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SUPREME COURT
STATE OF WASHINGTON
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BY SUSAN L. CARLSON
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SLC

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NO. 94089-4

DUKE PARTNERS, LLC, Plaintiff/Respondent

v.

MARIE-LOUISE PAUSON, Defendant/Appellant.

On Direct Appeal from Kitsap County 16-2-01481-1

BRIEF OF RESPONDENT DUKE PARTNERS, LLC

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For Respondent Duke Partners, LLC

ORIGINAL

filed via
PORTAL

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TABLE OF AUTHORITIES

- Selene RMOF II REO Acquisitions, LLC v. Ward*, 186 Wash. 2d 1008, 380 P.3d 458 (2017)
River Stone Holdings NW, LLC v. Lopez, 199 Wash. App. 87, 395 P.3d 1071 (2017)
Jesinoski v. Countrywide Loans, Inc., 135 S. Ct. 790 (2015)

STATUTES

Wash. Rev. Code Ann. § 61.24.127

I. INTRODUCTION

Marie-Louise Pauson does not and never will understand that when one rescinds a loan agreement, one has to surrender the collateral or the funds obtained. Contrary to her unsupported opinion, Scalia's *Jesinowski* decision 135 S. Ct. 790 (2015) does not mean she gets a free house. She has argued this endlessly and not one judge has agreed with her, because she is wrong.

II. IDENTITY OF RESPONDENT

Respondent is Duke Partners, LLC, a California Limited Liability Company, owner of the real property at issue herein.

III. STATEMENT OF THE CASE

Marie-Louise Pauson defaulted on her mortgage for the property located at 4811 Taylor Ave. NE Bainbridge Island, WA 98110 in May of 2010. On April 20, 2015, Ms. Pauson gave notice of her rescission of her mortgage on the property. *But Ms. Pauson never returned the funds she had been lent or the collateral.* Ms. Pauson received notice that the property would be sold non-judicially on June 10, 2016.

On June 3, 2016, Ms. Pauson filed a quiet title suit under Cause Number 16-2-01004-2 in Kitsap County Superior Court to restrain the sale of the property, requesting a preliminary injunction. That motion was denied on June 9, 2016. This appeal is not taken from this decision. Ms. Pauson has not asserted rights under RCW 61.24.127.

The property was sold to Duke Partners, LLC on June 10, 2016.

When Ms. Pauson refused to relinquish possession, Duke Partners, LLC brought a post-foreclosure eviction. Duke Partners' request for a writ of restitution was heard and the writ was issued on September 16, 2016. Post foreclosure unlawful detainer actions do not address title issues *River Stone Holdings NW, LLC v. Lopez*, 199 Wash. App. 87, 395 P.3d 1071 (2017)

Ms. Pauson filed a notice of stay re: bankruptcy on September 22, 2016.

On December 19, 2016, Judge Houser heard Petitioner Pauson's CR60 Motion to vacate the writ that had been previously issued by Judge Hull on September 16, 2016, and denied Ms. Pauson's motion.

On January 18, 2017, Ms. Pauson filed her appeal of Judge Houser's decision denying her motion to vacate the writ directly to this court.

Ms. Pauson's bankruptcy matters have only recently been dismissed and each and every argument she raises here has been carefully addressed and denied by the Hon. Ron Leighton and the Hon. Christopher Alston. *See Appendix.*

IV. THIS APPEAL IS INCONSISTENT WITH RAP 4.2

1. It is not authorized by statute; There is no statutory authority providing for direct appeal to the Supreme Court of a denial of a request to vacate a writ of restitution.
2. The trial court has not held this matter to be unconstitutional; There was no error at the trial court. Unlawful detainer does not address title. *River Stone Holdings NW, LLC v. Lopez*, 199 Wash. App. 87, 395 P.3d 1071 (2017) Furthermore, the subsequent purchaser, even if not the entity who purchased the property at auction, has the right to obtain the possessory interest in the property *Selene RMOF II REO Acquisitions, LLC v. Ward*, 186 Wash. 2d 1008, 380 P.3d 458 (2017)
3. Ms. Pauson wants to argue that she still has title to the real property at issue, but she does not.
4. There is no conflicting decision; There is no conflict between the different divisions of the Court of Appeals because this matter has never been to the Court of Appeals.
5. Ms. Pauson has failed to assert a fundamental and urgent issue of broad public import requiring prompt and ultimate determination;
6. This is not an action against a State officer, and
7. This is not a death penalty case.

ARGUMENT

This appeal is also inconsistent with RAP 13.1, which requires the moving party to seek discretionary review. No such ruling has been requested here. The Supreme Court does not accept cases as a matter of right, and there is no exception for pro se litigants. As there is no petition requesting discretionary review, review has not been granted.

Appellant Pauson has failed to submit the record of the hearing she wants this Court to review and overturn. Appellant Pauson does not discuss any of the cases she identifies in her table of authorities, or explain how they should be applied to her case.

Ms. Pauson failed to appeal the Kitsap Superior Court's denial of her request for a preliminary injunction on June 9, 2016. She continued to request relief, but that case was dismissed September 23, 2016.

Ms. Pauson failed to appeal the Kitsap Superior Court's issuance of a writ on September 16, 2016.

The only decision of which Ms. Pauson requests review is the December 19, 2016 Kitsap County Superior Court order denying her motion to "vacate" the September 16, 2016 writ. She has failed to provide the transcript of this hearing.

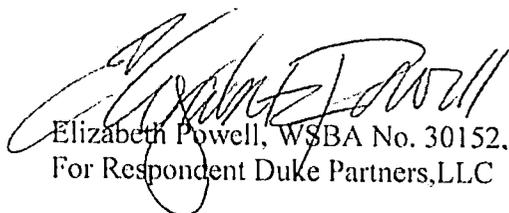
Ms. Pauson continues to request relief but has failed to follow the most rudimentary rules of civil procedure. This appeal presents no debatable issues. The harm to the non-moving party is the cost of

incessant litigation and the turmoil over the title to this property. This appeal is frivolous and this Court should dismiss it.

CONCLUSION

This appeal is meritless, improperly filed, improperly briefed, not timely, and should be dismissed.

Respectfully submitted this 10th day of August, 2017.

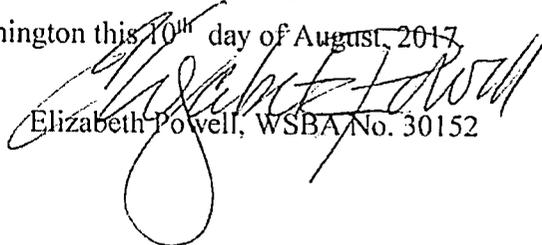


Elizabeth Powell, WSBA No. 30152,
For Respondent Duke Partners, LLC

CERTIFICATE OF DELIVERY

On this day, I emailed a true and correct copy of this document, and the Declaration of Counsel, and all attachments mentioned therein, to the Petitioner at her email address of record,
given as: maliposa@gmail.com

I declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct. Signed at Tacoma, Washington this 10th day of August, 2017.



Elizabeth Powell, WSBA No. 30152

Appendix

Coversheet for Decision Granting Motion for Judgment on
the Pleadings Pauson v Bayview, C15-5612-RBL

Hon. Ronald B. Leighton

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARIE-LOUISE PAUSON,
Plaintiff,

v.

BAYVIEW LOAN SERVICING, LLC,
Defendant.

CASE NO. C15-5612-RBL

ORDER GRANTING MOTION FOR
JUDGMENT ON THE PLEADINGS

THIS MATTER is before the Court on Defendant Bayview's Motion for Judgment on the Pleadings. [Dkt. #24] Pro se plaintiff Pauson borrowed \$338,000¹ from Washington Mutual in 2006. In her original [Dkt. #1] and amended [Dkt. #6] complaints, Pauson claims she rescinded the loan under TILA (15 U.S.C. §1635) in July 2015 (by sending Bayview a certified letter and recording her notice of rescission).

Pauson sued Bayview for alleged TILA violations in 2015, while a foreclosure was pending. After a bankruptcy stay, the foreclosure was completed and the case was re-opened.

¹ The exact nature of the loan is not clear, though the records suggest that it was a purchase loan.

1 Pauson seeks quiet title based on the rescission, though she implicitly admits she has not
2 tendered the loan proceeds back to her creditor.

3 In her Second Amended Complaint [Dkt. #27-1], Pauson claims that she also rescinded
4 the loan in 2008, by mailing a letter to a Nevada office of her, by then already extinct, original
5 lender, Washington Mutual. [Dkt. #27 -3]

6 Bayview seeks judgment on the pleadings arguing that Pauson's rescission was untimely
7 and ineffective, that TILA rescission under 15 U.S.C. §1635 does not apply to residential loan
8 transactions, and that she has failed to allege (and cannot allege) that she ever tendered the loan
9 proceeds back to her lender as part of the rescission.

10 Dismissal under Rule 12(b)(6) may be based on either the lack of a cognizable legal
11 theory or the absence of sufficient facts alleged under a cognizable legal theory. *Balistreri v.*
12 *Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's complaint must allege
13 facts to state a claim for relief that is plausible on its face. *See Aschcroft v. Iqbal*, 129 S. Ct.
14 1937, 1949 (2009). A claim has "facial plausibility" when the party seeking relief "pleads
15 factual content that allows the court to draw the reasonable inference that the defendant is liable
16 for the misconduct alleged." *Id.* Although the Court must accept as true the Complaint's well-
17 pled facts, conclusory allegations of law and unwarranted inferences will not defeat a Rule 12(c)
18 motion. *Vazquez v. L. A. County*, 487 F.3d 1246, 1249 (9th Cir. 2007); *Sprewell v. Golden State*
19 *Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A] plaintiff's obligation to provide the 'grounds'
20 of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic
21 recitation of the elements of a cause of action will not do. Factual allegations must be enough to
22 raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
23 (2007) (citations and footnotes omitted). This requires a plaintiff to plead "more than an
24

1 | unadorned, the-defendant-unlawfully-harmed-me-accusation.” *Iqbal*, 129 S. Ct. at 1949 (citing
2 | *Twombly*).

3 | Although *Iqbal* establishes the standard for deciding a Rule 12(b)(6) motion, Rule 12(c)
4 | is “functionally identical” to Rule 12(b)(6) and that “the same standard of review” applies to
5 | motions brought under either rule. *Cafasso, U.S. ex rel. v. General Dynamics C4 Systems, Inc.*,
6 | 647 F.3d 1047 (9th Cir. 2011), citing *Dworkin v. Hustler Magazine Inc.*, 867 F.2d 1188, 1192
7 | (9th Cir.1989); see also *Gentilello v. Rege*, 627 F.3d 540, 544 (5th Cir. 2010) (applying *Iqbal* to
8 | a Rule 12(c) motion).

9 | On a 12(b)(6) motion, “a district court should grant leave to amend even if no request to
10 | amend the pleading was made, unless it determines that the pleading could not possibly be cured
11 | by the allegation of other facts.” *Cook, Perkiss & Liehe v. N. Cal. Collection Serv.*, 911 F.2d 242,
12 | 247 (9th Cir. 1990). However, where the facts are not in dispute, and the sole issue is whether
13 | there is liability as a matter of substantive law, the court may deny leave to amend. *Albrecht v.*
14 | *Lund*, 845 F.2d 193, 195--96 (9th Cir. 1988).

15 | TILA gives borrowers the conditional right to rescind *certain* loans for up to three years
16 | after the transaction is consummated. See 15 U.S.C. §1635(f); *Jesinoski v Countrywide Loans,*
17 | *Inc.*, 135 S.Ct. 790 (2015). But the *unconditional* right to rescind lasts only three days. 15 U.S.C.
18 | §1635(a). The right to rescind is extended only if the lender fails to make disclosures it is
19 | required to make under TILA. See *Jesinoski* at 792.

20 | Pauson has not alleged in any of her three complaints that Washington Mutual failed to
21 | make any required disclosures to her. She did not so claim in either of her rescission notices, and
22 | she does not so claim in her response to the Motion. She has not plausibly pled that some
23 |
24 |

1 disclosure was not made, or that she had three years to rescind. She only recently even sought to
2 claim that she rescinded within three years; her first two complaints alleged a *nine* year delay.

3 Furthermore, she has not established that she had a right to rescind even in the absence of
4 some required disclosure, because she has repeatedly alleged a residential mortgage transaction.
5 Bayview points out that under 15 U.S.C. §1635(e)(1) and (2), TILA's rescission procedures do
6 not apply to (most) "residential mortgage transactions"—including those used to acquire or
7 construct a residence, or non cash-out re-finance transactions with the same lender. Pauson has
8 not plausibly pled a loan transaction that is within TILA's rescission procedures, even if she was
9 otherwise entitled to rescind, and timely followed those procedures.

10 Pauson's reliance on *Jesinoski* is misplaced, though in the Court's view, that that opinion
11 needlessly invited such reliance. *Jesinoski* addressed whether a rescinding borrower had to file
12 suit within three years of the date the loan was consummated. *See Jesinoski* at 791 ("The
13 question presented is whether a borrower exercises this right by providing written notice to his
14 lender, or whether he must also file a lawsuit before the 3-year period elapses.").

15 It held only that a borrower could meet TILA's three year rescission limitations period by
16 giving notice, and was not required to actually file a lawsuit seeking rescission within that
17 period. *Jesinoski*, 135 S.Ct. at 793; *see also* 15 U.S.C. §1635(f). *Jesinoski* did not address
18 whether the borrower there even had the right to rescind—it did not address whether the lender
19 failed to make required disclosures, and it did not address the import or impact of Sections
20 1635(e)(1) and (2) on his right to rescind what the court described as a "refinance" loan
21 transaction.

22 Unfortunately for in-default borrowers (and District Courts) everywhere, many read the
23 case as holding that any mortgage borrower has three years to notify her lender that the loan is
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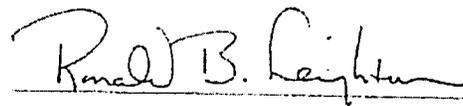
1 "rescinded" and if she does so (and the lender does not sue within 20 days), that it is the end of
2 the loan, the borrower's obligations, and the lender's interest in the property. But that is not what
3 *Jesinoski* holds, and it patently is not what TILA intended. Such a holding would decimate the
4 mortgage lending industry, and with it the economy.

5 Even if Pauson had the right to rescind, and even if she timely notified somebody of her
6 intention to do so, nothing in *Jesinoski* or TILA excused her from *ever* tendering the loan
7 proceeds back to her lender in order to actually "rescind" the loan transaction. *See In Re Brown*,
8 538 B.R. 714, 718 (Bankr. E.D. Va. 2015).

9 There are other flaws in Pauson's rescission/quiet title claim, including the fact that the
10 property has already been sold at foreclosure. In any event, Pauson's rescission claim is not
11 plausible, and there is nothing she could possibly add or alter to state a viable claim. Bayview's
12 motion for judgment on the pleadings is therefore GRANTED, and Pauson's claims against it are
13 DISMISSED with prejudice and without leave to amend.

14 IT IS SO ORDERED.

15 Dated this 30th day of August, 2016.

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18 Ronald B. Leighton
19 United States District Judge
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