NO. 74776-2-I

IN THE SUPREME COURT
OF WASHINGTON

PAUL SCHMIDT,

Appellant/Plaintiff,

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR GREENPOINT MORTGAGE FUNDING TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2006-AR6,

Respondent/Defendant.

ANSWER TO PETITION FOR DISCRETIONARY REVIEW

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I. IDENTITY OF RESPONDENT

The respondent is U.S. Bank National Association, as Trustee for Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2006-AR6, represented by Ryan M. Carson of the firm Wright, Finlay & Zak, LLP.

II. ISSUES PRESENTED FOR REVIEW

A. Is the decision of the Court of Appeals in conflict with a decision of the Supreme Court?

B. Is the decision of the Court of Appeals in conflict with a published decision of the Court of Appeals?

C. Does the decision of Court of Appeals involve a significant question of law under the Constitution of the State of Washington or of the United States?

D. Does the petition involve an issue of substantial public interest that should be determined by the Supreme Court?

III. STATEMENT OF THE CASE

Petitioner offers no statement of the case, so respondent offers the following for this Court's consideration. The King County Superior Court ruled that Summary Judgment in favor of the Respondent should issue on January 29, 2016. Petitioner failed, on two separate occasions, to file a substantive response to respondent's Motion for Summary Judgment. Despite the trial court providing petitioner a great deal of latitude,

petitioner failed to follow the trial court's simple instructions. Failing to find any substantive opposition on file, the trial court granted respondent's Motion for Summary Judgment.

Petitioner now asks this Court to accept review of the Court of Appeals decision affirming summary judgment. Respondent contends the Petition must be denied, and posits there are no issues qualifying for this Court's review.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

After the Court of Appeals has entered its opinion, acceptance of review in this Court is discretionary. RAP 13.3(a). RAP 13.4(b) sets forth the standard by which this Court considers whether to accept review. Under RAP 13.4(b), review will only be accepted if: (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 a published 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.

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A. The Decision of the Court of Appeals is not in Conflict with a Decision of the Supreme Court.

Petitioner does not argue how the Court of Appeals decision is in conflict with a Supreme Court decision. Thus, review should be denied.

B. The Decision of the Court of Appeals is not in conflict with another decision of the Court of Appeals.

Petitioner does not establish any conflict with any other decision of the Court of Appeals. While petitioner cites to a few opinions, he does not argue that the Court of Appeals' decision is in conflict with the cited authority.

C. The Decision of the Court of Appeals does not involve a Significant Question of Law under either the U.S. or Washington Constitution.

Petitioner seems to argue that he was denied property without due process in contravention of Article I, Section 3 of the Washington Constitution. Petitioner revives his argument before the Court Appeals that there is some defect in the manner in which the trial court conducted the summary judgment proceedings below. Specifically, he argues that the trial court should have listened to his additional arguments despite his failure to file any opposition to the respondent's Motion for Summary Judgment. VRP at 17–19.

As the Court of Appeals reasoned, "[o]n appeal, Schmidt focuses on his own misapprehensions" of trial court's instructions. Op. at 3. Petitioner seems to expect special solicitude given his pro se status, but "the law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws." *In re Marriage of Olsen*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). Despite the general application of that principle, the trial court granted petitioner a continuance at the first hearing on respondent's Motion for Summary Judgment, as well as an extension to file a written opposition. Even with the continuance in place, petitioner failed to file any written opposition.

There is no charge by petitioner that the trial court or the Court of Appeals failed to follow any of the rules governing summary judgment procedure, and thus he cannot establish that he was denied property without due process.

D. The decision of the Court of Appeals does not involve an issue of Substantial Public Interest that should be determined by the Court.

Petitioner now acknowledges that CRLJ 56 does not apply in these proceedings, but argues that the Court should evaluate the rule in light of the protections it affords to pro se litigants, as compared to the rule's

analog in Superior Court proceedings. However, petitioner repeats the same mistake as he did in his appeal by citing to a proposed rule that was not in force in 2016, and has to date never been adopted by the Court. Cf. CRLJ 56. The currently in force CRLJ 56 does not have a section "J" and the language quoted on page 9 of the Petition is not part of the actual rule. It is telling that Exhibit B to the Petition contains a statement of purpose for the rule changes from 2007. The rule change has evidently been evaluated for adoption, but to date has never been adopted by the Court.

The proposed changes to the rule include a longer time for noting and responding to summary judgment motions in district courts, and would have brought the rule into harmony with CR 56. The other change in the rule is to force moving parties to serve copies of CRLJ 56 on opposing parties who are not represented by counsel. Petitioner interprets this proposal as a model for this Court to consider for treatment of unrepresented litigants. However, the petitioner fails to address the fact that the changes were never adopted or grapple with the implications of that fact. That neither CRLJ 56 or CR 56 contains any requirement that a copy of the rules be provided to unrepresented litigants could lead to an inference that the Court is satisfied that pro se defendants receive adequate notice of the rules. Nothing in the Petition demonstrates why this Court should draw the inference preferred by the petitioner.

At any rate, review of the Court of Appeals' decision is not the proper vehicle for reconsidering a rule for adoption. GR 9 contains the procedure for adopting, changing, or amending rules for courts of this state. While the rule allows for any person to propose a rule to the Supreme Court, GR 9(d), the submission must take a proper form and be filed with "supporting information, including letters, memoranda, minutes of meetings, research studies, and the like." GR 9(e)(2). The change must be deemed meritorious by this court, and only then will it be submitted for public comment. See GR 9(f)(3). Finally, even if this Court were to adopt a change to CR 56 to mandate that moving parties provide copies of the rule to unrepresented litigants, such a change to the rule would not take effect retroactively. See GR 9(i).

Finally, even if the rule were as the petitioner wishes it to be, it would not have been of assistance below. The trial court gave considerable leeway to petitioner in granting the continuance at the first summary judgment hearing, but warned Schmidt that he was expected to provide a written response if he wanted to be heard on the issue. VRP at 4, ll. 15-19. The trial court also struck the trial date within the same Order. The trial court further clarified in oral statement the pending procedure for the parties. Judge Middaugh stated: "we'll reset the trial date at the summary judgment hearing if necessary . . . that means that if

summary judgment is granted because there's no factual issues, then the *case will be over*. If it's not granted, then we'll set a trial date so that any issues that are not factual issues can be resolved." VRP at 12, ll. 1-8. Schmidt replied: "Okay." VRP at 12, l. 9. Petitioner was specifically instructed that a written response would be needed, provided the new hearing date, and instructed as to what would happen if he failed to successfully oppose the motion. Providing a copy of CR 56 with the original Motion for Summary Judgment would not have had any effect on Petitioner's ability to properly oppose the motion.

IV. CONCLUSION

In light of the foregoing, review should not be granted in this matter.

Dated this 7th day of August, 2017.

/s/Ryan M. Carson
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Attorneys for Respondent U.S. Bank, N.A. as Trustee for Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2006-AR6.

CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I hereby declare that on August 7, 2017, I caused to be served a copy of the ANSWER TO PETITION FOR DISCRETIONARY REVIEW via first-class, postage prepaid mail as follows:

Paul Schmidt
PO Box 26
Black Diamond, WA 98010
Luape1@aol.com

Dated: August 7, 2017

/s/Karina Krivenko
Karina Krivenko, Declarant
Wright, Finlay & Zak, LLP

WRIGHT FINLAY & ZAK LLP

August 07, 2017 - 3:37 PM

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Comments:

Paul Schmidt's Petition for Review was filed with the Appellate Court on 6/30/2017 and has not been transmitted to the Supreme Court as of 8/7/2017. Respondent is not able to efile this Answer with the Supreme Court due to lack of case number.

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