No. 94072-0

(Court of Appeals No. 74602-2-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN PHILLIP HALL,

Petitioners/Plaintiffs,

v.

JP MORGAN CHASE BANK, N.A., et al.,

Respondents/Defendants.

ANSWER OF JPMORGAN CHASE BANK, N.A., TO PETITION FOR REVIEW BY JOHN PHILLIP HALL

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I. INTRODUCTION

Petitioner/Plaintiff John P. Hall ("Hall") provides no basis for this Court to review the appellate court's decision to affirm summary judgment in Respondent/Defendant JPMorgan Chase Bank, N.A. ("Chase") and Wells Fargo Bank, N.A., as Trustee, WaMu Mortgage Pass-Through Certificates Series 2005-PR4 Trust ("Wells Fargo Trustee")'s favor. The only basis cited—an issue affecting the public interest—is not met because the issues are personal and this Court would have no guidance to give.

In the trial court, Hall sought to force Chase and Wells Fargo Trustee to modify his ex-wife's loan for his benefit (even though he was a non-party to the loan and was not on legal title to the property). In fact, his divorce decree ordered him to either **sell** the property or **refinance** the loan—not modify it.

Hall asserts the FFA required Chase and Wells Fargo Trustee to consider him for a loan modification on his ex-wife's loan, even though the FFA did not encompass ex-spouses and was amended only after his mediation (without retroactive effect) to potentially include them. As to the actual feasibility of a modification, Hall was considered, but—based on the information provided at mediation—the only way to have payments sufficient to satisfy the debt over the life of the loan was to have either a ***negative*** interest rate or the lender write off over a hundred thousand dollars. Nothing in the law requires a lender to offer a negative interest rate or to write off large sums owed on a loan.

Hall claims review of the dismissal on summary judgment of his Consumer Protection Act ("CPA") claim is warranted because Chase and Wells Fargo Trustee misrepresented an ability to modify the loan under Freddie Mac guidelines (Wells Fargo owned the loan but Freddie Mac was a guarantor). But he ignores that, despite his claims, the guidelines he cites did not encompass ex-spouses.

In addition, Hall seeks review over (a) some perceived bias issue relating to trustee's counsel changing jobs (and that the trustee and counsel's law firm has some common owners), (b) that he was denied leave to amend, and (c) he was denied discovery while a summary judgment motion was pending. None of these issues raises an issue impacting the public. There was no evidence that the trustee was biased in any foreclosure or acted to favor any party over another. Hall is only frustrated that the trustee did not postpone the foreclosure sale on property he did not own under a deed of trust securing a loan to which he was not a party. Likewise, Hall raises no unique issue regarding discovery or amendment—Hall waited too long for discovery, and his proposed amendment was futile.

The Court should deny review for the following reasons:

First, Hall's FFA claim raises no public interests because the FFA previously did not apply to ex-spouses, was amended to do so, and neither version required Chase or Wells Fargo Trustee to give a modification (which would have been impossible to do).

Second, Hall's CPA claim raises no public interests because Freddie Mac guidelines do not apply to ex-spouses.

Third, Hall's Trustee conflict theory raises no public interests as Hall failed to show any trustee bias.

Fourth, denying Hall discovery under CR 56(f) raises no public interests as a Court may deny additional discovery based on delay.

Fifth, denying Hall leave to amend raises no public issues as the law is settled that futile amendments do not warrant leave.

Sixth, the Court should award Chase its fees and costs.

II. IDENTITY OF RESPONDENT

Chase is the respondent and a defendant in this case.

III. STATEMENT OF CASE

A. Factual Background

Ms. Hough's Loan. On August 1, 2005, non-party Diane E. Hough n/k/a Diane Van Natter ("Ms. Hough") borrowed $272,000 from Washington Mutual Bank ("WaMu") evidenced by a promissory note (the "Note") and secured by real property at 623 Main St. #3, Edmonds, Washington 98020 (the "Property"). CP 193-194, 198-203. Hall is not a party to the loan and it was not transferred by Ms. Hough.

Hall Sought a Loan Modification After Ms. Hough Conditionally Transferred Her Interest in the Property to Hall. On January 3, 2014, Ms. Hough and Hall divorced, and any title she had in the Property (but not the loan) was transferred to Hall in the divorce decree, which provided that he had to either sell the property or refinance the loan

by July 2014. CP 311-321. On or about March 17, 2014, Hall submitted an application for a loan modification, ostensibly seeking to modify Ms. Hough's (his ex-wife's) loan. CP 194 ¶ 8, CP 269-274. Chase and Wells Fargo Trustee told Hall that they had no authority to consider him for a loan modification because: (i) he was not the borrower, and (ii) the borrower, Ms. Hough, did not sign the loan-modification application, was not present at the foreclosure mediation, and did not execute a power-of-attorney authorizing Hall to negotiate a loan modification on her behalf. CP 194 ¶¶ 9-10, CP 265-267, 447 ¶ 3.11. Chase and Wells Fargo Trustee separately denied Hall's request to assume Ms. Hough's loan because although Wells Fargo owned the loan, the guarantor of the loans (Freddie Mac) would not allow Hall to assume the loan. CP 77, 195 ¶ 11. But Chase was servicing the loan for Wells Fargo Trustee who made modification decisions.

Freddie Mac Guidelines. Even if they were relevant—and they are not—the Freddie Mac guidelines upon which Hall relies for this motion apply only to situations where the borrower is deceased or the loan is transferred. CP 80-85. The February 15, 2013, Bulletin Hall cites explicitly states "Upon receiving notice that all Borrowers on a delinquent Note are deceased or upon receiving notice of a transfer requiring acceleration of the Note, the Servicer must comply with all requirements of the Guide, and as appropriate, conduct loss mitigation activities . . . ." CP 81. The February 15, 2013 Bulletin does not apply to divorces. The

July 15, 2014, letter upon which Hall relies contains no information about the changes mentioned within it and no indication that they would apply to him. CP 87-93. The April 2015 document indicates that the process applies to an assumption through a contract of sale, which did not occur here. CP 95-96.

B. Procedural Background

On December 15, 2015, the trial court granted Chase and Wells Fargo Trustee's summary judgment motion and found that summary judgment was warranted on Hall's pleaded claims and the claims in the proposed amended complaint. CP 11-12, 15-18; 54-64.

On January 13, 2016, Hall appealed the grant of summary judgment and the denial of his motion for leave to amend. CP 2-10. The appellate court issued an opinion on October 24, 2016, that addressed all of Hall's claims here. *Hall v. JP Morgan Chase Bank*, 196 Wn. App. 1036, 2016 WL 6534895 (2016) (unpublished). Hall filed a motion for reconsideration in the appellate court, which was denied.

IV. ARGUMENT

Hall fails to present a reason for this Court to review the appellate court decision. The Court should deny his petition and request for review.

A. Legal Standard

Hall petitions this Court for review of the appellate court decision but fails to cite the sections of Rule of Appellate Procedure 13.4 under which he seeks review. Under Rule of Appellate Procedure 13.4(b)(1), (2) and (4), a petition to review a decision is accepted only if the decision

conflicts with decisions of the Supreme Court or another Court of Appeals, or if an issue of substantial public interest is present. RAP 13.4; *Hoflin v. City of Ocean Shores*, 121 Wn.2d 113, 125, 847 P.2d 428, 434–35 (1993). Hall cites no Supreme Court or Appellate Court decision that conflicts with Division I's determination in this case, so the only possible basis for review is whether the decision involves issues of public interest.

To determine whether there is a substantial public interest, the Court should consider "(1) the public or private nature of the issue; (2) the desirability of an authoritative determination that will provide future guidance to public officers; and (3) the likelihood that the issue will recur." *In re Det. of June Johnson*, 179 Wn. App. 579, 584, 322 P.3d 22, 25 (2014), *review denied sub nom. In re Det. of Johnson*, 181 Wn.2d 1005, 332 P.3d 984 (2014). No issue of public interest is present under the facts of this case.

B. Hall Fails to Show Any Issue of Substantial Public Interest

The nature of the issues involved in this matter are individual—not public—as the issues are uniquely intertwined with the facts of the loan relating to Hall's property, his ex-wife's loan, and the terms of his divorce decree. And the situation he complains of—spousal participation at foreclosure mediation—will not reoccur, due to the FFA amendment allowing participation in certain circumstances. Reviewing the appellate decision will not provide new guidance to litigants.

1. Hall's FFA Claim Raises No Public Interests because the FFA Previously did Not Apply to Ex-Spouses and was Amended to Do So

The FFA requires the borrower and the beneficiary to mediate in good faith. Hall argues that since the FFA's intent is to avoid foreclosure, this Court should review his case and create a new provision to the April 2014 FFA to retroactively entitle a non-borrower, divorced spouse to an FFA mediation and a loan modification of someone else's loan (without her consent). But the Court cannot do that because no such provision existed or was even implied when Hall's mediation occurred, and the legislature subsequently amended the statute (without retrospective effect) to just require consideration of people in Hall's situation. Hall's situation thus cannot reoccur in the future.

Hall's mediation occurred in April 2014. In April 2014, RCW 61.24.165 did not apply to a divorced spouse. *See Hall*, 196 Wn. App. at *3. The statute only required a mediation with the borrower, not the borrower and any spouse or ex-spouse who was awarded title to the property. After June 12, 2014, the statute was revised to include a person who "has been awarded title to the property in a proceeding for dissolution or legal separation." RCW 61.24.165(6). Thus, Chase and Wells Fargo had no duty to consider him as there was no statutory duty to do so.

This Court cannot find that the previous version required a lender to mediate a foreclosure with an ex-spouse, because it did not. Only the June 2014 amendment creates that duty. The amendment does not change

the original provision but, rather, adds a new provision including both the borrower (RCW 61.24.165(2)) and now an ex-spouse (RCW 61.24.165(6)). Moreover, RCW 61.24.165(6) explicitly states that there is no ***affirmative duty on the beneficiary to accept an assumption of the loan***. Thus, even if the statute had encompassed him, he has provided no evidence that anyone in his situation would be able to assume the loan or that they would have been given a modification. The mediation records indicate that if Hall assumed the loan, $280,000 would need to be written off or the interest rate would need to be negative just to allow him an affordable payment. CP 267. The public interest is thus not affected and, due to the amendment, this situation will not reoccur.

Further, Hall fails to show, in any way, that the RCW 61.24.165(6) amendment is retroactive. Statutory amendments are prospective only, "unless there is a legislative intent to apply the statute retroactively or the amendment is clearly curative or remedial." *Houk v. Best Dev. & Const. Co., Inc.*, 179 Wn. App. 908, 913 (2014). There is no evidence that the legislature intended to apply the amendment retroactively. A "curative" or "remedial" amendment is one that clarifies or corrects an ambiguity. *Houk*, 179 Wn. App. at 913. Hall fails to point to any ambiguity—the prior version of the statute clearly applied to a "borrower", and not any other person. RCW 61.24.165(6) creates a substantive change in the law so it is not retroactive: "'[w]here ambiguity is lacking in statutory language, this court presumes an amendment to the statute constitutes a

substantive change in the law, and the amendment presumptively is not retroactively applied.'" *Houk*, 179 Wn. App. at 913–14 (quoting *In re F.D. Processing, Inc.*, 119 Wash.2d 452, 462 (1992)).

2. Hall's CPA Claim Raises No Public Interests because Freddie Mac Guidelines do Not Apply to Ex-Spouses

Hall argues review of his CPA claim is warranted because: 1) Chase (during mediation and litigation) allegedly acted deceptively by supposedly misrepresenting Hall's eligibility for a loan modification (it merely told him the truth that as a non-borrower, he was not eligible to modify someone else's loan without her consent); and 2) causation was established (he wrongly presumes Freddie Mac would allow him to assume Ms. Hough's loan and that once he assumed it, he would have received a loan modification). There is no evidence either theory is true, much less that they create an issue of public interest. Hall's theories present an inherently personal issue, unique to his situation. The theories he advances are unlikely to reoccur, and the Court's decision would not provide future guidance, as his claims are based upon specific, personal facts. Hall is simply re-arguing the merits of his claims, instead of showing a public interest issue.

Hall relies on a Freddie Mac February 15, 2013, Bulletin (CP 80-85), a July 15, 2014, letter (CP 87-93) and an April 2015 document (CP 95-96) to claim he could assume the loan. Chase submitted no evidence to rebut Hall's claims because they were asserted after the motion for

summary judgment was filed, and his assertions to their content are wrong. Hall's theories are not pleaded in his complaint, so he cannot now add it to the action. *Kirby v. City of Tacoma*, 124 Wn. App. 454, 472 (2004) ("A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along. [Citation and quotations omitted.]"). His theories fail in any event for the following reasons:

First, Hall, or any other potential party, cannot base an affirmative claim on Freddie Mac Guidelines: "The law is clear that Freddie Mac guidelines … are not intended to, and do not, grant borrowers any rights and are not part of the contract between lender and the borrower." *See Abreu v. Countrywide Bank, FSB*, 2009 WL 2913509, *2 (D. Md. 2009) (unpublished); *Deerman v. Federal Home Loan Mortg. Corp.*, 955 F. Supp. 1393, 1398 (N.D. Ala. 1997) (the Freddie Mac Servicing Guide "does not define any rights and obligations between the [defendant] and the [plaintiffs] or any other borrower"), *aff'd*, 140 F.3d 1043 (11th Cir. 1998). There is no evidence that Freddie Mac would have even allowed him (or any other future borrower) to assume the loan.

Hall is also a stranger to the loan documents so he cannot state any claims arising from them or the foreclosure. Judge Pechman reviewed and rejected a similar claim by a non-borrower with a purported property interest: "Because [plaintiff] is a stranger to the [applicable] Deed of Trust, which precludes his challenge to any procedural irregularities with

the foreclosure process under the Deed of Trust Act (DTA) . . . the Court dismisses the Declaratory Judgment claim against Chase and GMAC Defendants." *Robertson v. GMAC Mortgage LLC*, 982 F. Supp. 2d 1202, 1206 (W.D. Wash. 2013). Other courts agree. *Ramirez-Melgoze v. Countrywide Home Loan Servicing LP*, ADV 09-80101-PCW, 2010 WL 4641948, at *6 (E.D. Wash. Nov. 8, 2010) (unpublished); *Glenham v. Palzer*, 58 Wn. App. 294, 298, 792 P.2d 551, 553 (1990) (strangers to loan not protected by anti-deficiency statutes). Hall's only argument to the contrary is a California case that holds, on a pleading motion under California unfair competition law, a person who inherits a property from a trust could potentially assert a claim when the lender treated her as a borrower for some purposes. *McGarvey v. JP Morgan Chase Bank, N.A.*, 2013 WL 5597148, *1, *8 (E.D. Cal. Oct. 11, 2013). Hall was not treated like a borrower. Hall is not even on title to the property—the JPH Family trust is and has been since 2011.[1] This means that Hall is suing over a loan-modification denial for ***someone else's loan on property he does not even own*** (in a personal capacity).

Further, Hall (and any future person in Hall's position) has no right to cure any default. *See* RCW 61.24.090. Chase, Wells Fargo Trustee and even Freddie Mac have the freedom to contract with whom they please, and Hall points to nothing that would require them to allow anyone else to assume the loan, modify the loan, or otherwise allow third-party

[1] http://www.snoco.org/RecordedDocuments/RealEstate/SearchDetail.aspx, Instrument # 201103170437.

involvement in a loan between a lender and borrower. *See Salewski v. Pilchuck Veterinary Hosp., Inc., P.S.*, 189 Wn. App. 898, 908 (2015), *review denied*, 185 Wn.2d 1006 (2016); *GMAC v. Everett Chevrolet, Inc.*, 179 Wn. App. 126, 146–47 (2014), *review denied*, 181 Wn.2d 1008 (2014). Hall does not show that Freddie Mac, a guarantor of the loans owned by Wells Fargo, could mandate assumption. This Court should not do so in the absence of a contractual or statutory requirement.

Second, the February 15, 2013, Bulletin applies only to deceased borrowers: "Upon receiving notice that all Borrowers on a delinquent Note are deceased or upon receiving notice of a transfer requiring acceleration of the Note, the Servicer must comply with all requirements of the Guide and, as appropriate, conduct loss mitigation activities." CP 81. The February 15, 2013, Bulletin, including the provision Hall underlined, also requires a request to assume the mortgage and eligibility for assumption. CP 81. Hall failed to make such a request or otherwise show he met the assumption requirements mentioned in the Bulletin. *Hall*, 196 Wn. App. 1036, *4, fn.37, *5. Nor does he show future borrowers in his position would meet these requirements either, such that there is no public interest at issue.

Third, the July 15, 2014, letter mentions only that Freddie Mac is "Updating our transfer of ownership and assumption requirements." It does not state what those updates are, other than provide a broad description: "Transfers of Ownership where the transferee requests to

assume the Mortgage or the transferor requests to assume the mortgage or the transferor requests release of liability." CP 88. Hall fails to provide any evidence that shows this update would allow any third party to assume the mortgage or loan or that it otherwise contradicted Chase's statement that Freddie Mac did not allow assumption in situations similar to his. Again, Hall failed to make an assumption request, instead asking for a modification of his ex-wife's loan on different terms. *Hall*, 196 Wn. App. 1036, *4, fn.37.

Fourth, the unauthenticated April 2015 document appears to be part of a PowerPoint slide deck lacking any context, especially how it applies to any borrower like Hall. Even if Hall had shown its context—which he did not—the document explicitly states that a complete Loan Assumption request package should contain, among other things, a "Copy of executed contract of sale." CP 96. There is no evidence that a contract of sale was executed on the Property. The slides also appear to apply to a loan originator as the first slide references "originators." CP 95. Chase was not the originator. Moreover, as pointed out previously, Hall never submitted an assumption request. *Hall*, 196 Wn. App. 1036, *4, fn.37.[2] And, again, there is nothing in the document making Hall eligible for a loan modification.

[2] Contrary to Hall's implication in his brief at page 4, Chase was not sanctioned by the federal Office of the Comptroller for failing to follow Freddie Mac's policies for loan assumption as there was no mention of loan assumptions in the online news article Hall cited, much less divorced non-borrowers assuming loans. The article also does not state that Chase was cited for misrepresenting anything. CP 161.

Fifth, there was no causal link between Chase's alleged statements and a failure to obtain a loan modification. *Hall*, 196 Wn. App. 1036, *4, fn.37. Again, Hall never asked for an assumption, so that relief was unavailable to him. *Hall*, 196 Wn. App. 1036, *4, fn.37. Hall also ignores that there is no evidence he would have received a loan modification, even if he could assume the loan. *Hall*, 196 Wn. App. 1036, *4, fn.37, *5. Indeed, Hall failed to submit any evidence that if he could assume the mortgage, the end result would have changed, and he would have obtained a modification. And again, Hall ***was*** evaluated, but a modification was not possible unless most of the loan was written off or the interest rate was negative. CP 267. In the absence of a but-for causal link, no CPA claim exists. *See Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc*., 162 Wn.2d 59, 83, 170 P.3d 10, 22 (2007).

3. Hall's Trustee Conflict Theory Raises No Public Interests as Hall Failed to Show Any Trustee Bias

In April 2014, Mr. McDonald worked at McCarthy and Holthus and was at the FFA mediation, assisting Chase and Wells Fargo with the mediation. Mr. McDonald now works as general counsel for the foreclosure trustee. Hall argues that because attorney Robert McDonald changed jobs, and because the foreclosure trustee and the McCarthy and Holthus law firm have common owners, somehow the foreclosure trustee is biased against him.

Hall provides no evidence of any such bias. The appellate court found there was no violation of the foreclosure trustee's duty of good faith, and Hall fails to provide any new evidence or law. *Hall*, 196 Wn. App. 1036 at * 5. He also provides no citation that indicates former jobs, or common ownership, creates a bias or other conflict as to the foreclosure trustee. Thus, there is nothing for which this Court could provide guidance. Instead, he wants the Court to essentially legislate and declare that common ownership between a law firm representing trustees or lenders, and a foreclosure trustee, creates a non-rebuttable per se bias. Likewise, he asks this Court to create a law out of thin air that counsel formerly representing a lender cannot work for a foreclosure trustee in the future without creating an irrefutable bias. Nothing supports this claim.

4. Denying Hall Leave to Amend Raises No Public Issues as Futile Amendments do Not Warrant Leave

Hall's "Issues Presented for Review" claims there is an issue as to whether the trial and appellate courts erred by not giving him leave to amend his complaint. Under Rule of Appellate Procedure 12.1, the appellate court can only decide a case on the issues raised in the appellate briefs. Hall failed to make any argument as to why he should have been given leave to amend. Hall therefore has waived any review of the theory by this Court. *See Mangat v. Snohomish Cty*., 176 Wn. App. 324, 334, 308 P.3d 786, 791 (2013); *US W. Commc'ns, Inc. v. Wash. Util. & Transp.*

Comm'n, 134 Wn.2d 74, 112, 949 P.2d 1337, 1356 (1997), as corrected (Mar. 3, 1998).

Regardless, the trial and appellate court's denial of leave to amend does not implicate any public interest here. Under CR 15(a), Hall could amend his complaint "only by leave of court or by written consent of the adverse party." The decision to grant leave to amend the pleadings is within the discretion of the trial court. *Sprague v. Sumitomo Forestry Co.*, 104 Wn.2d 751, 763 (1985); *Lincoln v. Transamerica Inv. Corp.*, 89 Wn.2d 571, 577 (1978). The trial court's decision "will not be disturbed on review except on a clear showing of abuse of discretion, that is, discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26 (1971); *Caruso v. Local Union No. 690*, 100 Wn.2d 343, 351 (1983).

Hall is not entitled to amendment. The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party. *Caruso*, 100 Wn.2d at 350. The factors a court may consider in determining prejudice include undue delay and unfair surprise. *Caruso*, 100 Wn.2d at 349–51. Hall waited until less than a week before the hearing on the summary judgment motion to request leave to allege his (new, but wrong) theory. *Hall*, 196 Wn. App. 1036, *5; CP 54-56. He also failed to comply with the local rules for amendment. *See* CR 15(a) and SCLCR 15(e), which provides an independent basis for denying leave to amend. CP 29, 54-64. The trial court was thus justified in denying

leave since it would have caused prejudice to Chase and Wells Fargo Trustee, occurring after a summary judgment was filed and its evidence presented. *See Gardner v. First Heritage Bank*, 175 Wn. App. 650, 675 (2013) (not abuse of discretion to deny leave to amend when filed with response to summary judgment motion); *Wilson v. Horsley*, 137 Wn.2d 500, 507 (1999); *Karlberg v. Otten*, 167 Wn. App. 522, 530 (2012).

5. Denying Hall Discovery under CR 56(f) Raises No Public Interests as the Law is Settled that Discovery Can be Denied for Delay

Hall argues that summary judgment was improper because he made a discovery request under CR 56(f). He fails to explain how this raises a public interest issue warranting review. The law is settled—a CR 56(f) is properly denied when: (1) the moving party fails to state what evidence it would establish through additional discovery; (2) the evidence sought would not raise a genuine issue of fact rendering delay and further discovery futile; or (3) the moving party fails to offer good reason for their delay in obtaining the evidence desired. *Molsness v. City of Walla Walla*, 84 Wn. App. 393, 400 (1997). Failure to meet one of these requirements is fatal. *Manteufel v. SAFECO Ins. Co.*, 117 Wn. App. 168, 175 (2003).

Hall has not shown how this Court could provide any guidance on the first element. Continuing a summary judgment motion for discovery "is not justified if the party fails to support the request with an explanation of the evidence to be obtained through additional discovery." *Molsness*, 84 Wn. App. at 400-401. "Vague or wishful thinking is not enough." *Id.*

(holding trial court did not abuse discretion by denying continuance). Hall failed to state what evidence he needed, much less by doing so in a declaration as the rule requires. *See* CR 56(f); *Molsness*, 84 Wn. App. at 401. All he said was he wanted to know "the current status of [his] loan modification application with Chase." CP 174. This is not even a discovery request and he offers no explanation for how it raises a material issue of disputed fact.

The second element is also not met. Hall's request to know the status of his loan modification application does not raise an issue of fact. *Stranberg v. Lasz*, 115 Wn. App. 396, 406-407 (2003). An answer of "denied" would not have created an issue of fact as there was no dispute he was denied. *See Hall*, 196 Wn. App. 1036 at *6. The mere possibility that discoverable evidence exists that may be relevant is not sufficient. *Molsness*, 84 Wn. App. at 401.

There is nothing for the Court to clarify on the third element. Hall did not offer any good reason for his delay in obtaining the evidence desired. Hall's request was merely a stalling tactic. He made his request in one paragraph in his opposition three weeks after being served with the summary judgment motion (and six months after the Complaint was filed). CR 56(f) is not intended to endorse inaction and delay. *Bridges v. ITT Research Inst.*, 894 F. Supp. 335, 337 (N.D. Ill. 1995) ("Rule [56(f)] is not to be used as a delay tactic or scheduling aid for busy lawyers"); *Pfingston v. Ronan Eng'g Co.*, 284 F.3d 999, 1005 (9th Cir. 2005) ("The failure to

conduct discovery diligently is grounds for denial of a Rule 56(f) motion.").[3] Waiting until the last minute is not a basis for continuing a motion and is not a reason to review the appellate court's determination.

C. The Court should Award Chase its Costs

The Court should award Chase and Wells Fargo Trustee their costs in connection with the Hall's petition for review under RAP 18.1(j). That rule permits an award "to the party who prevailed in the Court of Appeals . . . for the prevailing party's preparation and filing of the timely answer to the petition for review." Hall's petition has no merit and fails to show any public interest in any of the issues raised in his case.

V. CONCLUSION

There is no reason to grant Hall's petition. There is no novel issue of law and reviewing the appellate court's decision will not lead to guidance on any public interest issue. The Court should deny Hall's Petition.

RESPECTFULLY SUBMITTED this 21st day of February, 2017.

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[3] Washington state courts interpret CR 56(f) consistently with its federal counterpart. *Turner v. Kohler*, 54 Wn. App. 688, 693 (1989) (looking to Fed. R. Civ. P. 56(f))

PROOF OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the state of Washington that on this day he served the foregoing document upon the following attorneys of record via e-service and via U.S. Mail:

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