

No. 93556-4

SUPREME COURT
OF THE STATE OF WASHINGTON

4518 S. 256th LLC,

Appellant

v.

KAREN L. GIBBON, P.S., Trustee; RECONTRUST, N.A, Trustee;
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.
("MERS") acting as nominee for COUNTRYWIDE HOME LOANS,
INC., a Beneficiary; THE BANK OF NEW YORK MELLON f/k/a THE
BANK OF NEW YORK, as Trustee for the certificateholders of the
CWABS, Inc. Asset-backed Certificates, Series 2006-7,

Respondents

ON APPEAL FROM DIVISION I OF THE COURT OF APPEALS
(NO. 73834-8-I)

**RESPONDENTS MERS AND BONY'S ANSWER TO THE *AMICUS*
CURIAE MEMORANDUM OF THE NORTHWEST JUSTICE
PROJECT IN SUPPORT OF PETITION TO REVIEW**

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I. INTRODUCTION

Pursuant to the Court's November 10, 2016 letter order, Respondents BONY and MERS¹ respectfully submit this answer to the Amicus Curiae Memorandum of the Northwest Justice Project in Support of Petition to Review ("NJP Amicus") filed by Amicus Curiae Northwest Justice Project ("NJP").

While acknowledging with deep respect the important work the NJP does in the State of Washington, BONY and MERS must disagree with the arguments raised in the NJP Amicus. Like Appellant's Petition for Review, NJP's claims of public interest are both conclusory and illusory. As for the contention that the court of appeals decision conflicts with existing law, NJP's arguments focus on the merits of the decision, not any actual case law conflict. Accordingly, the Petition for Review should be denied.

II. ANSWER

A. NJP's Argument in Favor of Public Interest Uses the 2009/10 Foreclosure Crises as a Straw Man.

NJP argues that this case merits Supreme Court review because there are still non-performing loans in the State of Washington that are

¹ "BONY" is Respondent The Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the certificateholders of the CWABS, Inc., Asset-Backed Certificates, Series 2006-7.

"MERS" is Respondent Mortgage Electronic Registration Systems, Inc.

relics of the foreclosure crises.² NJP does not offer any numerical data that substantiate the number of these non-performing loans nor does it provide any citation for its claims that it has witnessed an “uptick” in cases with a more than six-year default period.³ Most importantly, NJP offers no numbers or analysis regarding the number of properties—like the property here—where a foreclosure was started and then more than six years elapsed without the loan being reinstated or the foreclosure occurring. Lacking such information, NJP cannot actually say that this case will affect the public interest, much less that such impact will be substantial.

NJP also invokes the public interest by claiming that this case will lead to “absurd and unfair” results.⁴ This argument does not hold water.

First, there is nothing in the court of appeals’ decision or the facts of this case that would allow a deficiency judgment to survive a non-judicial foreclosure sale.⁵ Washington law does not permit post-foreclosure deficiencies on residential loans and that law remains sound. RCW 61.24.100(1).

² NJP Amicus pp. 2-4.

³ *Id.* at pp. 2-3.

⁴ *Id.* at p. 7.

⁵ *See id.* at p. 8.

Next, NJP appeals to the scourge of abandoned properties that plague some Washington communities.⁶ However, were the court of appeals' decision reversed, lenders would be barred from foreclosing such properties and title (and thus responsibility) would remain in the name of borrowers who lack the means or inclination to maintain them.

As argued in MERS and BONY's Answer to Appellant's Petition for Review, this is a factually unique case that does not impact the public.⁷ That reasoning holds and the Petition should be denied.

B. There is No Conflict with Existing Law.

NJP argues that the court of appeals' decision conflicts with existing law.⁸ However, the brief just attempts to argue the merits of the case without getting to an actual conflict. The state of the law in Washington before this case was that an acceleration needed to be made in a clear and unequivocal manner. *Glassmaker v. Ricard*, 23 Wn. App. 35, 39, 593 P.2d 179, 181 (1979). The court of appeals explicitly followed *Glassmaker*, holding that there had not been acceleration because the record lacked any indication that the debt had been called due. *4518 S. 256th, LLC v. Karen L. Gibbon, P.S.*, 195 Wn. App. 423, 382 P.3d 1

⁶ *Id.* at p. 9.

⁷ Answer to Petition for Review p. 3.

⁸ NJP Amicus pp. 4-7.

(2016) (citing *Glassmaker*). Thus, the court of appeals' decision is in harmony with existing law, not conflict.

III. CONCLUSION

The NJP Amicus does not tip the scales in favor of review under RAP 13.4(b). For the reasons articulated in its Answer to Petition for Review and supported herein, MERS and BONY respectfully request that the Petition for Review be denied.

RESPECTFULLY SUBMITTED this 8th day of December, 2016.

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on the 8th day of December, 2016, I caused to be served a copy of the attached document to the following person(s) in the manner indicated below at the following address(es):

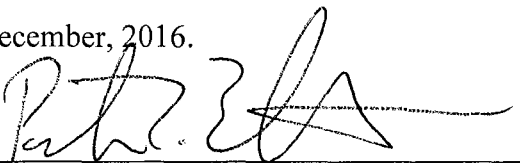
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