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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

DANIEL L. ROGERS,

Appellant,

v.

QUALITY LOAN SERVICE CORPORATION
OF WASHINGTON, et al.,

Respondents.

RESPONDENTS JPMORGAN CHASE BANK, N.A. AND WELLS
FARGO BANK N.A. FOR ITSELF AND AS TRUSTEE FOR THE
WAMU MORTGAGE PASS-THROUGH CERTIFICATES SERIES
2005-PR1 TRUST'S ANSWERING BRIEF

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Appellant Daniel Rogers (“Rogers”) focuses his appeal on an issue he did not raise below: whether the trial court should have appointed counsel to prosecute his anti-foreclosure Complaint against his loan servicer, JPMorgan Chase Bank N.A. (“Chase”) and to defend against a judicial foreclosure counter-claim by his loan owner (Wells Fargo Bank N.A. acting as trustee for the WaMu Mortgage Pass-through Certificates Series 2005-PR1 Trust (“Trust”)). Rogers assigns no error to the trial court’s order granting summary judgment on his Complaint for Chase and Trust, waiving the issue. But even if he did not waive his claims, he abandons all but one theory, arguing only that Chase violated the Consumer Protection Act (“CPA”) by initiating non-judicial foreclosure. But he ignores the unrefuted evidence showing Chase and the Trust was entitled to initiate foreclosure. And his skeletal arguments against the Counterclaim judgment are also wrong—the trial court found no factual dispute because he did not show one. This Court should affirm the trial court’s judgments because:

First, Rogers’s “assistance of counsel” arguments are irrelevant because he waived them and he is not entitled to counsel.

Second, Chase and the Trust’s Complaint judgment is correct because Rogers waived review and his CPA claim fails—Chase did not act deceptively or cause him injury.

Third, Rogers did not properly submit evidence that could create a factual dispute on the Trust’s Counterclaim summary judgment motion.

II. STATEMENT OF THE CASE

Rogers’s case statement is disjointed and contains irrelevant tangents. Chase and the Trust provide a coherent statement relevant to the orders and judgments the trial court entered and Rogers appealed.

A. Rogers Borrowed \$240,000, Secured by Real Property and the Trust Purchases the Loan

On or about November 2, 2004, Rogers borrowed \$240,000 from Washington Mutual Bank (“WaMu”), evidenced by a promissory note (“Note”). CP 1107-08, 1256-63, 1424-36. Rogers promised to make payments “every month,” and to do so “until I have paid all of the principal and interest and any other charges described below that I may owe under this Note.” CP 1256, 1429. Simultaneously with signing the Note, Rogers signed a deed of trust securing the Note (the “Deed of Trust”) against his property in Tahuya, Washington (“Property”). CP 1107-08, 1265-88, 1424-26, 1438-61. The Deed of Trust provides that the beneficiary can sell the Property if Rogers defaulted on his loan. CP 1280,

1453. The Note and Deed of Trust named WaMu as lender and beneficiary. CP 1107-08, 1256-63, 1424-36, 1265-88, 1438-61. The Note is indorsed-in-blank, making it enforceable by possession alone. CP 1434. WaMu sold the loan/Note to the Trust in 2005, but remained loan servicer and custodian, possessing the Trust's underlying promissory notes. CP 916, 1249-1250.

B. Rogers Defaults on the Loan

Rogers admitted he defaulted on his loan in 2007 and declared bankruptcy multiple times. CP 1108, 1426. After Rogers defaulted, he made payments to the bankruptcy trustee (and other payments) that Chase ultimately credited to his loan. CP 1628-1720; RT 132-142, 236-242.

C. Chase Becomes WaMu's Successor and Physically Holds the Note, Acting for the Trust (the Note Owner)

In September 2008, WaMu failed and the FDIC took WaMu into receivership. *Rundgren v. Wash. Mut. Bank, FA*, 760 F.3d 1056, 1059 (9th Cir. 2014); *Benson v. JPMorgan Chase Bank, N.A.*, 673 F.3d 1207, 1209 (9th Cir. 2012). The FDIC took over "all rights, titles, powers, and privileges" of WaMu. 12 U.S.C. § 1821(d)(2)(A)(i). The FDIC is also authorized to "take any action . . . which [it] determines is in the best interests of the depository institution." 12 U.S.C. § 1821(d)(2)(J)(ii); *see also Sahni v. Am. Diversified Partners*, 83 F.3d 1054, 1058 (9th Cir.

1996), as amended (July 24, 1996) (“Congress explained that the authority granted to the FDIC was ‘designed to give the FDIC the power to take all actions necessary to resolve the problems posed by a financial institution in default’”); *W. Park Assocs. v. Butterfield Sav. & Loan Ass’n*, 60 F.3d 1452, 1459 (9th Cir. 1995) (recognizing that the FDIC has “broad powers to allocate assets and liabilities” in order to facilitate a P & A Agreement).

On September 25, 2008, Chase became the successor-in-interest as to WaMu’s rights in plaintiff’s loan by purchase of WaMu’s assets from the FDIC, acting as receiver; Chase and the FDIC entered into a Purchase and Assumption Agreement to memorialize the purchase, which included WaMu’s rights to service certain loans (including Rogers’s loan). CP 1108, 1424-26, 1463-1506. While the Trust owns the Note, Chase services the loan and physically possesses the Note, and the Trust gave Chase a Limited Power of Attorney to enforce Rogers’s loan. CP 1169, 1425-1426, 1509-1514.¹

D. Rogers Files this Lawsuit

On January 21, 2014, Rogers filed this lawsuit, seeking to stop a non-judicial foreclosure on the Property. CP 1102-1136. Rogers alleged Chase improperly foreclosed non-judicially because it did not acquire an

¹ A more detailed history of the roles of WaMu, the Trust, and Chase is available in *Wells Fargo Bank N.A. v. Short*, 180 Wn. App. 1012, 2014 WL 1266304, at *1 (Wn. App. Div. III 2014) (unpublished), where similar claims were made as to the Trust.

interest in the Property, making the non-judicial foreclosure documents invalid. *Id.* Additionally, Rogers alleged that the parties failed to follow DTA requirements for non-judicial foreclosure and because the property was for agricultural purposes, Chase and the Trust had to foreclose judicially. CP 1102-1136.

E. The Trust Counterclaimed for Judicial Foreclosure on Rogers's Deed of Trust and the Trust, and Chase Successfully Obtained Judgment on All Claims

Chase and the Trust answered Rogers's Complaint, and the Trust filed a judicial foreclosure Counterclaim on July 17, 2015. CP 1332-1390. On June 28, 2016, Chase and the Trust filed a motion for summary judgment against Rogers's Complaint and on the Trust's affirmative judicial foreclosure Counterclaim. CP 1424-1594.² The Court or parties continued Chase and the Trust's motion several times to September 26, 2016, December 5, 2016, and December 12, 2016. RT 86-185.

The trial court granted summary judgment to Chase and the Trust and against Rogers on his Complaint on December 12, 2016.³ CP 1078-1086. In the same order, the trial court granted foreclosure on the Trust's Counterclaims but denied, without prejudice, judgment on: 1) the total

² The Court also granted Defendants McCarthy and Holthus and Quality Loan Service Corp. of Washington summary judgment on Rogers's Complaint. Rogers has appealed that order and judgment, but it is inapplicable as to Chase and the Trust.

³ The other counter-defendants stipulated to the Court issuing a foreclosure order and judgment on the Property.

amount due and owing; 2) Rogers's redemption right; and 3) the Trust's recoverable costs. CP 1078-1086.⁴

The Trust subsequently successfully moved a second time for judgment on the three items the trial court found were "disputed." CP 1076-1077, 1737-1743. The Trust provided a declaration and payment histories showing what was unpaid and due and what Chase credited. CP 1633-1636, 1673-1720. Instead of timely opposing that second motion, Rogers filed, on the final hearing date, numerous documents without properly authenticating or explaining them. CP 992-1071.

Rogers appeals the trial court's orders granting Chase and the Trust's summary judgment on the Complaint and the Trust's Counterclaim judgment.

III. STANDARDS OF REVIEW

This Court reviews *de novo* an order granting summary judgment, engaging in the same inquiry as the Superior Court. *Hayden v. Mut. of Enumclaw Ins. Co.*, 141 Wn.2d 55, 63–64 (2000). The Court may ***affirm*** the ruling below ***on any ground supported by the record***, "even if the trial court did not consider the argument." *King Cty. v. Seawest Inv. Assocs.*,

⁴ The trial court indicated these issues were "disputed," but only because it found at that time that the Trust had not submitted sufficient evidence to prove those items.

LLC, 141 Wn. App. 304, 310 (2007) (citing *LaMon v. Butler*, 112 Wn.2d 193, 200-01 (1989)).

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party bears the initial burden of showing the absence of an issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225 (1989). If the moving party meets this initial showing, the burden shifts to the opposing party. *Id.* An opposing party “may [not] rely on ‘speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value.’” *Rucker v. Novastar Mortg., Inc.*, 177 Wn. App. 1, 10 (2013) (quoting *Seven Gables Corp. v. MGM/UA Entm’t Co.*, 106 Wn.2d 1, 13 (1986)). “Mere allegations or conclusory statements of facts unsupported by evidence are not sufficient to establish a genuine issue.” *Id.*.

The Court reviews an attorneys’ fees award for abuse of discretion. *Chuong Van Pham v. City of Seattle, Seattle City Light*, 159 Wn.2d 527, 538 (2007).

IV. ARGUMENT

F. Rogers' "Assistance of Counsel" Arguments are Irrelevant

1. Rogers Waived his "Assistance of Counsel" Arguments

Rogers' "assistance of counsel" issue was not properly before the trial court. While Rogers filed a motion⁵ for an order waiving costs and fees with the trial court, he argued he needed more time because he did not have counsel, not that he was entitled to counsel. CP 476-494. Rogers waived his "assistance of counsel" argument. RAP 2.5; *Mangat v. Snohomish Cty.*, 176 Wn. App. 324, 334 (2013); *US W. Commc'ns, Inc. v. Wash. Utils. & Transp. Comm'n*, 134 Wn.2d 74, 112 (1997), as amended (Mar. 3, 1998).

Rogers did not properly notice his "assistance of counsel" argument in this appeal. Rogers' Notice of Appeal failed to include any order relating to his asserted indigence or denial of counsel in his Notice of Appeal. CP 1072-1097. He only raised this issue for the first time in his Opening Brief. Rogers did not perfect his appeal on this issue, waiving appellate review. RAP 2.4;⁶ *Hiner v. Bridgestone/Firestone, Inc.*,

⁵ Rogers requested a filing fee waiver for an earlier, dismissed appeal in 2015-2016.

⁶ Rogers's original action was filed by his current appellate counsel, who withdrew shortly after filing the Complaint, but later reappeared in 2017 as an "ADA" advocate for Mr. Rogers. CP 965-67. Mr. Rogers argued below that his current counsel is responsible for filing a defective pleading. CP 487.

138 Wn.2d 248, 263 (1999). And the Trust's summary judgment against him was correct (see below), so counsel's assistance would not have made a difference.

2. Rogers is Not Entitled to Counsel on a Matter Involving Property and Financial Interests

Rogers's brief devotes many pages—22 pages out of 39—arguing he is entitled to appointed counsel in the trial court and this Court. He is wrong. Generally, a civil litigant only has a right to counsel in cases where his physical liberty is threatened, or where a fundamental liberty interest (*e.g.*, parent-child relationship) is at risk. *In re Grove*, 127 Wn.2d 221, 237 (1995). Rogers fails to identify any constitutional or statutory right to counsel. Here, no one threatened to divest Rogers of a physical or fundamental liberty. Instead, the Trust filed a judicial foreclosure Counterclaim (allowed by statute, RCW 61.12 *et seq.*) to enforce the loan as Rogers agreed it could in the Deed of Trust. CP 1141-1164, 1424-1461. The Trust only threatened Rogers's property and financial interests.

We hold there is no constitutional right to appeal at public expense in civil cases in which only property or financial interests are threatened. Where there is no constitutional or statutory right to counsel at public expense and where there is no constitutional or statutory right to a waiver of fees and payment of costs, there is no right, simply because of the fact of indigency, to appointment of counsel on appeal or to waiver of fees and payment of costs.

In re Grove, 127 Wn.2d at 240. Rogers has no right to counsel, even if indigent, because only his property and financial interests were at issue.

G. The Trial Court Correctly Granted Chase and the Trust Summary Judgment on Rogers's Complaint

3. Rogers Waived Review of the Judgment on his Complaint

Rogers's Notice of Appeal included the trial court's order granting Chase and the Trust judgment on his Complaint and on the judicial foreclosure Counterclaim. But his assignments of error do not assert the trial court erred in granting judgment on his Complaint, and his arguments ignore that judgment. He has thus waived all issues arising from Chase and the Trust's judgment on his Complaint. *Clark Cty. v. W. Washington Growth Mgmt. Hearings Review Bd.*, 177 Wn.2d 136, 145, 147-48 (2013); *State v. Sims*, 171 Wn.2d 436, 441 (2011).

4. To the Extent Rogers Preserved Appealing His CPA Claim, it Fails as to Chase and the Trust

Rogers's second assignment of error solely references the Counterclaim judgment. Thus, as discussed above, Rogers has waived any review of Chase and the Trust's judgment on his Complaint. To the extent assignment of error two, issue F, raises any errors on the Complaint judgment, it is limited to Rogers's CPA claim. Rogers has abandoned an

appeal of his other claims because he failed to argue anything relating to them. *Sims*, 171 Wn.2d at 441.

Rogers's CPA claim does not allege anything against the Trust—he only alleges Chase, the foreclosure trustee, or the trustee's law firm foreclosed. The CPA requires: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that impacts the public interest; (4) which causes injury to a plaintiff's business or property; and (5) that injury is causally linked to the unfair or deceptive act. *Guijose v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 917 (2001).

Rogers must “produce evidence on each element required to prove a CPA claim”; otherwise, it fails. *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 119 (2012). This Court can determine if an action is unfair or deceptive as a matter of law. *Leingang v. Pierce Cty. Med. Bureau, Inc.*, 131 Wn.2d 133, 150 (1997). Rogers's Opening Brief does not argue how Chase acted deceptively or unfairly, or how he was injured. “A skeletal ‘argument’, really nothing more than an assertion, does not preserve a claim. . . . Judges are not like pigs, hunting for truffles buried in briefs.” *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991); *Gordon v. Virtumundo, Inc.*, 575 F.3d 1040, 1066 (9th Cir. 2009); *State v. Mason*, 170 Wn. App. 375, 384, (2012) (“We do not consider conclusory

arguments unsupported by citation to authority”); *Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 160 (1990).

a. Chase Did Not Act Deceptively or Unfairly

Rogers vaguely asserts there is a factual dispute about how much he owed on his loan between 2010 and 2014. He does not explain how this applies to his CPA claim. His Complaint alleged Chase (and not the Trust) acted deceptively and unfairly because it was not the foreclosure beneficiary. CP 1118-1123. He did not plead Chase violated the CPA through misstating his loan balances and so cannot use that theory to save his claim now. “A party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along. [Citation omitted.]” *Lundberg ex rel. Orient Found. v. Coleman*, 115 Wn. App. 172, 180 (2002); *Pac. Nw. Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 352 (2006) (“Complaints that fail to give the opposing party fair notice of the claim asserted are insufficient”).

Rogers’s beneficiary theory is wrong. Chase declared it physically held the indorsed-in-blank Note. CP 1425-1426. Because Chase held the indorsed-in-blank Note, it can non-judicially foreclose as the Deed of Trust beneficiary under settled Washington law. *See Bain*, 175 Wn.2d at

106; *Brown v. Washington State Dep't of Commerce*, 184 Wn.2d 509, 536 (2015); *Deutsche Bank Nat. Tr. Co. v. Slotke*, 192 Wn. App. 166, 178 (2016), *review denied sub nom. Deutsche Bank Nat'l Tr. Co. v. Slotke*, 185 Wn.2d 1037, (2016) (“We conclude that because Deutsche Bank was the holder of the note and the holder of the note is authorized to commence a judicial foreclosure, summary judgment was appropriate”); *Blair v. Nw. Tr. Servs., Inc.*, 193 Wn. App. 18, 31 (2016), *as amended on denial of reconsideration* (May 12, 2016), *rev. den. sub nom. Blair v. Nw. Tr. Servs.*, 186 Wn.2d 1019 (2016) (“According to the DTA definitions, a “beneficiary” is “the holder of the instrument or document evidencing the obligations secured by the deed of trust.” RCW 61.24.005(2)”; RCW 62A.3-201 Official Comment No. 1 (one can possess a Note directly “or through an agent”); RCW 62A-9A-313 Official Comment No. 3 (may possess through an agent).

The fact that the Trust “owned” the Note is not deceptive or unfair—it is irrelevant. The Supreme Court endorses the plain words of RCW 62A.3-301, which says a person (Chase) may be “entitled to enforce the instrument even though the person [Chase] is not the owner of the instrument.” *Bain*, 175 Wn.2d at 104. The comments to RCW 62A.3-203 explain that “the right to enforce an instrument and ownership of the instrument are two different concepts.” RCW 62A.3-301 states that a

person entitled to enforce an instrument includes “the holder of the instrument.” The Trust “owned” the Note, but Chase could enforce it because it held the Note. *Brown*, 184 Wn.2d at 527–29.

Chase also declared that it held a limited power of attorney for the Trust. CP 1426. Washington law allows the servicer to foreclose as a beneficiary under a power of attorney. *Barkley v. GreenPoint Mortg. Funding, Inc.*, 190 Wn. App. 58, 63, 69 (2015), *review denied sub nom. Barkley v. JPMorgan Chase Bank*, 184 Wn.2d 1036 (2016); *Meyer v. U.S. Bank Nat’l Ass’n*, 530 B.R. 767, 778 (W.D. Wash. 2015), *aff’d sub nom. Meyer v. Nw. Tr. Servs. Inc.*, 712 F. App’x 619 (9th Cir. 2017). But even if Chase did not possess the indorsed Note (it did), and did not have a power of attorney for the Trust (it did), it could foreclose as the Trust’s agent. “Washington law, and the deed of trust act itself, approves of the use of agents” *Bain*, 175 Wn.2d at 106. There is nothing deceptive about a servicer (Chase) acting for its principal (the Trust) in performing foreclosure actions, especially when the servicer has independent authority to act. *McAfee v. Select Portfolio Servicing, Inc.*, 193 Wn. App. 220, 229 (2016).

b. Chase Did Not Cause Rogers’ Injuries

Rogers’s CPA claim fails for another reason—he cannot show Chase caused an identifiable injury to his business or property.

See Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780 (1986). He had to offer evidence showing that but-for Chase's actions, he would not have suffered an injury—this required more than just evidence Chase contributed to some unidentified injury. *Indoor Billboard v. Integra Telecom of Wash., Inc.*, 162 Wn.2d 59, 84 (2007). In the absence of a causal link between the injury and the unfair or deceptive act, Rogers has no viable CPA claim. *See Guijose*, 144 Wn.2d at 917.

Rogers alleged his injury was being unable to negotiate with the beneficiary, having to hire an attorney, and incurring foreclosure costs. But Rogers's admitted default caused the foreclosure costs, so Chase's alleged actions did not cause the foreclosure. *Bavand v. OneWest Bank*, 196 Wn. App. 813, 846 (2016), *as modified* (Dec. 15, 2016); *Djigal v. Quality Loan Serv. Corp. of Wash., Inc.*, 196 Wn. App. 1038, at *10 (2016) (unpublished). And, he would incur those costs regardless Chase's role in foreclosing—which was proper because it held the Note. *Djigal*, 196 Wn. App. at *9. Because Chase was the beneficiary (and was the Trust's agent, including through a power of attorney), Rogers was negotiating with the proper entity. “[W]e conclude that expenses incurred to determine the “owner” of a promissory note under the circumstances of this case are not compensable under the CPA.” *Bavand*, 196 Wn. App. at 846. Finally, hiring an attorney to stop the foreclosure and loss of

property (through his lawsuit) is not injury under the CPA. *See Bakhchinyan v. Countrywide Bank, N.A.*, 2014 WL 1273810, at *5-6 (W.D. Wash. 2014) (consulting an attorney to dispel uncertainty about debts “must still be for a purpose: Plaintiffs must have a reason to resolve the particular uncertainty at issue” but “Plaintiffs have not put forward any explanation for why they need to clarify the identity of the beneficiary”); *Sign-O-Light Signs, Inc. v. DeLaurenti Florists, Inc.*, 64 Wn. App. 553, 564 (1992) (“mere involvement in having to defend against Sign’s collection action and having to prosecute a CPA counterclaim is insufficient to show injury to her business or property”); *Djigal*, 196 Wn. App. at *8-10; *Panag v. Farmers Ins. Co. of Wash.*, 166 Wn.2d 27, 57 (2009). Nothing Chase did injured Rogers.

H. The Trial Court Correctly Granted the Trust Summary Judgment on Its Foreclosure Counterclaim

This Court can affirm the judgment on any basis present in the record of proceedings in the trial court. *Seawest*, 141 Wn. App. at 310.

5. Rogers Waived All Defenses to the Counterclaim

Rogers did not file an answer to the Trust’s Counterclaim. *See* CP 844. He therefore admitted all facts the Trust pleaded in its Counterclaim. CR 8(d). He also waived his defense that he showed a factual dispute about the foreclosure judgment amount because he did not plead it in an

answer. “[A]ffirmative defenses are waived unless they are pleaded.” *Gunn v. Riely*, 185 Wn. App. 517, 529 (2015); *see also Taliesen Corp. v. Razore Land Co.*, 135 Wn. App. 106, 134 (2006) (unpleaded defenses “are deemed to have been waived and may not thereafter be considered as triable issues in the case”). Rogers cannot now argue there is a factual dispute about the foreclosure amount pleaded in the Counterclaim because he did not answer or otherwise plead any affirmative defenses to challenge those amounts, therefore admitting they were correct.

6. The Trial Court Correctly Found the Trust Established the Foreclosure Judgment Amount

Rogers appears to acknowledge that the Trust can foreclose—he does not challenge the actual foreclosure decree. Instead, he asserts that the foreclosure judgment amount is incorrect. But the Trust submitted evidence showing the amount (including the amounts he claimed were not credited) and he failed to submit admissible evidence creating a material factual dispute.

Initially, the trial court found there was a “factual dispute” as a result of a lack of evidence about the amount Rogers owed; the Trust provided an aggregate amount and did not prove the amount of each monthly installment Rogers owed and how it calculated the amount due. CP 844-847, 849-856. The trial court permitted the Trust to make a

supplemental filing focusing on the amount due, allowing Rogers to fully litigate any issues he had with the amount. The Trust provided a declaration and payment histories showing what was unpaid and due and what Chase credited. CP 1633-1636, 1673-1720. Instead of timely opposing that second motion, Rogers filed, on the final hearing date, numerous documents without properly authenticating or explaining them, contending that they showed contradictory default amounts. CP 992-1071. Because Rogers filed his documents late, the trial court could properly ignore them, and this Court can find there is no factual dispute. See CR 56; *West v. Wash. State Ass'n of Dist. & Mun. Court Judges*, 190 Wn. App. 931, 943–44 (2015); *Johnson v. Horizon Fisheries, LLC*, 148 Wn. App. 628, 638–41 (2009) (affirming dismissal for local rule violation). And even if the records were timely submitted, the possibility of different default amounts as time progressed does not mean the final default amount submitted to the Court was in anyway disputed or inaccurate. On appeal, Rogers fails to argue how the Trust misstated the foreclosure judgment amount. He cannot now argue this point because he failed to timely make them in the trial court and because his arguments do not refute the default amount. RAP 2.5; *Mangat*, 176 Wn. App. at 334.

Even if Rogers could challenge the foreclosure judgment amount—and he cannot because he waived his challenge—his arguments

lack merit. Rogers's skeletal argument claims that Chase did not credit money he paid during his bankruptcy and that Chase sent him contradictory payment information. His claimed factual "dispute" is really his admitted inability to understand his payment records. OB p. 14. Rogers provides no citations to evidence in his argument. OB p. 38-39. He improperly asks this Court (or Chase and the Trust) to find evidence supporting him. *Dunkel*, 927 F.2d at 956; *Gordon*, 575 F.3d at 1066.

Rogers ignores the trial court expressly stated it considered Rogers's filings but did not find any factual dispute. RT 196, 238-241. Rogers' late-submitted documents showed different information in different ways (interest paid vs. interest accrued, reinstatement amounts vs. payoff amounts, etc.) on amounts between 2009 and 2014, predating the 2016 motion. CP 992-994, 1006-1071. He also ignored the payment histories (that showed how Chase credited his payments) and the amount in default. Indeed, the trial court explained why Rogers's documents did not show a factual dispute as to the amount due:

And the issue that Mr. Rogers is pointing out is that the total that is said to be due in this letter does not match the total that is claimed due at this time.

That is not what this letter says. The letter indicates that these are the monthly payments that are in arrears, plus interest, escrow payments that weren't made, late fees—and gives a total with regard to that figure. But what we're here today to look at is

the principal balance after an acceleration of the loan. And so, that is not raising an issue of material fact.

RT 238:18-239:6.

Rogers, in his Opening Brief, claims that Chase did not credit \$30,000 to his account. OB p. 38. The trial court found that Chase credited the payments Rogers “disputed”:

Mr. Rogers indicated that he didn’t believe he got credit for an \$18,000 payment. The Court located on page 32 at reference number 35 a payment in the amount of \$18,035.75 being credited. Thereafter, on page 31, there are eight payments that are credited on page 30. There is an additional payment that’s credited and we’re still in the year 2009.

On page 29, there are payments — six payments that are credited. On page 27 at reference line 74, there’s a payment credited of \$14,440. And again, that was a specific amount -- \$14,000 — that Mr. Rogers did not believe was credited. And further, the page 27 –

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MR. ROGERS: No, that’s credited.

THE COURT: Do not interrupt me. On page 27, there’s also an additional payment credited as well as page 26 that has seven payments credited. And so, the Court –all in this timeframe of 2009, 2010, now I’m up to page 24, lines or reference numbers 94 and 92, two more payments credited. So, the Court finds that the attempt to raise issues with regard to non-payment or non-crediting payments that were made does not raise an issue of material fact.

RT 239:18-240:13. Thus, the unrefuted evidence shows Chase in fact credited the \$30,000 that Rogers claims was not credited. (And Rogers nowhere argues or alleges that had the default amount been some other lower number, he could have paid off his loan.)

Rogers fails to show a dispute of fact, both in the trial court and before this Court. The trial court only properly had before it the Trust's payment histories, which showed the amount due. The Trust proved the amounts Rogers owed and showed it and Chase calculated the judgment amount correctly. Rogers' appeal therefore fails.

II. CONCLUSION.

For the foregoing reasons, this Court should affirm the trial court's judgments. Rogers's "assistance of counsel" arguments are irrelevant, he waived the issue, and he is not entitled to counsel. The Court should affirm the trial court's judgment on the Complaint—Rogers waived review. To the extent he did not waive review, he only requests review of his CPA claim, which fails due to lack of a deceptive or unfair act and a lack of injury caused by Chase or the Trust. Finally, the trial court correctly granted judgment on the Trust's foreclosure Counterclaim because Rogers did not show any factual dispute. The Court should affirm Chase and the Trust's judgments.

RESPECTFULLY SUBMITTED this 15th day of January, 2019.

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CERTIFICATE OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the state of Washington that on this 15th day of January, 2019, he electronically filed the foregoing document with the Washington State Court of Appeals, Division II, which will send notification of such filing to the attorneys of record at their email addresses listed below.

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