**IN THE SUPREME COURT**
**OF THE STATE OF WASHINGTON**

101989-1

(Court of Appeals No. 100670-5)

**ERIC C. BETTEN and MICHAEL R. MCPHERSON,**

**as Co-Personal Representatives of the Estate of Julia H. Betten, Deceased**

**Plaintiffs/Respondents,**

**v.**

**ALLEN MCPHERSON and NIKKALA L.**

**MCPHERSON, husband and wife, and the marital community comprised thereof; and J. DOES 1-10 and all other occupants of 1148 S. Pekin Rd., Woodland Washington 98674,**

**Defendants/Appellants.**

# APPELLANT'S BRIEF IN SUPPORT OF PETITION FOR REVIEW

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## I. INTRODUCTION:

It is hereby submitted before this honorable Court:

1. That the Appellants are submitting this instant response in support of their appeal brief before the Supreme Court For the reasons set herein below, it is requested that the Court grants the requested relief in favor of the Appellants and against the Respondents.

## II. FACTUAL BACKGROUND:

2. Briefly stated, in August 2015, the Plaintiffs filed a complaint for foreclosure of a deed of trust and judgment on a promissory note, bearing case no. 15-200917-7, in the Superior Court for the State of Washington, in and for the County of Cowlitz ("**Foreclosure Suit**"). In respect of the Foreclosure Suit, the Superior Court granted a summary judgment in favor of the Plaintiffs.

3. Then, in 2018, Plaintiff brought a claim for quiet title, trespass, and ejectment, bearing case no. 18-2-01334-08, against Defendants ("**Quiet Title Suit**"). On the other hand, the Defendants argued that the loan and the property purchased therefrom were indeed a gift. Moreover, it was argued that the Defendant, Nikkala, had not been properly served. However, the Superior Court again granted summary judgment in favor of the Plaintiffs and a writ of ejectment against the Defendants ("**Quiet Title Suit Decision**").

4. The Superior Court's Quiet Title Suit Decision was appealed by the Defendants in the Court of Appeals of the State of Washington, Division II, bearing appeal no. 54507-1-II ("**Appeal**"). The Court of Appeals rendered an unpublished decision dated January 19, 2022, upholding Superior Court's decision.

5. Thereafter, the Defendants filed a petition for review of the Quiet Title Suit Decision before the Supreme Court of the State of Washington, bearing case no. 100670-5.

## III. LEGAL GROUNDS FOR INSTANT BRIEF:

6. At the outset, the Appellants highlight that the Superior Court's decision in Foreclosure Suit, upon which the Quiet Title Suit is based, ought to be reviewed under trial court's abuse of discretion. First and foremost, the trial court erred by granting a summary judgment in Foreclosure Suit before a summons was placed in the newspaper giving known or unknown persons a fair opportunity to join the proceedings. Rule 56 (c) of Federal Rules of Civil Procedure makes it clear that it is an error to grant a motion for summary judgment without affording the opposite side the time provided or without giving notice or the opportunity to be heard. See ***Bowdidge v. Lehman***, 252 F.2d 366; ***Enochs v.***

***Sisson***, 301 F.2d 125; ***Scott v. Courtesy Inns, Inc.***, 472 F.2d 563; ***Mustang Fuel Corp. v. Youngstown Sheet and Tube Co.***, 480 F.2d 607.

7. The Appellants and their attorney also argued this before the Court of Appeals that denying the right of being heard to the Appellant, Nikkala, is a violation of her constitutional right. For this, reference is made to the 14th amendment of the United States Constitution which gives everyone a right to due process of law, including judgments that comply with the rules and case law. Most due process exceptions deal with the issue of notification. If, for example, someone gets a judgement against a party in another state without notifying the party, the judgement can be challenged for lack of due process of law. This was the case in ***Griffen v. Griffen***, 327 U.S. 220, 66 S. Ct. 556, 90 L. Ed. 635 in which a pro se litigant won his case for lack for due process in the Supreme Court. Therefore, the Appellant, Nikkala, has not had a fair opportunity to be heard to bring out all the facts. Not being properly represented by counsel has proven to be the problem and of public interest to not be treated as an equal in the trial court. One should not have to fight for their rights to be an equal. Hence, this case deserves to have a fair review of the Superior Court's decisions in light of all the relevant facts and procedural defects. Nikkala's testimony and presence in the Foreclosure Suit was necessary and incumbent for proper statement of facts, as elaborated below, and fair determination of the case.

8. Further, the Appellant also highlights that the Appellant, Nikkala, was legally married to and in a matrimonial relationship with Appellant, Allen, at the time of Foreclosure Suit. Therefore, any contrary claim by the Respondents that the parties were not married and thus do not have an interest in the property/estate is invalid. Being family members, it was not uncommon knowledge that despite being married, the Appellants were not living together for twenty-five (25) years. Be that as it may, the Respondents were legally and procedurally obligated to serve summons for the Foreclosure Suit separately onto both Appellants.

9. In any event, the Foreclosure Suit is time barred. In this regard, the Appellants submit that when the beneficiary directed the trustee to release the deed of trust in October 2008, the statute of limitations changed to three (03) years. Carl Betten, therefore, had three (03) years to change his mind, which he did not do so, and the action thus became time barred on October 2011. Moreover, as the terms of promissory note state "no payments or installments", it clearly shows that there was no mortgage. Hence, the Respondents had no authority to file in the absence of any mortgage. Respondents' actions in the form of various lawsuits are also frivolous as they were instituted after both parents, Carl Betten and Julia Betten, had passed away.

10. Further, the Superior Court erred in rendering its decisions through errors in timeline of the case, leading up to relevant causes of action. For the sake of clarity, the Appellants briefly highlight the important facts in chronological order as follows: In April 2008, Carl Betten and Julia Betten provided funds to Appellant, Allen McPherson, to purchase property in Cowlitz County as a "gift". The transaction of the property purchase was made with assistance of escrow officer, Janie Ray, at Cascade Title in Longview WA. Carl and Julia Betten provided the funds for the property purchase and directed the escrow officer to have Appellant Allen sign the promissory note and deed of trust only to protect Carl and Julia Betten's investment in case anything was to happen to Appellant Allen during the first year as Allen was still married. These documents provided a safety net for Carl and Julia Betten. The deed of trust named escrow officer Janie Ray the "trustee" of the deed. If Carl Betten, the beneficiary of the promissory note, had intended on collect the funds, he would have had to sign the promissory note, which he did not do so. Moreover, the terms on the promissory note states "NO PAYMENTS OR INSTALLMENTS". Although before escrow could close, all parties had to agree on the terms written in the escrow documents. As the named trustee of the deed, Janie Ray had an obligation as escrow officer and to the beneficiary of the promissory note to hold the property deed. The deed could only be released by the trustee by "direction" of the beneficiary, Carl Betten, of the promissory note; this was done in October 2008. The property deed was properly vested into Allen

McPherson's name and the deed and titles to the manufactured homes were released and sent to Allen McPherson in the mail. Mr. McPherson holds the deed and titles with the original envelope the documents were mailed in October 2008 by the named trustee of the deed which again rendered the promissory note and deed of trust void while both Carl and Julia Betten were alive.

11. Seven (07) years later and after both parents Carl and Julia Betten had passed, the Respondents filed a frivolous Foreclosure Suit against Appellants only to unjustly steal their brother's home. Moreover, in their official capacity as personal representatives, the Respondents breached their fiduciary duty to Allen McPherson (beneficiary) by fraudulently misrepresenting facts to the Superior Court, by failing to be honest and failing to follow the rules of the law. As a result of their "continuous deception of facts" along with the help of their attorneys, this was the only way the Respondents obtained two summary judgments against Appellant.

12. The Respondents have still been misrepresenting and misstating the facts, such as in their answer to Petition for Review. On the other hand, the Appellants maintain that both Allen and Nikkala were served in only one suit, the Quiet Title Suit, and not the Foreclosure Suit. Moreover, the opposing counsel also claims that Nikkala in not a "necessary party" and

service of a summons through the newspaper as an unknown is proper. On the other hand, the Appellants maintain that if Nikkala is not a "necessary party", then obtaining a summary / default judgement to the tune of $665,000.00 against Appellant, Nikkala, is unreasonable and baseless as Nikkala was not afforded an opportunity to be heard or defend herself in the Foreclosure Suit. The opposing counsel also states that they filed a Lis Pendens and published a summons that was proper notification to Nikkala. On the other hand, the Lis Pendens was filed in August of 2015. Thereafter, seven (07) months, later the Superior Court granted a summary judgment at the end of March 2016. However, the summons was published for the first time on June 1st, 2016, after the summary judgment was granted. Moreover, the summons state that anyone known or unknown has sixty (60) days to respond or a default judgment will be given. On the other hand, the Superior Court did not wait the full sixty (60) days and signed the final order granting the Respondents a summary judgment. Therefore, the Superior Court had no jurisdiction to grant a summary judgement against Appellant Nikkala, knowing that Nikkala had not been served at all.

13. The Appellants also emphasize that both the causes, the Foreclosure Suit and the Quiet Title Suit go hand in hand. They are not separate issues and to have several misrepresentations by Respondents amounts to violations under the law. Moreover, the

Supreme Court ought to take into account the errors committed by the Superior Court in rendering its summary judgements without following due process of law.

**IV. PRAYER(S):**

14. In view of the above, it is humbly requested before this honorable Court that the Court enters a judgment declaring that:

(i) the summary judgments rendered by Superior Court in both the Foreclosure Suit and Quiet Title Suit be overturned for abuse of discretion;

(ii) a fresh hearing be scheduled to make a fair determination in light of correct facts and proper procedural process; and

(iii) such other and further relief as the Court deems just and proper.

**/s/ Nikkala l. McPherson**
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**Date: May 11, 2023**

## NIKKALA MCPHERSON - FILING PRO SE

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## Transmittal Information

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