Supreme Court No. 100619-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTOPHER and ANGELA LARSON,

Plaintiffs-Appellants,

v.

SNOHOMISH COUNTY, et al.,,

Defendants-Respondents.

ANSWER OF DEUTSCHE BANK TRUST COMPANY, AS TRUSTEE; SELECT PORTFOLIO SERVICING, INC.; AND MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. TO PETITION FOR REVIEW

Court of Appeals, Div. I, No. 80968-7-I

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Respondents Deutsche Bank National Trust Company as Trustee for Morgan Stanley ABS Capital I Inc. Trust 2007-HE2 Mortgage Pass Through Certificates, Series 2007 (the "Trust"); Deutsche Bank National Trust Company; Morgan Stanley ABS Capital I Inc. Trust 2007-HE2; Select Portfolio Servicing, Inc. ("SPS"); and Mortgage Electronic Registration Systems, Inc. ("MERS") (collectively the "Private Respondents") respectfully submit the following joint response brief.

I. INTRODUCTION

In a consolidated opinion, the Court of Appeals correctly affirmed the trial court decisions resolving two separate actions related to the ownership and nonjudicial foreclosure of Appellants'—the Larsons—property. Rather than seeking to enjoin and directly challenge the sale, the Larsons chose to file multiple lawsuits in both Skagit and Snohomish Counties, asserting unfounded conspiracy theories and frivolous claims of

fraud and other wrongdoing against Washington's state and county governments, judges, and the Private Respondents.

In their Petition, the Larsons seek review as to only the court's decision affirming the trial court orders denying the Larsons' multiple motions to recuse Superior Court judges from the cases. The Larsons' Petition should be denied because the Court of Appeals properly rejected the Larsons' arguments affirming the decisions in both cases and none of the factors in RAP 13.4(b) support review.

II. STATEMENT OF THE CASE

Appellant Christopher E. Larson executed a Promissory Note (the "Note") in favor of New Century Mortgage Corporation ("New Century") in 2006. Clerk's Papers ("CP") 3142.[1] The Note was secured by a deed of trust signed by the

[1] The Clerk's Papers from Snohomish County case No. 19-2-01383 are referred to herein as "CP." The Clerk's Papers from Snohomish County Case No. 18-2-04994-31 are referred to as the "TP CP."

Larsons (the "Deed of Trust") against real property located at 11914 167th Drive NE, Arlington, Washington (the "Property"). CP 3149, 3237-3256. Under the Deed of Trust, Defendant MERS was the designated nominee for New Century Mortgage, beneficiary of the security instrument, and its successors and assigns. *Id.*

The Trust is the holder of a Note and, as a result, the successor beneficiary of the Deed of Trust. CP 3216. It is also the assignee of all interest in the Deed of Trust by virtue of an assignment recorded on July 16, 2010. CP 3197. SPS is the servicer of the Note and holds a limited power of attorney to act on behalf of the Trust to enforce the Note. CP 3199.

The Larsons ceased making payments on the Note in August 2007. CP 3136, 4008-4009. On December 22, 2017, a Notice of Default was issued for the Note and, on June 8, 2018, the successor foreclosure trustee, Respondent Quality Loan Service Corp., recorded a Notice of Trustee's Sale, setting a

date for sale of October 12, 2018 (the "Trustee's Sale"). CP 3209, 3218, 3221.

On June 15, 2018, the Larsons filed their initial Torrens Application (the "Application") in Snohomish County Superior Court, case no. 18-2-04994-31 (the "Torrens Proceeding"). CP 3931-3934. In the Application they submitted a "Commitment for Title Insurance" for the Property. CP 3935-3953. The title insurance policy commitment identified the Deed of Trust as an encumbrance on the Property and excluded it from coverage. CP 3941.

On October 18, 2018, the Larsons filed a second lawsuit in Skagit County Superior Court based in part on the Application (the "Second Action"). CP 3985-4031. The Larsons sought to quiet title to the Property in their favor, challenged the foreclosure, and alleged other claims against the Private Defendants. *Id.* They further asserted claims against the Washington Governor and Attorney General, Snohomish

County and its auditor and examiner of titles, and all Snohomish County Superior Judges (the "Public Defendants") in connection with their Application and sought to compel the Public Defendants to comply with their duties under the Torrens Act, Ch. 65.12 RCW. *Id*.

The Trustee's Sale was postponed once from October 12 to November 16, 2018. CP 3227-3229. The Larsons did not seek to enjoin the Trustee's Sale, and the sale was held as scheduled on November 16, 2018. *Id.* The Trust was the winning bidder. CP 3110-3113, 3227-3229.

On December 20, 2018, the Skagit County Superior Court considered motions to dismiss by all defendants and a motion for change of venue in the Second Action. CP 3110-3113, 3340-3344. The trial court concluded that the Larsons had waived their quiet title claim because they failed to enjoin the foreclosure sale. CP 3110-3113; RP 15-16. The trial court also dismissed the Larsons' claim against the Public Defendants

based on a deficiency in the Torrens Application, namely that it did not include an abstract of record as required by the Torrens Act. CP 3340-3344. Finally, the trial court transferred venue of the Second Action to Snohomish County on the remaining claims. CP 3110-3113, 3340-3344.

As relevant to this Petition, at the December 2018 hearing, the Larsons asked Skagit County Judge Svaren to recuse himself. CP 3343. The request was denied. *Id.*

Following the change in venue, the Larsons moved to disqualify all the Snohomish County judicial officers, contending that they were named defendants in the Second Action. CP 2745-2750. The presiding judge for Snohomish County Superior Court granted the motion and assigned the case to Judge Svaren, sitting in capacity of a visiting judge for Snohomish County Superior Court. CP 17.

In November 2019, Judge Svaren granted the Private Defendants' motion for summary judgment. CP 30-33, 44-47.

He also denied the Larsons' request to disqualify himself from the case. *Id.*

On May 29, 2020, the Trust moved to dismiss the Torrens Proceeding because it was now the owner of the Property and, therefore, the Larsons had no interest in the Property to support their claim. TP CP 1182-1193. The Larsons moved for Snohomish Superior Court Judge Okrent, who was assigned to hear the case, to recuse himself. Torrens CP 17-23. Judge Okrent denied the motion to recuse and granted the Trust's motion to dismiss. TP CP 14-15.

The Larsons appealed both cases and, in a published opinion, the Court of Appeals affirmed the trial court decisions. As it relates to the present Petition, the Court of Appeals concluded that Judge Svaren and Judge Okrent did not err in refusing to recuse themselves from the cases. *Larson v. Snohomish County, et al.*, Court of Appeals Nos. 80968-7-I and 81874-1-I ("Slip Op.") at 41-43. The court held that the

judges' purported financial interest in their retirement fund, which the Larsons' asserted held mortgage-backed securities, was based on clear speculation. *Id.* at 43. The court further rejected the Larsons' assertion that Judge Svaren could not rule impartially because the judges in Snohomish County had allegedly failed to rectify a procedural issues related to the Torrens registration system and, by the time Judge Okrent dismissed the Torrens Proceeding, that procedural issue had been resolved. *Id.* Finally, the court held that since the Larsons had sought to disqualify all of the judges in both Skagit and Snohomish Counties, the rule of necessity applied and defeated their position. *Id.* at 42.

III. ARGUMENT

A. Review Is Not Warranted Under RAP 13.4(b).

To support their Petition, the Larsons contend that the Court of Appeals erred in affirming Judge Svaren's and Judge Okrent's decisions denying the motions to recuse or disqualify

themselves from the two cases. Although the Larsons wax poetic on the importance of an impartial judiciary, their Petition, like their briefing at the trial court and on appeal, fails to point to any evidence in the record to support their assertion that the trial court judges were not impartial. Instead, as the Court of Appeals properly concluded, their arguments are based on "pure speculation," *id.* at 43, and review of its decision is not warranted under any of the bases in RAP 13.4(b).

The Larsons assert that the trial court judges should have recused themselves and, indeed, all of the judges in both counties should have been disqualified, because (1) they have a personal interest in the Washington State Retirement Fund, which holds mortgage-backed securities, Pet. at 29-31; (2) because they did not comply with "their responsibilities under [the Torrens Act]," Pet. at 29. They further contend the Court of Appeals improperly applied the rule of necessity to excuse the trial court judges' failure to recuse themselves. Pet.

at 17-19. The Larsons, however, did not present evidence to support disqualification of the judges nor do they demonstrate why review is appropriate under any of the factors set forth in RAP 13.4(b).[2]

As an initial matter, the Larsons assert that the Court of Appeals applied the wrong standard in making its decision. Pet. at 36. The Larsons, however, appear to conflate the standard for review with the burden to show the bias or impartiality in the first instance. Contrary to their contention, the Larsons had the burden to "produce sufficient evidence demonstrating actual or potential bias, such as personal or pecuniary interest on the part of the judge; mere speculation is not enough." *Kok v. Tacoma Sch. Dist. No. 10*, 179 Wn. App. 10, 24, 317 P.3d 481 (2013) (citing *In re Pers. Restraint of*

[2] While the Larsons assert that all four factors in RAP 13.4(b) support review, their Petition largely focuses on the Court of Appeals' purported error in affirming the trial court decisions. *See, e.g.,* Pet. at 27-35.

Haynes, 10 Wn. App. 366, 377 n.23, 996 P.2d 637 (2000)). In any event, consistent with Washington law, the Court of Appeals applied an objective standard to determine whether the trial court judges should have recused themselves. Slip Op. at 41 (citing *State v. Gentry*, 183 Wn.2d 749, 762, 356 P.3d 714 (2015)).

1. The Court Properly Applied Washington Law in Holding that the Larsons Did Not Present Facts to Support a Financial Interest in the Action.

The Larsons' contentions that the trial court judges were impartial because they had a pecuniary interest in their state retirement fund was insufficient to establish that either judge had an interest in the actions. *See, e.g.,* RCW 2.28.030(1) (judicial officers must be disqualified from exercising judicial power in any proceeding "to which he or she is a party, or in which he or she is directly interested").[3] As the court

[3] The Larson contend that the Court of Appeals improperly focused its decision on the Code of Judicial Conduct and RCW 2.28.030, rather than on the Due Process

concluded, the Larsons presented no evidence—and did not even allege sufficient facts—that the either judge had any control over the state retirement plans or that their decision in the cases would have any impact on the retirement plans.[4] Slip Op. at 43.

2. The Court Properly Applied Washington Law in Holding that the Larsons Did Not Present Evidence to Support a Bias in Relation to the Torrens Act.

As to the Torrens Act, the Larsons ignore the fact that their claims were dismissed because they failed to comply with the statutory requirements, namely, to provide an abstract of record as required by RCW 65.12.085. Slip Op. at 14, 18-19.

Clause of the Fourteenth Amendment to the U.S. Constitution. Pet. at 26. But the court did confirm the important of due process as part of its analysis. Slip Op. at 41 (citing *State v. Leon*, 133 Wn. App. 810, 812, 138 P.3d 159 (2006)).

[4] Documents relied on by the Larsons in their Petition to argue to the contrary largely include their own briefing before the trial courts as well as the Declaration of Joseph M. Vincent, none of which call the court's conclusion into question. Pet. at 28.

That dismissal had nothing to do with the judges' purported failure to enforce a county registration system.[5] Moreover, by the time Judge Okrent dismissed the Torrens Proceeding with prejudice in 2020, because the Larsons no longer owned the Property, the Snohomish County had rectified the procedural issues the Larsons had raised in their Second Action. Slip Op. at 43.

3. The Court Properly Applied Washington Law in Holding, in the Alternative, that the Rule of Necessity Applied.

The Court of Appeals' reference to the rule of necessity was not improper. Because the Larsons asserted that, not only Judge Svaren, but ever other judge in Skagit County should have been disqualified,[6] the Court of Appeals noted that, "if

[5] The Larsons' submission of documents alleging that no county in Washington appropriately followed the Torrens Act undercuts their argument on this point. CP 3471.

[6] After the Second Action was transferred to Snohomish County, the Presiding Judge granted the Larsons' motion to recuse all the Snohomish County Superior Court judges

true, the rule of necessity defeats their argument." *Id.* at 42. The court's reference was consistent with well-established law. *Id.* (citing *United States v. Will*, 449 U.S. 200, 213, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980); *Glick v. Edwards*, 803 F.3d 505, 509 (9th Cir. 2015)).[7]

In all events, as discussed above, the Court of Appeals' decision did not rest on the rule of necessity since it determined that the Larsons had failed to set forth any facts that would cause a "reasonable person [to] conclude that either Judge Svaren or Judge Okrent acted in any way other than impartially in handling these cases." *Id.* at 43; *see also Kok*, 179 Wn. App. at 24 ("A judicial proceeding satisfies the appearance of

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because the Larsons named them as defendants in the Second Action. CP 17.

[7] Moreover, the Larsons' argument that applying the rule of necessity was improper is based on Wash. Const. art. IV, § 7, which allows for the appointment of a judge pro tempore if it is "agreed upon writing by the parties litigant." Pet. at 18. The Larsons do not indicate whether this option was ever presented or agreed to by the parties at the trial court.

fairness doctrine if a reasonably prudent and disinterested person would conclude that all parties obtained a fair, impartial, and neutral hearing.").

4. The Larsons' Petition Does Not Raise an Issue of Substantial Public Importance.

While ensuring that cases are heard by an impartial judicial is a matter of public importance, the Larsons' Petition does not raise such an issue because, as the Court of Appeals concluded, the Larsons did not present evidence or credible allegations to support any question of bias or impartiality in the trial court proceedings. Merely because the Larsons seek review of the court's decision on their motions to recuse Judge Svaren and Judge Okrent does not create an issue of substantial public importance.

IV. CONCLUSION

Because no showing has been made that any consideration identified in RAP 13.4(b) is present in this case,

the Private Defendants respectfully submit that the motion for discretionary review should be denied.

I certify this document contains 2,428 words.

DATED: March 18, 2022.

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CERTIFICATE OF SERVICE

I declare under the penalty of perjury in accordance with the laws of the State of Washington that on the below date the preceding document was filed in the Washington State Supreme Court and served by the Court to all counsel of record at the following email addresses:

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