

**FILED**  
**Court of Appeals**  
**Division II**  
**State of Washington**  
**11/7/2019 12:18 PM**  
No. 53743-5-II

DIVISION II, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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DANIEL G. SZMANIA  
Defendant/Appellant,

Vs.

WELLS FARGO BANK N.A., AS.  
TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3  
Plaintiff/Respondent.

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ON APPEAL FROM THE SUPERIOR COURT  
OF WASHINGTON FOR CLARK COUNTY  
The Honorable Bernard F. Veljacic  
No. 16-2-02606-4

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**APPELLANT'S OPENING BRIEF**

**ORAL ARGUMENTS REQUESTED**

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## I. INTRODUCTION

RAP 2.1 (a) (1) & RAP 2.2 (a) (1) is jurisdiction for this appeal. This is the second (2<sup>nd</sup>) appeal from this case. This Court Denied the recalling of the MANDATE in the FIRST APPEAL, Case No: 50523-1-II on August 27, 2019. Appellant therefore initiated a separate review under RAP 12.9 (a) also in his NOTICE OF APPEAL filed on August 23, 2019. The Superior Court of Washington for Clark County (Superior Court), made errors in its rulings on Daniel G. Szmania the Defendant/Appellant's, (Szmania) Motion for Damages at the 07/19/2019 and the 8/09/2019 hearing dates, (Hearings). *See* CP 41, CP 60, CP 62. The Plaintiff/Respondent, Wells Fargo Bank N.A., as Trustee for Bear Stearns ARM TRUST 2007-3, (Wells), is barred by the Res Judicata doctrine and precluded from seeking relief from Szmania's Damages claims based on the ruling from this Court on January 3, 2019. This Decision In the Court of Appeals of the State of Washington, Division II., No. 50523-1-II. **REVERSED** this Superior Court's ruling and Ruled the Defendant's Motion To Dismiss is valid due to Wells Fargo Improper Service. *See* CP 41 at page 5.

The case nucleolus is an illegal foreclosure by Wells on Szmania's home that was fully paid off since November 21, 2007.

## **II. STATEMENT OF RELIEF SOUGHT**

Szmania respectfully request relief under RAP 2.2 (a) (1), (3) and (13) that the orders listed in Szmania's Notice of Appeal CP 63 and CP 64, created by Szmania's Motion for Possession and Damages, June 13, 2019, CP 41. All be reviewed de novo by this Court and reversed based upon the Law of the State of Washington and the ruling from this Court that **REVERSED** Szmania's Motion To Dismiss, February 16, 2017, CP 14.(See January 3, 2019 Decision In the Court of Appeals of the State of Washington, Division II., No. 50523-1-II.) Szmania appeals from the issuance of these 2 orders:

- 1) PLAINTIFF'S ORDER ON DISMISSAL OF THE ACTION, August 09, 2019, CP 63.
- 2) PLAINTIFF'S ORDER ON DEFENDANT'S MOTION FOR POSSESSION AND DAMAGES, August 09, 2019, CP 64.

Szmania alleges errors in the above superior court rulings based upon the ruling of this Court and Washington Law.

Wells claims are further Barred by Res Judicata. The U.S. District Court Western District of Washington At Tacoma, Case No. 3:16-CV-05644 RBL, ruled this was ***“This is not a foreclosure case.”*** Dkt 64 page 2 at 14. Also Wells did not seek relief from my damages claims or possession claims in the Motion To Dismiss, CP 14 or the dismissal of the case on appeal in the Superior Court or in the Appellate Court briefings in Case No. 50523-1-II.. Therefore Wells can not seek relief based upon their illegal foreclosure action in which they never got a Declaratory ruling saying they had legal standing to collect or foreclose on Szmania’s home. This means Wells has NO legal standing in Szmania’s home or in this Case since this Court Ruled on January 3, 2019 in Case No. 50523-1-II. This ruling **REVERSED** the Superior Court’s ruling and ruled the Defendant’s Motion To Dismiss should have been granted for lack of proper service. This Court did NOT say dismiss without Damages and Possession given to Szmania. But Wells proceeded anyways? Thus Wells claims are barred from relitigating those claims under the doctrines of claim and issue preclusion or Res Judicata.

Well's claims are also Barred for Lack of Legal Standing since this Court ruled Szmania's Motion to Dismiss should have been granted in its January 3, 2019 ruling in Case No. 50523-1-II.. With the action dismissed, Wells never had personal Jurisdiction of the Defendant, Szmania as this Court noted on page 4 of its ruling. Wells claims are also Barred for Lack of Authorization to Legally Represent Wells Fargo Bank N.A. *See* CP 14 page 7, at 18-24 and CP 13 Ex M, Mr. Petiprin the lawyer who started this action is NOT a lawyer for Wells. Also in CP 13, Ex J the parent company of Bear Stearns, JP Morgan Chase, clearly states on page 7 of Ex J, that they had NOTHING to due with Szmania's loan. This is prima fascia evidence that Wells has NO LEGAL STANDING to act on Bear Stearns behalf in this case! PERIOD!

**Szmania asks for a reversal of the following orders:**

- 1) PLAITIFF'S ORDER OF DISMISSAL OF THE ACTION, August 9, 2019, Dkt 63.
- 2) PLAITIFF'S ORDER ON DEFENDANT'S MOTION FOR POSSESSION AND DAMAGEES, August 9, 2019, Dkt 64.

**Szmania asks for Damages and Possession of the  
property known as:**

**17005 NE 164<sup>th</sup> Ave, Brush Prairie, WA 98606.**

**RCW 59.18.290**

***Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date.***

***(1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section may recover possession of the property or terminate the rental agreement and, in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees. (Emphases added!)***

See <https://app.leg.wa.gov/RCW/default.aspx?cite=59.18.290>

Since this Court's Ruling on January 3, 2019. This Decision In the Court of Appeals of the State of Washington, Division II., No. 50523-1-II. **REVERSED** this Superior Court's ruling and Ruled the Defendant's Motion To Dismiss is valid due to Wells Fargo Improper Service. See CP 41. Therefore by the above law, *Id.*, Wells does NOT have a valid court order and Szmania is entitled to Damages and Possession.

*"THE COURT: I understand. You can go ahead and take that -- you have the right to appeal that and that is your right. And I know I'm subject to the authority of the Court of Appeals, and I submit to that absolutely." See RP Volume I, Page 43 at 2 to 6.*

### III. ASSIGNMENT OF ERRORS

#### No. 1 NOT AWARDING POSSESSION

The lower court erred in not awarding POSSESSION that Szmania requested in his MOTION FOR POSSESSION AND DAMAGES CP 41 and the DECLARATION IN SUPPORT OF CP 40. RCW 59.18.290 (1) is clear. Szmania **“may recover possession of the property..”** (Emphases added!) Thus Szmania is an aggrieved party found in RAP 3.1.

#### No. 2 NOT AWARDING DAMAGES

The lower court erred in not awarding DAMAGES that Szmania requested in his MOTION FOR POSSESSION AND DAMAGES CP 41 and the DECLARATION IN SUPPORT OF CP 40. RCW 59.18.290 (1) is clear. Szmania **“in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney’s fees.”** (Emphases added!) Thus Szmania is an aggrieved party found in RAP 3.1.

**No. 3 Failure to State a Claim Upon Which Relief Can be Granted CR 12 (b) (6) & RES JUDICATA:**

The lower court erred in not allowing Szmania's POSSESSION and DAMAGES Claims Since this Court REVERSED Szmania's MOTION TO DISMISS in its January 3, 2019 Ruling in Division II., No. 50523-1-II. Wells is now in the position in the case for that any claims they make fall under the "umbrella" of: Failure to State a Claim Upon Which Relief Can be Granted in CR 12 (b) 6) and the doctrine of Res Judicata. With Szmania's MOTION TO DISMISS now granted by this Court. Wells is with out proper standing after said Reversal. Wells has no legal course of action to bring a case or claims back to the Superior Court Case or its jurisdiction and venue. Wells did not plead for a Motion to Dismiss in the Superior Court or this Court. Therefore their claims are further Barred by the legal doctrines of claim and issue preclusion, and Res Judicata and Collateral Estoppel. As attorneys, they are fully aware they can **NOT** relitigate claims and issues they lost or didn't bring up or preserve in the Superior Court and this Court of Appeals previously.

#### No. 4 The Superior Court Abused its Discretion

Being that the Superior Court receives the Instant Case back on this Courts MANDATE, February 14, 2019, CP 38 in order for the Superior Court to apply this Courts Ruling of January 3, 2019 Ruling in Division II., No. 50523-1-II. In which this Court said:

See CP 38 Decision at:

Page 1, “Because Wells Fargo failed to comply with the alternative service statute and the trial court’s order for alternative service, we reverse.” (Emphases added!)

Page 4, “We agree that Wells Fargo failed to comply with the alternative service statute, and the superior court’s order based on that statute, by failing to mail a copy of the summons and complaint by certified mail.” And “Scanlan v. Townsend, 181 Wn.2d 838, 847, 336 P.3d 1155 (2014). Proper service of the summons and complaint is essential to invoke personal jurisdiction over the defendant. Id.” (Emphases added!)

Page 5 “As a result, we reverse the superior court’s denial of Szmania’s motion to dismiss.” (Emphases added!)

Page 10 “We reversed based on Wells Fargo’s improper service of process.” (Emphases added!)

See <http://www.courts.wa.gov/opinions/pdf/D2%2050523-1-II%20Unpublished%20Opinion.pdf>

The Superior Court issuing orders outside of a “view that Szmania’s Motion to Dismiss” was granted was totally inappropriate, rogue, unethical and criminal! If a justice is NOT going to follow the law and the oath they took, than they should NOT be on the bench! PERIOD! This is the SECOND time Judge Veljacic has totally disregarded the law! That in it’s self is totally inappropriate and unacceptable!

Szmania asks this Court to award Possession and Damages and not waste time and money of the parties or the Courts be doing another remand. Szmania has legal relief also in RCW 59.18.380 since proper service was NOT done per this Court ruling! The Superior Court failed issue orders resending the default and writ of restitution and to send the case to trail. No trail on the merits was held to resolve issues in this case.

*“If it appears to the court that the plaintiff should not be restored to possession of the property, the court shall deny plaintiff’s motion for a writ of restitution and enter an order directing the parties to proceed to trial within thirty days on the complaint and answer.” See <https://app.leg.wa.gov/RCW/default.aspx?cite=59.18.380>*

Also Szmania is entitled to relief under CR 55 (c) and CR

IV. **ISSUES PERTAINING TO  
ASSIGNMENTS OF ERRORS**

No. 1 **NOT AWARDING POSSESSION**

The January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, Szmania is entitled to POSSESSION that the law provides in RCW 59.18.290 (1) "**may recover possession of the property..**" (Emphases added!)

**No. 2 NOT AWARDING DAMAGES**

The January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, Szmania is entitled to DAMAGES that the law provides in RCW 59.18.290 (1) "*in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.*" (Emphases added!)

*"And if" "the right to possession ceases to be at issue at any time between the commencement of an unlawful detainer action and trial of that action," "the unlawful detainer action "may be converted into an ordinary civil suit for damages.""* Munden. 105 Wn.2d at 45-46. (Full Citation) Munden v. Hazelrigg. 105 Wn.2d 39, 45, 711 P.2d 295 (1985).

The Munden court shows us that Szmania's Motion for Possession and Damages CP 41 was correct and proper, yet the Superior Court ignored this vital fact!

**No. 3 Failure to State a Claim Upon Which Relief Can be Granted CR 12 (b) (6) & RES JUDICATA:**

The January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, Wells is now in the position in the case for that any claims Wells make fall under the "umbrella" of: Failure to State a Claim Upon Which Relief Can be Granted in CR 12 (b) 6) and the doctrine of Res Judicata. With Szmania's MOTION TO DISMISS now granted by this Court. Wells is with out proper standing after said Reversal. Wells has no legal course of action to bring a case or claims back to the Superior Court or its jurisdiction and venue. Wells did not plead for a Motion to Dismiss in the Superior Court or this Court. Therefore their claims are further Barred by the legal doctrines of claim and issue preclusion, and Res Judicata and Collateral Estoppel.

As attorneys, they are fully aware they can **NOT** relitigate claims and issues they lost or didn't bring up or preserve in the Superior Court and this Court previously. And **Res Judicata:**

Washington State Division II Court of Appeals ruling. *“On January 19, 2007, Countrywide purchased the loan from E-Loan; this purchase included the adjustable rate note, the deed of trust, and the right to service the loan. Countrywide subsequently pooled and securitized the loan, **thus passing title to the loan to EMC Mortgage.**”* (Emphases added!). See *Szmania v. Countrywide Homes Loans, Inc.*, 160 Wn. App. 1002 (2011).

#### **No. 4 The Superior Court Abused it's Discretion**

The January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, it is only proper and correct for the prevailing party, Szmania to be granted both POSSESSION and DAMAGES the law allows in RCW 59.18.290 (1). The Superior Court abused it's discretion by not awarding Szmania Possession and Damages for the unlawful eviction by Wells.

**V. STATEMENT OF THE CASE**

- (a) **History of Primary State Case** *See Szmania Brief dated December 11, 2017; Case No. 50523-1-II pages 12-13. (In order of not being repetitive.)*
- (b) **History of Instant State Case that is on Appeal** *See Szmania Brief dated December 11, 2017; Case No. 50523-1-II pages 14-17. (In order of not being repetitive.)*
- (c) **To see a wider detailed history, See MOTION FOR POSSESSION AND DAMAGES, CP 41, section II. FACTS, pages 2-5. (In order of not being repetitive.)**

**(d) TIME LINE THIS SECOND APPEAL**

On December 22, 2016 Plaintiff/Respondent filed this lawsuit that is on appeal for the second time in  
THE SUPERIOR COURT  
OF WASHINGTON FOR CLARK COUNTY  
The Honorable Bernard F. Veljacic  
No. 16-2-02606-4, (*See Dkt 1, Dkt 2, Dkt 3*).

On February 16, 2017 Defendant/Appellant, filed his Motion to Dismiss. (MTD) *See Dkt 14*.

On April 28, 2017 this Court heard arguments on Defendants MTD. *See Dkt 17*.

On May 26, 2017 this Court entered: Findings *See Dkt 19 & 20*, Order Denying Motion to Dismiss, *See Dkt 21*, Default Judgment *See Dkt 22*, and Order for Writ of Restitution *See Dkt 23* and Writ of Restitution Issued *See Dkt 24*.

On July 5, 2017 Clark County Sheriff's Office Executed Writ of Restitution on Defendant/Appellant and forced him, his family, his roommates and business to fully move out of his **fully paid off home** after 16 years being in residence there.

On June 23, 2017 Defendant/Appellant Filed Appeal to the Washington Court of Appeals, Dkt 25- 27. Division II, No. 50523-1-II

On January 3, 2019 Ruling in Division II, No. 50523-1-II. This Granted Szmania's MOTION TO DISMISS CP 14 and **REVERSED** Superior Courts Rulings.

On February 20, 2019, MANDATE, CP 38 with the January 3, 2019 Ruling in Division II, No. 50523-1-II. This Granted Szmania's MOTION TO DISMISS CP 14.

On June 13, 2019 Defendant/Appellant files MOTION FOR POSSESSION AND DAMAGES, CP 41.

On July 19, 2019 The Superior Court has hearing on the MOTION FOR POSSESSION AND DAMAGES, (CP 41). *See* CP 60.

On August 9, 2019 The Superior Court has hearing on the MOTION FOR POSSESSION AND DAMAGES, (CP 41) *See* CP 62.

On August 9, 2019 The Superior Court Rules a Dismissal of the Action, *See* CP 63.

On August 9, 2019 The Superior Court Rules a Denial of Defendant/Appellant files MOTION FOR POSSESSION AND DAMAGES, (CP 41), *See* CP 64.

On August 23, 2019, Defendant/Appellant files Notice of Appeal, CP 65.

On August 23, 2019, Defendant/Appellant files Statement of Arrangements, CP 66

On August 23, 2019, Defendant/Appellant files Designation of Clerks Papers, CP 67.

On September 26, 2019 Report of Proceedings filed in Case No. 53743-5-II.

On November 8, 2019 Defendant/Appellant Brief is due.

The Defendant/Appellant is now entitled to  
POSSESSION and DAMAGES per the law.

## VI. SUMMARY OF ARGUMENT

**The following 4 equitable claims argued in this brief warrants a reversal of the 2 orders and the Writ of Restitution.**

### **No. 1 NOT AWARDING POSSESSION**

The Defendant/Appellant is legally entitled to POSSESSION based upon the January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, Szmania is entitled to POSSESSION that the law provides in RCW 59.18.290 (1) "***may recover possession of the property..***" (Emphases added!)

**No. 2 NOT AWARDING DAMAGES**

The Defendant/Appellant is legally entitled to DAMAGES based upon the January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, Szmania is entitled to DAMAGES that the law provides in RCW 59.18.290 (1) "*in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.*" (Emphases added!)

**No. 3 Failure to State a Claim Upon Which Relief  
Can be Granted CR 12 (b) (6) & RES JUDICATA**

With the January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, Wells is now in the position in the case for that any claims they make fall under the "umbrella" of: Failure to State a Claim Upon Which Relief Can be Granted in CR 12 (b) 6) and the doctrine of Res Judicata. With Szmania's MOTION TO DISMISS now granted by this Court. Wells is with out proper standing after said Reversal. Wells has no legal course of action to bring a case or claims back to the Superior Court or its jurisdiction and venue. Wells did not plead for a Motion to Dismiss in the Superior Court or this Court. Therefore their claims are further Barred by the legal doctrines of claim and issue preclusion, and Res Judicata and Collateral Estoppel.

As attorneys, they are fully aware they can **NOT** relitigate claims and issues they lost or didn't bring up or preserve in the Superior Court and this Court previously. And **Res Judicata:** Washington State Division II Court of Appeals ruling. *“On January 19, 2007, Countrywide purchased the loan from E-Loan; this purchase included the adjustable rate note, the deed of trust, and the right to service the loan. Countrywide subsequently pooled and securitized the loan, thus passing title to the loan to EMC Mortgage.”* (Emphases added!). See *Szmania v. Countrywide Homes Loans, Inc.*, 160 Wn. App. 1002 (2011).

#### **No. 4 The Superior Court Abused its Discretion**

The January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, it is only proper and correct for the prevailing party, Szmania to be granted both POSSESSION and DAMAGES the law allows in RCW 59.18.290 (1). The Superior Court abused it's discretion by not awarding Szmania Possession and Damages for the unlawful eviction by Wells. The Superior Court gave no legal reason NOT to award Possession and Damages! **Page 20**

## VII. ARGUMENT

### No. 1 NOT AWARDING POSSESSION

**As previously stated:** The Defendant/Appellant is legally entitled to POSSESSION based upon the January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. \* Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. \*\* But since it was, Szmania is entitled to POSSESSION that the law provides in RCW 59.18.290 (1) "may recover possession of the property.." (*Emphases added!*)

**Furthermore:** RCW 59.18.290 (1) and RAP 12.8. Clearly allows the Defendant/Appellant clear paths in the law to recover POSSESSION. As noted above RCW 59.18.290 (1) allows it for is says "*may recover*".

\* On July 19, 2019 The Superior Court acknowledged it was aware the Appellate Court REVERSED its orders. *See RP* page 5 at 4 to page 6 at. 2. \*\* August 9, 2019 Superior Court concurs. *See RP* page 19 at 11-22. **Page 21**

But in RAP 12.8 we see:

*“RAP 12.8 EFFECT OF REVERSAL ON INTERVENING RIGHTS  
If a party has voluntarily or involuntarily partially or wholly  
satisfied a trial court decision which is modified by the appellate  
court, **the trial court shall enter orders and authorize the  
issuance of process appropriate to restore to the party any  
property taken from that party, the value of the property, or in  
appropriate circumstances, provide restitution.** An interest in  
property acquired by a purchaser in good faith, under a decision  
subsequently reversed or modified, shall not be affected by the  
reversal or modification of that decision.” (Emphases added!)*

[https://www.courts.wa.gov/court\\_rules/pdf/RAP/APP\\_RAP\\_12\\_08\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RAP/APP_RAP_12_08_00.pdf)

Here the trail Court has NO DISCRETION! **It SHALL RESTORE POSSESSION AND THE VALUE THAT IS TAKEN FROM THE PARTY! “the trial court shall enter orders”**. Here the Superior Court ignored the MANDATE from this Court and the laws and rules it took an oath to uphold! *See* CP 41 p. 1.

Defendant/Appellant asks this Court for the POSSESSION LISTED in Szmania’s MOTION TO DISMISS (MTD) *See* Dkt 14 and his MOTION FOR POSSESSION AND DAMAGES, CP 41.

*“The action is a narrow one, limited to the **question of possession and related issues such as restitution of the premises and rent.**” (Emphases added!) *Munden v. Hazelrigg*, 105 Wn.2d 39" 45, 711 P.2d 295 (1985). Cited from: FEDERAL NATIONAL MORTGAGE ASSOCIATION v. IBRAHIMA NDIA YE, No. 32994-1-III, IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION THREE, PUBLISHED OPINION at page 6.*

<http://terrellmarshall.com/wp-content/uploads/2018/01/556131.pdf>

Further we see in **RCW 59.18.375**

***Forcible entry or detainer or unlawful detainer actions—  
Payment of rent into court registry—Writ of restitution—Notice.***

***(4) “Issuance of a writ of restitution under this section shall not affect the defendant's right to schedule a hearing on the merits. “***

***(And) “If the court concludes at the show cause hearing that the writ of restitution should not have been issued because of any legal or equitable defense to the eviction, then the writ of restitution must be quashed and the defendant must be restored to possession.” (Emphases added!)***

<https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.375>

The law once again says Szmania ***“must be restored possession”!***

In both RCW 59.18.290 (1), the term “*tenant*” is used and in RCW 59.18.375 the term “*defendant*” is used and in RAP 12.8 the term “*party*” is used. Szmania qualifies as a “*tenant in sufferance*” per RCW 59.04.050 and a “*defendant*” and a “*party*”. See RP page 20 at 1-11 and page 21 at 21 to page 22 at 3 and the Superior Court concurs. Wells labels Szmania as “*Defendant*” See CP 3 pages 1 & 2 at # 3.

**No. 2 NOT AWARDING DAMAGES**

**As previously stated:** The Defendant/Appellant is legally entitled to DAMAGES based upon the January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling.\* Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. \*\* But since it was, Szmania is entitled to DAMAGES that the law provides in RCW 59.18.290 (1) "**in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.**" (Emphases added!)

\* On July 19, 2019 The Superior Court acknowledged it was aware the Appellate Court REVERSED its orders. See RP page 5 at 4 to page 6 at. 2. \*\* August 9, 2019 Superior Court concurs. See RP page 19 at 11-22.

**Furthermore:** RCW 59.18.290 (1) and RAP 12.8. Clearly allows the Defendant/Appellant clear paths in the law to recover DAMAGES. As noted above RCW 59.18.290 (1) allows it for is says “*may recover*” but in RAP 12.8 we see:

*“RAP 12.8 EFFECT OF REVERSAL ON INTERVENING RIGHTS  
If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, **the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution.** An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.” (Emphases added!)*

[https://www.courts.wa.gov/court\\_rules/pdf/RAP/APP\\_RAP\\_12\\_0800.pdf](https://www.courts.wa.gov/court_rules/pdf/RAP/APP_RAP_12_0800.pdf)

Here the trail Court has NO DISCRETION! It SHALL RESTORE THE VALUE OF THE PROPERTY TAKEN FROM THE PARTY! **“the trial court shall enter orders”**. Here the Superior Court ignored the MANDATE from this Court and the laws and rules it took an oath to uphold! *See* CP 41 p. 1.

Defendant/Appellant asks this Court for the DAMAGES LISTED in Szmania’s MOTION TO DISMISS (MTD) *See* Dkt 14 and his MOTION FOR POSSESSION AND DAMAGES, CP 41. Here is the argument in CP 41: **Page 25**

**See CP 41. page 7:**

“(a) The law in RCW 59.18.290 (1) & RAP 12.8 is clear; the Plaintiff kicked the Defendant out of his home in violation of *Id*’s, without a valid Court Order with proper service, now based upon the Appeal’s Court ruling! So now the Defendant may recover Possession, Damages and Cost. The total **Cost** to Defendant ask for is: **\$83,567.39** AND the man hours of: **5,798.10**. The 2019 Living Wage in Clark County WA for Management = \$114,702.00 x 2 years = **\$229,404.00** See <http://livingwage.mit.edu/counties/53011> Defendant asks the Court to Judicially Notice this site. See **Ex T.** page 24.

” Damages can be **Trebled** under *RCW 19.86.090 Civil action for damages—Treble damages authorized.* See Dkt 14, Page 14 at 5, Defendant’s Motion To Dismiss. Defendant asks for Treble Damages in (a), (b) and (c).

The Defendant is entitled to the Fair Market Rental Value of his home that he was illegally removed from **July 5, 2017 to the Present time when Plaintiff could have the necessary repairs done to make it Fit and Habitable, to July 5, 2019 = 24 months!**

Precedence is found in: *JORDAN v. NATIONSTAR MORTGAGE, LLC, UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WASHINGTON, NO. 2:14-CV-0175-TOR, ORDER GRANTING IN PART PLAINTIFF’S MOTION FOR PARTIAL SUMMARY JUDGMENT, ECF No. 262.* (Where Nationstar locked residence out of their homes.)

<http://terrellmarshall.com/wp-content/uploads/2018/01/556131.pdf>

Page 15 at 12-13: “**Additionally, Ms. Jordan and Class members are entitled to the fair market rental value of their homes.**” (Emphases added!) “

**See CP 41. page 8:**

*“The action is a narrow one, limited to the question of possession and related issues such as restitution of the premises and rent.”* (Emphases added!) *Munden v. Hazelrigg*, 105 Wn.2d 39" 45, 711 P.2d 295 (1985). Cited from: FEDERAL NATIONAL

*MORTGAGE ASSOCIATION v. IBRAHIMA NDIA YE*, No. 32994-1-III, IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION THREE, PUBLISHED OPINION at page 6.

<http://terrellmarshall.com/wp-content/uploads/2018/01/556131.pdf>

**Wrongful eviction:** Washington Appeals Court upholds trial courts;

*“The trial court in the unlawful detainer matter (not a separate action) held the tenant’s reliance on the letter justifiable and awarded damages for wrongful eviction including “moving expenses, costs of relocation, loss of opportunity and pain and suffering”. The award was upheld on appeal.”* (Emphases added!) *Iverson v. Marine Bancorporation* 86 Wn.2d 562, 546 P.2d 454 (1976). (Pain and suffering=Emotional Damages)

Cited:

<https://washingtonlandlordtenant.info/washington-landlord-tenant-law/do-not-pass-%E2%80%9Cgo%E2%80%9D-%E2%80%93-wrongful-eviction-in-washington/>

*“In a case of wrongful eviction, the tenant is entitled to recover all the damages that reasonably flowed from the landlord’s wrongful act, including the expense of moving.”* (Emphases added!) *McKennon v. Anderson*, 49 Wn.2d 55, 62, 298 P.2d 492 (1956); *Chung v. Louie Fong Co.*, 130 Wash. 154, 162, 226 P. 726 (1924). Cited:

<https://washingtonlandlordtenant.info/washington-landlord-tenant-law/do-not-pass-%E2%80%9Cgo%E2%80%9D-%E2%80%93-wrongful-eviction-in-washington/>

**Double Damages and Fair Market Rental Value:**

***RCW [59.12.170](#) Judgment—Execution.***

***“or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due.”*** (Emphases added!)

<https://app.leg.wa.gov/rcw/default.aspx?cite=59.12.170>

Damages are in order **for emotional damages!** Bank of America was ordered to pay Erik & Renee Sundquist over \$6,000,000.00 for “[state of battle-fatigued demoralization](#)”.

[https://southfloridalawblog.com/bank-america-illegal-](https://southfloridalawblog.com/bank-america-illegal-foreclosure-six-million-settlement/)

[foreclosure-six-million-settlement/](#)

**See CP 41. page 9:**

“See *SUNDQUIST v. BANK OF AMERICA, N.A.* Case No. 10-35624-B-13J. <https://www.leagle.com/decision/inbco20170324943>

In **Ex U** it clearly shows a fair market rental value of \$1.10 per square foot and the Defendant’s home has 5,333 + 1,464 livable footage = 6,797 total square feet X \$1.10 = **\$7, 476.70 monthly** rent due Defendant since July 5, 2017 to the present of July 5, 2019 = 24 months X \$7, 476.70 = **\$179,440.80 due Defendant in Fair Market Rental Value.**

**Possession;** In light of the Court of Appeals of the State of Washington, Division II January 3 2019 ruling. Defendant on January 9, 2019 served a 48 Hour Notice to Vacate upon the residence in question in this case: **17005 NE 164<sup>th</sup> Ave., Brush Prairie, WA 98606**. It is obvious no one is living there! After Posting Notice on the front door, Defendant did an outside walk around. Defendant found all the locks were replaced, thus has **NO ACCESS** and many were broken, several of the doors and windows were damaged, and the natural gas meter for heating and cooking was removed? This will for sure have caused mold to grow in basement and (*in*) the house. The pool was not maintained, neither was the yard or landscaping etc...

In light of this state of uninhabitableness and the ongoing protection from the Plaintiff that the Defendant needs to stay safe, like using the Washington State Address Protection Program that is mentioned below. Living in the former home is no longer an option for the Defendant due to the Plaintiff's death threats and lack of maintenance. Thus Defendant seeks an additional **\$7, 476.70 per month** more in Fair Market Rent for each month past July 5, 2019. **Further we see in RCW 59.18.375 Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice. (4) “Issuance of a writ of restitution under this section shall not affect the defendant's right to schedule a hearing on the merits. “ (And) “If the court concludes at the show cause hearing that the writ of restitution should not have been issued because of any legal or equitable defense to the eviction, then the writ of restitution must be quashed and the defendant must be restored to possession. “ (Emphases added!) <https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.375>”**

**See CP 41. page 10:**

“(b) Defendant also asked for the relief he asked for in his Motion to Dismiss (CP 14) for the Plaintiff's Bad Faith procedures in the Process Servicing and in this suit. On Defendant's Motion to Dismiss pages 2 at 20 to-pages 3 at 5, Defendant asked for: *“Plaintiff Wells Fargo Bank N.A., Mr. Benjamin David Petiprin and his law firm of Zieve, Brodnax & Steele, LLP should each pay Defendant\*\* \$100,000.00 each for Damages for bringing this outrageous and frivolous law suit! That is not only wasting the resources of the Defendant but also both Courts! This is in violation of RCW 61.24.010 (4) “Good Faith Doctrine” for Trustee's “The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor.” Along with a Punitive Damage Award to the Defendant in the amount of \$100,000.00 from each mentioned party\*\* as well. This Court needs to send a message to the Plaintiff whom are predators! And a \$10,000.00 for damages and \$10,000.00 in Punitive Damages Award from the process server Mr. Brian Anders\*\* as well for unlawful process service.” – “The 2 DECLARATIONS OF NON SERVICE DUE DILIGENCE by Brian Anders are unconvincing! Give me a break!*

*A processor server must be tough and put up with undesirable working conditions. This guy is a whimp!" See Page 8 at 14.*

Defendant asked for these additional amounts now as well.

(c) The Court of Appeals of the State of Washington, Division II in their January 3 2019 ruling which states: at Page 5 **"As a result, we reverse the superior court's denial of Szmania's motion to dismiss."** (Emphases added!) And their February 14, 2019 MANDATE (CP 38) to allow for further proceedings. After the Damages are awarded in (a) & (b) than Defendant's previous Motion To Dismiss and Proposed Orders should be signed and entered by this Court AFTER Possession and Damages are Collected from (a) & (b)."

**See CP 41. pages 11-15:**

**"DEATHTHREATS, STALKING, ATTEMPTED BREAK-INS = A LIVING HELL!**

The Plaintiff Wells Fargo (Wells) and through its people, have made numerous death threats, the Defendant was laser rifled scoped not once, not twice, not three times, not four times, not five times **but six times!!** (Started 11/ 22/6, 1 day after Judgment FED). {Federal Case}

Wells stalked the Defendant and his girlfriend, have attempted multiple break ins at all hours of the day/night, and created a living Hell for the Defendant! This was noted in the Motion To Dismiss, (MTD) See Dkt 14 page 8 at 14 to page 10 at 2. Due to this, this Court allowed telephone hearings for the Defendant's safety since the Court administration could not and **would not accommodate** the Defendant wearing a bullet proof vest and it's storage upon entrance.

Defendant once moved out of the house had to enter into the Washington State Address Protection Program. This can be verified by calling 1-800-822-1065. Defendant's #8229. Therefore Defendant can NOT live in the house ever again due to the above facts that than the Plaintiff and its "hit men" will know were to find the Defendant. Defendant had to buy 3, level III bullet proof vest for himself, girl friend and roommate.

Defendant had to remain armed 24-7 when legally feasible and have armed security at the house in his absence. **This is MAJOR EMOTIONAL STRESS!!**

Within this tremendous stress Wells created, Defendant's 22 years of U.S. Navy training guided the Defendant to have restraint even when Wells would continue to escalate and continue to make death threats and aggressions toward him and his family on an almost daily basis! **This case is the first claim for the Emotional Distress for the Death Threats.**

Defendant penned the above facts in the appeal on this instant case in: APPELLANT'S

**OPENING BRIEF, No. 50523-1-II dated 12/11/2017, page 14:**  
**"Wells also escalated and even made death threats to Szmania aiming rifles." (Emphases in original)**

Defendant penned more about the death threats and harassment in **APPELLANT'S MOTION, No. 50523-1-II dated 1/16/2018, page 2:**

*"Just so this Court understands the emotion and the restrained anger this Appellant feels, it needs to know that Wells Fargo used **death threats, had me rifle laser scoped six (6) times!!!** Appellant had to invest in Level III Bullet Proof Vests for him and family members, which are very expensive BTW! Appellant was also stalked, harassed, had multiple attempted break in attempts into his home by Wells contractors to try to change the locks way before their illegal trustee sale! Szmania was followed numerous times, 2 times with Drones, had mail stolen and tampered with and Wells people even contacted and slandered Szmania to his neighbors." (Emphases in original)*

Wells added additional stress, time and cost to Defendant by delaying the Appellate case No. 50523-1-II with their 1/12/2018 Motion for more time to file their Reply Brief, than on 2/8/2018 their Motion to Withdrawal as Counsel. **The Appellate Court Division II greatly chastised Wells and their counsel for these games in their 2/12/2018 Order and gave them 1 week to file their brief!**

**APPELLANT’S REPLY BRIEF, No. 50523-1-II dated 3/14/2018, page 4** “4)Based upon the above, reversal of the above Superior Court Orders and Writ, **Szmania asks for possession of the property known as: 17005 NE 164th Ave, Brush Prairie, WA 98606.**“ (Emphases in original)

Defendant filed not one but two (2) Emergency Motions (ER) requesting a Restraining Order, Anti-Harassment; Anti- Stalking Order against Wells in the Appeal Case with the Ninth Circuit Court of Appeals, No. 16-36055 (Ninth) (Concurrent case at the same time as instant case and since this is a court of summary proceedings, Defendant motioned the Ninth for the emergency relief as those rules allowed such). First on 4/10/2017, See DktEntry 8-1 & 8-2, and 4/18/2017 Denial DktEntry 9 and second ER Motion on DktEntry 17-1 & 17-2 on 5/10/2017 Denial DktEntry 21 on 5/18/2017.

Defendant also pens about the death threats in the Petition for Writ of Certiorari filed in the Supreme Court of the United States, (#SCOTUS) No.18-734.

***QUESTIONS PRESENTED, Rule 14.1 (a)***

7) Did the UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (Ninth) Error by Denying an Emergency Motion for Protection of the Petitioner’s life and his family in DktEntry 8-1 & 8-2 **EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 Motion for Restraining Order, Anti Harassment Order and an Anti Stalking Order after Wells Fargo made death threats?** Was the Ninth’s Denial a Violation of Petitioner’s Constitutional rights of protection of his life under the Fifth and Fourteenth Amendments to the United States Constitution or in the Constitutions whole? Further was the denial a failure in Procedural Due Process for Neutral Decision Making or was their actions an arbitrary denial of Petitioner’s value of his life? See DktEntry 8-1, 8-2 and 9.

***See Page iii-iv (Emphases in original)***

**CORPORATE STATEMENT, Rule 14.1  
(b) & Rule 29.6**

*WELLS FARGO BANK, N.A. “is a national bank headquartered in South Dakota and is therefore a citizen of South Dakota for diversity purposes.” See Dkt 1 p. 2 at 18-19, District Court. “Berkshire Hathaway Inc., a publicly held corporation, owns 10% or more of Wells Fargo & Company’s stock.” DATED: July 22, 2016 See Dkt 9 p. 1 at 20-21, District Court. Wells is a criminal enterprise that steals fully paid off homes of disabled Veterans like that of the Petitioner while using death threats. See DktEntry 8-1, 8-2 and 9. (Wells) **(Emphases in original)***

**See Page vi**

**STATEMENT OF THE CASE, Rule 14.1  
(g) (i) (ii)**

*The UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT (Ninth) by Denying an Emergency Motion for Protection (DktEntry 9) of the Petitioner’s life and his family in DktEntry 8-1 & 8-2, **EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 Motion for Restraining Order, Anti Harassment Order and an Anti Stalking Order** after Wells Fargo made death threats clearly is a Denial by the Ninth that is a clear Violation of Petitioner’s Constitutional rights of protection of his life under the Fifth and Fourteenth Amendments to the United States Constitution and in the Constitutions as a whole. Further this was a failure in Procedural Due Process for Neutral Decision Making and their actions were an arbitrary denial of Petitioner’s value of his life and his family’s lives! See DktEntry 8-1, 8-2 and 9. This is also a clear Violation of their Oath: “I will support, protect and defend the Constitution....” **(Emphases in original)***

**See Page 5**

***I ask this Court to exercise its supervisory power and reverse all the Ninth rulings based upon Res Judicata along with the Remand back to Superior Court. See Rule 10 (a). Along with: this Court Subpoena's both current & former CEO's of Wells Fargo, Mr. John G. Stumpf & Mr. Timothy J. Sloan & JP Morgan Chase CEO Jamie Dimon. The Plaintiff & the Nation deserves to know why Wells foreclosed on a disabled Veteran's fully paid off home, made death threats and why JP Morgan Chase denied involvement yet know of the litigation by service and did NOTHING to protect the Plaintiff! See Page 13 (Emphases in original)***

***7) The Ninth by Denying an Emergency Motion for Protection of Petitioner's life and his family in DktEntry 8-1, 8-2 EMERGENCY MOTION UNDER CIRCUIT RULE 27-3 Motion for Restraining Order, Anti Harassment Order and an Anti Stalking Order after Wells Fargo made death threats! Was a blatant disregard for not only the Plaintiff's life but those of his family! The Ninth's Denial is a Violation of Petitioner's Constitutional rights of Equal Protection that is required under the Fifth Amendment.***

*The non practice of Equal Protections under the Fifth Amendment is further a Violation of Due Process under the Fourteenth Amendments to the United States Constitution. Further this denial was a failure in Procedural Due Process for Neutral Decision Making and their actions were an arbitrary denial of Petitioner's value of his life. See DktEntry 8-1, 8-2 and 9.*

*If the Ninth can arrogantly grant a Temporary Restraining Order in favor of the State of Hawaii against Donald J. Trump acting as the President of the United States of America, regarding Executive Order No. 13,780 issued on March 6, 2017 "Protecting the Nation from Foreign Terrorist Entry into the United States". (See State of Hawaii V. Donald J. Trump, et al CV. NO. 17-00050 DKW-KSC). Which in fact temporally protected Foreign Terrorist over U.S. Citizen's! **Then NOT issuing a Restraining Order under true and documented DEATH THREATS of this Petitioner by Wells Fargo, who is a Disabled, Retired Navy Veteran of 22 years is NOT "Equal Justice Under Law"!***

*It is totally biased against this Plaintiff and in Clear Violation of the Safeguards afforded the Plaintiff as a U.S. Citizen and Disabled Veteran under the Fifth Amendment and under the Fourteenth Amendments to U.S. Constitution.*

*Also it is in Clear Violation of the Oath these Ninth Circuit Judges took! If they blatantly and willfully will NOT protect the Citizens of the United States of America, than they don't deserve to have a job working for the United States of America! They have grossly and irresponsibly Violated their Oath of Office. Plaintiff asks this Court to use its Supervisory Power under Rule 8 to Suspend and Disbar and under Rule 10 (a) and TERMINATE Circuit Justices of the Ninth BARRY B. SILVERMAN and ANDREW D. HURWITZ for violating the "good behavior clause". See DktEntry 9. **See Page 14-16 (Emphases in original)***

*Add to that the multiple death threats made by Wells, the constant harassment, the lower court's cowardness in not granting orders of protection.*

**See Page 23 #SCOTUS.**

*See Petition:*

<https://www.supremecourt.gov/search.aspx?filename=/docket/docketfiles/html/public/18-734.html>

*Defendant asks the Court to Judicially Notice this site.*

The last two weeks in my house up to the move out on July 5, 2017, Defendant was awake for 24-7 for that full two (2) weeks in order to protect his girlfriend & barely moved out on time.

**Equals Pain & Suffering & Emotional Duress Estimated \$10,000,000.00.**

The Superior Court was aware of the death threats, they allowed telephone hearings in 2016 & 2017 and *See RP page 20 at 12-25.*

*See* CP 41. pages 16-17:

**TOTALS PRAYED FOR:**

- 1) Defendant's business collapsed estimated value 2 years:  
**\$100,000.00.** *See p. 5.*
- 2) Estimated value of those 2/3 possessions sold/given away is:  
**\$100,000.00.** *See p. 6.*
- 3) Pain and Suffering for the stress of moving 4 times:  
**\$100,000.00.** *See p. 6.*
- 4) Pain and Suffering for loss of affection of girl friend:  
**\$500,000.00.** *See p. 6.*
- 5) Cost of litigation, appeals moving, storage, service, copies, travel to court, rent etc. **\$83,567.39** AND the man hours of: **5,798.10.** *See p. 7.*
- 6) Loss of 2 years 2019 Living Wage in Clark County WA for Management = **\$229,404.00.** *See p. 7.*
- 7) Fair Market Rental Value due Defendant for loss of use of home for 2 years: **\$179,440.80.** *See p. 9.*
- 8) Relief in MTD: Wells Fargo Bank N.A., to pay Damages: **\$100,000.00** *See p. 10.*
- 9) Relief in MTD: Wells Fargo Bank N.A., to pay Punitive Damages: **\$100,000.00** *See p. 10.*
- 10) Relief in MTD: Mr. Benjamin David Petiprin to pay Damages: **\$100,000.00** *See p. 10.* \*\*Wells Fargo Bank N.A to pay for Mr. Petiprin's actions.

**11) Relief in MTD: Mr. Benjamin David Petiprin to pay Punitive Damages: \$100,000.00 See p. 10. \*\*Wells Fargo Bank N.A to pay for Mr. Petiprin's actions.**

**12) Relief in MTD: Zieve, Brodnax & Steele, LLP to pay Damages: \$100,000.00 See p. 10. \*\*Wells Fargo Bank N.A to pay for Law firm's actions.**

**13) Relief in MTD: Zieve, Brodnax & Steele, LLP to pay Punitive Damages: \$100,000.00 See p. 10. \*\*Wells Fargo Bank N.A to pay for Law firm's actions.**

**14) Relief in MTD: Mr. Brian Anders to pay Damages: 10,000.00. See p. 10. \*\*Wells Fargo Bank N.A to pay for Mr. Ander's actions.**

**15) Relief in MTD: Mr. Brian Anders to pay Punitive Damages: 10,000.00. See p. 10. \*\*Wells Fargo Bank N.A to pay for Mr. Ander's actions.**

**16) DEATH TREATS PAIN & SUFFERING & EMOTIONAL DISTRESS: Wells Fargo Bank N.A., to pay Damages of: \$10,000,000.00. See pages 11-15.**

**17) Defendant Further asked that TREBLED DAMAGES found in RCW 19.86.090 See p. 7. OR DOUBLE DAMAGES RCW 59.12.170 See p. 8, be applied to the above as well.**

*See full argument in MOTION FOR POSSESSION AND DAMAGES CP 41, pages 7- 17*

**No. 3 Failure to State a Claim Upon Which Relief  
Can be Granted CR 12 (b) (6) & RES JUDICATA:**

**As previously stated:** With the January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, Wells is now in the position in the case for that any claims they make fall under the "umbrella" of: Failure to State a Claim Upon Which Relief Can be Granted in CR 12 (b) 6) and the doctrine of Res Judicata. With Szmania's MOTION TO DISMISS, CP 14, now granted by this Court. Wells is with out proper standing after said Reversal. Wells has no legal course of action to bring a case or claims back to the Superior Court or its jurisdiction and venue. Wells did not plead for a Motion to Dismiss in the Superior Court or this Court of Appeals. Therefore their claims are further Barred by the legal doctrines of claim and issue preclusion, and Res Judicata and

Collateral Estoppel. As attorneys, they are fully aware they can **NOT** relitigate claims and issues they lost or didn't bring up or preserve in the Superior Court and this Court previously.

**Furthermore:**

Well's claims are further Barred by doctrines of Res Judicata & Collateral Estoppel (claim and issue preclusion).

The 4 prongs for Res Judicata apply here. To determine whether res judicata applies, Washington courts apply a four-part test. *Karlberg*, 280 P.3d at 1130. In all instances, res judicata applies only if there is a final judgment on the merits. *Id.* (citing *Pederson v. Potter*, 103 Wn. App. 62, 11 P.3d 833, 835 (2000).) Assuming there is, that judgment will have preclusive effect only if there is identity between the prior judgment and the subsequent action with respect to (1) persons and parties; (2) causes of action; (3) subject matter; and (4) the quality of persons for or against whom the claim was made. *Id.* Plead on page 18 (d), the parties, cause of action, subject matter and the quality of persons claims were made against, all meet the above standards.

Res Judicata occurs when a prior judgment has a concurrence of identity in four respects with a subsequent action. In short; Well's claims in the Instant Case on Appeal are Barred by Res Judicata.

**“no court—state or federal—is free to revisit as a matter of res judicata”**. See generally *Farm Credit Bank of St. Paul v. Ziebarth*, 485 N.W.2d 788, 791 (N.D. 1992). (Emphases added!)

Well's claims are Barred for Lack of Legal Standing. **Wells has NO LEGAL STANDING in Defendant's home!** As the Defendant penned in the Facts Section, (CP 41) Wells lacks Legal Standing as materially evidenced in: See Ex B, Ex C, Ex D, Ex E, Ex F, Ex G, and **Ex J (JP Morgan, owner of Bears Stearns says Szmania's loan is NOT in it's trust!)** of Decl. Daniel G. Szmania, re: Motion to Dismiss. See CP 13.

Well's claims are barred for Lack of Authorization to Legally Represent Wells Fargo Bank N.A. Mr. Benjamin David Petiprin is **NOT** an attorney for Wells Fargo Bank N.A. as materially evidenced in the attorney list for Wells in the Ninth Circuit. See Ex M of Decl. Daniel G. Szmania, re: Motion to Dismiss CP 13. (See CP 14 Pages 17 at 7 to 18 at 13).

*“Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal.” Hill Top Developers v. Holiday Pines Service Corp., 478 So. 2d. 368 (Fla 2nd DCA 1985)*

Also Res Judicata and Collateral Estoppel (claim and issue preclusion) bars Wells from litigating old or new issues that were or should have been litigated in the Federal Case that has supplemental jurisdiction, (28 U.S.C. § 1367) such as an unlawful detainer action and a writ of restitution.

**“no court—state or federal—is free to revisit as a matter of res judicata”.** See generally *Farm Credit Bank of St. Paul v. Ziebarth*, 485 N.W.2d 788, 791 (N.D. 1992). (Emphases added!)

**“A judgment rendered by a court without personal jurisdiction over the defendant is void. It is a nullity. [A judgment shown to be void for lack of personal service on the defendant is a nullity.]** “*Sramek v. Sramek*, 17 Kan. App. 2d 573, 576-77, 840 P.2d 553 (1992), rev. denied 252 Kan. 1093 (1993). (Emphases added!)

Here we have VOID orders in CP 63 Superior Court Ruling of a Dismissal of the Action, August 9, 2019. And in Superior Court Ruling Denying of Defendant/Appellant MOTION FOR POSSESSION AND DAMAGES, (CP 41), August 9, 2019. CP 64. The Superior Court can NOT rule as if the MOTION TO DISSIMISS was not granted when it was by this COURT!

When the CP 38, MANDATE dated February 20, 2019, with the January 3, 2019 Ruling in Division II, No. 50523-1-II. This Granted Szmania's MOTION TO DISMISS CP 14, is properly applied with common sense and reason. Wells has failed service and has NO PERSONAL JURSDICTION over Szmania! Therefore there claims in instant case on appeal are VOID!

**No. 4 The Superior Court Abused its Discretion**

**As previously stated:** The January 3, 2019 Ruling in Division II, No. 50523-1-II, Granted Szmania's MOTION TO DISMISS CP 14. The MANDATE dated February 20, 2019, CP 38 is a direction from this Court to the Superior Court to rule anew based upon this Court's ruling. Thus with Szmania's MOTION TO DISMISS granted, the WRIT OF RESTITUTION ISSUED CP 24, would have never been issued. But since it was, it is only proper and correct for the prevailing party, Szmania to be granted both POSSESSION and DAMAGES the law allows in RCW 59.18.290 (1), *Removal or exclusion of tenant from premises—Holding over or excluding landlord from premises after termination date.*

*(1) It shall be unlawful for the landlord to remove or exclude from the premises the tenant thereof except under a court order so authorizing. Any tenant so removed or excluded in violation of this section **may recover possession of the property** or terminate the rental agreement and, **in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees.** (Emphases added!)*

<https://app.leg.wa.gov/RCW/default.aspx?cite=59.18.290>

Here the key words: “**may recover**” it reads:” **may recover possession of the property.**” And “**in either case, may recover the actual damages sustained. The prevailing party may recover the costs of suit or arbitration and reasonable attorney's fees**” The

Superior Court has discretion here.

But in the following, the Superior Court has **NO** discretion!

***RCW 59.18.375 Forcible entry or detainer or unlawful detainer actions—Payment of rent into court registry—Writ of restitution—Notice.***

***(4) “Issuance of a writ of restitution under this section shall not affect the defendant's right to schedule a hearing on the merits. “ (And) “If the court concludes at the show cause hearing that the writ of restitution should not have been issued because of any legal or equitable defense to the eviction, then the writ of restitution must be quashed and the defendant must be restored to possession. “ (Emphases added!)***

<https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.375>

Key words: **“the writ of restitution must be quashed and the defendant must be restored to possession.”** The Superior Court has NO discretion! The Superior Court concurred! *See* RP page 19 at 23 to page 20 at 11. In the court rules in:

*“RAP 12.8 EFFECT OF REVERSAL ON INTERVENING RIGHTS  
If a party has voluntarily or involuntarily partially or wholly satisfied a trial court decision which is modified by the appellate court, **the trial court shall enter orders and authorize the issuance of process appropriate to restore to the party any property taken from that party, the value of the property, or in appropriate circumstances, provide restitution.** An interest in property acquired by a purchaser in good faith, under a decision subsequently reversed or modified, shall not be affected by the reversal or modification of that decision.”* (Emphases added!)

[https://www.courts.wa.gov/court\\_rules/pdf/RAP/APP\\_RAP\\_12\\_08\\_00.pdf](https://www.courts.wa.gov/court_rules/pdf/RAP/APP_RAP_12_08_00.pdf)

The Superior Court has NO discretion with:  
**“the trial court shall”...”to restore to the party”.. “the value of the property, or in appropriate circumstances, provide restitution”.**

Therefore the Superior Court abused it’s discretion by not awarding Szmania Possession and Damages for the unlawful eviction by Wells. The Superior Court gave no legal reason NOT to award Possession and Damages! The Superior Court concurred with my understanding of RAP 12.8. *See* RP page 21 at 21 to page 22 at 3.

**Furthermore:** Due to the Superior Courts total disregard for the law and the Court rules. Szmania has endured more work, more cost and more time. Szmania asks this Appellate Court to chastise the Superior Court for its repeated disregard for the law and the rules in writing. The Superior Court concurred that this Courts REVERSAL on January 3, 2019 granted my MOTION TO DISMISS. *See* RP page 26 at 9-14.

### VIII. CONCLUSION

*“In an unlawful detainer action, plaintiff bears the burden to prove, **by a preponderance of the evidence, the right to possession of the premises.**” Duprey v. Donahoe, 52 Wn.2d 129, 135, 323 P.2d 903 (1958). (Emphases added!)*

The only evidence before this court Wells has offered is in their Compliant CP 3, Ex A, (Trustee Deed) which is their illegal, fraudulent and non compliant in 61.24 RCW, Deeds of Trust Act. What is lacking in evidence before this Court is a **Declaratory Ruling** giving Wells Legal Standing to collect and or foreclose on Szmania’ home. Standing and many more claims in equity were made presale. There is **NO** affidavit of the foreclosing trustee, as evidence of a properly conducted sale or the Federal Case order saying: **“This is not a foreclosure case.”** Dkt 64 page 2 at 14.

This ruling alone is why Wells “Court Shopped” and moved to get possession of Szmania’s home in the Superior Court and is trying to pull a fast one on every one! However, Szmania submitted a “preponderance of the evidence” (Decl. CP 13) that **proves Wells has NO LEGAL STANDING his home: Ex B is the Deed, Ex C shows full pay off by Szmania 11/ 21/ 2007\*\*\*, Recording No. 4397625, Ex D shows Bear Stearns Arm Trust 2007-3 is delisted, Ex E Wells illegal assignment with fake address as evidence in Ex F, Ex G shows an illegal trustee not in Washington State & noncompliant in RCW 61.24.030(6), Ex J- JP Morgan Chase owner of Bear Stearns Trusts states:” Szmania’s loan is NOT in their trust”! Page 7. See RP Volume I, Page 8 at 12-25.**

\*\*\*Szmania has superior color of title found in RCW 59.12.030 (6) so a halt should have occurred since Wells has no standing as an “owner in *Id.*”. We see in plain meaning RCW 59.18.390, does not prohibit the stay of a writ of restitution after entry of a default judgment, a stay should have been granted per CR 62 (b) even with only the Superior Courts discretion. Also, Wells is NOT a purchaser as defined in RCW 61.24.060 (1) since the already allegedly owned the Deed of Trust? Common sense prevails, one can NOT purchase what one already owns unless a documented third party is involved. See CP 3 page 2 at # 7 and Ex A page 2 # 10. There’s NO proof that the sale complied with the statutory foreclosure rules in RCW 61.24. And Wells was NOT a document landlord to Szmania.

*"[W]aiver is an equitable doctrine, and 'we apply waiver only where it is equitable under the circumstances and where it serves the goals of the act.'" Klem v. Wash. Mut. Bank. 176 Wn.2d 771, 783 n. 7, 295 P.3d 1179, 1185 (2013) (quoting Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 569, 276 P.3d 1277 (2012)).*

*"Where a court failed to observe safeguards, it amounts to denial of due process of law, court is deprived of juris." Merritt v. Hunter, C.A. Kansas 170 F2d 739.*

**Res Judicata:** Washington State Division II Court of Appeals ruling.

*"On January 19, 2007, Countrywide purchased the loan from E-Loan; this purchase included the adjustable rate note, the deed of trust, and the right to service the loan. Countrywide subsequently pooled and securitized the loan, **thus passing title to the loan to EMC Mortgage.**" (Emphases added!).*

*See Szmania v. Countrywide Homes Loans, Inc., 160 Wn. App. 1002 (2011).*

There is NO MATERIAL EVIDENCE before this Court that EMC Mortgage ever passed title to Wells or as WELLS FARGO BANK N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3. PERIOD! Thus Wells is Barred by Res Judicata by this very Court! PERIOD!

For the foregoing reasons, **Szmania respectfully request a reversal of the following two (2) orders and writ (CP 24):**

Superior Court Ruling of a Dismissal of the Action, August 9, 2019. CP 63

Superior Court Ruling Denying of Defendant/Appellant MOTION FOR POSSESSION AND DAMAGES, (CP 41), August 9, 2019. CP 64.

After all: Washington, Division II, No. 50523-1-II in their January 3 2019 ruling which states: at *Page 5* **“As a result, we reverse the superior court’s denial of Szmania’s motion to dismiss.”**  
(Emphases added!)

**Szmania also asks for POSSESSION (Or its equal value of \$680,000.00 as noted in Wells Ex A) of the property known as: 17005 NE 164<sup>th</sup> Ave, Brush Prairie, WA 98606.**

**Szmania also asks for the above listed DAMAGES as prayed for in his MOTION TO DISMISS CP 14 and his MOTION FOR POSSESSION AND DAMAGES CP 41.**

Szmania also asked under RAP 18.1 that no attorney fees or cost be awarded to Wells. That cost, fees and time of value be awarded Szmania for prosecution of this appeal be payable by Wells.

RCW 59.18.290 (2) provides for an award of cost and fees to the prevailing party in an unlawful detainer action. Szmania has prevailed per the January 3, 2019 Decision In the Court of Appeals of the State of Washington, Division II., No. 50523-1-II.

Szmania is also available for oral arguments and request oral arguments. This brief is under the 50 page maximum limit for Appellant Briefs found in RAP 10.4 (b).

*“Our homes hold a special place in our constitutional jurisprudence. It is the first place specifically called out in our constitution, and it is called out to give it special protection. Under our constitution, “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.””* U.S. Constitution, Article. I, § 7 (*Emphasis added*). Washington Supreme Court Justice, J. Gonzalez. *See City of Shoreline v. McLemore*, No. 95707-0, April 18, 2019. Page 1.

**Respectfully submitted;**

s/ Daniel G. Szmania

Appellant/Defendant, Daniel G. Szmania, Pro Se’, November 7, 2019  
Presented: Daniel G. Szmania, Defendant, Pro Se’.  
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U.S. Supreme Court No. 11-6137  
U.S. Supreme Court No. 18-734  
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**CERTIFICATE OF SERVICE**

Case No. 53743-5-II

Pursuant to RCW 9.A.72.085, the undersigned certifies under penalty of perjury under the laws of the United States and the State of Washington, that on the 7<sup>th</sup> day of November, 2019, I served via: (Indicated by and X) to the following persons, a true and correct copy of the Foregoing:

  X   by CM/ECF          by First Class Mail

**1) DEFENDANT’S/ APPELLANT’S OPENING BRIEF**

**TO PLAINTIFF/RESPONDENT:**

1) Wells Fargo Bank, N.A., AS TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3.

C/o Holland & Knight LLP, Garrett S. Garfield WSBA# 48375  
2300 US Bancorp Tower, 111 SW Fifth Ave, Portland, OR 97204  
503-517-2931, [Garrett.Garfield@hklaw.com](mailto:Garrett.Garfield@hklaw.com) By: CM/ECF

I certify under penalty of perjury under the laws of the United States and the laws of the State of Washington that the foregoing is true and correct. **AND** Per GR 30 ELECTRONIC FILING AND SERVICE: (d) (2) (B) and (C) (ii): I ensure these electronic documents has the digital signature of the signer, myself; s/ Daniel G. Szmania.

Dated this 7<sup>th</sup> day of November, 2019, at Brush Prairie, Washington.

**Respectfully submitted;**   s/ Daniel G. Szmania

Appellant/Defendant, Daniel G. Szmania, Pro Se’, November 7, 2019  
Presented: Daniel G. Szmania, Defendant, Pro Se’.  
HM1 USNR Retired,  
U.S. Supreme Court No. 11-6137  
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**DANIEL SZMANIA - FILING PRO SE**

**November 07, 2019 - 12:18 PM**

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**Appellate Court Case Title:** Wells Fargo Bank, Respondent v. Daniel G. Szmania, Appellant  
**Superior Court Case Number:** 16-2-02606-4

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Appellant Daniel G. Szmania Opening Brief.

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