

Supreme Court Cause No. 94580-2

Court of Appeals, Division Three, Case No. 34971-3-III

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FEDERAL HOME LOAN MORTGAGE CORPORATION

Plaintiff/Respondent,

vs.

PAMELA S. OWEN,

Defendant/Petitioner

**RESPONDENT FEDERAL HOME LOAN MORTGAGE
CORPORATION'S RESPONSE TO PETITION FOR REVIEW**

Submitted by:

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I. IDENTITY OF ANSWERING PARTY

Federal Home Loan Mortgage Corporation (“Respondent”) hereby asks this Court to deny the Petition for Review of Petitioner Pamela Owen as follows below.

II. STATEMENT OF RELIEF SOUGHT

Respondent requests that the Washington Supreme Court decline to accept review of *Fed. Home Loan Mortg. Corp v. Owen*, No. 47566-9-II (October 16, 2015) and *Fed. Home Loan Mortg. Corp v. Owen*, No. 34971-3-III (May 2, 2017).

III. STATEMENT OF THE CASE

A. Procedural History and Statement of Facts

Petitioner was the owner of the Property that was subject to a deed of trust. Appellant’s Brief at 1. A notice of trustee’s sale was recorded June 18, 2014. CP 22, 25. On January 16, 2015, the Property was sold at a non-judicial foreclosure sale to Freddie Mac, the highest bidder; the record does not show the sale was restrained. The trustee issued and recorded a Trustee’s Deed to Freddie Mac. See Appellant’s Brief at 3; Supplemental CP 80-81. Owen refused to vacate the Property and on March 6, 2015, Freddie Mac served Owen with a Summons and Complaint for Unlawful Detainer. CP 1-6. The trial court entered a default judgment April 3, 2015.

Appellant’s Brief at 4; Supplemental CP 82-86. The judgment was upheld by *Fed. Home Loan Mortg. Corp v. Owen* No. 47566-9-II (October 16 2015).

Owen says she received a 1099-A tax form (“1099-A”) on January 28, 2016. Appellant’s Brief at 4. Owen raised the 1099-A in her federal case and that court rejected the challenge on February 9, 2016. CP 60-67. On April 22, 2016, based on the original judgment, Freddie Mac moved the trial court to re-issue the writ. CP 7-10. On May 12, 2016, Owen raised the issue of the 1099 in the trial court. CP 11-20. This was over a year from the judgment. On May 20, 2016, after hearing, the trial court ordered the clerk to re-issue the writ. CP 69-72.

The 1099-A makes no representation regarding note possession. It labels Freddie Mac a “Lender” – who acquired real property at a foreclosure sale. CP 31-32. According to the *Freddie Mac Single-Family Seller/Service Guide* (2016) the “servicer must provide IRS form 1099-A... this reporting must be done whenever Freddie Mac or a third party acquires an interest in a property in full or partial satisfaction of Freddie Mac’s secured debt.” CP 35-36; *see* 26 USC ss6050J(a).

IV. RESPONSE ARGUMENT

A. Standard of Review.

Discretionary acceptance of decisions terminating review may only be granted pursuant to the criteria set forth in R.A.P. 13.4(b). Owen cites specifically to none of the enumerated grounds for review under RAP 13.4(b). Owen instead contends the Court of Appeals' decision "abolishes" "well-settled decisional law." Pet. for Review at 5. As shown below, this Court should decline review. There was no error, no conflict with decisions of this Court or the Court of Appeals; and no significant questions of law or issues of substantial public interest were involved.

B. Review of *Fed. Home Loan Mortg. Corp v. Owen*, No. 47566-9-II (October 16, 2015) is Time-Barred.

Petitioner seeks reversal of not one, but two Court of Appeals decisions: *Fed. Home Loan Mortg. Corp v. Owen*, No. 47566-9-II (October 16, 2015), raised as Issue Pertaining to Assignment of Error #1, and *Fed. Home Loan Mortg. Corp v. Owen*, No. 34971-3-III (May 2, 2017), raised as Issue Pertaining to Assignment of Error #2. See Petition for Review at 1; and Appendix thereto.

Petitioner can no longer seek review of *Fed. Home Loan Mortg. Corp v. Owen*, No. 47566-9-II (October 16, 2015). A petition for review

must be filed within 30 days after the decision is filed. RAP 13.4(a). Appellant's 30-day deadline to have sought review expired November 15, 2015. Petitioner cannot shoehorn review of the 2015 decision into review of a more recent decision. Consequently, the Supreme Court should deny the Petition as to Assignment of Error #1, for this reason.

C. The Court Should Decline Review of *Fed. Home Loan Mortg. Corp v. Owen*, No. 34971-3-III

The Court of Appeals correctly decided that the 1099-A has no bearing on the foreclosure proceedings under RCW 61.24, and is not evidence of wrongful foreclosure. See *Fed. Home Loan Mortg. Corp v. Owen*, No. 34971-3-III at 7-8. Thus, the 1099-A has no bearing on this unlawful detainer action and Assignment of Error #2 should be denied. The 1099-A makes no representation regarding note possession. It does not even solicit such information. Instead, it identifies a "Lender" who acquired real property at a foreclosure sale – for tax purposes, not for analysis of the non-judicial foreclosure process. A commercial lender must provide the borrower with this form when it acquires an interest in secured property to satisfy a debt. See 26 U.S.C. ss 6050J(a).

The Court of Appeals decision comports with longstanding applicable decisions of both this Court and Washington appellate courts. Foremost, a

challenge to the underlying foreclosure is outside the scope of unlawful detainer. Unlawful detainer is a narrow proceeding limited to the question of possession and related issues such as restitution of the premises and rent. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). Courts sit in a statutorily limited capacity and lack authority to resolve issues outside the scope of the unlawful detainer statute. *See Sprincin King St. Partners v. Sound Conditioning Club, Inc.*, 84 Wash.App. 56, 66–68, 925 P.2d 217 (1996). Also, unlawful detainer “do[es] not provide a forum for litigating claims to title.” *Puget Sound Inv. Grp., Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998).

The Court of Appeals also correctly decided that Owen waived any “chain of title defense.” *Fed. Home Loan Mortg. Corp v. Owen*, No. 34971-3-III at 9. This conclusion comports with *Federal National Mortgage Association v. Ndiaye*, 188 Wn.App. 376, 384, 353 P.3d 644 (2015), *Merry v. Northwest Trustee Services*, 188 Wn.App 174, 194-95, 352 P.3d 830 (2015) and *River Stone Holdings NW LLC v. Lopez*, No. 48432-3-II, at 6 (2017). Owen had notice of a purported “MERS claim” based on the deed of trust she signed, and the recorded Notice of Trustee’s Sale’s advisement of the right to restrain the sale. See Appellant’s Brief at 2; Respondent’s Request for Judicial Notice Exhibit 1, p. 3; *Fed. Home*

Loan Mortg. Corp v. Owen, No. 34971-3-III at 2, 9. Nor did Petitioner restrain the sale. Petitioner waived her foreclosure challenge.

Finally, constitutional law is not implicated. This is an unlawful detainer proceeding based on Washington law; more specifically, RCW 59.12 *et seq.* and RCW 61.24 *et seq.* No significant questions of law or issues of substantial public interest were involved.

V. CONCLUSION

The Court of Appeals' decisions should be left to stand. Owen's Petition for Review must therefore be denied.

DATED this 28th day of June, 2017.

RCO LEGAL, P.S.

By: /s/ Joseph H. Marshall
Joseph H. Marshall, WSBA #29671
Attorneys for Respondent

Declaration of Service

The undersigned makes the following declaration:

1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.

2. On June 28, 2017 I caused a copy of **Respondent Federal Home Loan Mortgage Corporation's Response to Petition for Review** to be served to the following in the manner noted below:

Pamela Owen 3912 NE 57 th Ave. Vancouver, WA 98661 <i>Pro Se</i> Appellant	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile
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I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed this 28th day of June, 2017.

/s/ Kristine Stephan
Kristine Stephan, Paralegal

RCO LEGAL PS

June 28, 2017 - 3:08 PM

Transmittal Information

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