

ORIGINAL

No. 840440

SUPREME COURT
OF THE STATE OF WASHINGTON

BANK OF AMERICA, N.A., a national association,

Petitioner,
v.

KENNETH TREIGER,
a married person as to his separate estate,

Respondent,

J'AMY LYN OWENS, an unmarried person, SHULKIN, HUTTON,
INC., P.S. a Washington professional service corporation; and
EDMUND JOHN WOOD,

Defendants.

ANSWER TO AMICUS CURIAE MEMORANDUM OF
WASHINGTON LAND TITLE ASSOCIATION

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

By: Catherine W. Smith
WSBA No. 9542

1109 First Avenue, Suite 500
Seattle, WA 98101
(206) 624-0974

Attorneys for Respondent Kenneth Treiger

FILED
MAR 29 2010
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

CLERK

BY RONALD R. CARPENTER

10 MAR 29 PM 3:47

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

FILED AS
ATTACHMENT TO EMAIL

It is undisputed that the petitioner Bank had both actual and constructive notice of respondent Treiger's judgments, which were entered, filed, and recorded before the Bank perfected its lien on Owens' interest in the real property at issue. The Bank, which had made an unsecured loan to Owens, had notice of Treiger's judgments and his interest in the property, and took its prejudgment writ of attachment subject to them. The Court of Appeals correctly rejected the Bank's efforts to turn its unsecured loan into a secured obligation by giving priority to the Bank's writ of attachment over previously recorded liens of which it had notice.

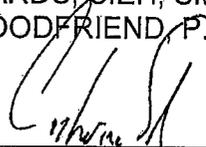
Amicus ALTA's concerns that a title insurer might have to "search" for judgments, or that lenders might refuse to make secured loans if unrecorded judgments took priority, simply are not raised by this case. The judgments at issue here were readily found by the Bank on the recording docket. The Bank had earlier lent money to Treiger's ex-wife Owens without security.

Treiger is one individual, forced to litigate against a huge corporation with no grounds for recouping his attorney fees against his well-funded adversary, which had actual notice of his judgments when it obtained the writ of attachment for which it now seeks priority. He has waited four years for the distribution he was owed

in his dissolution from Owens. His own liability to the Bank, and that of the community, had been fully discharged years earlier, after payment of significant sums to the Bank on Owens' debt. Treiger cannot afford to and should not be forced to litigate in this Court priority issues raised only by compensated trust lawyers with institutional interests that are not implicated by the Court of Appeals' decision in this case. This Court should deny review.

Dated this 29th day of March, 2010.

EDWARDS, SIEH, SMITH
& GOODFRIEND, P.S.

By: 

Catherine W. Smith, WSBA No. 9542

Attorneys for Respondent Kenneth Treiger

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on March 29, 2010, I arranged for service of the Answer to Amicus Curiae Memorandum of Washington Land Title Association, to the court and the parties to this action as follows:

Office of Clerk Washington Supreme Court Temple of Justice P.O. Box 40929 Olympia, WA 98504-0929	___ Facsimile ___ Messenger ___ U.S. Mail <input checked="" type="checkbox"/> E-Mail
Jerome Shulkin Shulkin Hutton Inc., P.S. 7525 SE 24th Street, Suite 330 Mercer Island, WA 98024	___ Facsimile ___ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Jerry R. Kimball Law Office of Jerry R. Kimball 1200 Fifth Avenue, Suite 2020 Seattle, WA 98101	___ Facsimile ___ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Edmond John Wood Wood & Jones PS 303 N 67th St Seattle, WA 98103-5209	___ Facsimile ___ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Cynthia B. Whitaker Attorney at Law 1200 Fifth Avenue, Suite 2020 Seattle, WA 98101-3100	___ Facsimile ___ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Thomas S. Linde Law Offices of Laurin S. Schweet 80th Avenue Professional Building 2955 - 80th Ave. SE, Suite 102 Mercer Island, WA 98040	___ Facsimile ___ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Robert W. Sargeant Williams Kastner & Gibbs PLLC Two Union Square 601 Union Street, Suite 4100 Seattle WA 98101	___ Facsimile ___ Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

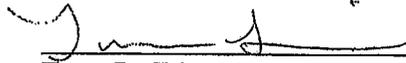
CLERK

DONALD R. CARPENTER

10 MAR 29 PM 3:47

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

DATED at Seattle, Washington this 29th day of March, 2010.



 Tara D. Friesen

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, March 29, 2010 3:46 PM
To: 'Tara Friesen'
Cc: jkimballaw@seanet.com; tomlinde@schweetlaw.com; jshulkin@shulkin.com; cynthia@cynthiawhitaker.com; ewood1@aol.com; rsargeant@williamskastner.com
Subject: RE: Bank of America v. J'Amy Lyn Owens, et al., Cause No. 84044-0

Received 3/29/10

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Tara Friesen [mailto:taraf@washingtonappeals.com]
Sent: Monday, March 29, 2010 3:43 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: jkimballaw@seanet.com; tomlinde@schweetlaw.com; jshulkin@shulkin.com; cynthia@cynthiawhitaker.com; ewood1@aol.com; rsargeant@williamskastner.com
Subject: RE: Bank of America v. J'Amy Lyn Owens, et al., Cause No. 84044-0

Attached for filing in .pdf format is the Respondent Kenneth Treiger's Answer to Amicus Curiae Memorandum of Washington Land Title Association, in *Bank of America v. J'Amy Lyn Owens, et al.*, Cause No. 84044-0. The attorney filing this document is Catherine W. Smith, WSBA No. 9542, e-mail address: cate@washingtonappeals.com

Tara Friesen
Legal Assistant to Howard Goodfriend and Catherine Smith
Edwards, Sieh, Smith & Goodfriend, P.S.
1109 First Avenue, Suite 500
Seattle, WA 98101
(206) 624-0974
taraf@washingtonappeals.com