Supreme Court No. 101012-5
(COA No. 55753-3-II)
(COA NO. 385477)
(CLARK COUNTY SUPERIOR CAUSE No. 152032261)

THE SUPREME COURT OF THE STATE OF WASHINGTON

LINDA AMES, AN INDIVIDUAL,

APPELLANT

v.

HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16,

RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT OF THE COUNTY OF CLARK, AND APPEAL FROM THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II / DIVISION III)

PETITION FOR REVIEW

LINDA AMES, APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797, E-mail: lindalouames@comcast.net
Appellant Pro Se

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IDENTITY OF PETITIONER and RESPONDENT

Petitioner is Linda Ames, an individual. Petitioner, LINDA AMES, resides at 11920 NW 35TH AVE, VANCOUVER WA 98685 and the Property which was the subject of the action of Clark County, Washington is 10810 NW 13th Place, now worth in excess of one million dollars.

Respondent is HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16. According to the SEC Edgar filings, it is incorporated in the State of Delaware, is primarily in the business of asset-backed securities, and THE REGISTRATION WAS TERMINATED ON JANUARY 16TH, 2007 as evidenced by the **Registration Termination**, Form 15-15D. See https://sec.report/CIK/0001373699

COURT OF APPEALS DECISIONS

The Court of Appeals Division 2 has transferred the cases listed in the attached orders to Division 3, including the above-entitled action.

Linda Ames seeks review of the Court of Appeals decisions dated May 19th, 2022 and April 5th, 2022.

ISSUES PRESENTED FOR REVIEW

1. Plaintiff, by summary judgment, was deprived of her opportunity to prove that the mortgage was paid in full, the foreclosure against her wrongful, and

amend to include Wells Fargo as servicer once the entire scheme, plan, and artifice to defraud has now been revealed. CR 60(b)(3)

STATEMENT OF THE CASE

Plaintiff / Appellant Ames lost her home, as did hundreds of thousands of other borrowers. Her loss was particularly hurtful because she was current in her payments, and told to stop making her payments by Wells as servicer for a trust which does not exist, and did not exist since 2007.

On March 26, 2012, AFTER WELLS FARGO had already recorded the assignment of Deed of Trust, as set forth above, they then recorded an appointment of Trustee to Quality Loan Service Corp. of Washington, Document 4841188 who foreclosed on Ames after WELLS FARGO no longer had any right appoint a Trustee.

So the registration for the trust which claims to have held the mortgage was cancelled on January of 2007, yet the "Trust" claims to have acquired the mortgage in 2011, in direct violation of New York and Delaware Law, prohibiting the acquisition of new assets after a trust is closed.

Ames had a PMI provision in her mortgage and believes her mortgage was satisfied by that mortgage, but up until now, has been unsuccessful in proving it and is seeking leave of this court to let her go back to State Court, and prove that the mortgage was already satisfied when she was foreclosed and lost her home.

Ambac Assurance Company, has come forward, seeking repayment of the sums they paid out in satisfying the mortgage by suing the entities who bundled and sold the sub-par mortgages, but said they were valuable. Mid July of 2022, they are having a trial for 1.5 BILLION dollars in mortgages they paid but servicers never satisfied the mortgages after paying the trusts the principal and interest on Ames and other mortgages. The borrowers mortgages have never been satisfied even though the money was paid in full to the "Lender".

Appellant has consistently alleged throughout this case that her mortgage was paid in full before the wrongful foreclosure. Since that time, Appellant has learned the precise fraudulent scheme under which that occurred. In *Ambac Assur. Corp. v Countrywide Home Loans, Inc.*, 2022 NY Slip Op 00805 [202 AD3d 462] **February 8, 2022**, Ames learned that 350 million in mortgages were satisfied, and the 1.5 billion dollar action is coming up for trial soon.

Here's how Appellant was cheated and Wells Fargo, as the servicer is double recovering:

That there is a scheme and artifice to defraud. First, the scheme involves purchasing a mortgage, but not the note, which transpired here. Second, the securitization of that mortgage into a closed trust- again, it transpired here. Third, the guaranteeing of that mortgage payment through PMI or issuance of RMBS bonds from Ambac Assurance or other third party insurance companies that guarantee the payment of

these mortgages to the investors in the trust.- again, what happened here. Fourth, the default of the borrower- again, it happened at the cause of the defendant's servicer. (Or in this case, Wells instructed the Appellant to stop making payments with the false promise of a loan modification. Instead, Plaintiff / Appellant now knows that her allegations that the mortgage was already satisfied are true, and proven. In this case, Wells as servicer was taking regular timely payments of the loan modification given to Ames. That was for FIFTEEN months, so the loan modification was permanent. Wells claimed that this was just a "TRIAL" and that to activate the loan modification again, was that Ames HAD TO MISS HER PAYMENT. Wells, in order to recover from the assurance company, needed Ames to default. Therefore, they falsely promised her a loan modification if she stopped paying. They made sure that the property had plenty of equity, and was beautifully re-done by Ames, as evidenced by the inspection fees they charged her. They knew they had a hot prospect in taking this home.) Fifth, the claim by the trust against the insurance, as they did here. Sixth, the servicer then continues to collect without either the trust or the servicer ever informing the borrower that the mortgage was already satisfied- as occurred here. Collection could be in the form of having the borrower continue to pay, or, if there is equity and value in the property, simply foreclose and sell the property for quick cash. The pooling and servicing agreement requires the servicer to pay the trust ONLY the principal and interest collected, and

any other charges imposed or collected on the account belong to the servicer. Once again, it happened precisely as planned. The investors were paid in full by the assurance company. However, what did not transpire, as equity would dictate, is the prompt recording of a satisfaction of mortgage. Instead, the servicer stepped in to make great profit from their misdeeds. The entire scheme therefore depends on the borrower defaulting, and so in order to insure that the servicer imposed on the plaintiff, and others in her situation, false charges, charging for services which were never rendered, overcharging for services which were rendered, and charging fees and costs for amounts that were neither due nor owing. This was all done for the purpose of putting the borrower (Appellant Ames) into default so the borrower would have to either request a loan modification or sell or lose the home in foreclosure. If there is a modification, the servicer adds the amount of their fraudulent charges to the loan modification making sure they recover the full amount of the fake charges. If the property is sold, the trust, having already been paid in full, ends up with nothing more and the servicer keeps the balance of the proceeds from the sale. If the property is foreclosed, the servicer ends up with the property and it is sold on the retail market and the servicer again keeps all the money, the trust already having been paid in full. If a third-party buyer buys the property, the servicer keeps all the proceeds from the sale, the trust already having been paid in full. Under any of the scenarios, the servicer keeps all the proceeds.

In Ames case, Wells charged for multiple inspections, evidencing they knew the property was valuable and would sell. The investors were paid in full. The Servicer, on the other hand, took the proceeds from the sale of the home after a fraudulent and defective foreclosure process.

ARGUMENT

I. INTRODUCTION

Ames was instructed to stop making payments by Wells. Since the entry of the summary judgment, whereas the court originally did not believe Wells was liable for any wrongdoing and denied the motion for leave to amend, much has happened to open the eyes of this court. Most recently, as mentioned above, Ambac Assurance and CFIG Assurance came out of the shadows and admitted to satisfying the mortgages. Additionally, multiple class action suits were filed and the courts now are deluged with cases where that Wells wrongfully instructed people to go into default for the nefarious purpose of depriving them of their home and equity. Now, the motive for Wells to do this has come to light. *IN RE WELLS FARGO MORTGAGE-BACKED CERTIFICATES LITIGATION*, Civil Action No. 09-cv-01376-SI.

Ames was one of those victims. Her home was often inspected, her bank account monitored, and after multiple times being told to resubmit loan

modification requests and the same documents over and over, when her bank balance dropped to a point she could not pay the full amount of the arrears they induced her to build, they denied her modification request and defaulted her. They put the property up for auction, cancelled the auction and instead, transferred title in California. There is no admissible evidence on the record that a sale ever occurred on the courthouse steps, and the paperwork shows the title was transferred in California. There were other defects in the sales process which were caused by Wells. For example, the public records prove that the Trustee was not lawfully appointed by Wells Fargo, because Wells Fargo had already assigned away their right title and interest at the time they claim they improperly appointed the Trustee. Defendant Appellee admitted that Leisa Jefferson was not authorized to execute the documents in favor of Wells because she was an employee of Wells and falsely held herself out to be the authorized signature of the assignor, but it was a defunct entity at the time and not licensed to do business in the state. At the time designated for the auction, Ames was told the sale was cancelled, and the sale did not transpire on the Courthouse steps. The Trustee was not even licensed to do business in the State at the time of the purported sale to the Defendant. In violation of RCW 23.95.505. the already satisfied Defendant Trust was not licensed to do business in this State and the trust was closed at the time it claims to have acquired the interest in the Plaintiff's home. The identity of the Lender has and was at all relevant times

concealed from the Plaintiff until the foreclosure. According to the SEC Edgar filings, the trust closed January 26, 2007, and could not be even related to this mortgage, let alone claim to be a holder and owner of the subject note and mortgage. Nothing that transpired against the Plaintiff was legal, and Defendant, knowing that, failed and refused to respond to the propounded discovery, all with the hopes of preventing the Court from seeing the depth of their deception. Plaintiff had to bring Six Motions to Compel because the discovery sought directly relates to the issues listed herein, and the Plaintiff had not received any responses. In fact, the Plaintiff obtained an order granting her request requiring them to respond by February 28th, 2017 and Plaintiff was still waiting by the time the motion for Summary Judgment was filed.

II. RIGHT TO APPEAL

This case is back here because Ames filed a motion to set aside and/or vacate the original order after exhausting her original appeal to the US Supreme Court. All the cases against Wells became public after the court entered the summary judgment, and after the appeal was exhausted, Ames filed a motion to set aside the judgment so she could amend and go after Wells in addition to the already satisfied Trust. The lower court denied the relief. The order denying a motion for reconsideration and the Court of Appeals order sustaining the denial of the motion to set aside and vacate the judgment dismissing the case is an appealable order under

RAP 2.2(a)(9) and (10) inasmuch as it represents an appeal of the Order on Motion for New Trial or Amendment of Judgment. An order granting or denying a motion for new trial or amendment of judgment. (10) Order on Motion for Vacation of Judgment. An order granting or denying a motion to vacate a judgment.

III. STANDARD OF REVIEW
STANDARD ON SUMMARY JUDGMENT

A defendant who moves for summary judgment bears the initial burden of showing the absence of a genuine issue of material fact. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Once that burden is met, the burden shifts to the party with the burden of proof at trial to "'make a showing sufficient to establish the existence of an element essential to that party's case.'" *Young*, 112 Wn.2d at 225 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). In demonstrating the existence of material facts, the nonmoving party may not rely on "mere allegations . . ., but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." CR 56(e). We draw all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004).

Leave to amend a complaint is to be freely given when justice requires. CR 15(a). *Doyle v. Planned Parenthood*, 639 P. 2d 240 - Wash: Court of Appeals, 1st Div. 1982 Rule 15(a) specifically provides that leave to amend "shall be freely given when justice so requires." CR 15(a). These rules serve to facilitate proper decisions on the merits, to provide parties with adequate notice of the basis for claims and defenses asserted against them, and to allow amendment of the pleadings except where amendment would result in prejudice to the opposing party. *Caruso v. Local Union No. 690*, 100 Wash.2d 343, 349, 670 P.2d 240 (1983); *Herron*, 108 Wash.2d at 165, 736 P.2d 249. The decision to grant leave to amend the pleadings is within the discretion of the trial court. *Sprague v. Sumitomo Forestry Co.*, 104 Wash.2d 751, 763, 709 P.2d 1200 (1985); *Lincoln v. Transamerica Inv. Corp.*, 89 Wash.2d 571, 577, 573 P.2d 1316 (1978). Therefore, when reviewing the court's decision to grant or deny leave to amend, we apply a manifest abuse of discretion test. *Caruso*, 100 Wash.2d at 351, 670 P.2d 240. The trial court's decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P.2d 775 (1971). The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party. *Caruso*, 100 Wash.2d at 350, 670 P.2d 240. Factors which may be considered in determining whether permitting

amendment would cause prejudice include undue delay, unfair surprise, and jury confusion. *Herron*, 108 Wash.2d at 165-66, 736 P.2d 249. *Wilson v. Horsley*, 974 P. 2d 316 - Wash: Supreme Court 1999.

First, THERE IS NO TRUST and therefore the only party was Wells Fargo who hired a lawyer to pretend to be representing a non-existent trust. The Lender was paid in full. The servicer double collected and concealed the recovery of the money from the Assurance company.

Since the summary judgment was rendered, and while on appeal, multiple class actions occurred against Wells proving the issues claimed by Ames were true. Wells was sued for inducing defaults, making loan default a pre-requisite for modification, without regard to whether a borrower otherwise qualified for a modification due to financial hardship, caused borrowers to unnecessarily suffer ruined credit and subjected them to significant fees, penalties and interest. As a loan servicer, Wells generated a significant portion of its revenue from fees, penalties and interest collected on the non-performing loans it services. See www.hfesq.com. This exact misconduct transpired against Ames. Similarly, on October 18, 2019, the U.S. District Court for the Eastern District of Washington decided that plaintiffs who lost their homes after Wells Fargo rejected their modification applications due to an error in the servicer's software had properly alleged a claim under the Washington Consumer Protection Act, on Friday, August 3, 2018, Wells Fargo

admitted that it failed to give modifications to about 870 borrowers. Its customers were wrongfully denied modifications resulting in Wells Fargo paying out more than 69 million dollars under Washington Consumer Protection Act. Wells Fargo also improperly denied modifications where an internal review at Wells revealed that an underwriting tool the company used to process loan modifications consistently made a calculation error that affected specific accounts between April 13, 2010, and April 2018.

All of these cases have one underlying theme in common, unknown to all those borrowers who were victimized by Wells. That is, Wells was acting for their own personal gain, and not for the non-existent trusts. The scheme has to be that the borrower is put into default, so Wells can have all the money from the foreclosure. Even if Wells has to pay a small percentage back from all those millions of fraudulent foreclosures, it is still a profitable criminal enterprise.

There are many more instances, but the court now understands the simple fact that Ames was victimized and out of the millions of homeowners victimized by Wells, Ames's right to recover has been deprived by this Court. This is a matter of great public importance and great public interest, because a ruling from this court permitting Ames to proceed against Wells for concealment of this scheme will once again rock the mortgage servicing world. This court must take this matter very seriously.

IV. THERE ARE TWO PROCEDURAL ERRORS MADE BY THE LOWER COURT WHICH DEPRIVED THE APPELLANT OF HER RIGHT OF RECOVERY.

First, the court incorrectly found that the statute of limitations expired preventing Plaintiff from recovery against Wells. This court granted a summary judgment in favor of the Defendant on the grounds that the complaint was barred by the Statute of Limitations. However, a review of the public records shows that HSBC BANK USA terminated their status in this state and became inactive in 08/10/2004. https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation. When HSBC was registered here, they registered as a Foreign Entity whose jurisdiction was New York. Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16 is not a registered trust in this state at all. See https://ccfs.sos.wa.gov/#/BusinessSearch - No Value Found.) As a result of their absence, Defendants / Appellees claims of statute of limitations are improper as the statute was tolled. Similarly, Wells was not registered in this State and thus the statute was tolled against them as well.

Second, the court found that the time for bringing the motion to vacate the judgment lapsed after a year. However, the appeal to the Supreme Court of the United States tolled the time, and the original motion was brought in a timely fashion, and the court rejected even hearing the matter until the appeal was complete. The motion was filed within 30 days of the denial of the US Supreme

Court review. The relief is sought under Civil Rule 60(b)(3) and there was no way of knowing the depth of Wells Fargo's deceit until the claims against it were published, and they were not published until the appeal was already pending. Some cases are brought as late as 2021 against Wells and they continue to grow. Appellant should be entitled to proceed.

Neither of these grounds sufficed to deprive the Appellant of her rights to recover.

CONCLUSION AND RELIEF SOUGHT

Ames has shown her determination to obtain justice. She took her first appeal to the US Supreme Court and was prevented from recovering because the original Wells Fargo participation was not before the court. Now, the entire matter is before this Court. Here's how Appellant was cheated and Wells Fargo, as the servicer is double recovering:

That there is a scheme and artifice to defraud.

First, the scheme involves purchasing a mortgage, but not the note, which transpired here.

Second, the securitization of that mortgage into a closed trust- again, it transpired here.

Third, the guaranteeing of that mortgage payment through PMI or issuance of RMBS bonds from Ambac Assurance or other third party insurance companies that

guarantee the payment of these mortgages to the investors in the trust.- again, what happened here.

Fourth, the default of the borrower- again, it happened at the cause of the defendant's servicer. (Or in this case, Wells instructed the Appellant to stop making payments with the false promise of a loan modification. Instead, Plaintiff / Appellant now knows that her allegations that the mortgage was already satisfied are true, and proven. In this case, Wells as servicer was taking regular timely payments of the loan modification given to Ames. That was for FIFTEEN months, so the loan modification was permanent. Wells claimed that this was just a "TRIAL" and that to activate the loan modification again, was that Ames HAD TO MISS HER PAYMENT. Wells, in order to recover from the assurance company, needed Ames to default. Therefore, they falsely promised her a loan modification if she stopped paying. They made sure that the property had plenty of equity, and was beautifully re-done by Ames, as evidenced by the inspection fees they charged her. They knew they had a hot prospect in taking this home.)

Fifth, the claim by the trust against the insurance, as they did here.

Sixth, the servicer then continues to collect without either the trust or the servicer ever informing the borrower that the mortgage was already satisfied- as occurred here. Collection could be in the form of having the borrower continue to pay, or, if

there is equity and value in the property, simply foreclose and sell the property for quick cash.

The pooling and servicing agreement requires the servicer to pay the trust ONLY the principal and interest collected, and any other charges imposed or collected on the account belong to the servicer. Once again, it happened precisely as planned. The investors were paid in full by the assurance company. However, what did not transpire, as equity would dictate, is the prompt recording of a satisfaction of mortgage. Instead, the servicer stepped in to make great profit from their misdeeds. The entire scheme therefore depends on the borrower defaulting, and so in order to insure that the servicer imposed on the plaintiff, and others in her situation, false charges, charging for services which were never rendered, overcharging for services which were rendered, and charging fees and costs for amounts that were neither due nor owing,

This was all done for the purpose of putting the borrower (Appellant Ames) into default so the borrower would have to either request a loan modification or sell or lose the home in foreclosure.

If there is a modification, the servicer adds the amount of their fraudulent charges to the loan modification making sure they recover the full amount of the fake charges. If the property is sold, the trust, having already been paid in full, ends up with nothing more and the servicer keeps the balance of the proceeds from the

sale. If the property is foreclosed, the servicer ends up with the property and it is sold on the retail market and the servicer again keeps all the money, the trust already having been paid in full.

If a third-party buyer buys the property, the servicer keeps all the proceeds from the sale, the trust already having been paid in full.

Under any of the scenarios, the servicer keeps all the proceeds.

Before the Supreme Court of the United States are two cases which now raise this issue. There are cases in California, Texas, and other states, all underway seeking to prove this same scheme, plan and artifice to defraud.

The time for these servicing companies to be unjustly enriched where it is unjust for them to do so has come.

That as an actual and proximate cause of said conduct, the Plaintiff is simply asking this court for the opportunity to prove she suffered actual damages in the sum of $770,000, the fair market value of the property; harm to her credit; severe emotional distress; severe physical distress; anger and upset, all in an amount according to proof, and such other and further relief as the court deems just and adequate. She just wants a fair trial.

Respectfully Submitted 6/13/2022

LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685

TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se

CERTIFICATE OF PAGE LENGTH

LINDA AMES, APPELLANT, hereby certifies that the attached brief does not exceed 20 pages, excluding the cover and index.

Dated: JUNE 10th, 2022

June 13th 2022

LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se

CERTIFICATE OF SERVICE

A true and correct copy of the PETITION FOR REVIEW was served by means of US Mail on JUNE 10th, 2022, postage prepaid first class, on:

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3600 15th Ave. West
Suite 200
Seattle, WA 98119
Direct (206) 946-8109

Dated: JUNE ~~10~~th, 2022

June 13TH 2022

L. A.

LINDA AMES
APPELLANT
11920 NW 35TH AVENUE
VANCOUVER WA 98685
TEL: (360) 931-1797
E-mail: lindalouames@comcast.net
Appellant Pro Se

LINDA M AMES

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Address:
11920 NW 35th Ave
Vancouver, WA, 98685
Phone: (360) 931-1797

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

LINDA AMES, Appellant, v. HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16, Respondents.	)	No. 38547-7-III UNPUBLISHED OPINION

SIDDOWAY, C.J. — Linda Ames appeals denial of her tardy motion seeking to vacate a 2018 judgment based on newly-discovered evidence. Because she fails to demonstrate that she had newly-discovered evidence that would probably change the result reached in 2018 and fails to identify a basis for avoiding the fatal untimeliness of her motion, we affirm.

FACTS AND PROCEDURAL BACKGROUND

We draw much of the background from this court's decision in a prior appeal by Ms. Ames, *Ames v. HSBC Bank USA, NA*, No. 51941-1-II (Wash. Ct. App. Nov. 5, 2019)

(unpublished),[1] *review denied*, 195 Wn.2d 1016, 461 P.3d 1203, *cert. denied*, 141 S. Ct. 680 (2020), *reh'g denied*, 141 S. Ct. 1143 (2021).

In 2006, Ms. Ames borrowed $590,000 from Sierra Pacific Mortgage Company, Inc., to purchase real property in Vancouver. *Ames*, slip. op. at 2. Her loan was sold to a securitized trust, HSBC Bank USA, National Association, as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16 (HSBC). *Id.* at 3. Wells Fargo Bank, N.A. (Wells Fargo) serviced the loan and served as HSBC's attorney-in-fact. *Id.*

Ms. Ames ceased making her monthly loan payments in 2011. *Id.* In September 2012, HSBC commenced nonjudicial foreclosure. *Id.* The foreclosure sale eventually took place in November 2013, after which HSBC filed an unlawful detainer action. *Id.* at 3-4. A writ of restitution was granted. *Id.* at 4. Ms. Ames had raised objections in answering the unlawful detainer action, including that HSBC had wrongfully foreclosed and the deed of trust should be declared void for fraud, and she appealed. *Id.* A commissioner of this court granted HSBC's motion on the merits, concluding that Ms. Ames had waived her opportunity to invalidate the sale or the trustee's deed. *Id.*

In November 2015, Ms. Ames brought the action below against HSBC,[2] alleging seven causes of action: quiet title, wrongful foreclosure, conversion, fraud,

[1] Https://www.courts.wa.gov/opinions/pdf/D2%2051941-1-II%20Unpublished%20Opinion.pdf.

misrepresentation, civil conspiracy, and declaratory relief from a summary judgment that had been granted to the successor foreclosure trustee in an action Ms. Ames had filed in 2013. *Id.* Among her allegations were that the deed of trust and foreclosure sale were illegal, there were irregularities with the sale, the property's title was fraudulently transferred, and the entities involved in foreclosing on the property had conspired to commit criminal and civil acts. *Id.* at 4-5. Her prayer for relief sought to void the deed of trust, quiet title in her name, declare any notes invalid, declare that HSBC committed fraud, vacate the summary judgment order from her earlier action, and award her monetary damages. *Id.* at 5.

The trial court granted HSBC summary judgment in February 2018. *Id.* at 6. It implicitly denied a motion to add Wells Fargo as a defendant that Ms. Ames had filed after HSBC moved for summary judgment. *Id.* at 6. Ms. Ames appealed. *Id.* In November 2019, this court affirmed the summary judgment and denial of the motion to amend. *Id.* at 1-2.

Ms. Ames petitioned for review by the Washington Supreme Court, which was denied in April 2020. *Ames*, 195 Wn.2d 1016 (2020). She petitioned the United States Supreme Court for a writ of certiorari, which was denied in November 2020. *Ames v. HSBC BANK USA, N.A.*, 141 S. Ct. 680, 208 L. Ed. 2d 284 (2020). Her petition for

[2] Clark County Superior Court Case No. 15-2-03226-1.

rehearing was denied on January 11, 2021. *Ames v. HSBC BANK USA, N.A.*, ____ U.S. ____ 141 S. Ct. 1143, 208 L. Ed. 2d 573 (2021).

In February 2020, while her requests for review of this court's decision were pending, she filed an action against Wells Fargo in state court that Wells Fargo removed to federal court. She asserted claims for wrongful foreclosure, conversion, fraud, misrepresentation, and a civil conspiracy among Wells Fargo, HSBC, and others. The action was dismissed with prejudice in August 2020, the federal court having concluded that Ms. Ames's claims were fully litigated and decided by the state court in this action. *Ames v. Wells Fargo Bank NA*, No. C20-5246 BHS, 2020 WL 5105458 (W.D. Wash. Aug. 31, 2020).

The present appeal is from denial of a CR 60 motion that Ms. Ames filed in March 2021. In an order to show cause (vacate judgment/order), she asserted that in light of newly-discovered evidence, the trial court should "vacate, alter or amend its final summary judgment and permit the Plaintiff to file an amended complaint against Wells Fargo." Clerk's Papers (CP) at 2684. Beyond that, her motion identified 13 orders entered before the dismissal of her action that she requested be vacated. All were at least three years old.

She identified three pieces of newly-identified evidence. First, she relied on what she characterized as "smoking gun evidence": certificates of tax exemption that HSBC filed with New Jersey's Division of Taxation when it sold New Jersey properties. CP at

2689. She construed them as proving "there is no trust" and HSBC "had no capacity to sue or foreclose." CP at 2685-86. Relatedly, she represented that HSBC Bank USA had ceased actively doing business in Washington in 2004. Second, she relied on a settlement entered into on August 1, 2018, between the United States Department of Justice (DOJ) and Wells Fargo, resolving civil claims against Wells Fargo that she contended resolved "illegal acts which are identical to those complained of by the Plaintiff." CP at 2688. Third, she relied on a securities fraud class action by allegedly defrauded investors, *In re Wells Fargo Mortgage-Backed Certificates Litigation*, 712 F. Supp. 958 (N.D. Cal. 2010) that was "just discovered." CP at 2688. It had been settled, with the settlement amount distributed to trust investors, from which Ms. Ames concluded, "they had already recovered their money for the subject mortgage, or at a minimum, some portion of it, which was never credited to the Plaintiff." CP at 2688-89.

In responding to the motion, HSBC stated, as to Ms. Ames's three pieces of new evidence, that (1) the action settled by the DOJ and Wells Fargo "is unrelated to and completely separate from the action here" and the settlement agreement "does not affect HSBC and Wells Fargo's ability to foreclose" after default; (2) the class action on which she relied was filed in 2009, by *investors*, not borrowers, and had nothing to do with the types of claims asserted by Ms. Ames's complaint; and (3) the checked box on the "smoking gun" residency certification/exemption documents signified that the seller/grantor was not an estate or personal trust—not that it was not a corporate trust.

CP at 2904. HSBC provided the court with a "frequently asked questions" document from the New Jersey Division of Taxation that explains the certification/exemption document is required to be filed when New Jersey real property is transferred, and identifies relevant New Jersey taxation statutes. CP at 2896-99.

At a hearing taking place in March 2021, the trial court denied Ms. Ames's motion to vacate, explaining to Ms. Ames that the evidence she relied on as newly-discovered did not constitute the type of information that would change the result of its decision to grant summary judgment and deny her leave to amend, that her motion was untimely, and that the issues she sought to litigate had already been resolved.

Ms. Ames appeals.

ANALYSIS

Under CR 60(b)(3), a party may seek relief from an order on the basis of newly-discovered evidence that, by due diligence, could not have been discovered in time to move for a new trial under CR 59(b). *Vance v. Thurston County Comm'rs*, 117 Wn. App. 660, 671, 71 P.3d 680 (2003). Courts will grant a motion to vacate a judgment under CR 60(b)(3) "when newly discovered evidence '(1) would probably change the result if a new trial were granted, (2) was discovered since trial, (3) could not have been discovered before the trial by the exercise of due diligence, (4) is material, and (5) is not merely cumulative or impeaching.'" *Coogan v. Borg-Warner Morse Tec Inc.*, 197 Wn.2d 790, 821, 490 P.3d 200 (2021) (quoting *Jones v. City of Seattle,* 179 Wn.2d 322, 360, 314 P.3d

380 (2013)). The moving party—here, Ms. Ames—bears the burden of presenting facts demonstrating that the evidence could not have been timely discovered. *Vance*, 117 Wn. App. at 666. A mere allegation of diligence is not sufficient. *Id*. at 671.

An appeal from the denial of a CR 60(b) motion is not a substitute for an appeal and is limited to the propriety of *denying the motion to vacate*, not any alleged impropriety of the underlying order. *In re Dependency of J.M.R.*, 160 Wn. App. 929, 938 n.4, 249 P.3d 193 (2011) (citing *Bjurstrom v. Campbell*, 27 Wn. App. 449, 450-51, 618 P.2d 533 (1980)). Further, motions under CR 60(b) must be made "not more than 1 year after the judgment, order, or proceeding was entered or taken." We review a court's decision under CR 60(b) for abuse of discretion. *In re Marriage of Tang*, 57 Wn. App. 648, 653, 789 P.2d 118 (1990). We will not overturn the decision unless the trial court exercised its discretion on untenable grounds or for untenable reasons. *Id.*

To succeed on appeal, it was incumbent on Ms. Ames to zero in on the trial court's reasons for denying her relief—principally its findings that the evidence she relied on as newly-discovered did not constitute the type of information that would change its decisions granting summary judgment and denying amendment[3] and that her motion was untimely.

[3] The same superior court judge who had decided the summary judgment motion in 2018 heard and denied the motion to vacate that judgment.

Ms. Ames failed to present *evidence*, not mere allegations, proving *facts* that would change the result of the 2018 judgment. Her motion to vacate needed to be supported by *evidence* of *facts* learned from the DOJ/Wells Fargo settlement and class action that had a direct bearing on the foreclosure of her property and that would demonstrate directly that some fact specific to her foreclosure and her lawsuit was disputed. Her motion needed to show not merely that she discovered the two legal proceedings too late, but that with due diligence she could not have discovered them earlier. It was Ms. Ames's burden, not HSBC's, to provide the court with law, regulation, or evidence of policy that proves what the seller's assurance on the New Jersey seller certification/exemption document means. If the certification/exemption document does demonstrate some defect in HSBC's organization, it was her burden to provide legal authority that the defect would have prevented foreclosure where she had defaulted in repaying a $590,000 loan. Instead, Ms. Ames provides us, and provided the trial court, with only conclusory allegations. Her briefing on appeal is almost entirely unsupported by citations to the record in violation of our rules. *See* RAP 10.3(a)(5) (reference to the record must be included for each factual statement); *Joy v. Dep't of Labor & Indus.*, 170 Wn. App. 614, 629, 285 P.3d 187 (2012) (this court will not consider conclusory arguments).

Finally, Ms. Ames provides no defense to the trial court's reasoning that her motion was untimely. Her failure to file the motion within a year was an independent

basis mandating dismissal. The judgment she asked be vacated was entered on February 6, 2018, and the motion to vacate whose denial is before us on appeal[4] was filed on March 8, 2021. Ms. Ames suggests in her opening brief that she filed the motion within a year of the United States Supreme Court's disposition of her petitions. Opening Br. of Appellant at 39-40. That would not make her motion timely, however.

The order denying the motion is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, C.J.

WE CONCUR:

Staab, J.

Fearing, J.

[4] Ms. Ames had earlier filed a motion to vacate, alter, or amend final judgment, but it was denied on February 11, 2020. That denial was never appealed. This appeal, filed on April 26, 2021, was clearly too late to challenge that 2020 decision. *See* RAP 5.2(a) (providing that a notice of appeal must ordinarily be filed within 30 days of entry of the decision being appealed).

Tristen L. Worthen
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals of the State of Washington Division III

500 N Cedar Street
Spokane, WA 99201-1905

Fax (509) 456-4288
http://www.courts.wa.gov/courts

April 5, 2022

Linda Ames
11920 NW 35th Ave
Vancouver, WA 98685
lindalouames@comcast.net

Justin T. Jastrzebski
Lagerlof LLP
701 Pike St Ste 1560
Seattle, WA 98101-3915
jjastrzebski@lagerlof.com

Robert A. Bailey
Lagerlof, LLP
701 Pike St Ste 1560
Seattle, WA 98101-3915
rbailey@lagerlof.com

CASE # 385477
Linda Ames, Appellant v. HSBC Bank USA, et al., Respondents
CLARK COUNTY SUPERIOR COURT No. 152032261

Ms. Ames and Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please see word count rule change at https://www.courts.wa.gov/wordcount, effective September 1, 2021. Please file the motion electronically through this court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be <u>received</u> (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:jab
Attachment

c: **E-mail**—Hon. Derek J. Vanderwood