No. 90504-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MICHIKO STEHRENBERGER,

Appellant,

v.

JPMORGAN CHASE BANK, N.A.,

Respondent.

ANSWER OF JPMORGAN CHASE BANK, N.A. TO STEHRENBERGER'S PETITION FOR REVIEW

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INTRODUCTION AND SUMMARY OF ANSWER

The petitioner, Michiko Stehrenberger, borrowed $50,000 from Washington Mutual under a commercial line of credit, but argues that she should not be required to pay back the money to JPMorgan Chase Bank, N.A., which acquired the loan from the FDIC after WaMu filed. As the trial court, the Court of Appeals, and an Ohio federal district court all recognized, Chase is entitled to enforce Stehrenberger's obligations even though her original promissory note is missing. The Supreme Court should deny Stehrenberger's petition for review.

First, there is no constitutional issue that the Supreme Court needs to decide. Stehrenberger's arguments about the proper interpretation of Washington commercial statutes do not automatically give rise to a constitutional issue.

Second, the Court of Appeals properly applied existing Court of Appeals precedents, including *Federal Financial Co. v. Gerard*, 90 Wn. App. 169 (1998). Its decision in this case does not conflict with Court of Appeals decisions in other cases.

Third, the Court of Appeals properly applied the Supreme Court's precedents on summary judgment motions. As Stehrenberger herself admits, "[w]ith few exceptions, the relevant facts of the case are undisputed and recited in the Opinion." Stehrenberger Pet. at 3.

Fourth, there are no public policy or other reasons why the Supreme Court should accept review. Stehrenberger does not have a genuine grievance, much less one affecting the public interest.

IDENTITY OF ANSWERING PARTY

JPMorgan Chase Bank, N.A. is the respondent in this appeal and the plaintiff in the underlying action. Chase was also the defendant in three separate lawsuits brought by Stehrenberger in federal courts in Ohio, New York, and Eastern Washington, each involving many of the same issues as this appeal. The Ohio federal district court dismissed Stehrenberger's complaint with prejudice. *Stehrenberger v. JPMorgan Chase Bank, N.A.*, No. 2:12-cv-874, 2012 WL 5389682, *1, *6 (S.D. Ohio 2012). Stehrenberger voluntarily dismissed the New York and Eastern Washington actions. *See Stehrenberger v. JPMorgan Chase & Co.*, No. 1:12-cv-07212-AJN, ECF No. 18 (S.D.N.Y. 2012); *Stehrenberger v. JPMorgan Chase Bank, N.A.*, No. CV-12-543-JLQ, 2012 U.S. Dist. LEXIS 154223, *1–2 (E.D. Wash. 2012).

STATEMENT OF THE CASE

A. Stehrenberger obtained a commercial line of credit from Washington Mutual.

In 2007, Stehrenberger obtained an unsecured commercial line of credit for $50,000 from Washington Mutual Bank ("WaMu"). CP 2 ¶ 5; CP 4-7, 11-13; CP 836 ¶ 3. Stehrenberger signed a note as evidence of her obligation to repay the loan. CP 249 ¶ 64; CP 10; CP 17-18 ¶ 1; CP 22 ¶ 4; CP 24 ¶ 20; CP 1049. Stehrenberger "left the signed promissory note on the manager's desk" at a WaMu branch. CP 249 ¶ 64. The note is a negotiable instrument under RCW 62A.3-104, "payable to bearer or to order at the time it is issued or first comes into possession of a holder." CP 143-44; CP 859-60; CP 24 ¶ 20.

B. Chase acquired Stehrenberger's loan from the FDIC, as receiver for WaMu.

On September 25, 2008, the Office of Thrift Supervision closed WaMu and appointed the FDIC as receiver. CP 93 ¶ 2; CP 249 ¶ 70; CP 1049. The FDIC, as receiver, "succeeded to all of the rights, title, and interest of [WaMu] in and to all of the assets" under FIRREA. CP 193 (*citing* 12 U.S.C. § 1821(d)(2)(A)(i)). As receiver, the FDIC had broad authority under FIRREA to "transfer any asset or liability of Washington Mutual, without any approval, assignment, or consent with respect to such transfer." CP 93 ¶ 3; *see also* 12 U.S.C. § 1821(d)(2)(G)(i)(II) (same).

Invoking this authority, the FDIC executed a Purchase and Assumption Agreement ("PAA") with Chase. CP 93 ¶ 4. The FDIC transferred to Chase "certain of the assets, including all loans and all loan commitments, of Washington Mutual." *Id.*; *see also* CP 633 (Chase purchased from the FDIC "all right, title, and interest of the Receiver in and to all of the assets"); CP 660 (listing "Loans" as among the WaMu assets Chase purchased); CP 188; CP 885 ("All WaMu loan files were transferred to JPMorgan Chase pursuant to the [PAA]."). "As a result, on September 25, 2008, [Chase] became the owner of the loans and loan commitments of Washington Mutual," without the need for assignments identifying each loan. CP 93 ¶ 5.

Chase thus acquired Stehrenberger's loan from the FDIC, as receiver for WaMu. There is no evidence that anyone other than Chase acquired Stehrenberger's loan. Stehrenberger does not allege that before

September 2008 she ever paid anyone other than WaMu or that WaMu sold her loan to someone else before WaMu failed. *See* CP 852, 1051.

Chase acquired WaMu's records associated with Stehrenberger's loan. Chase received an electronic record generated by WaMu of the loan disbursements made to Stehrenberger. CP 836 ¶ 5; *see also* CP 885. Stehrenberger's loan history shows she received $49,000 on May 30, 2007. *Id.*; CP 668. Chase also received copies of WaMu's monthly statements to Stehrenberger, and Chase issued monthly statements to her after acquiring the loan. CP 836 ¶ 6; CP 666-834. Stehrenberger admits that "[i]n 2008-2009, [she] received a notice from [Chase] informing [her] that Chase now owned [her] line of credit." CP 249 ¶ 71.

C. Stehrenberger stopped making payments on her loan because she disputes the PAA and Chase's right to enforce the note.

In 2010, Stehrenberger stopped making payments on her loan, even though she admits owing money on the loan. CP 22 ¶ 4; *see also* CP 837 ¶ 7; CP 1077. Stehrenberger disputes whether Chase acquired her loan—or any other loan—from WaMu, because the FDIC assigned all of WaMu's loans but did not execute assignments specifically identifying every loan by name. CP 27 ¶ 42; *see also* CP 100-01 ¶¶ 16-17. Stehrenberger also refuses to pay her loan because Chase does not have the original note. CP 269 ¶ 15. By February 4, 2011, Stehrenberger owed Chase approximately $47,600, including principal, overdue interest, and fees. CP 3 ¶ 11.

D. Chase commenced this action to collect the unpaid note.

Due to Stehrenberger's default, Chase filed this breach of contract lawsuit in King County Superior Court. CP 2-3. Stehrenberger answered with many affirmative defenses and counterclaims, including an indemnification claim against the FDIC, CP 51, Consumer Protection Act, conspiracy, and racketeering claims, CP 54, an unjust enrichment claim, CP 57, and Fair Debt Collection Practices Act ("FDCPA") and Fair Credit Reporting Act ("FCRA") claims, CP 62.

Chase filed a motion to dismiss Stehrenberger's counterclaims. CP 69-81. Stehrenberger responded with numerous "declarations" purporting to characterize phone calls and e-mails with various Chase personnel, excerpts of Chase's responses to her discovery requests, and copies of her correspondence with the FDIC regarding her FOIA request. *See* CP 95-252. The trial court entered an order converting the motion to dismiss into one for summary judgment, dismissed Stehrenberger's FDCPA and FCRA claims, and converted her indemnity counterclaim into an affirmative defense. CP 265-66.

Stehrenberger then embarked on a burdensome discovery campaign, serving over 400 discovery requests on Chase and filing various motions to compel (requiring a motion for a protective order). *See* CP 276; *see also* CP 274-577; CP 1411-14. (She had already pursued a FOIA request to the FDIC. CP 188-92.)

Chase sought summary judgment on its breach of contract claim, and on Stehrenberger's unjust enrichment and CPA counterclaims.

CP 588, 591. Chase pointed out that it acquired Stehrenberger's loan from the FDIC, as receiver for WaMu, and that under FIRREA Chase did not need an assignment identifying Stehrenberger's loan in particular to enforce Stehrenberger's note. CP 591-600. Chase showed it could enforce the note because, as the FDIC's assignee, Chase stands in the shoes of the FDIC. CP 601-10. Res judicata also bars Stehrenberger's claims because an Ohio federal court issued a final judgment on the merits based on the same claims and parties. CP 1107 & n.5; CP 1110. Finally, Chase met the elements of its breach of contract claim because Stehrenberger admits she obtained the loan and owes money on the loan, but refuses to pay. CP 610-11.

While Chase's summary judgment motion was pending, Stehrenberger filed two motions for partial summary judgment and for declaratory relief, improperly noting the first for hearing four days later, CP 840, 995, and the second for hearing one week later, CP 1010, 1037. In these motions, as in her Ohio action, Stehrenberger asked the trial court to declare she did not need to repay her loan because the FDIC did not give Chase the authority to enforce her promissory note. CP 845, 847, 852, 1011. Stehrenberger presented no evidence WaMu sold or transferred her loan before it failed or that any entity other than Chase attempted to enforce the note after WaMu failed.

The trial court granted Chase summary judgment. CP 1337-47; *see also* CP 1409-16. The transfer of an instrument "vests in the transferee, in

this case [Chase], any right of the transferor, [WaMu] through the FDIC to enforce the instrument, including any right as a holder in due course." CP 1341:17-21. In reaching this conclusion, the trial court relied on *Federal Financial Co. v. Gerard*, 90 Wn. App. 169, 176-77 (1998), in which the Court of Appeals held that under RCW 62A.3-203(b), "the assignment of a note by the FDIC ... carries with it the right to enforce the instrument." CP 1342:8-18.

Stehrenberger filed a motion to amend the trial court's judgment to provide "adequate protection" under RCW 62A.3-309(b), allegedly to protect her if someone other than Chase tried to enforce her note. CP 1424-30. Stehrenberger presented no evidence that in the seven years since she obtained the loan, anyone other than WaMu or Chase has ever tried to enforce the note. The trial court denied Stehrenberger's motion, CP 1509, and entered judgment for Chase, CP 1431-32.

Chase filed a motion for prevailing party attorneys' fees under the note and RCW 4.84.330. CP 1442-49. The trial court granted Chase's motion, awarding $98,446.76. CP 1546. "[T]hese fees and costs were reasonable and necessary to prosecute plaintiffs' claims in light of defendant's protracted defense of this matter." *Id.*

E. Stehrenberger filed five other lawsuits in connection with this loan and her legal theories.

Stehrenberger litigated this case aggressively for two years, filing numerous substantive and discovery motions and declarations, and serving hundreds of discovery requests on Chase. CP 275-76; CP 1411-16.

Apparently discontented with this forum, Stehrenberger also filed three federal lawsuits against Chase in other jurisdictions based on the same commercial line of credit and the same legal theories. *Stehrenberger v. JPMorgan Chase Bank, N.A.*, No. 2:12-cv-874 (S.D. Ohio 2012); *Stehrenberger v. JPMorgan Chase & Co.*, No. 1:12-cv-07212-AJN (S.D.N.Y. 2012); *Stehrenberger v. JPMorgan Chase Bank, N.A.*, No. CV-12-543-JLQ (E.D. Wash. 2012). In each lawsuit, Stehrenberger sought a declaration that Chase does not own her loan, and an injunction barring Chase from attempting to enforce her note.

Before Stehrenberger dismissed the Eastern Washington action, the district court ordered her to amend or voluntarily dismiss her complaint because she failed to plead allegations showing she had standing to challenge the PAA. *Stehrenberger*, No. CV-12-543-JLQ, ECF No. 6 at 3. The district court also noted Stehrenberger had "filed a nearly identical suit in the United States District Court for the Southern District of Ohio just days after filing this one." *Id.* at 4.

Meanwhile, the magistrate judge in Ohio recommended dismissing Stehrenberger's complaint because her theory that Chase did not acquire any of WaMu's loans was "unsupported" and "indisputably lacks merit." *Stehrenberger*, 2012 WL 443217, at *3. The FDIC had statutory authority to transfer WaMu's assets "without any approval, assignment, or consent with respect to such transfer." *Id.* Courts have repeatedly held that through its agreement with the FDIC, Chase acquired WaMu's loans. *Id.*

The Ohio federal district court adopted the magistrate's recommendation and dismissed Stehrenberger's complaint with prejudice. *Stehrenberger*, 2012 WL 5389682, at *1, *6. This is because, as "a debtor and a nonparty to the PAA," Stehrenberger "lacks standing to challenge alleged flaws in the PAA documents." *Id.*, at *4 (*citing Livonia Prop. Holdings, LLC v. 12840-12976 Farmington Rd. Holdings, LLC*, 399 Fed. App'x 97, 102 (6th Cir. 2010)). Courts consistently affirm the PAA's validity and hold Chase has authority to enforce WaMu loans. *Id.* Stehrenberger had "not alleged that WaMu did not own her loan or that it had transferred its interest in her loan prior to Chase's acquisition of WaMu's assets," or that any other entity had attempted to enforce the note. *Id.*, at *5.

Stehrenberger also filed (and then voluntarily dismissed) two actions against Chase's trial court attorneys in this case, based on the same theory that Chase acquired none of WaMu's loans. *Stehrenberger v. LaMunyon*, No. 12-2-03366-8 SEA (Wn. Super. Ct. Jan. 26, 2012) (alleging Chase did not acquire any of WaMu's loans); *Stehrenberger v. LaMunyon*, No. 12-2-25983-6 SEA (Wn. Super. Ct. Aug. 6, 2012) (same).

F. The Court of Appeals affirms the trial court.

The Court of Appeals affirmed the trial court in this case because Chase is entitled to enforce Stehrenberger's promises under RCW 62A.3-309(a). The Court of Appeals explained that "in accordance with *Gerard*, the FDIC's transfer of all assets of the failed bank to Chase carried with it the authority to enforce Stehrenberger's note. This is

because Chase purchased ***all*** of WaMu's assets as shown by the purchase and assumption agreement." *JPMorgan Chase Bank, N.A. v. Stehrenberger*, No. 70295-5-I, slip op. at 5 (Wn. App. April 28, 2014) (emphasis in original). Accordingly, the Court of Appeals did not need to decide whether the Ohio federal district court's judgment was res judicata of Stehrenberger's claims. *Id.* at 9. The trial court properly rejected Stehrenberger's request for adequate protection because "Stehrenberger's promissory note was payable to WaMu and Chase is now the only entity that can enforce WaMu's loans. There is no evidence that she is at risk of having any entity other than Chase attempt to enforce the loan." *Id.* at 10. Finally, the Court of Appeals found the trial court did not abuse its discretion in awarding attorneys' fees, and granted Chase its fees and costs on appeal, subject to compliance with RAP 18.1. *Id.* at 11-12.

ARGUMENT

A. This case does not involve a significant question of law under the Constitution of the State of Washington or of the United States.

The Court of Appeals decision in this case does not involve a significant—or even debatable—constitutional issue. RAP 13.4(b) says the Supreme Court will accept a petition for review if the case involves a "significant question of law" under the Washington or U.S. constitutions. This case is about Chase's right to enforce Stehrenberger's note under Washington's Uniform Commercial Code and FIRREA, not about any constitutional rights or issues.

The Court of Appeals decision involves a straightforward application of RCW 62A.3-301 and RCW 62A.3-309, which, when read together, give Chase the right to ask Stehrenberger to pay back her loan. Chase is a "person entitled to enforce" Stehrenberger's note under RCW 62A.3-301, even though Chase is not in possession of the instrument, because Chase acquired Stehrenberger's loan from the FDIC, as receiver for WaMu. WaMu was Stehrenberger's original lender. Under Washington law and FIRREA, the FDIC had the power to transfer WaMu's rights to Chase, and Chase acted properly in asking Stehrenberger to repay her loan.

Neither the Court of Appeals nor the trial court had reason to consider any provision of the constitutions of the State of Washington or the United States. There are simply no constitutional issues in this case because Chase's rights are defined by uncontroversial provisions of Washington's Uniform Commercial Code and FIRREA. Stehrenberger's disagreements with the interpretation of the governing statutes do not *ipso facto* create constitutional issues. If that were true, then every dispute about the interpretation of a statute would necessarily create a constitutional issue, which is clearly not the law.

Nor did the Court of Appeals advance an extraordinary interpretation of the law in its decision. To the contrary, an Ohio federal district court had already rejected Stehrenberger's theories, and an Ohio federal magistrate judge called Stehrenberger's claims "unsupported" and

"indisputably lack[ing] merit." *Stehrenberger*, 2012 WL 443217, at *3. Likewise, before Stehrenberger voluntarily dismissed her federal case in the Eastern District of Washington, the district court ordered Stehrenberger to amend or voluntarily dismiss her complaint because she failed to plead allegations showing she had standing to challenge the transactions between the FDIC and Chase.

It is not accurate to suggest, as Stehrenberger does, that the Court of Appeals in this case interpreted Washington law differently from the Washington legislature. The official comments to Washington's Uniform Commercial Code confirm that WaMu had the power to transfer to Chase its rights under RCW 62A.3-309:

> Also, the right under Section 3-309 to enforce a lost, destroyed, or stolen negotiable promissory note may be sold to a purchaser who could enforce that right by causing the seller to provide the proof required under that section. This Article rejects decisions reaching a contrary result, e.g., *Dennis Joslin Co. v. Robinson Broadcasting*, 977 F. Supp. 491 (D.D.C. 1997).

RCW 62A.9A-109, cmt. 5. The Permanent Editorial Board for the Uniform Commercial Code agrees that courts should interpret Washington's version of UCC 3-309 to authorize a transferee from the person who lost possession of a note to qualify as a person entitled to enforce it. *See* Report of the Permanent Editorial Bd. for the Uniform Comm. Code at 6 n.25 (ALI Nov. 14, 2011), *available at* www.ali.org/00021333/peb%20report%20-%20november%202011.pdf; *see also* CP 1067-68, 1413 (citing Report).

The trial court and the Court of Appeals properly chose to follow Washington law, and the advice of the Permanent Editorial Board, instead of the out-of-jurisdiction cases Stehrenberger cites, including the rejected *Dennis Joslin* decision. *See also Allen v. US Bank, Nat'l Ass'n (In re Allen)*, 472 B.R. 559, 566 (B.A.P. 9th Cir. 2012) (assignee of lost note could enforce note terms under RCW 62A.3-309, and collecting authorities); *Atl. Nat'l Trust, LLC v. McNamee*, 984 So.2d 375 (Ala. 2007) (assignee not in possession when note was lost could enforce note under Alabama's former § 7-3-309, which was identical to RCW 62A.3-309, if assignor was entitled to enforce note before assignment).

B. The Court of Appeals decision does not conflict with *Gerard, Trujillo,* or *Colbert.*

The Supreme Court should not accept Stehrenberger's petition for review because the decision of the Court of Appeals in this case does not conflict with other Court of Appeals decisions. RAP 13.4(b)(2) says the Supreme Court will accept a petition for review if "the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals." The Court of Appeals decision in this case properly applied Washington law—including prior Court of Appeals decisions—and does not conflict with *Trujillo v. Northwest Trustee Services, Inc.*, -- Wn. App. ---, 326 P.3d 768, No. 70592-0-I (Wn. App. June 2, 2014), or *Colbert v. U.S. Bank of Wash. N.A.*, No. 28508-1-III (Wn. App. June 15, 2010) (unpublished opinion), as Ms. Stehrenberger suggests.

1. The Court of Appeals decision properly applied Washington law, including prior decisions of the Court of Appeals.

The Court of Appeals properly applied Washington law, including prior decisions of the Court of Appeals. In *Federal Financial Co. v. Gerard*, 90 Wn. App. 169, 176-77 (1998), the Court of Appeals held that under RCW 62A.3-203(b), "the assignment of a note by the FDIC ... carries with it the right to enforce the instrument." That is because the buyer of an instrument from the FDIC is entitled to *all* of the rights of the assignor, including "not only those identified in the contract, but also applicable statutory rights." *Id.* at 177. As the Court of Appeals properly held in this case, that includes the right to enforce a lost or misplaced negotiable instrument under RCW 62A.3-309. Thus, Stehrenberger is really asking the Supreme Court to overturn the Court of Appeals decision in this case *and* to overrule *Gerard*, a prior Court of Appeals decision that articulates the same legal principles.

2. The Court of Appeals decision does not conflict with *Trujillo*.

The Court of Appeals decision in this case does not conflict with *Trujillo*. To the contrary, *Trujillo* is an admirably reasoned opinion that helps to show why the Court of Appeals made the right decision in this case. In *Trujillo*, the plaintiff defaulted on her loan, then insisted her lender could not foreclose on its security because the beneficiary of the plaintiff's deed of trust was the holder, but not the owner, of her promissory note. The Court of Appeals held the lender qualified as a

person entitled to enforce the instrument under RCW 62A.3-301 and, as a consequence, was entitled to foreclose on the deed of trust.

Stehrenberger claims *Trujillo* contradicts the Court of Appeals decision in this case because, in *Trujillo*, the Court of Appeals purportedly "concluded that the only the [sic] entity with physical possession of Ms. Trujillo's note is entitled to enforce it." Stehrenberger Pet. at 19. That is not true. This is what *Trujillo* actually said.

> [RCW 62A.3-301] merely clarifies that one entitled to enforce a note may be any of three specified persons: (i) the *holder* of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d).

Trujillo, 326 P.3d at 779 (emphasis in original). *Trujillo* did not say that *only* the holder of an instrument is entitled to enforce it. *Trujillo* properly refers to RCW 62A.3-301 to determine who qualifies as a "person entitled to enforce" an instrument. That includes a holder, but also includes a person (like Chase in this case) that is not in possession but who qualifies under RCW 62A.3-309.

In *Trujillo*, of course, unlike here, the person seeking to enforce the note actually had possession of the note. Accordingly, the Court of Appeals in *Trujillo* focused on the rights of a holder under Washington law, as distinct from the rights of an owner. But *Trujillo* did not forbid lenders from establishing the right to collect an obligation as a person, not in possession, who is nevertheless entitled to enforce the obligation under RCW 62A.3-309. The Court of Appeals in this case properly held that

Chase has the right to enforce Stehrenberger's note under RCW 62A.3-309, and that holding is consistent with *Trujillo*.

3. The Court of Appeals decision does not conflict with *Colbert*.

Stehrenberger argues that *Colbert*—an unpublished Court of Appeals decision from 2010—conflicts with the Court of Appeals decision in this case. *Colbert* is consistent with the Court of Appeals decision in this case because there are no genuine issues of material fact in this case, which was not true in *Colbert*.

In *Colbert*, the purported owners of two Washington college savings bonds sued to redeem the bonds. The bank that allegedly issued the bonds said it had no record of the bonds and did not respond to demands for payment. The Court of Appeals reversed a summary judgment order in favor of the putative owners of the bonds because there were genuine issues of material fact. There was conflicting evidence about whether the bonds ever even existed. The purported issuer denied issuing the bonds, and the owners did not disclose the existence of the bonds in their earlier bankruptcy case. The Court of Appeals held those questions of fact needed to be resolved before the Court could determine whether the bonds (if they existed) were enforceable under RCW 62A.3-309.

Colbert does not announce a different legal rule than the Court of Appeals decision in this case. Instead, *Colbert* simply observes—accurately—that a court can't decide as a matter of law whether bonds are enforceable under RCW 62A.3-309 when the party seeking to enforce the

bonds makes contradictory statements about the very existence of the bonds, and when the alleged issuer of the bonds denies issuing them.

That is very different from this case because Stehrenberger admits borrowing money, admits signing a promissory note, admits the terms of the note, and admits leaving the note with WaMu. No one disputes the existence of the note or the fact that WaMu had possession of the note before WaMu failed. Nor is there any genuine dispute that the FDIC, as receiver, transferred all of WaMu's loans to Chase. Stehrenberger herself admits that "[w]ith few exceptions, the relevant facts of the case are undisputed and recited in the Opinion." Stehrenberger Pet. at 3.

There are no genuine issues of material fact to decide in this case. It is certainly true that there are matters that are not known and probably never will be known. It is not known whether WaMu or Chase lost Stehrenberger's note. There is no evidence that anyone other than Chase is entitled to enforce Stehrenberger's note, however, and no evidence that anyone other than Chase (and before Chase, WaMu) has ever even tried to enforce Stehrenberger's note. As the Court of Appeals recognized, it does not matter whether WaMu or Chase lost the note. Under the UCC, as enacted in Washington, and under FIRREA, Chase is a "person entitled to enforce" the note as a matter of law.

C. The Court of Appeals decision does not conflict with—and properly applies—the Supreme Court's prior holdings on summary judgment motions.

The Court of Appeals decision properly applied, and does not conflict with, the Supreme Court's guidance on summary judgment

motions. *See* RAP 13.4(b)(1). Summary judgment is appropriate when the pleadings and supporting materials "show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 501 (2005). The non-moving party cannot meet that burden by responding with conclusory allegations, speculative statements, or argumentative assertions. *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852 (1986).

The Court of Appeals and the trial court properly applied those principles when they decided Chase was entitled to summary judgment as a matter of law. Stehrenberger admits borrowing money, admits signing a note and leaving it with WaMu, and admits the terms of the note. She also admits defaulting on her obligations. Stehrenberger has no quibble with these or other important facts, such as WaMu's failure and the FDIC's sale of loans to Chase. Stehrenberger argues about the legal effect of those facts, but the Court of Appeals properly could and did decide those arguments as a matter of law.

D. There are no other reasons for the Supreme Court to accept Stehrenberger's petition for review.

There is no public policy or other reasons why the Supreme Court should accept Stehrenberger's petition for review. RAP 13.4(b) says the Supreme Court will accept a petition for review if the petition "involves an issue of substantial public interest that should be determined by the Supreme Court." Stehrenberger has no genuine grievance affecting the

public interest because she does not deny borrowing money, does not deny the terms of her loan, and does not provide any evidence why she has a legitimate reason to fear someone other than Chase will try and make her pay back her loan. It has been seven years since she took out her loan. During that time, no one other than WaMu or Chase has ever tried to collect her loan. There is no evidence that Stehrenberger has suffered any real injury, much less an injury implicating a substantial public interest.

REQUEST FOR FEES

The Supreme Court should award reasonable attorneys' fees and expenses to Chase for the cost of preparing and filing this answer. RAP 18.1(j) expressly authorizes the Supreme Court to award fees and expenses under these circumstances. Stehrenberger's petition for review is part of her campaign of expensive, time-consuming litigation tactics. In addition to this case, Stehrenberger filed five separate lawsuits against Chase and Chase's attorneys. Every court reaching the merits has rejected Stehrenberger's legal theories, including an Ohio federal district court, the King County Superior Court, and the Washington Court of Appeals. The trial court in this case awarded Chase $98,446.76 in prevailing party attorney's fees, CP 1546, because those "fees and costs were reasonable and necessary to prosecute plaintiff's claims in light of defendant's protracted defense of this matter." Likewise, the Court of Appeals decided Chase, as the prevailing party on appeal, is "entitled to fees and cost, subject to its compliance with RAP 18.1." *Stehrenberger*, No. 70295-5-I, slip op. at 12 (Wn. App. April 28, 2014). The Supreme Court should

likewise award reasonable fees and expenses under RAP 18.1(j) for the expense of this answer.

CONCLUSION

For the foregoing reasons, the Court should reject Stehrenberger's petition for review, and should award Chase its fees and expenses under RAP 18.1(j).

RESPECTFULLY SUBMITTED this 5th day of August, 2014.

Davis Wright Tremaine LLP
Attorneys for JPMorgan Chase Bank, N.A.

By _____
Fred B. Burnside, WSBA No. 32491
Hugh R. McCullough, WSBA No. 41453
Rebecca Francis, WSBA No. 41196

CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2014, I caused the foregoing *Answer of JPMorgan Chase Bank, N.A. to Stehrenberger's Petition for Review* to be served on the following persons in the manner stated below.

Steven K. Linkon, Esquire Routh Crabtree Olson, P.S. 13555 SE 36th Street, Suite 300 Bellevue, WA 98006-1489 slinkon@rcolegal.com	☐ Messenger ☒ U.S. Mail, postage prepaid ☐ Federal Express ☐ Fax ☐ Electronic
Michiko Stehrenberger 215 S. Idaho Street Post Falls, ID 83854 document.request@gmail.com	☐ Messenger ☒ U.S. Mail, postage prepaid ☐ Federal Express ☐ Fax ☐ Electronic

Dated this 5th day of August, 2014.

Fred B. Burnside

Faulk, Camilla

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, August 05, 2014 12:12 PM
To: Bass, Lisa
Cc: Faulk, Camilla
Subject: RE: Stehrenberger v. JPMorgan Chase Bank, N.A., Washington State Supreme Court No. 90504-5 -- Answer of JPMorgan Chase Bank, N.A. to Stehrenberger's Petition for Review

Received 8-5-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Bass, Lisa [mailto:LisaBass@dwt.com]
Sent: Tuesday, August 05, 2014 12:05 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Burnside, Fred; McCullough, Hugh; Francis, Rebecca; Cadley, Jeanne; Huckabee, Elaine
Subject: Re: Stehrenberger v. JPMorgan Chase Bank, N.A., Washington State Supreme Court No. 90504-5 -- Answer of JPMorgan Chase Bank, N.A. to Stehrenberger's Petition for Review

Re: Stehrenberger v. JPMorgan Chase Bank, N.A.
Washington State Supreme Court No. 90504-5
Answer of JPMorgan Chase Bank, N.A. to Stehrenberger's Petition for Review

Dear Clerk:

Please find attached for filing with the Court in .PDF format, *Answer of JPMorgan Chase Bank, N.A. to Stehrenberger's Petition for Review.*

Please note: This document was filed inadvertently with the Court of Appeals, Division I, yesterday, August 4, 2014. In an abundance of caution, we are filing this today with the Supreme Court to ensure that it is delivered timely and with the appropriate caption.

This Answer is being submitted by:

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Thank you for your assistance.

Sent on behalf of Fred B. Burnside by:

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