

CASE NO. 91928-3

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IN THE SUPREME COURT FOR THE STATE OF WASHINGTON
(Court of Appeals Division III, Case No. 32315-3-III)

MICHAEL URIBE and HELEN URIBE husband and wife,

Appellants,

v.

LIBEY, ENSLEY & NELSON, PLLC, a Washington
professional limited liability company;
GARY LIBEY and JANE DOE LIBEY, husband and wife
and the marital community comprised thereof, RANDALL
RUPP AND LUZ DARYL-RUPP, husband and wife and
the marital community comprised thereof; and 7HA
FAMILY, LLC, a Washington limited liability company;

Respondents.

**URIBE'S REPLY TO ANSWER TO PETITION FOR REVIEW
FROM RESPONDENTS GARY LIBEY AND
LIBEY ENSLEY & NELSON, PLLC.**

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A. CASE PAGE(S)

1. WASHINGTON STATE SUPREME COURT:

Klem v. Washington Mutual Bank,
176 Wash. 2d 771, 295 P.3d 1179 (2013) 1, 2, 3

I. IDENTITY OF PETITIONERS

Petitioners are Michael and Helen Uribe (the “Uribes” or “Uribe”).

II. NEW ISSUES ADDRESSED IN THIS REPLY

New Issue 1. It is irrelevant that the resigning trustee’s signature on the Resignation and Appointment of Successor Trustee was notarized eighteen days *before* it was actually signed by the agent for the resigning trustee, Chicago Title.

New Issue 2. The Uribes abandoned their claim for damages under the Consumer Protection Act.

III. ARGUMENT

New Issue 1. It is irrelevant that the resigning trustee’s signature on the Resignation and Appointment of Successor Trustee was notarized eighteen days *before* it was actually signed by the agent for the resigning trustee, Chicago Title.

The Respondents, Gary Libey and Libey, Ensley and Nelson, PLLC (Libey) are asking the Court to review the false notarization issue and determine it is irrelevant because the original trustee does not really need to resign in order for a successor trustee to be appointed by the bank.¹

This is the same “no-harm, no foul” argument this court condemned in *Klem v. Washington Mut. Bank*, 176 Wash 2d 771, 295 P.3d 1179 (2013).

¹ Respondent Libey’s answer to the petition for review at page 12.

In *Klem*, the Notice of Trustee's Sale was dated and notarized on November 26, 2007 according to the notary jurat. However, the document was not actually signed that day. This court found that "Quality notaries regularly falsified the date on which documents were signed." *Id.*, 176 Wash.2d at 792, 295 P.3d at 1122.

Quality argued that the falsely notarized Notice of Trustee's Sale are immaterial because the owner received the minimum notice required by law and otherwise did not suffer any harm. This court answered:

This no-harm, no-foul argument again reveals a misunderstanding of Washington law and the purpose and importance of the notary's acknowledgment under the law. A signed notarization is the ultimate assurance upon which the whole world is entitled to rely that the proper person signed a document on the stated day and place. Local, interstate, and international transactions involving individuals, banks, and corporations proceed smoothly because all may rely upon the sanctity of the notary's seal

Id., 176 Wash.2d at 792-93, 295 P.2d at 1190.

This court then went on to hold that the false dating by a notary employee of the trustee is an "unfair and deceptive act or practice" that satisfies the first three elements of the Washington Consumer Protection Act. *Id.*, 176 Wash.2d at 794, 295 P.2d at 1191.

However, the issue of whether a falsely notarized foreclosure document is valid, or whether a false notarization itself renders the document void was expressly deferred. *Id.*, Footnote 15. It is suggested

that our case, perhaps, provides the opportunity to do so. It is submitted that the sanctity of the notary seal and the legality of actions in relations thereto be honored in this transaction as a general legal principal.

New Issue 2. The Uribes abandoned their claim for damages under the Consumer Protection Act.

Respondent Libey falsely claims that Uribes abandoned their CPA claims when they abandoned their claims for collusion, conspiracy and chilled bidding.²

Uribe's Reply Brief in the court of appeals does concede the abandonment of the claims in the complaint for collusive bidding, conspiracy, and chilled bidding.³ But, Uribe has *never* abandoned the CPA claims. Uribe even argued that the trial court wrongly dismissed the CPA, Civil Conspiracy and Rico claims *sua sponte* because those claims were not part of Uribe's motion for partial summary judgment. In fact, the CPA claims were expressly reserved in the 12-20-13 in the summary judgment. CP 387.

The Court of Appeals even ruled on the CPA claims, holding, "Because there is no merit to the Uribes' claims under the DTA, we need

² Respondent's Answer at page 2 and page 13.

³ Appellants' 10-3-15 Reply Brief at page 20.

not address their claim under the CPA or their request for attorneys' fees.”

2015 WL 2124358 at page 3.

DATE: August 6th, 2015.

Respectfully Submitted,

THE LANZ FIRM, P.S.

By: 

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Importance: High

To whom it may concern:

Attached please find Petitioner Uribe's Reply to Answer to Petition for Review from Respondents Gary Libey and Libey Ensley & Nelson PLLC's for filing with the Court in the matter of Michael Uribe, et ux. v. Libey, Ensley & Nelson, PLLC, et al; Case No. 91928-3.

I have copied other counsel on this email as there is an e-service agreement among the parties. As a courtesy I will also be mailing a hard copy.

Thank you and please do not hesitate to contact me if you have any questions.

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