

FILED
SUPREME COURT
STATE OF WASHINGTON
3/18/2021
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No. 99578-8

THE SUPREME COURT OF THE
STATE OF WASHINGTON

DANIEL G. SZMANIA,
Defendant-Appellant,

v.

WELLS FARGO BANK, N.A.,
AS TRUSTEE FOR BEAR STERNS ARM TRUST 2007-3,
Plaintiff-Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

This Petition for Review¹ arises from Petitioner Daniel Szmania's repeated and erroneous attempts to secure possession of real property that he does not own. The case came before the Court of Appeals twice, which rejected Petitioner's substantive contentions and resolved the issues presented by application of simple and well-established points of Washington law. The Petition for Review now similarly fails to set out any issue calling for this Court's review.

II. RESPONSE TO ISSUES FOR REVIEW

Szmania's petition purports to set out two issues for review, broadly styled: (a) "Loss of Subject Matter Jurisdiction," and (b) "Lack of Personal Jurisdiction." *See* Petition for Review 1–3. Neither issue is appropriate for review.

III. COUNTER-STATEMENT OF THE CASE

In June 2016, Respondent Wells Fargo purchased real property in Brush Prairie, Washington at a trustee's sale held under RCW 61.24. *See*

¹ The decision of the Court of Appeals below is a decision terminating review, because it affirmed the trial court's dismissal of the case. Review in this Court should thus be sought through a petition for review. *See* RAP 13.3(b). Petitioner's filing is instead erroneously styled as a "Motion for Discretionary Review." However, under RAP 13.3(d), such a motion is given the same effect as a petition for review. Wells Fargo accordingly refers to Szmania as "Petitioner," and to his filing as a "Petition for Review."

CP 6 (appellate opinion dated January 3, 2019, setting out factual background). Szmania, the former owner of the property, failed to vacate the property after the sale. *See id.* In December, Wells Fargo filed an unlawful detainer complaint, to remove Szmania from the premises and secure possession of its property. *See id.*

Szmania moved to dismiss the unlawful detainer action. *See* CP 7. The trial court denied that motion, ordered that possession of the premises be restored in Wells Fargo, and Szmania then appealed. *See id.*

In the first appeal, the Court of Appeals ruled that Wells Fargo's substituted service on Szmania had been technically defective. *See* CP 8–9. This Court thus reversed the denial of Szmania's motion to dismiss, on the ground that service had not been properly completed, and remanded for further proceedings. *See* CP 9. However, the Court of Appeals rejected Szmania's substantive arguments that the trial court lacked subject matter jurisdiction based on removal of a separate lawsuit to federal court, and did not rule on the merits of his remaining contentions under CR 12(b)(6). *See* CP 10–14.

After the case was remanded to the trial court for further proceedings, Szmania submitted a motion styled "Motion for Possession and Damages." *See* CP 49–67. Wells Fargo opposed the Motion for Possession and Damages. *See* CP 171–74. The matter came before the trial

court for hearing on August 9, 2019, where Wells Fargo orally moved in open court for dismissal of the action under CR 41(a)(1)(B). The trial court entered two orders from the bench: one denying the Motion for Possession and Damages, CP 181; and another granting Wells Fargo's oral motion to dismiss, CP 179–80.

Szmania timely appealed the trial court's August 9, 2019 orders. In the second appeal, the Court of Appeals issued an unpublished opinion rejecting Szmania's contentions and affirming the Superior Court. Specifically, the Court of Appeals held that the landlord-tenant statutes upon which Szmania relied were inapplicable. *See Wells Fargo Bank, N.A. as Tr. For Bear Stearns Arm Tr. 2007-3 v. Szmania*, No. 53743-5-II, 2021 WL 37614, at *2 (Wn. Ct. App. Jan 5, 2021). The Court of Appeals further held that the Superior Court had properly granted Wells Fargo's motion to dismiss the action under CR 41(a)(1)(B). *Id.* at *3–4.

Szmania then filed a Petition for Review (erroneously styled as a Motion for Discretionary Review).

IV. REASONS TO DENY REVIEW

This case was properly resolved below, based on well-established principles of Washington law. None of the criteria set out in RAP 13.4(b) for review in this Court are satisfied, or even implicated, by the rulings at issue here. Indeed, the Petition for Review does not even argue that the

decisions below conflict with existing opinions of this Court or of the Court of Appeals (RAP 13.4(b)(1)–(2)); that the case raises any significant constitutional question (RAP 13.4(b)(3)); or that the case involves any issue of substantial public interest calling for review in this Court (RAP 13.4(b)(4)).

Instead, the Petition for Review simply reprises plainly-erroneous contentions that were properly rejected by the trial and appellate courts below. First, the petition spills a good deal of ink arguing that the trial court lacked jurisdiction because Petitioner removed a separate lawsuit to federal court. But as the Court of Appeals held in the first appeal, removal of a separate action simply has no bearing on jurisdiction in this lawsuit. *See* CP 11–12. More to the point, the petition’s various arguments on this point present no issues calling for this Court’s review under RAP 13.4(b).

Second, the Petition for Review argues that in the first appeal, the Court of Appeals ruled that substituted service was improper. But as the Court of Appeals further noted in the second appeal, nothing in the prior ruling held or suggested that Szmania had any rights in the real property in question. *See Wells Fargo Bank, N.A. as Tr. For Bear Stearns Arm Tr. 2007-3 v. Szmania*, No. 53743-5-II, 2021 WL 37614, at *3 (Wn. Ct. App. Jan 5, 2021). Nor was there any error in dismissing the action on Wells Fargo’s motion under CR 41(a)(1)(B). *Id.* at *3–4. Again, none of the Petition for

Review's various arguments on this topic present any issue that could justify review under RAP 13.4(b).

V. CONCLUSION

For the reasons stated above, Wells Fargo requests that the Petition for Review be denied.

Respectfully submitted this __ day of March, 2021.

HOLLAND & KNIGHT, LLP

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*Attorneys for Respondent Wells
Fargo Bank, N.A., as Trustee for
Bear Stearns ARM Trust 2007-3*

CERTIFICATE OF SERVICE

I hereby certify that on the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

- Email and first-class United States mail, postage prepaid, to the following:

Daniel G. Szmania
P.O. Box 757
Brush Prairie, WA 98606-0757
Phone: 360-718-1402
Email: dszmania@quixnet.net
Pro Se Appellant

DATED this __ day of March, 2021.

Garrett S. Garfield

CERTIFICATE OF SERVICE

I hereby certify that on the date stated below, I caused to be served a true and correct copy of the foregoing Letter on the below-listed parties of record by the method(s) noted:

- Email and first-class United States mail, postage prepaid, to the following:

Daniel G. Szmania
P.O. Box 757
Brush Prairie, WA 98606-0757
Phone: 360-718-1402
Email: dszmania@quixnet.net
Pro Se Appellant

DATED this 5th day of March, 2021.

/s/ Garrett S. Garfield _____

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March 5, 2021

Via E-file

Washington State Court of Appeals - Division II
Clerk of Court
909 A Street, Suite 200
Tacoma, WA 98402

Re: *Daniel G. Szmania v. Wells Fargo Bank, N. A.; Case No. 53743-5-II*

Dear Clerk of Court:

On February 4, 2021, Appellant Daniel Szmania filed with this Court a Motion for Discretionary Review, seeking Supreme Court review of the Court's January 5, 2021 opinion affirming the trial court's dismissal of the action.

It appears that Szmania filed the motion in this Court only, rather than in the Supreme Court as directed by RAP 13.5(a). Accordingly, there is currently no case number open in the Supreme Court in connection with this matter. Moreover, Szmania's motion appears to be erroneously styled—because this Court's decision was one terminating further review, a petition for review under RAP 13.3(b) should have been submitted rather than a motion for discretionary review. However, under RAP 13.3(d), the motion should be given the same effect as a petition for review.

Because there is currently no open Supreme Court case number, Respondent Wells Fargo is unable to submit its answer to Szmania's request for review in the Supreme Court, as would typically be appropriate under RAP 13.4(d). Wells Fargo accordingly files this letter to inform this Court of the situation, and attaches the answer that Wells Fargo is prepared to file in the Supreme Court if and when a case number is opened. Wells Fargo will of course also comply with any further directions this Court or the Supreme Court may see fit to give.

Sincerely yours,

HOLLAND & KNIGHT LLP



Garrett S. Garfield

HOLLAND AND KNIGHT LLP

March 05, 2021 - 2:57 PM

Transmittal Information

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