NO. 94648-5

(Court of Appeals NO. 74705-3-I)

IN THE SUPREME COURT

OF THE STATE OF WASHINGTON

JOHN R. WILSON, a married man, and JACQUELINE M. WILSON, a married woman

Petitioner,

v.

QUALITY LOAN SERVICE CORP. OF WASHINGTON, a Washington Corporation, McCARTHY and HOLTHUS, LLP, a California Limited Partnership,

Respondents.

RESPONDENT QUALITY LOAN SERIVCE CORP. OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF ANSWERING PARTY

Quality Loan Service Corporation of Washington, a Washington corporation ("Respondent") is Respondent in the appeal and Defendant in the Superior Court action. Respondent hereby answers the Petition for Review ("Petition") of Appellants John R. and Jacqueline Wilson (collectively, the "Petitioners" or "Wilsons") as follows.

II. SUMMARY OF GROUNDS FOR DENYING REVIEW

The Superior Court's order granting judgment in favor of Respondent pursuant to CR 56 was correctly affirmed by the Court of Appeals. Review of the Court of Appeals' decision is appropriate in only four narrowly prescribed circumstances under RAP 13.4(b). The Court should not accept review of the Petition because, here, the issues are narrow, discrete, specific to the facts of this particular matter and resolved by established case law. The Petition fails to show that the Court of Appeals' decision is in conflict with either a decision of this Court or a decision of another Court of Appeals or involves an issue of substantial public interest. This Court should deny the Petition for Review.

III. COUNTERSTATEMENT OF CASE

The Petition fails to present any statement of the facts and procedures relevant to the issues presented for review, as required by RAP 13.4(c)(6). Respondent presents the following Counterstatement of Case

in order to aid the Court's review of the Petition.

A. Statement of Facts Relevant to Review.

The Wilsons obtained a loan secured by their home from Washington Mutual Bank ("WaMu") in 2005. Clerk's Papers ("CP") 466, 622-23. The Adjustable Rate Note (the "Note") signed by the Wilsons is in the amount of $567,000 and includes a promise to repay the loan to the holder. CP 469-474. The Wilsons also agreed that the "Lender may transfer the Note." CP 469. To secure the Note, the Wilsons executed a Deed of Trust ("Deed of Trust") encumbering their home. CP 466, 476-493, 622-23. The Deed of Trust explains that upon default the Trustee of the Deed of Trust could sell the Wilsons' home to repay the Loan. CP 649.

In September 2008, the federal government's Office of Thrift Supervision closed WaMu, and the Federal Deposit Insurance Corp. ("FDIC") assumed the assets of WaMu as the receiver. CP 443. Pursuant to the Federal Deposit Insurance Act, 12 USC § 1821 (j)(d)(2)(g)(i)(II), the FDIC entered into a Purchase and Assumption Agreement which transferred all of the assets of WaMu to JPMorgan Chase, N.A. ("Chase") on September 25, 2008. CP 371, 409, 466. On October 2, 2008, the FDIC signed and recorded in the Snohomish County, Washington property records an affidavit confirming Chase's purchase of the assets of WaMu, including all loans and commitments. CP 371, 443. In addition, on May

17, 2013, Chase, acting as attorney in fact for the FDIC, the receiver for WaMu, executed an Assignment of Deed of Trust (the "Assignment") assigning the Deed of Trust to Chase. CP 467, 501. Due to this litigation, the original Note (which is endorsed in blank) is in the possession of Chase's counsel. CP 466, 474.

The Wilsons made their loan payments until approximately December 2010, two years after Chase had taken over WaMu's operations. CP 514. The Wilsons ceased making their mortgage payments due to financial hardship after Mr. Wilson closed his company, defaulted on several other consumer debts, and became subject to outstanding federal and state tax liens. CP 376, 386-389. Jacqueline Wilson filed for bankruptcy to stay the foreclosure, and, after her bankruptcy case was closed without a discharge, the Wilsons filed this action to enjoin the foreclosure. CP 379, 381 and 631.

Quality received a Foreclosure Transmittal Package for the Wilson Loan on May 18, 2011. CP 506. The Foreclosure Transmittal Package informed Quality that the mortgage was held by Chase and instructed Quality to foreclose in the name of JPMorgan Chase Bank, National Association. CP 508. On November 19, 2012, Chase, as beneficiary, executed a Declaration of Ownership (the "Beneficiary Declaration") which states that Chase "is the holder of the promissory note or other

obligation evidencing the above referenced loan." CP 336, 339, 466, 494 (emphasis applied). Quality received the Beneficiary Declaration on November 30, 2012. CP 336, 341. The information contained in the Beneficiary Declaration is consistent with the information in the Foreclosure Transmittal Package. CP 466, 508.

On October 1, 2012, Chase appointed Quality as Successor Trustee pursuant to an Appointment of Successor Trustee. CP 343-345, 466, 497. Just over two weeks later, on or about October 16, 2012, the Wilsons were sent a Notice of Default by Quality acting on behalf of Chase. CP 336, 346-352. The Notice of Default informed the Wilsons that Chase was owner of the Loan. CP 347. The Notice of Default also stated that the Wilsons were behind $54,239.90 (22 monthly payments). CP 348.

On December 11, 2012, Quality executed and mailed a Notice of Trustee's Sale ("First Notice") which scheduled a sale for April 12, 2013. CP 336, 354-357. Quality later executed and mailed a Second Notice of Trustee's Sale ("Second Notice") which scheduled a sale for January 24, 2014. CP 337, 362-366. Both the First Notice and the Second Notice were discontinued by recording and mailing Notices of Discontinuance. CP 337, 359-360, 368-369. The Wilsons' property was not sold pursuant to either of these sale notices. CP 337.

The Wilsons' Complaint alleges that McCarthy & Holthus, LLP ("M&H") is an alter ego of Quality. M&H is separately represented and submitted declarations establishing that M&H is not a shareholder or officer of Quality, that it does not own, operate or control the operations of Quality, and that Quality maintains its own bank account and does not commingle funds with M&H. CP 330, 331 and 333. The nonjudicial foreclosure documents were all prepared by Quality (*see* CP 333, 335-337) and there is no evidence that the Wilsons had any contact with M&H during the nonjudicial foreclosure proceedings.

B. <u>Statement of Proceedings Relevant to Review.</u>

The Wilsons' Complaint was filed June 3, 2013 and requested as relief: (1) an order declaring Quality unfit, (2) an order restraining Quality from acting as trustee, and (3) an award of damages. CP 631. The Wilsons do not dispute their default, do not dispute that the Notice of Default disclosed that Chase was the owner and holder of the Loan, do not claim that any entity other than Chase has ever contacted them about the Loan or tried to foreclose the Deed of Trust, and do not claim they have ever tried to reinstate their Loan or have the funds to do so. CP 620-631.

The Complaint, and indeed the Petition, is chock full of nefarious allegations about Quality, M&H and Chase and the mortgage industry in general. The "evidence" the Wilsons offer is Mr. Wilson's opinion that

Quality was partial to Chase (in other cases) and his view that Quality could not be trusted. CP 54. He states that Chase was engaged in "fraudulent robo-signing" in other cases. CP 53. Mr. Wilson's beliefs derive not from his own experience, but from news reports. CP 461 ("beliefs based on widespread reports around the nation" and "general principle"). Mr. Wilson references a purported 60 Minutes "expose" about Lender Processing Services and a Wall Street Journal article about Chase, both nonparties. OB 22, 33.

On October 12, 2015, Quality filed a Motion for Summary Judgment. CP 524-43. On January 14, 2015, the Superior Court entered an Order Granting Defendant Quality Loan Service Corp. of Washington's Motion for Summary Judgment (the "Order"). CP 669-71. The Order notes that the Petitioners' Declaration was inconsistent with his prior testimony in deposition. CP 670. The Order dismissed all of Petitioners' claims against Quality with prejudice. CP 671. The Wilsons did not have a record of the summary judgment proceedings prepared.

The Wilsons appealed the Order to the Court of Appeals which properly affirmed the trial court's conclusion that the Wilsons had failed to present any genuine issues of material fact pursuant to CR 56. The Court of Appeals also correctly found that Petitioners had abandoned claims at the trial court and raised many issues not supported by the record.

IV. ISSUES PRESENTED IF REVIEW IS GRANTED

Petitioners misstate the issues that would be before the Court if the Court grants review. The issues that would actually be presented, if review is granted, are as follows:

1. Did the Court of Appeals properly affirm the Superior Court's determination that there were no genuine issues of material fact and, therefore, dismissal was warranted;

2. Did the Court of Appeals properly affirm the Superior's Courts order dismissing the Wilsons' CPA claims as a result of their failure to submit sufficient evidence to establish each essential element of their CPA claim;

3. Did the Court of Appeals properly conclude that the Wilsons had abandoned issues that were not raised to the Superior Court?

V. AUTHORITY AND ARGUMENT

A. Standard for Review.

Discretionary acceptance of a decision terminating review may be granted only if: (1) the decision of the Court of Appeals is in conflict with the decision of the Supreme Court; (2) the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; (3) a significant question of law under the constitution of the state of Washington or of the United States is involved; or (4) the petition involves

an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

B. The Issues Raised by the Petition are Resolved by Existing Case Law.

This Court should not accept review under RAP 13.4(b). The discrete issues Wilsons' Petition presents are readily resolved by existing case law and statutes. First, it is clear under existing Washington law that Petitioners cannot have a claim under the Washington Deed of Trust Act (the "DTA") because no nonjudicial sale occurred. *Frias v. Asset Foreclosure Services Inc.*, 181 Wn.2d 412, 334 P.3d 529 (2014).

Thus, the issue before the Superior Court was whether the Wilsons presented sufficient evidence to establish each of the five elements of their Consumer Protection Act ("CPA") claims. The requisite elements of a CPA claim are: (1) an unfair or deceptive act or practice, (2) that occurs in trade or commerce, (3) a public interest, (4) injury to the plaintiff in his or her business or property, and (5) a causal link between the unfair or deceptive act and the injury suffered. *Hangman Ridge Training Stables v. Safeco Title Ins., Co.*, 105 Wn.2d 778, 780, 719 P.2d 531 (1986). Failure to establish any one element is fatal to a CPA claim. *Id.* at 793.

Whether the conduct is an unfair or deceptive act is a question of law, a question which turns in part on whether the conduct was likely to

deceive a substantial portion of the public. *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 787, 295 P.3d 1179 (2013). Here, Petitioners failed to offer evidence of why any purported wrongdoing constituted an unfair or deceptive act or practice under the CPA or that the act in question had capacity to deceive a substantial portion of the public and was likely to mislead a reasonable person. *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d. 27, 48-9, 204 P.3d 885 (2009).

In addition, to establish injury, a plaintiff must demonstrate "out-of-pocket expenses directly resulting from" the defendant's conduct. *Panag*, 166 Wn.2d at 63. To show causation, a plaintiff must establish that, "but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury." *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 84, 170 P.3d 10 (2007). In other words, a plaintiff must demonstrate that "the injury complained of … would not have happened" but for the defendant's acts. *Id.* at 82.

Petitioners have failed to establish (1) but for Quality's conduct, an injury would not have occurred; and (2) that Petitioners suffered an injury as the result of said conduct. The fact is the Wilsons stopped paying their mortgage in 2010. CP 514. Their default triggered the power of sale and is the cause of the injuries they claim to have incurred, all of which are

related to their efforts to stop foreclosure of their home.[1]

As to the specific allegations, while difficult to discern, Petitioners' claims appear to fall into four general categories: (1) whether Chase was a beneficiary pursuant to RCW 61.24.005(2); (2) whether Quality violated the duty of good faith under RCW 61.24.010(4) by relying on the Beneficiary Declaration under RCW 61.24.030(7); (3) whether Quality maintained a physical presence in Washington; and (4) whether Quality violated its duty of good faith by allegedly commingling with M&H.

1. Chase was a proper beneficiary pursuant to RCW 61.24.005(2) and had the authority to appoint Quality as trustee.

The beneficiary of the deed of trust is "the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation." RCW 61.24.005(2). The holder of the note is the beneficiary because the DTA contemplates that the "security interest will follow the note, not the other way around." *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 104, 285 P.3d 34 (2012).

[1] The Wilsons claim to have suffered damages exceeding $5,484,640 (CP 453), $5,000,000 of which is "lost opportunity cost" relating to Wilsons' alleged plan to start a new company, expand it internationally and then sell it in 4 or 5 years to a "large conglomerate." CP 453, 456. The Wilsons also seek to be compensated in the amount of $488,322 for 3,029 hours they claim to have devoted to such activities as "you-tube training," "family discussions," and "flow charting." CP 456. Mr. Wilson stated that the "numbers got away" from him and ultimately the project "got so large ... [he] could not walk away from it." CP 456.

The only evidence before this court is that Chase is the holder of the note by virtue of its possession of the note with the right to enforce. Chase attested to this status in October 2012 when it provided the Beneficiary Declaration to Quality, and reaffirmed in a summary judgment declaration that it was the owner and holder of the note (which was in the possession of Chase's counsel for purposes of this litigation). CP 336, 339, 341, 446, 474. The Wilsons did not meet their burden of submitting evidence that someone other than Chase was the holder (and in possession of the Note) as of October 2012 when the Appointment was signed.[2]

Numerous appellate decisions have made it clear that the DTA's "definition of 'holder' does not turn on ownership" and "a person need not own a note to be entitled to enforce the note." *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 540, 359 P.3d 771 (2015); s*ee also Trujillo v. Nw. Tr. Sers, Inc.*, 181 Wn. App. 484, 497-98, 326 P.3d 768 (2014), *rev'd in part on other grounds*, 183 Wn.2d 820, 355 P.3d 1100 (2015) ("The UCC does, however, make clear that the 'person entitled to enforce' a note is not synonymous with the 'owner' of the note ... [I]t is the status of holder of the note that entitles the entity to enforce the obligation. Ownership of the note is not dispositive.") Pointedly, the Supreme Court

[2] When asked to identify who they believed was the correct beneficiary of the Deed of Trust the Wilsons responded: "No person identifiable as a lawful beneficiary is known to Plaintiffs." CP 459.

previously established that it is unnecessary to determine who owns the note or who is the beneficiary of the deed of trust as Washington law focuses on who holds the note. *Bain*, 175 Wn.3d at 102-04. Given the holdings of *Bain*, *Brown* and *Trujillo*, the Wilsons' arguments about the chain of title to, and ownership of, the Note are simply wrong and contradicted by long-standing legal precedence.

Similarly, statements in the Petition claiming that Chase and Quality allegedly submitted evidence that the Note had been securitized is misleading and entirely fictional. As the Court of Appeals correctly noted, the Wilsons' claims rest "primarily on the Wilsons' unsupported assertions and beliefs about WaMu's business practices." The erroneous statement in a declaration submitted by Quality was corrected by a later declaration. CP 335-7. While it is not clear whether the trial court considered, or even reviewed, the earlier declaration, the alleged inconsistency does not establish a genuine issue of material fact because, contrary to Petitioners' numerous arguments, the declarations do not state that the Note was transferred or sold before it was assumed by Chase. Rather, the declarations merely point out the documents referred to by Quality when processing nonjudicial foreclosures. (Compare CP 192 and CP 220.)

Thus, because Chase was a proper beneficiary under RCW 61.24.005(2), it had authority to appoint Quality as trustee and Quality, in

turn, had authority to conduct the nonjudicial foreclosure. The Court of Appeals' decision was correct and does not merit further review.[3]

2. Quality did not violate the duty of good faith under RCW 61.24.010(4) and was entitled to rely on the Beneficiary Declaration under RCW 61.24.030(7).

Petitioners argue that Quality violated the duty of good faith imposed by RCW 61.24.010(4) by failing to investigate or otherwise corroborate the statements made by Chase in the Beneficiary Declaration.[4] Contrary to this assertion, it is well settled in Washington that "a party satisfies the proof of beneficiary provisions of RCW 61.24.030(7) when it submits an undisputed declaration under penalty of perjury that it is the actual holder of the promissory note." *Brown,* 184 Wn.2d at 544. Under these circumstances, the trustee "can rely on a declaration consistent with its duty of good faith." *Id.* Ambiguous language in a beneficiary declaration only precludes summary judgment when the trustee relies on it and does not have proof of ownership. RCW 61.24.030(7). *See also Lyons*, 181 Wn.2d 775; *Trujillo*, 183 Wn.2d 820.

Here, the Beneficiary Declaration is unambiguous and complies

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[3] Petitioners abandoned the claim that Quality violated the DTA because the Notice of Default was sent prior to Quality receiving the Beneficiary Declaration. RCW 61.24.030(7) requires the trustee to have the declaration prior to recording a Notice of Sale, not prior to sending a Notice of Default.

[4] Courts have uniformly rejected the invitation to import a duty to verify the information contained in the beneficiary declaration into the trustee's duty of good faith. *Meyer v. U.S. Bank Nat'l Ass'n*, 2015 U.S. Dist. LEXIS 47745, 2015 WL 1619048, (W.D. Wash. Apr. 9, 2015) (collecting cases).

with RCW 61.24.030(7). It plainly states that "JPMorgan Chase Bank, National Association, is the **holder** of the promissory note or other obligation evidencing the above referenced loan" (emphasis added). CP 466. The Beneficiary Declaration mirrors the precise statutory language of RCW 61.24.030(7)(a). Since the Beneficiary Declaration is unambiguous, and was in Quality's possession over two months before the Notice of Sale was recorded, Quality was entitled to rely on it. RCW 61.24.030(7)(b); *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 347 P.2d 487 (2015) (dismissal affirmed where trustee had right to rely on declaration).

3. Quality maintained a physical presence in Washington and, even assuming otherwise, Petitioner failed to show any injury due to the alleged unfair or deceptive act.

While Petitioners fail to present any legal argument related to their physical presence claim, it is clear that the Court of Appeals correctly affirmed the Superior Court's dismissal. First, Petitioners raised the physical presence issue for the first time in their summary judgment opposition in an unabashed attempt to capitalize on a dispute between Quality and the Attorney General during the pendency of this case and based on facts which did not involve or injure the Wilsons. CP 95. The Complaint contains no cause of action under RCW 61.24.030(6), nor did Petitioners seek to amend their complaint to add such a claim. Moreover,

Petitioners repeated references to the proceedings between Quality and the Attorney General are entirely improper and inadmissible.[5]

Second, despite the fact that no reported case from a Washington state court has interpreted RCW 61.24.030(6), numerous federal courts in Washington have repeatedly held that the DTA is satisfied where the trustee maintains an agent to receive service of process with a street address and telephone service in the state. *Singh v. Fannie Mae*, 2014 U.S. Dist. LEXIS 15745, 2014 WL 504820 (W.D. Wash. Feb. 7, 2014); *Ayala v. Fannie Mae*, 2013 U.S. Dist. LEXIS 139877 (W.D. Wash. Sept. 17, 2013); *Douglas v. ReconTrust Co, N.A.*, 2012 U.S. Dist. LEXIS 161268, 2012 WL 5470360 (W.D. Wash. Nov. 9, 2012). In *Douglas*, the federal district court explained that the DTA "only requires that the trustee have a 'street address' in Washington for service of process, a 'physical presence' at that address, and 'telephone service.'" 2012 U.S. Dist. LEXIS 161268 at *13 (quoting RCW 61.24.030(6)). The court rejected the argument that the trustee could not have a physical presence via its agent as "inconsistent with the plain meaning of the statute" which it found to be

[5] The court "cannot, while deciding one case, take judicial notice of records of other independent and separate judicial proceedings even though they are between the same parties." *Avery v. Dep't of Social & Health Servs. (In re B.T.)*, 150 Wn.2d 409, 415, 78 P.3d 634 (2003), citing *Swak v. Dep't of Labor & Indus.*, 40 Wn.2d 51, 54, 240 P.2d 560 (1952). Here, the court cannot take judicial notice of the AG pleadings because they are a record of another independent, separate judicial proceeding which involved parties other than those present. The Wilsons' use of such pleadings in this case is improper.

"unambiguous." *Id.* at *14-15. The court held that "[n]othing in the legislative history suggests that the trustee is prohibited from designating an in-state agent to provide that physical presence." *Id.* at *16.[6]

Nothing in the record contradicts the facts presented by Quality that it had physical offices in Washington during all relevant times or establishes that Quality was not otherwise in compliance with RCW 61.24.030(6).[7] CP 171. There is no evidence that the Wilsons attempted to reach Quality during the time period referenced in the Attorney General proceedings (early January 2014). Indeed, the Petitioners merely state that they attempted to contact Quality in the early summer of 2013. CP 53.

Finally, as the Court of Appeals properly concluded, even if there was such evidence in the record, the Wilsons failed to demonstrate that they suffered an injury due to the lack of a physical presence. The contradictory declaration submitted by Petitioners to the trial court only shows that the Wilsons attempted to make contact with Quality once (CP 55) and not the multiple times otherwise alleged. And Petitioners testified that they refused to contact Quality at all because they believed Quality

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[6] Notably, the *Douglas* court reached this conclusion even though ReconTrust had entered into a consent decree with the Washington Attorney General.

[7] When Quality was appointed trustee it maintained an office in Poulsbo with telephone service at said office. CP 170, 172. At this time Quality's registered agent was M&H. CP 170. On January 2, 2014 Quality moved its physical office to Seattle. CP 171. After the move to Seattle, Quality changed its primary telephone number but the original number remained operational. CP 172. Quality also changed its registered agent to CT Corporation on January 6, 2014. CP 171.

would not help them. CP 394; 452.[8] Accordingly, Petitioners failed to establish a genuine issue of material fact regarding an injury purportedly suffered due to the lack of physical presence.

4. Quality did not violate its duty of good faith by failing to act impartially toward Petitioner.

The Court of Appeals properly found that there was no evidence that Quality violated its duty of good faith by failing to act impartially toward Petitioners. Specifically, the Court found that merely because Quality and M&H share office space and employees and that M&H has previously represented banks and other lenders, it does not follow that Quality acted impartially toward the Wilsons. Petitioners cannot point to any evidence in the record that M&H represented Chase during this proceeding or that Quality's business relationship with M&H affected Quality's duty of good faith to the Wilsons.

There is no statutory prohibition in the DTA against the relationships between Quality and M&H.[9] Instead, the DTA imposes on

[8] In his Interrogatory Answers, Mr. Wilson stated: "I chose not to discuss my situation with Quality Loan Services due to fear that they were in bed with Chase, basing these concerns from my research on foreclosures. I did not trust them at all due to their bias." CP 452. Mr. Wilson's response is consistent with his deposition testimony where he similarly disavowed any efforts to speak with Quality because he was persuaded that Quality was not a neutral party. CP 394.

[9] The DTA specifically permits an attorney, a professional corporation, or a limited liability company composed entirely of attorneys, to act as trustee, RCW 61.24.010 (1)(c)-(d), and neither the DTA nor any other statute prohibits law firm ownership or operation of a corporate trustee.

the trustee has a duty of good faith to both the beneficiary and the grantor. RCW 61.24.010(3). The Wilsons' conclusion that these relationships are an ipso facto breach has been rejected by other courts construing Washington law. In *Singh*, the plaintiffs contended that ReconTrust's status as a subsidiary of Bank of America (the beneficiary) created a conflict of interest. 2014 U.S. Dist. LEXIS 15745. The District Court held that this ownership "by itself, falls well short of establishing a breach of a duty of good faith." *Id.*, at *12-13.

Washington law has long been clear that liability based on commingling and alter ego type theories requires proof that the corporate form has been intentionally misused to violate or evade a duty and that disregarding the corporate form is necessary and required to prevent unjustified loss to the injured party. *Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 411, 645 P.2d 403 (1982). Importantly, "commingling" is not sufficient to meet the test, nor is the sharing of employees, officers, clients, physical addresses or business interests. *See Norhawk Invest. v. Subway Sandwich Shops*, 61 Wn. App. 395, 811 P.2d 221 (1991) (apart from the commingling of assets, piercing the corporate veil was not appropriate because the corporate form was not being used to mislead and evade a duty to plaintiff). There is no evidence that Quality

shared resources with M&H in order to avoid a statutory duty or that disregard is necessary to prevent a loss. As a matter of law, the Wilsons have not submitted sufficient evidence to establish that the alleged commingling is a breach of the duty of good faith.

Washington case law is well settled and the Court of Appeals' decision is not in conflict with any other decision regarding the purported commingling between a trustee and its legal counsel.

C. The Court of Appeals Correctly Found that the Wilsons Abandoned Claims at the Superior Court.

An appellate court will not consider issues on appeal that are not raised by an assignment of error or are not supported by argument and citation of authority. *McKee v. Am. Home Prods, Corp.*, 113 Wn.2d 701, 705, 782 P.2d 1045 (1989); RAP 10.3(a). Where a brief contains no argument or citation to authority pertaining to omitted issues, the court will deny review of these arguments. *Ang v. Martin*, 154 Wn.2d 477, 486-487, 114 P.3d 637 (2005). The Court of Appeals rightly concluded that Petitioner abandoned claims because they were not addressed to the Superior Court or preserved on appeal. Further, the Court did not consider evidence submitted by Petitioner for the first time on appeal or legal arguments based upon materials outside the record. RAP 9.12.[10]

[10] The Petition, similar to the Opening Brief before the Court of Appeals, also contains statements and conclusory arguments about "forged" declarations and

D. The Court Should Decline to Accept Review Due to Wilsons' Failure to Include Citations to the Record.

A party's brief must provide a citation to the record for each factual statement made therein. *See* RAP 10.3(a)(5). The record on review consists ***only*** of the following: "report of proceedings", "clerk's papers", exhibits and a certified record of administrative adjudicative proceedings. RAP 9.1 (a). *See also e.g. Aba Sheikh v. Choe*, 156 Wn.2d 441, 446-47, 128 P.3d 574 (2006); *Burrell v. State (in Re K.S.C.)*, 137 Wn.2d 918, 932, 976 P.2d 113 (1999); *Nelson v. McGoldrick*, 127 Wn.2d 124, 141, 896 P.2d 1258 (1995); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

VI. CONCLUSION

This Court should decline to accept discretionary review of the issues raised by Petitioners. Their brief not only fails to show that the Court of Appeals erred but it also falls far short of showing that 1) the Court of Appeals' decision conflicts with another decision either of this Court or of another Court of Appeals; 2) involves an issue of substantial public interest that should be determined by this Court; or 3) presents a significant question of constitutional law.

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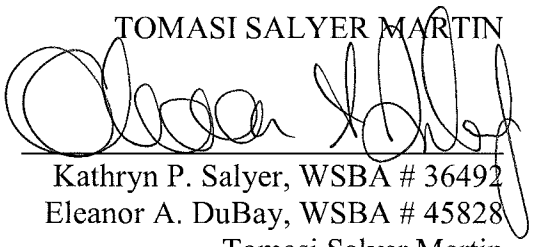
fraudulent filings. There are no issues of forgery raised in the summary judgment proceedings and indeed no forgery occurred.

Respectfully submitted this 24th day of August, 2017.

TOMASI SALYER MARTIN



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CERTIFICATE OF SERVICE

I certify that on August 24, 2017, I served a copy of the foregoing document, described as RESPONDENT QUALITY LOAN SERVICE CORPORATION OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW on the following persons by U.S. First Class Mail and email:

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I declare under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct, and that this Declaration was executed in Portland, Oregon.

Dated: August 24, 2017.

Legal Assistant
Tomasi Salyer Martin

TOMASI SALYER MARTIN

August 24, 2017 - 12:51 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	94648-5
Appellate Court Case Title:	John R. Wilson, et ux. v. Quality Loan Service Corp. of Washington, et al.
Superior Court Case Number:	13-2-05323-1

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