

FILED
SUPREME COURT
STATE OF WASHINGTON
8/29/2022 3:21 PM
BY ERIN L. LENNON
CLERK

NO. 101047-8
IN THE SUPREME COURT OF WASHINGTON

John Earl Erickson and
Shelley Ann Erickson, *in propria persona*,
Plaintiffs/Appellants,

v.

VANESSA POWER AND STOEL AND
RIVES AND SELECT PORTFOLIO
SERVICING, JOHN GLOWNEY AND
WILL EIDSON, THOMAS REARDON,
AND LANCE OLSEN,
Defendants/Respondents.

PETITIONERS' REPLY ON
REQUEST FOR JUDICIAL NOTICE FILED
IN SUPPORT OF AMENDED PETITION FOR REVIEW

On Appeal from King County Superior Court
No. 20-2-08633-9 KNT
Judge Ken Schubert Presiding

John Earl Erickson & Shelley Ann Erickson,
in propria persona
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I. INTRODUCTION

Petitioners John Earl Erickson (Mr. Erickson) and Shelley Ann Erickson (Ms. Erickson) reply to the Motion to Strike their Requests for Judicial Notice filed by Respondents¹, which appears to have been construed as a Motion to Submit Additional Evidence, as not meeting the requirements of Rule 9.11 of the Rules of Appellate Procedure (RAP). In these extraordinary circumstances, RAP 9.11 does not apply or compliance with RAP 9.11 should be waived in the interests of justice and judicial economy.

Concurrently herewith, Petitioners have filed their Answer to Respondents' Motion to Strike their Reply to Respondents' Answer to their Amended Petition for Review.

¹ Respondents are SELECT PORTFOLIO SERVICING, INC. (SPS); the law firm retained by SPS, STOEL RIVES LLP (STOEL RIVES); and lawyers employed by STOEL RIVES: Vanessa Power, John Glowney, and Will Eidson.

This Court has the authority to interpret the Rules of Appellate Procedure (RAP)

II. RELEVANT PORTIONS OF RECORD

The relevant portions of the record are the Clerks' Papers referenced in the Ericksons' Amended Petition for Review and in their Reply with their Request for Judicial Notice and Respondents' Answer to Petition for Review which contains argument only and no references to any evidence or documents in the record on review.

III. ARGUMENT

A. The issues² which necessitated Petitioners' Reply to Respondents' Answer arose for the first time in the Answer.

Requests for Judicial Notice Exhibits 1-8 are submitted in support of the Reply to the Answer to Amended Petition for Review and for the benefit of the Court. The new issues³

² The legal definition of the word "issue" is retrieved from Cornell University Law School's on-line legal dictionary. Retrievable at <https://www.law.cornell.edu/wex/issue>, most recently retrieved on August 29, 2022.

arising in the Answer involve Respondents' argument, without evidence, that misrepresents facts and law in order to mislead the Court.

1. Judicial Notice is proper when the proceedings have been engrafted into each other and are ancillary or supplemental, having been once consolidated and then deconsolidated.

Respondents' misrepresentation of the procedural history of the present action now pending before this Court on the Amended Petition for Review, commenced on May 19, 2020, was filed after the Independent Action was decided in *Erickson, et al. v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, in King County Superior Court Case No. 19-2-12664-7 KNT at oral argument on June 5, 2020. This is false. The present action filed as *Erickson, et al. v. Power, et al.*, in King County Superior Court Case No. 19-2-12664-7 KNT, was commenced on May 7, 2020 in King County Superior Court No. 20-2-08633-9 against Defendants Vanessa Power ("POWER"), STOEL

RIVES, Select Portfolio Services, Inc. (“SPS”), EIDSON and GLOWNEY (the STOEL RIVES/SPS Action). Request for Judicial Notice Exhibits 4 and 5 demonstrate that not only was the Independent Action pending when the present action was filed, the present action was consolidated into the Independent Action, and was thereby engrafted into the Independent Action. *Swak v. Department of Labor & Industries*, 40 Wn.2d 51, 53, 240 P.2d 560 (Wash. 1952) (“A court of this state will take judicial notice of the record in the cause presently before it or in proceedings engrafted, ancillary, or supplementary to it.”)

The consolidated actions were then procedurally deconsolidated when the Independent Action was decided on the Superior Court’s Motion for Summary Judgment at the June 5, 2020 oral argument on the Motion to Dismiss the Independent Action, depriving the Ericksons of notice and opportunity to be heard in violation of their Due Process Rights (RJN Exhibit 1). The oral argument occurred while the causes

were engrafted. The deconsolidated Independent Action, separated from the present action, was decided by the Court of Appeals on November 29, 2021 and the Petition for Review was denied. Respondents' rely on the Court of Appeals' decision (RJN Exhibit 2) and argue from the Court of Appeals' decision in their Answer to the Amended Petition for Review. They are estopped from objecting to a document upon which they rely and should not be heard to object to RJN Exhibit 2 being provided for the convenience of and benefit of the Court. RJN Exhibit 3 merely informs this Court of the status of the Independent Action as being subject to the Ericksons' right to file their Petition for Writ of Certiorari to the United States Supreme Court on or before October 1, 2022.

Requests for Judicial Notice Exhibits 1, 2, 3, 4, and 5 involve proceedings in the Independent Action into which the present action was engrafted or ancillary or became supplemental to the present action. *Swak v. Department of*

Labor & Industries, 40 Wn.2d at 53-54 and are properly judicially noticeable.

2. Respondents are estopped from arguing that documents on which both parties base their arguments in the present case should be stricken.

Respondents misquoted the finding of the Federal District Court in the March 2, 2011 Opinion on Summary Judgment in *Erickson et al. v. Long Beach Mortgage Co., et al.*, United States District Court for the Western District of Washington Case No. 10-cv-1423. They cannot be heard to object to the submission of RJN Exhibit 6, which is the complete document which contains the language which Respondents' misquoted. RJN Exhibit 7 merely identifies the parties to the Federal District Court Action from which the Washington Court of Appeals in the Foreclosure Action found "collateral estoppel", apparently without evidence of privity between the parties.

The doctrine of collateral estoppel upon which the courts of the State of Washington have relied since the Court of Appeals disposed of the Ericksons' appeal in Appeal No. 73833-0-1 on February 13, 2017, relies in part on the Federal District Court case, and in alternative part, on the Respondents' fraud on the court in the Foreclosure Action (RJN Exhibit 8). Respondents relied on the Court of Appeals decision in *Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson*, Appeal No. 73833-0-1 for their defense of collateral estoppel in the present action and are thereby estopped from arguing that this Court may not consider that opinion in connection with the Ericksons' Amended Petition for Review.

B. In the alternative, this Court has the authority under RAP 1.2(a) to waive noncompliance with RAP 9.11, if it is found to apply, in the interests of justice.

The Rules of Appellate Procedure (RAP) are to be

liberally interpreted to promote justice and facilitate the decision of cases on the merits. RAP 1.2(a) provides:

INTERPRETATION AND WAIVER OF RULES BY COURT

(a) Interpretation. These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. *Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands*, subject to the restrictions in rule 18.8(b)⁴. (Emphasis added.)

Respondents have made no showing that justice demands that Petitioners' effort, by their Reply, to inform this Court of the

² RAP 18.8(b) does not apply to the Reply to Respondents' Answer.

RAP 18.8(b) provides:

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

misrepresentations of fact and law in Respondents' Answer to their Amended Petition for Review must be stricken for noncompliance with any of the Rules of Appellate Procedure.

Respondents are seeking to prevent the Ericksons from being fully and fairly heard in reply to the Respondents' misrepresentations of facts and law in their Answer to the Amended Petition for Review.

IV. CONCLUSION

This Court should consider the documents submitted as Requests for Judicial Notice in support of the Ericksons Reply to Respondents' Answer to the Amended Petition for Review. The Ericksons' Reply calls this Court's attention to the misrepresentations of fact and law, which has been the pattern of practice of STOEL RIVES parties throughout the Related Actions and continues before this Court. In the alternative, Petitioners have prepared Appendix 1 attached to the Answer to Respondents' Motion to Strike Petitioners' Reply to

Respondents' Answer to the Amended Petition for Review which the Court may allow under RAP 10.7. The Ericksons arguments are supported by the Clerk's Papers referenced therein whereas Respondents' Motion to Strike provides no evidence in the record whatsoever.

Dated this 29th day of August, 2022 at Auburn, Washington.

E-signed: /s/ *John Earl Erickson*

John Earl Erickson, *in propria persona*
5421 Pearl Ave. S.E.
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Dated this 29th day of August, 2022 at Auburn, Washington.

E-signed: /s/ *Shelley Ann Erickson*

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CERTIFICATE OF COMPLIANCE

The foregoing Reply on Request for Judicial Notice in Support of Amended Petition for Review complies with RAP 18.17 in that it is produced using a word processing program, is prepared in 14 point font, double-spaced except as otherwise allowed, and I am informed that the foregoing Petition for Review consists of 1,571 words, inclusive of footnotes and the cover page and exclusive of the signature blocks and Certifications according to the word count tool for the word processing program with which it has been prepared.

E-signed: /s/ *Shelley Ann Erickson*

Shelley Ann Erickson, *in propria persona*

CERTIFICATE OF SERVICE

I hereby certify that on August 29, 2022, I caused a true and correct copy of the Reply on Request for Judicial Notice in Support of Amended Petition for Review to be served via E-Filing as set forth below:

Attorney Ann Dorsheimer
STOEL RIVES, LLP
Attorney for Respondents Power, STOEL RIVES, SPS,
Eidson and Glowney
600 University Street, Suite 3600
Seattle, Washington 98101

Dated this 29th day of August, 2022 in Auburn, Washington.

E-signed: /s/ *Shelley Ann Erickson*

Shelley Ann Erickson, *in propria persona*

SHELLEY ANN ERICKSON - FILING PRO SE

August 29, 2022 - 3:21 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,047-8
Appellate Court Case Title: John Erickson, et ano v. Stoel Rives, LLP et al

The following documents have been uploaded:

- 1010478_Answer_Reply_20220829151913SC793066_7692.pdf
This File Contains:
Answer/Reply - Reply to Answer to Motion
The Original File Name was 8.29.2022.Reply.RJN.pdf

A copy of the uploaded files will be sent to:

- anne.dorshimer@stoel.com
- john206erickson@icloud.com
- malaika.thompson@stoel.com

Comments:

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