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No. 98110-8

SUPREME COURT OF THE STATE OF WASHINGTON

No. 51941-1 II
COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

LINDA AMES,

Appellant,

vs.

HSBC BANK USA, NATIONAL ASSOCIATION
as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-
Through Certificates Series 2006-AR16,

Respondent.

**RESPONDENT HSBC BANK USA, NATIONAL ASSO-
CIATION'S ANSWER TO PETITION FOR REVIEW**

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I. INTRODUCTION

Plaintiff-Appellant Linda Ames seeks review by the Washington State Supreme Court following her second unsuccessful appeal challenging a routine nonjudicial foreclosure by Defendant-Respondent HSBC Bank USA. Ames's latest post-sale appeal¹ arises from her third lawsuit against HSBC regarding the same completed foreclosure this Court already examined now more than almost five years ago. Footnote 1, *ante*. There, the Court determined that Ames had waived her claims, and affirmed the trial court's writ of restitution. *Id.*

Following the Court of Appeals' ruling, Ames persisted in filing suit against HSBC more than two years after the foreclosure's completion. She again sought to set aside the foreclosure sale based on claims like those she had already raised against the same factual background.

When Respondent filed its motion for summary judgment in the trial court, Ames never addressed — let alone opposed — its multiple affirmative defenses to her action. She fared no better on appeal. The trial court's rulings were unassailably correct, and the Court of Appeals affirmed the trial court's ruling on review. Footnote 2, *ante*.

The trial court and Court of Appeals correctly held that all seven of Ames' claims are waived, barred by the statute of limitations, or not statutorily authorized. The trial court and the Court of Appeals correctly held

¹ November 5, 2019, Unpublished Opinion, Court of Appeals Division II, *Linda Ames v. HSBC Bank USA, Nat'l Assoc. as Trustee for Wells Fargo Asset Securities Corp., Mort. Pass-Through Certificates Series 2006-AR16*, No. 51941-1 II.

that Ames' Motion to Amend, brought more than two years after filing her original complaint, and two months after the parties' hearing on Respondent's motion for summary judgment, but before the trial court rendered its decision on Respondent's motion, was futile.

II. ISSUES PRESENTED FOR REVIEW THAT WERE NOT DECIDED BY THE COURT OF APPEALS

The Court of Appeals did not decide the issue of whether a class action and settlement agreement (Appellant's Petition, p. 2, Point Two), neither of which Appellant was a party to nor class member of, affected Respondent's ability to foreclose after Appellant defaulted on her loan.

Furthermore, the Court of Appeals did not decide the issue of whether "Defendant Appellee was unjustly enriched." Appellant's Petition, p. 2, Point Three.

This Court must disregard these points under RAP 2.4 as they were never raised before the trial court or Court of Appeals.

III. RESTATEMENT OF THE CASE

A. Factual Background

This case arises from the foreclosure and subsequent trustee's sale of Appellant's Vancouver, Washington property. The relevant facts were previously examined by Division II of the Court of Appeals in Ames's prior appeals in Nos. 46585-0-II and 51941-1 II.

More than twelve years ago, Ames borrowed \$590,000 from Sierra Pacific Mortgage Company, Inc., in March 2006. The \$590,000 loan to Ames was memorialized in a promissory note. To secure the loan, she executed a deed of trust in favor of Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for beneficiary Sierra Pacific, its successors and assigns. The deed of trust was recorded against Ames's Vancouver, Washington property.

The loan to Ames was subsequently sold to a securitized trust, HSBC BANK USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16 (HSBC), which owned the loan and held the note. While Wells Fargo Bank, N.A. (Wells Fargo) serviced the loan and served as HSBC's attorney-in-fact, HSBC remained the note holder, and was the assignee of the trust deed's beneficial interest.

Ames stopped making her monthly loan payments in September 2011. HSBC appointed Quality Loan Service Corporation of Washington (QLS) several months later in March 2012 as successor foreclosure trustee on the trust deed securing her defaulted loan. Wells Fargo, as HSBC's servicer and attorney-in-fact, executed the successor trustee appointment on March 16, 2012. Ten days later, it was recorded with the Clark County Auditor's Office.

HSBC commenced nonjudicial foreclosure on September 21, 2012 by issuing a notice of default. The default at that point was \$36,265.32, plus additional fees and costs. Ames was notified that reinstatement funds could be paid to Wells Fargo, and was instructed how to make the payment. She was also notified that Wells Fargo was the loan servicer, and that HSBC owned the note for her loan. She was given the address and telephone number where she could contact Wells Fargo.

Ames did not reinstate her loan in response. So QLS as foreclosure trustee issued a notice of trustee's sale dated April 5, 2013 and recorded three days later, along with a notice of foreclosure. The trustee's sale was scheduled for August 9, 2013. This notice was never discontinued.

Four days before the sale date, Ames filed her first lawsuit in Clark County Superior Court against HSBC, Wells Fargo, MERS, and QLS. She asserted causes of action for an alleged statutory violation of Washington's Consumer Protection Act, for injunctive relief, declaratory judgment, slander of title, to quiet title, and for fraud.

Though she asked for an injunction restraining foreclosure in her complaint, she never moved to restrain the trustee's sale, nor did she ever obtain any such injunction. The trustee's sale proceeded on November 22, 2013, in Vancouver, Washington. HSBC took ownership of the property by virtue of its \$537,900 credit bid.

Five days later, on November 27, 2013, QLS issued a trustee's deed conveying the property to HSBC. Contrary to Ames's assertion that the sale occurred in California, the trustee's deed for the sale in Washington was merely executed in California.

B. *Procedural History*

On April 8, 2014, HSBC filed an unlawful detainer action in Clark County Superior Court. In response, Ames affirmatively challenged the validity of the trustee's sale. HSBC obtained an order for a writ of restitution on July 11, 2014. Ames appealed to this Division II of the Court of Appeals, Case No. 46585-0-II.

On April 10, 2015, the Court of Appeals granted HSBC's motion on the merits, and it affirmed the trial court's order for a writ of restitution. The Court ruled that because Ames had failed to restrain the trustee's sale, she had likewise waived her claims to invalidate the sale and trustee's deed. The Court deemed Ames's appeal without merit because it was clearly controlled by settled law.

On July 18, 2015, in Ames' first lawsuit, the trial court granted QLS's motion for summary judgment, dismissing her claims against it with prejudice.

On November 24, 2015, Ames filed her second lawsuit, naming HSBC only. This was two years and at least one court day after the trustee's sale took place. She again sought to set aside the trustee's sale. She asserted

seven causes of action, and requested damages in the round sum of \$3,080,000. By this second lawsuit, Ames sought to collaterally attack the summary judgment order dismissing her claims against QLS in her first lawsuit, without naming QLS to the new action.

On February 26, 2016, Ames filed a motion for default. HSBC filed a notice of appearance, and requested leave to respond to the her complaint pursuant to CR 55(a) (2) because *(a)* there was already a pending and contested action between the parties that HSBC was defending; *(b)* she did not provide counsel for HSBC notice of the default hearing; *(c)* the second action should have been abated given that her first action was still pending; and even worse, *(d)* HSBC had not been served.

On March 18, 2018, the trial court agreed with HSBC and denied Ames's motion for default.

On June 6, 2016, Ames filed another motion for default, noting it for hearing on July 15, 2016. On July 11, 2016, HSBC filed its answer. On July 15, 2016, the trial court denied her motion for default because HSBC had answered. Ames propounded requests for admission, requests for production, and interrogatories on HSBC on August 10, 2016. HSBC responded to her discovery requests on September 12, 2016, lodging its objections.

On April 19, 2017, HSBC filed a motion for entry of a confidentiality order, proposing that the parties mark material “confidential,” which would limit their distribution and disclosure. Ames opposed.

On May 24, 2017, the trial court entered a revised version of HSBC’s proposed order.

On August 18, 2017, Ames filed her “fifth [sic]” motion to compel², seeking further responses, claiming that she had not received a single document, nor any responses to interrogatories, or to any of her twelve requests for admission. She also claimed that HSBC could not produce an authentic note.

On August 25, 2017, the court heard her latest motion to compel. The trial court determined that HSBC had responded to her requests for admission. It explained to her that denials are responses, so a motion to compel did not apply. All responsive documents in HSBC’s possession had already been produced to Ames. The trial court denied her motion to compel.

On October 5, 2017, HSBC filed its motion for summary judgment noted for hearing on November 17, 2017.

Less than two weeks later, Ames filed her “sixth [sic]” motion to compel. The trial court had already determined that HSBC’s discovery re-

² Although Ames labeled her motion as her “Fifth Motion to Compel,” it was her fourth.

sponses were complete at the prior hearing on August 25, 2017, and denied Ames's motion to compel.

Ames continued attempting to stall, filing a motion to continue HSBC's motion for summary judgment on October 24, 2017, and stating that she was unable to respond to the summary judgment motion until the motion to compel was ruled upon.

On February 5, 2018, the trial court granted HSBC's motion for summary judgment, and dismissed Ames's claims with prejudice. Ames filed a notice of appeal on February 26, 2018, and sought review of five trial court orders.

Ames's Notice of Appeal identified the following orders:³

- (1) order denying plaintiff's motion for default;⁴
- (2) confidentiality/protective order covering materials disclosed during discovery, filed May 24, 2017;⁵
- (3) order regarding plaintiff's "fifth" motion to compel, filed August 25, 2017;
- (4) order denying plaintiff's "sixth" motion to compel, filed February 6, 2018; and

³ This issue was not preserved for appeal pursuant to RAP 2.4(b).

⁴ No error was assigned nor was it discussed in her opening brief. *Conrad v. Alderwood Manor*, 119 Wn. App. 275, 297, 78 P.3d 177, 189 (2003) (failure to assign error and to argue the points in the opening briefing, results in waiver); *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549, 553 (1992).

⁵ No error was assigned nor was it discussed in her opening brief, resulting in waiver.

(5) order granting defendant's motion for summary judgment, filed February 6, 2018.

On November 5, 2019, Division II of the Court of Appeals affirmed the trial court's granting summary judgment in favor of HSBC – finding that Ames waived her causes of action for quiet title, wrongful foreclosure, conversion, and civil conspiracy when she failed to enjoin the foreclosure sale of her property. Ames' claims all attempt to challenge the legality of the foreclosure sale. Ames failed to enjoin the foreclosure sale. Ames received notice of her right to enjoin the foreclosure sale, attempted to defend against the foreclosure, and failed to obtain a court order enjoining the sale. As a result, all three elements of waiver are met, and these claims are waived.

The Court of Appeals correctly ruled that Ames' remaining claims of fraud and misrepresentation are barred by the statute of limitations, and that her claim for declaratory relief from summary judgment in her first case is not statutorily authorized. RCW 61.24.127(1) does not statutorily authorize declaratory relief as a permissible action for damages.

Finally, the Court of Appeals correctly held that Ames' Motion to Amend, brought more than two years after filing her original complaint, and two months after the parties' hearing on Respondent's motion for summary judgment, but before the trial court rendered its decision on Respondent's motion, was futile. Given the delay in filing her motion, the

adverse ruling against her on summary judgment, and the futility of amendment because of Ames's waiver, statute of limitations bar, and lack of authority for seeking declaratory relief, the trial court did not abuse its discretion in denying Ames's motion to amend.

IV. ARGUMENTS WHY REVIEW SHOULD BE DENIED

A. *Standard of Review*

To obtain this Court's review, Ames must show: (1) that the Court of Appeals' Decision is in conflict with a decision of the Supreme Court; or (2) that the Court of Appeals' Decision 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. RAP 13.4(b).

Ames' Petition for Review neither mentions nor addresses any of the four grounds implicated by Division II's November 5, 2019, decision. Ames' Petition makes reference to a number of cases from cases within this Court's jurisdiction, and several outside of the State of Washington. However none of the cases cited address the four grounds for Washington State Supreme Court review above. Ames' Petition is simply a regurgitation of arguments previously made in the trial court and then again in her appellate briefing.

Because Division II's decision does not conflict with any issued Supreme Court or appellate court decisions, does not involve either a significant question of constitutional law or an issue of substantial public interest, the Petition for Review should be denied.

B. *The Decision Below Is Not In Conflict With Any Decision Of This Court*

Of the twenty-six cases cited⁶ in the Petition for Review, twelve are Washington State Supreme Court decisions.

Under Washington law, the security instrument follows the Note. *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wash.2d 83, 104, 285 P.3d 34, 44 (2012). In *Bavand v. OneWest Bank, FSB*, 196 Wn. App. 813, 385 P.3d 233 (2016) the court explained: "In *Bain*, the supreme court stated in its discussion regarding MERS that the Deeds of Trust Act "contemplates that the security instrument will follow the note, not the other way around." This statement is consistent with well settled law. Commentators have stated that the "transfer of the [note] alone will carry the [deed of trust] along with it." Other commentators have elaborated, stating:

[B]etween the parties to a transfer, the assignment or negotiation of the note itself is all that must be done. It is unnecessary to have any separate document purporting to transfer or assign the mortgage on the real estate, for it will follow the obligation automatically.

...

⁶ Ames' Table of Authorities lists 20 cases and 1 Law Review Article cited in her Petition. This is not an accurate list of all cases cited; however Respondent addresses all Washington State Court cases cited.

The purported assignment of a nonexistent beneficial interest in Bavand's deed of trust is immaterial.

Bavand, 196 Wash. App. at 843 (2016) (internal citations omitted).

In the trial court, Ames sued to quiet title, free and clear of the Deed of Trust, asserting that the Assignment of the Deed of Trust was invalid because the individual who executed that Assignment lacked capacity to do so. Since HSBC held the note, it was the beneficiary of the Deed of Trust, *regardless* of whether there was any assignment. Division II's decision is not in conflict with any of the above reasoning or rationale. (*Compare*, decision, p. 3, to quotation above.)

Ames also cites to *Brown v. Safeway Stores, Inc.* 94 Wn.2d 359, 617 P.2d 704 (1980) in her Petition (p. 4), however her actual Petition cites to this Court's Opinion in *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015). In *Brown v. Dep't of Commerce*, the Court held:

We hold a party satisfies the proof of beneficiary provisions RCW 61.24.030(7)(a) and RCW 61.24.163(5)(c) when it submits an undisputed declaration under penalty of perjury that it is the actual holder of the promissory note. That party is the beneficiary for the purposes of the mediation exemption provision, RCW 61.24.166, because the note holder is the party entitled to modify and enforce the note.

Brown, 184 Wn.2d at 547 (2015). Division II's decision is not in conflict with any of the above reasoning or rationale either. (*Compare*, decision, p. 3, to quotation above.) The Petition actually supports the above Supreme Court holding that it is the holder that is entitled to enforce the Note. *See Petition* at pg. 24 (citing *Brown* 184 Wn. 2d at 523).

Finally, Ames cites to *Barber v. Bankers Life & Cas. Co.*, 81 Wn.2d 140, 500 P.2d 88, (1972); *Barrie v. Hosts of Am.*, 94 Wn.2d 640, 642, 618 P.2d 96, 97 (1980); *Yakima Fruit & Cold Storage Co. v. Cent. Heating & Plumbing Co.*, 81 Wn.2d 528, 503 P.2d 108 (1972); *Morris v. McNicol*, 83 Wn.2d 491, 519 P.2d 7 (1974); *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982); *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 802 P.2d 1360 (1991) for the standard of review on a motion for summary judgment. Ames claims “[t]he evidence was supposed to be construed in light most favorable to the moving party, not to Linda Ames, the nonmoving party.” *Petition* at 22. However, Ames entirely misquotes the Supreme Court’s recitation of the standard of review on a motion for summary judgment:

The **burden is on the movant** for summary judgment to demonstrate that there is no genuine dispute as to any material fact and all reasonable inferences from the evidence must be resolved against him. *Welling v. Mount Si Bowl, Inc.*, 79 Wn.2d 485, 487 P.2d 620 (1971). And, where a motion is made for summary judgment, it is the duty of the trial court to **consider all evidence and all reasonable inferences therefrom in a light most favorable to the nonmovant**.

Barber, 81 Wn.2d at 142 (1972) (emphasis added). This is the exact opposite of the standard Ames claims to be the rule for granting summary judgment.

Finally, Ames blindly cites to *Plein v. Lackey*, 149 Wn.2d 214, 67 P.3d 1061 (2003) for the position that “[i]t is important to note that the appointment of trustee is invalid and the appointment of the trustee is

fraudulent as alleged in the complaint.” *Petition* at p. 22. However, the Court in *Plein* was not asked to determine whether an appointment of successor trustee was valid. The Court’s review there dealt primarily with the ability of a borrower to raise a post-foreclosure sale challenge when he fails to invoke the pre-sale remedies available under RCW 61.24.040.

We agree that the waiver rule applied by the Court of Appeals in *Country Express Stores, Steward, Koegel* and like cases, appropriately effectuates the statutory directive that any objection to the trustee's sale is waived where presale remedies are not pursued. *See* RCW 61.24.040(1)(f)(IX). Applying the waiver doctrine here: Plein received notice of his right to enjoin the sale, had knowledge of his asserted defense before the sale (that Cameron paid on behalf of Alpen and the debt was extinguished), and failed to obtain a preliminary injunction or other order restraining the sale. We conclude that Plein waived the right to contest the sale.

Plein v. Lackey, 149 Wn.2d 214, 229, 67 P.3d 1061, 1067-68 (2003).

Division II’s decision here is in alignment with the Supreme Court’s holding in *Plein*.

Because no conflicts exist between Division II’s decision and the Washington State Supreme Court cases cited, the Petition for Review is unsupported.

C. The Decision Below Is Not In Conflict With Any Published Decision Of The Court Of Appeals

Ames cites to eight published decisions from the Court of Appeals, none of which conflict with Division II’s decision rendered in this case.

Ames cites to *Demelash v. Ross Stores, Inc.*, 105 Wn. App. 508, 20

P.3d 447 (2001); *Guile v. Ballard Cmty. Hosp.*, 70 Wn. App. 18, 851 P.2d 689 (1993); and *Rhinehart v. Seattle Times Co.*, 51 Wn. App. 561, 754 P.2d 1243 (1988) to support her various arguments pertaining to discovery obligations and the alleged failure of Respondent to furnish discovery responses.

In her motions to compel, Ames asserted she had not received responses to twelve requests for admission. But she did receive responses denying the admissions, just not the responses she hoped for. The trial court determined that HSBC had responded to her requests for admission. It explained to her that denials are responses, and all responsive documents in HSBC's possession had already been produced to Ames. The trial court subsequently denied her last two motions to compel.

Division II's decision is not in conflict with the published decisions above. "A trial court's decision not to impose discovery sanctions is reviewed for abuse of discretion. A trial court necessarily abuses its discretion if its ruling is based on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Demelash*, 105 Wn. App. at 530. No specific ruling was made in the Division II decision relating to Ames' motions to compel and alleged failure to produce discovery. However, in light of all of Ames' motions to compel discovery, responses thereto, and hearings on those motions, reviewing the granting of

summary judgment *de novo*, Division II affirmed the trial court's granting summary judgment.

Ames cites to *Walker v. Quality Loan Serv. Corp. of Wash.*, 176 Wn. App. 294, 308 P.3d 716 (2013) for the position that only a lawful beneficiary may appoint a successor trustee who can thereafter issue a notice of trustee's sale. (*Petition* at p. 24). The Division II decision however does not conflict with Division I's decision in *Walker*, both of which rely on the same holding cited in *Bain, supra*.

Finally, Ames cites to four cases⁷ related to her "unjust enrichment" (*Petition*, p. 17) and "leave to amend" (*Petition*, p. 15) claims. Neither of these claims was raised in the trial court or the court of appeals, and review is therefore barred under RAP 2.4.

Furthermore, Ames only cites to *Bailie Commc'ns*, *Lynch*, and *Young* for the elements of proving "unjust enrichment." Because the Division II decision does not address an issue that was not raised on appeal, there is no conflict with any published decision of the Court of Appeals.

Finally, Ames' citation to *Doyle* does not conflict with Division II's decision:

Leave to amend a complaint is to be freely given when justice requires. CR 15(a). The motion must be in writing and state with particularity the grounds therefor. CR 7(b). **When a motion to**

⁷ *Bailie Commc'ns v. Trend Bus. Sys.*, 61 Wn. App. 151, 810 P.2d 12 (1991); *Lynch v. Deaconess Med. Ctr.*, 113 Wn.2d 162, 776 P.2d 681 (1989) *Young v. Young*, 164 Wn.2d 477, 191 P.3d 1258 (2008); and *Doyle v. Planned Parenthood of Seattle-King Cty.*, 31 Wn. App. 126, 130-31, 639 P.2d 240, 242 (1982)

amend is made after the adverse granting of summary judgment, the normal course of proceedings is disrupted and the trial court should consider whether the motion could have been timely made earlier in the litigation. *Trust Fund Servs. v. Glasscar, Inc.*, 19 Wn. App. 736, 577 P.2d 980 (1978); 3A Wash. Prac. § 5182 (3d ed. 1980).

Doyle v. Planned Parenthood of Seattle-King Cty., 31 Wn. App. 126, 130-31, 639 P.2d 240, 242 (1982) (emphasis added). Division II's decision affirming the trial court's denial of Ames motion to amend filed after the summary judgment hearing, but before the trial court rendered its decision in favor of HSBC, was appropriate and in not in conflict with the court's holding in *Doyle*. Amendment at that stage would disrupt the normal course of proceedings and Ames' motion could have been timely made earlier in the litigation.

Because no conflicts exist between Division II's decision and the Published Decisions of the Court of Appeals cited, the Petition for Review is unsupported.

D. *The Decision Below Does Not Create A Significant Question Of Law Under Either The Constitution of Washington State Or The United States Constitution*

Ames' Petition is devoid of any significant questions of law under either the United States Constitution or the Washington State Constitution. Furthermore, she never raised a constitutionality claim in either the trial court or Division II, and accordingly those claims are barred under RAP 2.5(a). That rule's exception for manifest error affecting a constitutional

right does not assist Ames:

Because RAP 2.5(a)(3) is an exception to the general rule that parties cannot raise new arguments on appeal, we construe the exception narrowly by requiring the asserted error to be (1) manifest and (2) "truly of constitutional magnitude." ... The policy behind RAP 2.5(a)(3) is simply this: Appellate courts will not waste their judicial resources to render definitive rulings on newly raised constitutional claims when those claims have no chance of succeeding on the merits.

State v. WWJ Corp., 138 Wn.2d 595, 602-03, 980 P.2d 1257, 1261 (1999) (citations omitted). Given the established law that summary judgment does not infringe on a litigant's jury trial right, any claimed error Ames may argue is neither manifest nor of true constitutional magnitude; accordingly, it is barred by RAP 2.5(a).

E. ***The Petition Does Not Involve An Issue Of Substantial Public Interest That Should Be Determined By This Court.***

In determining whether a matter, though moot, is of continuing and substantial public interest and thus reviewable, this Court considers: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. *In re Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (citing, *Sorenson v. Bellingham*, 80 Wn.2d at 558, 496 P.2d 512 (1972)). "Arguably a fourth factor exists, that being the level of genuine adverseness and the quality of advocacy of the issues." *Hart v. Dep't. of Soc. & Health Servs.*, Ill Wn.2d 445, 447, 759 P.2d 1206 (1988) (citations omitted).

As explained by the Hart court:

The continuing and substantial public interest exception has been used in cases dealing with constitutional interpretation, ...; the validity and interpretation of statutes and regulations, and matters deemed sufficiently important by the appellate court,

....

Most of the public interest exception cases fall into the first two categories as they tend to present issues which are more public in nature and are more likely to arise again. Further, decisions involving the constitution and statutes generally help to guide public officials. The public interest exception has not been used in statutory or regulatory cases that are limited on their facts, ..., or involve statutes or regulations that have been amended.

The third category includes cases taken by the appellate courts within their discretion because of the importance of the issues involved [such as] ...case involving definition of death; ... public campaign financing and election limit ordinance in Seattle; ... Seattle's building and zoning ordinances; ... negligence of a third party supplying liquor to a minor; ... large development project and Environmental Impact Statement requirements; [and] ... referendum to repeal city ordinance.

Id., at 449-50 (citations omitted).

The issues noted for review satisfy none of the three substantial public interest standards. First, foreclosure of a secured property interest due to loan default is a private matter limited to the contracting parties. Division II's decision did not add to or expand on the developing body of foreclosure law.

Second, there is no issue requiring an authoritative determination to provide future guidance to public officers. Non-judicial foreclosures have been prosecuted for at least a century in Washington State, and no statutory interpretations pertaining to the construction of the non-judicial

foreclosure statutes were argued or contested in the trial or appellate courts.

Finally, although non-judicial foreclosures and summary judgments are likely to recur, a Supreme Court decision in this case is unlikely to affect any such future proceedings. The underlying rulings were limited to the specific facts of this case, and they do not expand the law of either non-judicial foreclosures or summary judgments.

Because no issue of substantial public interest has been identified or exists, the Petition for Review is unsupported.

V. CONCLUSION

After the moving party shows the absence of material facts, the summary judgment inquiry shifts to the party with the burden of proof at trial. *Young v. Key Pharmaceuticals*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the non-moving party then fails to establish the existence of an element essential to that party's case, the moving party is entitled to summary judgment as a matter of law. *Id.*, at 225; *Sun Mountain Productions, Inc. v. Pierre*, 84 Wn.App. 608, 616, 929 P.2d 494 (1997).

Here, Respondent HSBC carried its summary judgment proof by uncontroverted, competent, admissible evidence. Ms. Ames did not dispute the facts by introducing controverting evidence.

Accordingly, Respondent HSBC respectfully requests the Petition for Review be denied.

RESPECTFULLY SUBMITTED this 27th day of February, 2020.

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Corporation, Mortgage Pass-Through Certificates

Series 2006-AR16

CERTIFICATE OF SERVICE

I, Karrie Blevins, certify that on this 27th day of February 2020, I caused the foregoing Respondent HSBC's Answer to Ames' Petition to Review to be delivered to the following parties in the manner indicated below:

Pro Se Appellant

Linda Ames
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By United States Mail
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Signed this 27th day of February 2020 at Seattle, Washington.

/s/ Karrie Blevins
Karrie Blevins, Paralegal
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February 27, 2020 - 2:36 PM

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