No. 93123-2

SUPREME COURT FOR THE STATE OF WASHINGTON

No. 46906-5-II

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

KEY K. KIM,
Plaintiff/Appellant,

vs.

FAY SERVICING, LLC,
Defendant/Respondent

RESPONDENT FAY SERVICING, LLC'S ANSWERING BRIEF TO APPELLANT'S PETITION FOR REVIEW

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I. INTRODUCTION

The Court of Appeals' decision in this case should be affirmed. The undisputed facts of this case cannot support a claim for violation of Washington's Consumer Protection Act (the "CPA"). As the Court of Appeals recognized, in order to prevail on a CPA claim, a plaintiff must have sufficient evidence to support all five elements of the claim. With the facts not in dispute, the determination of whether conduct is unfair or deceptive (the first CPA element) is an issue of law that is reviewed *de novo*. *See Robinson v. Avis Rent a Car Sys.*, 106 Wn. App. 104, 114, 22 P.3d 818 (2001); *citing Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 150, 930 P.2d 288 (1997).

The Court of Appeals determined as a matter of law that Fay Servicing LLC's ("Fay Servicing") actions were not unfair or deceptive. Because the first element of the CPA claim failed, the Court of Appeals did not address whether Fay Servicing's actions affected the public interest (element three of a CPA claim). The Court of Appeals did not hold or analyze whether the alleged unfair or deceptive acts had the "capacity to deceive a substantial portion of the public" because it determined that no unfair or deceptive acts occurred in the first place. Illogically, however, Plaintiff's Petition for Review asks this Court to determine whether the public impact element should have been analyzed differently because this was a

private transaction. As such, Plaintiff's petition fails on its face because it fails to assert any error by the Court of Appeals with regard to its dispositive determination that there was no unfair or deceptive act.

II. ASSIGNMENT OF ERROR

The Court of Appeals properly determined as a matter of law that no unfair or deceptive act occurred. The Court of Appeals did not address or rely upon a "capacity to deceive a substantial portion of the public" analysis in making this determination as a matter of law based upon the undisputed facts before it. Plaintiff appears to be attempting to set up a straw man argument in order to assign error, but he has failed to identify any error actually made by the Court of Appeals or the trial Court.

III. STATEMENT OF CASE[1]

A. 2006 - Plaintiff Borrows $298,850.00 Secured by Deed of Trust

On January 19, 2006, Plaintiff borrowed $298,850.00 (the "Loan") to use toward the purchase of a home commonly known as 10423 91st Street Ct SW, Lakewood, Washington 98498 (the "Property"). *See* Complaint (CP 94-141) at ¶1.1 and ¶3.2. As security for repayment of the Loan, Plaintiff executed a Deed of Trust which was recorded under Pierce County Auditor Recording No. 200601230570 on January 23, 2006. *Id.* at ¶3.3, Ex. A.

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[1] Note that because review of the issues in this case are *de novo*, a full recitation of the undisputed facts as provided to the Court of Appeals is being provided herein.

B. 2012 – Plaintiff Purposefully Defaults on Loan

In 2012, based upon advice from friends and people he knows in his community, Plaintiff intentionally stopped paying on the Loan under the presumption that it would help him to obtain a loan modification. During his deposition, Plaintiff testified as follows:

> **Q.** What did you do to attempt to modify your mortgage?
>
> **A.** First I was told that I will be qualified for modification if I don't pay for six months, so I did that.
>
> **Q.** Who told you that?
>
> **A.** Several people.
>
> **Q.** Do you recall any specific people?
>
> **A.** People, friends around and people I know.
>
> **Q.** Did anyone at Fay Servicing tell you that?
>
> **A.** The company?
>
> **Q.** Yes.
>
> **A.** No.
>
> **Q.** So you chose to not make your mortgage payments for six months so that you could then you were understanding that it would help you get a loan modification; is that correct?
>
> **A.** Yes.
>
> **Q.** So after waiting that six months, what did you do to attempt to get a modification?
>
> **A.** In case it wasn't successful, I have to pay the mortgage, so for every month I saved the mortgage amount so I could pay. So if you look at my credit report, it's perfect, I was never late in paying any payments including car payments, but just with this loan itself, it was intentional.

(*See* CP 46 - 47 underline emphasis added).

C. April 2013 – Flagstar Issues Notice of Default and Plaintiff Employs Attorney to Help Negotiate Loan Modification

After six months without payment, the then beneficiary of the Deed of Trust, Flagstar,[2] issued a Notice of Default, informing Plaintiff that he was in default on his Loan because he had failed to make any payments for the prior six months. *See* Complaint (CP 94-141) Ex. E. At about the same time as the Notice of Default was being prepared, Plaintiff engaged his attorney to assist him in obtaining a loan modification, or as Plaintiff himself put it: "I asked Attorney Kim to get me the modification, I told him this happened and this happened, so now six months has passed so please get me a modification, and I gave him the documents." (CP 47).

D. April/May 2013 – Appointment of Successor Trustee and Notice of Trustee's Sale Recorded Initiating Foreclosure

On April 10, 2013, Flagstar executed an Appointment of Successor Trustee (the "AST") naming Northwest Trustee Services ("NWTS") as Trustee for the Deed of Trust. The AST was thereafter recorded on April 23, 2013. CP 60-61. On May 15, 2013, NWTS recorded and served a Notice of Trustee's Sale and Notice of Foreclosure. *See* Complaint (CP 94-141)

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[2] Flagstar's status as the beneficiary with the right to initiate non-judicial foreclosure under RCW 61.24 *et seq.* was previously established by Flagstar in support of its successful motion for summary judgment before the trial court and that decision was not appealed.

Ex. C.[3] As of May 7, 2013, Plaintiff owed $16,181.55 in fees and arrearages. *Id.* at p. 2, § III (CP 121). The Notice of Trustee's Sale informed Plaintiff that if he did not cure the debt, a Trustee's Sale of the Property was scheduled to occur on September 13, 2013. *Id.* at p. 1 (CP 120). The Notice of Trustee's Sale also informed Plaintiff that "anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. ***Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.***" *Id.* at p. 3, § IX (CP 122).

E. August-October 2013 – Servicing Transferred to Fay Servicing and Fay Servicing Attempts to Work Out Loan Modification With Plaintiff

Effective August 1, 2013, after Plaintiff had failed to obtain a loan modification through Flagstar due to his failure to provide complete information or any proof of income (as was detailed in Flagstar's own motion for summary judgment – Filed March 21, 2014),[4] servicing of Plaintiff's Loan was transferred to Fay Servicing. (CP 62-63). Due to Plaintiff's Loan being in foreclosure, Fay Servicing reached out to Plaintiff to attempt to help

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[3] It should also be noted that Plaintiff stipulated that all required notices under RCW 61.24 et seq. were properly placed and delivered. (CP 53).

[4] The Court should also be aware that while Plaintiff did provide Flagstar with information purporting to show business income, Plaintiff admitted at deposition that he received no such income. *See* CP 43-45.

him avoid foreclosure either by curing the default or coordinating a loan modification. (CP 63 at ¶3). Again, however, after many attempts to work with Plaintiff and obtain information from him that might have allowed Fay Servicing to provide him with a loan modification, Plaintiff provided false information and failed to provide the information needed to evaluate him for a loan modification, and no loan modification was ever offered to Plaintiff. (CP 51-52, 55-58, 63 at ¶3, and CP 69-70 at ¶¶2-4).

During this process, Plaintiff was not forthcoming with Fay Servicing. Despite receiving $300,000.00 on August 19, 2013, from the sale of his stake in his ex-wife's business, Plaintiff intentionally hid this money from Fay Servicing. (CP 50-51). On September 11, 2013, Plaintiff submitted bank statements to Fay Servicing showing a balance as of 8/12/2013 of only $1,076.99, and a hardship letter stating that he became delinquent on the Loan because of discontinuation in income from his business. (CP 55-58).[5] When questioned about this hardship letter at his deposition, Plaintiff responded as follows:

> **Q.** So at the time that you are writing this letter in September 2013, you have over $300,000 in cash, but you are still writing a hardship letter; is that correct?

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[5] Recall that Plaintiff testified in his deposition that he intentionally stopped making Loan payments in a calculated attempt to obtain a loan modification, not because he was unable to pay. (CP 46-47).

> **A.** Well, doesn't everybody? I mean, if you have millions of dollars, like you want to modify the loan, you don't say I have a lot of money; please modify my loan for me.

(CP 51).

Despite the above, Fay Servicing continued to attempt to work with Plaintiff to see if a loan modification might be possible. It was during the last of these phone calls, on October 17, 2013 (date confirmed at Plaintiff's deposition – CP 50), that Plaintiff contends he was offered a loan modification. (CP 40-42). Note, however, that the Complaint alleges only that Plaintiff was told by Fay Servicing that he could still be qualified for a loan modification, not that a modification was actually offered. *See* Complaint (CP 94 - 141) at ¶ 5.3.

Regardless, it was later clarified in Plaintiff's deposition that no modification was ever offered, but rather because technical terms that Plaintiff did not understand were being used during his last phone call with Fay Servicing, Plaintiff unilaterally believed that a modification was being offered:

> **Q.** Going back to Exhibit 6 [Plaintiff's previously filed declaration – Filed April 10, 2014], on Page 2, Paragraph 7, it states: I thought the modification would be finalized as negotiations between myself and the company handling the loan were making much progress with the last phone call on or about October 30, 2013 [actually October 17 as confirmed

previously in deposition], we talked about that earlier, ending with the company representative telling me that he would get a Korean interpreter and call again. When you say "much progress," what do you mean by that statement?

A. So when I was talking to Mike we talked for a while, and before we were talking he was using no technical terms, but at the end, the last call he was using a lot of technical terms. Before I had no problem understanding, but when he was using technical terms regarding modification, I could not understand. And for him to use many technical terms to explain modification, I believe that he meant that he was offering modification, so that I thought it was finalized and things were finalized. And when Attorney Kim called me, I said everything worked out well. But Mike was the one who requested we talk about this with interpreter. It wasn't myself asking for interpreter.

(CP 47-48).

Plaintiff's entire case against Fay Servicing was built on his own unsupported and erroneous conclusion that the use of technical terms in his October 17, 2013, conversation with Fay Servicing meant that he was being offered a modification and that the Trustee's Sale would be postponed again pending finalizing a modification:

Q. The next sentence [of Plaintiff's previously filed declaration] says: I was under the impression that the trustee's sale would be postponed again pending finalization of the modification. What gave you that impression?

THE INTERPRETER: Could you repeat the question?

Q. BY MR. HUGHES: What gave you that impression?

A. Because Mike was very positive about it and he spoke positively. So I told Attorney Kim that according to Mike, I think modification is possible. I don't know how much it will be modified, but I believe it would be modified.

Q. Did you take Mike as being helpful to you in attempting to get a modification?

A. Yes, sure, yes.

Q. Were you under the impression that Mike was doing all that he could to help you do a modification?

A. Yes, of course. He called a lot and he was very nice.

Q. The last paragraph of this declaration says: Had I thought the trustee's sale would proceed as scheduled, I would have sought an injunction against the sale. Mr. Kim, do you know on what basis you would have sought an injunction?

* * *

A. So what injunction?

Q. BY MR. HUGHES: On what basis would you have sought an injunction?

A. I don't understand the meaning. So let's repeat this from the beginning, let's do this from the beginning.

Q. Do you understand what is stated in Paragraph 8 [of his own declaration signed under penalty of perjury and submitted to this Court previously]?

A. No.

(CP 48-49).

F. November 1, 2013 – Trustee's Sale Goes Forward Without Objection

On November 1, 2013, despite having received all foreclosure notices and being represented by an attorney in the process, the Trustee's Sale went forward without any attempt to enjoin the sale by Plaintiff. (CP 9) On November 7, 2013, a Trustee's Deed was recorded documenting the sale of the Property to IH3. *Id.*

G. The Current Litigation

After failing to cure his default or enjoin the Trustee's Sale of the Property, Plaintiff filed the current lawsuit alleging mainly that Flagstar did not have standing to initiate foreclosure based upon unsupported allegation that Flagstar was not the "beneficiary" under RCW 61.24.005(2). *See* Complaint (CP 94 - 141) at ¶4.4. Plaintiff also alleged that MERS and Fay Servicing never met the definition of "beneficiary" (*see id.*), but neither MERS nor Fay Servicing initiated the non-judicial foreclosure, nor were they alleged to have done so. (CP 94 - 141). Flagstar and MERS filed a motion for summary judgment on or about March 21, 2014, and their motion was granted on April 25, 2014. (CP 144-145). Similarly, Defendant IH3 filed a motion to dismiss all claims against it, and the Court granted that motion on March 21, 2014. (CP 142-143).

Given the allegations in the Complaint, and the statements made by Plaintiff in his declaration in response to Flagstar's motion for summary judgment, Fay Servicing decided that it wanted to take Plaintiff's deposition prior to filing its own motion for summary judgment. (CP 9). Plaintiff's deposition was taken on July 17, 2014, and the relevant admissions made during that deposition are cited above and were attached to the Declaration of Adam G. Hughes filed in support of Fay Servicing's motion for summary judgment. (CP 38-58). Plaintiff's deposition confirmed that Plaintiff's claims against Fay Servicing were/are baseless, and established Plaintiff's own bad faith in the process. *Id.* Accordingly, Fay Servicing filed its motion for summary judgment, which the Trial Court granted. (CP 89-91).

Plaintiff then appealed and the Court of Appeals affirmed the Trial Court's dismissal of Plaintiff's consumer protection act claim against Fay Servicing.

IV. ARGUMENT

A. Standard of Review is *De Novo*.

Appellate courts review an order for summary judgment *de novo*, engaging in the same inquiry as the trial court. *Loeffelholz v. Univ. of Wash.*, 175 Wn.2d 264, 271, 285 P.3d 854 (2012).

Summary judgment is appropriate where the "pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if

any, show there is no genuine issue as to any material fact, and the moving party is entitled to summary judgment as a matter of law." Civil Rule (CR) 56(c). A material fact is one on which the outcome of the litigation depends. *Swinehart v. City of Spokane*, 145 Wn. App. 836, 844, 187 P.3d 345 (2008). A defendant can move for summary judgment in either of two ways: (1) set out its version of the facts and allege that there is no genuine issue based on those facts; or (2) point out to the court that the nonmoving party lacks sufficient evidence to support its case. *Seybold v. Neu*, 105 Wn. App. 666, 677, 19 P.3d 1068 (2001).

Once a moving party meets its burden to show that there is no genuine issue as to any material fact, the nonmoving party must set forth specific facts rebutting the moving party's contention and disclosing that a genuine issue of material fact exists. *Strong v. Terrell*, 147 Wn. App. 376, 384, 195 P.3d 977 (2008). If the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the party will bear the burden of proof at trial," then summary judgment should be granted. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225, 770 P.2d 182 (1982).

Mere allegations, argumentative assertions, conclusory statements, and speculation do not raise issues of material fact to preclude summary judgment. *Grimm v. Univ. of Puget Sound*, 110 Wn.2d 355, 360, 753 P.2d

517 (1988). The party seeking to avoid summary judgment must affirmatively present the admissible factual evidence upon which he relies; he cannot rely upon the bare allegations of his pleadings. *Meyer v. University of Washington*, 105 Wn.2d 847, 852 (1986).

B. The Court of Appeals Correctly Found That Plaintiff's CPA Claim Failed as a Matter of Law on the First Required Element

To establish an RCW 19.86 Consumer Protection Act ("CPA") claim, the Plaintiff has the burden to show (1) an unfair act or deceptive act or practice, (2) occurring in trade, (3) affecting the public interest, (4) injury, and (5) a causal link between the act and resulting injury. *See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784-5, 719 P.2d 531 (1986). If any of the elements is not established, a Consumer Protection Act claim cannot stand. *See Robinson v. Avis Rent A Car Sys., Inc.*, 106 Wn. App. 104, 114, 22 P.3d 818 (2001).

Plaintiff's allegations, argumentative assertions, conclusory statements, and speculation are not sufficient to create an issue of material fact to preclude summary judgment. *Grimm*, 110 Wn.2d at 360. Plaintiff must be able to present the admissible factual evidence upon which he relies; he cannot rely upon bare allegations. *Meyer*, 105 Wn.2d at 852. Plaintiff has failed to do that here.

With the facts not in dispute, the determination of whether conduct is unfair or deceptive (the first CPA element) is an issue of law that is reviewed *de novo*. *See Robinson v. Avis Rent a Car Sys.*, 106 Wn. App. 104, 114, 22 P.3d 818 (2001); *citing Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 150, 930 P.2d 288 (1997).

Following the Trial Court's dismissal of his core allegation that the Trustee's Sale was invalid, Plaintiff shifted his focus to attempt to blame Fay Servicing for allegedly tricking him into thinking he was getting a loan modification two weeks before the Trustee's Sale, thereby allegedly causing him to not enjoin the Trustee's Sale. Yet Plaintiff cannot point to a single misrepresentation made by Fay Servicing or a single basis upon which he could have enjoined the Trustee's Sale. All that Plaintiff can point to is Fay Servicing's multiple phone calls to him in a good faith effort to work out a loan modification, his illogical assumption that he was offered a loan modification despite admitting that zero terms had been offered (let alone agreed to), and Fay Servicing's offer at the end of the last call to see if it had a Korean translator to assist in further discussions given Plaintiff's purported lack of understanding of English.

Notably, Plaintiff had his own Korean translator / attorney that he hired to assist him in the modification process, who was in receipt of all foreclosure notices, and who took no action to enjoin the Trustee's Sale.

Neither Plaintiff nor his attorney can point to a single communication from Fay Servicing offering a loan modification or indicating that the November 1, 2013, Trustee's Sale would be postponed or cancelled. Instead, Plaintiff relies entirely on his own illogical presumption that he was offered a loan modification because Fay Servicing's representative used technical terms that he did not understand during their final phone call, thus the Trustee's Sale must be cancelled.

By contrast, Plaintiff admitted to (1) intentionally not paying his mortgage in order to attempt to negotiate a loan modification, (2) during his loan modification review with Flagstar – providing false income information about his income (CP 44-45), (3) not disclosing the $300,000 he received from his ex-wife in August 2013, to Fay Servicing while it was attempting to obtain sufficient information from Plaintiff to determine his eligibility for a loan modification (CP 51), and (4) instead disclosing a bank account with less than $2,000.00 and his lack of any income source (CP 55-58).

The Court of Appeals weighed these undisputed facts and correctly ruled as a matter of law that no unfair or deceptive act occurred. Plaintiff's petition for review does not challenge this ruling, but instead focuses on the third element of a CPA claim. Accordingly, not only was the Court of Appeals decision correct as a matter of law, but Plaintiff has provided no basis for review of the Court of Appeals' decision.

C. Even if Plaintiff Could Meet the First Element of a CPA Claim, He Cannot Establish the Third Element

In his petition for review Plaintiff asks that this Court analyze the public interest element of his CPA claim in accordance with *Hangman Ridge*. Because this Court reviews a summary judgment affirmance *de novo*, Fay Servicing will address this issue as well despite the Court of Appeals not having to do so under its reasoning.

In order to establish the third element of a CPA claim even in a private "transaction," Plaintiff must have evidence showing that it is likely "that additional plaintiffs have been or will be injured in exactly the same fashion." *Hangman Ridge*, 105 Wn.2d at 790 (emphasis added). Here, in response to Fay Servicing's discovery requests, Plaintiff provided the following response:

> **INTERROGATORY NO. 20:** State all facts on which You base Your claim that Fay Servicing violated the Washington Consumer Protection Act, Chapter 19.86 RCW, or may be held liable for others' violations of the Act.
>
> **ANSWER:**
>
> As previously discussed, Fay Servicing engaged in discussions that led me to believe that my mortgage would be modified and it is presumed that there are other Washington residents whose mortgages are being serviced by Fay Servicing.

(CP 35).

Not only does Plaintiff have no evidence that any other person might be injured in "exactly the same fashion" as he has allegedly been injured here, but he alleges only that Fay Servicing services other Washington residents' loans. Plaintiff's petition cites to the *Anhold v. Daniels*, 94 Wn.2d 40, 45, 614 P.2d 184 (1980), decision in an attempt meet the public interest element of his CPA claim summarily concluding that because Fay Servicing is in the business of servicing mortgage loans, "potential does exist for repetition" of its actions here. All admissible evidence, however, is to the contrary. The facts show this to be an extremely unique situation in which a borrower had a language barrier, had access to an interpreter but did not use him, chose to default on his mortgage, misrepresented his financial situation, and despite having hired an attorney failed to attempt to enjoin the trustee's sale. This is not a scenario likely to be repeated, and there is absolutely no evidence in the record that could lead to the conclusion "that additional plaintiffs have been or will be injured in exactly the same fashion," as required by *Hangman Ridge supra.*

Even analyzing the four factors to be considered in making this determination, at most two of those four factors are present. That is, while the alleged acts occurred in the course of Fay Servicing's business, and the parties arguably occupied unequal bargaining power, there is no evidence that Fay Servicing advertises to the public in general, nor is there evidence

that Fay Servicing actively solicited this particular plaintiff. This is not a situation that could lead to the conclusion that additional plaintiffs will likely be injured "in exactly the same fashion."

Plaintiff thus also failed to establish the public interest impact element of a CPA claim and thus his CPA claim was properly dismissed by the Trial Court for this reason alone as well.

D. Fay Servicing's Actions Did not Cause Plaintiff's Injury

The fifth element of a CPA claim is a causal link between the act and resulting injury. *Hangman Ridge*, 105 Wn.2d at 784-5. Because this Court reviews a summary judgment affirmance *de novo*, Fay Servicing will also address this issue despite the Court of Appeals not doing so under its reasoning.

Proof of causation, is an essential CPA element. *Schnall v. AT&T Wireless Svcs., Inc.*, 168 Wn.2d 125, 144, 225 P.3d 929 (2010). The causal link is but-for – plaintiff must establish the "injury complained of ... would not have happened" if not for defendant's acts. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 82, 170 P.3d 10 (2007).

Plaintiff's alleged injury arises from the Trustee's Sale of the Property. Plaintiff claims that he was under the impression that the trustee's sale would be postponed and otherwise he would have sought an injunction to

halt the sale of the Property. (CP 78). Yet, Plaintiff provided no basis upon which he would have been able to obtain an injunction of the Trustee's Sale, since the non-judicial foreclosure was initiated properly by the beneficiary of the Deed of Trust as was previously fully addressed in Flagstar and MERS' motion for summary judgment granted by the Trial Court. Additionally, Plaintiff did not dispute that he received all notices as require by RCW 61.24 et seq. Plaintiff had absolutely no basis for asking for an injunction.

Plaintiff's opening brief argued for the first time on appeal that Plaintiff would have used the $300,000.00 he had to "protect his home," but failed to cite to any portion of the record to support such an argument. Plaintiff's declaration certainly contained no such statement, but rather stated that despite Fay Servicing suggesting that he use those funds to get his loan current, he refused since he was going to use the money to "invest in a small business to have a regular source of income." (CP 77-78). As such, there is no evidence in the record to support this new argument. Additionally, an appellate court should not consider arguments, such as this one, raised for the first time on appeal. *See Smith v. Shannon*, 100 Wash.2d 26, 37, 666 P.2d 351 (1983); RAP 2.5(a).

It is also important that the undisputed facts before the Trial Court established that the only reason a Trustee's Sale was ever scheduled was because Plaintiff admittedly intentionally stopped paying on his mortgage.

Fay Servicing did not cause the Property to be sold at the Trustee's Sale, Plaintiff did that himself. Fay Servicing did what it could to try to help Plaintiff avoid having the Property sold at the Trustee's Sale, but Plaintiff's own admitted withholding of financial information made it impossible for Fay Servicing to provide him with a loan modification. In the end, the Trustee' Sale went forward, but Fay Servicing's actions cannot be considered to be the cause under the undisputed facts in play here.

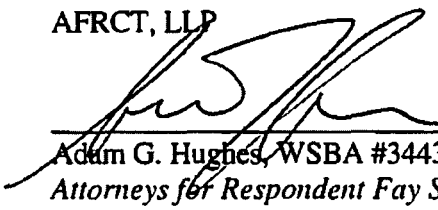
Under the undisputed facts of this case, no reasonable factfinder could find for Plaintiff on his CPA claim and as such, Plaintiff's lawsuit was properly dismissed by the Trial Court for this reason as well.

VI. CONCLUSION

For the foregoing reasons, the Court of Appeals correctly found that Plaintiff's CPA claim against Fay Servicing was properly dismissed. Fay Servicing therefore respectfully requests that Plaintiff's Petition for Review be denied.

Respectfully submitted, this 20th day of June, 2016.

AFRCT, LLP



Adam G. Hughes, WSBA #34438
Attorneys for Respondent Fay Servicing, LLC

CERTIFICATE OF SERVICE

I, Kay Spading, certify that on the 20th day of June, 2016, I caused the foregoing document, Respondent Fay Servicing, LLC's Answering Brief, to be delivered to the following parties in the manner indicated below:

James K. Kim THEMIS LAW 3520 96th Street S, Suite 109 Lakewood, WA 98499 *Attorney for Plaintiff/Appellant*	[X] By First Class Mail [ ] By Legal Messenger [X] By Email [ ] By Facsimile

Under penalty of perjury of the laws of the State of Washington, the foregoing is true and correct.

Dated this 20th day of June, 2016, at Seattle, Washington.

Kay Spading

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OFFICE RECEPTIONIST, CLERK

To: Kay P. Spading
Cc: Adam G. Hughes
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Key K. Kim v. Fay Servicing, LLC
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Please file the attached document.

Thank you.

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