruptcy.

1 At hearing, Plaintiffs raised an issue as to whether Deutsche Bank National Trust Company is indenture trustee for the trust

named in the complaint or whether the Note is presently held for a different trust. Resolution of this issue is beyond the

scope of these summary judgment motions.

I note that Olga Stewart has indicated that she prefers being referred to as "Olga Plastino," but for purposes of clarity, as she

filed her bankruptcy under the name "Olga Stewart," she will be referred to as Ms. Stewart. No disrespect is intended.

MEMORANDUM DECISION - 3

Below is a Memorandum Decision of the Court.

ANALYSIS

I. Legal Standard

A. Summary Judgment

Federal Rule of Civil Procedure 56(a) provides that "[t]he court shall grant summary judgment if

the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to

judgment as a matter of law." The moving party bears the initial burden of demonstrating the absence of

a genuine issue of material fact. *Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S. Ct. 2548, 91* L. Ed.

265 (1986). A fact is material if it might affect the outcome of the suit under the governing law. *See*

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986).

When a properly supported motion for **[*5]** summary judgment has been presented, the adverse party

"may not rest upon the mere allegations or denials of his own pleading." *Id.* Rather, the non-moving

party must set forth specific facts demonstrating the existence of a genuine issue for trial. *Id. at 256*.

While all justifiable inferences are to be drawn in favor of the non-moving party, when the record, taken

as a whole, could not lead a rational trier of fact to find for the non-moving party, summary judgment is

warranted. *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348*,

89 L. Ed. 2d 538 (1986) (internal citations omitted).

B. Washington Limitation of Actions Provisions

In Washington State, "[e]xcept as otherwise provided in this chapter, and except when in special

cases a different limitation is prescribed by a statute not contained in this chapter, actions can only be

commenced within the periods provided in this chapter after the cause of action has accrued." RCW

4.16.005.

Further, "[w]hen the commencement of an action is stayed by injunction or a statutory

prohibition, the time of the continuance of the injunction or prohibition shall not be a part of the time

limited for the commencement of the action." *RCW 4.16.230*.

MEMORANDUM DECISION - 4

Below is a Memorandum Decision of the Court.

In 2010, when the last payment was made **[*6]** on the Note by Mr. Plastino, *RCW 4.16.270* stated:

When any payment of principal or interest has been or shall be made upon any existing

contract, whether it be a bill of exchange, promissory note, bond or other evidence of

indebtedness, if such payment be made after the same shall have become due, the limitation shall commence from the time the last payment was made.

RCW 4.16.270 (amended July 28, 2019).

II. Statute of Limitations Analysis

A. The *Edmundson* Dicta Issue

The Plaintiffs assert that the discharge Mr. Plastino received in his 2005 bankruptcy triggered, in

effect, an acceleration of the Note, starting with the payment due before his Chapter 7 discharge--

approximately February 1, 2007. The Defendant asserts that no statute or binding Washington case law

establishes acceleration of a debt as a consequence of a bankruptcy discharge. Additionally, Defendant

asserts that regardless of whether the discharge in Plastino's 2005 Bankruptcy triggered an acceleration of the debt, the statute of limitations has not run in this case as (1) the last payment on the Note was

made August 2, 2010; (2) Mr. Plastino acknowledged the debt obligation on August 27, 2010, in a loan-

modification application; and (3) the Stewart Bankruptcy **[*7]** subsequently tolled the statute of limitations.

The Plaintiffs' bankruptcy discharge acceleration argument is based on the following statement

in a Washington Court of Appeals case:

[T]he statute of limitations for each subsequent monthly payment accrued on the first day

of each month after November 1, 2008 until the Edmundsons no longer had personal liability under the note. They no longer had such liability as of the date of their

bankruptcy discharge, December 31, 2013. Thus, from December 1, 2008 through December 1, 2013, the statute of limitations accrued for each monthly payment under the

terms of the note as each payment became due.

Edmundson v. Bank of Am., 194 Wash. App. 920, 931, 378 P.3d 272 (2016); *see also Jarvis v. Fannie*

Mae, 726 F. App'x 666, 666 (9th Cir. 2018); *Hernandez v. Franklin Credit Mgmt. Corp.*, Case No. C19-

-*JCC, 2019 WL 3804138, *2, 2019 U.S. Dist. LEXIS 136543, *4-6 (W.D. Wash. Aug. 13, 2019)*,

aff'd sub nom. Hernandez v. Franklin Credit Mgmt. Corp. (In re Hernandez), 820 Fed. Appx. 593 (9th

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Below is a Memorandum Decision of the Court.

Cir. 2020); *Taylor v. PNC Bank, Nat'l Ass'n*, Case No. C19-1142-JCC, 2020 WL 4431465, *3-4, 2020

U.S. Dist. LEXIS 136599, *6-9 (W.D. Wash. July 31, 2020), *appeal dismissed sub nom. Taylor v. PNC*

Bank, N.A., No. 20-35766, 2020 WL 7048194, 2020 U.S. App. LEXIS 37957 (9th Cir. Sept. 11, 2020);

U.S. Bank NA v. Kendall, No. 77620-7-I (consolidated with No. 77621-5, No. 77786-6, and No. 77820-

0), *2019 WL 2750171, at *4, 2019 Wash. App. LEXIS 1704, at *10-11 (Wash. Ct. App. July 1, 2019)*. 3

The language Plaintiffs cite to from *Edmundson* is dicta. In *Edmundson*, Carrington ***Mortgage***

Services, LLC (hereafter "Carrington"), **[*8]** appealed the trial court's grant of summary judgment in favor of

Kevin and Meche Edmundson. *Id.* at 924. The trial court permanently enjoined Carrington's trustee

sale on the grounds that the ***deed of trust*** securing the promissory note was unenforceable due to the

Edmundsons' bankruptcy discharge. *Id.* The Court of Appeals reversed and found in favor of

Carrington, holding that the bankruptcy discharge did not preclude ***foreclosure*** and that the statute of

limitations had not run. *Id. at 926*. The court provided no supporting authority for its statement that the

discharge created, in essence, an acceleration of the debt, as the Edmundsons "no longer had . . .

liability" on the note. Moreover, it was not necessary to the court's determination that the statute of

limitations on all installments was accelerated by the discharge. The court concluded that the

bankruptcy discharge did not render the note unenforceable for ***foreclosure*** and that the six-year statute

of limitations on the outstanding installments had not run. It would have reached this conclusion

whether or not the debt had accelerated by discharge.

Although the *Edmundson* court did not cite authority for the proposition that the bankruptcy

discharge accelerated **[*9]** the debt, in examining the appellate briefs in *Edmundson*, I note that Carrington

I note that, with the exception of *Jarvis*, all the cases that follow the *Edmundson* bankruptcy discharge acceleration dicta are

unpublished. Further, as in *Edmundson*, the bankruptcy discharge acceleration propositions in *Taylor* and *Kendall* are dicta. In *Taylor*, as the court ultimately held that the statute of limitations had restarted based on the debtors' acknowledgment of the debt, determination that there had been an acceleration upon the debtors' discharge was not necessary for the court's

conclusion. Similarly, in *Kendall*, the statute of limitations had not run regardless of whether discharge accelerated the installments because the debtor acknowledged the debt, restarting the limitations period.

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Below is a Memorandum Decision of the Court.

cited to an earlier unpublished Western District of Washington decision for that proposition. Brief of

Respondents at 13, *Edmundson v. Bank of America, 194 Wash. App. 920 (2016)* (No. 74016-4-1).

In the unpublished case cited by Carrington, the court states, without citation to authority:

[T]he [borrowers] remained personally liable on the Note (and successive payments continued to be due) until January **[*10]** 1, 2010, when they missed that payment; they received

their Chapter 7 discharge on January 25, 2010.

Accordingly, the statute of limitations to

enforce the ***Deed of Trust*** ***lien*** began to run on January 1, 2010. 4

Silvers v. U.S. Bank Nat. Ass'n, No. 15-5480 RJB, 2015 WL 5024173, *4, 2015 U.S. Dist. LEXIS

112650, *9-10 (W.D. Wash. Aug. 25, 2015).

The acceleration by bankruptcy discharge articulated in *Silvers* and subsequent cases does not

appear to be based on any Washington statute or case law. However, in examining the briefs in *Silvers*,

the proposition was cited to the court by the lender, without any reference to authority, stating:

[T]he Silvers remained personally liable on the Note (and installments continued coming due) until January 25, 2010, when they received their Chapter 7 discharge. Put another

way, the statute of limitations on U.S. Bank's right to enforce the ***Deed of Trust*** was renewed each month default through the date of the January 1, 2010 installment payment

. . . . that statue began running, at the earliest on January 1, 2010 (emphasis added).

U.S. Bank's Motion to Dismiss at 5, *Silvers v. U.S. Bank National Ass'n, 2015 WL 5024173* (W.D.

Wash. Aug. 25, 2015), ECF 8.

The acceleration by bankruptcy discharge articulated in *Silvers* **[*11]** and subsequent cases does not

appear to be based on any Washington statute or case law. It is also inconsistent with the proposition

that acceleration is not automatic but requires action by the lender. *Edmundson, 194 Wash. App. at 932*.

I therefore, do not believe that the Washington Supreme Court would create a new rule

accelerating installment payment debt upon discharge in bankruptcy. 5 As the discharge in the Plastino

I note that this language in *Silvers* is also dicta as the court's determination that the statute of limitations had not run on the

outstanding installment payments would have been the same whether or not the bankruptcy discharge created an acceleration.

But for my alternative conclusion that the statue of limitations was tolled by the stay in the Stewart Bankruptcy, the

"acceleration by discharge" issue may well have been appropriate for certification to the Washington Supreme Court.

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Below is a Memorandum Decision of the Court.

2005 Bankruptcy did not cause acceleration of future installments on the Note, the statute of limitations

has not run. 6

B. Restart of Statute of Limitations

Even if the *Edmundson* bankruptcy discharge acceleration proposition is correct, **[*12]** the statute of

limitations was restarted by the August 2, 2010 payment and by the August 27, 2010 Loan-Modification

Application.

i. The Last Payment

The parties agree that the last payment Mr. Plastino made on the Note was on August 2, 2010.

Under Washington law, "the limitation shall commence from the time the last payment was made."

RCW 4.16.270. Therefore, if the last payment was made on August 2, 2010, absent tolling, the statute

of limitations on the Note would have run on August 2, 2016.

ii. The Loan-Modification Application

The loan modification application (hereafter the "Application") executed on August 27, 2010,

constitutes an acknowledgment of the debt. Washington case law sets forth four factors for a debt

acknowledgment: (1) the acknowledgment must be in writing, (2) the acknowledgment must be

communicated to the creditor, (3) the acknowledgment must recognize the existence of a debt, and (4)

not indicate an intent not to pay. *See* *In re Tragopan Properties, LLC, 164 Wash. App. 268, 273, 263*

P.3d 613 (2011); *see also* *Jewell v. Long, 74 Wash. App. 854, 856, 876 P.2d 473 (1994)*.

Plaintiffs assert that the Application did not restart the statute of limitations because the

Defendant did not accept or agree to it. However, Plaintiffs have not cited to any Washington authority

requiring that a lender accept a loan modification **[*13]** application for it to constitute an acknowledgment of

6 Although both the *Edmundson* and *Hernandez* courts cite to *Herzog v. Herzog, 23 Wn.2d 382, 388, 161 P.2d 142 (1945)*,

the *Herzog* case does not establish that bankruptcy discharge causes debt acceleration. *Herzog* states that for "an obligation

payable by installments the statute of limitations runs against each installment from the time it becomes due; that is, from the time when an action might be brought to recover it." *Id.* The case does not address the affect of discharge in bankruptcy.

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debt. Therefore, the Application was a valid debt acknowledgment and restarted the statue of limitations

on August 27, 2010.

C. The Stewart Bankruptcy

Defendant asserts that the automatic stay in the Stewart Bankruptcy tolled the statute of

limitations on the Note as the Defendant was stayed from foreclosing on the Property. Plaintiffs

disagree.

Washington courts have rejected "the argument that statutory tolling under *RCW 4.16.230* does

not apply to the bankruptcy stay because a creditor may move for relief from the stay. The bankruptcy

stay is 'a statutory prohibition' within the meaning of *RCW 4.16.230*." *Merceri v. Deutsche Bank AG*, 2

Wash. App. 2d 143, **[*14]** 154, *408 P.3d 1140 (2018)*, *review denied sub nom. Merceri v. Deutsche Bank Nat'l*

Tr. Co., 190 Wn.2d 1027, 421 P.3d 457 (2018); *see also Washington Fed., Nat'l Ass'n v. Pac. Coast*

Constr., LLC, No 51197-5-*II, 2018 WL 3640905, *3-4, 2018 Wash. App. LEXIS 1779, *6-9* (Wash. Ct.

App. July 31, 2018).

Plaintiffs argue that *RCW 4.16.230* only applies when a stay is initiated by a holder of the note,

stating, "Olga Stewart was not an obligor on the Note and no actions she personally took, including

filing for bankruptcy, could toll the running of the six-year limitations period under the statute." Dkt.

No. 33. I disagree. Nothing in the plain language of *RCW 4.16.230* or the case law indicates that the

stay must have been created by an action directly involving the obligor on the Note. 7

A stay was created by the Stewart Bankruptcy filing. At the time of the filing of her bankruptcy,

the Property, secured by the ***Deed of Trust***, was community property. Property of the estate includes

community property. *See* *11. U.S.C. 541(a)(2)*. The automatic stay in bankruptcy stays any action to

obtain possession of property of the estate or to enforce a ***lien*** against property of the estate. *See* 11.

U.S.C. 362(a)(3) and (5). Therefore, the Stewart

Bankruptcy triggered a statutory prohibition staying

7 I note that under11 U.S.C. 524(a)(2) *in personam* enforcement of the Note against Mr. Plastino was permanently **[*15]** stayed following his bankruptcy discharge.

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Below is a Memorandum Decision of the Court.

enforcement of the ***Deed of Trust*** secured by the Note obligation. The statute of limitations was

therefore tolled.

The Stewart Bankruptcy was filed on September 22, 2010. I confirmed Stewart's Chapter 11

Plan on November 27, 2012. The plan provided that the automatic stay was to remain in place during its

pendency unless Ms. Stewart received a notice of default and failed to cure any default within thirty

days of the notice. Ms. Stewart defaulted on her plan obligations, and on November 29, 2016, Defendant

sent a notice of default. Ms. Stewart failed to cure the default within 30 days. Therefore, the stay in the

Stewart Bankruptcy tolled the statute of limitations from September 22, 2010 through December 29,

2016.

From the restart of the statute of limitations by payment on August 2, 2010, the limitations

period ran from August 2, 2010 to September 22, 2010, a total of fifty-one days. 8 The limitations period

was then tolled starting on the date the Stewart Bankruptcy was filed until December 29, 2016, a total of

2,289 days. The limitations period ran again from December 29, 2016 to February **[*16]** 3, 2017, when Mr.

Plastino filed his California Bankruptcy, a total of thirty-six days. The limitations period was tolled

again upon the filing of the California Bankruptcy until the case was dismissed on March 27, 2017, a

total of fifty-two days. The limitations period again ran until this bankruptcy was filed on April 18,

2017, a total of twenty-two days. Therefore, starting from August 2, 2010, the limitations period has

only run, at most, a total of 109 days.

As discussed above, acknowledgment of the debt on August 27, 2010, also restarted the limitations period.

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Below is a Memorandum Decision of the Court.

CONCLUSION

For the reasons previously stated, the six-year statute of limitations on the Note has not run.

Therefore, I grant summary judgment in favor of the Defendant and deny the Plaintiffs' cross motion.

Counsel for Defendant shall present an appropriate form of judgment.

/ / / End of Memorandum Decision / / /

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Case No. 81991-7

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

WEST COAST SERVICING, INC.,

Appellant,

vs.

PRINCE ERIC LUV,

Respondent.

APPELLANT'S MOTION FOR RECONSIDERATION

ORAL ARGUMENT REQUESTED

Joseph Ward McIntosh, WSBA #39470
McCarthy & Holthus, LLP
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I. NAME AND DESIGNATION OF MOVING PARTY

The moving party is appellant West Coast Servicing, Inc.

II. RELIEF SOUGHT

Pursuant to RAP 12.4, Appellant moves for reconsideration of this Court's opinion, dated August 2, 2021, affirming the superior court and terminating review. Appellant asks that the opinion is reconsidered and reversed, or the opinion is re-written to address the concerns identified herein.

III. STATEMENT OF GROUNDS FOR RELIEF

The opinion correctly acknowledges that under state law, the statute of limitations runs against each loan installment payment from the time it becomes due, and that a bankruptcy discharge does not accelerate or eliminate the debt. Yet, the opinion also concludes, without recitation to statutory or other authority, that a discharge in bankruptcy alone immediately begins the running of the statute on *all* future installments. The Court writes, for example, at page 7:

> Edmundson[1] cannot be read to stand for the proposition that bankruptcy discharge eliminates or accelerates the debt; rather, discharge triggers the statutory limitation period during which a creditor may enforce the deed of trust.

But the opinion plainly fails to explain or support *why* the discharge triggers

[1] Edmundson v. Bank of Am., NA, 194 Wn. App. 920 (2016)

the limitation period. The discharge does not accelerate the debt. The discharge does not mature or terminate the debt[2]. The discharge does not modify the installment nature of the obligation or modify well-settled law that on installment debt, the statutory period runs as to each installment due prior to maturity or acceleration[3].

Thus, for the Court to hold the statute of limitations for enforcement of the deed of trust, securing all future installments, is triggered by the discharge, the Court is adding an "effect of discharge" that cannot be found in the Bankruptcy Code[4], is not listed in state law, and that essentially holds that discharge alone matures or accelerates the debt. There is no other explanation for how the statute of limitations can run to *all* future installments if the discharge does not act to accelerate or mature the loan. If discharge neither accelerates, matures nor terminates the debt, then why does the discharge have any impact as to future installments due on that debt? This holding appears internally inconsistent and is

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[2] Were the debt terminated, there would be no lien to enforce.

[3] The state's Uniform Commercial Code, governing negotiable instruments, corroborates that the statute of limitations runs from the payment due date in the note, unless there is acceleration. *See* RCW 62A.3-118(a), which provides:

> (a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

[4] Noticeably absent from the Court's conclusions as to the effect of a bankruptcy discharge are quotes or citations to the Bankruptcy Code.

not adequately explained[5].

The Edmundson language has been justifiably criticized by parties, practitioners and judges in this state who specialize in secured debt and bankruptcy law. It was anticipated that this opinion, even if affirming the superior court, would address the concerns raised and explain the impact of a discharge on installment debt if, as the Court agrees, the discharge does not accelerate, mature or terminate debt. Instead, the opinion injects more ambiguity and contradiction into the issue, guaranteeing further litigation (it is not a coincidence that this issue has generated so much litigation, thus far, with many more cases in the "pipeline"[6]).

The latter part of the opinion suggests the Court wants to punish or deter Appellant and other lenders for enforcement delays. Bars to enforcement for unreasonable delay already exist in the law, for example, through the circumstances-based doctrine of laches. This Court should avoid re-writing the Bankruptcy Code and state's statute of limitations to combat what it views as

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[5] The Court's opinion at page 5 says, without citation to the Bankruptcy Code, that following discharge payments on the note are no longer due. As explained in the briefing, and with citations to the Bankruptcy Code, this is not accurate as the discharge does nothing more than enjoin enforcement of the debt as a personal liability of the debtor under 11 USC 524(a)(2), a point the Court appears to accept when later holding that the debt was not eliminated by the discharge.

[6] This Court notes that the bankruptcy judges who have rejected Edmundson have been reversed by the federal courts on appeal, but those reversals were out of deference to this Court and a published state court case speaking directly to the state's statute of limitations. No other court has actually corroborated Edmundson as correctly stating the law. Litigation and appeals will continue as many practitioners view the Edmundson rule as obvious legal error that will eventually be corrected.

unreasonable delay by the lender under the circumstances of this case. The Court's opinion presents unnecessary confusion and ambiguity for practitioners charged with advising their borrower or lender clients as to the possible impact of this new, unique and law-changing Edmundson rule that effects thousands of loans in this state, the majority of which share no factual similarities to this one. Among the unanswered questions that follow this opinion are:

What phrase or language in the applicable Bankruptcy Code Section, 11 U.S.C. § 524, provides that an effect of discharge is the initiation of a limitations period for enforcement?

Does the Edmundson rule apply to all security instruments, or just deeds of trust?

Does Edmundson apply if personal liability is lost due to the death of the borrower, and not through bankruptcy? Or, what if the borrower's loan contract does *not* promise personal repayment of the debt, e.g. a non-recourse loan? Many loans in this state are originated, or re-negotiated, as non-recourse. Is a loan that is non-recourse by agreement to be treated different than a loan that became non-recourse due to a bankruptcy or the death of the borrower?

What if the creditor does not learn about the borrower's discharge following his bankruptcy or death, does the statute still run? Notice to creditors is not required in a Chapter 7 no-assets, no-bar-date bankruptcy. In re Nielsen, 383 F.3d 922 (9th Cir. 2004).

Is the Court holding that the secured creditor should or may demand full payment following discharge, even if installment payments are still being timely made pursuant to the terms of the contract? If, as this holding implies, the debt fully accrues because of the bankruptcy, then why must a creditor accept partial payments or a reinstatement, and why can it not immediately demand the full amount due at penalty of foreclosure?

What if personal liability is terminated as to only one of several borrowers on the same loan?

Can the parties contract-around the Edmundson rule? Do all security instruments in the state going forward need to add a paragraph saying "the Edmundson rule does not apply, and the loan and its repayment schedule remains intact notwithstanding the absence of personal recourse?" This Court is reminded that mortgages (of which a deed of trust is a species) are customizable contracts, and the parties are allowed to dictate the accrual of rights through their contract. RCW 61.12.020.

These are but a select few of the questions raised but not answered by the opinion of the Court, which questions logically follow such a profound change of the rules and status quo[7].

//

[7] Appellant maintains that changing the rules for secured lending in the state is the province of the state legislature, and changing the Bankruptcy Code is the province of Congress.

ORAL ARGUMENT REQUESTED

Under RAP 12.4(f), motions for reconsideration are generally heard without oral argument, but RAP 12.4(g)(2) allows the court to schedule argument.

This Court opted to consider this matter originally without oral argument. In hindsight, oral argument may have been helpful, as it appears Appellant is not effectively communicating the law and its arguments by way of the written submissions. Oral argument may be particularly helpful to address this Court's conclusion in the opinion that a bankruptcy discharge does not accelerate or eliminate a debt, but that all future installments are immediately enforceable due solely to the discharge. Said analysis is untenable and correction is needed for all interested parties. Appellant respectfully request the opportunity to orally argue the case.

IV. CONCLUSION

WSC respectfully requests the Court reconsider the opinion. If the Court is going to affirm, it serves all parties and the public to get an explanation as to how, precisely, and without contradiction, the Bankruptcy Code and state law compels the Edmundson rule, and the parameters for this new rule going forward.

DATED August 7, 2021

/s/ Joseph Ward McIntosh
Joseph Ward McIntosh, WSBA #39470
Attorney for Appellant

MCCARTHY & HOLTHUS, LLP

August 09, 2021 - 2:06 PM

Transmittal Information

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