No. 75695-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

ALBERTO & VICTORIA AVALO,

Petitioner/Plaintiff,

v.

DEUTSCHE BANK TRUST COMPANY AMERICAS AN INDENTURE TRUSTEE FOR THE REGISTSERED HOLDERS OF SAXON ASSET SECURITIES TRUST 2005-1, MORTGAGE LOAN ASSET BACKED NOTES, SERIES 2005-1,

Respondent/Defendants.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Petition for Review before this Court arises out of a judicial foreclosure action brought by Deutsche Bank as Trustee (the "Trust")[1] after borrowers Alberto and Victoria Avalo (the "Defendants" or "Petitioners") defaulted on a promissory note and deed of trust held by the Trust. Defendants' initial Answer to the foreclosure complaint stated that they were uncertain if they ever executed a Note, and they claimed the Note and Deed of Trust "may be a forgery." (CP 222.) Later, Defendants claimed that the Trust was not the appropriate party entitled to receive payments under the Note, in spite of a signed Loan Modification Agreement stating that the Trust was the "Lender" and promising to make monthly payments to the "Lender." (CP 279; 280, ¶ 2.) Now, the Defendants' Petition further claims that specific terms in the signed Loan Modification Agreement were the result of servicer error and that they justly refused to pay as required under the Agreement. The Defendants also assert that this Court should accept their untimely Petition, which they received before the petition deadline, due to the fact that the Clerk allegedly sent the Court of Appeals' Opinion to the wrong address.

[1] Respondent's complete name is Deutsche Bank Trust Company Americas an Indenture Trustee for the Registered Holders of Saxon Asset Securities Trust 2005-1, Mortgage Loan Asset Backed Notes, Series 2005-1.

None of the Defendants' arguments have any merit, and this Court should deny review. Many of the Defendants' claims are simply not credible; others reflect a fundamental misunderstanding of the law. The Court of Appeals correctly found that the Trust proved it was entitled to enforce the note and foreclose on the deed of trust when it established it was the "holder" of the note by proving that it was the party in possession of the original note. *Deutsche Bank Nat. Trust Co. v. Slotke*, 192 Wn. App. 166, 174, 367 P.3d 600 (2016), *rev. den. sub nom.*, 185 Wn. 2d 1037, 377 P.3d 746 (2016) (citing RCW 62A.3-301). Defendants' Petition fails to show any error in the proceedings below, and also fails to satisfy this Court's criteria for accepting review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Is there any basis, as required under the Washington Rules of Appellate Procedure ("RAP"), Rule 13.4(b), for this Court to accept discretionary review of the Court of Appeals' unpublished opinion affirming grant of summary judgment in this routine foreclosure case?

2. Is the Trust entitled to an award of attorney's fees and costs incurred in responding to Defendants' Petition for Review?

III. COUNTERSTATEMENT OF THE CASE

Defendants' Petition presents this Court with new facts not previously discussed on appeal, and without citation to any portion of the

record. The facts documented in the record and appropriately before this Court are as follows:

A. Defendants Take Out a Loan to Purchase Property

On December 22, 2004, Alberto E. Avalo and Victoria L. Avalo, executed and delivered a Promissory Note (the "Note") for a loan (the "Loan") in the amount of $388,218.00 to Saxon Mortgage, Inc. (CP 246 at ¶ 5.) The Note was secured by a Deed of Trust on property located in Pierce County, Washington (the "Property"). (CP 256.) Under the Note and Deed of Trust, Defendants agreed to make monthly payments and agreed that if they did not do so, they would be in default and the Deed of Trust could be foreclosed. (CP 250, ¶ 3(B); CP 251, ¶ 7(B)-(C); CP 268, ¶ 22.)

The Note provided that the Note could be transferred and that anyone who took the Note by transfer was the "NoteHolder." (CP 250 at ¶ 1.) Accordingly, the Note was later indorsed to Deutsche Bank Trust Company Americas as Indenture Trustee for the Registered Holders of Saxon Asset Securities Trust 2005-1, Mortgage Loan Asset Backed Notes, Series 2005-1 (the "Trust"). (CP 252.)

B. Defendants Default on the Loan and the Trust Initiates Foreclosure

Defendants became delinquent on the Loan and entered into a Loan Modification Agreement with the Trust on June 2, 2009. (CP 279.) The Loan Modification Agreement, signed by Defendants, explicitly acknowledged that the "Lender" of the Loan was "Deutsche Bank Trust Company Americas formerly known as Banker's Trust Company, as Trustee." (CP 279-80.) In the Loan Modification Agreement, Defendants promised to make monthly payments on the Loan to the "Lender." (CP 280, ¶ 2.) Defendants also promised that they had "no right of set-off or counterclaim, or any defense to the obligations of the Note or Security Instrument." (CP 281, ¶ 4(c).) The Loan Modification Agreement provided that the new "Unpaid Principal Balance" under the Note was $378,686.33 and stated:

> "The Unpaid Principal Balance does not include the following amount which is also payable under the Note and Security Instrument, $70,067.85 (the "Stated Balloon Amount"), because this is the amount that Borrower owes to Lender in arrears. Lender hereby agrees to waive charging further interest on the Stated Balloon Amount to Borrower in exchange for Borrower's promise to pay the Stated Balloon Amount to Lender on January 1, 2035 (the "Maturity Date") in this Agreement.

(CP 280, ¶ 1.)

The Loan Modification Agreement brought Defendants' Loan current and also reduced their interest rate from 7.800% (CP 250, ¶ 2.) to

3.750%, and waived interest on a portion of the Loan. (CP 280, ¶¶ 1-2.) As part of the agreement, Defendants signed a notice verifying that the written agreement was the final agreement and there were no other oral agreements. (CP 284.)

Defendants nonetheless ceased making payments on their Loan by at least July 2011. (CP 247, ¶ 10.) Ultimately, Ocwen Loan Servicing, LLC ("Ocwen"), the servicer of the Loan at the time, sent a Notice of Default (CP 247, ¶ 10) and then filed a foreclosure complaint on March 24, 2014. (CP 1.) Defendants filed an Answer stating that they did not know if they executed the Note and Deed of Trust because Defendants were "now uncertain as to exactly what happened on or about May 27, 2009 and, therefore, this is denied." (CP 222.) Defendants further stated they were unable to ascertain the accuracy or truthfulness of the Note and Deed of Trust documents and that the documents "may be a forgery." (*Id.*) Defendants also alleged several affirmative defenses challenging standing and mentioning the securitization of the Loan, among other things. (CP 226-242.)

C. The Trial Court Grants the Trust's Motion for Summary Judgment

On November 25, 2014, the Trust filed a Motion for Summary Judgment supported by several sworn affidavits. The Motion argued that

there was no genuine issue of material fact that (1) Defendants were in default, (2) the Trust provided notice of the default to Defendants, (3) the Trust was the holder of the Note entitled to foreclose, and (4) the Trust satisfied all of the preconditions to enforcement of the Note and Deed of Trust through foreclosure. (CP 309, ¶1.) The Trust offered evidence supporting all of these points. (CP 246-306.)

In opposition, Defendants argued that the Court should deny summary judgment because Defendants had not had an opportunity to conduct any discovery or obtain a "forensic audit," which they wished to do. (CP 75-76.) The Superior Court held a hearing on the Motion for Summary Judgment on January 16, 2015; however, in light of Defendants' desire to conduct discovery, continued the hearing to February 13, 2015. (Opening Br. at 17.)

On February 9, 2015, less than five days before the hearing, Defendants filed an Amended Opposition. (CP 82.) Defendants made the same points as their prior Opposition, but also attached a lengthy document they termed a "forensic audit." (CP 86-169.) Defendants failed to provide any briefing or explanation regarding the forensic audit or the conclusions Defendants expected the Court to draw from the audit.

Defendants also failed to serve any discovery requests on the Trust. (CP 316.)[2]

Ultimately, the Supreme Court found that Defendants were in default of the Note; that the Note had been indorsed to the Trust and was in possession of the Trust as confirmed by presentation of the Note at the summary judgment hearing (Tr. 11:14-23); and that all pre-requisites to foreclosure had been satisfied. (CP 171.) The Court granted Summary Judgment on February 13, 2015. (CP 170-172.)

D. Defendants' Appeal and Petition for Review

Defendants filed a Notice of Appeal on April 24, 2015. Their Second Amended Opening Brief ("Opening Br.") argued that the Trust's evidence was inadequate to support grant of summary judgment and that material issues of fact were in dispute. (Opening Br. at 1.) Defendants also argued they had inadequate time to conduct discovery. (*Id*. at 2.) The Court of Appeals rejected each of their arguments in an unpublished decision. *Deutsche Bank Trust Co. Americas v. Avalo*, No. 75695-8-I, 196 Wn. App. 1061, 2016 WL 6683627, at *2-3 (Nov. 14, 2016).

[2] At the February hearing, the Trust's counsel learned that Defendants filed discovery requests with the Court, but did not serve them. (Tr. 9:24-10:1.) Defendants attach unsigned discovery requests to their Opening Brief, but the requests do not contain certificates of service confirming when they were served on the Trust's counsel.

Defendants filed an untimely Petition for Review on approximately December 28, 2016,[3] accompanied by a Motion for Extension of Time to File the Petition. As discussed further below, none of the arguments raised in the Petition warrant this Court's review.

IV. REASONS WHY REVIEW SHOULD BE DENIED

This Court should deny Defendants' Petition for Review. The Petition was untimely and no adequate reason for an extension has been offered. Further, Defendants fail to point to an actual error in the Court of Appeals' ruling or raise a legitimate issue warranting reversal of the grant of summary judgment. Finally, Defendants' Petition does not satisfy this Court's standards for review.

A. Defendants' Petition for Review was Untimely and Should Be Denied on that Basis

Defendants filed their untimely Petition for Review in the Court of Appeals on December 28, 2016, more than two weeks after the 30-day deadline for filing a Petition seeking discretionary review. RAP 13.4(a). The Washington State Rules of Appellate Procedure governing petitions for review provide that an appellate court "will only in extraordinary

[3] The Court docket for the Supreme Court, Case No. 939721, indicates a Petition for Review was filed on December 23, 2016. The Petition should have been filed in the Court of Appeals and the Court of Appeals docket for Division I, Case No. 756958 indicates a Petition for Review was filed December 28, 2016. Both dates are more than 30 days after the November 14, 2016 Opinion entered in *Deutsche Bank Trust Co. Americas v. Avalo*, No. 75695-8-I, 196 Wn. App. 1061, 2016 WL 6683627 (Nov. 14, 2016), and are therefore untimely.

circumstances and to prevent a gross miscarriage of injustice extend the time within which a party must file . . . a petition for review[]." RAP 18.8(b). "The rule will not be waived." *State v. Hand*, 177 Wn.2d 1015, 308 P.3d 588, 589 (2013) (citing RAP 1.2(c), 18.8(b).) Under Rule 18.9, the appellate court may dismiss an untimely petition for review on its own initiative or by motion by a party. RAP 18.9(a), (b).

Here, Defendants' Petition was untimely, and Defendants have not provided evidence of extraordinary circumstances justifying this Court's allowance of the Petition. As one court explained:

> "Extraordinary circumstances" includes instances in which "the filing, despite reasonable diligence, was defective due to excusable error or circumstances beyond the party's control. Negligence, or lack of "reasonable diligence," does not amount to "extraordinary circumstances." . . . Even if the appeal raises important issues, it would be improper to consider those issues absent sufficient grounds for granting an extension of time. The court will ordinarily hold that the interest in finality of decisions outweighs the privilege of a litigant to obtain an extension of time. RAP 18.8(b). In light of this policy, the standard set forth in RAP 18.8(b) is rarely satisfied.

State v. Hand, 308 P.3d at 589 (internal citations omitted).

Here, Defendants fail to articulate a credible and valid reason for their untimely petition. Defendants' request for extension states merely: "Due to a clerical error made by a party not known to the Appellants, the notice of the opinion mailed by the Court Administrator/Clerk of Division

I was sent to the incorrect address, and, thereby, the Appellants were not aware that the opinion had been filed until November 28, 2016." (App-A, Request for Extension Dated 12/23/16.)

The cover letter sent to Defendants with the Opinion is dated November 14, 2016 and is attached to this Answer as part of an appendix. (App-A.) The letter is dated November 14, 2016, and states that a copy of the Opinion will be sent to Alberto E. and Victoria L. Avalo at 2215 29th Ave St. SW, Puyallup, WA 98373. (App-A.) This is the same address the Defendants provide in their Request for Extension (*Compare* App-A *with* App-B.). Defendants make no attempt to explain the nature of any clerical error, provide the address they contend the Opinion was actually sent to (if not sent to their address), or otherwise account for the cause of their delay in receiving the Opinion.

More importantly, however, Defendants fail to explain why they did not file a Petition for Review at some point between their alleged receipt of the Opinion on November 28, 2016 and the December 14, 2016 deadline. They present no explanation at all, let alone an explanation showing "extraordinary circumstances" or reasons why the delay was out of their control. The Petition should therefore be denied.

B. The Defendants' Petition for Review is Unsupported by Authority and Raises No Legitimate Legal Issue

Even if this Court considers the Petition on the merits, the Petition points to no error in the proceedings below. The Court of Appeals and trial court correctly held that the Trust proved its entitlement to foreclose and that none of the discovery proposed by Defendants would have supported an issue of fact. Moreover, Defendants' new arguments concerning whether the Trust was a "holder in due course" and concerning the amount owed under the Loan Modification Agreement also fail to create an issue of fact precluding summary judgment.

1. The Trust satisfied its burden of showing that summary judgment was warranted and there were no issues of fact

The Uniform Commercial Code Article 3, which is codified in the Revised Code of Washington ("RCW"), is the substantive state law governing negotiable instruments, including promissory notes. The RCW provides that the "holder" of a Note is the party entitled to enforce it. *See* RCW § 62A.3-301. *See also Brown v. Washington State Dep't of Commerce*, 184 Wash. 2d 509, 524-25, 359 P.3d 771 (2015) (citing RCW 62A.3-301.) A person or entity in possession of an instrument qualifies as the "holder" of the instrument if it is payable to that person or entity. RCW 62A.l-201(b)(21) (stating "Holder" means the "person in possession of a negotiable instrument that is payable either to bearer or to an

identified person that is the person in possession.") *See also Brown*, 184 Wash. 2d at 525 (quoting from statute); *Bain v. Metro Mortg. Group, Inc.*, 175 Wash. 2d 83, 104, 285 P.3d 34 (Wash. 2012) (quoting from statute, previously codified as RCW 62A.1-201(20)(2001)).

The concept of "person entitled to enforce" a note is not synonymous with "owner" of the note. To the contrary, one party may own the right to a note's proceeds, while its servicer or another party may have the ability to enforce it. Indeed, a holder is "entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument." RCW 62A.3-301. This has been the law in Washington for 45 years. *John Davis & Co. v. Cedar Glen No. Four, Inc.*, 75 Wash. 2d 214, 222-23 (1969) ("The holder of a negotiable instrument may sue thereon in his own name, and payment to him in due course discharges the instrument. It is not necessary for the holder to first establish that he has some beneficial interest in the proceeds.") (citation omitted).

When a note is transferred from one entity to another, the successor entity receives both the ability to enforce the note and the ability to enforce the pertinent trust deed. *Am. Sav. Bank & Trust Co. v. Helgesen*, 64 Wash. 54, 61 (1911) *on reh'g*, 67 Wash. 572 (1912) ("There is no doubt that a mortgage, or any other security given for the payment of

a bill or note, passes by a transfer of the bill or note to the transferee."). The successor holder therefore has the right to judicially foreclose on the note and trust deed, based on its possession of the note. *Slotke*, 192 Wn. App. at 168 (2016) ("The holder of a note may commence a judicial foreclosure of the deed of trust in the same manner as a mortgage.")

Here, the Trust submitted evidence establishing that it was in possession of the Note, and that the Note was indorsed to the Trust. Defendants failed to present any evidence contesting these facts. Consequently, the Trust proved it was the holder of the Note, and therefore the party entitled to enforce the Note. *Slotke*, 192 Wn. App. at 168 (party proving it was in possession of a note, also indorsed to that party, established it was entitled to foreclose).[4]

2. Defendants' argument that the Trust must prove it is a "holder in due course" is without merit

Defendants' Petition argues that proof of possession is inadequate to prove entitlement to enforce a note, claiming that the Trust must prove it is the "holder in due course" who took the instrument for value and in

[4] Moreover, the Court of Appeals could have affirmed the grant of summary judgment on the grounds that Defendants were contractually estopped from claiming the Trust was not the party entitled to receive payments, where they had previously signed a written Loan Modification Agreement stating that the Trust was the Lender to whom payments were due. (CP 40-41, ¶2, 4(c).) *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453, 266 P.3d 881 (2011) (noting court may affirm on any grounds supported by the record); *Ivy Press v. McKechnie*, 88 Wash. 643, 652 (1915) (where a party enters into a contract with a corporation, it should be estopped from denying its existence).

good faith pursuant to RCW 62A.3-302(a)(1). Defendants misunderstand the law. A "holder in due course" under 62A.3-302 enjoys different rights from that of a mere "holder." *Wesche v. Martin*, 64 Wn.App. 1, 10 (1992) (noting a holder in due course, "enjoys certain privileges and immunities which [a holder] does not have.") As explained above, under Washington law, a party needs only prove it is the holder in order to prove entitlement to enforce the note. *Slotke*, 192 Wn. App. at 172-78 (rejecting numerous arguments regarding securitization and ownership of the note and finding plaintiff need only prove it was holder of the note.); *Bucci v. Nw. Tr. Servs., Inc.*, 197 Wn. App. 318, 328, 387 P.3d 1139 (2016) ("USB produced the original note, indorsed in blank, for inspection by the trial court. This was sufficient to prove the status of USB as the holder of Bucci's note.")

3. The trial court's decision to grant summary judgment in spite of Defendants' request for more time to conduct discovery was appropriate

Defendants argue that they did not have adequate time to conduct discovery. However, it is undisputed that the Court held two summary judgment hearings in order to accommodate their request to conduct discovery, continuing the initial January 16, 2015 hearing to February 13, 2015. (Opening Br. at 17.) In spite of the continuance, Defendants did not serve the Trust's counsel with discovery. Further, Defendants failed to

submit any evidence in opposition to the summary judgment motion other than the forensic audit, which was unauthenticated, irrelevant, hearsay evidence, which the Superior Court properly noted offered legal conclusions and probably constituted the improper practice of law. (Tr. 6:16-24.) The Court's concern about the audit was understandable, as this type of proposed expert material is regularly rejected by courts.[5] Here, however, the Court need not consider the hypothetical question of whether a "forensic audit" could ever be admitted as expert evidence, because the evidence is clearly inadmissible due to the fact that it provides legal conclusions (rather than expert evidence on facts), and because the evidence is irrelevant. Nothing in the audit disputes the only relevant fact regarding the Trust's standing to foreclose, which is that the Trust was the holder of the Note. *Slotke*, 192 Wn. App. at 172-78. Because the issues discussed in the audit would not have impacted the Trust's entitlement to

[5] *See Fidel v. Deutsche Bank Nat'l Trust Co.*, No. C10-2094 RSL, 2011 WL 2436134, at *1 (W.D. Wash. Jun. 4, 2011) (disregarding forensic audit because plaintiff cannot rely on legal conclusions from a report); *Abarquez v. OneWest Bank, FSB*, No. C11-0029RSL, 2011 WL 1459458, *1 (W.D. Wash. Apr. 15, 2011) (same); *In re Butler*, 512 B.R. 643, 655 (Bankr. W.D. Wash. 2014) (same). The Washington Attorney General and the Federal Trade Commission warn borrowers not to pay for these kinds of reports. *Hanson v. Wells Fargo Bank N.A.*, No. C10-1948Z, 2011 WL 2144836, *3 at n.6 (W.D. Wash. 2011) (noting credibility of reports was dubious and the Federal Trade Commission had issued a consumer alert "regarding forensic mortgage loan audit scams."). *See also* the website of the Washington State Office of the Attorney General, entitled "Mortgage and Foreclosure Scams," available at http://www.atg.wa.gov/mortgage-and-foreclosure-scams.

foreclose, the Court appropriately refused to continue the summary judgment proceedings to conduct discovery pertaining to the audit. *See* Wash. Civ. R. 56(f).

4. The Defendants fail to show that any aspect of the Court of Appeals' ruling was in error

The Defendants criticize several aspects of the Court of Appeals' Opinion that are immaterial and/or which were not in error. For instance, the Defendants take issue with the Court's mention of the fact that the Defendants defaulted on their loan, arguing for the first time in their petition that the "Avalos NEVER defaulted on their loan or refused to make any payments." (Petition at 3.) The Defendants fail to cite the record for this proposition; and indeed, the record contains no copies of cancelled checks or other payments made on the Loan past the claimed date of default. Further, the Defendants' own Petition admits that they failed to pay on the Loan because they disputed a portion of their debt amounting to $70,067.85. (Petition at 4.)

The Defendants' challenge to the $70,067.85 figure is a theme of their Petition, yet was unmentioned in their Opening Brief on Appeal and is therefore not appropriate for this Court's consideration. *See, e.g.*, *Slotke*, 192 Wn. App. at 177 (holding an "issue raised and argued for the first time in a reply brief is too late to warrant consideration.") Even if

considered, the Defendants' objection to this amount is not credible and their claim that further discovery would have revealed the amount to be improper is without merit. The Loan Modification Agreement the Defendants entered into in June 2009 discloses an amount in arrears of $70,067.85, and states that this amount is still owed to the Lender and due at maturity, but that interest on the amount is waived. (CP 280, ¶ 1.) The Defendants both initialed the page of the Loan Modification explaining this, and it is undisputed that they signed the Agreement. (CP 280, 282.) They cannot now reasonably claim this figure was a surprise to them and a mistake, nor is there any basis for asserting it was unlawful. Moreover, their argument that they defaulted because they refused to pay on this amount makes no sense, since the Loan Modification discloses that the amount was not bearing interest and was not due until the Note's maturity on January 1, 2035. (CP 280, ¶ 1.) Finally, the Defendants are not entitled to negate an unambiguous term of a signed contract with their oral representations. *See Washington Fed. Sav. & Loan Ass'n v. Alsager*, No. 66019-5-I, 164 Wn. App. 1025, 2011 WL 5027500, at *4 (2011).

C. The Defendants' Petition Does Not Satisfy any Requirement for Acceptance of Review

The Defendants' Petition suffers a further defect in that it fails to satisfy this Court's requirements for review. Pursuant to the Washington

Rules of Appellate Procedure, Rule 13.4(b), a petition for review to the Washington Supreme Court is accepted 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.

RAP 13.4(b).

The Defendants fail to establish that any of these bases exist. They argue that the Court of Appeals' Opinion is in conflict with *Bain*, but their arguments demonstrate that they simply misunderstand the law. Defendants identify no conflict among any jurisdictions. Indeed, the Court of Appeals' decision was consistent with numerous Washington authorities holding that an entity is entitled to enforce a note through foreclosure upon proof that it is the "holder," of the note, which requires proof only of possession of a note indorsed to the entity or indorsed in blank. *See John Davis*, 75 Wash. 2d at 222-23; *Brown*, 184 Wn.2d at 536; *Slotke*, 192 Wn. App. 166. *See also* RCW 62A.3-301.

Defendants also have not identified an important public interest. Even if they had, the argument would lack merit given the Defendants fail to show a single instance of error in the trial court's grant of summary judgment. Petitioners have shown no abuse in the proceedings, nor are

any other property owners prejudiced when they face valid foreclosure proceedings where it is established on summary judgment that the property owners are in default and also established that the party seeking to foreclose is the party entitled to enforce the note. To the contrary, this Petition and others like it merely present another delay tactic to keep control of property that the Petitioners have long since stopped paying for.

VI. ENTITLEMENT TO ATTORNEY FEES

The Washington Rules of Appellate Procedure allow an award of fees where supported by law. RAP 18.1(a). Here, the Deed of Trust executed by the Defendants includes a provision awarding attorney's fees, including appellate fees, to a prevailing party. RCW 4.84.330. Consequently, if this Court denies the Petition, the Trust respectfully requests that the Court award reasonable attorney's fees and costs pursuant to RAP 18.1(a) for time spent preparing an Answer to the petition.

VII. CONCLUSION

For the reasons set forth above, the Trust requests that this Court deny the Defendants' Petition for Review.

RESPECTFULLY SUBMITTED this 11th day of April, 2017.

By _____

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E-Mail: eedling@houser-law.com
Of Attorneys for Deutsche Bank Trust Company Americas an Indenture Trustee for the Registered Holders of Saxon Asset Securities Trust 2005-1, Mortgage Loan Asset Backed Notes, Series 2005-1

APPENDIX

A. A letter from the Washington Court of Appeals, dated November 14, 2016, enclosing the Opinion entered in *Deutsche Bank Trust Co. Americas v. Avalo*, No. 75695-8-I, 196 Wn. App. 1061, 2016 WL 6683627 (Nov. 14, 2016).

B. A Request for Extension of Time filed by Alberto E. Avalo and Victoria L. Avalo in the Washington State Supreme Court on December 23, 2016.

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
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November 14, 2016

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CASE #: 75695-8-I
Deutsche Bank Trust Company Americas, Respondent v Albert E. Avalo, Appellant

Pierce County, Cause No. 14-2-07188-0

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Accordingly, we affirm."

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

law

Enclosure

c: The Honorable Susan K. Serko

COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

93972-1

ALBERTO E. AVALO, Pro se, and VICTORIA L. AVALO, Pro se, Appellants,	)	Court of Appeals No. 75695-8-1 [PREVIOUSLY 47501-4-II]
vs.	)	REQUEST FOR EXTENSION
DEUTSCHE BANK TRUST COMPANY AMERICAS,	)	
Respondent	)	

COME NOW the Appellant(s) Alberto E. Avalo and Victoria L. Avalo, pro se, to request an extension of 16 days to complete and submit their PETITION FOR REVIEW for the Washington State Supreme Court. This request comes after the Appellants learned, purely by chance, that the Division I Court had filed their opinion in this matter on November 14, 2016. Due to a clerical error made by a party not known to the Appellants, the notice of the opinion mailed by the Court Administrator/Clerk of Division I was sent to the incorrect address and, thereby, the Appellants were not aware that the opinion had been filed until November 28, 2016. Pursuant to RAP 13.4(a) Appellants have 30 days in which to file and in light of the above-described loss of time, Appellants request for an extension allowing for the full 30 days provided for in the rule.

Respectfully submitted this 12th day of December, 2016

A. E. Avalo
Alberto E. Avalo, Appellant, Pro se

2215 29th Ave. Ct. SW,
Puyallup, WA 98373

PHONE: 253-988-0231

Victoria Avalo
Victoria L. Avalo, Appellant, Pro Se

COURT OF APPEALS DIVISION I
OF THE STATE OF WASHINGTON

ALBERTO E. AVALO, Pro se, and VICTORIA L. AVALO, Pro se, Appellants,	)	Court of Appeals No. 75695-8-1 [PREVIOUSLY 47501-4-II]
vs.	)	CERTIFICATE OF SERVICE
DEUTSCHE BANK TRUST COMPANY AMERICAS, Respondent	)	

WE, the Appellants, Alberto E. Avalo and Victoria L. Avalo, Pro Se, HEREBY CERTIFY that a true and correct copy of Appellants REQUEST FOR EXTENSION and OBJECTION TO COST BILL, which was filed with the Clerk of the Court and served by email/US Mail upon the following party: Emilie K. Edling, Houser & Allison, APC, 9600 SW Oak Street, Suite 570, Portland, OR, 97223, on this 12th day of December, 2016.

Respectfully submitted this 12th day of December, 2016

Alberto E. Avalo, Appellant

Victoria L. Avalo, Appellant

2215 29th Ave. Ct. SW,
Puyallup, WA 98373

PHONE: 253-988-0231

CERTIFICATE OF SERVICE

I the undersigned declare as follows: I am over the age of 18 years and am not a party to this action. I certify that on the 11th day of April 2017, I caused a true and correct copy of this ANSWER TO PETITION to be served on the following via first class mail, postage prepaid:

Alberto E. and Victoria L. Avalo
2215 29th Ave St. SW
Puyallup, WA 98373

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: April 11, 2017

Sharon Kuger