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Supreme Court No. 96608-7

Court of Appeals No. 76624-4-I

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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HUY YING CHEN and YUEH HUA CHEN, Husband and Wife,

Appellants,

v.

JPMORGAN CHASE BANK, AS TRUSTEE F/K/A THE CHASE  
MANHATTAN BANK SUCCESSOR IN INTEREST TO THE CHASE  
MANHATTAN BANK, N.A.,

Respondent

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**ANSWER OF RESPONDENT THE BANK OF NEW YORK  
MELLON TRUST COMPANY, N.A. FKA THE BANK OF NEW  
YORK TRUST COMPANY, N.A. AS SUCCESSOR TO  
JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR  
RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.,  
MORTGAGE ASSET-BACKED PASS-THROUGH  
CERTIFICATES SERIES 2005-RP3 TO  
APPELLANT CHEN'S PETITION FOR  
DISCRETIONARY REVIEW**

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**I. IDENTITY OF ANSWERING PARTY**

Respondent The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates Series 2005-RP3 responds below to Appellant Chen’s re-filed Petition for Discretionary Review, which seeks to obtain review of the Court of Appeals’ unpublished decision dated October 8, 2018 and subsequent denial of Chen’s Motion for Reconsideration.

**II. STATEMENT OF RELIEF SOUGHT**

Respondent respectfully requests that the Supreme Court deny Chen’s Petition for Discretionary Review.

**III. STATEMENT OF THE CASE**

A. Chen Defaults on a Secured Loan.

In 1999, Chen received a \$525,000 loan but failed to make any of the mortgage payments. CP 262. In May 2006, JPMorgan Chase Bank, N.A. initiated a judicial foreclosure action with respect to Chen’s real property located at 5112 189th Ave. N.E., Redmond, WA 98052 (the “Property”). CP 215.

On March 19, 2007, Chen filed a bankruptcy petition and removed the foreclosure action as an adversary proceeding. CP 229; CP 233.

On November 29, 2007, the Bankruptcy Court granted summary judgment to Chase and ordered a Property sale to proceed in satisfaction of the \$647,478.68 debt Chen owed to Chase at the time. CP 1-6.

On or about December 10, 2007, Chen filed an appeal to challenge the foreclosure judgment. CP 13-15. On March 24, 2008, Chen's request for a stay of foreclosure during appeal was denied. CP 261-267. The District Court specifically found, "[b]ecause the Chens are unlikely to prevail on appeal against Chase, the foreclosure sale of their Redmond home is unavoidable." CP 264 at 27.

B. The Judgment Against Chen is Domesticated in State Court.

On or about April 18, 2008, Chase filed its judgment in the King County Superior Court. CP 137-146. On or about October 2, 2008, Chase obtained a Writ for Order of Sale to foreclose on the Property. CP 35-38.

On or about November 13, 2008, Chase's counsel and Chen agreed to cancel the pending sheriff's sale in conjunction with dismissal of the District Court appeal. CP 178. On or about November 20, 2008, Chen stipulated to dismiss his appeal in the District Court. CP 64-67.

On or about January 2, 2009, the King County Sheriff returned the Writ because the scheduled sale did not occur. CP 25-26.

Eventually, on or about July 20, August 26, and October 20, 2016, additional Orders of Sale were issued in the King County Superior Court. CP 43-47, 48-52, 77-79.

On or about October 20, 2016, the King County Sheriff's Office was instructed to proceed with sale of the Property and provide the requisite statutory notices. CP 96-102.

On October 24, 2016, a Sheriff's Levy on Real Property was recorded with the King County Auditor. CP 75-79.

On October 26, 2016, publication of the Sheriff's Notice of Sale commenced in the Seattle Daily Journal of Commerce. CP 89. On or about October 26, 2016, the most recent Order of Sale and associated notices were also mailed to Chen via both first-class and certified mail, return receipt requested. CP 90; *see also* CP 278-286. The sheriff's sale was scheduled for December 16, 2016. CP 91-93.

On or about December 12, 2016, bidding instructions were provided to the King County Sheriff's Office. CP 119.

Also, on or about December 12, 2016, Chen filed a “Motion to Dismiss a Wrongful Judicial Foreclosure” in the King County Superior Court. CP 57-79. On December 15, 2016, the Superior Court denied Chen’s motion, permitting the sheriff’s sale to proceed in satisfaction of the underlying judgment. CP 82.<sup>1</sup>

C. Chen’s Property is Sold at Auction and the Sale is Confirmed.

On December 16, 2016, the sheriff’s sale occurred. CP 84-85. On December 23, 2016, a Notice of Return of Sheriff’s Sale on Real Property was filed with the King County Superior Court. CP 103-104.

On January 12, 2017, Chen filed an Objection to Confirmation of the Sheriff’s Sale. CP 105-213. On February 10, 2017, after reviewing the parties’ briefing, the Hon. Judge Beth Andrus overruled Chen’s objections. CP 306-307; *see also* CP 330-370.

On February 21, 2017, Chen moved for reconsideration of the order overruling his objections. CP 308-416. On February 28, 2017,

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<sup>1</sup> The successor to Chase’s enforcement rights is Respondent The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates Series 2005-RP3.



Judge Andrus denied Chen's reconsideration motion. CP 417-418.

On February 14, 2018, the King County Superior Court granted an order confirming the sheriff's sale, *nunc pro tunc* to February 10, 2017.

Supp. CP 1-4.

D. Chen Appeals the Trial Court's Decisions.

On February 26, 2018, the Court of Appeals denied Chen's *de facto* Motion on the Merits as improper. On May 9, 2018, the Court of Appeals denied Chen's motion to modify that ruling.

Chen sought discretionary review by the Supreme Court, but on July 12, 2018, that motion was also denied. *JPMorgan Chase Bank v. Chen*, Case No. 95884-0 (Ruling Denying Review).

On October 8, 2018, the Court of Appeals affirmed the trial court's ruling overruling Chen's objections to the sale confirmation. *JPMorgan Chase Bank v. Chen*, 2018 WL 4860189 (2018) (unpublished).

On November 7, 2018, the Court of Appeals denied Chen's motion for reconsideration. The instant proceeding now follows.<sup>2</sup>

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<sup>2</sup> At the same time, Chen has filed another lawsuit in federal court against the same parties involved in this case, and their respective counsel personally. Pet. for Review at 18; *Chen v. JPMorgan Chase Bank as Trustee*, Case No. 18-01269-RSL (W.D. Wash.). Motions to dismiss are pending in that action as of this briefing.

**IV. RESPONSE TO ISSUES PRESENTED**

Respondent was entitled to enforce a valid judgment filed in state court through judicial foreclosure, and the judgment had not expired at the time of sale confirmation.

**V. RESPONSE ARGUMENT**

A. Standard of Review.

The discretionary acceptance of a decision terminating review may only be granted pursuant to the criteria set forth in R.A.P. 13.4(b), *i.e.*:

- (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.

Chen appears to argue that subsections (1), (3), and (4) are applicable here. Pet. for Review at 7. However, the record does not support further review for any of these reasons.

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B. The Court of Appeals Properly Affirmed the Trial Court.

The Court of Appeals correctly analyzed the trial court order overruling Chen’s objections to sale under a manifest abuse of discretion standard. *Chen, supra.* at \*1 (unpublished), *citing Braman v. Kuper*, 51 Wn. 2d 676, 684, 321 P.2d 275 (1958). Each of Chen’s arguments failed based on either the facts presented or the conclusory nature of his assertions.

First, Chen contends that the “judgment creditors are fictitious entities.” Pet. for Review at 8. As the Court of Appeals observed, “Chen does not base this conclusory assertion on any evidence or citation to the record.” *Chen, supra.* at \*2 (unpublished), *citing Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).<sup>3</sup>

Further, courts have routinely recognized that Chase is not “fictitious.” *See, e.g., Heintz v. U.S. Bank Tr., N.A. for LSF9 Master*

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<sup>3</sup> Chen supports his Petition for Review with a hearsay “Chain of Title and Securitization Analysis” which is not part of the record and must be disregarded. Pet. for Review, Appx. C; *see also City of Moses Lake v. Grant Cnty. Boundary Review Bd.*, 104 Wn. App. 388, 391, 15 P.3d 716 (2001); R.A.P. 10.3(a)(6) (arguments must be supported by “references to relevant parts of the record.”); R.A.P. 10.3(a)(8) (“An appendix may not include materials not contained in the record on review without permission from the appellate court.”).

*Participation Tr.*, 2018 WL 418915, \*1 (2018) (unpublished) (“the FDIC assigned the note and deed of trust to JP Morgan Chase Bank, N.A.... and Chase, in turn, assigned the note and deed of trust to respondent U.S. Bank.”); *State v. Roy*, 2015 WL 260842 (2015) (unpublished) (upholding conviction for bank robbery; “A reasonable jury could infer from the circumstantial evidence in this case that Chase Bank is a bank that is [a] ‘financial institution’ within the meaning of the controlling statutes.”).<sup>4</sup>

Second, Chen argues the notice of sale was not served at his last known address and he did not receive it. Pet. for Review at 8, 16; *see also* RCW 6.21.030(1). However, physical delivery of a “return receipt requested” letter is not required. *Chen, supra.* at \*2 (unpublished), *citing In re Marriage of McLean*, 132 Wn.2d 301, 309, 937 P.2d 602 (1997) (“due process does not require proof of actual receipt of the mail by the

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<sup>4</sup> Likewise, courts have issued rulings in favor of The Bank of New York Mellon Trust Company, National Association fka The Bank of New York Trust Company, N.A. as successor to JPMorgan Chase Bank, N.A. as Trustee for Residential Asset Mortgage Products, Inc., Mortgage Asset-Backed Pass-Through Certificates Series 2005-RP3 without difficulty accepting that entity’s authority or rights as a creditor. *See, e.g., Keen v. Ocwen Loan Serv., LLC*, 2018 WL 4111938, at \*1 (M.D. Tenn. Aug. 28, 2018) (granting motion to dismiss); *Bank of New York Mellon Tr. Co. N.A. v. Faber*, 2018 WL 1610955, at \*1 (D.N.J. Apr. 3, 2018) (granting motion to remand).

addressee.”). Moreover, as the Court of Appeals observed, Chen received a subsequent mailing at his Redmond address, used that address in pleadings, and had a full opportunity to challenge the sale date. *Id.* There was not a violation of the notice process found in RCW 6.21.030(1).

Third, Chen attacks the sale as void, based on a claim that the underlying judgment had expired. Pet. for Review at 9, 13. The general rule is that judgments rendered by a Washington court are viable for ten years, unless extended for another ten years under RCW 6.17.020. *See* RCW 4.56.210(1)&(3); *see also* RCW 6.17.020(1).

When a foreign judgment is filed in a county superior court, it is treated in the same manner as a judgment of the superior court. RCW 6.36.025(1). For example, in *Hazel v. Van Beek*, a bankruptcy court judgment was filed in superior court on November 30, 1983 but confirmation of the October 15, 1993 sale did not occur until October 28, 1994—more than ten years after filing of the judgment. 135 Wn.2d 45, 954 P.2d 1301 (1998). *Hazel* holds the judgment was unenforceable because confirmation within ten years of such filing in superior court is a necessary step in the execution process. *Id.* at 66; *see also* *Mueller v. Miller*, 82 Wn. App. 236, 248, 917 P.2d 604 (1996). Inherent in this

decision is a recognition that the critical ten-year period commenced upon filing of a bankruptcy court judgment in superior court, and not upon the bankruptcy court's original action.

In this case, Chase's judgment was filed on April 18, 2008 in the King County Superior Court pursuant to RCW 6.36.025(1); this commenced a ten-year execution period under RCW 4.56.210(1) and RCW 6.17.020(1). The sheriff's sale occurred on December 16, 2016, within this ten-year time limit. CP 84-85.<sup>5</sup> Chen is incorrect that the judgment expired prior to either the sheriff's sale or confirmation of it.

Fourth, Chen asserts the judgment's enforcement through foreclosure was affected by an automatic bankruptcy stay. Pet. for Review at 14. Chen suggests that the automatic stay provisions of 11 U.S.C. § 362(a) rendered the judgment unenforceable. *Id.* However, he is again mistaken about the law.

Actions taken within a bankruptcy court proceeding are not subject to the automatic stay. *See* Rutter Group Prac. Guide Bankruptcy (Nat. Ed.) Ch. 8(I)-C, "Exceptions to Automatic Stay," *citing In re Teerlink*

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<sup>5</sup> On February 14, 2018, also within the ten-year limitation period, the Superior Court entered an order confirming the sale. Supp. CP 1-4.

*Ranch Ltd.*, 886 F.2d 1233, 1237 (9th Cir. 1989) (“The stay does not operate against the court with jurisdiction over the bankrupt.”). Additionally, 11 U.S.C. § 362(a) merely stays “*enforcement of the lien*” and “says nothing about the effect of that injunction on the statutory life of the lien under state law.” *Hazel*, 135 Wn.2d at 60 (emphasis in original); *accord U.S. v. Dos Cabezas Corp.*, 995 F.2d 1486, 1490-1491 (9th Cir. 1993) (the act of foreclosure is stayed under 11 U.S.C. § 362(a)(4)).

Here, the Bankruptcy Court ruled Chase could proceed with foreclosure of the Property in satisfaction of the debt Chen owed; this was not a judgment obtained elsewhere prior to Chen’s bankruptcy petition that could become subject to the automatic stay. CP 2-6; *see also* CP 262 at 15-16 (District Court order reciting the case history). Chen appealed the Bankruptcy Court’s summary judgment order, but the District Court denied Chen’s stay request and explicitly permitted Chase to proceed with foreclosure. CP 13-15 (notice of appeal), CP 261-267 (order denying stay). After Chase agreed to cancel the pending sheriff’s sale in 2008, Chen stipulated to dismiss the appeal. CP 64-67 (stipulation), CP 178 (communications). Nothing in the record suggests that the judgment was void or that it could not be enforced through the 2016 sheriff’s sale.

**VI. CONCLUSION**

None of the criteria found in R.A.P. 13.4(b) are satisfied with respect to the Court of Appeals' decision, and Chen's arguments are each unavailing based on the factual record presented below. There is no reason for the Supreme Court to review this matter.

RESPECTFULLY SUBMITTED this 9th day of January, 2019.

**PERKINS COIE LLP**

By: /s/ Joshua S. Schaer  
Cody M. Weston, WSBA No. 52321  
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Attorneys for Respondent The Bank of  
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National Association fka The Bank of New  
York Trust Company, N.A. as successor to  
JPMorgan Chase Bank, N.A. as Trustee for  
Residential Asset Mortgage Products, Inc.,  
Mortgage Asset-Backed Pass-Through  
Certificates Series 2005-RP3



**CERTIFICATE OF SERVICE**

I, June Starr, certify that on January 9, 2019, a copy of the above  
**ANSWER OF RESPONDENT THE BANK OF NEW YORK  
MELLON TRUST COMPANY, N.A. FKA THE BANK OF NEW  
YORK TRUST COMPANY, N.A. AS SUCCESSOR TO  
JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR  
RESIDENTIAL ASSET MORTGAGE PRODUCTS, INC.,  
MORTGAGE ASSET-BACKED PASS-THROUGH  
CERTIFICATES SERIES 2005-RP3 TO APPELLANT CHEN'S  
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Huy Ying Chen  
5112 189th Avenue NE  
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**Pro Se Appellant**

**I certify under penalty of perjury under the laws of the State of  
Washington that the foregoing is true and correct.**

EXECUTED at Seattle, Washington, on January 9, 2019.

  
\_\_\_\_\_  
June Starr

**PERKINS COIE LLP**

**January 09, 2019 - 3:09 PM**

**Transmittal Information**

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