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Division II  
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**NO. 51426-5-II**

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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**FEDERAL NATIONAL MORTGAGE ASSOCIATION,**

**Appellant,**

**v.**

**RORY SKINNER, ROSEMARIE SKINNER,  
OCCUPANTS OF SUBJECT LOT 6 REAL PROPERTY;  
and DOES 1-10,**

**Respondents.**

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**BRIEF OF RESPONDENTS**

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## I. INTRODUCTION

Defendants Rory and Rosemarie Skinner (the “Skinners”) purchased a duplex located at 231/241 Blass Ave. SE in Tumwater, Washington in 2006. They signed documents for the property’s purchase, received a title commitment, used professional realtors to negotiate the purchase price, an escrow company to close the sale, took possession, made monthly mortgage payments, and rented the property to tenants for nearly 10 years. All the preliminary documents, title commitment, and closing documents stated that the Skinners were purchasing the duplex located at 231/241 Blass Ave SE. However, at some point in the closing process, the legal description of the property recorded in the transaction related to the duplex next door, located at 211/221 Blass Ave. SE. The Skinners had no warning of any defect in the legal description; they had not received any notices giving rise to a problem, no loan default notices, nor any other indication that there was a problem.

In September of 2016, the Skinners hired counsel to resolve an issue with the City of Tumwater regarding alleged code violations on the adjacent duplex which had been abandoned by separate ownership, believing the City had simply confused ownership of the two properties. On October 31, 2016, Plaintiff Federal National Mortgage Association (“FNMA”) commenced this action for quiet title and ejectment against the Skinners for

the 231/241 Blass Ave. SE property. Again, the Skinners believed FNMA was asserting claims against the incorrect property address and asked their counsel to resolve the mix-up. They believed the matters were being resolved on their behalf and that their attorney was defending their interest in 231/241 Blass Ave. SE. They still had tenants paying rent, were maintaining the property, and paying their mortgage.

Unbeknownst to the Skinners, FNMA filed a Motion for Summary Judgment on their Complaint on July 25, 2017. The Skinners' counsel did not appear, respond or defend against the motion, no evidence was presented, nor did he even communicate to the Skinners that a motion had been filed. On August 25, 2017, the Court entered a Judgment on the Complaint. The Skinners subsequently learned that there was an error in their legal description when, in October 2017, a notice from the City of Tumwater informed them that a judgment had determined that they owned the adjacent parcel, not the one they thought they owned. They also learned that their tenants were being evicted.

The Skinners immediately sought new counsel, who filed the motion to vacate judgment which is the subject of this appeal. At the hearing on January 5, 2018, the trial court granted the Skinners' requested relief on all grounds the Skinners presented after construing CR 60(b) in the context of CR 1. The Court found that the multitude of miscarriages of

justice that had occurred throughout the case warranted vacating summary judgment and proceeding on the merits. FNMA appeals that decision and contends the trial court abused its discretion in vacating the August 25, 2017 Judgment.

An abuse of discretion requires a finding that no reasonable person would have reached the same decision of the court. *In re Marriage of Burkey*, 36 Wn. App. 487, 489, 675 P.2d 619 (1984). Upon review of the inequities, mistakes, and extraordinary circumstances that preceded the August 25, 2017, Judgment, that is simply not the case here. The Skinners respectfully request that this Court affirm the Trial Court's decision and allow the case to proceed to trial on the merits.

## **II. ASSIGNMENTS OF ERROR**

Respondents do not assign error to the trial court's judgment.

## **III. STATEMENT OF THE CASE**

This matter arises out of two transactions in November 2006 involving the sale of two adjacent duplexes by Curtis Bidwell and Kristi Bidwell. The Bidwells sold the property commonly known as 211/221 Blass Ave. SE to Craig Baldwin and Wendy Baldwin. CP 9, 10, 409. The Bidwells sold the property commonly known as 231/241 Blass Ave. SE to Rory Skinner and Rosemarie Skinner. CP 10, 409. The Real Estate Purchase and Sale Agreement between the Bidwells and the Skinners listed

the property being sold as 231/241 Blass Ave. SE. CP *Id.* at para. 5, Ex. 1. The Title Commitment, Schedule B, Special Exceptions, identifies the property address as “231 & 241 Blass Avenue, SE, Tumwater, WA 98501.” CP *Id.*, Ex. 6. Upon closing of the sale on or about November 9, 2006, the Skinners took possession of the 231/241 Blass Ave. SE property.

Similarly, the Real Estate Purchase and Sale Agreement between the Bidwells and the Baldwins listed the property being sold to them as 211/221 Blass Ave. SE. CP 410. The Baldwins took possession of the 211/221 Blass Ave. SE duplex at approximately the same time. CP 409.

Unfortunately, due to negligent mutual mistake, scrivener’s error, or an inadvertent mistake in reducing the deeds to writing, and/or errors and omissions on the part of the sellers, the real estate agents, the lender, and/or Stewart Title Company, the closing agent, the lot legal descriptions for the respective properties were mixed up. CP 409-410. Thus, the Statutory Warranty deed on the Skinners’ transaction conveyed 211/221 Blass Ave. SE to the Skinners even though the Skinners agreed to purchase and take possession of 231/241 Blass Ave. CP 305-306, 328. The reverse occurred with the Baldwin’s Statutory Warranty Deed; it conveyed the 231/241 Blass Ave. SE property even though the Baldwins believed they were purchasing and took possession of 211/221 Blass Ave. SE. CP 305-306, 335.

For many years, both the Skinners and Baldwins owned and operated the property that each had bargained for separately and without any reason to discover the recording errors. The Baldwins subsequently defaulted on their Deed of Trust and FNMA took ownership of 231/241 Blass Ave. SE, the property which the Skinners believed they purchased, following a trustee sale on or about May 24, 2013. CP 12, 80-81, 207, 285-287, 410-411. The Skinners were given no notice of the foreclosure proceedings on 231/241 Blass Ave. SE. CP 410. The Skinners, who were in possession of 231/241 Blass Ave. SE, never received the Notice of Default nor notice of the Notice of Trustee Sale held on May 24, 2013, because the Notices were posted on 211/221 Blass Ave. SE, which matched the address the foreclosing entity, Green Tree Servicing, LLC (now Ditech Financial, LL) had as the Baldwin-owned property. CP 410, and *see* Appellant's Brief at 20. FNMA apparently believed they had purchased 211/221 Blass Ave. SE at the time of the foreclosure because all of the notices pertaining to the sale referenced that address.

The Skinners first learned of a paperwork discrepancy with 211/221 Blass Ave. SE property when the City of Tumwater contacted them about that property and the need for abatement in April 2016. CP 410. The Skinners believed the City was merely mistaken and that they would sort this out. CP *Id.* Plaintiff commenced this action for quiet title and

ejectment on October 31, 2016. CP 8-81. The Skinners were not personally served with the lawsuit; instead, their attorney accepted service on the Skinners' behalf without their knowledge. CP 411. On July 24, 2017, FNMA served the Skinners' attorney and filed a Motion for Summary Judgment on their Complaint. CP 494, 514, 523. Defendants' former counsel did not respond or defend against the motion, nor did he communicate to the Skinners that a motion had been filed. CP 411-412. At the hearing on the Motion for Summary Judgment, the Defendant's former counsel failed to show up. CP 296-300, 412. On August 25, 2017, the Court entered essentially a Default Judgment on the Complaint quieting title in favor of FNMA and ejectment of the Skinners from the property located at 231/241 Blass Ave. SE. CP 412.

The Skinners did not learn of the Judgment until October 16, 2017, almost two months later, when they received a notice from the City of Tumwater. CP 412. Upon learning of the judgment, the Skinners hired new counsel. A Notice of Withdrawal and Substitution of Attorney was filed on November 15, 2017. CP 301-302. On December 13, 2017, Skinners' counsel filed the Motion to Vacate the Judgment. CP 389-404.

The trial court granted the Motion to Vacate the Judgment at the hearing on January 5, 2018, citing as the basis each of the arguments made by the Skinners in the Motion to Vacate Judgment and construing the

application of CR 60(b) to comply with CR 1. CP 554-556, Verbatim Report of Proceedings, January 5, 2018, at 3-5.

#### IV. ARGUMENT

##### Abuse of Discretion Standard

Discretion involves a weighing of competing points of view. *John Doe v. Blood Center*, 117 Wn.2d 772, 780, 783, 819 P.2d 370 (1991) (exercise of discretion involves identifying and weighing "the respective interests of the parties in litigation"); *State of Washington ex. rel. Clark v. Hogan*, 49 Wn.2d 457, 462, 303 P.2d 290 (1956). ("Although it cannot be defined by a hard and fast rule, [judicial discretion] means a sound judgment which is not exercised arbitrarily, but with regard to what is right and equitable under the circumstances and the law, and which is directed by the reasoning conscience of the judge to a just result.") A court's primary concern is whether that decision is just and equitable. *Rush v. Blackburn*, 190 Wn. App. 945, 957, 361 P.3d 217, 222 (2015). What is just and proper must be determined by the facts of each case, not by a hard and fast rule applicable to all situations regardless of the outcome. *Id.*

A trial court's decision to vacate a judgment under CR 60(b) is reviewed for abuse of discretion. *Haller v. Wallis*, 89 Wn. 2d 539, 543, 573 P.2d 1302 (1978). "A motion to vacate a judgment is to be considered and decided by the trial court in the exercise of its discretion, and its decision

should be overturned on appeal only if it plainly appears that it has abused that discretion." *State v. Quintero-Morelos*, 133 Wn. App. 591, 596, 137 P.3d 114 (2006) (quoting *Haller v. Wallis*, 89 Wn.2d 539, 543, 573 P.2d 1302 (1978)). Discretion is abused when the court bases its decision on unreasonable or untenable grounds. *Luckett v. Boeing Co.*, 98 Wn. App. 307, 309, 989 P.2d 1144 (1999).

A decision is unreasonable if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). An abuse of discretion requires a finding that no reasonable person would have reached the same decision of the court. *In re Marriage of Burkey*, 36 Wn. App. 487, 489, 675 P.2d 619 (1984). An appellate court will not overturn a trial court's decision on a motion to vacate a judgment for excusable neglect unless it plainly appears that the trial court abused its discretion. *Scanlon v. Witrak*, 110 Wn. App. 682, 686, 42 P.3d 447 (2002).

Appellant argues that the Trial Court abused its discretion when it vacated the Judgment previously entered in this matter on August 25, 2017, pursuant to CR 60(b)(1), (5), and (11). As the Trial Court noted in its January 5, 2018, Order Vacating Judgment, CR 1 requires that all other Court Rules be construed "to secure the **just**, speedy, and inexpensive determination of every action." [Emphasis added.] The Trial Court

properly exercised its discretion when, after considering the facts and circumstances of this case, it vacated the prior Judgment so that the dispute could be justly and equitably decided on the merits.

**A. The Trial Court did not abuse its discretion when it granted Skinnners’ Motion to Vacate the Judgment pursuant to CR 60(b)(1).**

Judge Lanese properly exercised discretion by vacating the August 25, 2017, Judgment for FNMA pursuant to CR 60(b)(1). CR 60(b)(1) provides a party relief from a Judgment or Order due to “Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order.” *See* CR 60(b)(1). A party seeking relief from judgment under CR 60(b)(1) must show (1) substantial evidence supporting a prima facie defense; (2) the failure to appear and answer was due to mistake, inadvertence, surprise, or excusable neglect; (3) the defendant acted with due diligence after learning of the judgment; and (4) plaintiff will not suffer substantial hardship if judgment is vacated. *Ha v. Signal Electric, Inc.*, 182 Wn. App. 436, 448-449, 332 P.3d 991 (2014). “Factors (1) and (2) are primary; factors (3) and (4) are secondary.” *Id.* at 449. When rendering a decision on motion to vacate judgment at its discretion, the trial court should liberally and equitably exercise its authority so that the substantial rights of the parties are preserved and so that justice between the parties is “fairly and judiciously done.” *Id.*

“Abuse of discretion is less likely to be found if the default judgment is set aside.” *Id.*

In *Ha*, the Court further develops the factors a moving party must show to vacate judgment. Substantial evidence of a prima facie defense is established when the movant presents concrete facts and circumstances which, if believed by the court, would entitle the movant to relief. *Id.* The trial court must view evidence and draw reasonable inferences in the light most favorable to the moving party. *Id.* The non-moving party does not experience substantial prejudice when judgment is vacated merely because a trial on the merits delays resolution of the dispute. *Id.* at 455.

The above-referenced analysis provides guidance on when a trial court should exercise its discretion to vacate default judgment. In this case, FNMA has argued that since it was awarded summary judgment after its motion went wholly unopposed, the analysis to vacate under default judgments is inapplicable. In support of its position, FNMA cites the holdings from two cases, *Haller v. Wallis*, 89 Wn.2d 539, 573 P.2d 1302 (1978), and *Lane v. Brown & Haley*, 81 Wn. App. 102, 912 P.2d 1040 (1996). Appellant mistakenly construes the holdings of *Haller* and *Lane* by incorrectly suggesting that in any case where judgement other than a default judgment is rendered, judgments may only be set aside for fraud or mutual mistake.

In *Haller v. Wallis*, Appellant sought relief from a settlement that her attorney agreed to over her objections. *Haller* at 540, 542. The *Haller* court distinguished the equities at play in consent judgments like settlements versus default judgments. *Id.* at 544. Where a consent judgment was entered, each party has had the merits of their claim examined, usually with counsel, and agreed upon the disposition of the controversy. *Id.* In a default judgment, the defaulting party has had no representation and no hearing, and thus should be reviewed more leniently than a judgment denying trial on the merits. *Id.* at 543-544. The client in *Haller* was advised at all times of the proposed settlement and her objections were brought to the trial court's attention. *Id.* at 540-41. As such, *Haller* held that consent judgments may not be set aside for excusable neglect—only for fraud, mutual mistake, or when consent was not in fact given. *Id.* at 544. The *Haller* court, however, also noted “... that consent by an attorney contrary to his client's instructions may be ground for vacating such a judgment...” *Id.* at 545.

Appellant then looks to the *Lane* analysis to extend the *Haller* decision to summary judgments. However, in *Lane*, the Lane’s attorney appeared on their behalf and argued the case in a fully adversarial setting where the case’s merits were fully addressed. *Lane* at 108. The *Lane* Court found summary judgment appropriate under the *Haller* analysis

because “the judgment here was entered after full resolution of the controversy on its merits,” and thus attorney mistake or negligence was not an equitable basis for relief. *Id.* at 109.

In this case, FNMA’s reliance on the *Haller* ruling as extended to summary judgment under the *Lane* analysis is misplaced. In *Haller* and *Lane*, the Courts reiterate that the law favors a judgment on the merits. *Lane* is distinguishable as a judgment on the merits, because in *Lane*, defense counsel actually responded to, appeared and argued the motion. In this case, the Skinners’ prior counsel failed to respond to FNMA’s Motion for Summary Judgment, failed to appear at the hearing, failed to argue the motion, and failed to notify the Skinners’ that he was taking no action to defend their rights in the property even after they requested he do so. The analysis in *Haller* and *Lane* support finality in judgment after equitable evaluation of the merits; their holdings were not intended to strictly bar a Court from exercising its discretion to justly vacate judgment under CR 60(b)(1) while completely ignoring the context by which judgment was obtained. “What is just and proper must be determined by the face of each case, not by a hard and fast rule applicable to all situations regardless of the outcome.” *Ha* at 453 (*citing Akhavuz v. Moody*, 178 Wn. App. 526, 534-35, 315 P.3d 572 (2013)). Unopposed summary judgment, as

occurred here, is much closer to a default and it is certainly not a decision on the merits.

When evaluating the facts of this case under the *Ha* analysis, it is evident that vacating summary judgment was a prudent exercise of the trial court's discretion to equitably and justly resolve this case on the merits. First, the Skinner's presented prima facie evidence of defenses in their Motion to Vacate which provide a decisive issue for the finder of fact to evaluate in a trial on the merits. Respondents challenged the legitimacy of the foreclosure sale in which all notice was delivered to 211/221 Blass Ave. SE and of which they had no knowledge prior to April 2016 to lawfully extinguish their ownership interests in 231/241 Blass Ave. SE. Whether or not Respondents' defenses will ultimately succeed at trial is not important in this analysis, and this Court should not engage in a mini trial on the merits of the defense. Rather, the consideration here is whether or not such a defense, prima facie and in the light most favorable to the moving party, present an issue of fact.

As to the second factor, the Skinners argued facts supporting that their failure to defend their rights at the summary judgment stage was due to mistake or excusable neglect. Upon learning of the summary judgment on October 21, 2017, the Skinners quickly retained new counsel and submitted their Motion to Vacate within two months and well before the one-year time

bar provided for under the law. Finally, as the *Ha* Court explained, a plaintiff does not suffer substantial prejudice merely because the resulting trial would delay resolution on the merits. As the Skinners properly submitted evidence to the trial court in support of all four factors required to vacate a judgment under CR 60(b)(1), the trial court was well within its discretion to vacate judgment and allow the case to proceed on the merits.

**B. The Trial Court did not abuse its discretion when it granted Skinners' Motion to Vacate the Judgment pursuant to CR 60(b)(11).**

While well within the Trial Court's discretion to vacate summary judgment in this case under CR 60(b)(1), the Court also properly vacated judgment under CR (60)(b)(11). CR 60(b)(11) authorizes relief from judgment when there exists "any other reason justifying relief from the operation of the judgment." *See* CR 60(b)(11). "This is a catch-all provision intended to serve the ends of justice in extreme, unexpected situation and when no other subsection of CR 60(b) applies." *Shandola v. Henry*, 198 Wn. App. 889, 895, 396 P.3d 395 (2017) (*citing State v. Ward*, 125 Wn. App. 374, 379, 104 P.3d 751 (2005)). While the finality of judgments is important, some situations justify an exemption to the "doctrine of finality." *Flannagan v. Flannagan*, 42 Wn. App. 214, 215, 709 P.2d 1247 (1985). The United States Supreme Court has held that CR 60(b)(11) vests in courts the authority enabling them to vacate judgments

“whenever such action is appropriate to accomplish justice.” *Id.* at 221. The Court should vacate judgment where the facts support “extraordinary circumstances involving irregularities extraneous to the proceeding.” *Shandola* at 895 (citing *Union Bank, NA v. Vanderhock Assocs.*, 191 Wn. App. 836, 845, 365 P.3d 223 (2015)).

In *Flannagan*, the Court affirmed the reopening of a divorce case that was resolved prior to the passage of a new law by the United States Congress that retroactively impacted a spouse’s claim to a military pension. *See Flannagan* at 224-225. In *Shandola*, that Court granted a prisoner’s motion to vacate judgment against him for attorneys’ fees after the anti-SLAPP statute was ruled unconstitutional. *See Shandola* at 904-905. In both, the Courts engaged in analysis of extraneous circumstances unrelated to the procedural history of the cases in rendering the conclusion that trial was further evaluation of the parties’ respective claims was warranted on the merits. *See Flannagan* at 222, and *see Shandola* at 904-905. After analyzing the extraordinary circumstances extraneous to the proceedings of this case, it is clear that the Trial Court’s decision to vacate summary judgment here was appropriate under CR 60(b)(11).

First, the Skinner’s presented evidence that notice pertaining to the foreclosure sale of their property was never provided to them and improperly served at the address all parties believed to be, at that time, the

property upon which the Baldwin's had defaulted. Only after discovering that the Statutory Warranty Deed inaccurately reflected ownership of the Skinner's property and not the foreclosed upon property did FNMA initiate these proceedings over three years after purchasing the property. The Skinner's, having owned, possessed, and maintained their own property for over 12 years at that point, were reasonable to presume that the appropriate relief was to correct the recording error on the Warranty Deeds between the properties. The Skinners never considered termination of their ownership interest in the property they had agreed to purchase from the Bidwells and hired an attorney to defend their rights in the 231/241 Blass Ave. SE property.

The record is clear that Respondents' former counsel failed to respond to the motion for summary judgment, attend the hearing, or defend their rights in any capacity. This abdication of his responsibilities as their attorney resulted in an inequitable granting of summary judgment not decided on the merits. There is no basis for attributing the attorney's "acts" to the client when the agency relationship has disintegrated to the point where as a practical matter there is no representation." *Barr v. MacGugan*, 119 Wn. App. 43, 48, 78 P.3d 660, 663 (2003); *see also Graves v. P.J. Taggares Co.*, 25 Wn. App. 118, 119, 125, 605 P.2d 348 (1980), *aff'd*, 94 Wn.2d at 306, 616 P.2d 1223. The *Graves* court held that "no client should

be at the mercy of his attorney, who, without the authority or knowledge of his client stipulates away such a right directly contrary to the client's interest, as was done in the case at bench. If there is substantial doubt, the client's interest should be protected.” *Id.* at 125. The *Graves* court distinguished *Haller* on this basis. *Id.* at 122–24.

Further, the record indicates that Respondents may have grounds to challenge the legitimacy of the summary judgment proceeding under lack of personal jurisdiction, as there is no record that the Skinners were ever personally served with the Summons and Complaint in this lawsuit. CP 411. Respondents may raise the issue of jurisdiction at any time. While the Declarations of Service filed herein state that personal service was made on “David Britton, Attorney Authorized to Accept,” such declarations never indicate that Mr. Britton did in fact agree to accept service on behalf of his clients or that he had consent to waive his clients’ rights to original service of process. CP 85-87. To the contrary, Mrs. Skinner declares that “[a]pparently, Mr. Britton accepts service of the lawsuit as we were never served.” CP 411. These factors, coupled together with the inequity of granting FNMA ownership interest of 231/241, which they did not understand they were purchasing at the time of foreclosure, present ample extraordinary circumstances extraneous from the proceedings which support the Trial Court’s discretion in vacating summary judgment.

**C. The Trial Court did not abuse its discretion when it granted Skinners' Motion to Vacate the Judgment pursuant to CR 60(b)(5).**

The Trial Court also properly vacated summary judgment under CR 60(b)(5). CR 60(b)(5) requires relief from judgment where “the judgment is void.” *See* CR 60(b)(5). Appellant’s award of summary judgment here is void under this rule for two reasons. First, the trustee sale upon which FNMA acquired ownership of the Skinner’s property was improperly performed. Second, summary judgment was procedurally void because the trial court lacked personal jurisdiction over defendants due to improper service of process.

Appellant’s arguments that the sale was valid as executed and that defendants’ right to challenge the sale is time-barred misstate both the law and facts of this case. In 2013, after the Baldwin’s defaulted in payments, Green Tree Servicing, LLC (now Ditech Financial, LLC), initiated foreclosure proceedings against the property it believed it had financed for the Baldwins, 211/221 Blass Ave. SE. All foreclosure documentation indicated that the property address was 211/221 Blass Ave. SE, and the Notice of Default and Notice of Sale were improperly addressed to that property. The Skinners received no notice whatsoever of the foreclosure proceedings and had no reason to suspect that their ownership interests in

211/221 Blass Ave. SE property, which derives entirely from an error in recording the properties at the time of sale, were implicated.

Appellant's cite RCW 61.24.127(2)(a) as a defense to Respondent's claim that the sale was improperly performed. RCW 61.24.127(1)(a) protects the rights of borrowers or grantors to bring a claim for damages in the event they failed to enjoin the original foreclosure proceeding. Subsection (2)(a) states that the claim "must be asserted or brought within two years from the date of the foreclosure sale or within the applicable statute of limitation for such claim, whichever expires earlier." However, this statute of limitation is inapplicable to the case at hand for two reasons. First, it is nonsensical to suggest that the statute of limitations started running in 2013 after the sale when, due to errors in the Trustee's notices, the Skinners had no notice of the sale and therefore no opportunity to enjoin the sale. As clearly established in the record, the earliest opportunity the Trial Court could determine that the Skinner's had notice of any issue concerning their ownership was when they learned of the recording mistake on the Statutory Warranty deeds at the commencement of this action in October 2016. Even if the Court found that they had constructive notice of the mistake in April 2016 after being contacted by the City of Tumwater to abate the conditions of 211/221 Blass Ave. SE, their Amended answer seeking to challenge the sale was timely filed no later than January 2018,

well within the two year time limit. Finally, the entire statute Appellant's cite is inapplicable to this case because RCW 61.24.127(3) states that "this section applies **only to foreclosures of owner-occupied residential real property.**" [Emphasis added.] It is a mutually agreed upon fact that the property was not occupied by the Skinners, but was instead rented to tenants. As such, this statute has no bearing on the matter before this Court and the Trial Court was proper to vacate a void judgment granted on the pretext that notice was properly served to perfect FNMA's ownership interest in the real property located at 231/241 Blass Ave. SE.

The judgment is also void because the record does not establish that the Trial Court had personal jurisdiction over the Skinners at the time it entered into summary judgment. As argued previously under the CR 60(b)(11) analysis above, the Skinners prior attorney did not have consent from his clients to accept service of the lawsuit and waive their original service of process. It is illogical to presume he had authority to waive original service of process on his clients' behalf when the Skinners' had no knowledge of the lawsuit as they were neither personally served nor informed by Mr. Britton that this lawsuit had been commenced by FNMA. Further, while the declarations of the process server declare prior counsel as an "Attorney Authorized to Accept," there are no facts in the record that confirm Mr. Britton did in fact make that representation to the process

server. It is customary for an attorney to execute an Acceptance of Service at the time the lawsuit is served, and no such evidence of acceptance exists in the court record. For both these reasons, the Trial Court properly exercised its discretion under CR 60(b)(5) to vacate summary judgment, engage in further fact finding to determine whether the case is procedurally barred and if not, to try the case on the merits.

**D. The Trial Court did not abuse its discretion by failing to award FNMA terms at the time it granted the Motion to Vacate Judgment.**

Finally, the fact that the Trial Court did not award terms to FNMA at the time it vacated summary judgment is not assignable error. Appellant's claim that they have suffered financial harm in the amount of \$15,095.00 as a result of reliance upon the issuance of the judgment in this action for attorneys' fees, legal costs, and \$8,000.00 FNMA expended to buy the Skinners' tenants out of the remainder of their tenancy. In support of its position, FNMA cites the holding in *Graves*, whose reasoning is not broadly disputed by Respondents. It must also be remembered that the Skinners are innocent parties whose tenants were evicted by FNMA.

However, the figures cited in Appellant's briefs are claims and are not yet supported in the record by any factual evidence demonstrating such amounts were expended. Appellants have not produced contracts evidencing that they entered into such agreements nor have they produced

receipts that indicate such amounts were already tendered by FNMA. Further, the facts in *Graves* are distinguishable from the facts at hand because, unlike in *Graves*, where the plaintiff suffered harm resulting from errors committed by the defendant's attorney, FNMA has not proven that mistake by the Skinner's counsel was the sole basis for vacating judgment. In addition, there were errors committed by several third parties throughout this process whose actions directly resulted in the confusion of ownership between Appellant and Respondents. The Trial Court properly exercised its discretion by considering the relative liability of all parties involved in this matter and evaluation of this case on the merits will provide the finder of fact ample opportunity to determine which party, if any, is responsible to reimburse FNMA for any financial harm incurred through reliance on the now vacated Judgment.

#### V. CONCLUSION

Under the applicable law and legal analysis, the Trial Court properly exercised its authority to vacate the August 25, 2017, Summary Judgment erroneously awarded to FNMA in this matter under CR 60(b)(1), (5), and (11), and did not err when failing to award terms to FNMA contemporaneously with vacating judgment. Respondents therefore respectfully request that this Court reject Appellant's arguments to restore summary judgment and remand this case to the Trial Court on the merits.

Respectfully submitted this 2<sup>nd</sup> day of July, 2018.

JACK W. HANEMANN, P.S.

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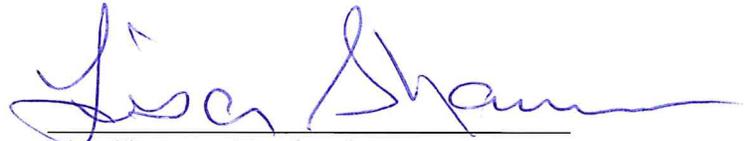
## CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2018, I electronically filed the foregoing BRIEF OF RESPONDENTS and this Certificate of Service, with the Clerk of the Court, using the Washington State Appellate Court's Portal for e-filing, and served copies on the following attorneys of record electronically on July 2, 2018:

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