Court of Appeal Case No. 47265-1-II

SC#93244-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

IOAN A. PAUNESCU and DANIELA PAUNESCU,

Appellants/Petitioner,

v.

GERHARD H. ECKERT and MARGARETHE ECKERT AS TRUSTEES OF THE ECKERT FAMILY TRUST, and SCOTT RUSSON and JANE DOE RUSSON, husband and wife

RESPONDENTS,

PETITION FOR REVIEW

IOAN & DANIELA PAUNESCU
PO BOX 87847
VANCOUVER, WA 98687 (360)449-2255

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A. Identity of Petitioner

Petitioners are Ioan Paunescu and Daniela Paunescu (the "Paunescu"). Paunescu are the appellants in the Court of Appeals ("COA") decision.

B. Court of Appeals Decision

The Paunescus ask The Supreme Court to review all of the decision of the Court of Appeals which the party wants reviewed, the May 10, 2016 decision filed, and the date of any order denying a motion for reconsideration dated May 25, 2016

A copy of the decision is in the Appendix A. A copy of the order denying petitioner's motion for reconsideration is in the Appendix at B.

C. Issues Presented for Review

1.) Whether the COA erred in stating that the loan on the said property "5619 ne 56th st vancouver, wa 98661" was a Commercial loan. What the consequences of foreclosure fraud were and this clouded the title to the property.

2.) Whether the Promissory note was valid and if the trust was valid name.

3.) The trial court erred in the way it followed procedure, and also approving Attorney Fees. The constitution states that everyone should have access to a fair trial.

D.Statement of the Case/ Facts of case

1. On July 14, 2005 Appellants purchased the property in question.
2. Two loans were on the "property" the first was for $164,000 and the second was for $41,000. (CP 14)
3. On June 29, 2006 did a Home Equity Line of Credit on the second load for the $60,000. (CP 14)
4. May 15, 2007 refinanced the Home Equity Line of credit with a loan from the Respondents "Eckerts", for a sum $290,000.
5. On May 15, 2007 Fidelity National Title on the borrower Settlement statement states that there was title charges of a refinance fee of $ 497.72 and title insurance of lender residential refi in the amount of $517.20 for the respondents refinance loan for the "property". Assessor's Parcel # 160748-005 and lot 2 of short plat, recorded in book 2, page 348. Records of Clark County, Washington. (Cp 83 Ex-9,11)
6. As of May 15, 2007 The first mortgage was not involved.

7. On February 15, 2008 Appellant was licensed with DSHS for Adult Family Home.
8. Notice of default sent September 9,2013. (CP 83 Ex-4)
9. On Oct 31, 2013 The Respondents "Eckert" appointed Scott Edward Russon as successor Trustee. (CP 83 EX-12).
10. On Oct 31, 2013 Scott E. Russon filed notice of trustee sale.
11. On February 11, 2014 filed trustee's Deed with the name of Eckert Trust.
12. On March 3, 2014 Quit Claim Deed filed states in the document to "correct the name of the Trust and to substitute the Trustee.
13. On March 4, 2014 Notice to vacate sent to the Appellants.
14. On March 19, 2014 DSHS put a stop placement on my adult care home because itdshs said it received a call from the trustee (Russon) and told them the home had been foreclosed and that the sixty day notice was served.
15. On March 19, 2014 Eviction Summons and order to show cause scheduled for March 28, 2014 in fron of Judge Clark.
16. On March 28, 2014 order for judgment and immediate writ of restitution granted to respondents. (RP 3/28/2014 page 5 line 9-11).

17. On March 31, 2014 DSHS came and removed all the residents from the home.
18. On April 14, 2014 had to vacate said "property" on or before 11:59pm
19. On 6/25/2014 complaint filed. (cp 3)
20. On 7/18/2014 Amended Complaint filed. (cp 14)
21. On August 11, 2014 filed a declaration of non- abandonment of homestead. (CP 83 Ex 7)
22. November 24, 2014 Deposition against Daniela Paunescu.
23. November 24, 2014 Mr. Shafton and Mr. Scicianni said we will make another appointment ro take Ioan a. Paunescu deposition, but never did.
24. On January 16, 2015 Summary Judment. (RP-1/16/2015)
25. On January 30, 2015 motion for attorney fees court. (RP-1/30/2015).
26. On January 30, 2015 Judge Clark stated she will send by Feburary 13, 2015 letter to the paunescus if attorney fees for Mr. Scisciani and file objection with the trial court and the trial court will send written decision on what those fees are.(RP 1/30/2015 page 11 line 12-25)

27. February 13, 2015 came and went and never received a written order from Judge Clark.
28. On March 9, 2015 Answer to writ of Garnishment. (CP 98).
29. On April 3, 2015 had a court for exemption with Judge clark and Mr. Shafton (attorney for respondents) (CP-98).
30. On April 3, 2015 Judge Clark approved Mr. Shafton (attorney for respondents) for attorney fees and everything was a personal judgment nothing to do with our LLC company and Judge Clark didn't want to see any proof that it was an LLC and approved Mr. Shafton for attorney fees over $20,000, from our LLC account.

The matter of motion to reconsideration was not approved, is brought forth to The Supreme Court and ask the Court to carefully look over all the documentation and rule accordingly to the law. We know the Supreme Court is the highest court of the land and its sad that we have to bring everything to The Supreme Court to get Justice that was not given at the trial court nor at the COA. As to why The COA considered that the loan was for commercial purpose, let's see why they erred in stating this the COA said that the building permit said the property was for Adult Family home, now in reality the description only said that, the building permit was for residential purposes, an adult family home is also considered

residential, but on this permit it was only the description that said it was for Adult Family Home. For any home in clark county to become an Adult Family home, Dshs (Dept. of health & human services) has to approve a license and I didn't have classes before or right after the residential refinance from the Eckerts in May 2007. A description is not law. (RCW 70.128.010) (1) "Adult Family Home" means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults...etc and (RCW 70.128.050 (1) After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter.

The zoning for the property was R1-6 which the meaning is a single family residential home.

- It is important that lender not be able to circumvent the additional protections contained in RCW. 61.24.127(1)-(3) by merely characterizing a loan as commercial, to avoid such manipulations, courts should look deeper into the borrowers purpose in obtaining the loan when the record suggests a lender has merely labeled the loan as commercial so as to avoid consumer protections. **BROWN v. GIGER, 111 Wn.2d 76,83, 757 P.2d. 523(1988)** (Thus, where it appears that the objective evidence of a loans purpose has been

'rigged' by the lender, further scrutiny into the borrower's actual purpose in obtaining the funds may be necessary.")

Fidelity Title company, when the paperwork for the loan was done in May 2007, the settlement statement that it was again Residential Refinance. The COA stated that the promissory note was initialed under the commercial clause (page 7 of the opinion from COA) an objection from the paunescu is that the clause had the following written underneath **(optional- Not applicable unless initialed by the holder and maker to this Note) Maker represents and warrants to holder that the sums represented by this note are being used for business, investment or commercial purposes, and not for personal, family or household purposes.** This clause is number 17 on the promissory note, we look beneath where the initials belong and only the Maker is there and the holder which is The Eckerts are not there, thus making the commercial clause invalid. The same thing happened on the Due of Sale Clause which is number 8 on the promissory note states the following. **Due on sale(optional- not applicable unless initialed by holder and maker to this note) If this note is secured by a Deed of Trust or any other instrument securing repayment of this note, the property described in such security instruments may not be sold or transferred without the holder's consent. Upon breach of this provision, holder may declare**

all sums due under this note immediately due and payable, unless prohibited by applicable law. And underneath it has for initials for maker and holder, again maker signed but holder did not. The Eckert didn't have the due of sale clause initialed or the commercial which makes opposing counsel arguments void. The promissory note is basically an IOU that contains the promise to repay the loan, as well as terms for repayment by not initialed the due or sale clause it cannot by enforce against the debt. The proof from Fidelity shows us exactly what the loan was from the very beginning. (CP sub# 83)

The California Supreme Court ruled on a matter similar in some instance but it pertains to can you challenge a foreclosure, states the following: A foreclosed-upon borrower clearly meets the general standard to sue by showing an invasion of his or her legally protected interests (Angelucci v. Century Supper Club(2007) 41Cal.4th 160,175)- the borrower has lost ownership to the home in an allegedly illegal trustee's sale. (see culhane, supra, 708 F.3d at p.289(foreclosed- upon borrower has sufficient personal stake in action against foreclosing entity to meet federal standing requirement.) Moreover, the bank or other entity they ordered the foreclosure would not have done so absent that allegedly void assignment. Thus- (t)he identified harm- the foreclosure- can be traced directly to the

foreclosing entity's exercise of the authority purportedly delegated by the assignment.

Finally, the Yvanova ruling leaves us with the crowning glory of this descision. " A homeowner who has been foreclosed on by one with no right to do so has suffered an injurious invasion of his or her legal rights at the foreclosing entitys hands. No more is required to sue.

California Supreme Court ruling stated the above. Yvanova v. New Century Corp., No. S218973(Cal. Feb 18,2016).

The Supreme Court of California ruled about Yvanova v. New Century Corp and it stated if you can't prove you have the note it's not valid foreclosure. The Eckerts come and state we are the Eckerts and we own the promissory note and the deed of trust which by using public internet we were able to prove that The Eckerts is not the real name of their trust and that The Eckert Family Trust is correct. The Eckert Family Trust was in existence from 2-21-1997. Now The Eckerts never proved their true identity, how can we say they hold the name in a legal name. especially since on the tax affidavit Mr. Russon filed on 2-24-2014 states The Eckert Trust state the reason for exemption is to correct name of the trust and to substitute the trustees as title holders, instead of holding title in the name of the trust. Changing the name from The Eckert Trust to The Eckert Family Trust. So does that mean that The Eckert names on promissory

note and deed of trust are not valid? They can't prove it's them so that make them invalid as to the ruling in the California supreme court.

The foreclosure opposing counsel said was based on a commercial foreclosure, which we can clearly show it wasn't. The above points show that the Eckerts appointed a successor trustee which was invalid to do so. The process of the foreclosure all of it was invalid also because was not done on residential, also Mr. Russon said he sent proof to the lender about the foreclosure (MIT Lending) which actually in late 2000 became deusctche bank. Mr. Russon didn't bother to find the correct lender a few minutes of research that's all it would have taken. (CP Sub#83)

The Paunescu also have a valid homestead claim, on August 9, 2014 Paunescus signed a declaration of Non-abandonment of homestead. Which was recorded with Clark County a Declaration for Non-Abandonment of homestead document #5095229 which was done within 6 months to retain homestead rights. Pursuant to RCW. ET Al,. Thr Paunescu resided at the residential property and it was their homestead. Pursuant to RCW 6.13.060, The Eckert Deed of trust was not executed by both Plaintiffs, who are husband and wife. Per RCW 06.13.060 said Deed of Trust should be deeded, invalid and ineffective against the residential property. The Paunescu ask The Supreme Court to go back to the beginning from the trial court then to the COA to be able to give ruule

correctly. The Paunescu had their title clouded, consumer protection act, wrongful foreclosure, homstead and damages, Attorney fees, etc, in this case and COA chose not to rule on the main poritions, especially since COA approved rulings on motion in favor for Paunescu points On August 3, 2015, also allowed abit of laws pertaining to Residential Foreclosure to remain in this case.

The following is mistakes that the trial court didn't follow the law,

We have CR 30 DEPOSITIONS UPON ORAL EXAMINATION, If a party shows that when the party was served with notice under this subsection (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against the party. Now when Mr. Wuest Withdrew as our Attorney He stated that on November 13, 2014 was the day Mr. Shafton on November 13, 2014 mailed the Notice of Deposition, which didn't give us a chance to find a new Attorney, so by CR 30 subsection(b)(2) we had no chance of finding another lawyer because we weren't given time for this, The Law states the deposition may not be used against party, The deposition Mr. Shafton scheduled for November 24, 2014, a deposition on Daniela Paunescu was taken, they did it only on Daniela Paunescu, They said they will depose Ioan Paunescu but never did, because the law says discovery needs to be done within 30 day before

summary judgment and this wouldn't have been enough time so that would have meant they would've had to change summary judgment date, and they didn't want that. Now this brings me to my next point, that on December 12, 2014, Mr. Shafton and Mr. Scisciani brought us before Judge Clark on a Citation stating Notice to Court and request for Determination concerning status of Judge, This was done on the basis that something was said at the deposition which again CR 30, Deposition may not be used against party which again it was used here, Now Mr. Shafton and Mr. Scisciani could have stopped right there and could've said we made a mistake and need to make some changes, but they continued to move forward covering everything up, The trial Court never asked about a status conference to see where everyone was on the discoveries or interrogatories or if Appellants ever got a chance to depose the Eckerts. CR 30 DEPOSITIONS UPON ORAL EXAMINATION, If a party shows that when the party was served with notice under this subsection (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against the party., Both Mr. Scisciani and Mr. Shafton used the Deposition for Summary Judgement to win if we take a look at the following it will show some places where the Deposition was used at Declaration of Mr. Shafton dated Dec, 15,2014 and Response to Plaintiffs

motion for Summary Judgment and brief in support of Defendents Eckert motion for summary judgment and also Russon defendents' opposition to Plaintiffs' motion for partial summary jusgement these are only a few to name. Judge Clark approved their Summary Judgment based on all this information which was done illegally but the standards of the Law of Washington. Judge Clark entered Judgement, Rule 54. Judgment; cost states the following

(d) Costs; Attorney's Fees.

(2) Attorney's Fees.

(A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

Now this means that for any Attorney Fees that a motion has to be filed

and one party get to oppose the motion and the other to file in this case Plaintiffs opposed the motion and defendants filed the motion, now on January 30, 2015 in front of Judge Clark for Attorney fees, now the motion was brought fourth but both Defendants had mistakes on their motions and that , Rule 54, (2) Attorney's Fees, (A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. In this case Mr. Shafton should've refiled the motion for Attorney fees because Plaintiffs had a right to oppose the motion but weren't given that chance and Judge Clark approve Mr. Shafton. Now as to Mr. Scisciani Judge Clark set a special proceeding and said that she will give a written decision on Feburary 13, 2015 and that Plaintiff would have a chance to oppose the Attorney Fees ,which Plaintiff filed opposition on Feburary 9, 2015, those were the terms she set, Now she set the terms for the proceedings but never followed through, she should have some documentation certified mail receipt, which she doesn't have, She should've had Mr. Scisciani file another motion for Attorney Fees in this case but she didn't do that either so there is no valid Judgement concerning Attorney fees for the defendants. Why is it that Judge Clark instead of stating on (RP 1/30/2015) that the 13 of February is when the entry of the order is and yet we see that Judge Clark didn't

enter the order on February 13, 2015 like she said and only on March 9, 2015. Now we have to ask ourselves why that is what were both Defendants and the Judge trying to do here my opinion is that they tried intimidating us in seeing if I will file the motion on Notice of Appeal to court of Appeal filed on February 24, 2015, thinking I would wait for her order which never came until this date either, doesn't help it coming from Mr. Scisciani or Mr. Shafton a special proceeding she chose but never followed through is not legal and she will be held responsible for not enforcing the Law.

Due to all this illegally activity the following applies to the Plaintiffs CR 60 RELIEF FROM JUDGMENT OR ORDER, states the following:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken.

we see a lot has happened from the deposition til summary Judgment and kept going with the illegal entry of Judgment by Judge Clark. On April 4, 2015 Paunescu went in front of trial court, Judge Clark, because Mr. Shafton called them there for Fees and Mr. Shafton lied in front of the judge that he didn't know the bank account he went to get the attorney fees was a business LLC, now in washington state LLC is a different corporation and account compared to a personal bank account. Told Judge Clark that he lied about not knowing and I had the proof in hand and Paunescus told her if they can show her and she said I don't want to see it, we have a dvd from the trial court, being transcript to show exactly the corruption that goes on in the Trial court. The court room was full of people and yet the Judge and Mr. Shafton didn't follow procedure.

We included this information to the COA but never gave a decision to it. The trial Court didn't follow the law concerning a lot of the regulations and should be sanction for and an investigation should follow and see just how the trial court and the lawyers operate under fraud, corruption,

perjury.

E. Argument Why Review Should Be Accepted

A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court

A. A "fair hearing" is required by the due process provisions of the United States and The Washington State Constitutions. The Constitutional elements of procedural due process, and thus of a fair hearing, are: notice; an opportunity to be heard or defend before a competent tribunal in an orderly proceeding adapted to the nature of the case; an opportunity to know claims of opposing parties and to meet them; and a reasonable time for preparation of one's case.

B.

A significant question of law under the Constitution of the State of Washington or of the United States. To deny Appellant his legal review of these constitutional issues on the grounds that Appellant failed to exhaust his administrative remedies is, in itself, a usurpation of Appellant's exercise of constitutional rights. Further, denial of any right to effect discovery and cross-examination represents a denial of Appellant's Constitutional Due Process rights to know and confront the evidence against him.

~~VII.~~ F. CONCLUSION

Based on the foregoing, this court should grant the petition and accept review of the May 10, 2016, Paunescu v. Eckert, no. 47265-1-II and of the Motion for Reconsideration dated May 25, 2016.

Respectfully submitted this 1st day of June, 2016, by:

Daniela Paunescu & Ioan Paunescu

Daniela & Ioan Paunescu ProSe

A. Appendix: A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

IOAN A. PAUNESCU and DANIELA PAUNESCU, Appellants, v. GERHARD H. ECKERT and MARGARETHE ECKERT AS TRUSTEES OF THE ECKERT FAMILY TRUST, and SCOTT RUSSON and JANE DOE RUSSON, husband and wife, Respondents.	No. 47265-1-II UNPUBLISHED OPINION

SUTTON, J. — Ioan and Daniela Paunescu[1] appeal the trial court's order granting summary judgment in a nonjudicial foreclosure action and awarding attorney fees and costs to Gerhard and Margarethe Eckert and Scott Russon and his wife. The Paunsecus argue that the nonjudicial foreclosure sale of their property was invalid and that other procedural irregularities occurred. They also appeal the trial court's orders on summary judgment. We hold that the deed of trust and promissory note were enforceable, the successor trustee was properly appointed, and the nonjudicial foreclosure sale was valid. Therefore, we affirm the trial court's order granting summary judgment and dismissing the Paunescus's claims against the Eckerts and the Russons, affirm the trial court's order denying partial summary judgment to the Paunescus, and affirm the trial court's order awarding the Eckerts and the Russons their reasonable attorney fees and costs.

[1] We refer to Ioan and Daniela Paunescu by their first names for clarity and intend no disrespect.

FACTS

In 2005, the Paunescus purchased property located in Vancouver. Ioan obtained loans from MIT lending and Bank of America to finance the purchase of the property, and secured the loans with two deeds of trust on the property. In 2007, Ioan sought to obtain another loan to refinance the Bank of America loan and to add a six-bedroom addition to the Paunescu residence to operate an adult family home business

A loan broker introduced Ioan to the Eckerts, who agreed to privately loan the Paunescus $290,000 to expand the property to accommodate an adult family home business. The Paunescus obtained a permit to add six bedrooms to their home for the specific purpose of running an adult family home, and the floor plan was approved by the county before the loan was completed. In February 2008, the State approved the Paunescus's license to operate an adult family home business using the six-bedroom addition to their residential home.

In May 2007, the Paunescus signed a promissory note to The Eckert Trust, as "Holder," for $290,000. Clerk's Papers (CP) at 202. The promissory note specified that Ioan would pay interest-only payments of $2,900 per month until May 2008, when the entire balance would be due in full. The promissory note also contained a commercial property clause that Daniela initialed on behalf of Ioan as his attorney, which stated that "the sums represented by this Note are being used for business, investment or commercial purposes, and not for personal, family or household purposes." CP at 203. Daniela stated in her deposition that she had an opportunity to read the commercial loan clause in the promissory note but "at that time, I did not read it." CP at 347, 487.

The promissory note was secured by a deed of trust on the Paunescus's property. Daniela granted the deed of trust to Fidelity National Title Insurance Company as Trustee and "The Eckert Trust" as beneficiary. CP at 190. The Eckerts stated that the Paunescus did not object to the form on any of the loan documents and that if they had objected, the loan would not have been approved at that point until the objections were resolved.

In September 2013, after the Paunescus stopped making payments and failed to pay the balance of the promissory note in full by the due date, the Eckerts sent a notice of default to the Paunescus. The Eckerts appointed Scott Russon as successor trustee and Russon began nonjudicial foreclosure proceedings under chapter 61.24 RCW. Russon mailed a notice of trustee's sale to MIT Lending, the Paunescus, and the Paunescus's attorney at the time. At the trustee's sale in February 2014, the Eckerts purchased the property and subsequently conveyed the property to the Eckert Family Trust.

Before the trustee's sale took place, the Paunescus did not object or take any action to restrain the sale. Russon began eviction proceedings on behalf of the Eckerts and notified the Paunescus that they had 60 days to vacate the property following the trustee's sale. In March 2014, the trial court granted the Eckerts a writ of restitution. The State revoked the Paunescus's business license due to their default on the Eckerts's loan.

In July 2014, the Paunescues sued the Eckerts and the Russons, alleging multiple causes of action[2] and seeking a declaratory judgment to invalidate both the deed of trust to The Eckert Trust and the trustee's sale of their residential property. The trial court granted summary judgment to the Eckerts and the Russons, denied partial summary judgment to the Paunescus, and awarded the Eckerts and the Russons their attorney fees and costs. The Paunescus appeal.

ANALYSIS

I. NOTICE OF APPEAL AND BRIEFING

While the Paunescus briefed the issue of summary judgment they failed to properly appeal the trial court's orders dated January 16, 2015 or January 30, 2015 as required under RAP 5.3(a).[3] While the Paunescus filed their notice of appeal on February 24, 2015, they attached only the trial court's January 30, 2015 order awarding attorney fees and costs to the Eckerts and the Russons. The Eckerts do not provide any briefing on the Paunescus's failure to properly appeal the trial court's summary judgment order or the denial of their partial motion for summary judgment.

A notice of appeal must be filed within 30 days after the entry of the decision of the trial court and must designate the decision or part of decision which the party wants reviewed. RAP 5.2(a); RAP 5.3(a). We hold pro se litigants to the same standard and same rules of procedure on appeal as attorneys. *West v. Wash. Ass'n of County Officials*, 162 Wn. App. 120, 137 n. 13,

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[2] The Paunescues's amended complaint sought declaratory relief, quiet title, the establishment of a homestead exception and alleges breach of fiduciary duty, and alleged violations of the Unfair Business Practices Act (RCW 19.86), the Consumer Loan Act (RCW 31.04), and the usury statute (RCW 19.52.020).

[3] The party filing the notice of appeal should attach to the notice of appeal a copy of the signed order or judgment from which the appeal is made. RAP 5.3(a).

252 P.3d 406 (2011). Appellants are required to provide argument in support of the issues presented for review. RAP 10.3(a)(6),(g).[4]

Because the Paunescucs briefed the issue related to the validity of the nonjudicial foreclosure order, which was the subject of the trial court's summary judgment orders, we exercise our discretion under RAP 18.14[5] to reach the merits of this issue.[6]

II. SUMMARY JUDGMENT

We review a trial court's grant of summary judgment de novo and engage in the same inquiry as the trial court. *Wash. Fed. v. Harvey*, 182 Wn.2d 335, 339, 340 P.3d 846 (2015). Summary judgment is proper where, viewing the facts in the light most favorable to the nonmoving party, "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving

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[4] RAP 10.3(a)(6) and (g) state that the brief of the appellant should contain under appropriate headings the argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record, and the appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto.

[5] An appellate court may, on its own motion, affirm or reverse a decision or any part thereof on the merits. RAP 18.14(a).

[6] To the extent that the Paunescus argue alleged misconduct by the trial attorneys to support their argument that the trial court erred in its award of attorney fees, that issue is not before us because they have not provided argument to support the claim of error as required under RAP 10.3(a)(6), (g).

The Paunescus also argue that the Eckerts and the Russons violated CR 30(b)(2) by deposing Daniela soon after the Paunescus's attorney withdrew and before they had an opportunity to find new counsel. The Paunescus raise this argument for the first time in their reply brief, thus, we do not consider it under RAP 10.3(c) (reply brief is limited to a response to the issues to which the reply brief is directed).

party is entitled to a judgment as a matter of law." CR 56(c). We consider the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party. *Lyons v. U.S. Bank Nat'l Ass'n*, 181 Wn.2d 775, 783, 336 P.3d 1142 (2014).

A court may order a continuance of a summary judgment motion if the party opposing the motion can show that he is unable to present facts essential to justify his opposition. CR 56(f). The fact that all discovery has not been completed is not a basis to continue a summary judgment motion. *See Manteufel v. Safeco Ins. Co. of Am.*, 117 Wn. App. 168, 175, 68 P.3d 1093 (2003).

A. SUMMARY JUDGMENT PROCEDURE

The Paunescus argue that the timing of the summary judgment hearing was improper because after the Eckerts and the Russons had deposed Daniela, defendants' counsel asserted that they would like to depose Ioan as well, but did not do so.

CR 56(f) allows a party to move to continue a summary judgment hearing if the party opposing the motion cannot present facts essential to justify the party's opposition to the motion and provides that the court may order a continuance to permit affidavits to be obtained, depositions to be taken, or discovery to be conducted.

The Paunescus did not file a motion to continue the summary judgment motion under CR 56(f). Instead, Daniela told the trial court on December 12, 2014 that she did not have any objection to proceeding with the summary judgment hearing on January 16, 2015 and first raised her objection to the summary judgment proceeding at the January 30 hearing on the attorney fees award, after the trial court heard and granted summary judgment. The Eckerts and the Russons chose not to depose Ioan and the Paunescus chose not to ask for or file a motion to continue the

summary judgment motion prior to the motion being heard on December 12, 2014. The Paunescus do not present any basis to set aside or reverse the trial court's summary judgment orders.

B. THE NONJUDICIAL FORECLOSURE

The Paunescues argue that (1) the nonjudicial foreclosure sale was invalid because The Eckert Trust, named as beneficiary on the deed of trust,[7] is not the correct legal entity and cannot be a legal beneficiary of a deed of trust,[8] (2) the loan was a loan for residential property, not a commercial loan, (3) Russon was not properly appointed as a successor trustee, (4) Russon failed to follow proper nonjudicial foreclosure procedure under RCW 61.24.030, and (5) the homestead exemption applies.[9] We disagree.

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[7] The Paunescus also argue that their first deed of trust on the property, to which the Eckerts's loan was junior, is invalid because it lists "Mortgage Electronic Registration Systems, Inc. (MERS)" as beneficiary of the deed of trust. Br. of Appellant at 10; CP at 296. That deed is irrelevant to this case and MERS is not involved with the transaction between the Paunescus and the Eckerts. Thus, we do not further address this argument.

[8] The Paunescus also argue that they are entitled to relief from the trial court's summary judgment order under CR 60. We do not address this argument because the Paunescus did not raise it below or in their opening appellate brief. RAP 2.5(a), 10.3(c).

[9] They also raise several other issues that were not fully briefed or were not preserved. In their amended complaint, the Paunescus also alleged a breach of fiduciary duty by Russon and violations of the Unfair Business Practice Act (RCW 19.86), Consumer Loan Act (RCW 31.04), and usury statute (RCW 19.52). CP 26–28. We do not address these issues because these issues were not addressed in either the Paunescus's motion for partial summary judgment or the orders on summary judgment, thus these issues are waived on appeal. RAP 2.5(a).

Additionally, the Paunescus argue that the trustee reported false information to the Department of Social and Health Services. We do not address this issue because the Paunescus did not provide argument in their brief and we hold the Paunsecus to the same standard and same rules of procedure on appeal as attorneys. *West,* 162 Wn. App. at 137 n. 13. Appellants are required to provide argument in support of the issues presented for review. RAP 10.3 (a)(6), (g). Assignments of error not argued in brief are waived. *Sullins v. Sullins*, 65 Wn.2d 283, 285, 396 P.2d 886 (1964).

1. Deed of Trust & Promissory Note

A beneficiary is the "holder of the instrument or document evidencing the obligations secured by the deed of trust." RCW 61.24.005(2). The term "holder" refers to the person or entity that is in actual possession of the promissory note secured by the deed of trust. *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 101, 285 P.3d 34 (2012). Here, The Eckert Trust is named as the holder of the promissory note secured by the deed of trust and the promissory note identifies The Eckert Trust as the beneficiary of the deed of trust.

A trust as an entity is separate from the trustor, the trustee, and the beneficiary of the trust. *See e.g.* RCW 11.96A.030(6) (defining the persons interested in a trust, including the "persons holding powers over the trust . . . assets"). Assets of a trust belong to the trust, not to the trustee. *See* RCW 11.96A.050(1)(b) (venue is proper in any county "where any real property that is an asset of the trust is located"). The trustee and trust are distinct because the trustee has "discretionary power to acquire . . . *the trust property*" according to law. RCW 11.98.070 (emphasis added). The trustee holds business assets for the trust, uses the trust's general assets for the purpose of the trust, and can guarantee "on behalf of the trust" any loan to the business or secure a loan with "any other property *of the trust*." RCW 11.98.070(21)(e). Thus, a trust can be a legal beneficiary of a deed of trust when it holds the promissory note secured by the deed of trust.

The Paunsecus point to inconsistencies in how the trust name is described, arguing that the deed of trust is invalid because the loan proceeds came from "the Eckert Family Trust" but the quit claim deed granted the property from "The Eckert Trust" to the Eckerts individually, as trustees of "the Eckert Family Trust." CP at 335. This difference in the names used to describe the trust is a scrivener's error, but the error does not invalidate the deed of trust at issue. Furthermore, the

record does not demonstrate that the Paunescus objected at the time to obtaining the loan proceeds from "The Eckert Trust." The Paunescus do not cite any persuasive authority[10] to support their argument. Therefore, there is no genuine issue of material fact on whether the deed of trust and promissory note are valid and enforceable.

2. Character of the Loan

The Paunescus argue that the loan was a residential loan, not a commercial loan. Again, we disagree.

A commercial loan is "a loan that is not made primarily for personal, family, or household purposes." RCW 61.24.005(4). We determine the purpose of a loan according to the borrower's manifestations of intent for use of the loan proceeds. *Brown v. Giger*, 111 Wn.2d 76, 82, 757 P.2d 523 (1988).

Before the Paunescus received the loan proceeds, they decided to use the money to construct an addition to their home for the purpose of conducting an adult family home business, but they had also considered using the addition as a duplex to supplement their income. They had obtained a permit from the county in which the property exists and secured a floor plan with approval by the county. The Eckerts understood that the Paunescus would use the loan proceeds for the adult family home business as well. The promissory note included a provision stating that the "sums represented by this Note are being used for business, investment or commercial

[10] The Paunescues cite *Lowman v. Guie*, 130 Wash. 606, 607, 228 P. 845 (1924) (holding that under Washington incorporation statutes, a "common-law trust" is not a corporate entity), and *Portico Mgmt. Grp., LLC v. Harrison*, 202 Cal. App. 4th 464, 474, 136 Cal. Rptr. 3d 151 (2011) ("a trust is not an entity distinct from its trustees and capable of legal action on its own behalf"). But neither of these cases apply here.

purposes, and not for personal, family or household purpose," and the Paunescus initialed that provision. CP at 203. The objective evidence demonstrates that the Paunescus's loan was a commercial loan. The Paunescus fail to raise any genuine issue of material fact as to the character of this loan.

3. Appointment of Successor Trustee

The Paunescus argue that because the deed of trust listed an invalid beneficiary, the appointment of Russon as the successor trustee was also invalid. We disagree.

The actual holder of the promissory note or other instrument evidencing the obligation may be the beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. *Bain*, 175 Wn.2d at 89. Because The Eckert Trust is listed as the holder on the promissory note and as beneficiary of the deed of trust, the Eckerts, as trustees, had the power to appoint Russon as a successor trustee under RCW 61.24.010. Russon's appointment was valid and once the Paunescus defaulted on their loan, he had the right to proceed with the nonjudicial foreclosure process under RCW 61.24.030.

4. Trustee's Sale Process

The Paunescus argue that Russon failed to follow the statutory process to foreclose on a promissory note secured by their residential property. We disagree because the Paunescus did not challenge the nonjudicial foreclosure sale as they could have done under RCW 61.24 and the

objective evidence demonstrates that the Eckerts were loaning the money for commercial purposes.[11]

The nonjudicial foreclosure process must follow the requirements of chapter 61.24 RCW. *Bain*, 175 Wn.2d at 108. RCW 61.24.030 controls these procedures for commercial loans. *Compare* RCW 61.24.030, *with* RCW 61.24.031(7)(a) (requires the trustee to take certain due-diligence steps to contact the borrower before a nonjudicial foreclosure does not apply to a deed of trust "[s]ecuring a commercial loan").

Because the Paunescus received notice of the right to enjoin the sale, had knowledge of a defense to a nonjudicial foreclosure prior to the sale, and failed to bring an action to enjoin the sale, they waived the right to contest the nonjudicial foreclosure. *Frizzell v. Murray*, 179 Wn.2d 301, 306-07, 313 P.3d 1171 (2013) (holding that the mortgagor waives the right to contest the nonjudicial foreclosure when they receive notice of the right to enjoin sale, had knowledge of nonjudicial foreclosure prior to the sale, and failed to enjoin the sale). Although the Paunescus may not have read or understood the loan paperwork, Daniela acknowledged at her deposition that

[11] From their argument that the nonjudicial foreclosure sale was invalid, the Paunescus also challenge the unlawful detainer action that Russon brought following the trustee's sale and the garnishment proceedings Russon instituted to collect the Eckert's judgment against the Paunescus. Russon's unlawful detainer action proceeded under a different cause number than this case. The Paunescus did not designate the orders from the unlawful proceeding action in their notice of appeal in this case. We will review orders not designated in the notice of appeal only if the order prejudicially affects the decision designated in the notice of appeal and the trial court entered the order before we accepted review. RAP 2.4(b). We will review a final judgment that is not designated in the appellant's notice of appeal "only if the notice designates an order deciding a timely posttrial motion." RAP 2.4(c). The final order in the unlawful detainer action and the garnishment proceedings do not affect the orders designated in the Paunescus's current notice of appeal. Thus, we do not review the propriety of these orders.

she had time to read the documents and to ask questions if she had wanted to do so. Thus, the Paunescus waived their challenges to the nonjudicial foreclosure.

5. The Homestead Exemption

The Paunescus argue that the nonjudicial foreclosure sale did not extinguish their homestead rights. The homestead exemption is not applicable here.

The homestead exemption protects from "execution or forced sale" a person's homestead subject to certain exceptions. RCW 6.13.070-080. A nonjudicial foreclosure, the process that occurred here, conducted by a trustee under a deed of trust that empowers the trustee to sell the property, is not a forced sale. *Felton v. Citizens Fed. Sav. & Loan Ass'n of Seattle*, 101 Wn.2d 416, 423, 679 P.2d 928 (1984); *see also* RCW 6.13.080(2)(a) (The homestead exemption is not available against an execution or forced sale in satisfaction of judgments obtained on debts secured by security agreements describing as collateral the property that is claimed as a homestead.). A trustee sale is conducted pursuant to a power of sale granted to the trustee, thus the grantor has consented to a lawful trustee sale. *Felton*, 101 Wn.2d at 423. Therefore, the nonjudicial foreclosure sale here is not subject to the Paunescus's homestead rights.

III. Attorney Fees and Costs

The Eckerts and the Russons request reasonable attorney fees and costs on appeal. We grant their requests.

RAP 18.1(a) provides that we may award a party reasonable attorney fees and costs on appeal when an applicable law grants the party the right to recover them. We may award attorney fees and costs when a contractual provision authorizes the award. *Durland v. San Juan County*, 182 Wn.2d 55, 76, 340 P.3d 191 (2014). *See also* RCW 4.84.330 (authorizing an award for attorney fees and costs to the prevailing party in an action to enforce a contractual provision entered into after September 21, 1977).

The deed of trust between Ioan and The Eckert Trust included a clause for attorney fees and costs with the following language to "protect the security interest" of the deed of trust by Ioan's covenant and agreement: "To pay all costs, fees[,] and expenses in connection with this Deed of Trust, including the expenses of the Trustee incurred in enforcing the obligation secured hereby and Trustee's and attorney's fees actually incurred, as provided by statute." CP at 190-91. Because the Eckerts and the Russons are the prevailing parties on appeal, we grant them their reasonable attorney fees and costs on appeal.

CONCLUSION

We hold that the deed of trust and promissory note were enforceable, the successor trustee was properly appointed, and that the nonjudicial foreclosure sale was valid. Therefore, we affirm the trial court's summary judgment order dismissing the Paunescus's claims against the Eckerts

and the Russons, affirm the trial court's order awarding the Eckerts and the Russons their reasonable attorney fees and costs, and affirm the trial court's order denying partial summary judgment to the Paunescus.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Sutton, J.
SUTTON, J.

We concur:

Maxa, A.C.J.
MAXA, A.C.J.

Melnick, J.
MELNICK, J.

B. Appendix: B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ION PAUNESCU and DANIELA PAUNESCU, Appellant, v. GERHARD ECKERT, et al, Respondents.	No. 47265-1-II ORDER DENYING MOTION FOR RECONSIDERATION

Appellants move for reconsideration of the court's May 10, 2016 opinion. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Maxa, Sutton, Melnick

DATED this 25th day of May, 2016.

FOR THE COURT:

Maxa, A.C.J.
ACTING CHIEF JUDGE

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DIVISION II
2016 MAY 25 AM 10:25
STATE OF WASHINGTON
BY
DEPUTY

Daniela Paunescu
PO Box 87847
Vancouver, WA 98686

Ben Shafton
Attorney at Law
900 Washington St Ste 1000
Vancouver, WA 98660-3455
bshafton@ccrslaw.com

Ioan Paunescu
PO Box 87847
Vancouver, WA 98686

Anthony Robert Scisciani, III
Scheer & Zehnder LLP
701 Pike St Ste 2200
Seattle, WA 98101-2358
ascisciani@scheerlaw.com

Rebecca Reed Morris
Attorney at Law
701 Pike St Ste 2200
Seattle, WA 98101-2358
rmorris@scheerlaw.com

Certification of Service

I, Daniela Paunescu, the undersigned, declare under the penalty of perjury that

I served a true and correct copy of the above Petition for Review on Respondents' attorneys

Sending overnight delivery using USPS.

DATED this 1st day of June, 2016, in Vancouver, Washington,

BEN SHAFTON
WSBA#6280
ATTORNEY FOR THE RESPONDENTS
900 WASHINGTON STREET,
SUITE 1000
VANCOUVER, WASHINGTON 98660
(360)699-3001

ANTHONY SCISCIANI
WSBA #32342
ATTORNEY FOR THE
RESPONDENTS
701 PIKE STREET,
SUITE 2200
SEATTLE, WA 98101
(206) 262-1200

By: Daniela Paunescu

ProSE

PO BOX 87847 Vancouver,Wa 98687

(360) 693-8516