

Received
Washington State Supreme Court

MAY 19 2014

Ronald R. Carpenter
Clerk

90078-7

NO. 90085-0

SUPREME COURT OF THE
STATE OF WASHINGTON

WASHINGTON FEDERAL, a federally chartered savings association,

Plaintiff-Appellant,

v.

KENDALL D. GENTRY and NANCY GENTRY, individually, and the
marital community comprised thereof

Defendants-Respondents.

AMICI CURIAE MEMORANDUM
IN SUPPORT OF PETITION FOR REVIEW

FILED
JUN - 3 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON CRF

TABLE OF CONTENTS

Page

I. IDENTITY AND INTEREST OF AMICI1

II. STATEMENT OF THE CASE.....3

III. ARGUMENT4

IV. CONCLUSION.....7

APPENDICES

- A. Ruling in *Union Bank, N.A. v. F.R. McAbee, Incorporated* (Appeal No. 70497-4-I) dated April 2, 2014
- B. Ruling in *Union Bank, N.A. v. Lyons* (Appeal No. 70327-7-I) dated May 9, 2014
- C. Stipulation and Order for Stay of Proceedings in *Union Bank, N.A. v. Foster* (Pierce County No. 13-2-11042-9) dated May 9, 2014
- D. Stipulated Order to Stay Proceeding Pending Supreme Court Resolution of Conflict in Controlling Law in *General Electric Capital Corporation v. Xu* (King County No. 13-2-40746-9-SEA) dated May 2, 2014
- E. Ruling in *Union Bank, N.A. v. Deyo* (Appeal No. 71168-7-I) dated March 31, 2014
- F. Order Granting Defendants’ Motion for Temporary Stay and Vacating Case Scheduling Order in *Union Bank, N.A. v. Coaker* (King County No. 13-2-24284-2-SEA) dated April 16, 2014
- G. Order Granting Defendants’ Motion for Temporary Stay In Part in *Union Bank, N.A. v. McNaughton* (Snohomish County No. 11-2-09418-7) dated May 16, 2014

TABLE OF AUTHORITIES

	Page
RCW 61.24.100(10).....	3
RAP 13.4(b)(4)	4

I. IDENTITY AND INTEREST OF AMICI

The amici are F.R. McAbee, Incorporated; Mark and Marna McNaughton; Elizabeth and Mark Vanderveen; Daniel and Jeannine Moore; Robert and Darla Foster; Scott Edwards; Stanley Xu and Nanling Chen; Benjamin and Lillian Magnuson; Craig and Susan Pierce; Robert Pelan; Michael and Marilee Coaker; Harley (Jr.) and Michele O’Neil; Tori Lynn Nordstrom Trust; Harley O’Neil, Jr., trustee for the Tori Lynn Nordstrom Trust; John and Marion Bechtholt; Charles Deyo; A. Suzanne, G. Paul, Jared, Noelle, Levi, Stephanie, Adam, and Katherine Ware (the “Wares”); and Far North Ventures, LLC (each, a “**Guarantor**,” and together, the “**Guarantors**”). Each of the Guarantors is a defendant in a lawsuit currently pending in a state trial or lower appellate court. Each case involves substantially similar facts:

- In each case, the Guarantor executed a personal guaranty in connection with a loan made by a lender to a borrower.
- In each case, the loan was secured by one or more deeds of trust drafted by the lender and encumbering property located in the State of Washington.
- In each case, the deed(s) of trust contained the following language:

THIS DEED OF TRUST . . . IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS DEED OF TRUST

- In each case, the deed(s) of trust defined “Indebtedness” as follows (with underlining added):

The word “Indebtedness” means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor’s obligations or expenses incurred by Trustee or Lender to enforce Grantor’s obligations under this Deed of Trust, together with interest on such amounts as provided in this Deed of Trust.

- In each case, the deed(s) of trust defined “Related Documents” as follows (with underlining added):

The words “Related Documents” mean all promissory notes, credit agreements, loan agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness; provided, that the environmental indemnity agreements are not “Related Documents” and are not secured by this Deed of Trust.

- In each case, the Guarantor contends, based on the foregoing language in the deed(s) of trust, that its guaranty was a “Related Document” and that the payment and performance obligations evidenced

by the guaranty were accordingly secured by the deed(s) of trust.

- In each case, the borrower defaulted on the loan, and the lender (or its successor) foreclosed, non-judicially, on the deed(s) of trust.

- In each case, the lender (or its successor) sued the Guarantor to recover an alleged deficiency remaining after the completion of the non-judicial foreclosure.

- In each case, the Guarantor has asserted or intends to assert that: (1) RCW 61.24.100(10) prohibits the lender (or its successor) from enforcing a guaranty where the lender (or its successor) elected to non-judicially foreclose a deed of trust that secured the guaranty; (2) the deed(s) of trust that were non-judicially foreclosed by the lender (or its successor) was given to secure the Guarantor's obligations under the guaranty, which is a "Related Document" as defined by the deed(s) of trust; and (3) the boilerplate waiver provisions of the lender's guaranty form are void as against public policy.

In short, in each case, the Guarantor has raised the same issues that are presented in the petition for review. Accordingly, the Guarantors have a substantial interest in this Court's resolution of the issues presented in the petition for review.

II. STATEMENT OF THE CASE

The Guarantors adopt the Statement of the Case of petitioners

Kendall and Nancy Gentry.

III. ARGUMENT

The Court should accept review of this case pursuant to RAP 13.4(b)(4) because it involves issues of substantial public interest. This substantial public interest is evidenced by, among other things, the multiple cases pending before the state and appellate courts of Washington that raise the same issues as presented for the Court in the petition for review. The Guarantors submit this memorandum to confirm their interest in this Court's resolution of all issues raised by the petition for review.

The table below summarizes the procedural posture of pending cases in which a Guarantor is a defendant.¹ Indeed, as reflected by the stay orders entered in many of the below cases, the trial and lower appellate courts recognize that this Court's resolution of the issues presented will likely be outcome determinative.

Case Caption	Amici Defendants	Procedural Posture
<i>Union Bank, N.A. v. F.R. McAbee, Incorporated</i> (Appeal No. 70497-4-1)	F.R. McAbee, Incorporated; Far North Ventures, LLC; the Wares	Temporarily stayed pending this Court's anticipated review of this case, <i>Washington Federal v. Harvey</i> (No. 90078-7), and/or <i>Union Bank, N.A. v. Brinkman</i> (No. 89964-9). ²

¹ There are additional cases, not listed in the table, pending before Washington trial and appellate courts involving the same issues raised in the petition for review and guarantors who are not part of this memorandum.

² See Ruling dated April 2, 2014, attached hereto as Appendix A.

Case Caption	Amici Defendants	Procedural Posture
<i>Union Bank, N.A. v. Lyons</i> (Appeal No. 70327-7-1)	Elizabeth and Mark Vanderveen; Harley (Jr.) and Michele O'Neil; Tori Lynn Nordstrom Trust; Harley O'Neil, Jr., trustee of the Tori Lynn Nordstrom Trust	Noted for consideration, without oral argument, on June 4, 2014. ³
<i>Union Bank, N.A. v. Foster</i> (Pierce County No. 13-2-11042-9)	Robert and Darla Foster	Temporarily stayed pending this Court's anticipated review of this case, <i>Washington Federal v. Harvey</i> (No. 90078-7), and/or <i>Union Bank, N.A. v. Brinkman</i> (No. 89964-9). ⁴
<i>Union Bank, N.A. v. Moore</i> (Appeal No. 45311-8-II)	Daniel and Jeannine Moore	Fully briefed; not yet noted for consideration.
<i>General Electric Capital Corporation v. Xu</i> (King County No. 13-2-40746-9-SEA)	Stanley Xu and Nanling Chen	Temporarily stayed pending this Court's anticipated review of this case, <i>Washington Federal v. Harvey</i> (No. 90078-7), and/or <i>Union Bank, N.A. v. Brinkman</i> (No. 89964-9). ⁵
<i>Union Bank, N.A. v. Edwards</i> (Appeal No. 45966-3-II)	Scott Edwards; John and Marion Bechtholt	Appellant's opening brief due May 22, 2014.

³ See Ruling dated May 9, 2014, attached hereto as Appendix B.

⁴ See Stipulation and Order for Stay of Proceedings dated May 9, 2014, attached hereto as Appendix C.

⁵ See Stipulated Order to Stay Proceeding Pending Supreme Court Resolution of Conflict in Controlling Law dated May 2, 2014, attached hereto as Appendix D.

Case Caption	Amici Defendants	Procedural Posture
<i>Union Bank, N.A. v. Magnuson</i> (Snohomish County No. 12-2-08328-1)	Benjamin and Lillian Magnuson; Craig and Susan Pierce	Pending; no trial date assigned.
<i>Washington Federal v. Todd</i> (Snohomish County No. 12-2-02124-2)	Robert Pelan	Pending; no trial date assigned.
<i>Union Bank, N.A. v. Deyo</i> (Appeal No. 71168-7-1)	Charles Deyo	Temporarily stayed pending this Court's anticipated review of this case, <i>Washington Federal v. Harvey</i> (No. 90078-7), and/or <i>Union Bank, N.A. v. Brinkman</i> (No. 89964-9). ⁶
<i>Union Bank, N.A. v. Coaker</i> (King County No. 13-2-24284-2-SEA)	Michael and Marilee Coaker	Temporarily stayed pending this Court's anticipated review of this case, <i>Washington Federal v. Harvey</i> (No. 90078-7), and/or <i>Union Bank, N.A. v. Brinkman</i> (No. 89964-9). ⁷
<i>Union Bank, N.A. v. McNaughton</i> (Snohomish County No. 11-2-09418-7)	Mark and Marna McNaughton	Certain claims temporarily stayed pending this Court's anticipated review of this case, <i>Washington Federal v. Harvey</i> (No. 90078-7), and/or <i>Union Bank, N.A. v. Brinkman</i> (No. 89964-9). ⁸

⁶ See Ruling dated March 31, 2014, attached hereto as Appendix E.

⁷ See Order Granting Defendants' Motion for Temporary Stay and Vacating Case Scheduling Order dated April 16, 2014, attached hereto as Appendix F.

⁸ See Order Granting Defendants' Motion for Temporary Stay In Part dated May 16, 2014, attached hereto as Appendix G.

IV. CONCLUSION

For the foregoing reasons, the Guarantors respectfully request that this Court grant the Gentrys' petition for review.

DATED this 19th day of May, 2014.

CAIRNCROSS & HEMPELMANN, P.S.



John R. Rizzardi, WSBA No. 9388

E-mail: jrizzardi@cairncross.com

Jessica C. Tsao, WSBA No. 44382

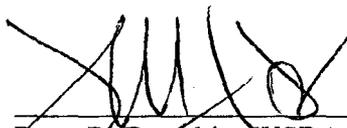
E-mail: jtsao@cairncross.com

524 Second Avenue, Suite 500

Seattle, WA 98104-2323

Attorneys for Guarantors/Amici F.R. McAbee,
Incorporated; Mark and Marna McNaughton

BELCHER SWANSON LAW FIRM, PLLC



Peter R. Dworkin, WSBA No. 30394

Email: prd@belcherswanson.com

900 Dupont Street

Bellingham, WA 98225

Attorneys for Guarantors/Amici Far North
Ventures, LLC; the Wares

No. 44382 per telephone
authorization

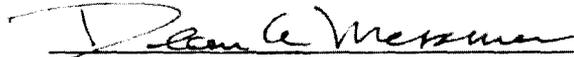
///

///

///

///

LASHER HOLZAPFEL SPERRY &
EBBERSON PLLC



Dean A. Messmer, WSBA No. 5738

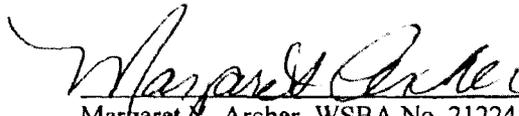
E-mail: messmer@lasher.com

601 Union Street, Suite 2600

Seattle, WA 98101

Attorneys for Guarantors/Amici Elizabeth and Mark
Vanderveen; Benjamin and Lillian Magnuson;
Craig and Susan Pierce; Robert Pelan; Michael and
Marilee Coaker

GORDON THOMAS HONEYWELL LLP



Margaret A. Archer, WSBA No. 21224

E-mail: marcher@gth-law.com

1201 Pacific Avenue, Suite 2100

Tacoma, WA 98402

Attorneys for Guarantors/Amici Scott Edwards;
Stanley Xu and Nanling Chen

ANDERSON LAW FIRM PLLC



Mark B. Anderson, WSBA No. 25895

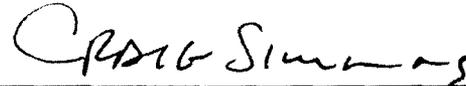
E-mail: marka@mbaesq.com

1119 Pacific Avenue, Suite 1305

Tacoma, WA 98402

Attorneys for Guarantors/Amici Daniel and
Jeannine Moore; Robert and Darla Foster

ROMERO PARK P.S.



H. Troy Romero, WSBA No. 19044
Email: tromero@romeropark.com
Craig Simmons, WSBA No. 38064
Email: csimmons@romeropark.com
155 – 108th Avenue NE, Suite 202
Bellevue, WA 98004
Attorneys for Guarantors/Amici Harley (Jr.) and
Michele O’Neil; Tori Lynn Nordstrom Trust;
Harley O’Neil Jr., trustee for the Tori Lynn
Nordstrom Trust

KELLEY GOLDFARB HUCK & ROTH PLLC

Michael A. Goldfarb, WSBA No. 13492
Email: goldfarb@kdg-law.com
700 Fifth Avenue, Suite 6100
Seattle, WA 98104
Attorneys for Guarantor/Amicus Charles Deyo

WILLIAMS, KASTNER & GIBBS PLLC

Shawn B. Rediger, WSBA No. 26425
Email: srediger@williamskastner.com
601 Union Street, Suite 4100
Seattle, WA 98101
Attorneys for Guarantors/Amici John and Marion
Bechtholt

ROMERO PARK P.S.

H. Troy Romero, WSBA No. 19044

Email: tromero@romeropark.com

Craig Simmons, WSBA No. 38064

Email: csimmons@romeropark.com

155 – 108th Avenue NE, Suite 202

Bellevue, WA 98004

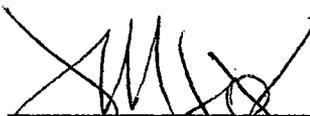
Attorneys for Guarantors/Amici Harley (Jr.) and

Michele O'Neil; Tori Lynn Nordstrom Trust;

Harley O'Neil Jr., trustee for the Tori Lynn

Nordstrom Trust

KELLEY GOLDFARB HUCK & ROTH PLLC

 No. 44382
per email authorization

Michael A. Goldfarb, WSBA No. 13492

Email: goldfarb@kdg-law.com

700 Fifth Avenue, Suite 6100

Seattle, WA 98104

Attorneys for Guarantor/Amicus Charles Deyo

WILLIAMS, KASTNER & GIBBS PLLC

Shawn B. Rediger, WSBA No. 26425

Email: srediger@williamskastner.com

601 Union Street, Suite 4100

Seattle, WA 98101

Attorneys for Guarantors/Amici John and Marion

Bechtholt

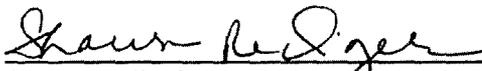
ROMERO PARK P.S.

H. Troy Romero, WSBA No. 19044
Email: tromero@romeropark.com
Craig Simmons, WSBA No. 38064
Email: csimmons@romeropark.com
155 – 108th Avenue NE, Suite 202
Bellevue, WA 98004
Attorneys for Guarantors/Amici Harley (Jr.) and
Michele O'Neil; Tori Lynn Nordstrom Trust;
Harley O'Neil Jr., trustee for the Tori Lynn
Nordstrom Trust

KELLEY GOLDFARB HUCK & ROTH PLLC

Michael A. Goldfarb, WSBA No. 13492
Email: goldfarb@kdg-law.com
700 Fifth Avenue, Suite 6100
Seattle, WA 98104
Attorneys for Guarantor/Amicus Charles Deyo

WILLIAMS, KASTNER & GIBBS PLLC


Shawn B. Rediger, WSBA No. 26425
Email: srediger@williamskastner.com
601 Union Street, Suite 4100
Seattle, WA 98101
Attorneys for Guarantors/Amici John and Marion
Bechtholt

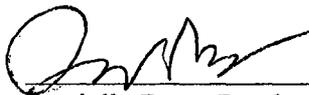
Certificate of Service

I, Danielle Rees, certify under penalty of perjury of the laws of the State of Washington that on May 19, 2014, I caused a copy of the document to which this is attached to be served on the following individual(s) via legal messenger:

Lane Powell PC
Gregory Fox and Ryan McBride
1420 Fifth Ave, Ste 4200
Seattle, WA 98111
Attorneys for Washington Federal

Tousley Brian Stephens
Christopher Brain and Adrienne McEntee
1700 Seventh Ave, Suite 2200
Seattle, WA 98101
Attorneys for Kendall Gentry and Nancy Gentry

DATED this 19th day of May, 2014, at Seattle, Washington.



Danielle Rees, Paralegal
CAIRNCROSS & HEMPELMANN, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: (206) 254-4429
Facsimile: (206) 254-4529
E-mail: drees@cairncross.com

APPENDIX A

RICHARD D. JOHNSON,
Court Administrator/Clerk

The Court of Appeals
of the
State of Washington

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

April 2, 2014

Matthew Turetsky
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
mturetsky@schwabe.com

Peter Robert Dworkin
Belcher Swanson Law Firm, P.L.L.C.
900 Dupont St
Bellingham, WA, 98225-3105
prd@belcherswanson.com

John Robert Rizzardi
Cairncross & Hempelmann PS
524 2nd Ave Ste 500
Seattle, WA, 98104-2323
jrizzardi@cairncross.com

Averil Budge Rothrock
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
arothrock@schwabe.com

Jessica C Tsao
Cairncross & Hempelmann
524 2nd Ave Ste 500
Seattle, WA, 98104-2323
jtsao@cairncross.com

CASE #: 70497-4-I
Union Bank, NA, Appellant v. F.R. McAbee, Incorporated, Respondent

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on March 31, 2014, regarding joint motion to stay:

Page 1 of 2

Page 2 of 2
Case No. 70497-4-I, Union Bank v. McAbee
April 2, 2014

"The parties jointly request a stay of this case pending the Supreme Court's anticipated review and decision to resolve the conflict between Divisions One and Two of this Court on the controlling issues of law raised in this case. This Court previously stayed this case pending this Court's decisions in Washington Federal v. Gentry, No. 70004-9-I, and Washington Federal v. Harvey, No. 69791-9-I, because those two cases involved the same or similar issues, the resolution of which would likely affect the outcome in this case. On February 18, 2014, this Court issued an opinion in both Gentry (published) and Harvey (unpublished). In Gentry and Harvey, this Court disagreed with the reasoning and conclusion in a recent Division Two decision in First-Citizens Bank & Trust Co. v. Cornerstone Homes & Development LLC, 178 Wn. App. 207, 314 P.3d 420 (2013). A petition for review was filed in both Gentry and Harvey. It appears that in another Division Two case, Union Bank v. Brinkman, No. 44839-4-II, a party seeks to transfer the case to the Supreme Court to resolve the conflict between Gentry and First-Citizens. Under these circumstances, a temporary stay is appropriate. If the Supreme Court denies review, a temporary stay will be lifted. The parties are directed to file a status report in this Court within 10 days of a decision on the petition for review in Gentry and Harvey and the petition for direct appeal in Union Bank v. Brinkman.

Therefore, it is

ORDERED that a temporary stay is granted until the Supreme Court decides whether to accept review in Washington Federal v. Gentry, No. 70004-9-I, Washington Federal v. Harvey, No. 69791-9-I, and Union Bank v. Brinkman, No. 44839-4-II. The parties shall file a status report in this Court within 10 days of a decision by the Supreme Court on the petition for review in Gentry and Harvey and the petition for direct appeal in Union Bank v. Brinkman."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

emp

APPENDIX B

RICHARD D. JOHNSON,
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

May 9, 2014

H. Troy Romero
Romero Park PS
155 108th Ave NE Ste 202
Bellevue, WA, 98004-5901
tromero@romeropark.com

Dean Alan Messmer
Lasher Holzapfel Sperry & Ebberson PLLC
601 Union St Ste 2600
Seattle, WA, 98101-4000
messmer@lasher.com

Averil Budge Rothrock
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
arothrock@schwabe.com

Matthew Turetsky
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
mturetsky@schwabe.com

Milt Reimers
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
mreimers@schwabe.com

CASE #: 70327-7-1

Union Bank, Appellant v. Elizabeth and Mark Vanderveen et al, Respondents

Counsel:

The following notation ruling by Richard D. Johnson, Court Administrator/Clerk of the Court was entered on May 9, 2014:

"At the direction of the panel, this case will be considered without oral argument on June 4, 2014 at 1:30 pm."

Sincerely,



Richard D. Johnson
Court Administrator/Clerk

ssd

APPENDIX C

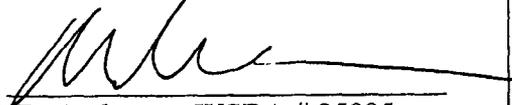
1 On these issues, different divisions of the Court of Appeals have reached
2 contradictory conclusions in three cases: *First Citizens Bank & Trust Co. v. Cornerstone*
3 *Homes & Development LLC*, 178 Wn. App. 207, 314 P.3d 420 (Div. 2 2013)
4 ("*Cornerstone*"), *Washington Federal v. Gentry*, _ Wn. App. _, 319 P.3d 823 (Slip. Op.
5 70004-9-I, February 18, 2014) ("*Gentry*"), and *Washington Federal v. Harvey*, 2014 WL
6 646746 (February 18, 2014, Slip Op. 69791-9-I) ("*Harvey*").

7 *Cornerstone* was not further appealed. Petitions for Supreme Court review have
8 been filed in *Gentry* and in *Harvey*, which are being considered under Supreme Court
9 Nos. 900850 and 899649 respectively. Additionally, a motion to transfer for direct
10 review has been filed in *Union Bank v. Brinkman, et al.*, Division II Case No. 44839-4-II
11 ("*Brinkman*"), which is being considered by the Supreme Court under Case No. 89964-9.
12 The issues presented in *Brinkman* are identical to those presented in *Gentry* and *Harvey*.

13 The Parties believe that, given the direct conflict between the divisions of the
14 Court of Appeals, the Supreme Court is likely to review these issues. A Supreme Court
15 decision in one of these cases will likely be determinative in this action. Therefore, the
16 Parties agree and stipulate to stay this action pending the final outcome of the appeals
17 involving the same legal issues, in order to conserve the resources of the Parties and
18 promote judicial efficiency. The Parties will keep the Court apprised of any changes in
19 the status of this matter.

20 IT IS SO STIPULATED.

21 ASSAYAG ❖ MAUSS
22 A Limited Liability Partnership
23 
24 per email authority
25 By: _____
26 Allison C. Bizzano, WSBA #45809
27 allisonb@amlegalgroup.com
28 Attorneys for Plaintiff

ANDERSON LAW FIRM PLLC

By: _____
Mark B. Anderson, WSBA # 25895
marka@mbaesq.com
Attorneys for Defendants

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

BASED UPON THE FOREGOING STIPULATION, which the Court finds sufficient, it is hereby ORDERED that this matter is stayed until such time as the Parties shall agree, a Party shall show good cause for lifting the stay, or as the Court may otherwise order. The Parties shall keep the Court apprised of any changes in the status of this matter.

DONE IN ~~OPEN~~ COURT THIS 9th day of MAY, 2014.

Denny Costello
JUDGE/COURT COMMISSIONER

Prepared and Presented by:
ASSAYAG ❖ MAUSS
A Limited Liability Partnership
[Signature]
per email authority
By: _____
Allison C. Bizzano, WSBA #45809
allisonb@amlegalgroup.com
Attorneys for Plaintiff

Copy Received, Approved as to Form,
Notice of Presentment Waived:
ANDERSON LAW FIRM PLLC
By: *[Signature]*
Mark B. Anderson, WSBA # 25895
marka@mbaesq.com
Attorneys for Defendants

APPENDIX D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ASSIGNED TO THE HONORABLE KEN SCHUBERT

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

GENERAL ELECTRIC CAPITAL CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

STANLEY XU and NANLING CHEN, husband
and wife, and the marital community
composed thereof,

Defendants.

NO. 13-2-40746-9 SEA

~~PROPOSED~~ *Zis*
STIPULATED ORDER TO STAY
PROCEEDING PENDING SUPREME COURT
RESOLUTION OF CONFLICT IN
CONTROLLING LAW

HEARING DATE: May 1, 2014
(Without Oral Argument)

THIS MATTER came before the Court on plaintiff and defendants' Joint Motion to Stay Proceeding Pending Supreme Court Resolution of Conflict of Law. The Court having considered the motion, reviewed the records and files herein, including the Declaration of Margaret Archer in Support of Motion to Stay, and being fully advised of the premises; it is now hereby

ORDERED that the Case Schedule set forth in the December 3, 2013 Order Setting Civil Case Schedule, including the December 17, 2014 trial date, is stricken and the matter is temporarily stayed until the Supreme Court addresses the conflict of law

STIPULATED ORDER TO STAY PROCEEDING - 1 of 3
(13-2-40746-9 SEA)
[100086687.docx]

LAW OFFICES
GORDON THOMAS HONEYWELL LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401-1157
(253) 620-6500 - FACSIMILE (253) 620-6565

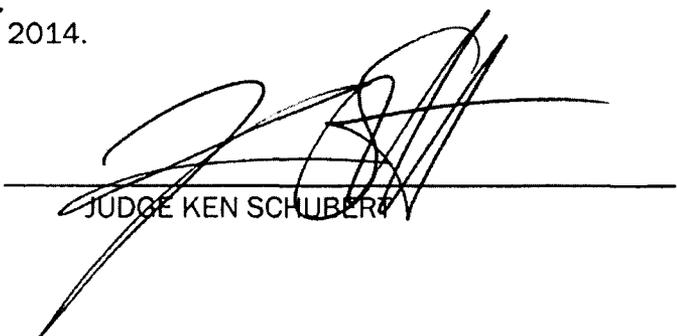
ORIGINAL

1 created by *First Citizens Bank & Trust Co. v. Cornerstone Homes & Development LLC*,
2 178 Wn. App. 207, 314 P.3d 420 (2013) ("Cornerstone") and *Washington Federal v.*
3 *Gentry*, ___ Wn. App. ___, 319 P.3d 823, (Slip. Op. 70004-9-I, Feb 18, 2014) ("Gentry")
4 subject to the following terms:

- 5
6 1. The temporary stay is granted in light of the Petition for Supreme Court filed in
7 *Gentry*, being considered under Supreme Court No, 900850; the Petition for
8 Supreme Court Review filed in *Washington Federal v. Harvey*, 2014 WL
9 646746 (February 18, 2014, Slip Op. 69791-9-I) ("*Harvey*"), being considered
10 under Supreme Court No. 899649; and the motion to transfer for direct
11 review filed *Union Bank v. Brinkman, et al.*, Division II Case No. 44839-4-II
12 ("*Brinkman*"), being considered by the Supreme Court under Case No. 89964-
13 9. The parties shall file a status report with this Court within 10 days of a
14 decision on the petitions for review in *Gentry* and *Harvey* and the request for
15 direct review in *Brinkman*.
16
- 17 2. If all the requests for Supreme Court review filed in *Gentry*, *Harvey* and
18 *Brinkman* are denied, then the stay shall be terminated and the Court will
19 issue a new Case Schedule.
20
- 21 3. If Supreme Court review is accepted in *Gentry*, *Harvey* and/or *Brinkman*, then
22 the stay shall remain in effect until the Supreme Court issues a decision on the
23 cases for which review is accepted, at which time the stay will be terminated.
24 Within 10 days of a decision from the Supreme Court, the parties shall file a
25 notice advising that a decision was issued and that a new Case Schedule
26 should be issued.

1 4. Either party may seek removal or amendment of the stay for good cause.

2 Dated this 2nd May day of April, 2014.

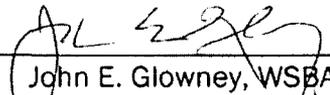
3
4
5 
6 JUDGE KEN SCHUBERT

7 Presented by:

8 GORDON THOMAS HONEYWELL LLP

9 By 
10 Margaret Archer, WSBA No. 21224
11 marcher@gth-law.com
12 Attorneys for Defendants Stanley Xu
And Nanling Chen

13
14 STOEL RIVES

15 By 
16 John E. Glowney, WSBA No. 12652
17 jeglowney@stoel.com
18 Attorneys for Plaintiff General
Electric Capital Corporation

APPENDIX E

The Court of Appeals
of the
State of Washington

RICHARD D. JOHNSON,
Court Administrator/Clerk

DIVISION I
One Union Square
600 University Street
Seattle, WA
98101-4170
(206) 464-7750
TDD: (206) 587-5505

March 31, 2014

Matthew Turetsky
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
mturetsky@schwabe.com

Michael Alan Goldfarb
Kelley, Goldfarb, Gill, Huck Roth, PLLC
700 5th Ave Ste 6100
Seattle, WA, 98104-5061
goldfarb@kdg-law.com

Milt Reimers
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
mreimers@schwabe.com

Averil Budge Rothrock
Schwabe Williamson & Wyatt PC
1420 5th Ave Ste 3400
Seattle, WA, 98101-4010
arothrock@schwabe.com

CASE #: 71168-7-I

Union Bank, N.A., Appellant v. Charles M. Deyo, et ux., Respondent

Counsel:

The following notation ruling by Commissioner Masako Kanazawa of the Court was entered on March 31, 2014, regarding parties' stipulated motion for a temporary stay of appeal:

The parties jointly request a stay of this case pending the Supreme Court's anticipated review and decision to resolve the conflict between Divisions One and Two of this Court on the controlling issues of law raised in this case. This Court previously stayed this case pending this Court's decisions in Washington Federal v. Gentry, No. 70004-9-I, and Washington Federal v. Harvey, No. 69791-9-I, because those two cases involved the same or similar issues, the resolution of which would likely affect the outcome in this case. On February 18, 2014, this Court issued an opinion in both Gentry (published) and Harvey (unpublished). In Gentry and Harvey, this Court disagreed with the reasoning and conclusion in a recent Division Two decision in First-Citizens Bank & Trust Co. v. Cornerstone Homes & Development LLC, 178 Wn. App. 207, 314 P.3d 420 (2013). A petition for review was filed in both Gentry and Harvey. It appears that in another Division Two case, Union Bank v. Brinkman, No. 44839-4-II, a party seeks to transfer the case to the Supreme Court to resolve the conflict between Gentry and First-Citizens. Under these circumstances, a temporary stay is appropriate. If the Supreme Court denies review, a temporary stay will be lifted. The parties are directed to file a status report in this Court within 10 days of a decision on the petition for review in Gentry and Harvey and the petition for direct appeal in Union Bank v. Brinkman.

Page 1 of 2

Appendix E - 1

No. 71168-7-I
Page 2 of 2

Therefore, it is

ORDERED that a temporary stay is granted until the Supreme Court decides whether to accept review in Washington Federal v. Gentry, No. 70004-9-I, Washington Federal v. Harvey, No. 69791-9-I, and Union Bank v. Brinkman, No. 44839-4-II. The parties shall file a status report in this Court within 10 days of a decision by the Supreme Court on the petition for review in Gentry and Harvey and the petition for direct appeal in Union Bank v. Brinkman.

Sincerely,

A handwritten signature in black ink, appearing to read 'R.D. Johnson', with a long horizontal flourish extending to the right.

Richard D. Johnson
Court Administrator/Clerk

LAM

APPENDIX F

Judge Monica Benton, Dept. 49
Date of Hearing: April 14, 2014
Without Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

UNION BANK, N.A.,

Plaintiff,

vs.

MICHAEL E. COAKER and
MARILEE B. COAKER, husband and
wife,

Defendants.

NO. 13-2-24284-2 SEA

**ORDER GRANTING DEFENDANTS'
MOTION FOR TEMPORARY STAY
AND VACATING CASE
SCHEDULING ORDER**

Clerk's Action Required

[Defendants' Proposed]

This matter came before the Court upon Defendants' Motion for Temporary Stay. In addition to Defendants' Motion, the Court also considered the following pleadings and papers:

1. Declaration of Dean A. Messmer in Support of Defendants' Motion for Temporary Stay
- 2.
- 3.

COPY

LASHER
HOLZAPFEL
SPERRY &
EBBERSON

ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
Fax 206 340-2563

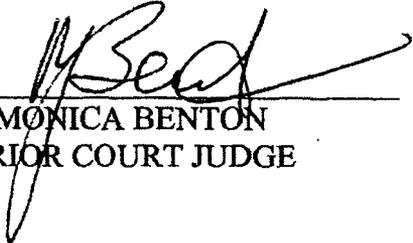
1 The Court being fully advised in the premises, IT IS HEREBY ORDERED THAT:

2 1. All proceedings in this action are temporarily stayed until the earlier of (a) the
3 Washington Supreme Court's decisions to deny review in all three of the cases of
4 *Washington Federal v. Gentry*, *Washington Federal v. Harvey* and *Union Bank v. Brinkman*,
5 or (b) the Supreme Court's issuance of an opinion on the merits in one or more of those
6 cases.

7 2. The parties are directed to file a status report with this Court within 10 days
8 following issuance of a decision on the petitions for review and *Gentry* and *Harvey* and the
9 petition for direct appeal in *Brinkman*.

10 3. The Case Scheduling Order entered at the commencement of this action is
11 hereby vacated. The Court will enter a new Case Scheduling Order after the foregoing
12 temporary stay of proceedings is lifted.

13 ENTERED this 16 day of April, 2014.

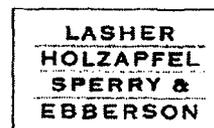
14
15 
16 HON. MONICA BENTON
17 SUPERIOR COURT JUDGE

18 PRESENTED BY:

19 LASHER HOLZAPFEL
20 SPERRY & EBBERSON P.L.L.C.

21 _____
22 Dean A Messmer
23 WSBA No. 5738
24 Attorneys for Defendants Coaker
25
26

ORDER GRANTING MOTION
FOR TEMPORARY STAY - 2



ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 824-1230
FAX 206 340-2563

APPENDIX G

FILED

MAY 16 2014

**SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.**

JUDGE'S CIVIL MOTION CALENDAR
DATE OF HEARING: MAY 16, 2014
TIME OF HEARING: 9:30 A.M

SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

UNION BANK, NA., a National Banking
Association,

Plaintiff,

v.

MARK A. McNAUGHTON, MARNA L.
McNAUGHTON, individually and the marital
community thereof; THE McNAUGHTON
GROUP, LLC, a Washington limited liability
company,

Defendants.

NO. 11-2-09418-7

ORDER GRANTING DEFENDANTS'
MOTION FOR TEMPORARY STAY IN
PART

~~(PROPOSED)~~

This matter came before the court on Defendants' Motion for Temporary Stay. The Court has considered the following:

This Court has considered the following:

1. Defendants' Motion for Temporary Stay;
2. Declaration of Charles Newton in Support of Defendants' Motion to for Temporary Stay;
3. Proposed Order Granting Defendants' Motion for Temporary Stay;
4. Union Bank's Opposition to Defendants' Motion for Temporary Stay;
5. Declaration of Matthew Turetsky In Support of Union Bank's Opposition to Defendants' Motion for Temporary Stay;

ORDER GRANTING DEFENDANTS' MOTION FOR
TEMPORARY STAY IN PART - 1

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax: 206 587 2308

1 6. Proposed Order Denying Defendants' Motion for Temporary Stay;

2 7. Reply in Support of Defendants' Motion for Temporary Stay; and

3 8. The records and files herein.

4 The Court being fully advised,

5 IT IS HEREBY ORDERED THAT:

6 1. Defendants' Motion for Temporary Stay is GRANTED only with respect to the
7 following claims in Plaintiff's Complaint for Breach of Contract and Breach of Guaranty:

8 a. First Claim for Relief;

9 b. Second Claim for Relief;

10 c. Third Claim for Relief;

11 d. Fifth Claim for Relief; and

12 e. Sixth Claim for Relief.

13 2. All proceedings in this action regarding the claims for relief set out in the
14 previous paragraph are temporarily stayed until the earlier of: (1) the Washington Supreme
15 Court's decisions to deny review in all three of the cases of *Washington Federal v. Gentry*,
16 *Washington Federal v. Harvey*, and *Union Bank v. Brinkman*, or (2) the Supreme Court's
17 issuance of an opinion on the merits in one or more of those cases.

18 3. The parties are directed to file a status report with this Court within ten (10) days
19 following issuance of a decision on the petitions for review in *Gentry* and *Harvey* and the
20 petition for direct appeal in the *Brinkman* case.

21 4. Nothing in this order shall prevent the parties from continuing to litigate the
22 claims and defenses related to the Eighth Claim for Relief and the Tenth Claim for Relief.

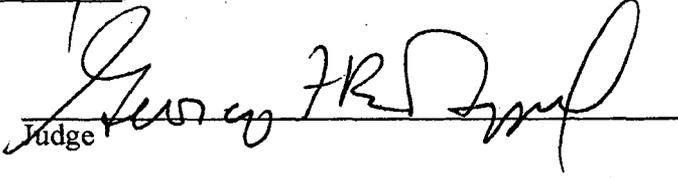
23 5. Prosecution of Union Bank's Seventh Claim for Relief and the Ninth Claim for
24 Relief against Defendant The McNaughton Group, LLC ("TMG") remain stayed as a result of
25 TMG's Chapter 7 Bankruptcy petition, Case No. 12-12823 KAO.

26
**ORDER GRANTING DEFENDANTS' MOTION FOR
TEMPORARY STAY IN PART - 2**

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax: 206 587 2308

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDERED this 16th day of May, 2014.


Judge

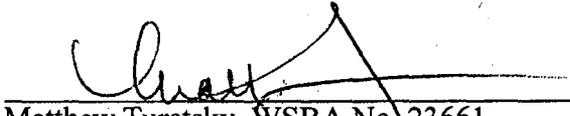
Presented by:

CAIRNCROSS & HEMPELMANN, P.S.



John R. Rizzardi, WSBA No. 9388
Charles Newton, WSBA No. 36635
Attorneys for Defendants Mark and Marna McNaughton

Approved as to form:



Matthew Turetsky, WSBA No. 23661
Claire L. Been, WSBA No. 42178
Attorneys for Plaintiff Union Bank, N.A.

ORDER GRANTING DEFENDANTS' MOTION FOR
TEMPORARY STAY IN PART - 3

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax: 206 587 2308

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Monday, May 19, 2014 4:28 PM
To: 'Danielle Rees'
Cc: 'messmer@lasher.com'; 'MArcher@gth-law.com'; 'marka@mbaesq.com'; 'tromero@romeropark.com'; 'csimmons@romeropark.com'; 'goldfarb@kdg-law.com'; 'ritchie@kdg-law.com'; 'srediger@williamskastner.com'; 'prd@belcherswanson.com'; Jessica Tsao; John Rizzardi
Subject: RE: RE-FILE: No. 90085-0 Washington Federal v. Gentry

Rec'd 5-19-14

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: Danielle Rees [mailto:drees@cairncross.com]
Sent: Monday, May 19, 2014 4:27 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: 'messmer@lasher.com'; 'MArcher@gth-law.com'; 'marka@mbaesq.com'; 'tromero@romeropark.com'; 'csimmons@romeropark.com'; 'goldfarb@kdg-law.com'; 'ritchie@kdg-law.com'; 'srediger@williamskastner.com'; 'prd@belcherswanson.com'; Jessica Tsao; John Rizzardi
Subject: RE-FILE: No. 90085-0 Washington Federal v. Gentry

Please file the attached document in the following case. This replaces the version sent at 4:08 pm. I inadvertently left out the appendixes from that version.

Case Name: Washington Federal v. Kendall D. Gentry and Nancy Gentry
Case Number: 90085-0
Document: Amici Curiae Memorandum in Support of Petition for Review

Filer name, phone number, and email address:

Name	Phone Number	Bar Number	Email
John R. Rizzardi	206.587.0700	9388	jrizzardi@cairncross.com
Jessica C. Tsao	206.587.0700	44382	itsao@cairncross.com
Peter R. Dworkin	360.734.6390	30394	prd@belcherswanson.com
Dean A. Messmer	206.624.1230	5738	messmer@lasher.com
Margaret Y. Archer	253.620.6500	21224	marcher@gth-law.com
Mark B. Anderson	253.327.1750	25895	marka@mbaesq.com
H. Troy Romero	425.450.5000	19044	tromero@romeropark.com
Craig Simmons	425.450.5000	38064	csimmons@romeropark.com
Michael A. Goldfarb	206.452.0260	13492	goldfarb@kdg-law.com
Shawn B. Rediger	206.628.6600	26425	srediger@williamskastner.com

CH& Danielle Rees

Paralegal

Cairncross & Hempelmann

524 Second Ave. | Ste. 500 | Seattle, WA 98104-2323

drees@cairncross.com | d:206-254-4429 | f:206-254-4529



This email message may contain confidential and privileged information. Any unauthorized use is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To comply with IRS regulations, we advise you that any discussion of Federal tax issues in this email is not intended or written to be used, and cannot be used by you. (a) to avoid any penalties imposed under the Internal Revenue Code or (b) to promote, market, or recommend to another party any transaction or matter addressed herein. Please be advised that if you use a public or employer-provided computer or workplace device or system, then there is a risk that your email correspondence may be disclosed to your employer or other third party.