Supreme Court No. 100394-3
Court of Appeal No. 37687-7-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOSHUA C. PLUMB and KAMERON F. PLUMB, ET AL

Appellants/Defendants, *Pro Se*

v.

U.S. BANK NATIONAL ASSOCIATION, ET AL

Respondent/Plaintiff

APPELLANTS' PETITION FOR REVIEW

By /s/ Joshua C. Plumb
Joshua C. Plumb

By /s/ Kameron F. Plumb
Kameron F. Plumb

Appellants / Defendants *Pro Se*
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I. IDENTITY OF PETITIONERS

Joshua C. Plumb and Kameron F. Plumb are the petitioners in this matter. Their mother, Georgia A. Plumb was previously involved in all aspects of this case, but recently passed away.

II. COURT OF APPEALS DECISION

The petitioners now seek review of the Court of Appeals decision filed September 2, 2021 and October 19, 2021 which focused solely on the topic of subject matter jurisdiction, and ignored the Plumbs' other defenses that exist independent of subject matter jurisdiction.

The Plumbs raised other issues of first impression in the State of Washington, which exist independently of subject matter jurisdiction and formed the basis for the court of appeals to dismiss this case in favor of the Plumbs. The violation of constitutionally protected rights were also involved.

The appellate court also ignored the relevant recent testimony by the Bank, which, after years of misleading the

courts and the Plumbs in its filings, had finally revealed the Bank was not the holder of the promissory note when the case was filed.

The judge asked the Bank for clarification, then made a finding of fact that the Bank did not have the note when the case was filed, but ruled that the Bank went out later, obtained the note after the case was filed and "substituted" itself as the real party in interest simply by virtue of attaching it to the Summary Judgment Motion. This same dubious theory upon which this supposed "ratification" substitution was based was previously advanced by a bank before the Supreme Court of Ohio, who debunked it thoroughly. *See, Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St. 3d 13, 2012-Ohio-5017, 979 N.E. 2d 1214 (2012).

The Bank's relevant admission qualified as newly-discovered evidence, opening the door for the Court of Appeals to address other important issues regarding standing that the Plumbs had been trying to establish for years, unsuccessfully,

due to the superior court's untenable ruling that standing could be gained after-the-fact and it granting summary judgment to the Bank, despite issues of material fact clearly being in dispute.

This effectively crippled the Plumbs' ability to establish anything further via testimony or discovery. They were unable to obtain relevant admissions via direct testimony and cross-examination at trial, in order to establish the exact dates that the Bank obtained the Note. Had the trial court's errors been corrected, the issue of standing in Washington state could have been addressed years ago by the appellate court, who previously indicated they would have addressed if not for the Plumb's non-determinative evidence.

The Court of Appeals also failed to address the constitutional implications that the Bank's recent admission opened the door to addressing, namely, that the very thing the Plumbs were trying to establish all along, how the Bank lacked standing when it filed its case, was legitimate. It was a defense

that the Plumbs are likely to have been able to establish had they been afforded access to a trial and further discovery. The appellate court would not have been able to say that it couldn't address the topic of standing. It was therefore improper for the superior court to deny the Plumbs the opportunity to establish their defenses. That denial was tantamount to a denial of due process.

Unfortunately, even after the latest admission by the Bank, the appellate court ignored any discussion of standing and gave no indication that they disagreed with the trial court allowing the Bank, who had admitted it was not the holder of the Note when the case was filed, to "substitute itself" as a true party in interest after the fact. As the Ohio Supreme Court pointed out, a party that has no standing to be before the court, has no standing to move the court to do anything, including substituting itself. *See, Fed. Home Loan Mtge. Corp. v. Schwartzwald*, 134 Ohio St. 3d 13, 2012-Ohio-5017, 979 N.E. 2d 1214 (2012).

III. ISSUES PRESENTED FOR REVIEW

1) In a judicial foreclosure, whether a bank seeking to foreclose should be required to demonstrate, prior to judgment, that it had standing under the Uniform Commercial Code to enforce the note and standing to foreclose on the mortgage at the time it filed suit.

2) When a bank is found to have filed a judicial foreclosure lawsuit prematurely against a Washington homeowner, having suffered no injury-in-fact at the time of its lawsuit, should the foreclosing bank be allowed to maintain its lawsuit and gain standing after-the-fact by subsequently obtaining the promissory note and substituting itself as the true party in interest?

3) Whether the Plumbs' procedural due process rights under the 14th Amendment of the Constitution were violated when the superior court abused its discretion based on untenable grounds, granting summary

judgment prematurely, which inhibited the Plumbs from establishing, via further discovery and through testimony at trial, the exact dates that the Bank received the promissory note, which was essential to their defense regarding the Bank's lack of standing.

IV. STATEMENT OF THE CASE

This case presents an important and recurring question of first impression in this state, regarding standing in judicial foreclosure proceedings.

V. ARGUMENT

The Supreme Courts of various jurisdictions across the country have held that a bank seeking to foreclose is required to demonstrate that it had standing under the Uniform Commercial Code (UCC) to enforce the note and standing to foreclose on the mortgage at the time it filed suit. The elements of standing to enforce the note, a predicate for foreclosure, are found in the UCC at RCW 62A.3-301 (1992)

(defining who is entitled to enforce a negotiable instrument such as a note); and RCW 62A.3-104(a), (b), (c) (1992) (identifying a promissory note as a negotiable instrument.) See, *Bank of New York v. Romero*, 2014-NMSC-007, ¶17.

Romero recognizes the fundamental importance to the judicial system of requiring a bank seeking to foreclose on a home to have a legal or equitable interest in the suit prior to invoking the assistance of the courts. The New Mexico Supreme Court has repeatedly held that the burden of proof is on the bank to establish that it had the right to enforce the note and the mortgage before it filed its lawsuit.

The decision to require standing to be established as of the commencement of the action and to permit standing to be raised at any time, even sua sponte by the appellate court, are supported by the terms of the UCC, regardless of whether this Court views standing as jurisdictional or prudential.

A. Standing as the Entity Entitled to Enforce the Note is a Prerequisite to an Action Pursuant to Article 3 of the Uniform Commercial Code (UCC).

As the New Mexico Supreme Court ruled in *Deutsche Bank Nat. Trust Co. v. Johnston*, 2016-NMSC 013 (N.M 2016), when a statute creates a cause of action and designates who may sue, the issue of standing then becomes a prerequisite to an action. Article 3 of the UCC is such a statute. Article 3, "Negotiable Instruments" provides for the creation and transfer of commercial paper. In this section, the Code creates new rights and defenses which did not exist in contract at the common law. RCW 62A.3-203 (specifying the rights under Article 3 acquired by the transferee of an instrument); RCW 62A.3-202 (cutting off common law contract remedies as to a subsequent holder in due course).

Part three of Article 3 addresses the enforcement of the commercial instruments created by the prior sections of the Article. RCW 62A.3-301 creates a cause of action to

enforce an instrument, while at the same time specifying and limiting the persons entitled to bring such an action:

> "Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 [lost instruments] or RCW 62A.3-418(d) [dishonored instruments]. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument. RCW 62A.3-301 (1992).

Commentators on the UCC note that a promissory note as defined by the UCC is in the nature of a 'chose in action', an intangible right which can be claimed or enforced only by an action in court. Anderson, UCC3rd §3-101:21 (1994).

Article 3 includes a statute of limitations for each cause of action and provides the rules which govern resolution of

the disputes that arise in a suit to enforce a negotiable instrument, specifying the defenses that the defendant may raise and those that may not be raised, the terms governing liability of the defendant and the obligations undertaken by transferees and sureties. RCW 62A.3-118; RCW 62A.3-301; RCW 62A.3-302; RCW 62A.3-305; RCW 62A.3-308.

Because our Legislature has created a cause of action to enforce a negotiable instrument as that term is defined by statute, specifying at the same time who has standing to bring such an action, the defenses which may be raised, and the statute of limitations, standing can be determined under Article 3 of the UCC.

B. Traditional Test.

Although actions in contract and property have been part of the common law from its earliest days, Article 3 of the UCC creates a right to enforce an interest in a new type of intangible property unknown at the common law.

Hawkland and Miller, UCC Series, [Rev.] §1-103:3 [Rev] (2012) ("Hawkland & Miller"). At the outset of the UCC, the Legislature explicitly states its intent to displace the common law in those areas covered by UCC terms. See RCW 62A.1-103. Common law principles are reduced to supplementing the Code in the areas of law the Code chooses not to address. Any recovery under the common law, inconsistent with the UCC, is prohibited. Id. at §1-103:12[Rev] (2012); see also *Mundaca Inv. Corp. v. Febba*, 727 A.2d 990 (N.H. 1999). When a party qualifies as a "holder in due course," traditional common law principles allowing contract defenses to be raised against an assignee are eliminated, to the great advantage of any commercial entity that is a holder in due course of a note, as that term is defined by the UCC.

A plaintiff seeking to invoke our courts' assistance must satisfy the statutory conditions of the UCC for enforcement of a note.

C. Even if the Bank's Lack of Standing is Prudential and Not Jurisdictional, Standing Must Be Established as of the Commencement of the Action and Lack of Standing Cannot be Waived.

Even if this Court determines that lack of standing under Article 3 of the UCC is not a matter which impairs the subject-matter jurisdiction of our courts, lack of standing under the UCC is, nonetheless, a potential jurisdictional defect. As such, it still must be established as of the commencement of the action; may not be waived; and may be raised at any stage of the proceedings, even sua sponte by the appellate courts. This is because even prudential considerations of standing implicate fundamental principles of judicial power.

Supreme Courts across the country have rightly recognized that standing to sue, particularly where standing is created as part of a statutory cause of action by state Legislature, is an important matter of public policy. As the

New Mexico Supreme Court stated in *Romero*, even "prudential rules of judicial self-governance, like standing, ripeness, and mootness, are 'founded in concern about the proper - and properly limited - role of courts in a democratic society and are always relevant concerns.'" Romero, ¶15, quoting, *New Energy Econ., Inc. v. Shoobridge*, 2010-NMSC-049, ¶16, 243 P.3d 746; *see also, In re Guardianship of Patrick D.*, 2012-NMSC-017, ¶37, 280 P.3d 909.

Even if standing is not a matter of our court's subject-matter jurisdiction, our courts have nonetheless long been guided by the traditional federal standing analysis. Although our courts have discretion which is not available to the federal courts to entertain cases which raise important issues of public policy, the requirement that a plaintiff establish a personal stake in the outcome in order to invoke the jurisdiction of our courts remains mandatory. Injury in fact is an essential requirement for standing. *ACLU of N.M.*, 2008-NMSC-045, ¶¶20, 23.

It is fundamental, then, that a plaintiff who has no legal or equitable interest in a note or contract cannot invoke the assistance of our courts. *Romero*, ¶17 ("[o]ne who is not a party to a contract cannot maintain a suit upon it." [citations omitted]); see also *Wells Fargo Bank, N.A. v. Heath*, 2012-OK-54, ¶12, 280 P.3d 328 ("[p]laintiff s obligation to enforce the rights and responsibilities established in the original promissory note need to be determined prior to the request for relief by reason of the alleged breach of the obligation; [a]bsent standing a party's claim is not justiciable, and the courts will not inquire into the merits of the claim).

Allowing a plaintiff who has no legal right to relief to file an action in our state courts seeking either a money judgment or foreclosure on a home is an abuse of our judicial system. The fact that our courts have discretion to grant standing in cases of great public importance to persons who do not have the direct interest required by the federal Constitution's Article III "case or controversy" requirement does not

empower litigants to use our courts to collect on commercial paper without showing that they possess a direct interest. Many other courts in states which, like Washington, do not have a constitutional "case or controversy" requirement have ruled consistent with the New Mexico Supreme Court's holding in *Romero* that standing to foreclose must be established as of the commencement of the action and that lack of standing can be raised at any stage of the proceeding, even for the first time on appeal. See *Bank of America, N.A. v. Kuchta*, 2014-Ohio-4275, ¶22, 21 N.E.3d 1040 (lack of standing vitiates a party's ability to invoke the jurisdiction of a court - even a court of competent subject-matter jurisdiction - over the party's attempted action and is a fundamental flaw that would require a court to dismiss the action"); *Wells Fargo Bank, N.A. v. Heath*, 2012-OK-54, ¶7; *U.S. Bank v. Collymore*, 890 N.Y.S.2d 578 App. Div. 2009) (the bank bears the burden of establishing its standing by showing

physical possession of the note as of the commencement of the action).

Therefore, a bank must show that it had standing to enforce the note and to foreclose on the mortgage by showing that it was the holder of the note and the owner of the mortgage at the time it commenced its suit.

D. The Burden is on the Bank to Establish at Each Stage of the Action That it Was the Holder of the Note When the Complaint was Filed.

This Court held in Romero, ¶17, that the plaintiff bank "had the burden of establishing timely ownership of the note and the mortgage to support its entitlement to pursue a foreclosure action," meaning proof that it held the note and mortgage when it filed its complaint. This holding is well-supported by the provisions of the UCC as well. This does not mean a court requires it to conclusively establish its standing

upon first filing the complaint. This agrees with *Romero* and with other state and federal standing decisions.

Standing and other requirements necessary to invoke judicial authority "are not merely pleading requirements but rather an indispensable part of plaintiffs case." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 566 (1992). The plaintiff must prove its standing the same way the plaintiff proves each element of the cause of action entitling it to relief. *Key v. Chrysler Motors Corp*., 1996-NMSC-038, ¶11, 918 P.2d 350. Each element of standing, "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e. with the manner and degree of evidence required at successive stages of the litigation." *Lujan v. Defenders of Wildlife*, 504 U.S. at 566.

This means that the party who asks the court to exercise its assistance in that party's favor must initially plead sufficient facts to establish its standing. Otherwise, dismissal of the complaint is appropriate. Assuming the pleaded facts

are sufficient to establish standing if proven, then, the plaintiff has the burden of introducing competent proof in response to any challenge to its standing, whether at summary judgment or at trial. *State ex rel. Anaya v. Columbia Research Corp*., 1978-NMSC-073, ¶7, 8, 583 P.2d 468; see also *McNutt v. Gen. Motors Acceptance Corp. of Indiana*, 298 U.S. 178, 189 (1936) ("[i]n the nature of things, the authorized inquiry is primarily directed to the one who claims that the power of the court should be exerted in his favor"; it is the plaintiff who bears the burden of proof at each stage of the proceedings).

E. The RCW 62A.3-308 Presumption Does Not Relieve the Bank from the Burden of Establishing that It Was the Holder of the Note at the Commencement of the Action.

If a bank were to argue that it should be able to rely on the presumption in favor of payment of a holder of a note found in RCW 62A.3-308 to either avoid the necessity to establish its standing as of the commencement of the action or

to shift the burden to the Homeowner to prove that the Bank lacked standing when it filed its complaint, that argument would fail to find support in the UCC. The presumption in RCW 62A.3-308 applies to the authority and authenticity of the signatures on a note. Even if the Bank were to show that it qualifies to take advantage of the presumption in RCW 62A.3-308, the presumption only helps the Bank establish that it is the holder of an authentic Note at the time of trial, not that it was the holder at the time it filed its Complaint. Nothing in RCW 62A.3-308 relieves the Bank of the separate requirement to establish that it had standing to invoke the assistance of the court when it commenced its foreclosure action.

Hawkland's and Miller's respected treatise on the UCC construes RCW 62A.3-301 of the Code to require that a person seeking to enforce an instrument through a court action possess the instrument at the time the action is commenced:

> An issue may also arise as to whether a person must possess an instrument at the time he commences the action, or whether it is sufficient that he possess the instrument at the time of trial. Unless the person files his action under Section 3-309 [lost, destroyed or stolen instruments], he should be required to have possession of the instrument at the time he commences his action.

Hawkland & Miller, UCC Series, [Rev.] §3-301:3; *see also*, *Investment Service Co. v. Martin Bros. Container & Timber Products Corp*., 465 P.2d 868 (Or. 1970); *Dolin v. Darnall*, 181 A. 201, 204-05 (N.J. Ct. App. 1935) (a plaintiff seeking to enforce a promissory note "can only recover upon the cause of action he had at the commencement of his suit, and is not allowed to sue first and obtain his cause of action afterwards").

Hawkland & Miller also explain that "the requirement of possession is an essential element in the system of priorities established by Article 3." Hawkland & Miller, [Rev.] §3-301:3. The requirement of physical possession of the original,

written instrument insures that "there can never be more than one holder of a particular instrument at any given time." *Id*. Only that one holder is entitled to bring an action in court to enforce the note.

The requirement of actual physical possession has important practical consequences. Its purpose is to protect the maker or drawer from multiple liability on the same instrument. *M & I Marshall & Ilsley Bank v. Nat'l Fin. Servs. Corp*., 704 F. Supp. 890, 891 (E. D. Wis. 1989); *Wells Fargo Bank, N.A. v. Heath*, 2012- OK-54, ¶12 ("[a] defendant needs to be assured it is being sued by the person who can rightfully enforce the note ... [otherwise, it potentially opens the defendant to multiple actions on a single note).

Hawkland & Miller note that if a lawsuit is commenced by a party who is not in possession of the note, the person that is in possession of the note remains free to collect again from the homeowner. That is because under RCW 62A.3-302 of the UCC, the person in actual possession of the note is a holder in

due course who takes free from the homeowner's defense that he has already paid someone else. *Id*.; see also RCW 62A.3-602(a) (payment discharges the obligor only if the payment is made "to a person entitled to enforce the instrument").

It is, therefore, inconsistent with the Code, as well as with standing, to allow a bank which is not in possession of the note at the commencement of the action to file suit based on speculation that it can acquire the note prior to trial, in the event the homeowner does not default. Hawkland & Miller, [Rev.] §3-301:3; *Investment Service Co. v. Martin Bros. Container*, 465 P.2d 868 (proof that the plaintiff was in possession of the note at the time the complaint was filed is necessary to avoid speculative litigation). The burden of presenting that proof is squarely on the shoulders of the Bank.

F. The Bank Failed to Introduce Competent Evidence Establishing That It Was the Person Entitled to Enforce the Note at the Time it Filed Its Complaint.

The evidence in the record was insufficient to prove that the Note was indorsed and delivered to the Bank prior to the filing of the Complaint. There is nothing in the record that shows when the bank acquired its interest in the underlying note. When the superior court judge asked Tiffany Owens (the attorney for the Bank) when the plaintiff had received the note, she replied that she did not know. The Plumbs had also sent numerous interrogatories and requests for production of documents to the Bank, seeking to resolve this exact issue, asking specifically on which date the Bank received the note prior to filing its complaint and from which entity. However, the superior court judge granted summary judgment to the Bank prior to the Bank answering the Plumbs' Interrogatories, despite the Plumbs pleading to the court that they needed to finish the process of gathering evidence and relevant testimony in order to establish their defenses. The Plumbs repeatedly told the court that they planned to call witnesses from the Bank to testify at trial regarding these unresolved

issues of standing, which other courts across the country had ruled in favor of the homeowner's position. The lower court judge dismissed this all, stating that he didn't want to hear about other courts, that it didn't matter of the Bank didn't have standing when it filed its case, that in his opinion, all that mattered is that the Bank had the note prior to summary judgment.

When the Plumbs were actively prevented by the court from obtaining the very evidence they needed to establish the Bank's lack of standing, this was a denial of due process that prejudiced their ability to defend themselves. A hearing is not meaningful or fundamentally fair when the court regularly intervenes in a way that actively prevents vulnerable defendants from obtaining access to the very reasonable process that should have been afforded them, which they needed access to in order to establish their defenses.

Neither of the two affidavits submitted by the Bank contained any information that stated when the Bank had

obtained the note, nor did either affidavit state that the Bank had the note at the time when the case was filed.

Clearly, the Bank did not carry its burden of demonstrating that it was the holder of the Note at the time the Complaint was filed. The Plumbs were forced to move forward with an extremely weak hand that they had been dealt from the superior court judge who had repeatedly seemed to be in a rush to grant summary judgment in favor of the Bank, even going so far as to grant summary judgment in favor of the Bank at a continuance hearing that took place two weeks prior to the actual summary judgment hearing. The Plumbs, bewildered, objected and the court reversed its order granting of summary judgment prematurely at the continuance hearing. The judge then instructed Joshua Plumb to argue his case right there, prior to the summary judgment hearing. He also indicated that he wasn't reading the Plumbs' pleadings.

Two weeks later, after summary judgment was granted a second time in favor of the Bank, the Plumbs, having had all

access to further discovery answers cut off, and having been denied access to the very process necessary for them to call Bank witnesses to testify under oath at a trial, the inexperienced, *pro se* Plumbs were forced to explain before the appellate court, the Washington State Supreme Court and even the U.S. Supreme Court, how the bank lacked standing, without the assistance of sufficient supporting evidence which they otherwise would have had reasonable access to if not but for the denial of due process from the lower court judge.

Despite the Plumbs' best efforts to get the appellate court to rule on the issue of standing, the Plumbs couldn't overcome the appellate court's stated "threshold" issue of the Note Location Determined evidence lacking supporting proof that the Bank didn't have standing when it filed the case. These were the very issues the Plumbs were addressing in their discovery responses, seeking to establish additional independent proof via direct testimony. If the Note Location Determined document was not dispositive proof and was

"hearsay", then the same information could be established via direct testimony via discovery and cross examination at an oral hearing. But this was not allowed to occur, due to the lower court judge, which prejudiced the Plumbs' ability to defend themselves. Their home was subsequently sold at auction. The Plumbs kept researching and discovered that some state supreme courts had ruled that once standing was challenged in a judicial foreclosure, the burden was on the Bank to prove it held the note when it filed the case, and that subsequent failure to prove this was a lack of standing, and the case must be dismissed. More than one supreme court had also connected a lack of standing with subject matter jurisdiction, which can be challenged at any time. The Plumbs subsequently challenged the Bank's subject matter jurisdiction.

G. New Evidence: The Bank Finally Admitted It Didn't Have the Note

Also, the Plumbs highlighted additional defenses they had discovered, where supreme courts had ruled that when it is shown that a bank lacked standing to foreclose when they filed the case, the case should be dismissed if for no other reason than to ensure that they have standing when they file the case. See, *Bank of Am., N.A. v. Reyes-Toledo*, 139 Haw. 361 (2017), *U.S. Bank National Ass'n v. Kimball*, 2011 VT 81. This was argued by the Plumbs before the appellate court, who ignored these defenses entirely and focused solely on subject matter jurisdiction alone.

The Court of Appeals repeatedly failed to address whether the Bank had failed to meet its burden of establishing that it properly had standing in this judicial foreclosure. The Plumbs are concerned that if the Bank is allowed to remain silent and mislead the courts and defendants for years, then can reveal the truth at a later date, then nothing is done, what chance does anyone have at defending against that kind of thing?

H. This Court Should Adopt Rules that Require That a Bank Which Brings a Foreclosure Action Establish Its Standing When It Files the Complaint.

This is not to say that a Bank seeking to foreclose would be required to either attach a copy of the indorsed note to its complaint or to produce a dated indorsement at summary judgment or trial. Instead, the simple requirement that production of a note with an undated indorsement at summary judgment or at trial for the first time, "absent some evidence of when the note was indorsed or when the Bank came into possession of the note" is not sufficient to carry a bank's burden of proving that it was the holder of the note at the time the complaint was filed.

Although it is not required for a copy of the indorsed note to be filed with the complaint in a foreclosure action, it is obvious that the difficult issues of proof of standing in foreclosure cases facing our courts would disappear if banks established their standing at the time the complaint is filed.

Although our rules of civil procedure permit notice pleading, a different rule is justified in residential mortgage foreclosure actions. In these actions, banks have taken advantage of homeowners, foreclosing by default judgment even though the bank cannot show it is the holder of the note. Not only are these banks defrauding the homeowner and the court, they are subjecting the homeowner to potential double liability. This is why the supreme courts in Ohio, Hawaii, New Mexico, Oklahoma, Vermont, Connecticut, Kansas – all of which are notice pleading states – require that foreclosing banks prove they held the note when a judicial foreclosure case was filed, otherwise the bank lacks standing and the case should be dismissed.

If similar rules are adopted by this Court, there should be no more foreclosure cases which proceed despite a bank's lack of standing. Until then, Rule 1-60(B)(4) and 1-060(B)(6) play a crucial role both in protecting homeowners from multiple liability on a single note and in providing a remedy

against banks which have abused their position of power at homeowners' expense.

VI. CONCLUSION

For the reasons set forth in this brief, Homeowner asks this Court to dismiss this foreclosure action without prejudice.

If the Court does not dismiss without prejudice for lack of standing, then remand to the Court of Appeals is required to address the issues that court ignored. For example, whether a bank who lacks standing can move the court to substitute itself as a true party in interest. And If standing is a legitimate defense, if they failed to prove standing, then the case should be overturned if for no other reason than to ensure that they have standing when the case is filed. And also the constitutional due process implications that stem from a legitimate defense that the appellate court agreed was our "chief defense", we were deprived of a meaningful opportunity to establish our necessary defenses, which

amounted to a procedural denial of due process, which is in violation of the Fourteenth Amendment of the United States Constitution, in addition to the Washington State Constitution, which uses fundamentally similar language.

This document contains 4,852 words, excluding the parts of the document exempted from the word count by RAP 18.17.

Respectfully submitted and dated this 18th day of January, 2022.

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APPENDIX TO PETITION FOR REVIEW

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FILED
SEPTEMBER 2, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO WILMINGTON TRUST COMPANY, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET INVESTMENT LOAN TRUST MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-1, Respondents, v. GEORGIA A. PLUMB; JOSHUA C. PLUMB; KAMERON F. PLUMB; and THE WORD CHURCH, Appellants, ESTATE OF CARL PLUMB, DECEASED; UNKNOWN HEIRS AND DEVISEES OF CARL PLUMB, DECEASED;; CITIBANK, N.A.; ALSO ALL PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT HEREIN, Defendants.	No. 37687-7-III UNPUBLISHED OPINION

No. 37687-7-III
U.S. Bank Nat'l Ass'n v. Plumb

PENNELL, C.J. — Georgia A. Plumb, Joshua C. Plumb, Kameron F. Plumb, and The World Church (aka Rev. Georgia Plumb) (collectively the Plumbs) appeal a superior court order denying their motion to vacate a foreclosure order. We affirm.

BACKGROUND

In 2017, this court addressed an appeal between the parties regarding an order of foreclosure issued after summary judgment. *U.S. Bank Nat'l Ass'n v. Plumb*, No. 34615-3-III (Wash. Ct. App. Dec. 14, 2017) (unpublished), https://www.courts.wa.gov/opinions/pdf/346153_unp.pdf. In the superior court litigation, the Plumbs argued U.S. Bank lacked standing to initiate foreclosure proceedings because the bank did not possess the applicable promissory note on the date it filed suit. We disagreed, explaining the Plumbs lacked sufficient evidence that U.S. Bank did not hold the note. The Plumbs unsuccessfully sought review of our decision in both the Washington Supreme Court, 190 Wn.2d 1010 (2018), and United States Supreme Court, 139 S. Ct. 227, *reh'g denied*, 139 S. Ct. 587 (2018). A mandate was issued from this court on April 19, 2018.

U.S. Bank proceeded with foreclosure proceedings in superior court. Five months after the superior court issued an order confirming sale of the subject property, the Plumbs moved to vacate under CR 60(b)(5). The Plumbs again asserted U.S. Bank

lacked standing to proceed with foreclosure. According to the Plumbs, the lack of standing divested the superior court of subject matter jurisdiction, thereby rendering the court's order void. The trial court denied the motion to vacate. The Plumbs appeal.

ANALYSIS

The trial court did not abuse its discretion[1] in denying the motion to vacate. Alleged defects in standing do not deprive superior courts of jurisdiction over forfeiture proceedings. *In re Estate of Reugh*, 10 Wn. App. 2d 20, 57, 447 P.3d 544 (2019), *review denied*, 194 Wn.2d 1018, 455 P.3d 128 (2020) ("[I]n Washington, a plaintiff's lack of standing is not a matter of subject matter jurisdiction."); *Deutsche Bank Nat'l Tr. Co. v. Slotke*, 192 Wn. App. 166, 171, 367 P.3d 600 (2016) (superior courts have jurisdiction over foreclosure actions). The Plumbs therefore lacked a basis to void the superior court's order.

CONCLUSION

The order on appeal is affirmed. The Plumbs' request for fees and costs is denied.

[1] "This court generally reviews a trial court's decision to deny a motion to vacate judgment for abuse of discretion." *Castellon v. Rodriguez*, 4 Wn. App. 2d 8, 14, 418 P.3d 804 (2018). "However, there is a nondiscretionary duty on the trial court to vacate a void judgment." *Id*. This court reviews "de novo whether a judgment is void." *Id*.

No. 37687-7-III
U.S. Bank Nat'l Ass'n v. Plumb

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Pennell, C.J.

WE CONCUR:

Siddoway, J.

Fearing, J.

Appendix B

FILED
OCTOBER 19, 2021
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR IN INTEREST TO WILMINGTON TRUST COMPANY, AS TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET INVESTMENT LOAN TRUST MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-1, Respondents, v. GEORGIA A. PLUMB; JOSHUA C. PLUMB; KAMERON F. PLUMB; and THE WORD CHURCH, Appellants, ESTATE OF CARL PLUMB, DECEASED; UNKNOWN HEIRS AND DEVISEES OF CARL PLUMB, DECEASED;; CITIBANK, N.A.; ALSO ALL PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, LIEN, OR INTEREST IN THE PROPERTY DESCRIBED IN THE COMPLAINT HEREIN, Defendants.	No. 37687-7-III ORDER DENYING MOTION FOR RECONSIDERATION

No. 37687-7-III
U.S. Bank Nat'l Ass'n v. Plumb

THE COURT has considered the pro se appellants' motion for reconsideration of our September 2, 2021, opinion; and the record and file herein.

IT IS ORDERED that the motion for reconsideration is denied.

PANEL: Judges Pennell, Siddoway, and Fearing

FOR THE COURT:

REBECCA L. PENNELL
Chief Judge

Appendix C

Constitution of the United States of America

ARTICLE VI
Section 2. Clause 2. Supreme law.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws State to the Contrary notwithstanding.

AMENDMENT XIV - Section 1.
Citizens of the United States.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Constitution of the State of Washington

ARTICLE 1
DECLARATION OF RIGHTS

SECTION 2 - SUPREME LAW OF THE LAND.

The Constitution of the United States is the supreme law of the land.

SECTION 3 - PERSONAL RIGHTS.

No person shall be deprived of life, liberty, or property, without due process of law.

Appendix D

Uniform Commercial Code

Wash. Rev. Code $ 62A.3-102(a)

Subject matter.

(a) This Article applies to negotiable instruments. It does not apply to money, to payment orders govern by Article 4A, or to securities governed by Article 8.

Wash. Rev. Code § 62A.3-203

Transfer of instrument; rights acquired by transfer.

(a) An instrument is transferred when it is delivered by a person other than its issuer for the purposes of giving to the person receiving delivery the right to enforce the instrument.

(b) Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument, including any right as a holder in due course, but the transferee cannot acquire rights of a holder in due course by a transfer, directly or indirectly, from a holder in due course if the transferee engaged in fraud or illegality affecting the instrument.

(c) Unless otherwise agreed, if an instrument is transferred for value and the transferee does not become a holder because of lack of an indorsement by the transferor, the transferee has a specifically enforceable right to the unqualified indorsement of the transferor, but negotiation of the instrument does not occur until the indorsement is made.

(d) If a transferor purports to transfer less than the entire instrument, negotiation of the instrument does not occur. The transferee obtains no right under this Article and has only the rights of a partial assignee.

Wash. Rev. Code § 62A.3-205(a)(b)

Special indorsement; blank indorsement;

(a) If an indorsement is made by the holder of an instrument, whether payable to an identified person payable to bearer, and the indorsement identifies a person to whom it makes the instrument payable, it is a “special indorsement.” When specially indorsed, an instrument becomes payable to the identified person and may be negotiated only the indorsement of that person. The principles stated in RCW 62A.3-110 apply to special indorsements. or

(b) If an indorsement is made by the holder of an instrument and it is not a special indorsement, it is a "blank indorsement.” When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed.

Wash. Rev. Code $ 62A.3-301

Person entitled to enforce instrument.

"Person entitled to enforce” an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

Supreme Court No. 100394-3
Court of Appeal No. 37687-7-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JOSHUA C. PLUMB and KAMERON F. PLUMB, ET AL

Appellants/Defendants, *Pro Se*

v.

U.S. BANK NATIONAL ASSOCIATION, ET AL

Respondent/Plaintiff

CERTIFICATE OF SERVICE
OF APPELLANTS' PETITION FOR REVIEW

By /s/ Joshua C. Plumb
Joshua C. Plumb
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Yakima, WA 98908
Tel. (509) 965-4304; Fax (509) 965-4334
Email: josh@plumbsafety.com

CERTIFICATE OF SERVICE

I, the undersigned party, declare that I am a citizen of the United States of America over the age of 21 years. I am competent to be a witness herein and I certify that on the 18th day of January 2022 I caused a true and correct copy of **1) APPELLANTS' PETITION FOR REVIEW**; and **2)** this **CERTIFICATE OF SERVICE** to be served on the Counsel indicated below and in the manner indicated below:

Counsel for U.S. Bank National Association, et al (X) Via eFile For Filing in Court: jmcintosh@mccarthyholthus.com
Name Joseph Ward Mcintosh, WSBA No. 39470
Address McCarthy & Holthus, LLP
108 1st Avenue South, Ste. 300
Seattle, WA 98104

Counsel for U.S. Bank National Association, et al (X) Via eFile For Filing in Court: warren.lance@mccalla.com
Name Warren Lance, WSBA No. 51586
Address McCarthy & Holthus, LLP
108 1st Avenue South, Ste. 300
Seattle, WA 98104

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. DATED this 18th day of January 2022 at Yakima (Yakima County) Washington.

By /s/ Joshua C. Plumb
Joshua C. Plumb
4902 Richey Rd., Yakima, WA 98908
Tel. (509) 965-4304 | Fax (509) 965-4334
Email: josh@plumbsafety.com

GEORGIA PLUMB - FILING PRO SE

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Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	100,394-3
Appellate Court Case Title:	US Bank National Association, et al. v. Georgia A. Plumb, et al.
Superior Court Case Number:	13-2-04236-2

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