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**Division II**  
**State of Washington**  
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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 Un-Honorable Bernard F. Veljacic  
No. 16-2-02606-4

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**APPELLANT'S REPLY BRIEF**

**ORAL ARGUMENTS REQUESTED**

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Daniel G. Szmania, Defendant/Appellant, Pro Se'.  
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## I. INTRODUCTION

DANIEL G. SZMANIA, Defendant/Appellant, (Szmania) brings this Reply Brief per rules: RAP 10.2 (d) within 30 days, RAP 10.3 (c) contents of the brief and RAP 10.4 (b) not to exceed 25 pages. In Reply to BRIEF OF RESPNDENT: WELLS FARGO BANK N.A., AS. TRUSTEE FOR BEAR STEARNS ARM TRUST 2007-3 Plaintiff/Respondent, (Wells) filed with this Court of 12/20/2019.

**This appeal is due to the blatant disregard for well settled law by Judge Bernard F. Veljacic and his clear abuse of judicial discretion by ruling in this case when the Superior Court had No Subject Matter Jurisdiction after Szmania's CP 18 Removal to U.S. District Court on 5/18/2017! And had No Personal Jurisdiction over Szmania due to improper service as noted by this Court in its January 3, 2019 ruling! But Judge Veljacic still illegally ruled multiple times in this case! There in no immunity for discretionary activities! = Un-Honorable!**

**For these excessive abuses of power, Szmania believes that Judge Veljacic should be forthwith REMOVED from the bench!**

**And be made to pay Szmania all his cost for both appeals along with Wells Fargo! RCW 4.84 COSTS.**

## II. ARGUMENT

Wells is procedurally barred by evicting Szmania for:

- (a) **Lack of Personal Jurisdiction over Szmania** based upon this Court's ruling in the January 3, 2019 Ruling in Division II, No. 50523-1-II. 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>

See Szmania’s Opening Brief p. 8.

As this Court has properly penned on page 4 of their January 3, 2019 Ruling, CP 38. Without proper Service, the trail court has **NO PERSONAL JURISDICTION OVER SZMANIA!** With the MANDATE filed, the trail court should have **VOIDED** the following based upon this Court's ruling that Service was NOT PROPER! Thus the May 26, 2017 trail court's actions of: Findings *See* CP 19 & CP 20, Order Denying Motion to Dismiss, *See* CP 21, Default Judgment *See* CP 22, and Order for Writ of Restitution *See* CP 23 and Writ of Restitution Issued *See* CP 24. (*See* Motion for Possession and Damages CP 41, p. 4) **Should of all been reversed and quashed and Szmania made whole as if he was never wrongfully evicted based upon this Court's ruling!**

**(b) Lack of Legal Standing of Ownership and Res Judicata by**

Wells based upon this Court's ruling in 2011:

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). *See Szmania's* Opening Brief p. 13.

The U.S. District Court ruled this was "*This is not a foreclosure case.*" Dkt 64 page 2 at 14. *And See* CP 41 p. 15 & Szmania's Opening Brief p. 3, p. 38-42.

It is Szmania who holds title in the property known as:  
17005 NE 164<sup>th</sup> Ave., Brush Prairie, WA 98606. Szmania  
submitted a “preponderance of the evidence” (Decl. CP 13) that  
**proves Wells has NO LEGAL STANDING in 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.** \*\*\*Thus non compliant with RCW

61.24.030(3) since NO DEFAULT Exist! See CP 38 p. 2 Fnote #1.

\*\*\*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 they 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. See Szmania’s Opening Brief p. 46.

(c) Szmania is a **tenant in sufferance** as the owner and the “alleged previous” owner by Wells, living in the home after the illegal trustee sale by Wells. Szmania qualifies as a “*tenant in sufferance*” per RCW 59.04.050. See Szmania’s Opening Brief p. 23. Thus Szmania is qualified under the following RCW’s and RAP’s for Possession and Damages:

***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>  
See CP 41 p.1, 2, 6, and 7. See Szmania’s Opening Brief p. 5.

***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!) See

<https://app.leg.wa.gov/rcw/default.aspx?cite=59.18.375>  
See CP 41 p.9. See Szmania’s Opening Brief p 23, 29 & 43.

*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!) See [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) See CP 41 p. 1, 6. See Szmania’s Opening Brief p 21, 22, 23, 25, 26 and 44.

Szmania asking for Damages and Possessions are claims and counterclaims on in the record on appeal. See CP 41.

Wells concurs Szmania was the “alleged” former owner of the property in their Brief of the Respondent, page 3 thus a tenant in sufferance.

(d) **Lack of Subject Matter Jurisdiction over the case and Szmania: CP 18, NOTICE OF REMOVAL to Federal District Court on 5/18/2017 immediately removed Jurisdiction from the Superior Court and places in the Federal District Court per:**

28 U.S.C. § 1446(d) **Procedure for removal of civil action, (d) NOTICE TO ADVERSE PARTIES AND STATE COURT.**—  
*Promptly after the filing of such notice of removal of a civil action the defendant or defendants shall give written notice thereof to all adverse parties and shall file a copy of the notice with the clerk of such State court, **which shall effect the removal and the State court shall proceed no further unless and until the case is remanded.*** (Emphases added!) See CP 14, page 5.

Therefore based on the **Removal by Szmania on 5/18/2017 of THIS CASE (CP 18)**, and NO REMAND within 30 days per 28 U.S.C. § 1447(c), all actions by the State Courts are **NULL AND VOID** and need to be quashed and Szmania made whole to his state of being before the Superior Courts rulings on the issuing of the Writ of Restitution. The Removal makes all the Superior Court Orders and Writs Void Ab Initio and is thus void! The Removal CP 18 is clear and convincing evidence meeting Szmania's burden of proof of the Removal to District Court.

*“A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid.”* And *“It is clear and well established law that a void order can be challenged in any court.”* *OLD WAYNE MUT. L. ASSOC. v. McDONOUGH*, 204 U.S. 8, 27 S. Ct. 236 (1907). This is the Court I challenge the Orders/Writ in.

*“The law provides that once State and Federal Jurisdiction has been challenged, it must be proven.”* *Main v. Thiboutot*, 100 S. Ct. 2502 (1980).

This Court accepted Jurisdiction when it accepted Szmania's filing fee of \$300.00 on 9/17/2019 and accepted the Opening Brief of the Szmania on 11/7/2019. Ruled on time schedule on 11/25/2019 and accepted Well's Brief on 12/20/2019. RAP 2.1 (a) (1) & RAP 2.2 (a) (1) is jurisdiction for this appeal. *See Szmania's Opening Brief p. 1.*

Thus Szmania's filing his Notice of Appeal (CP 65) on 8/23/2019 and paying the fling fee of \$300.00 on 9/17/2019 fully satisfied the Jurisdiction requirements in RAP 5.1 REVIEW INITIATED BY FILING NOTICE OF APPEAL (a) Review Initiated by Notice (b) Filing Fee. This also satisfied the requirements of RAP 5.2 TIME ALLOWED TO FILE NOTICE (a) Notice of Appeal, "*30 days after the entry of the decision..*"

Since the Superior Court has illegally ruled on this case without jurisdiction, since the Subject Matter Jurisdiction was Removed to the Federal District Court, via Diversity Jurisdiction. The Superior Court acted on fake or illegal "original jurisdiction", thus giving appellate jurisdiction to this Court. Both parties: Szmania and Wells has subjected to this Courts Jurisdiction by filing their briefs without objection in timely appearances.

We further see in RCW 59.18.380:

*“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> See Szmania's Opening Brief p. 9.*

**The is NO way for a Court with unbiased eyes to not see that the previous Orders and Writ need to be quashed and Szmania made whole to the state of being BEFORE the Writ of Restitution was issued!** That is well settled law in RCW's and the RAP's possession or the cash equivliant, damages and full cost.

With this Courts January 3, 2019 ruling, Szmania is entitled to relief under CR 55 DEFAULT AND JUDGEMNT (c) Setting Aside Default and CR 60 RELIEF FROM JUSGMENT OR ORDER.(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence: Fraud;; etc..

Furthermore: *“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 and abused its judicial discretion and power illegally! See Szmania's Opening Brief p. 11.

**Wrongful eviction:** Washington Appeals Court rulings:

*"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/>

See Szmania's Opening Brief p. 27.

### III. SUMMARY OF ARGUMENT

- (a) Per the January 3, 2019 Ruling by this Court, the Superior Court had **NO PERSONAL Jurisdiction** over Szmania as noted in (a) above.
- (b) We see **Lack of Legal Standing of Ownership and Res Judicata** by Wells based upon this Court's ruling in 2011 in (b).
- (c) We see that Szmania is a **tenant is sufferance** in (c) above.
- (d) Finally we see that the Superior Court **Lacked Subject Matter Jurisdiction over the case and Szmania in CP 18, NOTICE OF REMOVAL to Federal District Court on 5/18/2017** in (d).

*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!)"

Based on well settled law, the following need to be voided:

CP 21 Order Denying Szmania's Motion to Dismiss 5/26/2017,  
CP 22 Default Judgment 5/26/2017,  
CP 23 Order for Writ of Restitution 5/26/2017,  
CP 24 Writ of Restitution 5/26/2017,  
CP 63 Order of Dismissal of the Action 8/9/2019.  
CP 64 Order Denying of Defendant/Appellant MOTION FOR POSSESSION AND DAMAGES, (CP 41), 8/9/2019.

The Superior Court can NOT rule as if the MOTION TO DISSIMISS was not granted when it was by this COURT!  
See Szmania's Opening Brief p. 41.

Let's call the cards straight as they are read upon the table. This Court screwed up on the first appeal No. 50523-1-II by NOT recognizing **the Removal Szmania did in CP 18 to Federal District Court on 5/18/2017 of THIS CASE.** Yes the previous case was also removed by Wells. This was clearly noted in the Clerks Papers at CP 18. It was also noted in Szmania's Opening Brief for that case No. 50523-1-II, dated 12/11/2017 and argued about Removal on pages vi, vii, ix, 1, 2, 5, 6, 8:

The Superior Court in the Instant State Case on Appeal in No. 50523-1-II acknowledges seeing the Notice of Removal: "*And I have seen from both parties a notice of removal,...*" See RP Volume I, Page 25 at 15 to 16. See Brief p. 8.

Continuing pages 9, 10, 12, 16, 18, 19, 20, 21, 22, 23, 24, 25, 31, 32, 33, 34, 36, 38:

*'MR. SZMANIA: I just want to clarify, because 28 USC 1446 subsection (d) clearly says that once a notice is filed with the clerk of the court, which shall affect the removal, and the state court shall proceed no further unless and until the case is remanded. In my humble opinion, from my view, you're proceeding in the case by entering an order. So do you have an authority that overrides 28 USC 1446 subsection (d)?* **THE COURT:** *I haven't heard a question so I'm not going to respond. And moreover, I'm typically not the one to respond to questions."* See RP Volume I, Page 28 at 14 to 24. **The case has NEVER been Remanded thus Jurisdiction is in the Federal Court!** See RP Volume I, page 10 at 10. "*This case has not been remanded.*" See Brief p. 38.

The blatant arrogance of Judge Bernard F. Veljacic in the verbal responses on the subject of Removal and Lack of Jurisdiction are clear indicators of a rouge and unqualified justice earning an unearned paycheck from the State of Washington! If a justice is not going to uphold the laws and well established law and precedence than **they should be removed from the bench!**

Judge Veljacic in his arrogance and dishonor to the U.S. Constitution and this decorated disabled veteran has cost this Appellant dearly in both time and money! His actions are in excusable **and he should be removed from the bench!** His actions has violated my Procedural Due Process afforded me in the U.S. Constitution, IVX. Amendment. Judge Veljacic demonstrated by his actions and rulings that he was NOT an impartial decision maker. Once he proceeded after acknowledging the case was Removed to Federal District Court, he was acting on his own personal being and not any longer covered by the protection of his court. Once outside the law, he is personally responsible for his actions! Judicial Accountability needs to be strongly applied in this case with the repeated total disregard for the law by Judge Veljacic.

Szmania asked that Full Cost be awarded for both Appeals and paid for by Judge Bernard F. Veljacic **personally**, since he went outside of the law that caused Szmania to appeal twice per RAP 14.1 COSTS GENERALLY & RCW 4.84 COSTS.

This Court needs to get it right this time! It is clear that:

(a) Per the January 3, 2019 Ruling by this Court, the Superior Court had **NO PERSONAL Jurisdiction** over Szmania as noted in (a) above.

(b) We see **Lack of Legal Standing of Ownership and Res Judicata** by Wells based upon this Court's ruling in 2011 in (b).

(c) We see that Szmania is a **tenant in sufferance** in (c) above there Szmania is entitled to Possession (An equal cash amount.) and Damages and Cost for the illegal eviction!

(d) Finally we see that the Superior Court **Lacked Subject Matter Jurisdiction over the case and Szmania in CP 18, NOTICE OF REMOVAL to Federal District Court on 5/18/2017 in (d) above and should of proceeded NO MORE!**

On remand the Superior Court repeated the same errors!

**Based on well settled law, the following need to be**

**Voided by this Court:**

CP 21 Order Denying Szmania's Motion to Dismiss 5/26/2017,  
CP 22 Default Judgment 5/26/2017,  
CP 23 Order for Writ of Restitution 5/26/2017,  
CP 24 Writ of Restitution 5/26/2017,  
CP 63 Order of Dismissal of the Action 8/9/2019.  
CP 64 Order Denying of Defendant/Appellant MOTION FOR  
POSSESSION AND DAMAGES, (CP 41), 8/9/2019.

**Based upon well settled law, the following need to be**

**Granted by this Court:**

CP 15 Order Granting Szmania's Motion to Dismiss, CP 14.

CP 42 Order Granting Szmania's Motion for Possession and  
Damages, CP 41.

Than those actions will justify Szmania being a "*serial litigator.*" (See Wells Brief, page 6, foot note 4) Szmania become a serial litigator after Satan's bastard children in June of 2008 at Lane Powell PC in Seattle, WA; specifically John S. Devlin III, WSBA No. 23988 and Abraham K. Lorber, WSBA No. 40668. Started their serial attacks to present day, to steel Szmania's home that he fully paid of in November 2007. See CP 13 Ex B, Ex C, Ex J. They have been lying from day one using multiple banks as alleged owners of a paid off note. Can you say FRAUD?

So I take being called a “*serial litigator*” as a compliment!  
I am the 1% that is not a wimp but rather a warrior when someone attacks me, my family, or my home! I invested over \$2,000,000.00 and thousands of hours into that home! Who they Hell are they to steel it? Think I won’t fight and I won’t go the distance? Wrong!!

They miscalculated me!!!! They saw a disabled veteran.  
But in reality I am like Mel Gibson in *Brave Heart*, or *The Patriot*. Or like Russell Crowe in the *Gladiator*! I don’t back down from a fight and I go the distance! How many Pro Se’s do you know that have gone to the U.S. Supreme Court not once but twice? Look at my signature line. In fact if I have to I will again appeal this up and to the U.S. Supreme Court with this case. Those Nine Justices would love to pull and tear apart a State of Washington liberal judge who blew off 28 U.S.C. § 1446(d) and continued to rule and adjudge on a case with **NO SUBJECT MATTER JURISDICTION!** It will be great if they allow me oral arguments too! **HISTORY IN THE MAKING of a Pro Se’! I love it!!!**  
“*I embrace what other’s fear!*” Steve Perry, *I Stand Alone* lyrics.

**“Hence, after removal, the jurisdiction of the state court absolutely ceases and the state court has a duty not to proceed any further in the case. Any subsequent proceedings in state court on the case are void ab initio.”** *Maseda v. Honda Motor Co., Ltd.*, 861 F.2d 1248, 1254–55 (11th Cir. 1988) (internal citation omitted); see *DB50 2007-1 Tr. v. Dixon*, 723 S.E.2d 495, 496 (Ga. Ct. App. 2012) (“**[A]ny proceedings in a state court after removal of a case to federal court are null and void and must be vacated.**” (citation omitted)). (Emphases added!)

[https://www.mcglinchey.com/files/uploads/Real\\_Property\\_Newsletters/2016/01/Case-Wargo-v-Wells-Fargo.pdf](https://www.mcglinchey.com/files/uploads/Real_Property_Newsletters/2016/01/Case-Wargo-v-Wells-Fargo.pdf) Page 4.

“*BILBREY, J., concurring. I agree with Judge Benton’s thorough legal analysis that as 28 U.S.C. § 1446 is currently written, a state court lacks subject matter jurisdiction after a notice of removal is filed, even if the removal is improper.* See *Maseda v. Honda Motor Co., Ltd.*, 861 F.2d 1248 (11th Cir. 1988).”

[https://www.mcglinchey.com/files/uploads/Real\\_Property\\_Newsletters/2016/01/Case-Wargo-v-Wells-Fargo.pdf](https://www.mcglinchey.com/files/uploads/Real_Property_Newsletters/2016/01/Case-Wargo-v-Wells-Fargo.pdf) Page 20.  
(Emphases added!)

**“the filing of a removal petition terminates the state court’s jurisdiction until the case is remanded, even in a case improperly removed.”** *Lowe v. Jacobs*, 243 F.2d 432, 433 (5th Cir.), cert. denied, 355 U.S. 842, 78 S.Ct. 65, 2 L.Ed. 52 (1957).  
(Emphases added!)

**“There is no discretion to ignore lack of jurisdiction!”** *Joyce v. U.S.* 474 2D 215.

“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!)

#### IV. CONCLUSION

For the foregoing reasons; the well settled law as noted above needs to be applied in this case by this Court. Any

reasonable person can see clearly that:

(a) Per the January 3, 2019 Ruling by this Court, the Superior Court had **NO PERSONAL Jurisdiction** over Szmania.

(b) We see **Lack of Legal Standing of Ownership and Res Judicata** by Wells based upon this Court's ruling in 2011.

(c) We see that Szmania is a **tenant in sufferance and is legally** entitled to Possession (An equal cash amount.) and Damages and Cost for the illegal eviction!

(d) Finally we see that the Superior Court **Lacked Subject Matter Jurisdiction over the case and Szmania in CP 18, NOTICE OF REMOVAL to Federal District Court on 5/18/2017 in (d) above and should of proceeded NO MORE! Note, ALL the below listed orders where done by the Superior Court and Judge Veljacic AFTER the REMOVAL was filed! = VOID! These actions clearly demonstrate an abuse of judicial discretion by Judge Veljacic! PERIOD!!**

**Based on well settled law, the following need to be**

**Voided by this Court:**

CP 21 Order Denying Szmania's Motion to Dismiss 5/26/2017,  
CP 22 Default Judgment 5/26/2017,  
CP 23 Order for Writ of Restitution 5/26/2017,  
CP 24 Writ of Restitution 5/26/2017,  
CP 63 Order of Dismissal of the Action 8/9/2019.  
CP 64 Order Denying of Defendant/Appellant MOTION FOR  
POSSESSION AND DAMAGES, (CP 41), 8/9/2019.

**Based upon well settled law, the following need to be**

**Granted by this Court:**

CP 15 Order Granting Szmania's Motion to Dismiss, CP 14.

CP 42 Order Granting Szmania's Motion for Possession and  
Damages, CP 41.

**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 below listed DAMAGES as  
prayed for in his MOTION TO DISMISS CP 14 and his  
MOTION FOR POSSESSION AND DAMGES CP 41. *See*  
Also Szmania Opening Brief dated 11/7/2019 pages 26-35 and  
Totals Prayed for 36-37.**

*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*

Let's not forget, Szmania is homeless due to both Wells and Mr. Bernard F. Veljacic actions and his life has been turned upside down and destroyed.

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 AND the first appeal be payable by Wells and Mr. Bernard F. Veljacic

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 asks for those cost to be award and paid by both Wells and Mr. Bernard F. Veljacic. And in this case too and RCW 4.84 COSTS.

Szmania asks for any other relief this Court deems appropriate.

Szmania is also available for oral arguments and request oral arguments. This brief is under the limit for Appellant Reply Briefs found in RAP 10.4 (b) not to exceed 25 pages.

*“I am not afraid of an army of lions led by a sheep;  
I am afraid of an army of sheep led by a lion.”*  
Alexander the Great.

**Respectfully submitted;**

s/ Daniel G. Szmania

Appellant/Defendant, Daniel G. Szmania, Pro Se', January 7, 2020  
Presented: Daniel G. Szmania, Defendant, Pro Se'.  
HM1 USNR Retired,  
U.S. Supreme Court No. 11-6137  
U.S. Supreme Court No. 18-734  
PO Box 757, Brush Prairie, WA 98606-0757  
360-718-1402, Email: [dszmania@quixnet.net](mailto:dszmania@quixnet.net)

**CERTIFICATE OF SERVICE**

Case No. 53743-5-II, Szmania v. Wells Fargo

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 January, 2020, 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 REPLY 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 January, 2020, at Brush Prairie, Washington.

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

Appellant/Defendant, Daniel G. Szmania, Pro Se’, January 7, 2020  
Presented: Daniel G. Szmania, Defendant, Pro Se’.  
HM1 USNR Retired,  
U.S. Supreme Court No. 11-6137  
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PO Box 757, Brush Prairie, WA 98606-0757  
360-718-1402, Email: [dszmania@quixnet.net](mailto:dszmania@quixnet.net)

**CERTIFICATE OF SERVICE FOR:  
DEFENDANT’S/ APPELLANT’S REPLY BRIEF, Page 1 of 1  
(Page 31 of 31 Total Pages)**

**DANIEL SZMANIA - FILING PRO SE**

**January 07, 2020 - 6:18 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 53743-5  
**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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- teresa.armendariz@hklaw.com

**Comments:**

DANIEL G. SZMANIA, Defendant/Appellant, APPELLANT'S REPLY BRIEF ORAL ARGUMENTS REQUESTED

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