No. 69194-5-I (Division I)

91625-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

Scott C Townley and Stephanie A Tashiro-Townley,
Defendants/Appellants/Petitioners

vs.

Bank of New York Mellon, f/k/a Bank of New York, Trustee for Certificate Holders CWABS, Inc. Asset Backed Certificates, 2005-10, Mortgage Electronic Registration Systems, Inc., and Ocwen Loan Servicing LLC
Plaintiffs/Respondents

MOTION FOR DISCRETIONARY REVIEW

-PRV-

Stephanie Tashiro-Townley
Attorney for Appellants' Townleys

Stephanie Tashiro-Townley
25437 167 Place SE
Covington, WA 98042
425-413-2637
zoemom4@gmail.com

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A. Identity of Petitioner

Appellants, now Petitioners, Scott C Townley and Stephanie A. Tashiro-Townley, hereinafter referred to as Townleys, ask this court to grant discretionary review of the record, facts, issues of law, and decision of the review court designated in Part B. (RAP 13.4(b).

B. Decision

A copy of the Court of Appeals entered on March 2, 2015, in attached as Appendix, pages A-1 through A-11. The Division I decision primarily holds Appellants were barred from review because by res judicata. The procedural steps references in the section "D. Statement of Facts" are part of the correlative foundation for granting review, given the facts of direct evidence (inter alia) in this case; including briefs, the last pleading was a motion for reconsideration denied, by Div I, on April 2, 2015. A copy of the Division 1 ruling is attached as Appendix pages A-31 to A-32.

C. Issues Presented for Review

1. Is it plain error and a miscarriage of justice worked on Townleys (this homeowner), of a due process violation when Washington case law—*Shoemaker v. City of Bremerton* (1987) [1]—holds no final judgment exists[2] and whereTownleys defended an unlawful detainer action with specific facts, equitable defenses, and claims addressing validity of improper actions against them and the issues are not final, thus, res judicata is not applicable per *Shoemaker v. City of Bremerton* (supra)?

2. Is it plain error when the trial court and review court ignore undisputed direct evidence of facts establishing unfair and deceptive business acts and practices that establish violations of RCW 61.24 et seq., RCW 59.12 et.

[1] *Shoemaker v. City of Bremerton*, 109 Wn. 2d 504 , 745 P.2d 858 (1987)

[2] Respondents filed an unlawful detainer complaint against Townleys while Townleys were directly appealing the Federal District Court case #C10-1720 in the 9th Circuit Court of Appeals (case number 11-35819). Mandate from 9th Circuit issued in early 2014.

seq., and claims are formed for remedies of RCW 19.86 et. seq, , that resulted in cumulative irregularities of RCW 61.24 et. seq., and cumulative error, consistent with the determinations of *Klem v. Washington Mut. Bank* (2013)[3] of an illegal taking of Townleys' home (the facts do show acts that constitution theft if defined by criminal law), where Townleys were denied remedy of RCW 59.12.130, thus, working violations of Wash. Const. Article 1 § 12, thereby, given all errors, violations, etc., herein, Townleys submit, the facts and issues of law create a first impression issue of public interest?

3. Is due process upheld when the trial court and review court withhold statutory remedy of RCW 61.24.127, when allowing such remedy after the sale of a subject property (their home) or before eviction or after the writ of restitution was entered is proper given the submissions of direct evidence of facts supporting the counter complaint and other procedural steps presented by Townleys that formed pre and post-eviction CPA and common law fraud claims; where the trial court's failure to address said claims (stated in the complaint or in the record) and the review court's failures to address said claims by not remanding the counterclaims back to the trial and order court to rendering findings of facts and conclusions of law once the question of possession was resolved given Townleys stood procedurally proper before the trial court and consistent with the court's holding in *Munden v. Hazelrigg[1]* (1985)?

4. Was it proper for Townleys to move the proceedings from a limited proceedings to a general proceeding in order to insure there were not jurisdictional claims that might hinder the Court addressing their Petition for Declaratory Judgment; when, the Uniform Declaratory Judgments Act (RCW 7.24.010) does not specify limit remedy to general proceedings and the Court's holding of *Grant City Fire Prot. Dist. v. City of Moses Lake*[4] (2004) and *Fallahzadeh v. Ghorbanian*[5] (2004) hold a property interest was regulated by statute and the challenged action caused "injury in fact," economic or otherwise, to the party seeking relief and standing?

5. Is it contrary to the prohibitive language of the Wash Const. Article 1, § 21 regarding right to trial for the homeowner under the facts here when a

[3] *Klem v. Washington Mut. Bank* 176 Wn. 2d 771, 295 P.3d 1179, (2013)
[4] *Grant City Fire Prot. Distr. v. City of Moses Lake* 150 Wn. 2d 791, 83 P.3d 419 (2004)
[5] Fallahzadeh v. Ghorbanian 119 Wn. App. 596, 601, 82 P.3d 684 (2004)

timely and proper request jury trial was made consistent with RCW 59.12.130?

6. Is it proper to deny Townleys' relief when the denial rest as a violation of due process by not applying the *Bain v. Metropolitan* (infra) decision that holds MERS (inter alia) is not a legal beneficiary, thus, said use stands as one more of many irregularities of RCW 61.24 et. seq., had in this case; of course, here MERS is not a legal or proper beneficiary as required in order legally commence a foreclosure action under Washington law; therefore, this and the many irregularities show the foreclosure in this case was not legally commencement and the foreclosure judgment obtained is invalid, thus, showing the subsequent eviction was improper?

7. Was it proper for the trial court to leave the record in complete, which includes the review court failure to remand back to the fact finding court the issue addressing Findings of Facts and Conclusions of Law given the overall facts, issues, and procedural steps taken, as established by *WESCO DISTRIBUTION v. MA Mortenson Co.*[6] (1997)?

8. Was it reversible error for the trial court and review court to deny relief given the Townleys cannot waive their right to contest the sale, when the foreclosure and subsequent judgment here was rot with irregularities (no legal beneficiary, etc.) that were established by the facts submitted, when, under Washington law, the foreclosure sale cannot be completed per RCW 61.24.040 as required pursuant of RCW 61.24.005(2)) under *Bain v. Metropolitan Mortgage Group*[7] (2012), (infra), *Udall v. TD Escro Services, Inc.*[8] (2007), *Albice v. Premier Servs. Of Washington, Inc.*[9] (2012), (infra) *Walker v. Quality Loan Service Corp.*[10] (2013), (infra) and *Schroeder v. Excelsior Management Group*[11] (2013) (infra), of Washington's strict compliance Deed of Trust Act statutory scheme?

9. Does the holding of *Plein v. Lackey* [12] (2003) (infra), cited in *Albice*[9] (infra) and the holdings of *Klem v. Washington Mutual Bank*[3] (supra), that stands contrary to the trial court and the Ninth Circuit's decision to deny

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[6] *WESCO DISTRIBUTION v. MA Mortenson Co.*, 88 Wn. App. 712, 946 P.2d 413 (1997)
[7] *Bain v. Metropolitan Mortg. Group, Inc.*, 175 Wn.. 2d 83, 285 P.3d 34 (2012)
[8] *Udall v. TD Escrow Services, Inc.*, 159 Wn. 2d 903, 154 P.3d 882, (2007)
[9] *Albice v. Premier Mortg. Servs.*, 174 Wn. 2d 560, 276 P.3d 1277 (2012)
[10] *Walker v. Quality Loan Service Corp.*, 176 Wn. App. 294, 308 P.3d 716 (Ct. App. 2013)
[11] *Schroeder v. Excelsior Management Group*, 297 P.3d 677, 177 Wash. 2d 94 (2013)
[12] *Plein vs Lackey* 149 Wn.2d 214, 67 P.3d 1061 (2003)

relief for failure to seek a stay apply to the facts of this case when Respondent's attorney and Litton Loan (servicer of the loan in 2010) sent Townleys specific communications that the sale of their home was on hold and then (contrary to a legitimate reasons, except what appears as a calculated trick) in an unethically breach of fiduciary duties and obligations owed, etc., inform the Townleys the sale was no longer on hold, which said second notice was specific to a time line that was too late for the Townleys to seek remedy of stay before the sale; namely, second notice was on the afternoon of the (4th) fourth day (11/30) prior to sale date of 12/3—this was after the 5 day statutory mark of RCW 61.24.130(2) had past—as such, most favorable to opposition, this action creates another irregularity of the strict compliance requirement of RCW 61.24 et. seq., plus, the facts show the house was sold on day 80 contrary to the fixed 90 day time line, which said 80 days sale stands contrary to *Albice v. Premier Mortg. Servs.* [9] (infra)?

10. Under the facts of this case, Washington State and the Nation, plus consistent with *Klem v. Washington Mutual Bank*[3] (supra), is it proper to void the foreclosure and the taking of Townleys' home when privileged entities failed to to adhere to RCW Title 5 chapter 5.45.010 & .020; RCW 5.46.010 and .020, when facts presented by experts show the production of the documents used were void of Title 5's normal course of business mandates and were created out of thin air in acts contrary to public interests by using falsified documents in order to create the illusion of interest in a note where none legally existed, when per direct evidence of fraud submitted by fraud examiner, Lynn Szymoniak) and the parties (Respondents) who submitted the documents contrary to *Bainbridge Citizens United V. Dep't Of Natural Res.*[13] (2008)?

D. Statement of the Case

Townleys, were owners of a single family home in Maple Valley, Washington (Townleys' home). (CP 1 and 3). Townleys refinanced with Countrywide Mortgage in 2005. After their business failed in 2008, though they keep working low paying jobs, the Townleys received a Notice of Default in July 8 of 2009 by an unsigned document referencing

[13] *Bainbridge Citizens United V. Dep't Of Natural Res.* 147 Wn. App. 365 (Div II 2008)

"Bank of New York Mellon f/k/a Bank of New York as Trustee for Certificateholders CWL 2005-10". This was the 1st time Townleys saw or hear of Bank of New York Mellon; or its claims of association with their loan. Townleys sought bankruptcy protection while attempting to seek loan modification, during this time unethical and dodge tactics were used.

For example, a Motion to Stay was filed by the Bank with a Note as Exhibit A. The Chief Judge Karen Overstreet ordered Respondents to send a certified copy of the Note to the Homeowner and stated that the Note was not sufficient to show ownership of Townleys home. (Certified Transcript of 6/11/2010 hearing from US Bankruptcy Case #09-22120 (CP 11, Declaration, Ex A) and Affidavit of Richard Williams of Litton Loan (CP 11, Declaration, Ex B,) stating that Litton Loan did not have the note and attempting to obtain it during bankruptcy proceedings. Townleys or the Court never received the certified Note. When the case was transferred to another judge; the matter was no longer address (dismissed), over Townleys objections.

Respondents posted an Amended Notice of Sale on or about September 14, 2010 setting the sale date for late October. Townleys filed a lawsuit in Federal District Court which resulted in letters from Bank of New York Mellon attorney and Litton Loan dated November 8th (CP 11, Declaration, Ex E) stating that the sale was on hold.

Then on November 30th, 2010, a letter from Bank of New York Mellon attorney was received in email, without any other notice, withdrawing the "hold" and stating that the sale would proceed as planned on December 3rd. The total number of days between September 14th and December 3rd was around 81 days, not 90 days as stated in RCW 61.24.040 requirement. Townleys found out quickly that they could not waive the sale in court due to RCW 61.24.040(1) as they needed to give the bank 5 days notice. Townleys showed up at the auction verbally objecting the sale of their home.[14] Townleys home was sold to the Respondents and a Trustees' Deed was filed with the county.

In February 24, 2012, a Summons and Complaint for Unlawful Detainer, Bank of New York Mellon, Trustee for CWABS, Inc. Asset-Backed Certificates, 2005-10, in King County Superior Court. The Objection to the Unlawful Detainer (CP 8) and Answer and Affirmative Defenses (CP 12) were filed on March 13, 2012. Townleys filed a Motion requesting a change from Limited to General Proceeding on March 7, 2012 (CP 7) in order for the Petition for Declaratory Judgment to be heard. A declaration was also filed with this Motion with seven exhibits also filed with the Petition for Declaratory Judgment on March 8, 2012 (CP 11) including: the

[14] Violation of the RCW 61.24.040 time (81days versus 90 days requirement) was addressed in Townleys' Federal District Case C10-1720, dismissed with a CR12(b)(6) on or around June 2011 and in which Townleys directly appealed, ultimately receiving a ruling from Ninth Circuit (case #11-35819) in January 2014.

case docket for Federal fact finding court case C10-1720 (CP 11, Declaration, Ex G), the Affidavit of Lynn Szymoniak, and Declaration of Expert Cheye Larson (CP 11). All facts within the CP11 are still properly before the trial court and review court undisputed. Findings of Fact and Conclusions of Law (pertaining to the Declaratory Judgment) was filed on April 6, 2012 (CP 15).

A Counter and Cross Complaint fee was paid and the pleading filed on April 6, 2012 (CP 16). On May 7, 2012, Defendants re-filed Petition for Declaratory Judgment (CP 40), Motion to Change Proceedings from Limited to General (CP 41), and Motion to Strike Plaintiff's Motion to Dismiss (CP 42). On May 9, 2012, Plaintiffs filed a Response to Defendants Petition (CP 47) with a Declaration (CP 48), a Response to Defendants Motion to Change Proceedings from Limited to General (CP 49). Townleys filed a Reply to the Objection on May 10, 2012 (CP 57). The Petition for Declaratory Judgment was heard on May 11, 2012 with the motion to change from limited to general proceeding, motion to strike and motion to dismiss counter and cross complaint. The Motion to Change from Limited to General Proceeding was denied (CP 61), and the Petition for Declaratory Judgment was denied (CP 62) due to lack of subject matter jurisdiction. The Motion to Strike was denied (CP 63). No findings of facts or conclusions of law were issued.

On May 15, 2012, Townleys filed a Response to Motion for Writ of Restitution (CP 65), including Declaration in Support of the Response to the Motion for Writ of Restitution including the following exhibits: Notice of Default (CP 65, Ex A), Email and attached letters from Securities and Exchange Commission showing that no trust existed by name on Notice of Default CWL 2005-10 (CP 65, Ex B), Email from Securities and Exchange Commission dated January 26, 2012 (CP 65, Ex C), docket from C10-1720 (CP 65, Ex D), and corroborating complaint filed against top five (5) banks regarding improper business practices including "robo signing" (CP 65, Ex E) and audit (CP 65, Ex F). On May 17, 2012, Commissioner Hollis Hill signed orders to dismiss the Counter and Cross Complaints (CP 69) and for Plaintiff's Writ of Restitution (CP 70). Townleys filed the Motion for Reconsideration (CP 73) and Motion for Stay of Writ of Restitution on May 21, 2012 (CP 74). On May 25, 2012, Bank of New York Mellon filed a Response to Motion for Stay (CP 76) and Response to Motion for Reconsideration (CP 78). Townleys were evicted in late May with their four children and were homeless until finding a residence on June 6, 2012. On May 30, 2012, Townleys filed a Motion for Revision of Commissioners Orders (CP 81) and filed the Notice of Appeal regarding only the Writ of Restitution (CP 87).

On July 13, 2012, the Motion for Reconsideration and Motion for Revision came before the court. Orders denying the Motion for Revision (CP 105) and Motion for Reconsideration (CP 106) were issued. Incorporated herein by reference for the sake of brevity is the Verbatim Transcript of the hearing date July 13, 2012 (RP of hearing date: 5-17-12 and 7-13-12). Judge LeRoy McCullough made the following statement during the hearing,

> "Now this does not mean that the fraud that's alleged will not be before a jury or before a court..... I have not been convinced that this plaintiff engaged in fraudulent behavior. But I think that that is proper information to go before a jury and a judge in a different proceeding."

Judge McCullough in RP (7-13-2012), Pg 41, ll 1-3 and 6-10

The Notice of Appeal was timely filed on August 10, 2012. Townleys' Opening brief covered the newly discovered Equal Protection Violation (attached as Exhibit A to the Opening Brief), which is the order vacating the writ of restitution for a similarly situated individual (12-2-03428-1 SEA, order vacating Schnall's writ of restitution in 2012). Division 1 decision on 69194-5-I (filed March 2, 2015), Motion for Reconsideration (filed on March 23, 2015 – timely as due date landed on Sunday), and Division 1 decision denying Motion for Reconsideration was filed on April 2, 2015 provided in Appendix as noted above.

Argument (Summary)

The case stands with undisputed facts of direct evidence establishing fraud, deceptions, etc., and facts and issues of law stand in merit

Townleys submit the facts and issues of law presented in this petition establish plain error by the trial court and review court that stand in denial of due process worked on Townleys. In addition, Townleys submit there are first impression issues in this case that this Court should consider and provide guidance to Washington courts. The issues clearly involve public interest issues that rest with facts by experts establishing wholesale deceptions, unfair business practices, etc., worked on the Townleys and the public at large. Said establishing wholesale deceptions, unfair business practices, etc., expanded from the start of the mortgage crisis and are yet addressed in the instant case. Historically, the great depression is the closest of the wide spread mortgage business deceptive practices, etc. Townleys understand the idea of closing banks—though criminal acts were established on many levels and in the instant case— is something contrary to the nation's best interests; yet, that fact is not enough to ignore the damages, irregularities, wholesale deceptions, unfair business practices, etc worked on them and other homeowners like the Townleys.

The first impression issues, the due process violations and the deceptive business practices set in direct evidence in this particular case, etc. meet the requirements for review of RAP 13.4(b)(1) through (4). Two first impression issues rest: 1. No bona fide purchaser stands in this case (no

innocent 3rd part bought Townleys home) as such, placing Townleys in the pre-eviction status is available here and stand as just and equitable relief, that does not work prejudice on innocent 3rd parties. 2. The Court's guidance in addressing the procedural steps that Townelys submitted in this case could act (inter alia) as a frugal use of the courts' resources that included eliminating the need to remand, given the facts and issues herein. If any of these are individual issues are not enough to warrant relief then the cumulative effect denied due process.

Res Judicata - The application of estoppel by res judicata to deny Townleys relief from eviction proceedings is invalid per *Shoemaker* (supra); nothing in this case stands in finality. Most favorable, if such a status did procedurally exist, then the only manner to uphold such a view is to determine harmless errors (or that the ultimately outcome would stand as res judicata) but that ignores the facts and issues of law that stand in direct evidence of fraud, robo signing, document factories designed to create false documents and the illusion of legal transfers where none existed factually, (like non-existent pooling trust), plus, the admissible corroborative evidence of whole sale deception consistent with determinations enumerated in *Klem* (supra). At this point the evidence presented by experts stands as ignored. The facts show violations of due process' prohibitive language on Townleys and against public interests,

when privileged business entities (Respondents herein) are allowed to to act contrary to and in violation of statutory mandates and breach their fiduciary duties and obligations owned. In other words, a harmless error view of the res judicata determination cannot properly be applied given the facts and issues of law in this case if finality stood, which is does not. Res judicata doctrine is not application because it requires some finality. Procedural history here shows no final judgment exists in the Federal District Court—the federal fact finding court stayed the proceedings awaiting Washington's ruling and guidance. Townleys' case was dismissed on a CR 12(b)(6) ruling without prejudice, which was before the many cases were rendered that hold the facts presented to form foundation for relief.

The claims in the counter complaint focused on pre- and post-eviction as well as common law fraud claims (CP 16). The undisputed facts of fraud and irregularities go to the heart of the issue of possession and were brought forward as equitable defense (*Skarperud v. Long* 40 Wn. App. 548, 699 P.2d 786 (1985) and *Motoda v. Donohoe* (infra); the latter quoted in relevant part,

> "An equitable defense, as defined by our court, arises when: [T]here is a substantive legal right, that is, a right which comes within the scope of juridical action, as distinguished from a mere moral right, and the procedure prescribed by statute for the enforcement of such right is inadequate or the ordinary and usual legal remedies are unavailing, it is the province of equity

> to afford proper relief, unless the statutory remedy is exclusive. Rummens v. Guaranty Trust Co., 199 Wn. 337, 347, 92 P.2d228 (1939)."

Id *Motoda v. Donohoe*, 1 Wn. App. 174, 459 P.2d 654 (Div I)

In *Shoemaker v. City of Bremerton*, 109 Wn. 2d 504 , 745 P.2d 858 (1987) and *Christensen v. Grant County Hosp. Distr.* (infra), it is clear that review court misapplied requirements of res judicata decision; the latter is quoted here in relevant part,

> "the party seeking application of the doctrine must establish that (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding, (2) the earlier proceeding ended in a judgment on the merits, (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding, and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied. *Reninger*, 134 Wn.2d at 449, 951 P.2d 782; *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997)"

Id. *Christensen v. County Hosp. Dist.*, 152 Wn. 2d 299, 96 P.3d 957, 1 Wn. (2004).

Therefore, the writ of restitution was formed on a CR 12(b)(6) ruling and stands active—a determination that *no facts* existed is contrary to a proper reading of the record. Res judicata does not exist.

Deceptive practices underlying foreclosure – Undisputed facts in this matter show deceptive and unfair business practices starting with the use of MERS as a beneficiary (CP 65 Ex A) via fraudulent transfers, robo signers, whole sale deception within document factores designed to produce falsified transfers, etc. Townleys mortgage was claim to be

placed in a mortgage trust "CWL..." when it fact it was not. The Securities and Exchange Commission could not find such an item in late 2011 and early 2012 (CP 65, Ex A, B and C). Respondent's refused to submit a Note after the Honorable (chief judge) Judge Karen Overstreet's order then to produce said note. (CP 11, Declaration, Ex. A and B).

Letters from Respondents' attorney and Litton Loan (servicer at the time) stating foreclosure is on hold, then taking the hold off 4 days prior to the sale denying Townleys denying Townleys the statutorily barring Townleys from obtaining a stay per the statutory 5 day notice requirement; all stand within and around act of deceptive, and unfair business practices that were worked on Townleys; plus, these by entities' offices stand as breaches of their fiduciary duties and obligations owed. (CP 11, Declaration, Ex. E, F). If any of these are individual issues are not enough to warrant relief then the cumulative effect denied due process.

The facts of direct and corroborating evidence showing said robo-signers specific to the documents used in Townleys' foreclosure (the Respondent used to take their home—not nebulous allegation but specific and direct evidence!) that were identified by the fraud examiner (attorney) Lynn Szymoniak—she was a mortgage robo-signing whistleblower that was awarded 14 million in a mortgage robo-signing case in North Carolina and stands as one of the most respected experts in the nation (Lynn

Szymoniak was on 60 minutes)—note, after her discovered far more deception was discovered and these conclusions stand well settle in case law.

These facts were properly before the court and established the foreclosure judgment was illegally obtained. (CP11, Ex. A and B). MERS, as beneficiary, in this case, is at least an irregularity because MERS does not meeting the requirements of RCW 61.24.005(2) and therefore, cannot transfer interest in the Deed of Trust to the Respondent Bank of New York Mellon and cannot assign the trustee to foreclose. Thereby, invalidating the entire foreclosure. Between *Bain* (supra) and *Klem v. Washington Mutual Bank* (supra) deceptive and unfair business practices stand clear in this case. Of note, criminal liability includes the omission of duty prescribed by law. The taking of Townleys' home given the facts show this act meets the legal definition of theft by fraudulent business practices. This Court has an opportunity to return the home and hold privileged entities accountable for their actions against the Townleys.

Counter complaint sounded in equitable defenses - It is proper to remand the Counter Complaint (CP 16) to the trial court under a general calendar to address CPA and common law claims surrounding the facts and issues of law. The issues of valid interest in the note and mortgage fraud, deception, etc, and placing Townleys to pre-eviction status is a first

impression case and is proper given there is no innocent purchaser of the subject property. These aspects are ripe for this Court's review and guidance; plus, the issue(s) meet RAP 13.4(b)(3).

No bona fide purchaser- In *Munden v. Hazelrigg* (supra), the court held it is proper for a counterclaim in an unlawful detainer proceeding after the issues of possession is resolved. It appears that after the possession is resolved, given no bona fide purchaser in this case, this Court can render guidance to Washington Courts regarding equitable or just remedy by placing the homeowner (Townleys) in pre-eviction status, therefore, allowing Townleys and like Homeowner access to the many new statutory benefits of RCW 61.24 et seq. The door is open to address this issue because no innocent 3rd party i.e. no bona fide purchaser stands in this case—no innocent 3rd party is waiting in the wings to move into the subject property. Addressing this issue would save a lot of the courts' resources. We are dealing with subsection of RCW 61.24's allowance under RCW 59.12's limited proceedings. Courts need guidance and therefore this petition should be allowed per RAP 13.4(b)(4).

Petition for Declaratory Judgment (Uniform Declaratory Act) was properly before trial court-

The Uniform Declaratory Act (RCW 7.24.010) invoked by the Townleys' Petition for Declaratory Judgment (CP 11) sought proper relief

regarding their home. Townleys' procedural steps were designed to insure the issue of limited or general jurisdiction was not a procedural obstacle to the relief they sought (CP 15); this is consistent with Fallahzadeh v. Ghorbanian (infra), quoted in relevant part,

> Ghorbanian's answer raised several defenses, including the illegality of the agreement. He also filed a partition action and a declaratory judgment action to declare the lease invalid. ***The trial court consolidated the unlawful detainer and the declaratory judgment actions*, but denied Ghorbanian's request to consolidate the partition action.**

Accord, 119 Wn. App. 596, 601, 82 P.3d 684 (emphasis added)

The case of *Grant City Fire Prot. Dist. v. City of Moses Lake,* the court held, quoted in relevant part,

> "This court has established a two-part test to determine standing under the UDJA. The first part of the test asks whether the interest sought to be protected is "'arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question.'" *Save a Valuable Env't v. City of Bothell,* 89 Wn.2d 862, 866, 576 P.2d 401 (1978) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Camp,* 397 U.S. 150, 152-53, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970)). The second part of the test considers whether the challenged action has caused "'injury in fact,'" economic or otherwise, to the party seeking standing. *Id.* at 866, 576 P.2d 401. Both tests must be met by the party seeking standing."

Id. 150 Wn. 2d 791, 83 P.3d 419 (2004) (Emphasis added)

Consistent with *Fallahzadeh v. Ghorbanian* (supra) the trial court did in fact have jurisdiction (Contrary to the court's view) to hear the issues and facts presented by Townleys. In addition, RCW 7.24 does not state

declaratory is not proper in limited jurisdiction court or is there case law regarding UDJA is specific for limited or just general proceeding.

To deny relief is contrary to any view of what is proper under the facts of this case. The facts shows illegal acts were worked in obtaining the foreclosure judgment; plus, the many irregularities of the strict compliance wording of RCW 61.24.040., etc. Townleys presented proper procedural steps and preserved the record by proper objections and uses of the tools available. Granting declaratory judgment in favor of Townleys would allow equitable and just remedy of placing Townleys (and like Homeowners) back to their pre-eviction status.

***Constitutional Issues, Due Process*:**

Constitutional violations raised for the first time is allowed per RAP 2.5(a)(3) and consistent with the holding of *Klem v. Washington Mut. Bank* (2013). Washington Courts are required to apply Washington State Law consistently when the facts warrant. Due process' prohibitive language enumerated in Article 1 § 21 of the Wash. Const., the privileges and immunities clause, and the Fourteenth Amendment Equal Protection Clause are substantially identical and citing prior rulings reaching the same conclusion. In other words, failure to apply case law consistently to the facts here stands as a due process violation and warrants relief.

Wash Const. Article 1 § 21 is violated when the fundamental

rules of evidence are not followed by allowing admission of documents obtained in breach of the plain language of RCW Title 5 chapter 5.45.010 & .020; RCW 5.46.010 and .020; Washington Deed of Trust' s codified under RCW 61.24 et seq., and when said evidence (documents) were created with out of thin air void of required legal mandates, and used to deceive the Courts and Townleys—create the illusion of Respondent's legal standing in a note when no legal standing existed. Respondents were artful in their deceptions. These facts showed a wrongful eviction based on an illegally obtained a foreclosure judgment. Townleys attached a trial court order of a similarly situated individual whose Writ of Restitution were vacated due to the fact, in that case MERS was their beneficiary and the Court applies *Bain* (supra) (See Exhibit A to the 69194-5-I Opening Brief). Townleys also requested a jury trial during the Unlawful Detainer proceeding per RCW 59.12.130 but the request was ignored by the Commissioner. (See RP 5-17-12- Certified Transcript of Eviction hearing[15])

Absence of Findings of Facts and Conclusions of Law- Townleys timely and properly filed a motion for Findings of Facts and Conclusions of Law

[15] "This new day we're asking for the Court to grant us a jury trial per 59.12.130 that would allow us to go in with all of the facts, and allow them to also come in with their facts, and then have it decided. The sale did not – it could not be completed because it could not be perfected. The sale did not – it could not be completed because it could not be perfected and thus we are still sitting here with the facts that are undisputed by plaintiff." – Stephanie Tashiro-Townley (RP-5-17-12)

with their proposals attached per CR 52 (CP 15), which was part of their Petition for Declaratory Judgment. No the findings of facts and conclusions of law were rendered. As the court concluded in *Wesco Distribution v. MA Mortenson Co.* (supra), a civil action required a remand to gain the insight of the trial court to enable the determinations by the review court in making their decisions; quoted here in relevant part,

> "In Bowman v. Webster,[13] our Supreme Court held that where the findings of fact are incomplete or defective, the reviewing court may look to the oral or memorandum decision of the trial court. The court there determined that the findings and conclusions were inadequate for review. As a result, and because there was no oral or memorandum decision to supplement the findings and conclusions, it remanded the case with instructions to the trial court to enter findings on the material issues and conclusions."

Id. 88 Wn. App. 712, 946 P.2d 413 (Ct. App. 1997),

E. **Conclusion**

The Townleys submit this petition for discretionary review and the facts and issues of law stand in merit and meet requirements of RAP 13.4(b)(1), (b)(2), (b)(3) and (b)(4). The 1st impression issues; two of them are valid and ripe questions. The Townleys ask this Court to grant petition for review given their need for equitable relief and for this Court to render guidance for regarding the first impression questions.

May 4, 2015

Respectfully submitted,

Stephanie Tashiro-Townley, For Petitioners / Appellants Townleys

APPENDIX

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWABS, INC. ASSET-BACKED CERTIFICATES, SERIES 2005-10, Respondents, v. STEPHANIE TASHIRO-TOWNLEY AND SCOTT C. TOWNLEY, Appellants.	No. 69194-5-I DIVISION ONE UNPUBLISHED OPINION FILED: March 2, 2015

LEACH, J. — Before the nonjudicial foreclosure sale of their home, Stephanie Tashiro-Townley and Scott Townley filed suit in federal court against entities associated with the foreclosure, including Bank of New York Mellon ("BNYM"). BNYM later purchased the property at the sale. When it filed an unlawful detainer action in King County Superior Court, the Townleys filed counterclaims and other pleadings asserting claims similar to those they raised in their federal court complaint. The superior court dismissed or denied all of the Townleys' claims because they exceeded the scope of the unlawful detainer proceedings. It then granted BNYM a writ of restitution.

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The Townleys appeal, arguing that their counterclaims and other requests for relief came within the scope of unlawful detainer proceedings. Because we conclude that the doctrine of res judicata bars the Townleys' claims, we affirm.

FACTS

On July 26, 2005, the Townleys obtained a mortgage loan from Countrywide Home Loans Inc. They executed a promissory note in the amount of $297,000 secured with a deed of trust. The deed of trust identified Mortgage Electronic Registration Systems Inc. (MERS) as the beneficiary.

In January 2009, the Townleys stopped making monthly payments on the loan. Six months later, the Townleys received a notice of default.

On July 17, 2009, MERS assigned its interest in the deed of trust to BNYM, as Trustee. BNYM then appointed Northwest Trustee Services Inc. (NTS) as its successor trustee.[1]

On September 14, 2010, NTS issued a notice of trustee's sale, scheduling the sale for October 29, 2010. NTS later postponed the sale to December 3, 2010.

[1] In November 2009, the Townleys filed for bankruptcy in the U.S. Bankruptcy Court for the Western District of Washington. In May 2010, BNYM moved for relief from the bankruptcy stay. The Townleys opposed the motion, arguing that BNYM lacked proof that it was the noteholder on the loan and thus lacked standing. The bankruptcy court denied confirmation of the Townleys' bankruptcy plan and dismissed the case.

On November 16, 2010, the Townleys filed a complaint against BNYM, MERS, and others in federal district court. The complaint alleged irregularities in the foreclosure sale, wrongful foreclosure, and violations of the deed of trust act[2] and Consumer Protection Act (CPA).[3] The complaint alleged in part that the NTS lacked authority to foreclose because it acquired its interest in the property from BNYM, who in turn acquired its interest by assignment from MERS. Because MERS did not hold the note at the time of its assignment, the Townleys claimed that neither BNYM nor its assignee received any interest in the property, making the foreclosure sale void. The complaint further alleged noncompliance with statutory notice requirements and unlawful actions designed to manufacture "an alleged waiver by the [Townleys] of their rights to challenge the sale." They sought declaratory relief and damages. They did not move to restrain the sale.

On December 3, 2010, BNYM purchased the Townleys' property at the foreclosure sale.

In March 2011, the Townleys filed an amended complaint in federal district court, again alleging that the foreclosure sale was unlawful and void.

In June 2011, the federal district court dismissed the Townleys' complaint. The court ruled that the Townleys waived most of their claims by failing to restrain the foreclosure sale. The court further ruled that the Townleys failed to

[2] Ch. 61.24 RCW.
[3] Ch. 19.86 RCW.

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state a claim for relief under the CPA and could not seek injunctive relief under Title 59 RCW. The Townleys appealed to the Ninth Circuit Court of Appeals.

On February 24, 2012, BNYM filed this unlawful detainer action, seeking possession of the foreclosed property. The Townleys filed "Counter and Cross Complaints" against BNYM, MERS, and others. They sought damages and declaratory and injunctive relief for misrepresentation, fraud, breach of contract, unjust enrichment, violations of the CPA, and other causes of action. They alleged that the foreclosure was accomplished via fraudulent business records and practices.

On March 7, 2012, the Townleys moved to convert the unlawful detainer proceeding to a proceeding for damages under the court's general jurisdiction. The court denied the motion. On the same date, the Townleys filed a motion in federal court seeking relief from the district court's dismissal of their complaint under Fed. R. Civ. P. 60. The motion alleged newly discovered evidence of fraudulent business records. The new evidence consisted of affidavits of alleged experts regarding "robo-signed" documents and other irregularities in records associated with the foreclosure. The federal court later denied the motion.

On March 8, 2012, the Townleys filed a petition for declaratory relief in the unlawful detainer proceeding. The petition asserted the same claims raised in the Townleys' Fed. R. Civ. P. 60 motion, including claims based on robo-signed

documents. In an attached affidavit, Stephanie Tashiro-Townley alleged that she first learned of the evidence supporting these claims in December 2011, when she contacted a "certified fraud examiner and expert." The petition sought a declaration that BNYM's interest in the property was based on fraudulent documents and a void foreclosure sale. In the alternative, the petition sought an order for BNYM to cease and desist any actions "until the facts of new and relevant evidence of the fraudulent foreclosure . . . is properly reviewed by the [federal] Court."

On April 25, 2012, BNYM moved to dismiss the Townleys' "Counter and Cross Complaints" under CR 12(b), arguing that they exceeded the scope of unlawful detainer proceedings. Shortly thereafter, BNYM filed a motion for writ of restitution for possession of the property.

On May 11, 2012, the superior court denied the Townleys' petition for declaratory relief. On May 17, 2012, a court commissioner dismissed the Townleys' "Counter and Cross Complaints" and granted BNYM a writ of restitution.[4] Following unsuccessful motions for revision and reconsideration, the Townleys appealed.[5] We stayed the appeal pending the outcome of the Townleys' appeal of the federal district court's decision.

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[4] The May 11 and May 17 orders do not state whether the dismissals/denials are with or without prejudice.

[5] Contrary to BNYM's assertions, the Townleys' appeal was timely filed. On May 21, 2012, the Townleys timely moved for reconsideration of the order

On January 21, 2014, the Ninth Circuit affirmed the federal district court's dismissal of most of the Townleys' claims for relief. The court ruled that the Townleys' "waived those claims by failing to bring an action to enjoin the foreclosure sale." The court vacated the dismissal of the Townleys' CPA claim, however, and remanded for further proceedings. We then lifted the stay in this appeal and requested and received supplemental briefing on the preclusive effect of the federal courts' decisions.

DECISION

We must decide if the superior court erred in dismissing the Townleys' counterclaims and denying their petition for declaratory relief. We review rulings dismissing or denying claims as a matter of law de novo.[6] We may uphold such rulings on any theory supported by the record.[7]

The superior court gave two reasons for dismissing the counterclaims and denying declaratory relief: the Townleys waived the claims by not restraining the

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denying their petition for declaratory relief. On May 27, 2012, the Townleys moved to revise the May 17, 2012, commissioner's rulings dismissing their counterclaims and granting a writ of restitution. At the July 13, 2012, hearing on the motion for revision, the superior court rejected arguments that the Townleys' motion to revise was not filed on May 27, 2012. BNYM has not addressed or challenged that ruling. On July 13, 2012, the court denied the motions for revision and reconsideration. The notice of appeal filed on August 10, 2012, was therefore timely. RAP 5.2(a).

[6] In re Det. of A.S., 91 Wn. App. 146, 157 n.6, 955 P.2d 836 (1998) (motions to dismiss involving pure questions of law are reviewed de novo), aff'd 138 Wn.2d 898, 982 P.2d 1156 (1999).

[7] Korslund v. DynCorp Tri-Cities Servs., Inc., 121 Wn. App. 295, 317, 88 P.3d 966 (2004).

foreclosure sale and the claims exceeded the scope of the unlawful detainer proceeding.[8] But because the record includes some evidence that the Townleys relied to their detriment on representations that the foreclosure sale was on hold,[9] their failure to restrain the sale arguably did not waive their claims.[10] And to the extent their claims bore on their right to possession and damages incident to the denial of that right, they arguably came within the scope of the unlawful detainer proceedings.[11] We do not resolve those questions, however, because we conclude that res judicata barred the claims.

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[8] Both the court and opposing counsel noted that the Townleys could bring a claim for damages in a separate proceeding.

[9] Stephanie Tashiro-Townley alleged that prior to the sale, she received letters from the bank and the loan servicing agent stating that the sale was on hold.

[10] See Rucker v. NovaStar Mortg., Inc., 177 Wn. App. 1, 18-19, 311 P.3d 31 (2013) (waiver is applicable only where it is equitable under the circumstances; no waiver for failure to restrain sale if foreclosed party relied on misrepresentation that sale would not take place); Cox v. Helenius, 103 Wn.2d 383, 389-90, 693 P.2d 683 (1985) (where a "trustee undertakes a course of conduct reasonably calculated to instill a sense of reliance" by the borrower and then acts inconsistently therewith, the foreclosure sale is void); Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 571-72, 276 P.3d 1277 (2012) (where borrower reasonably believed sale would be canceled, purchaser had constructive knowledge of the procedural defect, and borrower did not sleep on rights, waiver did not apply). In addition, damage claims based on fraud, misrepresentation, or the CPA are not waived by failure to restrain the sale. RCW 61.24.127.

[11] Savings Bank of Puget Sound v. Mink, 49 Wn. App. 204, 208-10, 741 P.2d 1043 (1987) (party in unlawful detainer may raise counterclaim "that will void the sale and thus destroy any right to possession in the purchaser at the sale"); Kelly v. Powell, 55 Wn. App. 143, 150-52, 776 P.2d 996 (1989) (counterclaim for specific performance of option to purchase could be heard in unlawful detainer proceeding because its resolution was necessary to determine the right of possession); Peoples Nat'l Bank of Wash. v. Ostrander, 6 Wn. App.

Res judicata prohibits the relitigation of claims that either were litigated or, in the exercise of reasonable diligence, could have been litigated in a prior action.[12] Courts developed the doctrine to prevent relitigation of previously determined causes and to curtail harassment in the courts.[13] For the doctrine to apply, there must be a final prior judgment[14] and a current action that share an identity of (1) subject matter, (2) causes of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.[15] Whether res judicata applies presents a question of law.[16]

BNYM argues, and we agree, that each of the prerequisites for res judicata is present here. The federal district court's decision is a final judgment on the merits.[17] The federal and superior court actions have the same subject matter—i.e., the sale and right to possession of the Townleys' property. The

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28, 31-32, 491 P.2d 1058 (1971) (fraud in foreclosure process is an equitable defense that can be heard in an unlawful detainer action); Mead v. Park Place Props., 37 Wn. App. 403, 406, 681 P.2d 256 (1984) (unlawful detainer proceeding "'is limited to the primary issue of the right of possession, plus incidental issues such as restitution and rent, or damages'" (quoting Phillips v. Hardwick, 29 Wn. App. 382, 386, 628 P.2d 506 (1981))).

[12] King's Way Foursquare Church v. Clallam County, 128 Wn. App. 687, 693, 116 P.3d 1060 (2005).

[13] Bordeaux v. Ingersoll Rand Co., 71 Wn.2d 392, 395, 429 P.2d 207 (1967).

[14] Pederson v. Potter, 103 Wn. App. 62, 67, 11 P.3d 833 (2000).

[15] Rains v. State, 100 Wn.2d 660, 663, 674 P.2d 165 (1983).

[16] Landry v. Luscher, 95 Wn. App. 779, 782-83, 976 P.2d 1274 (1999).

[17] For purposes of res judicata, a judgment becomes final at the beginning, not the end, of the appellate process. City of Des Moines v. Pers. Prop. Identified as $81,231 in U.S. Currency, 87 Wn. App. 689, 702, 943 P.2d 669 (1997).

causes of action, or more specifically, the rights, evidence, and transactional facts involved in the two proceedings, are substantially the same.[18] The persons and parties and the quality of the persons against whom the claims are made are essentially the same.

The Townleys do not address the elements of res judicata. Nor do they cite any relevant authority. Courts hold pro se litigants to the same standard as attorneys and must comply with all procedural rules.[19] Under the Rules of Appellate Procedure, an appellant must provide "argument in support of the issues presented for review, together with citations to legal authority."[20] Arguments not supported by meaningful analysis or citation to pertinent authority need not be considered.[21] Virtually all of the Townleys' arguments in their supplemental briefs do not comply with these requirements.

Furthermore, as briefed, the Townleys' arguments do not persuade us. They contend the federal court decisions do not have preclusive effect because they misapplied Washington law. But for purposes of issue or claim preclusion, courts generally consider the correctness of the prior decision immaterial so long

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[18] See Rains, 100 Wn.2d at 664.
[19] In re Marriage of Olson, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).
[20] RAP 10.3(a)(6).
[21] Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

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as the parties received a full and fair opportunity to litigate the issue or claim.[22] The Townleys fail to cite any authority supporting an exception to this rule.

The Townleys also contend that they did not discover the evidence supporting their fraud claim until after the federal district court's decision and therefore the federal court decisions do not preclude their fraud claim in this case. They concede, however, that they presented the new evidence to the federal district court in their motion under Fed. R. Civ. P. 60 for relief from judgment. The federal court addressed and denied that motion. The Townleys nowhere explain why that opportunity to challenge the sale based on their new evidence was insufficient. Nor do they demonstrate that they could not have discovered the alleged experts and new evidence before the federal district court's decision by the exercise of due diligence.

Finally, we note that the Townleys' claims based on alleged newly discovered evidence of fraud were arguably properly dismissed on the ground that they have no effect on the Townleys' right to possession.[23]

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[22] See Thompson v. Dep't of Licensing, 138 Wn.2d 783, 794-800, 982 P.2d 601 (1999) (where party had a full and fair hearing before prior judgment, interests of finality, judicial economy, and the desirability of avoiding inconsistent results favor giving preclusive effect to the prior judgment even if it appears substantively erroneous).

[23] See generally Mendoza v. JPMorgan Chase Bank, N.A., 228 Cal. App. 4th 1020, 175 Cal. Rptr. 3d 880 (2014).

In summary, we conclude that on the briefing presented, the Townleys' counterclaims and petition for declaratory relief were or could have been litigated in the federal court proceedings and are therefore barred by the doctrine of res judicata.[24]

The Townleys' remaining claims, including their arguments relating to equal protection and their right to a jury trial, lack merit and/or are rendered moot by our decision. We deny the parties' requests for attorney fees on appeal.

Affirmed.

Leach, J.

WE CONCUR:

[24] See Holman v. Tjosevig, 136 Wash. 261, 262-63, 239 P. 545 (1925) (counterclaim in action to enforce judgment which could have been raised in action resulting in prior judgment was barred by res judicata).

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MOTION TO RECONSIDER

No. 69194-5-I

COURT OF APPEALS , DIVISION ONE OF THE STATE OF WASHINGTON

SCOTT C TOWNLEY and STEPHANIE A TASHIRO-TOWNLEY,

Defendants/Appellants

vs.

BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK, TRUSTEE FOR CERTIFICATE HOLDERS CWABS, INC. ASSET BACKED CERTIFICATES, 2005-10, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AND OCWEN LOAN SERVICING LLC
Plaintiffs/Respondents

Motion to Reconsider

1. Identify of Moving Party

Appellant, Scott C Townley, Stephanie Tashiro-Townley, asks for the relief designated in Part 2.

2. Statement of Relief Sought

Reconsideration of the March 2, 2015 decision (attached hereto) to apply law, [Const. statutory, case law, infra] under the particular facts of this case, correctly—review court's ruling of duty and obligation owed "stands manifestly unreasonable, or untenable grounds, or for untenable reasons" (infra)— because MERS (infra) was the named (illegal) beneficiary, therefore, the eviction of Appellants (individuals) from their home stands contrary to Washington law defining strict compliances of RCW 61.24 et. seq,; therefore, the taking of Appellants Home was prohibitive of relevant Constitutional language.

3. Facts Relevant to Motion

Background

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[Bolded text highlighting facts misstated in decision for sake of clarity.]

Appellants stood in possession of their single family home located in Maple Valley, Washington (Townleys' home) purchased in 1996. In 2005, Appellants refinanced with *Countrywide Mortgage* (where improper acts were worked on Appellants). In, 2008, Defendant Litton Loan appeared as alleged servicer. Townleys were misled—payments to Countrywide Mortgage were not transferred, confusion ensued (Countrywide was the alleged note holder—not the owners of their home)— Litton Loan participated in Notice of Default to Appellants, adding to further confusion.

In 2008, Townleys failed business (ripple effect of mortgage crisis) impacted their funds. Townleys attempted to get a loan modification until around July 2009 when the loan modification was formally denied—the confusion, misinformation, banks losing documents, requesting resending of documents again and again, while different information was stated, different information presented ... Appellants were diligent and consistent, yet, the tap dance of confusion regarding loan modification continued finalizing is denial of loan modification—Townleys are the quintessential American family; Mom, Dad and loving children who held a happy, cared for home (house-real estate).

Townleys received an unsigned Notice of Default on July 8, 2009 taped on their garage designating an unknown entity named, Bank of New York Mellon as the mortgagor and listed as the party issuing the default (CP 65, Ex A). Northwest Trustee Services operated as the Trustee.

The Assignment of Deed of Trust designated Mortgage Electronic Registration Systems Inc., (MERS) as beneficiary to Bank of New York Mellon; which was not dated until after the Notice of Default had been taped to the door, on July 17, 2009 and filed until July 24, 2009, as improper time lines, improper acts, and violations (contrary) of strict compliance of Washington's Deed of Trust Act (RCW 61.24 et seq. (See, the Assignment of Deed of Trust at CP 11, Affidavit of Lynn Szymoniak, Ex A).

Specifically, the Appointment of Successor Trustee from LandSafe Title to Northwest Trustee Services was not dated until after the Notice of Default was taped to Townleys' garage door (July 8); namely, dated July 20, 2009 and filed July 24, 2009 (See, the Appointment of Successor Trustee at CP 11, Affidavit of Lynn Szymoniak, Ex B). Notice of Sale was filed on August 21, 2009 (CP 30, page 14).

Facts of this nature, that worked prejudice on Townleys, are cumulative of violations of Deed of Trust act and fundamental principles enumerated of fixed law regarding business entities requirements to follow statutory plain language in order to accomplish proper notice and County filings requirements, etc. Business entities objectives were to avoid filing fees, yet, such acts were contrary to fundamental principles, volatile of proper notice, strict compliance of statutory scheme, and mandates of proper handling business records (normal course of business criteria, as established in Washington (RCW Title 5) during the relevant times herein), etc.

Townleys filed a Chapter 13 in the United States Bankruptcy Court in Western Washington in Seattle on or about late November, 2009. Bank of New York Mellon filed a Motion for Relief of Stay on or around April, 2010 in the US Bankruptcy Court. Townleys filed a Response to the Motion for Relief of Stay. On June 8, 2010, The Honorable Chief Judge Karen Overstreet stated the Note attached to the Motion for Relief of Stay **did not prove ownership** by Bank of New York Mellon. The Chief Judge's order was documented on the docket dated 6/11/2010 of the case (#09-22120) (See, CP 11, Declaration, Ex A). Quoted here,

> "The Bank will get a certified copy of the original note holder with a declaration and file it with the Court and send a copy to the debtors.
> (CP 11, Declaration, Ex A, 6/11/2010 Minute Ruling / Order)

This order was ignored by the directed parties; no "*certified copy of the original note holder with a declaration*" was ever filed, served, or produced. The affidavit filed by Litton Loan's Richard Williams (CP 11, Declaration, Ex B) **clearly stated that Litton Loan nor the bank possessed the Note at that time, over a year later after the Notice of Default had been issued** (See, CP 65, Ex A).

Townleys filed an Objection to the Claim of these parties standing on August 18, 2010. This was scheduled it to be heard on October 7, 2010 and, at the same time, they filed an Answer to the Trustees' Motion to Deny Confirmation of Plan and Dismiss the Case. The case was dismissed prior to time to allow The Honorable Judge Overstreet's order to be addressed by Townleys—a timely appealed was filed

by Townleys to the Bankruptcy Appellate Panel in 2010. Subsequently, a timely appeal to the Ninth Circuit of Appeals in 2011 addressing the Bankruptcy Court's ruling.

After the dismissal by the US Bankruptcy Court, Townleys received an Amended Notice of Sale dated on or about September 7, 2010. Townleys filed a Complaint on October 22, 2010 and finally docketed in November. Townleys served the Complaint as a courtesy to Northwest Trustee on October 22 by and through a service agent. The sale was placed on hold and rescheduled to December 3, 2010, 94 days after the date of the Amended Notice of Sale.

On November 8th, Litton Loan Servicing and Bank of New York Mellon sent letters stating that the sale was on hold (CP 11, Declaration, Ex E). **Townleys believed their sale was on hold.**

On November 30, 2010, Townleys informed Bank of New York Mellon and Northwest Trustee of a Lis Pendens that the Townleys were filing at the King County Records office (CP 11, Declaration, Ex F). **Townleys received a letter from the Bank of New York Mellon attorney that the sale would continue; thus, allowing them only 3 days to enjoin the sale making it impossible for them to do so.**

On December 3, 2010, Townleys **informed all investors and the auctioneer of the contested sale due to the active Federal District Court lawsuit.** December 3, 2010, the house reverted back to the alleged lender, Bank of New York Mellon. Trustees Deed was issued on December 10, 2010.

Townleys continued writing, serving and filing pleadings in Federal District Court until September 23, 2011, when the Motion of Reconsideration regarding the dismissal of the case was filed by Judge Coughenour. Townleys timely filed a Notice of Appeal to the Ninth Circuit in the Federal District Case. The direct appeal was regarding the first amended complaint filed on March 2011.

In late November, 2011, Townleys uncovered an experienced fraud examiner who reviewed the Assignment of Deed of Trust and Appointment of Successor Trustee for evidence of "robo-signing", illegal, improper activity performed by banks to push through paperwork without the proper safeguards for both homeowner or bank. An affidavit of fraud was written by Lynn Szymoniak (CP 11, Affidavit of Lynn Szymoniak).

Townleys also contacted the Securities and Exchange Commission to obtain the Pooling and Servicing Agreement (PSA) regarding the alleged trust that Bank of New York Mellon stated that they represented in the foreclosure (CWL, Inc. Asset-Backed Certificates, Series 2005-10). Securities and Exchange Commission **(SEC) found no trust by that name** (CP 65, Ex B and Ex C).

69194-5 Case Procedural Facts

In February 24, 2012, a Summons and Complaint for Unlawful Detainer, Bank of New York Mellon, Trustee for CWABS, Inc. Asset-Backed Certificates, 2005-10, in King County Superior Court. CP 1 and 3.

Appellants (Defendants), Scott C Townley and Stephanie A Tashiro-Townley, otherwise known as Townleys, were owners of a single family home in Maple Valley, Washington (Townleys' home). (CP 1 and 3).

Townleys filed a Motion requesting a change from Limited to General Proceeding on March 7, 2012 (CP 7). A declaration was also filed with this Motion with seven exhibits. The exhibits are the same as attached to the Declaration in Support of the Petition for Declaratory Judgment (CP 11 below).

Townleys served the Objection to the Unlawful Detainer (CP 10)and the Petition for Declaratory Judgment on March 8, 2012 (CP 11). A Declaration in Support with the following exhibits was also filed on the same day (CP 11): Certified Transcript of 6/11/2010 hearing from US Bankruptcy Case #09-22120 (CP 11, Declaration, Ex A), Affidavit of Richard Williams of Litton Loan (CP 11, Declaration, Ex B), official docket for US Bankruptcy case #09-22120, #33, 36, and 37 respectively (CP 11, Declaration, Ex C), Certified Transcript of 8/26/2010 hearing from Bankruptcy Case #09-22120 (CP 11, Declaration, Ex D), Letters from Bank of New York Mellon attorney and Litton Loan dated November 8th (CP 11, Declaration, Ex E), Letter from Bank of New York Mellon attorney on November 30th (CP 11, Declaration, Ex F), and case docket for C10-1720 (CP 11, Declaration, Ex G). The Affidavit of Lynn Szymoniak and Declaration of Expert Cheye Larson were filed with the Petition (CP 11) were also attached to the Petition for Declaratory Judgment.

In the Affidavit of Lynn Szymoniak, Ms. Szymoniak stated,

> "In thousands of Assignments I have examined, new "replacement" Assignments have been prepared and presented to Courts without any disclosure to the Court or to the Homeowner / Defendants that the original Assignments were lost. Many of these Assignments were prepared by Litton Loan Servicing. Countrywide Trusts, including the CWL Trust herein, are among the Trusts that are unable to produce the original Assignments and regularly Attempt to substitute Assignments prepared by mortgage servicing companies. The Bank of New York Mellon, the trustee herein, frequently cannot or has not produced the Assignments to the Trust supposedly obtained by the Trustee at the inception of the Trust."

(CP 11 – Affidavit of Lynn Szymoniak, pg 11, #20)

Affiant Szymoniak goes on to state in her conclusion, that

> "For all of the reasons set forth above, it is my opinion that the mortgage documents identified as Exhibits A (Assignment of Deed of Trust) and B (Appointment of Successor Trustee) are fraudulent."

(CP 11 – Affidavit of Lynn Szymoniak, pg 13, #25)

In the Declaration of Expert Cheye Larson, the

> "Given the evidence of mortgage fraud records removal in the MERS database, I declare the evidence documented above to be corroborative and supportive of the direct business fraud evidence by Expert Szymoniak. I also declare that all records from the defendants in the above captioned case need to be subpoenaed and depositions taken to determine the level of fraud and collusion involved. Finally, I declare after my review of all relevant documentation that it is my opinion that I could find no proof of legal affiliation by Bank of New York Mellon nor the Trust."

(CP 11 – Declaration of Expert Cheye Larson, pg 4, ll 15-19)

Townleys also filed an Objection to the Unlawful Detainer (CP 8), Answer and Affirmative Defenses (CP 12) on March 13, 2012. A Motion for Findings of Fact and Conclusions of Law was filed on April 6, 2012 (CP 15) with a Notice to the Clerk regarding Missing Exhibits (CP 14).

A Counter and Cross Complaint fee was paid and the pleading filed on April 6, 2012 (CP 16).

On May 7, 2012, Defendants re-filed Petition for Declaratory Judgment (CP 40), Motion to Change Proceedings from Limited to General (CP 41), and Motion to Strike Plaintiff's Motion to Dismiss (CP 42).

On May 9, 2012, Plaintiffs filed a Response to Defendants Petition (CP 47) with a Declaration (CP 48), a Response to Defendants Motion to Change Proceedings from Limited to General (CP 49). Objection (CP 52).

Townleys filed a Reply to the Objection on May 10, 2012 (CP 57). The Petition for Declaratory Judgment was heard on May 11, 2012 with the Motion to change from limited to general proceeding, motion to strike and motion to dismiss counter and cross complaint. The Motion to Change from Limited to General Proceeding was denied (CP 61), and the Petition for Declaratory Judgment was denied (CP 62) due to lack of subject matter jurisdiction. The Motion to Strike was denied (CP 63).

On May 15, 2012, Townleys filed a Response to Motion for Writ of Restitution (CP 65). In addition to the Response, Townleys filed the Declaration in Support of the Response to the Motion for Writ of Restitution including the following exhibits: Notice of Default (CP 65, Ex A), Email and attached letters from Securities and Exchange Commission (CP 65, Ex B), Email from Securities and Exchange Commission dated January 26, 2012 (CP 65, Ex C), docket from C10-1720 (CP 65, Ex D), and corroborating complaint filed against top five (5) banks regarding improper business practices including "robo signing" (CP 65, Ex E) and audit (CP 65, Ex F).

On May 17, 2012, Commissioner Hollis Hill signed orders to dismiss the Counter and Cross Complaints (CP 69) and for Plaintiff's Writ of Restitution (CP 70).

Townleys filed the Motion for Reconsideration (CP 73) and Motion for Stay of Writ of Restitution on May 21, 2012 (CP 74). On May 25, 2012, Bank of New York Mellon filed a Response to Motion for Stay (CP 76) and Response to Motion for Reconsideration (CP 78).

Townleys were evicted in late May with their four children and were homeless until finding a residence on June 6, 2012. On May 30, 2012, Townleys filed a Motion for Revision of Commissioners Orders (CP 81), Motion to Extend Time (CP 83), Statement of Additional Authorities (CP 84), and the Notice of Appeal regarding only the Writ of Restitution (CP 87). Bank of New York Mellon filed a response to Motion for Revision on June 5, 2012 (CP 95).

Townleys filed a Reply to Bank of New York Mellon"s Response to the Motion for Revision on June 7, 2012 (CP 96). On July 13, 2012, the Motion for Reconsideration and Motion for Revision came before the court. Orders denying the Motion for Revision (CP 105) and Motion for Reconsideration (CP 106) were issued. The Notice of Appeal was timely. Filed on August 10, 2012.

Opening brief covered the following topics: Equal Protection Violation, Remand Vacating Writ of Restitution due to recent case law; Facts Sufficient for Jury Trial per RCW 59.12.130; Equitable Defenses Sufficient to Justify Relief per Bain; Declaratory Judgment was properly before the trial court per CR 57 and RCW 7.24 and Remand is Necessary due to lack of requested Findings of Fact and Conclusions of Law.

Division 1 decision on 69194-5-I was filed March 2, 2015 (attached). Incorporated herein by reference for the sake of brevity is the Verbatim Transcript of the hearing date July 13, 2012 (RP of hearing date: 5-17-12 and 7-13-12) and Judge Erlick's Order vacating the Writ of Restitution and staying the Unlawful Detainer Action. Also, incorporated herein by references are the pleadings filed, including but not limited to Appellants' Opening brief filed 11/26/2012; cited as Appendix A- 12-2-03428-1 SEA.

Grounds for Relief and Argument

Grounds for Relief

1. It is a miscarriage of justice, contrary of Washington's Constitutional due process's prohibitive language, violation of equal protection of law and contrary to the review court's duty owed of reviewing issues presented given the procedural history and facts of this case that form Constitutional issues submitted for relief that lead to allowing Appellants' eviction to stand when (inter alia) MERS was the beneficiary in the foreclosure process.

2. The procedural fact of finality in the definition of res judicata doctrine are not present in this case, as such, denial of relief for Appellants under res judicata is not applicable to the instant case.

3. It was reversible error to deny relief when the procedural steps Appellants' submitted in motions during the eviction proceedings were steps designed to place Appellants properly before the Court in order to address the myriad of issues sounding in valid relevant law and invoking applicable prohibitive language of Constitutional magnitude while the Trial Court and review Court's failure to address Appellant's motion for Findings of Fact and Conclusions of Law per CR 52 further prejudiced Appellants by denying them a complete record that formed the basis for the trial court's rulings.

ARGUMENT

1. IT IS A MISCARRIAGE OF JUSTICE, CONTRARY TO WASHINGTON'S CONSTITUTIONAL DUE PROCESS AND (federal and state) EQUAL PROTECTION PROHIBITIVE LANGUAGE TO ALLOW APPELLANT'S EVICTION TO STAND WHEN THE JUDGMENT OBTAINED AND THE DOCUMENTS SUBMITTED BY MOVANTS HELD "MERS" AS THE BENEFICIARY and THE OTHER FACTS SUBMITTED TO THE TRIAL COURT THAT FORMED A FOUNDATION FOR VALID CLAIMS, WHEREAS, DETERMINATION OF VALIDITY OF THOSE FACTS RESTED IN THE PROVINCE OF A JURY, WHEREAS, DENIAL OF JURY TRIAL IN THE EVICTION PROCEEDING STANDS AS A CONSTITUTIONAL VIOLATION WORKED ON APPELLANTS.

The Bank of New York Mellon's (herein after movant) "Motion to Issue the Writ of Restitution" (CP 29, filed May 1, 2012) was heard on May 17, 2012. Movant's supporting documents included a 40 page Affidavit of their Counsel Scott Grigsby (CP 30). In said affidavit was a Notice of Sale (CP 30, pg 14) stating the following, quoted in relevant part,

> "Grantors: Northwest Trustee Services, Inc. The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificate holders CWL, Inc. Asset-Backed Certificates, Series 2005-10"

And

> "which is subject to that certain Deed of Trust dated 07/26/05, recorded on 08/01/05, under Auditor's File No. 2005080102392, records of King County, Washington, from Stephanie A Tashiro-Townley, and Scott C Townley, wife and husband, as Grantor, to Landsafe Title of Washington, as Trustee to secure an obligation "Obligation" in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for Countrywide Home Loans, Inc., as Beneficiary, the beneficial interest in which was assigned by Mortgage Electronic Registration Systems, Inc. to The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificateholders CWL, Inc. Asset-Backed Certificates, Series 2005-10, under an Assignment / Successive Assignments recorded under Auditor's File No. 20090724001895."

Id. CP 30, pg 14

MERS is clearly listed as the beneficiary for Movant. The document states, "...*Mortgage Electronic Registration Systems, Inc.*, solely as nominee for Countrywide as *Beneficiary*. ..." (Emphasis added).

The Washington Supreme Court determined homeowners in Washington, like Townleys, whose foreclosures designated "MERS" as the beneficiary were unlawful foreclosures. The eviction of Appellants from their home was founded on a judgment that stands contrary to Washington law. (Accord,

Bain v. Metropolitan Mortg. Group, Inc., 175 Wn 2d 83, 285 P.3d 34 (2012)) Given the additional facts submitted (Attached to CP 11 Declaration of Cheye Larson and Affidavit of Lynn Szymoniak) that formed foundation of a factual basis for relief; namely, fraud, misrepresentation, etc., rested in the province of the jury. Denial of right to jury trial in the eviction proceeding, when access to trial statutorily recognized in merit of due process, under the facts of this particular case, stand as violations of due process and right to trial by jury. (See, Wash. State Const. Article 1, Sections 12 and 21, respectively)

To deny Appellants relief is as an improper application of Washington law and reversible error by this Court; thus, foundation for reconsideration of this Court's decision. In addition, the benefits of new statutory language in favor of homeowners stands of benefits for Appellants. It is proper, under cumulative facts and law here, for retrospective application of new statutory language added to RCW 61.24 et seq.; as was presented to the review Court. to Appellants and thus, would warranted reconsideration and reversal of the Court's denial of relief. It is improper to deny Appellants the benefits of decisions not available to the fact finding courts such as Bain (supra) and *Albice v. Premier Mortg. Servs., 174 Wn 2d 560, 276 P.3d 1277, (2012)*. It is fundamental of due process, notice, and equal protection of a consistent application law that Washington review Courts are bound by Washington law.

2. THE PROCEDURAL FACT OF FINALITY IN THE DEFINITION OF RES JUDICATA ARE NOT PRESENT IN THIS CASE, AS SUCH, DENIAL OF RELIEF FOR APPELLANTS UNDER RES JUDICATA IS NOT APPLICABLE OF THE PARTICULAR PROCEDURAL FACTS OF THIS CASE—NO JUDGMENT IS YET FINAL, albeit STATE OR FEDERAL COURTS

Res judicata is defined as:

> "A matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment. Rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action. And to be applicable, requires identity in thing sued for as well as identity of cause of action, of persons and parties to action, and of quality in persons for or against whom claim is made. The sum and substance of the whole rule is that a matter once judicially decided is finally decided. Allen v McCurry, 449 U.S. 90."

Accord, *Black's Law Dictionary, 6th Edition*

The application of the legal doctrine of res judicata fails to fit the procedural history of the instant case. Not only are the cases still active and no mandate is yet rendered in either court, further, the fact finding courts did not hold guidance of the *Bain v. Mortgage Electronic Systems Inc. et al (supra)*. In particular, Bain fixed that foreclosures naming MERS as beneficiary were illegal foreclosures since MERS was not a legal beneficiary.

Of relevance to the more articulated elements of res judicata, like access data to rule, the factual timeline of the instant case shows the fact finding courts (eviction court for example) did not hold benefit of the Bain decision when it ruled, yet the review did hold such guidance.

MERS, during the relevant time lines specific to Appellants' case, was an illegal and improper beneficiary. Therefore, Appellants' foreclosure was not legal.

The res judicata's finality requirement is not present here; therefore, application of such is not proper or legally applies; not judgment became mandate—federal case is still active and state case is still active, there is no finality present, thus, no need to raise such issues to the Court. In other words, the proper view of procedures in this case shows judgment in either courts is not yet final. The simplicity is found in examining facts pertaining to direct appeal versus collateral estoppel. Here, the direct appeal remedies stands present and are still present. Nothing is final or reach judicial finality as is required to fit the legal definition of res judicata–no true finality. The procedure of remanding a case back to the fact finding court is not a final matter; therefore, res judicata, in its true definition, does not apply to the procedural history of this case. Moreover, a CR 12(b)(6) dismissal holds no facts, therefore, as the court attempts to present, res judicata applies because there was a proper airing of the facts, whereas, the court determined (the CR 12 dismissal was at the start of this unique historical time of our mortgage crisis and the closest correlation to such a widespread event is the great depression). Little to no facts exist from the depression days as the records exist today to prove, show, establish fraud, deception, misrepresentation and wholesale breach of public trust that stands square in the middle of the mortgage crisis case.

Direct appeal remedies are still available in the federal district court and no judgment is mandate in the state court. Appellant provided this court with the relevant 2012 case law during direct appeal (as

soon as it was available) to assist the 9th circuit judiciary in properly applying Washington law. They did not. The case is a quagmire and will be clarified given motion will request proper application of Washington case law to the facts, which would result in overturning the CR 12 dismissal.

Why one would need to argue finality when it does not exists is confusing or improper; namely, to hold Appellants failed to properly brief issues that hold no merit is confusing at best.

3. IT IS REVERSIBLE ERROR TO DENY RELIEF WHEN THE PROCEDURAL STEPS APPELLANTS SUBMITTED IN MOTIONS DURING THE EVICTION PROCEEDINGS WERE STEPS DESIGNED TO PLACE APPELLANTS PROPERLY BEFORE THE COURT IN ORDER TO ADDRESS THE MYRIAD OF ISSUES SOUNDING OF VALID LAW AND INVOKING APPLICABLE PROHIBITIVE LANGUAGE OF CONSTITUTIONAL MAGNITUDE WHILE THE TRIAL COURT AND REVIEW COURT'S FAILURE TO ADDRESS APPELLANT'S MOTION FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW PER CR 52 FURTHER PREJUDICED APPELLANTS BY DENYING THEM A COMPLETE RECORD THAT FORMED THE BASIS FOR THE TRIAL COURT'S RULINGS.

Appellants' pleadings (steps filed during eviction proceedings) of Motion to Change from Limited to General Proceeding was denied (CP 61); the Petition for Declaratory Judgment was denied (CP 62); the Motion to Strike was denied (CP 63); Appellants' filed Objection to the Unlawful Detainer (CP 8), Answer and Affirmative Defenses (CP 12) on March 13, 2012; a Motion for Findings of Fact and Conclusions of Law that was filed on April 6, 2012 (CP 15) with a Notice to the Clerk regarding Missing Exhibits (CP 14) and the Counter and Cross Complaint filed, served and fee paid (CP 16), stand as proper steps. The fact finding Court and review Court's failure to address findings of facts and conclusion of law was reversible error under Washington and worked prejudice on Appellants given lack of record for appeal.

"Abuse of discretion" has been defined as what happens when a court's decision is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.' " An exercise of discretion by a trial court may be erroneous without being illegal. 'Washington courts have stated that "discretion is abused only where it can be said no reasonable man would take the view adopted by the trial court."' *(State v. Hurst, 5 Wash. App. 146, 148, 486 P.2d 1136, 1138 (1971)* in *(Kunsch, Kelly. "Standard of Review (State and Federal): A Primer." Seattle UL Rev. 18 (1994): 11).*

A reasonable person would agree it is proper to apply fixed case law in a de novo review of the matter before them. As stated in an article in the *Seattle University Law Review on Standards of Review (a primer)*:

> "In Washington, if the facts are undisputed, the reviewing court stands in the same position as the trial court and can therefore apply the de novo standard." (*Peeples v. Port of Bellingham, 93 Wash. 2d 766, 613 P.2d 1128 (1980)*, overruled on other grounds by *Chaplin v. Sanders, 100 Wash. 2d 853, 861 n.2, 676 P.2d 431, 436 n.2 (1989)*)
>
> "Washington has also created an exception for reviewing trial court findings when constitutional rights are at issue. "(*State v, Byers, 85 Wash. 2d 783, 786, 539 P.2d 833, 835 (1975)*)
>
> Accord *Kunsch, Kelly. "Standard of Review (State and Federal): A Primer." Seattle UL Rev. 18 (1994): 11. pg 25*

Therefore it was an abuse of discretion for the review court to not seek guidance of recent case law stating MERS was an improper beneficiary resulting in a wrongful foreclosure and eviction contrary to strict compliance mandates of statutes, RCW 61.24 et al and RCW 59.12 et al, that were both designed in favor of homeowner (occupant).

It is also clear to any reasonable man that Constitutional issues briefed to the review court be obligated to perform their due diligence. It was an abuse of discretion to attempt to minimize the Constitutional rights of private Washington state citizens especially where property rights are in question.

Based on timeline and facts of the case, any reasonable person could see that Appellants were in a direct appeal and to this date have not had a single judgment from a trial court that has not been directly appealed. The facts contained in this direct appeal of the eviction and denial of the petition for declaratory judgment have been preserved due to the direct appeals. Therefore, the review court now also abused its discretion through the misapplication of res judicata doctrine.

It obvious that when a movant files a Motion for Findings of Fact and Conclusions of Law and does not receive the findings to take into an appeal that a prejudice is worked on the movant. When that issue is brought before the review court and briefed, it is an abuse of discretion by the review court to ignore the request.

In review, Appellants stood in possession of their home, illegal parties moved to take their home, the act of eviction is the ultimate test of property rights, and such rights stand illegal trampled. This is clear, stand sound in the record, and supports the instant request for reconsideration, to reverse eviction or in the least, grant request for trial as is allows under RCW 59.12, as transferred from RCW 61.24's process. The last remedy was recognized, and facts stood sufficient to warrant trial. It was an abuse of discretion for the trial court not to grant a jury trial per Washington State Constitution, Article I, Section 21 on the issues presented. *(State v. Hurst, supra)*.

As the injustice put upon Appellants and family has risen to unconscionable and contemptible levels, it can only be concluded that as long as justice is circumvented, Appellants will continue to seek all legal remedies available.

DECISION CLEARLY VIOLATES APPELLANTS' CONSTITUTIONAL RIGHTS: JURY TRIAL (PER RCW 59.12.130 AND WASH. CONSTIT., ARTICLE 1, SECTION 21) AND EQUAL PROTECTION (US CONSTIT. XIV AND WASH. CONSTIT., ARTICLE 1, SECTION 12)

Clearly, a miscarriage of justice was worked on Appellants. The fundamental principles of individuals, [not privileged entities] defending their home against privileged entities acting of statutory language that holds duties and obligations owed by way of "doing business in Washington."

The ruling stands in contrary to Appellants' constitutional rights to jury trial and equal protection of law. Appellants did properly request jury trial as allowed by RCW 59.12.130. The facts submitted went to the heart of property ownership and trial was requested verbally (RP 5-17-12, pg 10, LL 4-18). Washington state law pertaining to unlawful detainer proceedings is governed by RCW 59.12 et al. Therefore, violating this Court's ruling is also contrary to constitutional law, per Article I, Section 21 of the Washington State Constitution.

Here, individuals' property interest are at heart in light of a statutory scheme designed to benefit homeowners. A judicial ruling that grants privileged entities benefit and fails to apply strict compliance criteria to Washington's of Deed of Trust Act stands as a violation of RCW 61.24 and an abuse of judicial discretion. (*State v. Hurst* –supra) Namely, Townleys filed sufficient facts into the record supporting

their response to the Motion for Writ of Restitution (CP 65). Exhibits included but were not limited to the following: Notice of Default (CP 65, Ex A), Email and attached letters from Securities and Exchange Commission (SEC) (CP 65, Ex B), Email from SEC dated January 26, 2012 (CP 65, Ex C), docket from C10-1720 (CP 65, Ex D), and corroborating complaint filed against top five (5) banks regarding improper business practices including "robo signing" (CP 65, Ex E) and audit (CP 65, Ex F). Undisputed facts showing that the government agency, SEC could not locate the trust alleged to hold Appellants' mortgage and whom Bank of New York Mellon foreclosed in the name shows a fatal flaw (See, Notice of Default for name of trust (Ex. A) and SEC emails (Ex. B and C). An entity, after all, **cannot legally foreclose** on property that is held in a trust that **does not exist**.

The facts surrounding the eviction were not contained within the Ninth Circuit review of the Federal district case. As seen above, facts were submitted sufficient to form foundation to challenge the taking of Appellants' home. Facts are for the jury once sufficient facts are present as was the case here, and the decision rests in the province of the jury. It was also allowed by RCW 59,12,130, the section of law governing evictions. Is it not a question of should the jury award Appellant relief but rather could granted the Appellant relief? To deny Appellants' opportunity for trial violated Appellants' right to trial by jury when, as is the case here, (their home) a property interests was at stake.

Of clear relevance is the fact, the Honorable Judge McCullough stated on July 13th, 2012 the understanding that the facts in the case, at minimum, believed that the matter should be before the providence of the jury; therefore, he believed a remand due to the facts of the case would be forth coming, quoted in relevant part,

> "Now this does not mean that the fraud that's alleged will not be before a jury or before a court..... I have not been convinced that this plaintiff engaged in fraudulent behavior. But I think that that is proper information to go before a jury and a judge in a different proceeding."

Judge McCullough in RP (7-13-2012), Pg 41, ll 1-3 and 6-10

Especially in this matter where fraud has been alleged, the decision showed an abuse of discretion when the facts have never been before a jury nor have they been disputed.

The sweeping decision in this case further violated Appellants' equal protection rights as outlined in Appellants' opening brief to this Court (filed Nov 26, 2012; see, pg 19-22). The fact relief benefits were given to a similarly situated individual by the trial shows equal protection violation.

> That year, in Grant County Fire Protection District No. 5 v. City of Moses Lake, the Washington Supreme Court held for the first time that the state's privileges or immunities clause—at least in some circumstances——requires a separate and independent constitutional analysis from the United States Constitution. *(Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake, 42 P.3d 394 (Wash. 2002), vacated in part, 83 P.3d 419 (Wash. 2004).*

Accord Bindas, Michael, et al. "Washington Supreme Court and the State Constitution: A 2010 Assessment, The." *Gonz. L. Rev.* 46 (2010): 1. pg. 27

Facts to establish similarly situated individuals like Appellants is the case of *Deutsch Bank vs. Schnall, King County Superior Court case no. 12-2-03428-1 SEA*; whereas, Defendant Micha Schnall, who is still a homeowner, stood procedurally relevant and factually on point as Appellants except for a two week time span between the two. In Appellant's Division I Opening Brief [#69194-5-I dated Nov 26, 2012], (*See Exhibit A-A,*) these facts and documents are presented. In other words, the *Schnall* case (*supra*) lagged between 2 weeks beyond Appellants' eviction proceedings. In the *Schnall* case, the court issued the Writ of Restitution and then issued a stay pending appeal. After *Bain* decision was filed, the Court vacated the Writ of Restitution (no eviction for *Schnall*) was proper and that the *Bain* (supra) decision was controlling.

The only difference between the Schnall homeowner and Appellants, who were in their home at the time of their eviction proceedings. It would be hard to find any less similarly situated individuals than Schnall and Appellants, as that relates to the facts establishing their similarly situated individual status. United States Constitution's 14th Amendment, section I, states "No State shall...deny to any person within

its jurisdiction the equal protection of the laws." Therefore, for some reason, Appellants were denied any remedies despite the factual similarities with Schnall.

To this day, Schnall remains in his home.. Meanwhile Appellants' home sits vacant and run down while Appellants seek justice via application of new law and constitutional issues. Schnall's Writ of Restitution was granted then it was vacated because of the newer case law. Whereas, purely as a matter of timing—the only difference between the two homeowners was the timing of review decisions—Appellants entire family (Mom, Dad and 4 children) were evicted. Evicting Appellants, under the facts of this particular case, stands contrary to law because it violates the Washington Constitution's prohibitive language enumerated of due process and equal protection (per Wash. Constit. Article 1, Section 12).

REVIEW OF FACTS DE NOVO ARE REQUIRED OR AT MINIMUM REMAND TO COURT DUE TO TRIAL COURT WHEN FACTS ARE UNDISPUTED AND CONSTITUTIONAL ISSUES EXIST

The lack of findings of facts and conclusions of law from trial court would typically prompt review courts to remand cases back to the trial court. (*Groff v.Dept. of Labor, 65 Wn.2d 35, 40, 395 P.2d 633 (1964)*) As a matter of fact, Appellants filed a Motion of Findings of Fact and Conclusions of Law on April 6, 2012 (CP 12) but never received documentation from the court. The record is void of this document in response to the request.

> "For an adequate appellate review ... this court should have, from the trial court ... findings of fact (supplemented, if need be, by a memorandum decision or oral opinion) which show an understanding of the conflicting contentions and evidence, and a resolution of the material issues of fact that penetrates beneath the generality of ultimate conclusions, together with a knowledge of the standards applicable to the determination of those facts."

Accord. *Groff v. Dept. of Labor (supra)*

On the other hand, Appellants are owed a duty and obligation to have the facts of the case reviewed de novo if: the facts stand undisputed and constitutional rights are also presented, as in this case

here. *(Kunsch, Kelly. "Standard of Review (State and Federal): A Primer." Seattle UL Rev. 18 (1994): 11. pg 25).*

FORECLOSURE STILL IMPROPER GIVEN WASHINGTON STATE CASE LAW

The ruling here is misplaced and does not properly address the facts or applicable law, which shows the foreclosure was illegal. As such, the eviction was also contrary to law. The judgment was obtained by using an illegal beneficiary. RCW 61.24's is a strict compliance statutory scheme. Using MERS violated said compliance. When such issue is raised in the fact finding court, the facts stand undisputed, and the Court grants or does not grant relief and appeal is available (whether that is Appellants or opposition's remedy) as such, res judicata does not apply because it is black letter law, fundamental and stands without argument there was no finality of judgment in this case addressing MERS nor does a finality stand now. In Udall, the Washington State Supreme Court expressed the

> The trustee's delivery of the deed to the purchaser is a ministerial act, symbolizing conveyance of property rights to the purchaser. The trustee cannot withhold delivery unless the sale itself was void due to a procedural irregularity that defeated the trustee's authority to sell the property.

Accord. *Udall v. TD Escrow Services, Inc.*, 154 P.3d 882, 159 Wash. 2d 903, 159 Wa. 2d 903 (2007).

Also, as argued above and throughout the pleadings, if the trustee Northwest Trustee did not have authority to foreclose due to MERS ineligibility as a beneficiary who improperly assigned trustee powers, then Trustee did not have the power to participate in the foreclosure. Strict statutory adherence to RCW 61.24 is mandated and not a choice, rendering the eviction per 59.12 void:

> We conclude that the respondents' reliance on *Plein* is misplaced. It is well settled that the trustee in foreclosure must strictly comply with the **statutory** requirements. Albice, 174 **Wash**.2d at 568, 276 P.3d 1277 (citing Udall, 159**Wash**.2d at 915-16, 154 P.3d 882). A trustee in a non-judicial foreclosure may not exceed the authority vested by that statute. *Id.* As we have recently held, the borrower may not grant a trustee powers the trustee does not have by contracting around provisions in the deed of trust statute. Bain, 175 **Wash**.2d at 100, 285 P.3d 34.

Accord. *Schroeder v. Excelsior Management Group*, 177 Wash. 2d 94 (2013), 297 P.3d 677

To ignore or set aside the application of recent case law showing that strict compliance of RCW 61.24 is highly problematic for Respondents resulting in voiding foreclosure and therefore also voiding the eviction is an abuse of discretion as well as reversible error.

Conclusion

Requesting this Court's reconsideration of proper application of Washington case law and insight of new legislation (retrospective applications) is a just and equitable request given Appellants' foreclosure and subsequent eviction was before Bains determined the issue of MERS in those foreclosure as improper. MERS stands as the beneficiary in their foreclosure; thus, clearly shows and no one can reasonably dispute this fact nor the proper application of standing case law when such fact exist that shows Appellants' foreclosure was improper because movants, in the foreclosure, acted outside strict compliance of RCW 61.24.040 (6). To hold otherwise would be a miscarriage of justice given the Constitutional issues involved between individuals (Appellants) and privileged entities.

It appears that Appellant may need to seek discretionary review of Washington Supreme Court—Appellant submits their case meets the requirements given some of the linger and prejudicial issues surrounding the finalization of issues involved in these mortgage cases still stand unresolved and may need Supreme Court guidance.

Moreover, Appellant bow to the grace of the Court and pray for proper relief; pray for proper application of law, which they submit holds their foreclosure (in their time frame) that used MERS as their beneficiary, was illegal foreclosure and an illegal taking of their home as a matter of law and fact.

March 22, 2015

Respectfully submitted,

Signature

Stephanie A. Tashiro-Townley
for Appellants Townleys and occupants
25437 167 Place SE, Covington, WA 98042

OFFICE RECEPTIONIST, CLERK

To: Stephanie Tashiro-Townley
Cc: Bob Norman; Lauren D. Humphreys; Emilie K. Edling; Kaitlyn Q. Thinh
Subject: RE: 69194-5-I - Tashiro-Townley v. Bank of New York Mellon et al - Petition for Discretionary Review and Appendix

Received 5-4-2015

Supreme Court Clerk's Office

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: Stephanie Tashiro-Townley [mailto:zoemom4@gmail.com]
Sent: Monday, May 04, 2015 2:57 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Bob Norman; Lauren D. Humphreys; Emilie K. Edling; Kaitlyn Q. Thinh
Subject: 69194-5-I - Tashiro-Townley v. Bank of New York Mellon et al - Petition for Discretionary Review and Appendix

To Whom It May Concern:

This filing of the Petition for Discretionary Review includes the main document (petition) and the 30 page Appendix, for which I gained pre-approval with a clerk today. The petition meets the 20 page limit and follows RAP 10.4 and 13.4 for formatting and content.

As Mr. Norman and I have established email service throughout the Division I appeal, I am serving him as well as his associate counsel via this email. Hard copies are being sent to the attorneys as well by my process server today per our agreement.

Thank you.
Stephanie Tashiro-Townley
for Petitioners Townleys
#69194-5-I - Tashiro-Townley v. Bank of New York Mellon et al
425-413-2637
zoemom4@gmail.com

CC: Robert Norman (Respondents attorney), Houser & Allison
Lauren Humphreys (associate), Houser & Allison
Emilie Edling (associate), Houser & Allison