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Supreme Court No. 93777-0-

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Appeal Cause No. 73336-2-1

SUPREME COURT OF THE STATE OF WASHINGTON

Byron Barton and Jean Barton

Appellants

v.

JP MORGAN CHASE BANK, N.A., FIRST AMERICAN TITLE,
QUALITY LOAN SERVICE CORPORATION OF WASHINGTON,
AND TRIANGLE PROPERTY DEVELOPMENT, INC., A Washington Corporation

Respondents

Appeal from the Court of Appeals Division 1

The Honorable Becker, J.

RAP RULE 18.8 WAIVERS OF RULES AND EXTENSION OF TIME

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ORIGINAL

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This a short note to this Honorable Court. I'm a Disable Vietnam Veteran that has fallen through the safety net of WA RCW and Court. It would be a travesty of justice to not correct the errors for truth for justice.

RULE 18.8

WAIVER OF RULES AND EXTENSION AND REDUCTION

OF TIME

(a) Generally. The appellate court may, on its own initiative or on motion of a party, waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice, subject to the restrictions in sections (b) and (c).

(b) Restriction on Extension of Time. The appellate court will only in extraordinary circumstances and to prevent a gross miscarriage of justice extend the time within which a party must file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, a petition for review, or a motion for reconsideration. The appellate court will ordinarily hold that the desirability of finality of decisions outweighs the privilege of a litigant to obtain an extension of time under this section. The motion to extend time is determined by the appellate court to which the untimely notice, motion or petition is directed.

(c) Restriction on Changing Decision. The appellate court will not enlarge the time provided in rule 12.7 within which the appellate court may

change or modify its decision.

(d) Terms. The remedy for violation of these rules is set forth in rule 18.9. The court may condition the exercise of its authority under this rule by imposing terms or awarding compensatory damages, or both, as provided in rule 18.9.

ARGUMENT

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

These questions weren't asked by my attorney when I was represented by counsel. Now that I'm Pro Se I will ask this Honorable Court to except review of these issues because they impact WA State Laws and I have asked within the 30 days of filing.

- (1) Chase Bank used out of WA State Robo Signer
- (2) Chase Bank lacks standing (New Evidence)
- (3) Chase Bank failed to grant HAMP making homes affordable (Chase Bank lost our HAMP papers, multiple times.)
- (4) Res Judicata doesn't applied

ROBOSIGNING

(1) Foreclosure robo signing violated Washington Consumer Protection Act RCW 19.86 *klem v. Washington Mutual Bank, No. 87105 (Wash. 2013)*
The use of out of WA State robo signing is illegal in WA State there's no justification of waiver. As the waves of default began to rise, large lender such as Chase Bank were inundated with practice of submitting mass-produced affidavits signed by employees without any personal knowledge of the indebtedness or facts. Often these affidavits attested to the ownership of the loan and the inflated unjust fees and mishandled borrowers' loans and lenders submitted affidavits in court or to trustees that contained inaccuracies and were signed by the employees with NO knowledge of the *facts*. The name of the appointment successor Salwa Sayed Ahmed aka Salsa Ahmed VP at Chase. However, a quick Google search failed to find him or her. The trustee Quality Loan Services has failed to follow WA State Deed Of Trust Act in the past. RCW 61.24 It was just one week after WA State Attorney General lifted Deceptive Practices. Washington State Office of the Attorney General; Bob Ferguson February 27, 2014-April 3, 2014. Made the following statement;

"Foreclosure

Trustee have a duty to treat borrowers fairly *under the law*," said Attorney General of WA State. "I will make sure that all parties involved in the foreclosure process, including trustee like QLS, play by the rules."

You can Google McCarty and Hulthus, Quality Loan Service QLS, Dept. of Justice, etc.,-Statement from their Office. "We pride ourselves on knowing the judges and the "local-local" rules to effectively represent our lender clients." This hardly sounds like a neutral party to the homeowner from the owner of QLS.

(2) Chase Bank lacks standing (New Evidence)

The Appeals Court Division One; justify the reasoning on page five of the unpolished opinion for ownership of WAMU Mortgages is stated below;

"Bartons' loan note and deed of trust, the purchase and assumption agreement between the FDIC and Chase, and the notice of default and sale."

However, Chase ownership of the note is not an issue of standing but an element of its cause of its cause of action which it must plead and prove. *Wells Fargo Bank, N.A. V Erobobo, 042913 NYMISC, 2013-50675.*

The recent *Wells Fargo, N.A. V. Erobobo* of Supreme Court Kings County NY engaged in a discussion in re standing and how it related to the instant case. Many decisions treat the question of whether the Banks in a foreclosure action owns the note without showing proof of ownership. *Citigroup Global Markets Realty Corp v. Randolph Bowling*, 25 Misc. 3d 124(A), 906 N.Y.S. 2d 778 (Sup. Ct. Kings City 2009); *Federal Natl. Mtge. Assn. v. Youkelsone*, 303 AD2 546, 546-547 (2003); *Nat'l Mtge. Consultants v. Elizaitis*, 23 AD3d 630, 631 (2d Dept. 2005); *Wells Fargo Bank, N.A. v. Marchione*, 2009 Slip Op 7624, (2d Dept. 2009)

Recent Bankruptcy in (July of 20016); The ninth held that a Nevada statute that extinguished mortgage liens following HOA.... *Coker v. JP Morgan Chase Bank, N.A. Cal*, 2015

New evidence relented to this instant case; May 1, 2016 Florida's 4th DCA Reverses Many Foreclosure Judgments

In the first four months of 2016, Florida's 4th District Court of Appeals reversed many foreclosure judgments, primarily on standing grounds.

MICHIGAN SUPREME COURT RULES \$3.75 BILLION OF JPMORGAN CHASE HELD

MORTGAGES ARE VOIDABLE-(December 2012).

Juan C. Chavez v. JP Morgan Chase Bank, N.A. (2014); 'Chase did not acquire the Mortgage loan as part of sale from the FIDC. Instead, pursuant to a Mortgage Loan Purchase and sale Agreement ("P&S") by and between Washington Mutual Bank, FA ("WAMU") and Bank of America, N.A. ("BOA")

There's reasonable evidence and sites that a reasonable person can conclude there is questionable ownership of WAMU Mortgages by Chase Bank. Other state and the 9th are asking for the proof of mortgage before foreclosure is granted. WCCR 54(c) states: "No Judgment shall be taken upon a negotiable instrument until the original instrument has been filed. The consumer has WA Deed Of Trust Act that must protect the consumer as the Supreme Court has ruled WA Deed Of Trust Act must be.

(3) Chase Bank failed to grant HAMP making homes affordable (Chase Bank lost our HAMP papers, multiple times).

Upon contacting Chase Bank about our HAMP application, I was informed Chase Bank lost our application so I refaxed the lost paper work. One week later I recheck the progress of our HAMP application, only to be informed they couldn't locate our paper work. After talking to other people, I found they were told the same excuse.

Although about 1.3 million homeowners have begun trial modifications through the program, fewer than 400,000 homeowners have received permanent modification, *according to Treasury Department data.*

The United State Department of Treasury (DOT) established HAMP pursuant to Sections 101 and 109 of the Emergency Economic Stabilization Act of 2008.

In 2009, the Secretary of the Treasury and the Obama Administration unveiled the Making Homes Affordable Program ("MHA") to slow the foreclosure crisis and stabilize the economy. The TPP is a binding contract that requires servicers to grant permanent loan modification. *Federal courts, argues in favor of the HAMP, upholding the theory, and provides recommendations for National legislation. Belyea v. Litton Loan Servicing (July 2011); Bosque v. Wells Fargo(2011); Calfee v. Citimortgage(2011); Durmic v. J.P. Morgan Chase(2010); Johnson v. Bank of America Home Loans Servicing(2010)*

(4) Res Judicata doesn't applied

The Appeals Court Division One erred when they applied Res Judicata

"Becker, J-Because the appellants' claims were brought, or could and should have been brought, in their previous lawsuits, they are barred by res judicata. We affirm the trial court's dismissal of their claims.

RES JUDICATA DOES NOT APPLY

Defendants also argue this Court should not even consider the current facts, and should simply rule for the Defendants' based on the dismissal of a different case, with different facts and issues, brought over two years ago by the Barton's. Despite twice arguing and losing before other courts the Defendants' and Appeal Court misunderstood the application of res judicata.

Claim preclusion "does not bar claims which arise out of a transaction separate and apart from the issue previously litigated," *Schoeman v. N.Y. Ins*, 106 Wn.2d 855, 860, 726 P.2d 1 (1986) Consequently, application of res judicata requires that the two previous rise from the same nucleus of facts that have identical issue of fact. *Knuth v. Beneficial Wash, Inc.*, 107Wn. App. 727, 731, 31 P.3d 694 (2001).

CONCLUSION

WA State Deed Of Trust Act should rule non judicial foreclosure because the Supreme Court has ruled WA Deed Of Trust Act *must be*.

When the trustee (QLS) auction hammer went down and said sold 436 days past the original date of sale, the trustee lack powers under WA Deed Of Trust Act to sell the Barton's property. The Defendants' argument should fall on deaf ears for the Defendants' arguments are against the WA Deed Of Trust Act RCW 61.24 that the Supreme Court ruled *must be*. Accordingly, this court should grant in part and reverse the Appeals Court orders and remand for further proceedings consistent with the Court's opinion.

Sign and dated this 16th day of November 2016

/s/ Byron BARTON

Byron Barton Pro Se

CERTIFICATE OF SERVICE

I certify under penalty of perjury that the attached document was served upon WA State Supreme Court, and property served to counsel of record, November 16, 2016.

_____/s/ Byron Barton

Byron Barton

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Declaration of Service

I, Byron L. Barton, Pro Se. certify under penalty of perjury under the laws of the State of Washington, that on the date of Nov. 16 2016 I signed this declaration of service. I signed this declaration of service. To the following and mail via first class, postage prepaid, to the following counsel listed below:

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Nov. 16, 2016

Date