

FILED
SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
CLERK

No. 99465-0

SUPREME COURT
OF THE STATE OF WASHINGTON

TEN BRIDGES, LLC,

Petitioner,

v.

TERESIA GUANDAI and MIDAS MULLIGAN, LLC,

Respondents.

RESPONDENT'S ANSWER TO ANGELO CALFO'S
AMICUS CURIAE MEMORANDUM
IN SUPPORT OF REVIEW

Court of Appeals Case No. 80084-1-I

BERRY & BECKETT, PLLP
Guy W. Beckett, WSBA #14939
1708 Bellevue Ave.
Seattle, WA 98122
Tel: 206.441.5444
gbeckett@beckettllaw.com

Attorneys for Respondent

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I. INTRODUCTION

The purpose of an amicus curiae memorandum is to help the Court evaluate and analyze the legal issues before it. RAP 10.6(a) (amicus curiae brief is intended to “assist the appellate court”). Angelo Calfo is one of Ten Bridges, LLC’s (“Ten Bridges”) lawyers. In his Amicus Curiae Memorandum, Mr. Calfo unabashedly advocates for the result his client seeks, as one would expect from one of Ten Bridges’ attorneys. But Mr. Calfo’s Memorandum demonstrates little knowledge or understanding of the issues discussed in the Court of Appeals decision and in Ten Bridges’ Petition for Review. The Memorandum also demonstrates Mr. Calfo’s desire that Ten Bridges be permitted to continue to engage in its unfair and illegal equity skimming practices. Accordingly, the Court should pay no heed to Mr. Calfo’s Memorandum when ruling on the Petition for Review.

II. ARGUMENT

A. Mr. Calfo is Ten Bridges’ Attorney and is not an Uninterested Commentator.

“Amicus curiae procedures should serve the traditional purpose of rendering friend of the court opinions and advice to the appellate court.” 3 Wash. Prac. Rules Practice RAP 10.6 (8th ed. 2012).

Mr. Calfo is one of Ten Bridges’ attorneys. *See* Amicus Memorandum at 1 (conceding that Mr. Calfo represented Ten Bridges in “a related investigation [of Ten Bridges] by the Washington State Attorney General’s Office”); *see also* April 19, 2021 Notice of Removal in *Taie, et al. v. Ten Bridges, LLC, et al.*, United States District Court, Western District of Washington at Seattle, Case No. 2:21-cv-00526 JCC

(Dkt. No. 1) at 5 (identifying Mr. Calfo as Ten Bridges’ attorney).¹ The Court should consider Mr. Calfo’s Amicus Memorandum against the backdrop of his job as Ten Bridges’ attorney and advocate, as opposed to a neutral person providing unbiased analysis without partisanship.

B. Mr. Calfo Demonstrates Little if Any Knowledge or Understanding of the Issues Discussed in the Court of Appeals Decision and in the Petition for Review.

Mr. Calfo’s Memorandum demonstrates little, if any, knowledge or understanding about the issues before the Court, so it is not helpful to the Court’s evaluation and analysis of Ten Bridges’ Petition for Review.

1. Mr. Calfo mistakenly argues that the surplus proceeds from the Sheriff’s Sales were not held by a “county.”

Mr. Calfo argues that RCW 63.29.350 does not apply to the agreement between Ten Bridges and Ms. Asano because the statute only applies “to regulate property *in government hands*[.]” Amicus

¹ This Court may take judicial notice of filings in other courts: judicial notice may be taken of “adjudicative fact[s]” that are “capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” ER 201(a)-(b)(2). The Court must take judicial notice of a judicially noticeable fact “if requested by a party and supplied with the necessary information.” ER 201(d). Such notice may be taken at any stage of a proceeding. ER 201(f). ER 201 is essentially identical to FRE 201. *See generally State v. McBride*, 192 Wn. App. 859, 870, 370 P.3d 982 (2016) (citation omitted) (where federal evidence rule is substantially similar to Washington evidence rule, federal case law applying the rule is instructive). A court “may take judicial notice of proceedings in other courts . . . if those proceedings have a direct relation to matters at issue.” *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992); *see also Burbank–Glendale–Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir.1998) (courts may take judicial notice of court filings and other matters of public record). Ten Bridges’ Notice of Removal in *Taie, et al. v. Ten Bridges, LLC, et al.*, is attached in the Appendix to this brief, without its exhibits. Thus, the Court may take judicial notice that Mr. Calfo is one of Ten Bridges’ lawyers in *Taie*.

Memorandum at 6 (emphasis in original). This argument ignores that the 2010 amendments to RCW 63.29.350 increased the types of transactions to which the statute applies; it now applies to agreements like the one between Ten Bridges and Ms. Asano here, where the subject of the agreement is “funds held by *a county* that are proceeds from a foreclosure for delinquent property taxes, assessments, or other liens.” 2010 c 29 § 2 (emphasis supplied). Contrary to Mr. Calfo’s allegation in his Memorandum at 5 that “*Nothing* in the language of the 2010 amendment [to RCW 63.29.350] evidences an intent to regulate the transaction at issue here” (emphasis in original), it is clear that the amendment intended to address the *very type* of transaction at issue here.

Mr. Calfo’s argument that RCW 63.29.350 doesn’t apply to the agreement between Ten Bridges and Ms. Asano also ignores that surplus proceeds from sheriff’s sales are delivered to county clerks for deposit in the clerks’ registries, and that the Court of Appeals specifically held that such proceeds are, in fact, held by a “county” for purposes of RCW 63.29.350(1). *Ten Bridges, LLC v. Guandai*, 15 Wn. App.2d 223, 234-36, 474 P.3d 1060 (2020). In its Petition for Review, Ten Bridges did not acknowledge or dispute this holding, much less critique or distinguish it. The Court of Appeals holding on the issue is therefore a verity; thus, when ruling on the Petition the Court should not consider whether surplus proceeds from sheriffs’ sales on deposit with county clerks in their registries are “funds held by a county” for purposes of RCW 63.29.350(1). *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269, 272 n.1, 943 P.2d

1378 (1997) (“[a]ppellate courts will not usually decide an issue raised only by amicus).

Also, the Court of Appeals decision on this issue is correct. The surplus proceeds at issue were held by the Clerk of King County, who deposited them in the Registry of the Superior Court. The Superior Court is part of the King County Department of Judicial Administration, which is a department of the King County Executive. King County Charter § 350.20; *Nast v. Michels*, 107 Wn.2d 300, 311, 730 P.2d 54 (1986). The Department of Judicial Administration is administered by the County Clerk, whose responsibility it is to “maintain the official court files, records and indexes necessary for the efficient administration of justice and the court system” and “perform such other duties assigned to it by a majority of the superior court judges” in King County. King County Charter § 350.20.20. Pursuant to RCW 6.17.140(6), the King County Sheriff delivered the proceeds from the Sheriff’s Sale of Ms. Asano’s property to the Clerk of the Court, *not* to the Court Registry. The Clerk deposited the funds into the Court Registry, but they remained in the Clerk’s custody. *State v. Superior Court of Jefferson County*, 3 Wash. 702, 703-04, 29 P. 204 (1892). Therefore Ms. Asano’s funds in the Registry are held by King County.

Mr. Calfo’s Memorandum, rather than providing help to the Court on this topic, is instead misleading and provides no assistance whatsoever to the Court.

2. RCW 63.29.350 applies to proceeds that result from the foreclosure of “liens.”

In his Memorandum, Mr. Calfo discusses prior iterations of RCW 63.29.350, arguing that the statute does not apply to Ten Bridges’ agreement with Ms. Asano because the funds are not proceeds of the foreclosure of a tax lien. Mr. Calfo’s argument completely ignores the Legislature’s 2010 amendment to the statute that expanded its application to “funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, *or other liens.*” *See* 2010 c 29 § 2 (Emphasis supplied).

Unpaid assessments from a condominium owners association are liens against the condominiums for which they are assessed. RCW 64.34.364(1). The Sheriff’s Sale of Ms. Asano’s condominium was for the foreclosure of her condominium owners association’s assessments. Therefore, the surplus proceeds sought to be obtained by Ten Bridges were proceeds from a foreclosure for a lien, and the 5% cap permitted by RCW 63.29.350 applies. Because Mr. Calfo’s Memorandum fails to address this important expansion of the application of the statute, it attempts to mislead the Court, not assist it. The Court of Appeals decision is not inconsistent with previous decisions that interpreted RCW 63.29.350; rather, it is consistent with the prior decisions interpreting the parts of the statute that were in existence when those prior cases were decided and when the decision below in this case was issued. Mr. Calfo’s Memorandum provides no assistance to the Court on this issue, and his argument concerning it should be disregarded.

3. Ten Bridges did not argue that the case presents an issue of first impression.

In its Petition for Review, Ten Bridges did not argue that the Court of Appeals decision presented an issue of first impression. In fact, Ten Bridges claimed just the opposite: it argued that the decisions in *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995) and *Int'l Tracers of Am. v. Hard*, 89 Wn.2d 140, 570 P.2d 131 (1977) apply to the issues in this case; that the Court of Appeals decision here “conflicts” with the decisions in those cases, *see* Petition at 11-15; and that the “part of the statute that describes the reach of the law, namely the specific kind of behavior the statute prohibits, is identical to the corresponding parts of the statute that were in effect when *Nelson* and *Hard* were decided.” *Id.* at 13. Thus, while Ten Bridges argues in its Petition that the Court of Appeals decision conflicts with prior binding legal authority, its lawyer, Mr. Calfo, argues that those cases are not applicable. Ten Bridges can’t have it both ways. Moreover, since Ten Bridges did not argue in its Petition that this case presents an issue of first impression, this Court should not consider Mr. Calfo’s argument that it is. *Noble Manor Co.*, 133 Wn.2d at 272 n.1.²

4. J.P. Morgan Chase Bank, N.A. v. Unknown Heirs of Porter is not inconsistent with the Court of Appeals decision.

Mr. Calfo also claims that the Court of Appeals decision in this case is inconsistent with its decision in *JP Morgan Chase Bank, NA v. Unknown Heirs of Porter*, ___ Wn. App.2d ___, 481 P.3d 1114 (2021),

² In her Answer to Ten Bridges’ Petition for Review, Ms. Asano explained in detail why the Court of Appeals decision is not inconsistent with *Nelson* or *Hard*. *See* Answer to Petition for Review at 4-9.

which was decided after the Court of Appeals decided this case. *See* Amicus Memorandum at 3-4. Ten Bridges has not made this argument, so the Court should not consider it. *Noble Manor Co.*, 133 Wn.2d at 272 n.1.

Even if the Court were to consider Mr. Calfo's argument, however, the issues resolved in *Porter* were not anything like the issues here. In *Porter*, the Court considered whether a probate estate was required to be commenced to permit redemption of judicially foreclosed real property by an assignee of heirs of an intestate decedent of their right to redeem the property owned by the decedent at the time of his death, and if so, the amount that the assignee was required to pay in order to redeem. The court held that on the facts in that case, no superior court probate estate was required to enable the heirs' assignee to exercise the right of redemption under RCW Chapter 6.23. *Porter*, 481 P.3d at 1116-1119. Neither the heirs nor the assignee of their right to redeem in *Porter* intended to make a claim to surplus proceeds, as occurred in this case. There was no issue of entitlement to foreclosure surplus proceeds whatsoever in *Porter*.

Thus, the Court of Appeals decision in *Porter* is not inconsistent with its decision in this case, and this case has no application to the facts in *Porter*. Because *Porter* is irrelevant to this case, the argument about it in Mr. Calfo's Memorandum provides no assistance to the Court's analysis of whether Ten Bridges' Petition for Review should be granted.

- 5. Ten Bridges' equity skimming scheme does not "provide a socially useful service" to people who have just lost their homes to foreclosure and who face the loss of the equity they have earned for pennies on the dollar.**

In his Memorandum, Mr. Calfo makes the utterly laughable claim that “[f]irms like Ten Bridges perform a socially useful service of alerting beneficiaries to the existence of unclaimed property, rather than permitting such property to escheat to the State.” Amicus Memorandum at 2. In truth and in fact, the “service” Ten Bridges “performs” for people who have just had their homes foreclosed and who enter into agreements with it like Ms. Guandai did is to raid the equity in their homes for pennies on the dollar. In Ms. Guandai’s case, she would have lost the approximately \$89,000 of equity in her home in exchange for a payment of less than 17% of that amount, and in Ms. Asano’s case, had the trial court not invalidated the agreement between her and Ten Bridges, she would have lost over 50% of the equity remaining in her home after its foreclosure. *See* 15 Wn. App.2d at 228-29. What Ten Bridges is doing when it enters into agreements like the ones it entered into with Ms. Guandai and Ms. Asano is not performing “a socially useful service”; plain and simple, it is engaging in a form of the socially undesirable and illegal practice of equity skimming. By his Amicus Memorandum in support of Ten Bridges’ Petition for Review, Mr. Calfo has made it clear he wants Ten Bridges to be able to continue to do so.

III. CONCLUSION

Mr. Calfo’s Memorandum demonstrates his misunderstanding of the facts and issues in this case. Mr. Calfo’s support for Ten Bridges’ Petition for Review is disappointing yet predictable in view of his role as one of Ten Bridges’ attorneys, but the arguments he makes in support of Ten

Bridges' Petition are based on his misunderstanding—or misstatement—of the facts and issues in this case, and on his desire that Ten Bridges be permitted to continue to engage in its equity skimming scheme.

Accordingly, Mr. Calfo's Memorandum is of no help to the Court in evaluating the Petition, and the Court should disregard it and should deny Ten Bridges' Petition for Review.

DATED: April 26, 2021.

BERRY & BECKETT, PLLP

/s/ Guy Beckett
Guy W. Beckett, WSBA#14939
Attorneys for Respondents

DECLARATION OF SERVICE

Guy W. Beckett declares:

On April 26, 2021, I sent by electronic mail a copy of the foregoing Answer to Memorandum of Amicus Curiae Angelo Calfo in Support of Review, to:

Alexander S. Kleinberg
EISENHOWER CARLSON PLLC
1201 Pacific Avenue, Ste. 1200
Tacoma, WA 98402
akleinberg@eisenhowerlaw.com

Philip A. Talmadge
TALMADGE/FITZPATRICK
2775 Harbor Avenue SW
Third Floor, Ste. C
Seattle, WA 98126
phil@tal-fitzlaw.com

Chelsea Hicks
Tom McKay
NORTHWEST JUSTICE PROJECT
401 Second Ave. S., Ste. 407
Seattle, WA 98104
chelseah@nwjustice.org
tomm@nwjustice.org

Amanda Martin
NORTHWEST CONSUMER LAW CENTER
936 N. 34th St., Ste. 300
Seattle, WA 98103
Amanda@nwclc.org

Heidi Anderson
WASHINGTON STATE ATTORNEY GENERAL
800 Fifth Ave., Ste. 2000
Seattle, WA 98104
heidi.anderson@atg.wa.gov

Benjamin Roesch
JENSEN MORSE BAKER PLLC
1809 7th Ave., Ste. 410
Seattle, WA 98101
benjamin.roesch@jmblawyers.com

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

SIGNED: April 26, 2021, at Seattle, Washington.

/s/ Guy Beckett
Guy W. Beckett, WSBA #14939

APPENDIX

**Ten Bridges, LLC's Notice of Removal in
Taie, et al. v. Ten Bridges, LLC, et al.,
United States District Court, Western District
of Washington at Seattle, Case No. 2:21-cv-00526 JCC
(without attachments)**

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MARY TAIE, an individual; et al.,

Plaintiffs,

vs.

TEN BRIDGES LLC, an Oregon Limited
Liability Company; et al., et ux.,

Defendants.

Case No.

**DEFENDANTS' NOTICE OF
REMOVAL**

(King County Superior Court,
No. 21-2-04166-0)

PLEASE TAKE NOTICE that Defendants Ten Bridges, LLC, Demian Heald, and the marital community of Demian Heald and Jane Doe Heald hereby file this notice of removal pursuant to 28 U.S.C. §§ 1332(a), 1441, and 1446 in order to effect the removal of the above-captioned action, *Mary Taie, et. al., v. Ten Bridges, LLC, et. al.*, Case No. 21-2-04166-0, from the Superior Court of the State of Washington in and for King County, to the United States District Court for the Western District of Washington. Defendants are entitled to remove this action under 28 U.S.C. § 1332 because complete diversity of citizenship exists and the amount in controversy

DEFENDANTS' NOTICE OF REMOVAL
(Case No. _____) - 1

LAW OFFICES
CALFO EAKES LLP
1301 SECOND AVENUE, SUITE 2800
SEATTLE, WASHINGTON 98101-3808
TEL (206) 407-2200 FAX (206) 407-2224

1 exceeds \$75,000. *See* 28 U.S.C. § 1446(a) (requiring a “short and plain statement of the grounds
2 for removal”).

3 **I. PLEADINGS, PROCESS, AND ORDERS**

4 1. On March 30, 2020, Plaintiffs commenced an action entitled *Mary Taie, et. al., v.*
5 *Ten Bridges, LLC, et. al.*, Case No. 21-2-04166-0, in the Superior Court of the State of Washington
6 in and for King County. True and correct copies of the original Summons and Complaint, which
7 Plaintiffs served upon Defendant Ten Bridges, LLC, on March 31, 2021, are attached hereto as
8 **Attachment 1**. Pursuant to 28 U.S.C. § 1446(a), this constitutes the process and pleadings served
9 on Defendants.

10 2. The Complaint, which is separately attached on its own as **Attachment 2** pursuant
11 to Local Rule 101(b)(1), specifically alleges that Plaintiffs were damaged in an amount of at least
12 \$120,000. ¶ 6.7. Defendants are unaware of any separate jury demand.

13 3. Pursuant to Local Rule 101(b)(2), **Attachment 3** is a certificate of service which
14 lists all counsel who have appeared in the action with their contact information, including email
15 address.

16 4. Pursuant to Local Rule 101(c), copies of all additional records and proceedings in
17 the state court are attached as exhibits to the Verification of State Court Records, which is filed
18 concurrently with this Notice of Removal.

19 **II. BASIS FOR REMOVAL**

20 5. Removal is proper under 28 U.S.C. § 1332 because: (1) Plaintiffs’ claims put more
21 than \$75,000.00 in controversy, exclusive of interests and costs; and (2) Plaintiffs and the
22 Defendants are diverse.

23 6. The United States District Court for the Western District of Washington is the
24 federal judicial district embracing the superior courts of King County, where Plaintiffs filed the
25 State Action. 28 U.S.C. § 128(b). Thus, removal is proper to this Court.

1 **A. The Amount-in-Controversy Requirement Is Satisfied.**

2 7. Pursuant to 28 U.S.C. § 1446(c)(2)(B), removal is proper if the amount in
3 controversy exceeds \$75,000.00, exclusive of interests and costs.

4 8. In the Complaint, Plaintiffs state that “Plaintiffs have suffered actual damages
5 exceeding \$120,000, for which damages Plaintiffs are entitled to recover money judgment against
6 Ten Bridges, Demian Heald, and the marital community comprised of Demian Heald and Doe
7 Heald.” ¶ 6.7.

8 9. When a plaintiff alleges damages in excess of \$75,000, the amount-in-controversy
9 requirement is plainly met. 28 U.S.C. § 1446(c)(2) (“the sum demanded in good faith in the initial
10 pleading shall be deemed to be the amount in controversy.”).

11 **B. There is Diversity of Citizenship Between All Plaintiffs and All Defendants**

12 10. This case satisfies the complete diversity requirement. A person’s state of domicile
13 determines his or her state citizenship. *See, e.g., Kanter v. Warner-Lambert Co.*, 265 F.3d 853,
14 857–58 (9th Cir. 2001). A limited liability company is a citizen of every state of which its members
15 are citizens. *See, e.g., Johnson v. Columbia Properties Anchorage, LP*, 437 F.3d 894, 899 (9th
16 Cir. 2006).

17 11. Plaintiffs Mary Taie, Moyra Coop, William Groves allege that they are residents
18 of, respectively, Snohomish, Kitsap, and King Counties in Washington State. Compl. at ¶¶ 2.1,
19 2.2, and 2.3. Accordingly, upon information and belief, Plaintiffs are all domiciled in and therefore
20 citizens of the State of Washington.

21 12. Defendant Demian Heald is, and was at the time Plaintiffs commenced this action,
22 a resident of Oregon, where he is and has been domiciled since 1997 and intends to remain
23 domiciled. He is therefore a citizen of the State of Oregon.

24 13. Defendant Ten Bridges, LLC is, and was at the time Plaintiffs commenced this
25 action, a limited liability company organized under the laws of State of Oregon with its principal

1 place of business in Oregon. Defendant Demian Heald is the sole member of Ten Bridges, LLC.
2 Defendant Ten Bridges, LLC is therefore a citizen of the State of Oregon.

3 14. Defendant Demian Heald's spouse is, and was at the time Plaintiffs commenced
4 this action, a resident of Oregon, where she is and has been domiciled since 1997 and intends to
5 remain domiciled. She is therefore a citizen of the State of Oregon.

6 15. Defendants are not citizens of the same state as any of the Plaintiffs. Thus, the
7 parties are completely diverse. *See, e.g., Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996)
8 (diversity exists under § 1332(a), when the citizenship of each plaintiff is diverse from the
9 citizenship of each defendant.)

10 **III. TIMELINESS OF REMOVAL**

11 16. This Notice of Removal is being timely filed within 30 days of March 31, 2021, the
12 date on which the Summons and Complaint were served on Ten Bridges, LLC.

13 **IV. SERVICE ON PLAINTIFF AND STATE COURT**

14 17. Pursuant to 28 U.S.C. § 1446(d), Defendants will serve this Notice of Removal
15 upon Plaintiffs and promptly file the same in the state court action.

16 ///

17 ///

18 ///

CERTIFICATE OF SERVICE

I, Susie Johnson, declare that I am employed by the law firm of Calfo Eakes LLP, a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On April 19, 2021, I caused a true and correct copy of the foregoing document to be served on counsel listed below in the manner indicated:

Guy W. Beckett, WSBA #14939
BERRY & BECKETT, PLLP
1708 Bellevue Avenue
Seattle, WAW 98122
T: 206.441.5444
F: 206.838.6346
Email: gbeckett@beckettlaw.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email
- Via E-Service

C. Chip Goss
GOSS LAW PLLC
3614A California Avenue SW,
#246
Seattle, WA 98116
T: 206.420.1196
Email: chip@chipgossllaw.com

- Via legal messengers
- Via first class mail
- Via facsimile
- Via email
- Via E-Service

s/ Susie Johnson

Susie Johnson
Law Firm Administrator

BERRY & BECKETT, PLLP

April 26, 2021 - 12:49 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 99465-0
Appellate Court Case Title: Ten Bridges, LLC v. Teresia Guandai and Midas Mulligan, LLC

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Answer to Angelo Calfo's Amicus Curiae Memorandum in Support of Review

Sender Name: Tona Kiefer - Email: tonak@seanet.com

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