

FILED
SUPREME COURT
STATE OF WASHINGTON
8/25/2022 8:00 AM
BY ERIN L. LENNON
CLERK

Case No. 101096-6

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

U. S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, IN
TRUST FOR REGISTERED HOLDERS OF FIRST FRANKLIN
MORTGAGE LOAN TRUST, MORTGAGE LOAN ASSET-
BACKED CERTIFICATES, SERIES 2007-FF2S,

Respondent,

vs.

SHERYL C. MOORE,

Appellant,

vs.

OCCUPANTS OF THE PROPERTY,

Defendants.

U. S. BANK'S ANSWER TO PETITION FOR DISCRETIONARY
REVIEW

Joseph Ward McIntosh, WSBA #39470
Attorney for U. S. Bank, N.A.

TABLE OF CONTENTS

I. INTRODUCTION.....1
II. ARGUMENT.....1
A. No showing of a RAP 13.4(b) grounds for review.1
B. Courts’ treatment of acceleration warnings has been consistent.
2
C. No error by the appellate court.....3
III. CONCLUSION.....4

CASES

Bank of N.Y. Mellon v. Stafne, No. C16-77 TSZ, 2016 U.S. Dist. LEXIS 169588, at *6 (W.D. Wash. Dec. 7, 2016)4
Glassmaker v. Ricard, 23 Wash. App. 35, 38, 593 P.2d 179 (1979)...3
Merceri v. Bank of New York Mellon, 4 Wn. App. 2d 755, 434 P.3d 84 (Div. 1, 2018).....4
Terhune v. N. Cascade Tr. Servs., Inc., 9 Wn. App. 2d 708, 446 P.3d 683 (Div. 2, 2019).....4
U.S. Bank Nat’l Ass’n as Tr. for Registered Holders of First Franklin Mortgage Loan Tr., Mortgage Loan Asset-Backed Certificates, Series 2007-FFG2 v. Moore, 21 Wn. App. 2d 1067 (2022).....1
U.S. Bank Nat’l Ass’n as Tr. of Holders of Adjustable Rate Mortgage Tr. 2007-2 v. Ukpoma, 8 Wn. App. 2d 254 (Div. 3, 2019)3

RULES

RAP 13.4(b).....1

I. INTRODUCTION

Review of the underlying appellate decision, *U.S. Bank Nat'l Ass'n as Tr. for Registered Holders of First Franklin Mortgage Loan Tr., Mortgage Loan Asset-Backed Certificates, Series 2007-FFG2 v. Moore*, 21 Wn. App. 2d 1067 (2022), should be denied. The petition for review does sufficiently establish grounds. The petition merely argues there was error, which is not grounds for review.

II. ARGUMENT

A. No showing of a RAP 13.4(b) grounds for review.

Review of an appellate court decision is limited to certain circumstances. Those circumstances are enumerated in RAP 13.4(b).

The circumstances are, as follows:

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Moore's petition for review simply avers that the appellate court decision was erroneous. Error alone is not grounds for review. Moore does not specifically identify and argue a basis for review enumerated in RAP 13.4(b).

B. Courts' treatment of acceleration warnings has been consistent.

Moore does not argue a split in how the appellate courts are treating acceleration warnings, or "conditional statements of future acceleration." U.S. Bank nonetheless addresses the argument. Were that argument made, it would fail.

The courts applying Washington law have been consistent in their holdings on this topic. The underlying acceleration rule is as follows – acceleration must be made in a clear and unequivocal manner which effectively apprises the maker that the holder has exercised his

right to accelerate the payment date. *Glassmaker v. Ricard*, 23 Wash. App. 35, 38, 593 P.2d 179 (1979). Each of the state appellate court divisions have rejected the argument that an acceleration warning from the lender – e.g. “the loan *will be accelerated* [at some future date]” – per se establishes acceleration under the aforementioned state rule. See e.g. *U.S. Bank Nat'l Ass'n as Tr. of Holders of Adjustable Rate Mortgage Tr. 2007-2 v. Ukpoma*, 8 Wn. App. 2d 254 (Div. 3, 2019); *Terhune v. N. Cascade Tr. Servs., Inc.*, 9 Wn. App. 2d 708, 446 P.3d 683 (Div. 2, 2019); *Merceri v. Bank of New York Mellon*, 4 Wn. App. 2d 755, 434 P.3d 84 (Div. 1, 2018). The federal court, applying state law, has also rejected the argument. *Bank of N.Y. Mellon v. Stafne*, No. C16-77 TSZ, 2016 U.S. Dist. LEXIS 169588, at *6 (W.D. Wash. Dec. 7, 2016).

In short, there is no conflict in law between the courts. There is no need for supreme court intervention to cure a conflict of laws.

C. No error by the appellate court.

Error alone is not grounds for supreme court review. U.S. Bank nonetheless avers there was no error.

The record before the court of appeals demonstrated the requisite elements for a decree of foreclosure in favor of U.S. Bank – (1) standing, (2) breach by Moore, (3) damages, and (4) the contractual remedy of foreclosure. As she did at the trial court level, Moore attacks U.S. Bank’s prima facie case for foreclosure with mere speculation and argumentative assertions. Moore makes vague assertions of defects – e.g. unlawful securitization, chain of title, inaccurate loan statements, etc. Fatally, speculation and argumentative assertions do not defeat summary judgment. Moore did not, at any level of this case, introduce actual evidence to rebut U.S. Bank’s prima facie case and demonstrate a genuine issue of material fact requiring trial.

III. CONCLUSION

The petition for review should be denied.

SIGNATURE(S) ON NEXT PAGE

DATED August 24, 2022

A handwritten signature in cursive script that reads "Joseph Ward McIntosh". The signature is written in dark ink on a white background.

Joseph Ward McIntosh, WSBA # 39470
Attorney for U.S. Bank, N.A.

MCCARTHY & HOLTHUS, LLP

August 24, 2022 - 9:05 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,096-6
Appellate Court Case Title: U.S. Bank National Association, et al. v. Sheryl C. Moore
Superior Court Case Number: 18-2-00820-9

The following documents have been uploaded:

- 1010966_Affidavit_Declaration_20220824204617SC649935_5349.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Certificate_of_Service_re_Answer_to_Petition_for_Review.pdf
- 1010966_Answer_Reply_20220824204617SC649935_4898.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was BRIEF answer appeal supreme court petition.pdf

A copy of the uploaded files will be sent to:

- emily@brooksplumb.com
- emilybrooks@outlook.com
- gchu@mccarthyholthus.com
- warren.lance@mccalla.com

Comments:

Sender Name: Joseph McIntosh - Email: jmcintosh@mccarthyholthus.com
Address:
108 1ST AVE S STE 300
SEATTLE, WA, 98104-2104
Phone: 206-399-5034

Note: The Filing Id is 20220824204617SC649935

FILED
SUPREME COURT
STATE OF WASHINGTON
8/25/2022 8:00 AM
BY ERIN L. LENNON
CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SHERYL C. MOORE,

Plaintiff,

v.
U.S. BANK NATIONAL ASSOCIATION, AS
TRUSTEE, IN TRUST FOR REGISTERED
HOLDERS OF FIRST FRANKLIN MORTGAGE
LOAN TRUST, MORTGAGE LOAN ASSET-
BACKED CERTIFICATES, SERIES 2007-FF2S,

Defendant.

Case No.: 101096-6

CERTIFICATE OF SERVICE

I certify that on August 24, 2022, I caused a copy of U.S. BANK'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW to be served by e-service via Washington Supreme Court's Secure Portal e-filing system on the following specified below:

The Brooks Plumb Law Firm
Emily Brooks
1312 N. Monroe St., Suite F188
Spokane Valley, WA 99201
emily@brooksplumb.com

1 I declare under penalty of perjury under the laws of the United States of America and the
2 State of Washington that the foregoing Certificate of Service is true and correct and that this
3 Declaration was executed in San Diego, California.

4 Dated: August 24, 2022

5 

6

Walter Babst
Paralegal

MCCARTHY & HOLTHUS, LLP

August 24, 2022 - 9:05 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,096-6
Appellate Court Case Title: U.S. Bank National Association, et al. v. Sheryl C. Moore
Superior Court Case Number: 18-2-00820-9

The following documents have been uploaded:

- 1010966_Affidavit_Declaration_20220824204617SC649935_5349.pdf
This File Contains:
Affidavit/Declaration - Other
The Original File Name was Certificate_of_Service_re_Answer_to_Petition_for_Review.pdf
- 1010966_Answer_Reply_20220824204617SC649935_4898.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was BRIEF answer appeal supreme court petition.pdf

A copy of the uploaded files will be sent to:

- emily@brooksplumb.com
- emilybrooks@outlook.com
- gchu@mccarthyholthus.com
- warren.lance@mccalla.com

Comments:

Sender Name: Joseph McIntosh - Email: jmcintosh@mccarthyholthus.com
Address:
108 1ST AVE S STE 300
SEATTLE, WA, 98104-2104
Phone: 206-399-5034

Note: The Filing Id is 20220824204617SC649935