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Division II
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COURT OF APPEALS II No.: 51392-7-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

FRANK W. & CHERI L. SCHNARRS

Petitioner/Appellant

v.

WILMINGTON SAVINGS FUND SOCIETY, FSB,
D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS
TRUSTEE FOR PRETIUM MORTGAGE
ACQUISITION TRUST, its successors
and/or assigns; JOHN DOE; JANE DOE;

Respondents

ON APPEAL FROM THURSTON COUNTY SUPERIOR COURT

Case No. 17-2-02356-34

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Warren Frank Schnarrs, more commonly known to the people of Thurston County as “Frankie” died on Friday, August 17, 2018. As will be demonstrated herein a proximate cause of Frankie’s death was the foreclosure proceedings underlying this appeal.

Frankie’s wife Cherri Schnarrs moves pursuant to RAP 3.2 to substitute herself in place of her husband and life partner as she is now the sole owner of the property which is the subject of this appeal as well as other properties they owned together.

In this case the Schnarrs sought to register their interest in their home under the Torrens Act in order to challenge while an unlawful non judicial foreclosure based on a secret lien obfuscating hidden equities. They were unable to do so because Thurston County officials (and the superior court judges serving therein) failed to take those steps necessary to “trigger” the implementation of a Torrens System, which would have better protected their property interests from secret liens, hidden equities, and fraudulent recordings.

II. ASSIGNMENTS OF ERROR

Assignment of Error 1

The superior court judge erred in failing to find Thurston County officials and superior court judges in that county prevented the Schnarrs from taking advantage of the protections the Torrens Act, Chapter 65.12 RCW, was intended to afford persons with interests in real property.

Issues Related to Assignment of Error 1

1. Whether the superior court erred in refusing to refer Schnarrs Torrens application to the Thurston County Examiner of Titles immediately after it was filed in April, 2017? (Short Answer: YES)
2. Whether the superior court erred by not disclosing Thurston County had no working Torrens system because county officials and the superior court judges refused to comply with Chapter 65.12¹, which was intended to protect owners of real estate interests from secret liens, hidden equities, and fraudulent land filings? (Short Answer: YES)
3. Whether the superior court erred by concluding it had subject matter jurisdiction to resolve the Schnarrs' Torrens registration when the

¹ Specifically the Thurston County judges, as state officials, and other Thurston County officials, including without limitation the Auditor and deputy Auditors, the Superior Court clerk, and the Prosecutor failed to comply with one or more of the following provisions of the Torrens Act: RCW 65.12.050; 65.12.055; 65.12.080; RCW 65.12.090; 65.12.110; RCW 65.12.300 and 65.12.660.

superior court unlawfully refused to immediately refer the application to the Thurston County Title Examiner as required by RCW 61.12.110 because the judges and county officials had refused to comply with the Torrens Act because they wanted it repealed? (Short Answer: YES)

4, Whether the superior court erred in dismissing this case because material questions of fact existed which precluded resolution by way of CR 12(b)(6)?

Assignment of Error 2

The superior court erred in granting a CR 12(b)(6) motion to dismiss Schnarrs' Torrens judicial registration proceeding based on res judicata and/or collateral estoppel grounds.

Issues Related to Assignment of Error 2

1. Whether the Schnarrs had the ability to avail themselves of the Torrens Act to protect themselves against secret liens, hidden equities, and fraudulent filings six years prior to November 10, 2016, the date their home was purportedly foreclosed upon?

2. Whether the superior court erred in holding Wilmington had proved based on the evidence presented that it was entitled to dismissal based on the affirmative defenses of res judicata and/or collateral estoppel and/or claim splitting? (Short Answer: YES)

3. Whether the superior court erred in dismissing the Schnarrs' Torrens application based on preclusion defenses where the evidence demonstrates that the County and superior court judges therein corruptly prevented property owners from utilizing that judicial process? (Short Answer: YES)

Assignment of Error 3

Whether under the circumstances of this case the superior court judges of Thurston County did not afford Schnarrs due process under the Fourteenth Amendment to the United States Constitution? (Short Answer: YES)

Issues Related to Assignment of Error 3

1. Whether the Superior Court erred by refusing to comply with the provisions of the Torrens Act at the same time the superior court judges and county officials were attempting to have the Torrens Act repealed? (Short Answer: YES)

2. Whether the superior court of Thurston County erred by failing to provide the Schnarrs with "fair hearing by a fair tribunal" within the meaning of Due Process where its judges refused to comply with the Torrens Act at the same time the County was working to have the statute repealed and unlawfully delayed referring Schnarrs registration application to an Examiner of Titles? (Short Answer: YES)

III. STATEMENT OF THE CASE

On April 20, 2017 the Schnarrs filed a “Torrens Petition and Application for Registration of Land Titles”, which was docketed as Cause No. 17-2-02356-34. The Application was not docketed in the “land registration docket”, but the civil litigation docket. The application was not immediately referred to the Thurston County Examiner of Titles as required by RCW 65.12.110 because Thurston County judges never appointed an examiner during the relevant time period, i.e. since 1983, when the Schnarrs purchased their home until the date the Application was filed.

The Torrens Application identified WILMINGTON SAVINGS FUND SOCIETY FSB D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM MORTGAGE ACQUISITION TRUST as a party claiming an interest in the land. Clerk’s Papers (CP) 12-14. The Schnarrs submitted an “Abstract of Title” as part of their Torrens Application. CP 16-19. The Application alleged:

F. On or about October 21st, 2016 Applicants through their Attorney in Fact tendered payment in full of like kind consideration to CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM MORTGAGE ACQUISITION TRUST debt collectors CLEAR RECON CORP and to RUSHMORE LOAN MANAGEMENT SERVICES of/for the satisfaction of an alleged lien and/or interest claimed by any of the aforementioned parties.

G. As of March 30, 2017, Applicants [Schnarrs] are noted as the most recent Deed holder according to information provided by a local title company for real property d/b/a STEWART TITLE.

CP 14

On April 28, 2017 the Schnarrs filed an affidavit of service and proof of payment. CP 23-25. On this same date the Schnarrs filed a Homestead deed, along with a declaration of homestead. CP 26-39. Because Wilmington did not have a registered agent in Washington state, it was served by publication. CP 40-41.

When Wilmington did not respond to service by publication the Schnarrs moved for default, CP 50-51, supported by a declaration/affidavit that Wilmington had not responded, CP 42-45, and a certification of payment of current taxes. CP 46-49.

When no action was taken by a Thurston County superior court judge on their motion for default the Schnarrs filed another motion for default judgement on June 14, 2017, CP 50-52, along with another supporting declaration/affidavit. CP 63-66. When no action was taken on the June 14, 2017 motion for default, the Schnarrs filed another motion for default, with supporting a supporting declaration, on June 30, 2017. CP 73-79. The file stamp thereon states "Hearing is set for July 7th, 2017 at 9:00 am. Judicial Officer: Murphy." CP 73.

On July 14, 2017 the Schnarrs filed a pleading entitled “NOTICE OF OFFICIAL BOND AND OATH OF OFFICE (Carol Ann Murphy).”

CP 99-102. This notice states:

Please take notice of Bond No: 6303181 ... identifying Carol Ann Murphy d/b/a Superior Court Judge for the State of Washington at the County of Thurston as OBLIGOR ensuring the faithful performance of all duties of her office as Principal under the Supreme Law.”

CP 99.

On July 19, 2017 the Schnarrs filed a Counselor/Advocate Contract Agreement “demanding” that “Carol Ann Murphy, Risk Management for Thurston County and/or Thurston County and any and all interested parties” take notice of an Advocate Counselor Agreement between Schnarrs and David Olive and Micah James Anderson. CP 103-108.

Apparently after reviewing the above referenced pleadings and a request for accommodation under the American Disabilities Act, which stated that Mr. Schnarrs suffered from Post-Traumatic Stress Disorder (PTSD), emotional trauma, and failing health”, CP 112, the Court Administrator filed a response document which stated “[t]he court does not find a reason to appoint you an attorney as an accommodation or to allow a non attorney to assist you in court.” The letter setting forth these

findings is signed by Pamela Hartman Beyer., who is identified as “Court Administrator”. CP109-11.

Minutes dated July 21, 2017, but not accompanied by a signed order, indicate:

Mr. Schnarrs addressed the Court as to the motion for default judgment.

The Court noted the Notice of Issue was not signed by Mr. Schnarrs.

The Court denied the motion.

The Court recalled this matter.

Mr. Schnarrs addressed the Court

The Court continued the motion to July 28, 2017.

CP 113

Minutes dated July 28, 2017 state:

David Olive appeared pro se and attempted to file a Power of Attorney, to represent the plaintiff. Court would not accept the document, as Mr. Olive is not an attorney.

Mr. Schnarrs addressed the Court.

Court denied the Motion for Default, as the petition that initiated this lawsuit was not signed by Frank Schnarrs.

CP 114.

On July 28, 2017 Schnarrs filed another motion for default, which he signed. CP 118-125. Schnarrs also signed an amended Torrens application, which was filed on August 8, 2017.

The next day on August 9, 2017 Schnarrs filed a motion for an order referring his Torrens Application to an Examiner of Title as required by RCW 65.12.110. CP 166- 172. On that same day, the Schnarrs Application was assigned to Judge Chris Lanese, with a scheduled trial date of December 8, 2017. CP 238.

On August 11, 2017 court minutes state a hearing for another motion for a default judgment before Judge Murphy was stricken. CP 250. "The hearing was stricken. No order was issued during session." *Id.*

On August 17, 2017 Schnarrs filed another motion for default and affidavit in support thereof. CP 251-258, 267-269. The Schnarrs requested the motion be heard *ex parte*. CP 262-263

On August 30, 2017 attorney Rebecca Schrader of the law firm of Anglin, Flewelling, Rasmussen, Campbell & Trytten LLP (AFRTC) filed a notice of appearance on behalf of Wilmington. CP 274-275.

On August 31, 2017 Judge Murphy denied the *ex parte* motion. CP 277-278. Judge Murphy noted an "[a] n examiner of titles has not been appointed under RCW 65.12.110 (Torrens Act) which may be mandatory, even in a default situation." CP 277.

On September 27, 2017 the Schnarrs filed another motion for an order referring their Torrens Application to the Thurston County examiner of titles. CP 281-287. This motion was supported by the declaration of Frank Schnarrs. CP 209-293. In that declaration Frankie testified his Torrens Application was filed and recorded with Thurston County on April 20, 2017. ER 291. Further, that:

18. As of September 27th, 2017, Clerk of Court continues to refuses [sic] to provide confirmation of the aforementioned statutory obligation [RCW 65.12.100, 110, 130, 150, and 210] with neither a certified copy of a report provided by the Examiner of Titles nor notice of filing of said report as required by statute.

19. As of September 22nd, 2017, I am still waiting for the Superior Court for the County of Thurston and/or the Clerk of Courts, and/or The Auditor/Registrar of Title for Thurston County, and/or a bona fide court appointed Examiner of title to full their statutory contractual obligations so this matter can proceed.

CP 292.

Two days later, on September 29, 2017 defendant Wilmington filed a motion to dismiss Schnarrs' complaint pursuant to CR 12(b)(6) with a request for attorney fees. CP 303-315. This motion did not address the provisions of Washington's Torrens Act which Schnarrs claimed applied. CP 304.

Wilmington asserted only two grounds to dismiss Schnarrs' complaint: First, "[p]laintiffs have no interest in the subject property upon

which to base their application for Torrens registration.” CP 304. Second, “[p]laintiffs substantive allegations regarding their mortgage loan, presumably in support of their claim that their [sic] is a cloud on title, fail based on res judicata and claim splitting.” *Id.*

In support of these legal claims Wilmington’s motion contains a section entitled “**FACTUAL BACKGROUND AND SUMMARY OF CLAIMS**”. This section contains mostly legal argument *not supported by evidence*.

The only evidence Wilmington offers to support these arguments are four documents, which its counsel asked be judicially noticed, CP 317-348. These documents include: 1.) An alleged note dated February 28, 2005 (which Schnarrs’ Torrens Application disputed and claimed was paid off) CP 321-324, 189-190. 2.) An uncertified deed of trust purportedly filed with the Thurston County Auditor on March 7, 2005. CP 326-340; 3.) an uncertified Trustee Deed, dated November 11, 2016, which states on its face “This instrument is being recorded as an ACCOMMODATION ONLY, with no representation as to its effect on title.”² CP 342-344; and 4.) a September 22, 2017 order granting improperly named Wilmington,

² This type of recording could not have been entered into a Torrens Registration System as under Washington’s version of that law. The Thurston County Auditor is required to verify chain of title sufficiently so that each recording can be considered proof relating to title.

Rushmore Loan Management Services, LLC and MERS' motion to dismiss, which does not disclose the issues or evidence considered in that case. CP 346-348. Schnarrs objected to the court's taking judicial notice of these hearsay documents. CP 385. The Court did not rule on Schnarrs' evidentiary objections.

On October 2, 2017 Wilmington filed an opposition to the Schnarrs' Motion to Refer the Torrens Application to Thurston County's Title Examiner. CP 349-354. Relying on the same request for judicial notice, CP 317-348, Wilmington makes the same arguments as appear in its 12(b)(6) motion to dismiss; *i.e.* the Schnarrs motion should be denied because they have no interest in their home; or alternatively, that the Schnarrs' motion should be held in abeyance pending the outcome of the motion to dismiss. CP 351.

On October 4, 2018 Schnarrs filed a notice that the hearing on the motion which was currently scheduled for October 6, 2017 would be continued to October 27, 2017 at 9:00 a.m. before Judge Lanese.

On October 25, 2017 Schnarrs filed an Amended Reply to Wilmington's Opposition to his motion for an Order referring the Schnarrs' Torrens Application to the Thurston County Title Examiner as required by RCW 65.12.110. CP 359-368. This reply was supported by the

declaration of Micah Anderson who testified that he went to the auction of the Schnarrs' home *and it never came up for bid*. CP 369-370.

With regard to Wilmington's argument the Schnarrs had no interest in their homestead sufficient for an analysis by Thurston County's Examiner of Titles, Schnarrs argued 6 points, including the language of the statute which states: "The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of such land registered." RCW 61.12.005. CP 362-3 & 366. Schnarrs also rely on Anderson's declaration there was not a foreclosure auction of their home and that the loan was paid off. *Id.*

Further, Schnarrs made arguments as to why the court must comply with the clear provisions of Torrens Act, CP 364-367, including that it had no subject matter jurisdiction to do otherwise. *Id.* at 367.

On October 27, 2017 the Thurston County superior court through Judge Lanese filed an order, which states:

I. BASIS

II. FINDINGS

After reviewing the case record to date, and the basis for the motion, the court finds that the *motion to appoint a title*

*examiner will be held in abeyance*³ until the court has heard defendants motion to dismiss. Wilmington Savings agrees that no unlawful detainer will be commenced until the conclusion of this litigation

IT IS ORDERED that:

Plaintiff's motion will be held in abeyance until the outcome of defendant's motion to dismiss. Defendants will not commence an unlawful detainer action until this case is concluded.

CP 382. (Emphasis Supplied)

On October 30, 2017 the Schnarrs filed their opposition to Wilmington's motion to dismiss, CP 383- 391, along with a declaration in support thereof. CP 392 - 395. The Schnarrs argued "[a] motion to dismiss based on failure to state a claim upon which relief can be granted should be granted 'sparingly and with care,' and only in the unusual case in which the plaintiff's allegations show on the face of the complaint an insuperable bar to relief" citing *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 164, 157 P.3d 831, 842 (2007). CP 387.

Furthermore, among other things, the Schnarrs argued Wilmington was not entitled to any relief "until the statutory requirements are fulfilled by the Thurston County Registrar of Titles, the Clerk of the Court for the county of Thurston, as well as the superior court for the state of

³ Schnarrs never made a motion to appoint a title examiner, he made a motion to refer his Torrens Application to the Title Examiner for Thurston County pursuant to RCW 65.12.110.

Washington at the County of Thurston as defined within RCW 65.12 an act entitled Registration of Land Titles” CP 389. Schnarrs then went on to demonstrate many ways the Thurston County officials and superior court judges had violated the Torrens Act. CP 388-391.

On December 15, 2017 Wilmington filed its reply brief in support of its motion to dismiss pursuant to CR 12 (b) (6). CP 423-424. Without citation to any Torrens act authority Wilmington argued Schnarrs could not avail themselves of any of the protections that statute was intended to afford landowners. CP 419-420. Wilmington argued a second time that Schnarrs’ allegations are barred by the affirmative defenses of res judicata and claim splitting. CP 420-421.

On December 20, 2017 Schnarrs filed a pleading entitled REGISTRAR’S correspondence”, which included a November 22, 2017 letter from Mary Hall, the Thurston County auditor, to Frank and Cherri Schnarrs. That letter stated:

Our office is waiting on direction from the court before proceeding with your request. Per our earlier correspondence the Torrens process is set in statute, and our office with the assistance of our attorney, will follow the process laid out in that statute. We are returning your documents to you per the advice of our attorney.

CP 451.

On that same day, December 20, 2017, Frankie Schnarrs, then severely disabled *and now dead*, filed a “NOTICE Of Americans with Disabilities Act Accommodation request and Appointment of Advocate.” CP 452-454. This request stated:

I suffer from several health issues including PTSD (see attached). These debilitating conditions result in high levels of anxiety resulting in non-effective communication, struggling with remembering matters, recalling thoughts, hearing everyone, and articulating my thoughts into words during stressful situations.

THEREFORE, I will be requiring “Auxiliary aids and Services,” including and are not limited to:

1. The appointment and recognition of Scott Stafne WSBA 6964 to appear telephonically as my disability advocate to assist with communicating with the court and any such other accommodation if so required.

CP 452-453.

In response to questions on the Thurston County Superior Court’s “Request for Reasonable Accommodations” form Frankie states an accommodation is needed because: “I have 7th grade education, as well as suffer from PTSD and have hart [sic] failure. ... I struggle with keeping and articulating my thoughts, due to my PTSD. Therefore, I wish for Scott to appear by phone to assist me.” CP 455.

The form was accompanied by a letter from cardiologist Dr. John W. Waggoner, which stated:

Mr. Schnarrs suffers from severe cardiac disease with a history of multiple myocardial infarctions and both percutaneous and surgical revascularizations on several occasions, as recent as 2014. He has a severe ischemic cardiomyopathy and has had a defibrillator placed for primary prevention. He also has significant mitral insufficiency.

His current cardiac issues would be considered severe and end-stage by any estimation. I would consider Mr.Schnarr's cardiac status to be terminal.

Please feel free to contact me for questions regarding Mr. Schnarrs's cardiac status.

CP 456. Also included was a note from Providence Cardiology Associates which states "To Whom it May Concern -- Frank Schnarrs is being treated for Post-Traumatic Stress Disorder", CP 457, and a letter which identified Mr. Schnarrs had serious medical problems including: 1.) Coronary Artery Disease; 2.) Ischemic Cardiomyopathy; 3.) Mitral Insufficiency; 4.) H/o LV Thrombus; 5.) Bundle Branch Block, left; 6.) Deep Vein Thrombosis -- FH; 7.) Hypertension; 8.) Hypercholesterolemia; 9.) Diabetes Mellitus Type 2; 10.) Renal Insufficiency; 11.) COPD; 12.) Dyspepsia; and 13.) Posttraumatic Stress Disorder. CP 459.

On December 22, 2017 a hearing was held without affording Frankie the benefit of an advocate. The minutes related to that hearing state:

The Court held colloquy with Mr. Schnarrs regarding his requests for accommodation and confirmed that Mr. Schnarrs wished to proceed without oral argument⁴.

The Court placed its ruling on the record, granting summary judgment in favor of defendant, and dismissed the case with prejudice. The Court denied the motion it has previously reserved ruling on, for appointment of a title examiner⁵. The Court also denied the defense motion for attorneys' fees.

Ms. Shrader requested clarification on whether the Court's ruling was under 12(b)(6) versus summary judgment. The Court clarified its ruling.

The Court approved and signed:

- Order Dismissing Complaint with Prejudice.

The order Judge Lanese signed does not explain the evidentiary basis for the court's ruling or identify any of its findings. The order states only: "IT IS ORDERED that: Defendant's motion to dismiss under CR

⁴ The court does not indicate whether Mrs Schnarrs, who was a real party in interest, consented to proceeding without some sort of accommodation or representation.

⁵ As stated previously the judge apparently misunderstood the nature of Schnarrs' Motion, or did not want to acknowledge it, because Thurston County judges had not properly appointed, bonded, and qualified an Examiner of Titles at that to which the Schnarrs' Application could be referred. See RCW 65.12.110, which states in relevant part:

"Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right,

...

12(b)(6) has been granted and the case is dismissed with prejudice.

Plaintiffs' motion to appoint a title examiner is denied and Defendant's motion for attorney's fees is denied." CP 461.

On January 22, 2018 the Schnarrs timely filed a notice of appeal.

Facts Which Should Be Judicially Noticed On Appeal

Following the appeal of this case Frankie Schnarrs *pro se* brought a petition for Writ of Mandamus against all of the superior court judges located in Thurston County as state officers pursuant to RAP 16.2 for refusing to comply with their ministerial duties under the Torrens Act. See Motion for Judicial Notice. These benefits include protection against secret liens, hidden equities, and fraudulent filings. *See e.g. Larse v. Campbell*, 186 Wash. 319, 57 P.2d 1246 (1936), *McMullen & Co. v. Croft*, 96 Wash. 275, 164 P. 930 (1917); *Brace v. Superior Land Co.*, 65 Wash. 681, 118 P. 910 (1911).

In *Finley v. Finley*, 43 Wn.2d 755, 762 (1953) the Supreme Court stated "[a]n extensive list of defects of title which the Torrens Act eliminates, and which the recording acts do not eliminate, can be found in [R.G. Patton,] 19 Minnesota L. Rev. 519, 534 [1934].)" Among those reasons, provided are "[e]limination of the necessity of ever having to defend one's title because of forgery of one's name to a deed or mortgage

[because] a forger can accomplish nothing with a forged instrument unless he also has possession of the owner's duplicate certificate of title."

Another is "to secure immunity from risk of loss, or impairment of title from dangers incident to a title based upon the recording system..." *Id.* at 534.

During the special proceedings before the Supreme Court Commissioner the Thurston County Judges provided evidence that they first appointed an Examiner of Titles and legal advisor to the registrar on March 30, 2018. Schnarrs contends this is the reason Judge Lanese did not comply with Schnarrs's several motions to immediately refer his case to the Thurston County Title Examiner pursuant to RCW 65.15.110.

Further, Schnarrs also moves this Court take judicial notice that the Thurston County Auditor, along with other county auditors from all other Washington counties, have thus far unsuccessfully sought to repeal the Torrens Act for at least the past two years. *See* HB 2204 (2017) and HB 2315 (2018) *See* Schnarrs Motion for Judicial Notice.

The web site of the Washington State Association of County Auditors (WSACA), which Schnarrs requests be judicially noticed, establishes elimination of the Torrens Act as one of county auditors top

2018 Legislative Priorities⁶ because they do not want to be responsible for determining the chain of title to registered land. In this regard, the auditors, through WSACA, state:

Torrens (Registered Land) is a system of land registration defined under RCW 65.12 and supported by 105 sub-chapters (65.12.005 through 65.12.900). It is a complex, labor intensive system of land registration that must be kept separate from our standard recording systems. *It requires counties to maintain an employee as the Registrar of Titles. The registrar must maintain and verify appropriate chain of title, the role modernly performed by title companies.*

Auditors support the proposed bill that would abolish Torrens and instead record land titles using modern methods of recording and preserving documents.

See Schnarrs' request for judicial notice.

IV. ARGUMENT

A. *The Motion to Dismiss should not have been granted.*

Standard of Review: Courts should dismiss a claim under CR 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief." *Orwick v. Seattle*, 103 Wn.2d 249, 254, 692 P.2d 793 (1984) (quoting *Corrigal v. Ball & Dodd Funeral Home, Inc.*, 89 Wn.2d 959, 961, 577 P.2d 580 (1978)). Because a trial court's dismissal under this rule

⁶ This government document can be accessed at <http://wsaca.org/wp-content/uploads/2017/08/WSACA-2018-Leg-Priorities1.pdf>

is a holding on a question of law, appellate review is de novo. *Hoffer v. State*, 110 Wn. 2d 415, 420, 755 P.2d 781, 785 (1988).

1. There is no Operational Torrens System in Thurston County because of its Officials and Judges Corrupt Refusal to Comply with Washington Law

When the Schnarrs filed their Torrens Application they were in possession of their home and had declared it their homestead, which it had been since 1983. Under these circumstances RCW 65.12.005 authorized their filing the application to protect their legal and equitable interests in their home, which at the very least were possessory. The sheriff's sale alone did not prevent the Schnarrs from obtaining appropriate relief under the Torrens Act. See e.g. *Finley v. Finley*, 43 Wn.2d 755, 762 (1953), because the Schnarrs presented evidence Wilmington's trustee sale, i.e. auction, never occurred and the deed of trust had been paid off.

What prevented the Schnarrs from filing their Torrens Application to protect interests in their home was that Thurston County refused to comply with this statute and therefore had no operational Torrens system in place which could be used by persons having interests in real property.⁷

⁷ The statements by WSACA document one obvious reason why auditors do not want to comply with the Torrens Act in such a way as to implement it. They recognize that this statute makes counties responsible for determining chain of title issues and holds county officials responsible for making mistakes in this regard. See e.g. 65.12.650, 660, 680, 690, 700.

The superior court judges, failed to create rules and instructions for the registrar to follow in implementing and maintaining a Torrens System for Thurston County, notwithstanding they were required to do so by law.

The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. *All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the superior court having jurisdiction of the county in which they act.*

RCW 65.12.050.

Perhaps because the judges did not establish any rules or instructions the other County officials believed they could ignore their duties under the Torrens Act completely. For example, the registrar did not give a bond in the manner required by 65.12.055; the clerk of the court did not create the “land registration docket” required by RCW 65.12.080 and did not comply with RCW 65.12.300; and the superior court judges did not appoint a competent attorney to be Thurston County’s examiner of titles and legal advisor to the registrar as required by 65.12.090.

Because the superior judges failed to comply with RCW 65.12.090 until at least March 30, 2018 Thurston County never had at any time material to this lawsuit any properly appointed, bonded, and qualified

examiner of titles to whom Torrens Applications could be referred for a chain of title analysis as is required by RCW 65.15.110, which states:

Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he or she claims title, which may be a lien upon the lands described in the application; he or she shall search the records and investigate all the facts brought to his or her notice, and file in the case a report thereon, including a certificate of his or her opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he or she shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his or her application. The election shall be made in writing, and filed with the clerk of the court.

Schnarrs moved to have his Torrens Application referred to a properly appointed and bonded Thurston County Title Examiner pursuant to the above statute, not for superior court to appoint a title examiner for this case. Had a Torrens system been operational, the superior court would have reviewed the report of the Thurston County Title Examiner that would have been on the provisions of the Torrens Act, as implemented by superior court's rules and instructions.

Accordingly, the superior court judge erred by ignoring that under the Torrens Act its jurisdiction is appellate, not original. Wash. Const. art IV, § 6. *Cf. Colwell v. Smith*, 1 Wash. Terr. 92 (1860).

Furthermore, the superior court erred by rewriting Schnarrs' motion in such a way as to camouflage his own and other judges intentional and continuing violations of the Torrens Act, arguably for the purposes of preventing people from protecting their interests in property against secret liens in the age of MERS a/k/a Mortgage Electronic Registration System Inc.

As previously stated, among the primary purposes of the Torrens Act is to protect landowners from secret liens, hidden equities, and the recordation of fraudulent documents. *Supra.*, p 25-25. These are different purposes, more protective of registered landowners, than those which are sought to be achieved by Washington's recording statutes.

In the 1990s, the Mortgage Electronic Registration System Inc. (MERS) was established by several large players in the mortgage industry. MERS and its allied corporations maintain a private electronic registration system for tracking ownership of mortgage-related debt. This system allows its users to avoid the cost and inconvenience of the traditional public recording system and has facilitated a robust secondary market in mortgage backed debt and securities. Its customers include lenders, debt servicers, and financial institutions that trade in mortgage debt and mortgage backed securities, among others. MERS does not merely track ownership; in many states, including our own, MERS is frequently listed as the "beneficiary" of the deeds

of trust that secure its customers' interests in the homes securing the debts.

Bain v. Metro. Mortg. Grp., Inc., 175 Wash. 2d 83, 88, 285 P.3d 34, 36 (2012).

In *Bain* the Washington Supreme Court was asked to decide whether MERS, which was named as a nominee of the original lender in the deed of trust contract could also be named as the “beneficiary” under Washington’s Deeds of Trust Act, Ch. RCW 61.24 RCW (DTA) where it never held the original note being secured.

The Supreme Court correctly understood that the issue involved consideration of several statutes and how they worked together. *Id.*, at 94-98. The Supreme Court observed in part of the opinion “[t]he question ... is whether MERS and its associated business partners and institutions can both replace the existing recording system established by Washington statutes and still take advantage of legal procedures established in those same statutes.” *Id.*, at 98.

The court outright acknowledged the MERS system was intended to obfuscate information which had traditionally been public and a part of Washington’s recorded land records. “It [MERS] established ‘a central, electronic registry for tracking mortgage rights [where p]arties will be able to access the central registry (on a need to know basis).’” *Id.*, at 95. Such a

private registry system is incompatible with the Torrens Act because our founders intended each county would create a *public* registration system which people could utilize to protect themselves against secret liens and hidden equities. MERS private registration also runs counter to the Torrens Act because it promotes interests in land not being timely filed and inaccurate and/or fraudulent documents being filed belatedly.

In *Bain* the Supreme Court found MERS claiming to be the beneficiary of a deed of trust “when it knows or should know that under Washington law it must hold the note to be the beneficiary” is presumptively deceptive under Washington’s Consumer Protection Act, Ch. 19.86. Accordingly, it would not have been appropriate for an Examiner of Title to recommend that a MERS deed of trust be filed without an examination of MERS authority to do so. *See e.g.* RCW 65.12.410. This would have afforded registered landowners protection against secret liens and hidden equities on their property, and from being played as a part of the securitization fraud games which have become endemic in American society.

If the provisions of the Torrens Act were followed persons with legal or equitable interests in land would have the opportunity to know what was going on with their property at the time changes were occurring. Instead, people in Thurston County were not afforded with the protections

the state's founders intended they have under the Torrens Act because county officials and state officer superior court judges purposely prevented any Torrens system from going into effect by refusing to comply with the law.

Can public officials, including judges, simply ignore their clear duties under the law and suffer no legal consequences? Or are public officials and judges accountable for systematically violating the law in such a way where they could harm a great number of people?

As a proximate result of Thurston County's governmental misconduct Frankie Schnarrs and thousands other of people have likely died from either the stress of the legal process related to taking their homes or from being unable to survive on the streets of Washington state, which has the second highest per capita homelessness rate *in the nation*. "The 2017 Annual Homeless Assessment report (AHAR) to Congress prepared by U.S. Department of Housing and Urban Development"⁸. *See also* "Description of Homeless Deaths Investigated by the King County Medical Examiner Office" (MEO), 2012-2017"⁹; *Cf.* "May 2015, Thurston County Homeless Census Report, Fact Pack"¹⁰

⁸ This governmental report report can be accessed at: <https://www.hudexchange.info/resources/documents/2017-AHAR-Part-1.pdf>

⁹ This governmental publication can be accessed at

After decades of governmental redistribution of homes to money lenders and debt buyers many are wondering if this is not just another one of the genocides which America has perpetrated against people who have lived here since its founding. And the question is an appropriate one where it is established that government officials, especially judges, conspire to repeal laws they refuse to obey that were enacted to protect ordinary people against bankers' and debt buyers' secret liens and hidden equities affecting their title.

What is the difference between jurists forcing people to the streets where they die from the elements and forcing them into ovens where they burn? Just the method of death. The process which produces either result must be condemned.

2. This case cannot be resolved in a summary fashion

The evidence before the superior court was conflicting. Wilmington asked judicial notice be taken of a record trustee deed. But that deed was not certified as required by RCW 5.44.040. Additionally, the document states on its face that it is not intended to make any

<https://www.kingcounty.gov/depts/health/locations/homeless-health/healthcare-for-the-homeless/~media/depts/health/homeless-health/healthcare-for-the-homeless/documents/medical-examiner-analysis-homeless-deaths.ashx>

¹⁰ This governmental publication can be accessed at <http://www.co.thurston.wa.us/health/sscp/pdf/2015thurstoncountypithomeless.pdf>

representation with regard to title. CP 342. Nor was the trustee's deed authenticated in any way. Under these circumstances it is doubtful that it was properly noticed. But even if it was, the legal viability of that deed was attacked by Schnarrs presentation of evidence that there was no auction and the relevant note had been paid off. This evidence was sufficient to call the validity of the sale into question. *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn. 2d 560, 276 P.3d 1277 (2012).

Under these circumstances the superior court erred in not converting the motion to one for summary judgment, and denying any summary dispositive relief because questions of material fact existed. CR 56. See also *Keck v. Collins*, 184 Wn. 2d 358, 357 P.3d 1080 (2015).

B. Wilmington did not establish Schnarrs' Torrens Application was Barred by Res Judicata and/or Collateral Estoppel and/or Claim Splitting.

Standard of Review: Whether collateral estoppel or res judicata apply to preclude litigation is a question of law that we review de novo. *Weaver v. City of Everett*, 4 Wn. App. 2d 303, 313, 421 P.3d 1013, 1018 (2018).

Wilmington argued Schnarrs' Torrens registration action was barred by res judicata and claim splitting. It is not clear whether Wilmington is arguing Schnarrs claims are also barred by collateral estoppel because Wilmington erroneously suggests that res judicata

includes both “relitigation of claims or issues that were litigated, or might have been litigated in that prior action...” CP 420.

Res judicata (Claim Preclusion) and Collateral Estoppel (Issue Preclusion) are different doctrines. Both are affirmative defenses upon which the party asserting the defense has the burden of proof. *See Hisle v. Todd Pac. Shipyards*, 151 Wn. 2d 853, 865 (2004) (“The party asserting the defense of res judicata bears the burden of proof” citing *Civil Serv. Comm'n v. City of Kelso*, 137 Wn.2d 166, 172, 969 P.2d 474 (1999). *Id.* at 865.); *Dillon v. Seattle Deposition Reporters, LLC*, 179 Wn. App. 41, 65 (2014) (“The party seeking the application of collateral estoppel has the burden of proof, and ‘[f]ailure to establish any one element is fatal to the proponent's claim.’” *Id.* at 65.

The only arguable evidence Wilmington presented in support of its preclusion defenses was a September 22, 2017 order signed by judge Murphy, which was written and presented by Wilmington’s attorneys, and not signed by Schnarrs. CP 346-348. Wilmington argued below that this Order established the elements of res judica which it asserted required “a concurrence of identity with a subsequent action in (1) subject matter, (2) cause of action, (3) persons and parties; and (4) the quality of the persons for and against whom the claim is made.” CP 420-21 citing *Loveridge v Fred Meyer*, 125 Wn.2d 759 (1995).

In order for Wilmington to establish collateral estoppel (issue preclusion) applied to this case it would have had to establish each of the following requirements:

(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.”

Reninger v. Dep't of Corr., 134 Wn.2d 437, 449 (1998) (quoting *Southcenter Joint Venture v. Nat'l Democratic Policy Comm.*, 113 Wn.2d 413, 418 (1989)).

Judge Lanese's Order does not demonstrate the subject matter of that litigation and this Torrens application registration proceeding are the same. Nor does the Order demonstrate that these two cases involved the same causes of action, persons and same quality of persons (particularly with regard to an unbiased properly appointed, bonded, and qualified county examiner of titles) as those who would be involved in judicially resolving Schnarrs' Torrens application.

But more importantly, the Order does not demonstrate Schnarrs (or any person with an interest in land in Thurston county) could have actually sought and obtained title registration at any material time in Thurston

County, *i.e.* from 1983 (when the Schnarrs purchase their home) until December 22, 2017 (when this case was improperly dismissed).

Wilmington's failure to prove Schnarrs actually had the ability to bring a Torrens Act registration proceeding eviscerates its preclusion defenses. *See e.g. Schoeman v. N.Y. Life Ins. Co.*, 106 Wn. 2d 855, 860 (1986); *Landry v. Luscher*, 95 Wash. App. 779, 782-83 (1999) ("This theory of dismissal, variously referred to as *res judicata* or splitting causes of action, is based on the rationale that the relief sought in a subsequent action could have and should have been determined in a prior action." (internal quotation marks omitted) *Id.*, at 782-3. *See also Reninger v. Dep't of Corr.*, 134 Wn.2d 437, 449 (1998). (emphasis supplied)

With all due respect, the proceedings below indicate Thurston County officials and the superior court judges therein knew they were not in compliance with the Torrens Act and appear to have purposely resisted complying with that law by intentionally misconstruing RCW 65.12.110.

Schnarrs' Torrens Application was filed April 20, 2017. CP 8. RCW 65.15.110 required that it immediately be referred to a Thurston County Title Examiner, who met the requirements of RCW 95.15.090.

When Wilmington failed to respond to service by publication, Schnarrs promptly moved for a default judgement on June 14, 2017. CP 50. The Thurston County judges ignored that motion and the other

motions for a default judgment Schnarrs filed on: June 30, 2017 (CP 73), July 28, 2017 (CP 123), and August 17, 2017. CP 251. As they delayed Schnarrs Torrens proceeding, the judges also delayed dealing with the real issue before them, *i.e.* following the law just like other people are required to do.

After Schnarrs filed several motions to require his application be referred to a Thurston County Title Examiner, Wilmington's attorneys filed a notice of appearance on August 30, 2017 (CP 374-75).

The next day superior court judge Murphy denied the motion for a default judgment, stating in her order: "An examiner of titles has not been appointed under RCW 65.12.110 (Torrens Act), which may be mandatory even in a default situation."

Schnarrs agree the provisions of the Torrens Act apply even in situations where parties may default. The Schnarrs do not agree that RCW 65.12.110 requires the appointment of a Title Examiner. That statute presumes there is a title examiner in place when a Torrens application is filed and requires "[i]mmediately after the filing of the abstract of title, *the court shall enter an order referring the application to an examiner of titles, ...*" It was err for the judges of the superior court to violate clear provisions of the Torrens Act.

The evidence establishes the reason the court felt it had to appoint a Title Examiner was because there was no such official. But Thurston County superior judges never attempted to appoint, bond, and qualify a Title Examiner until April 2, 2018 in order to respond to the mandamus action being brought against them. This was almost a year after Schnarrs' Torrens application was filed and unlawfully ignored.

The Schnarrs maintain in this appeal that they, and all persons having interests in property in Thurston County, were effectively denied their rights to access the protections of the Torrens Act because county officials and superior court judges purposely refused to comply with their legal duties. Further, the Schnarrs maintain the most reasonable explanation for the court refusing to comply with state law appears to be supporting Thurston County's efforts to have the Torrens Act repealed so county officials did not have to accept chain of title responsibilities for evicting thousands of people who could have better protected themselves from MERS' secret liens if judges and county officials had complied with existing law.

C. Federal Due Process Arguments

Standard of Review. Constitutional challenges are questions of law subject to de novo review. *Amunrud v. Bd. of Appeals*, 158 Wn. 2d 208, 215, 143 P.3d 571, 574 (2006); *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004).

Under the federal due process clause, a governmental action that interferes with certain fundamental rights and liberty interests is subject to strict scrutiny. *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). Strict scrutiny requires that the infringement be narrowly tailored to serve a compelling state interest. *Id.* at 721. Governmental action that does not interfere with fundamental rights and liberty interests is subject to rational basis review. *Id.* at 728. See also *Am. Legion Post No. 149 v. Dep't of Health*, 164 Wn. 2d 570, 600 n.25, 192 P.3d 306, 321 (2008).

1. Schnarrs had a due process right to have Thurston county officials and the superior court judges thereof comply with the Torrens Act.

Washington enacted the Torrens Act in 1907 to provide persons with interests in land an alternative to Washington's recording system. The intention was that those persons who chose to do so could have their property interests in land registered and as a result be better protected from secret liens, hidden equities, and fraudulent filings. Ownership of interest in real property is a fundamental right protected by due process.

Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1015-16 (1992); Loretto v. Teleprompter Manhattan Catv Corp., 458 U.S. 419, 102 S. Ct. 3164 (1982)

Thurston County was obviously aware of its “chain of title” responsibilities under the Torrens Act when Schnarrs filed his registration application in April 2017 because the County had worked to repeal the statute during this period. And the superior court judges of that county, apparently in support of that effort, flat out refused to follow any aspect of that statute even though they were aware the legislature had refused to repeal this law in both 2017 and 2018. *See supra*.

The Due Process Clause has its origin in the Magna Carta. As originally drafted, the Great Charter provided that “[n]o freeman shall be taken, or imprisoned, or be disseised of his freehold, or liberties, or free customs, or be outlawed, or exiled, or any otherwise destroyed; nor will we not pass upon him, nor condemn him, but by lawful judgment of his peers, or *by the law of the land.*” Magna Carta, ch. 29, in 1 E. Coke, *The Second Part of the Institutes of the Laws of England* 45 (1797) (emphasis added).

In *United States v. Lee*, the Supreme Court forcefully expounded upon the fundamental character of the rule of law, and indicated that the

Due Process Clause contemplates government officials will follow the law. 106 U.S. 196, 220-21 (1882). According to the Court in *Lee*:

No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

Id. at 220.

Here, Thurston county officials and judges brazenly ignored their obligations under the Torrens Act to insure that the secret liens developed by MERS could not be successfully used to take people's homes without providing them appropriate notice along with a government investigated chain of title. Thurston county's refusal to follow this law has resulted in situation where people are dispossessed of their home and forced to the streets, where often they die - without ever obtaining the governmental chain of title analysis to which they are entitled by law.

There was no compelling reason for the Thurston county officials, or the judges who are state actors therein, to blatantly violate the Torrens Act. Indeed, the fact that the county officials and superior court judges did

not like the law, is not a constitutionally rational basis for disobeying it under our federal system.

The first question which must be asked in any procedural due process analysis is whether there exists a liberty or property interest of which a person has been deprived. If so, the second question which must be asked is whether the procedures followed by the State in depriving such liberty or property interest was constitutionally sufficient. *Swarthout v. Cooke*, 562 U.S. 216, 219-20 (2011)(per curiam). *See also Kentucky Dep't of Corrections v. Thompson*, 490 U.S. 454, 460 (1989).

Here, the Torrens Act creates a liberty and property interest to have interests in land registered in accordance with its provisions. The Schnarrs, and other persons having interests in land, have been prevented for at least the last six year from registering their property interests by Thurston county officials and judges systematically and corruptly refusing to comply with the statute at the same time they worked to repeal it.

As there is no doubt the Torrens Act continues to exist for the benefit of those who wish to use it (notwithstanding county officials and judges concerted efforts to repeal the law) the next part of the federal due process analysis is whether the procedure followed by the County in depriving the Schnarrs access to the protections afforded by this law was constitutionally appropriate. It obviously was not because the purpose of

these officials appears to have been repeal the law and thereby absolve themselves of those responsibilities that law imposes upon them.

2, The proceedings below violated Schnarrs right to due process because they were not fair and were not conducted by a fair tribunal.

Under the Federal Constitution "[a] fair trial in a fair tribunal is a basic requirement of due process." Rippo v Baker, 137 S. Ct. 905 (2017); Williams v. Pennsylvania, 136 S. Ct. 1899 (2016); Aetna Life Ins. Co. v Lavoie, 475 U.S. 813 (1986); Gibson v. Berryhill, 411 U.S. 564, 578-79, 93 S. Ct. 1689, 1697-98 (1973); Ward v. Monroeville, 409 U.S. 57, 93 S. Ct. 80 (1972); In re Murchison, 349 U.S. 133, 136 (1955); Tumey v Ohio, (1927). A tribunal is not fair when judges are deciding cases in which they have a direct interest related to a litigant or outcome. *Id.* See also Hurles v. Ryan, 752 F.3d 768, 788 (9th Cir. 2014); Echavarria v. Filson, Nos. 15-99001, 17-15560, 2018 U.S. App. LEXIS 20668 (9th Cir. July 25, 2018).

Here, the judges had a sufficiently direct interest against foreclosure victims, like Schnarrs, that they purposely refused to comply with the Torrens Act which likely would have benefited homeowners in their fight against secret liens, hidden equities, and the filing of fraudulent documents.

The Federal Due Process Clause is implemented by objective standards that do not require proof of actual bias. "In defining these

standards the Court has asked whether, 'under a realistic appraisal of psychological tendencies and human weakness,' the interest 'poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.'" Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 883-84 (2009); (quoting Withrow v. Larkin, 421 U.S. 35, 47 (1975)) (internal citations omitted).

This test requires only a showing of an undue risk of bias, based on the psychological temptations affecting an "average judge." To put it simply and in the words of the Supreme Court: "The Constitution requires recusal where 'the probability of actual bias on the part of the judge or decision maker is too high to be constitutionally tolerable.'" Withrow v. Larkin, 421 U.S. 35, 47, 95 S. Ct. 1456, 1464, 43 L. Ed. 2d 712 (1975).

Here, the probability of the actual bias is too high to be constitutionally tolerable with regard to whether the judges (1) complied with the Torrens Act and (2) if not, had an appropriate - non corrupt - basis for doing so.

V. CONCLUSION

Frankie Schnarrs, a deceased Vietnam veteran scarred with PTSD acquired in the service of his country, and his widow Cherri Schnarrs request the decision of the Superior Court dismissing their Torrens action

be reversed and that any further proceedings in this case be handled by a judge that has not violated the provisions of the Torrens Act.

Dated this 8th day of October, 2018.

s/Scott E. Stafne
Attorney for Plaintiff, # 6964
239 N. Olympic Avenue
Arlington, WA 98223
(360) 403-8700

CERTIFICATE OF SERVICE

I, LeeAnn Halpin, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1. I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

2. That on the 8th day of October 2018, I caused to be served by electronic service a true and correct copy of APPELLANT'S OPENING BRIEF by causing it to be delivered by notification through the Washington State Court of Appeals appellant e-filing system upon Anne T. Marshall and Barbara L. Bollero, the attorneys for Respondent "WILMINGTON SAVINGS FUND SOCIETY, FSB, D/B/A CHRISTIANA TRUST, NOT INDIVIDUALLY BUT AS TRUSTEE FOR PREMIUM MORTGAGE ACQUISITION TRUST, its successors and/or assigns".

3. That on the 8th day of October 2018 I emailed a copy Appellant's Opening Brief to Jane Futterman, the Deputy Thurston County Attorney who is representing the Thurston County Superior Court Judges in the still ongoing special proceedings before the Washington Supreme Court in *Schnarrs v Murphy*, Supreme Court No. 95545-0. I also mailed by U.S. Postal Service Certified Mail a copy of this Opening Brief to Ms. Futterman at the office of the Thurston County Prosecutor at:

**Deputy Thurston County Attorney
Jane Futterman
2000 Lakeridge Dr S.W.
Building 2
Olympia, WA 98502**

4. That on the 8th day of October 2018 I emailed a copy Appellant's Opening Brief to Deputy Washington Attorney Generals Susie Giles-Klein and Heather Wulf, who have been involved in other Torrens Act related lawsuits a copy of Appellant's Opening Brief at SusieG@atg.wa.gov and

HeatherW2@atg.wa.gov respectively. Because of the constitutional issues raised I also served a copy of Appellant's Opening Brief by U.S. Postal Service Certified Mail on the Washington Attorney General at the following address:

**Attorney General Bob Ferguson
Office of the Attorney General
1125 Washington St SE
PO Box 40100
Olympia, WA 98504-0100**

I also made arrangements to have the Washington Attorney General personally served with this document on October 8, 2018.

DATED this 8th day of October, 2018 at Arlington, Washington.



BY:

LeeAnn Halpin, Paralegal
STAFNE LAW
Advocacy & Consulting

STAFNE LAW ADVOCACY & CONSULTING

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