Case No. 94552-7

SUPREME COURT FOR THE STATE OF WASHINGTON

CONCEPCION HERMOSILLO, a single woman

Appellant,

vs.

QUALITY LOAN SERVICE CORP. OF WASHINGTON, INC., et. al.

Respondents.

ANSWER TO SUPREME COURT PETITION

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I. ANSWER

A. *Brown*'s Reversal Would Not Affect This Case's Outcome.

The crux of Appellant's Petition is that the appellate court relied on *Brown v. Dep't of Commerce*, 184 Wn.2d 509 (2015) in affirming the dismissal of NYCB, and *Brown* was wrongly decided by this Court and should be reversed. The question in *Brown* was whether the deed of trust "beneficiary" is the holder or owner of the note. In *Brown*, the note was owned by Freddie Mac, but held by Freddie Mac's loan servicer. This Court held that the deed of trust beneficiary was the loan servicer, not Freddie Mac, because the loan servicer held the note and had the right to enforce it. *Id*. at 536.

Appellant argues that *Brown* was wrongly decided and the owner, not the holder, should be declared the legal beneficiary. But this alleged error is irrelevant here because respondent New York Community Bank ("NYCB") was ***both the note owner and holder***. The reversal of *Brown* here would change nothing because the owner and holder were the ***same party***.

B. Lien Follows the Note.

Washington is a lien theory state. *OneWest Bank v. Erickson*, 185 Wn.2d 43, 63-64 (2016); *Kezner v. Landover Corp.*, 87 Wn. App. 458, 463 (1997). The holder of a lien does not have any right, title or interest in the land the lien encumbers. *Capital Inv. Corp. v. King County*, 112 Wn. App. 216, 229 (2002). The longstanding rule of this state is that the lien follows the note. *Bain v. Metro.*

Mortg. Grp., Inc., 175 Wn.2d 83, 104 (2012); *McAfee v. Select Portfolio Servicing, Inc.*, 193 Wn. App. 220, 228 (2016); *Bavand v. OneWest Bank, FSB*, 196 Wn. App. 813, 843 (2016).

Appellant's argument that a transfer of the secured note is a transfer of real property requiring a deed is nonsensical, has no legal support and goes directly against the longstanding law of this state.

C. Second Notice of Default Not Required.

Nothing in the DTA requires a new notice of default with every notice of sale. *Leahy v. Quality Loan Serv. Corp. of Wash.*, 190 Wn. App. 1, 7 (2015). The trustee foreclosing NYCB's deed of trust was not required to issue a new notice of default with its second notice of sale. As the appellate court correctly explained, the trustee's second notice of sale was based on the original default which was never cured.

D. Consumer Protection Act ("CPA") Claim Fails.

Acts performed in good faith under an arguable interpretation of existing law do not constitute unfair conduct violative of the CPA. *Perry v. Island Sav. & Loan Asso*, 101 Wn.2d 795, 810-811 (1984); *Leingang v. Pierce County Medical Bureau*, 131 Wn.2d 133, 155 (1997).

There can be no dispute that the trustee's foreclosure of NYCB's deed of trust complied with the published case law of this state. If this Court reverses *Brown* and its other published holdings, there is still no "unfair and deceptive act"

by NYCB or the trustee because the foreclosure complied with the existing law.

II. CONCLUSION

The appellate court followed the law in affirming NYCB's dismissal. There is no reason for this Court to reverse the law as the Appellant urges. And even if the law were reversed, Appellant would still not have a viable CPA claim against NYCB. Appellant's Petition should be denied.

Dated: June 17, 2017

MCCARTHY & HOLTHUS, LLP

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