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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  _____
DEPUTY

No. 47395-0-II

COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

Todd Baker and Theresa Baker,

Appellants. NO. 11-2-01437-5

vs.

PennyMac Loan Services, LLC,
Northwest Trustee Services, Inc.

Respondents.

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in denying the Bakers' Motion for Relief from Order & Judgment Pursuant to CR 60.

B. Issues Pertaining to the Assignment of Error

1. Whether the Court should grant the Bakers relief from judgment under CR 60(b)(6) when the unanimous decision of the United States Supreme Court in *Jesinoski* renders prospective application of a judgment denying enforcement of the Bakers' valid rescission inequitable?

2. Whether the Court should grant the Bakers relief from judgment under CR 60(b)(11) when extraordinary circumstances exist including: the United States Supreme Court's resolution of unsettled law in *Jesinoski*; PennyMac is not a proper and correct party to the proceeding; granting relief would not affect finality; and equity favors the grant of relief from judgment?

II. STANDARD OF APPELLATE REVIEW AND FINALITY OF ORDER

A. Standard of Review

The appropriate standard of review is abuse of discretion because the issue on appeal is whether the trial court erred in denying a motion for relief from judgment pursuant to CR 60. *Lindgren v. Lindgren*, 58 Wn. App. 588, 595, 794 P.2d 526 (1990).

B. Finality of Order

A final judgment is appealable as a matter of right in a civil case. RAP 2.2.

III. STATEMENT OF THE CASE

A. Procedural History

Todd and Theresa Baker (“the Bakers”) exercised their right to rescind their mortgage loan under the Truth in Lending Act (TILA) on May 28, 2009. CP 74. While the Bakers sent written notice of the rescission within the statutorily required three year period, they did not file suit to enforce the rescission (CP 130-143) within those three years from the date the loan was consummated.

PennyMac Loan Services, LLC (“PennyMac”), a purported servicer of the rescinded mortgage loan, acknowledged receipt of the rescission notice but refused to recognize its effect. CP 22. On or around

September 2010, PennyMac initiated a nonjudicial foreclosure action against the Bakers' property. CP 47. Northwest Trustee Services, Inc. (NWTS) is the trustee for the nonjudicial foreclosure. CP 47. On April 6, 2011, the Bakers filed a complaint against PennyMac and NWTS, requesting an injunction to stay the foreclosure and a declaratory judgment that the loan was properly rescinded, among other relief. CP 130-143.

The Clark County Superior Court enjoined the foreclosure and required the Bakers to post a bond and make monthly payments into the registry of the court pending resolution of the claim.

On July 12, 2012, PennyMac and NWTS moved for summary judgment. CP20. The Clark County Superior Court granted summary judgment in favor of PennyMac and NWTS. CP 6-10. In regards to the rescission claim, the trial court concluded in an advisory letter that the Bakers' "claim is time-barred for failure to file suit within three years of loan consummation," following CP 7. The letter also stated that the Bakers "failed to establish they could tender proceeds of the loan." *Id.*

On January 13, 2015, the Supreme Court of the United States reversed *McOmie-Gray, Id.*, and other similar cases and unanimously held that a borrower need not file suit within three years of loan consummation to exercise his right to rescind under TILA, only submit written notice. *Jesinoski v. Countrywide Home Loans, Inc.*, 135 S. Ct. 790, 190 L. Ed. 2d

650 (2015).

Upon learning of the decision in *Jesinoski*, the Bakers immediately filed a Motion for Relief from Order & Judgment Pursuant to CR 60 (“Motion”). CP 98. The Clark County Superior Court denied the Motion on March 9, 2015. CP 161. The Bakers filed a Notice of Appeal on March 26, 2015.

B. Factual History

The Bakers obtained a mortgage loan from Paramount Equity Mortgage (“Paramount”) on May 31, 2006. CP 38-48. After learning of multiple violations in their loan transaction, the Bakers exercised their rescission rights under TILA on May 28, 2009. CP 74. The Bakers sent a notice of rescission to MorEquity, who claimed to be the owner of the loan at the time. CP 74. When the Bakers exercised their rescission rights, they were current on their mortgage. CP 38. The Bakers were able to tender the mortgage principal at the time of rescission, had made arrangements to do so prior to rescinding, and made this known in their rescission letter. CP 38-48.

After the Bakers exercised their right to rescind, PennyMac purportedly took over servicing of the subject loan. CP 83. PennyMac conceded it had been notified of the rescission, but refused to recognize its validity as the rescission “was past the 3-day rescission period provided

for by the Truth in Lending Act.” CP 84; CP 136. While the Bakers were aware that PennyMac refused to recognize the rescission, the Bakers continued to make payments on the mortgage loan, relying on PennyMac’s representations that it would not recognize the rescission as valid and that it would initiate foreclosure proceedings. CP 83; CP 136 (at Paragraph 3.25). The Bakers continued to make payments until they obtained representation and their attorney advised them to stop, as the loan had been rescinded. CP 38-48. PennyMac then initiated a nonjudicial foreclosure action against the property on or around September 2010. CP 38-48.

In April 2011, the Bakers filed a complaint against PennyMac and NWTS, seeking enforcement of the rescission along with an injunction to stay the foreclosure, among other relief. CP 130. The Clark County Superior Court granted an injunction halting the foreclosure but they granted summary judgment in favor of PennyMac and NWTS, finding that the Bakers’ rescission claim was time-barred because they failed to file suit within the three year period. CP 6-8. The Superior Court also found that the Bakers did not establish facts showing they could tender the proceeds of the loan. *Id.* The trial court awarded PennyMac \$14,036.88 in attorneys’ fees. *Id.*

On January 15, 2015, the Supreme Court of the United States

decided *Jesinoski v. Countrywide Home Loans, Inc.*, 135 S. Ct. 790, 190 L. Ed. 2d 650 (2015). There, the borrowers, just like the Bakers, rescinded their mortgage loan by sending written notice, but not filing suit, within the required three year period. *Id.* at 791. The mortgage servicer refused to recognize the rescission as in the instant case. *Id.* In a unanimous decision, the Supreme Court held that “a borrower exercising his right to rescind under the Act need only provide written notice to his lender within the 3-year period, not file suit within that period.” *Id.* at 790. In the opinion, Justice Scalia wrote that the statutory language of TILA “leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind” and that the statute “nowhere suggests...that a lawsuit would be required” to effectively rescind under TILA. *Id.* at 792-793. In regards to the supposed tender requirement, *Jesinoski* states:

It is also true that [TILA] disclaims the common-law condition precedent to rescission at law that the borrower tender the proceeds received under the transaction. 15 U. S. C. §1635(b)...**The clear import of §1635(a) is that a borrower need only provide written notice to a lender in order to exercise his right to rescind. To the extent §1635(b) alters the traditional process for unwinding such a unilaterally rescinded transaction, this is simply a case in which statutory law modifies common-law practice.**

Id. at 793 (emphasis added).

After learning of *Jesinoski*, the Bakers filed a Motion for Relief from Judgment Pursuant to CR 60. CP 98. The Clark County Superior Court denied the Motion on March 9, 2015. CP 161. In the face of this appeal (and lis pendens), the nonjudicial foreclosure against the property was conducted on June 26, 2015.

IV. ARGUMENT

A. Summary of Argument

This Court should find the trial court abused its discretion, and grant the Bakers relief from judgment because it is no longer equitable that the judgment should have prospective application pursuant to CR 60(b)(6) when the Bakers' loan was effectively rescinded per *Jesinoski*. The *Jesinoski* court held, essentially, that the Bakers had properly rescinded their loan. This was not a change in the law, but rather confirmation that the Baker's actions to rescind were proper at the time they rescinded.

Alternatively, this Court should grant the Bakers relief from judgment pursuant to CR 60(b)(11) because extraordinary circumstances exist including the issuance of *Jesinoski* (the facts of which are identical to this case), PennyMac not being a proper party to the judgment (because the loan and deed of trust were void by virtue of prior rescission), finality not being affected, and it would serve the ends of justice to grant relief to the Bakers.

B. The Trial Court Erred in Denying the Bakers' Motion for Relief from Order & Judgment Because It Would Be Inequitable to Apply the Judgment Prospectively under CR 60(b)(6).

This Court should grant the Bakers relief from judgment because it would be inequitable for a judgment denying the enforcement of a valid rescission to have prospective effect here. CR 60(b)(6). In *Horne v. Flores*, the United States Supreme Court held that Fed. R. Civ. P. 60(b)(5)—the federal equivalent to CR 60(b)(6)—permits a party to obtain relief from a judgment or order if, among other things, applying the judgment or order prospectively is no longer equitable. *Horne v. Flores*, 557 U.S. 433, 129 S. Ct. 2579, 174 L. Ed. 2d 406 (2009). While this rule cannot be used to challenge legal conclusions upon which a prior judgment is based, it does provide a means by which a party can ask a court to modify or vacate a judgment or order if a significant change either in factual conditions or in law renders continued enforcement detrimental to public interest. *Rugo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384, 112 S. Ct. 748, 116 L. Ed. 2d 867 (1992). “The party seeking relief bears the burden of establishing that changed circumstances warrant relief...but once a party carries this burden, a court abuses its discretion when it refuses to modify an injunction or consent decree in light of such

changes.”” *Id.* at 447 (quoting *Agostini v. Felton*, 521 U.S. 203, 117 S. Ct. 1997, 138 L. Ed. 2d. 391 (1997)).

In light of the clear mandate of the Supreme Court in *Jesinoski* that a borrower does not need to file suit to successfully rescind under TILA, it would be inequitable to continue enforcing a judgment that denies the Bakers’ enforcement of their rescission rights while a nonjudicial foreclosure sale is pending on the property. 135 S. Ct. at 793. The judgment, which denied the Bakers an injunction staying the foreclosure sale, has prospective effect in that it affects the Bakers’ rights relating to the ongoing foreclosure proceedings, such as a suit to challenge an illegal foreclosure.

Furthermore, if the Bakers are not granted relief from that judgment, then not only would the Bakers lose their property, in which they still have a valid interest, but PennyMac would be unjustly enriched because they would gain the proceeds from the foreclosure sale for a loan that was validly rescinded under TILA. As such, equity requires that the Bakers be granted relief from judgment.

C. The Trial Court Erred in Denying the Bakers’ Motion for Relief from Order & Judgment Because Extraordinary Circumstances Exist under CR 60(b)(11).

The trial court abused its discretion in denying the Bakers’ Motion because extraordinary circumstances exist pursuant to CR 60(b)(11). CR

60(b)(11) allows a court to grant relief from judgment “for any other reason justifying relief.” In Washington, CR 60(b)(11) is used in “situations involving extraordinary circumstances not covered by any other section of the rule.” *State v. Keller*, 32 Wn. App. 135, 140, 647 P.2d 35 (1982). When interpreting the state civil procedure rules, Washington courts may look to decisions and analysis of the Federal Rules of Civil Procedures, including Fed. R. Civ. P. 60(b)(6), the federal equivalent to CR 60(b)(11). *See, e.g., In re Marriage of Parks*, 48 Wn. App. 166, 737 P.2d 1316 (1987).

Here, extraordinary circumstances exist including: (1) the United States Supreme Court’s unanimous decision in *Jesinoski*; (2) PennyMac is not prejudiced as it is not a proper party to the judgment; (3) finality is not affected as the nonjudicial foreclosure is still subject to challenge; and (4) relief from judgment will serve the ends of justice.

- 1. Extraordinary circumstances were created when the Supreme Court held in *Jesinoski* that a borrower does not have to file suit to rescind his mortgage loan under TILA.**

Pursuant to CR 60(b)(11), this Court should reverse the trial court and grant the Bakers relief from judgment because extraordinary circumstances were created when the United States Supreme Court ruled

in *Jesinoski* that a borrower does not need to file suit for a rescission to be effective under TILA. 135 S. Ct. 790, 190 L. Ed. 2d 650 (2015).

It is an abuse of discretion for a court to deny a Fed. R. Civ. Pro. 60(b) motion solely because the motion is based on subsequent changes in law. *See Phelps v. Alameida*, 569 F.3d 1120, 1131-34 (9th Cir. 2009). When such a motion is based on subsequent changes in law, “a ‘case by case inquiry’ is required.” *Id.* at 1133.

In Washington, courts have employed the “extraordinary circumstances” rule to reopen final decrees based on changes in the federal Uniformed Services Former Spouses Protection Act. *See, e.g., Flannagan v. Flannagan*, 42 Wn. App. 214, 709 P.2d 1247 (1985) (reopening judgments where changes in federal law permitted a state court to divide military non-disability repayment pay in accordance with state law); *In re Marriage of Parks*, 48 Wn. App. 166, 737 P.2d 1316 (1987); *In re Giroux*, 41 Wn. App. 315, 704 P.2d 160 (1985). Here, the Supreme Court did not make a change in the loan but held that the existing Truth-in-Lending Act rescission statute permitted rescission by merely sending the notice.

While a mere change in law alone is insufficient to constitute extraordinary circumstances, courts that have granted relief from judgment after there has been a subsequent change in law considered the following

factors: the close relationship between the two cases at issue (“the decision embodying the original judgment and the subsequent decision embodying the change in law”); the parties’ reliance interest in the finality of a judgment; the delay between the finality of the judgment and motion for relief; and concerns regarding comity, particularly whether denial of relief would “prevent the true merits of a petitioner’s constitutional claims from ever being heard.” *Phelps*, 569 F.3d at 1138-40 (granting a Fed. R. Civ. P. 60(b)(6) motion in the habeas context after a subsequent change in law). In *Phelps*, the Ninth Circuit also gave weight to the fact the United States Supreme Court clearly resolved an unsettled question of law which favored the party seeking relief from judgment. *Id.* at 1130. The Ninth Circuit distinguished between a “change in law...upset[ting] or overturn[ing] a settled legal principle” and a Supreme Court decision resolving a question of law that was previously unsettled, finding that the latter favored granting relief from judgment. *Id.* at 1136.

Applying the foregoing principles here, the facts in *Jesinoski* are identical to the Bakers’ case. In *Jesinoski*, the borrowers sent written notice to the beneficiary to rescind their mortgage loan within the three year deadline; here, the Bakers sent written notice to the purported beneficiary within the three year deadline. 135 S. Ct. at 791. Then, in *Jesinoski*, the servicer refused to acknowledge the validity of the

rescission; here, PennyMac refused to acknowledge the validity of the rescission. *Id.* The *Jesinoski* borrowers failed to file suit within three years; the Bakers failed to file suit within three years. *Id.* The lower courts in both *Jesinoski* and the Bakers' case applied the now-overturned requirement that a borrower must file suit to effectively exercise his rescission rights under TILA. These are two identical cases with divergent outcomes.

The parties are in the same position as they were when the judgment was entered. The only monetary relief—PennyMac's attorneys' fees—is incidental. The Bakers still retain a right to possession of the property, and PennyMac foreclosure efforts are void. *See, Cox v. Helenius*, 693 P.2d 683 (Wash. 1985); *Albice v. Premier Mortgage*, 276 P3 277 (Wash. 2012); and Leen, *Wrongful Foreclosures in Washington*, 49 Gonzaga Law Review 331, 356-359 (2014).

Additionally, there was not a mere change in law regarding the TILA rescission requirements but rather the unanimous settling of a circuit split in *Jesinoski*, confirming that the law was as the Bakers claimed it was in 2011. The questions of law posed and resolved in *Jesinoski* were posed in this case. The Bakers' Motion was brought immediately after the Supreme Court's issuance of *Jesinoski*, so there is no delay. While *Phelps* is set in a different context as it considered a habeas petition, denial of the

Motion here would similarly leave the Bakers without a court hearing the actual merits of their rescission claim beyond the now-overturned three year deadline to file suit and tender requirements. As such, this Court should find that the issuance of *Jesinoski* and its exact similarity to the Bakers' situation constitutes extraordinary circumstances, and thus find the trial court abused its discretion in denying relief from judgment.

2. Extraordinary circumstances exist because PennyMac did not obtain a judgment in its favor as the proper and correct party to the proceeding brought by the Bakers.

This Court should reverse the trial court and grant the Bakers relief from judgment because PennyMac did not obtain a judgment in its favor as the proper and correct party to the proceeding. The purported incredibly rapid rate of sale/transfer of the subject loan has rendered it impossible for the Bakers to ascertain the real party in interest with whom they can resolve the dispute then and now. In May 2009, when the Bakers rescinded, MorEquity claimed ownership of the loan. A couple months later, in July 2009, it was Third Street Funding LLC. Another couple of months passed, and the loan was purportedly sold to PennyMac Loan Services, LLC, in October 2009.

In 2011, when the Bakers filed this lawsuit, they named PennyMac as a defendant based on the only information made available to them by PennyMac who claimed to be the owner of the loan. After the lawsuit was

filed, on July 9, 2012, Brandon Sciumbato, Director of Servicing for PennyMac, signed a declaration certifying under penalty of perjury that PennyMac was servicing loans held in a securitized trust identified as the “American General Mortgage Loan Trust 2009-1” and that “Todd and Theresa Baker’s loan is currently held in this trust.” SP 84 at Paragraph 6. The Sciumbato Declaration, taken as true, provided post-filing and for purpose of summary judgment, effectively prevented the Bakers from naming the real party in interest as a defendant. Further, when the trial court dismissed the Bakers’ case against PennyMac and awarded fees and funds held in the court registry on the ground that PennyMac had legal authority to enforce the loan documents, the trial court was also deceived by PennyMac, who admitted to have no rights or interests under the loan documents, but a naked servicing rights with the real party in interest. In short, the Order and Judgment in favor of PennyMac was awarded against the wrong party based on PennyMac’s own proof and constitutes an error in the judgment. *See generally Entranco Engineers v. Envirodyne, Inc.*, 34 Wn. App. 503, 504, 662 P.2d 73 (1983) (Under certain circumstances, it is an abuse of discretion for the trial court to refuse to grant a CR 60(a) motion to correct an error in a party's name).

3. **Extraordinary circumstances exist because relief from judgment does not affect finality.**

The Court should grant the Bakers relief from judgment under CR 60(b)(11) as it would not offend the principles of finality. “Mere finality of a judgment is not sufficient to thwart Rule 60(b)(6) from an unexecuted judgment.” *Ritter v. Smith*, 811 F.2d 1398, 1402 (11th Cir. 1987), *cert. denied*, 483 U.S. 1010, 97 L. Ed. 2d 747, 107 S. Ct. 3242 (considering a Fed. R. Civ. Pro. 60(b) motion in the habeas context). Furthermore, “if simple finality were sufficient to overcome a Rule 60(b)(6) motion then no such relief would ever be granted.” *Id.*

The only executed action in this matter was the payment of PennyMac’s attorneys’ fees as awarded in the summary judgment order, an incidental recovery in the underlying action. The Bakers still retain possession of the property, and the nonjudicial foreclosure has not been completed. As such, the parties are in the same position as they were three years ago when the judgment was entered.

Moreover, there has been no valid foreclosure of the property because, once again, the owner of the loan or the real party in interest, is incapable of being identified. In December 2013, Plaintiffs received a Notice from MorEquity informing them that “your mortgage loan [referenced by loan number ending in 13720]... was sold to MOREQUITY INC. on November 26, 2013.” CP 83-84. On April 28, 2014, Plaintiffs received Notice from PennyMac stating that “your

mortgage loan [referenced by loan number ending in 13720] was sold to PENNYMAC CORP. ('Creditor') on April 1, 2014." *Id.* Therefore, the Court's grant of relief would not prejudice any party, and certainly not PennyMac, who had no substantive or beneficial interest in the subject loan at the time the judgment was entered. *See Adams v. Merrill Lynch Pierce Fenner & Smith*, 888 F.2d 696, 702 (10th Cir. 1989) (affirming district court grant of relief from judgment where Supreme Court altered law regarding arbitration of securities claims while claims were pending); *Wilson v. Al McCord, Inc.*, 858 F.2d 1469, 1478-79 (10th Cir. 1988) (vacating and remanding where change in state law while appeal was pending made it necessary for parties to develop more fully the factual record); *Overbee v. Van Waters & Rogers*, 765 F.2d 578, 580 (6th Cir. 1985) (holding on the basis of "the unique facts of this case" that district court abused its discretion in denying Rule 60(b)(6) relief where, at time plaintiff filed motion, judgment was not final, and action of Ohio Supreme Court of reversing itself within one year was certainly unusual). As relief from judgment would not offend the principles of finality, this Court should reverse the trial court.

4. **Extraordinary circumstances exist because relief from judgment in this case serves the ends of justice.**

CR 60(b)(11) allows courts to vacate judgments “whenever such action is appropriate to accomplish justice.” *State v. Carter*, 56 Wn. App. 217, 223, 783 P.2d 589 (1989) (quoting *Klapprott v. United States*, 335 U.S. 601, 615, 93 L. Ed. 266, 69 S. Ct. 384 (1949)). Proceedings to vacate judgment are equitable in nature, and this Court should exercise its authority liberally to preserve substantial rights and do justice between the parties. See *In re Hardt*, 39 Wn. App. 493, 696 P.2d 1386 (1985); *Griggs v. Averbek Realty, Inc.*, 92 Wn.2d 576, 599 P.2d 1289 (1979). To warrant relief, the movant must show both injury and circumstances beyond their control that prevented timely action to protect their interest. *Lehman v. United States*, 154 F.3d 1010, 1017 (9th Cir. 1998).

For example, there was no inequity in *Columbia Rentals* where successors in interest sought to use subsequent changes in case law to reopen judgments establishing their property boundaries. *Columbia Rentals, Inc., v. State*, 89 Wn.2d 819, 820 (1978). The judgments were entered by agreement of the predecessor parties, and the motion to modify judgment was filed eight years after the change in law and fourteen years after the last judgment was entered. *Id.* The court found the movants would not suffer inequity because the original actions were initiated at the insistence of title companies, so the court presumed that the transactions involved the sale of land. *Id.* at 822. “It would seem that in those

instances respondents purchased their property after the...boundary was judicially established and knew precisely what they were getting.” *Id.* The court also found it significant that the United States Supreme Court cast doubt upon the case supplying the subsequent change in law. *Id.* at 823.

Here, the Bakers’ injury is clear: PennyMac’s wrongful rejection of the Bakers’ lawfully executed rescission placed the Bakers in a state of purgatory—they could not wind up the transaction and they could not afford to lose their home to foreclosure by some entity which has no relationship to the transaction.

Additionally, the Bakers’ situation is distinguishable from *Columbia Rentals*. While both involve property transactions and a subsequent change in law, the similarities end there. The Bakers are not a successor in interest to the TILA rescission. The Bakers did not know “precisely what they were getting” like the successors in interest in *Columbia Rentals*. The Bakers filed the Motion approximately one month after *Jesinoski* was issued, and the unanimous decision of the Supreme Court is clear. *See* 135 S. Ct. at 792 (“The language leaves no doubt that rescission is effected when the borrower notifies the creditor of his intention to rescind.”).

Furthermore, the Court of Appeals has held that a party does not waive his right to modify a decree because he did not appeal the decision. *See, e.g., Flannagan v. Flannagan*, 42 Wn. App. 214, 709 P.2d 1247 (1985) (“Any appeal...at the time the decree was entered would have been frivolous. The failure to file such an appeal does not waive the right to have the decree reopened.”). Pre-*Jesinowski*, the Ninth Circuit required borrowers to file suit within the three years of loan consummation to validly rescind their mortgage loan under TILA, a rule followed by the Clark County Superior Court here. *See McOmie-Gray v. Bank of Am. Home Loans*, 667 F.3d 1325, 1326 (9th Cir. 2003). At that time, it may have been frivolous for the Bakers to pursue such an appeal and risk incurring additional legal fees.

Finally, providing relief to the Bakers would not open the floodgates in other cases where the collateral has already been foreclosed upon and sold to a bona fide purchaser. The Bakers are in a unique position in that they effectively exercised their rescission rights, sought to enforce those rescission rights in court pre-*Jesinowski*, and a nonjudicial foreclosure has been pending for the past four years. Had the Bakers not begun pursuing their claims against PennyMac in 2011 and instead waited to file suit until the final days leading up to the foreclosure sale, they

would have been entitled to the benefit of *Jesinoski*. As such, it would serve the ends of justice to grant the Bakers relief from judgment.

D. The Bakers are Entitled to Reasonable Attorney Fees and Costs

If successful, the Bakers are entitled to recover their reasonable attorney fees and costs under 15 U.S.C. § 1640(a)(3).

V. CONCLUSION

For the reasons set out above, the Bakers respectfully request that the Court of Appeals reverse the trial court and remand with instructions to vacate the judgment below and award attorney fees and costs.

Respectfully submitted this 22nd day of July, 2015.



David A. Leen
Attorney for Appellants

WSBA #3516

FILED
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DIVISION II
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STATE OF WASHINGTON
BY [Signature]
DEPUTY

No. 47395-0-II

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DECLARATION OF SERVICE

Appeals No. 47395-0-II

I, Shannon Schulz, Paralegal for Leen & O'Sullivan, PLLC, 520 E. Denny Way, Seattle, WA 98122, hereby certify that on the date indicated below, I caused to be served true and correct copies of the following: 1) Brief of Appellant, upon the following at the addresses stated below, via the method of service as indicated.

Claire L. Rootjes
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Joshua Schaer RCO Legal, P.S. 13555 SE 36th St, Ste 300 Bellevue, WA 98006-1489 Email: jschaer@rcolegal.com	<input checked="" type="checkbox"/>	Electronic Mail
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DATED this 23rd day of July, 2015.


Shannon L. Schulz
Paralegal