

FILED
SUPREME COURT
STATE OF WASHINGTON
2/21/2018 4:59 PM
BY SUSAN L. CARLSON
CLERK

NO. 953-81-3

IN THE SUPREME COURT
OF WASHINGTON

U.S. BANK NATIONAL ASSOCIATION, AS SUCCESSOR IN
INTEREST TO WILMINGTON TRUST COMPANY, AS TRUSTEE,
SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL
ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET
INVESTMENT LOAN TRUST MORTGAGE PASS-THROUGH
CERTIFICATES SERIES 2005-1,

Respondent/Plaintiff,

v.

GEORGIA A. PLUMB, JOSHUA C. PLUMB, KAMERON F. PLUMB;
AND THE WORD CHURCH,

Petitioners/Defendants.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The respondent is U.S. Bank National Association, as Successor In Interest To Wilmington Trust Company, as Trustee, Successor In Interest To Bank of America, National Association, as Trustee for Structured Asset Investment Loan Trust Mortgage Pass-Through Certificates Series 2005-1, 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

This Petition arises out of a judicial foreclosure brought by the Respondent in King County Superior Court. On July 1, 2016, the trial court entered summary judgment in favor of the Respondent. Petitioners

are borrowers under a Promissory Note originally made to Finance America and have been in default on the loan since 2009.

Petitioners now repeat their failed affirmative defenses asserted before the trial court. Chief among the affirmative defenses was that respondent somehow lacked standing to foreclose because it did not physically possess the note as of the date of filing the Complaint. The trial court made no findings with regard to actual possession on that date, but concluded that at the time respondent moved for summary judgment and presented the original Note to the court, it was in possession and thus appellants' standing challenge failed.

In addition, the petitioners again claim that there was fraud in the origination of the loan and complained of many independent acts of nonparties to the action in the course of finalizing their refinance transaction in 2006. The court below rejected this defense as to the actual enforcement of the Note and Deed of Trust. Finally, the appellants asserted that respondent's claims were barred by the doctrine of laches, and that respondents, its agents, or its counsel were somehow engaged in bad faith prosecution of the foreclosure. The court below rejected these arguments and ultimately entered judgment for respondent.

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.

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

Petitioners do not establish that the Court of Appeals decision is in conflict with a Supreme Court decision. The only case from this Court petitioners cite to is *Brown v. Department of Commerce*, 181 Wn.2d 509, 359 P.3d 771 (2015) for the proposition that endorsement of a promissory note and transfer of possession are sufficient for negotiation of the instrument. (Pet. at 20). However, *Brown* has nothing to do with judicial foreclosures, timing of possession of the note for the purposes of filing a foreclosure complaint. Review should be denied under RAP 13.4(b)(1)

because there is no inherent conflict between the case before this Court and *Brown* for the simple fact that the trial court did not rule on the question of standing, or whether possession of the note at the time of filing was required. Rather, the trial court ruled simply that the evidence petitioners held up in support of their defense is inadmissible hearsay and cannot create a material question of fact. Thus, for petitioners to establish a conflict, they would need to overcome the evidentiary issue with the proffered document calling respondent's standing into question.

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

As was the case with any precedent from this Court, petitioners do not establish any conflict with any other decision of the Court of Appeals.

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

Petitioners identify an issue of due process in their table of contents (Pet. at 2), but do not actually devote any argument to the issue in the ensuing sections. Moreover, on page 8 of the Petition, the Plumbs only identify RAP 13.4(b)(1), (b)(2), and (b)(4) as the sections under which review should be granted. Thus, it would seem that petitioners have abandoned this argument with respect to their Petition to this Court.

Division III addressed both their due process and equal protection arguments in its Unpublished Opinion. (Pet. Appx. I at 9). As to due process, the court held that petitioners failed to support their defenses with admissible evidence, but were given the opportunity to defend the lawsuit in court. As to equal protection, the court held that the petitioners failed to demonstrate how they were treated differently from other litigants in similar situations. Petitioners provide no reason to disturb the court of appeals' ruling on these issues.

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

Petitioners seem to argue that because other states have taken up the issue of whether a foreclosing entity must possess the promissory note at the time of filing; this Court should apparently do so as well. The central flaw in the petitioner's argument is that it has never been established as a fact that respondent lacked possession, either actual or constructive, of the note at issue when the lawsuit was filed. The entirety of petitioner's affirmative defense rests on one document, obtained in discovery, that the courts below deemed inadmissible hearsay. Even if there was an issue of public interest with regard to standing to initiate judicial foreclosure proceedings, this case does not present the necessary

facts to justify this Court's review of the legal issue. The court of appeals did not rule that possession at the time of suit was somehow not required, it simply did not rule on the issue of standing. Rather, the court ruled that the issue was simply an evidentiary matter, and affirmed the lower court. There is no reason that this Court needs to take review of a simple evidentiary question under the rubric of public interest.

IV. CONCLUSION

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

Dated this 20th day of February, 2018.

/s/Ryan M. Carson
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Attorneys for Respondent U.S. Bank,
N.A.

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 February 20, 2018, I caused to be served a copy of the ANSWER TO PETITION FOR DISCRETIONARY REVIEW via first-class, postage prepaid mail as follows:

Word Church aka Rev. Georgia Plumb
Georgia Plumb
Joshua Plumb
Kameron Plumb
4902 Richey Road
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Dated: February 20, 2018

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

WRIGHT FINLAY & ZAK, LLP

February 21, 2018 - 4:59 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95381-3
Appellate Court Case Title: U.S. Bank National Association, et al v Estate of Carl Plumb, et al
Superior Court Case Number: 13-2-04236-2

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