No. 100679-9
(Court of Appeals No. 81698-5-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

MARK AND DAINA CARTER,

Petitioners,

v.

PNC BANK, NATIONAL ASSOCIATION,

Respondent.

PNC BANK, NATIONAL ASSOCIATION'S ANSWER TO MARK AND DAINA CARTER'S PETITION FOR REVIEW

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I. INTRODUCTION

In 2019, Petitioners Mark and Daina Carter (the "Carters") sued to quiet title to their then-home, claiming that respondent PNC Bank, N.A.'s ("PNC") second position home equity Deed of Trust lien was time-barred because six years earlier they received a bankruptcy discharge. The Superior Court dismissed their claim, holding that the statute of limitations was tolled by the automatic bankruptcy stay because the Carters' home remained an asset of the bankruptcy estate post-discharge. The Carters appealed.

While their appeal was pending, the Carters sold their home for nearly $2.5 million and voluntarily repaid PNC the value of its lien. But this was only after they asked the Superior Court to order PNC to release its lien without receiving payment, despite the Superior Court's ruling that the lien was valid. The Superior Court refused to do so, and the Carters appealed that order too, claiming the court "forced" them to repay PNC.

Because the Carters sold their home and voluntarily repaid PNC the value of its disputed lien, the Court of Appeals correctly held that the Carters' case was moot. The Court of Appeals could not grant them any relief because: (1) the Carters no longer had title to quiet; and (2) the voluntary payment doctrine barred any monetary recovery.

For the same reason, there is nothing for this Court to review. The case is still moot.

Nor are there any issues of continuing and substantial public interest to justify an exception to the mootness doctrine. The only "issue of substantial public interest" the Carters identify is a general lament that a mootness holding means litigants, like themselves, do not receive substantive appellate review of issues of their choice. But this is not a matter of substantial public interest; it is simply how the mootness doctrine works.

Mootness aside, none of the other factors this Court considers when determining whether to accept a petition

support review here. The Carters do not show that there is a substantial public interest in the issues underlying their appeal that would justify review by this Court. This case involves procedural facts unique to the Carters' bankruptcy, and existing precedent provides decisive guidance. Certainly, there are no Constitutional issues, despite the Carters' attempt to claim that the Supreme Court ordered them to pay PNC when it did not.

Nor do the Carters identify any conflict with any ruling of this Court or with the rulings of any other Courts of Appeals. Just the opposite: the Carters identify a published decision issued after their appeal was decided–*Copper Creek (Marysville) Homeowners Ass'n v. Kurtz*, 502 P.3d 865, 869 (Wash. Ct. App. 2022)–that definitively resolves the lawsuit in PNC's favor. *Copper Creek* makes clear that PNC's lien *could not* have been time-barred, whether the automatic bankruptcy stay tolled the statute of limitations or not, because the statute of limitations to foreclose PNC's lien never began to run in the first place.

This Court should deny review and award PNC the attorney fees it incurred responding to this petition, as provided for in the Deed of Trust.

II. IDENTITY OF RESPONDENT.

PNC is the defendant-respondent.

III. COUNTERSTATEMENT OF THE ISSUES PRESENTED FOR REVIEW.

1. Whether the Carters' petition should be denied as moot because the Court of Appeals correctly held: (1) the Carters no longer had any title to quiet because they sold the Property and voluntarily paid off PNC's lien while their appeal was pending; (2) there is no monetary relief the Court could award because any attempt to claw back what they paid PNC is barred by the voluntary payment doctrine; and (3) the appeal does not involve issues of continuing and substantial public interest that would justify this Court deciding a moot case.

2. Whether the Carters' petition fails to satisfy RAP 13.4(b) because the case: (1) does not raise an issue of substantial public interest but, rather, a narrow issue arising

from unique procedural circumstances for which existing precedent provides adequate guidance; (2) does not implicate a conflict with a decision of this Court or other Court of Appeals decisions; and (3) does not involve a significant Constitutional question.

IV. STATEMENT OF THE CASE.

***The Property and Mortgage Loan at Issue*:** The Carters owned a home in Bellevue ("Property"). CP 1-2. In addition to a $900,000 first mortgage, the Carters obtained a $350,000 home equity line of credit from PNC's predecessor ("PNC Loan") secured by a second position Deed of Trust on the Property ("Deed of Trust"). CP 3, 9-15. The PNC Loan was payable in installments, and the loan was to mature on August 24, 2036. CP 10.

The Carters' Bankruptcy Proceedings. The Carters stopped making payments on the PNC Loan after they filed for bankruptcy on April 27, 2012. CP 97-126, 210-241. The Property became an asset of the bankruptcy estate upon the

Carters' filing of the petition, and the automatic bankruptcy stay applied to the Property. 11 U.S.C. § 362. On August 14, 2012, the Bankruptcy Court entered an order closing the case when the Carters did not file a financial management training certificate. CP 100. Less than a week later, at the Carters' request, the bankruptcy court vacated the closure order and granted the Carters a discharge. CP 101, 214. Ten days after that, on August 31, 2012, the bankruptcy court again closed the case but reopened it on November 8, 2012, noting the second closure was "due to an administrative error." CP 101.

The Carters' bankruptcy proceedings then continued until 2020. CP 97-126, 210-241. The Property remained an asset of the bankruptcy estate until the Trustee abandoned it on June 22, 2017. CP 123-124. The Carters brought adversary proceedings against another creditor in September 2017 and won on the

basis that the other creditor had violated the automatic bankruptcy stay in 2013. CP 237.[1]

This Quiet Title Lawsuit. On February 5, 2019, the Carters filed a single quiet title claim against PNC, asserting that under *Edmundson v. Bank of Am., NA*, 194 Wn. App. 920 (2016), their August 2012 bankruptcy discharge started the six-year statute of limitations for PNC to foreclose on its Deed of Trust. CP 4-5, 90, 148-150. They claimed that the bankruptcy stay did not toll the statute of limitations under RCW 4.16.230 because the bankruptcy court's August 14, 2012, case closure terminated the stay. CP 4, 270-274.

The Carters and PNC filed competing motions for summary judgment. CP 142-284. PNC argued, in part, that the Carters' statute of limitations argument failed because the Property remained part of the bankruptcy estate between 2012 and 2017, so even if the discharge triggered the statute of

[1] United States Bankruptcy Court for the Western District of Washington, case no. 17-01151 ("Carters Adversary Action") (the Carters Adversary Action docket can be found at https://ecf.wawb.uscourts.gov/cgi-bin/DktRpt.pl?202648782555077-L_1_0-1).

limitations to foreclose, the stay remained in place and tolled the statute of limitations until 2017. CP 190-198.

The Superior Court agreed with PNC and dismissed the case. CP 286-291. The Carters appealed PNC's summary judgment victory. CP 323-334.

The Carters Decide to Sell the Property and Ask the Trial Court to Order PNC to Release Its Lien. Rather than maintaining the status quo pending appeal, the Carters decided to sell the Property. CP 337-340. The Carters needed PNC to release its lien so they could sell the Property with a clean, unencumbered title. CP 337-340, 353-354. They asked the Superior Court to order PNC to release its lien (the Release Lien Motion) and they would deposit funds to satisfy PNC's lien into the court registry pending appeal. On July 31, 2020, the Superior Court denied the Carters' motion (without prejudice). It directed the parties to meet and confer to try to resolve the issue and invited the parties to "seek[] additional relief if necessary." CP 377-379. On the same day, the Carters

sold the Property for $2,450,000, paid PNC's loan in full, and appealed the July 31, 2020 ruling. Dec. 20, 2021 Op. p. 5; Pet. App'x. p. 13-24.

The Court of Appeals Affirms and Awards PNC Its Attorney Fees. On appeal, the Carters made the same arguments as they did below. May 14, 2021 Amended OB 12-24. They also blatantly mischaracterized the Superior Court's decision denying the Release Lien Motion, which directed the parties to meet and confer, as "ordering" the Carters to pay PNC, calling the decision a "de facto judgment" akin to a judicial foreclosure. OB 5, 25, 27, 28, 29, 31. The Carters argued this "judgment" was an "ultra vires" act and violated their Fourteenth Amendment right to due process. OB 12-32.

PNC argued that: (1) the appeal was moot because the Carters had sold the Property, had no title left to quiet, had paid PNC in full, and thus, under the voluntary payment doctrine, the Carters could not obtain monetary relief; (2) the Carters' bankruptcy discharge did not trigger the statute of limitations in

the first place, and regardless, the bankruptcy stay tolled the statute; and (3) the Superior Court did not violate the Carters' rights by denying the Release Lien Motion because the court did not order the Carters to do anything other than meet and confer. RB 17-33, 36-41; CP 377-379.

The Court of Appeals affirmed PNC's summary judgment in its December 20, 2021 Opinion. The Carters' quiet title claim was moot because they sold the Property while the appeal was pending, and, in addition, the voluntary payment doctrine barred monetary recovery. Dec. 20, 2021 Op. p. 5, 9-11. The Superior Court had not acted ultra vires or violated the Carters' rights because it had not ordered them to pay PNC. CP 377-379. The Court of Appeals also awarded PNC its attorney fees on appeal, as the Deed of Trust provided. Dec. 20, 2021 Op. p. 11-12.

The Carters moved to reconsider, which the Court of Appeals denied on January 25, 2022. Jan. 25, 2022 Order.

V. ARGUMENT

A. The Court Should Deny Review Because the Case is Moot.

1. The Carters Sold the Property and Voluntarily Repaid PNC.

The Court need not even review this matter under the traditional RAP 13.4(b) factors because the case is moot. *See Eyman v. Ferguson*, 7 Wn. App. 2d 312, 320 (2019) (A case is moot if it involves "abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief").

As the Court of Appeals correctly held, no court can grant relief to the Carters even in the unlikely event they could have succeeded on their appeal. Dec. 20, 2021 Op. p. 5, 9-11. The Carters voluntarily sold the Property and voluntarily repaid the PNC Loan, despite their claim that the statute of limitations for PNC to enforce it had purportedly run. *See Herrera v. Villaneda*, 3 Wn. App. 2d 483, 492 (2018) (quoting *Blackmon v. Blackmon*, 155 Wn. App. 715, 719 (2010)). PNC reconveyed

the lien, and the Carters have no title left to quiet. Dec. 20, 2021 Op. p. 4-5, 7, 10-11.

The Court also cannot permit the Carters to claw back the amount they voluntarily paid to satisfy PNC's lien. The voluntary payment doctrine bars their attempt:

> It is a universally recognized rule that money voluntarily paid under a claim of right to the payment, and with knowledge by the payor of the facts on which the claim is based, cannot be recovered on the ground that the claim was illegal, or that there was no liability to pay in the first instance.

Hawkinson v. Conniff, 53 Wn.2d 454, 458 (1959).

Nor does the "economic duress" exception to the voluntary payment doctrine apply. *See id*. at 459. While the Carters argue that the Superior Court "forced" them to pay PNC, Pet. 15-16, the Superior Court did no such thing. Dec. 20, 2021 Op. p. 7-9; CP 377-379. And PNC did not threaten foreclosure nor indicate that foreclosure was in any way imminent. The Carters had not made any payments on the PNC Loan since 2012. The Carters failed to show they

suddenly needed to sell the Property to pay off PNC's lien because PNC did anything. Pet. 4. While the COVID-19 pandemic may have exacerbated the Carters' economic circumstances, they had been in financial distress for years prior, as demonstrated by their prolonged bankruptcy proceedings and their failure to make any payments on the PNC Loan since 2012. CP 4, 97-126, 210-241.

The Carters argue that the case is not moot because they could still recover under RAP 12.8. They cite *State v. A.N.W. Seed Corp.*, 116 Wn.2d 39, 41 (1991), a case that applied RAP 12.8 and found that after the appellate court vacates a judgment, the measure of restitution under RAP 12.8 when personal property is sold when executing on a judgment is the sale amount. *See* Pet. 7, 9-10.

But no matter how many different ways the Carters try to argue that the Superior Court somehow awarded PNC money or a foreclosure judgment (Pet. 14, 16, 19-20), that is not what

happened. CP 377-379. RAP 12.8 does not apply here. Rather, RAP 12.8 provides, in relevant part:

> 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.

The Carters are not entitled to restitution under RAP 12.8—PNC did not seek nor recover anything from the Carters. The Carters did not "satisf[y]" any trial court decision when they voluntarily paid off PNC's lien. PNC's judgment was a defense judgment that dismissed the Carters' quiet title lawsuit and nothing more.

2. No Exception to Mootness Applies Here.

The Carters argue that their lawsuit involves an issue of substantial public interest because the Court "may, in its discretion, retain and decide an appeal that has otherwise become moot when it can be said that matters of continuing and substantial public interest are involved." *Eyman*, 7 Wn. App.

2d at 320; Pet. 7-22. But RAP 13.4(b)(4) requires the Carters to identify an issue of substantial public interest, and they cannot.

In determining whether a substantial public interest exists in a moot case, the Court considers:

> "(1) Whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur." A fourth factor may also play a role: "the level of genuine adverseness and the quality of advocacy of the issues." Lastly, the court may consider the "likelihood that the issue will escape review because the facts of the controversy are short-lived."

Eyman, 7 Wn. App. 2d at 320.

The issues here are private in nature–they involve only the Carters and their Property. The Carters' requested review would not give any new guidance to the public. The Carters' counsel has zealously prosecuted their case, and this is not an issue that will escape review. And the issue is not likely to recur—the case involves unique procedural facts. It is unlikely that a large number of bankruptcy debtors will try to take

advantage of a brief case closure in a bankruptcy to try to gain a windfall by claiming their mortgage loans are time-barred or have a court hold their case is moot because they chose to sell their property. And if they do, there is clear precedent to guide the courts, especially now that the *Copper Creek* case obviates the Carters' main argument in this case (discussed below).

B. The Carters' Bankruptcy Case Closure-Related Arguments Are Not of Substantial Public Interest.

The Carters argue that the Court should review their case because the public has an interest in this Court reviewing the bankruptcy stay and discharge issues in this case. As discussed above, there is no public interest issue implicated here because the Court of Appeals' *Copper Creek* decision makes the Carters' bankruptcy arguments irrelevant. It does not matter whether an automatic bankruptcy stay tolled the statute of limitations if the statute was never triggered to begin with, which *Copper Creek* clearly holds. Second, the Carters' case closure arguments are simply wrong. And third, this case

involves facts unique to the Carters—which, by definition, means they do not involve the public interest.

1. The Carters' Bankruptcy Case Closure Argument Will Not Recur; *Copper Creek* Renders the Argument Irrelevant.

The Carters' Deed of Trust called for monthly installment payments. CP 255-257, 263. The Carters' quiet title claim and their arguments in this case depend on the proposition that a bankruptcy discharge accelerates an installment loan like the PNC Loan and starts the statute of limitations to enforce the loan. CP 142-152, 269-277; OB 12-24; Pet. 7-12, 16-20. The Carters argued their bankruptcy discharge triggered the statute of limitations to foreclose, which they claim ran by the time they brought their quiet title lawsuit *unless* the statute was tolled. Thus, the Carters were compelled to argue that *something* prevented the automatic bankruptcy stay imposed by their own bankruptcy proceedings from tolling the statute of limitations. The Carters argued that the brief case closure in 2012 pre-discharge was that "something," ignoring

that the Property remained in the bankruptcy estate long after their discharge.

But *Copper Creek*, issued just less than a month after the Court of Appeals' decision in this case, changed all that. It held that a bankruptcy discharge does not: (1) start the statute of limitations running on all installment loan payments; (2) extinguish a Deed of Trust, or (3) bar enforcement of a Deed of Trust six years after the discharge. Thus, the August 2012 bankruptcy case closure is irrelevant, even without the bankruptcy stay tolling,[2] because PNC could have foreclosed on all missed payments less than six years past due, and the Carters had no basis to ask the court to wipe out PNC's lien as time-barred. *Merceri v. Bank of NY Mellon*, 4 Wn. App. 2d 755, 760 (2018), *review denied,* 192 Wn.2d 1008 (2018).

The Carters' quiet title theory is only valid if something *other than the Carters' bankruptcy discharge* accelerated all

[2] The bankruptcy stay applied post-2012 case closure, *see* RB 22-33, but again, under *Copper Creek*, that is irrelevant.

future installment payments, but the Carters point to nothing else. "Some affirmative action is required, some action by which the holder of the note makes known to the payors that he intends to declare the whole debt due." *Weinberg v. Naher*, 51 Wash. 591, 594 (1909).

The discharge does not bar payments from accruing against PNC's lien nor PNC foreclosing if the Carters miss those payments: "A creditor retains a right to payment, enforceable *in rem,* on the unsecured portion of a loan for which in *personam* liability may have been discharged." *In re Davis*, 778 F.3d 809, 813 (9th Cir. 2015); *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991) ("a creditor's right to foreclose on the mortgage survives or passes through the bankruptcy"). The discharge does not affect a Deed of Trust in any way: "a lien on real property passe[s] through bankruptcy unaffected." *Dewsnup v. Timm*, 502 U.S. 410, 418 (1992). Thus, the Carters' loan was never accelerated, the Deed of Trust was never extinguished, and PNC still could foreclose despite

their discharge—all things that the *Copper Creek* decision acknowledged and which completely negate the Carters' statute of limitations arguments.

The Carters try to attack *Copper Creek* by arguing that *Luv v. W. Coast Servicing, Inc*., 18 Wn. App. 2d 1049 (2021) (unpublished), review denied, 198 Wn.2d 1035 (2022), issued by the same Division, should control. First, *Luv* was not published and *Copper Creek* was. Thus, *Copper Creek* controls. And *Luv* wrongly interpreted the law described above, as the *Copper Creek* decision held. *Copper Creek*, 502 P.3d at 877, fn. 12.

Second, *Copper Creek* correctly followed existing law, holding:

> Edmundson does not stand for the proposition that bankruptcy discharge of personal liability of the debtor accelerates the obligation on an installment note or commences the statute of limitations on both the outstanding balance of the note and on enforcement of the DOT.

Copper Creek, 502 P.3d at 877. A bankruptcy discharge does not affect a Deed of Trust lien or prevent that lienholder from foreclosing. *Id.* at 872. Further, the *Copper Creek* court correctly explained that such a rule*:*

> would attribute to a bankruptcy discharge of the debtor more than relief from personal liability. It would mean the option of the lender to accelerate or not to accelerate the maturity date of the note was eliminated. It would mean that the payment schedule no longer applied and the maturity was accelerated. Affecting the lender's rights in a negative manner is not necessary to effect the purposes of the bankruptcy discharge.

Id. at 876.

Under *Copper Creek*, even if no bankruptcy stay applied, PNC could still enforce its Deed of Trust lien for six years' worth of missed payments, up until maturity. *Copper Creek* is well reasoned, and revisiting the statute of limitations issue in this case would not advance any public interest.

2. The Carters' Bankruptcy Case Closure Argument Is Wrong.

Nor would the Court have need to apply *Copper Creek* in this case to decide in favor of PNC, even if, in some other case,

the Court would be inclined to review *Copper Creek*'s holding despite that it is not in conflict with any other published decisions of the Court of Appeals. This is because the Carters' argument that their bankruptcy wouldn't have prevented any applicable SOL from running is simply wrong. The Carters argue that even though the bankruptcy court vacated the case closures, those 2012 closures lifted the bankruptcy stay so tolling did not apply after 2012. Pet. 7-9, 11-12. Not only is their argument irrelevant, it is also wrong. The stay was never lifted because the bankruptcy court vacated the closures and their Property was administered in the bankruptcy estate until 2017. Thus, if the statute of limitations to foreclose *had* been triggered somehow through acceleration, it was tolled.

First, the bankruptcy court **vacated** the August 14, 2012 closure order (at the Carters' request and urging), and held the closure was erroneous. CP 100, 101 145, 155, 204-205. A vacated order returns the parties to the pre-closure status quo,

so the stay never lifted. *See Interstate Prod. Credit Ass'n v. MacHugh*, 90 Wn. App. 650, 657 (1998).

Second, a bankruptcy discharge does not always trigger the end to a bankruptcy case. The trustee can administer an estate, such as selling assets like the Carters' real Property, even after a debtor is discharged. *In re Hokulani Square, Inc.*, 776 F.3d 1083, 1085 (9th Cir. 2015); *In re Sherman*, 491 F.3d 948, 968 (9th Cir. 2007). And that is what happened here. CP 97-126, 210-241.

Third, the bankruptcy stay against the Carters' Property never lifted. Filing a Chapter 7 bankruptcy petition creates a bankruptcy estate which consists of "all legal or equitable interests of the debtor in property as of the commencement of the case," meaning the Property was part of the estate. 11 U.S.C. § 541(a)(1), (7). Case closure alone does not terminate the stay; rather, it "'continues until such property is no longer property of the estate.'" *In re Sundquist*, 576 B.R. 858, 875 (Bankr. E.D. Cal. 2017) (quoting 11 U.S.C.

§ 362(c)(1)), *aff'd*, 827 F. App'x. 763 (9th Cir. 2020). Under 11 U.S.C. § 362(c), the stay lifts when the bankruptcy court closes the case, ***and*** the Property is no longer part of the estate. *See* 11 U.S.C. § 362(c)(1), (2), (3), and (4) (which are connected by the conjunction "and").

The Carters' case closure arguments are irrelevant. Here, the Property was part of the bankruptcy estate until June 2017 when the trustee abandoned it. CP 123-124. Because the stay was lifted in 2017 and the Carters filed their action in 2019, even if the statute of limitations *had* been triggered, it had not run. There is no public interest in this Court reiterating the well-established rules governing bankruptcy stays.

3. The Carters' Bankruptcy Case Closure Argument Addresses Facts Unique to Them and, Thus, Does Not Present an Issue of Importance to the Public that Will Escape Meaningful Appellate Review.

The Carters' arguments in this case rest on facts unique to them—the bankruptcy court closed their case for a brief time in August 2012 because the Carters had not filed required

certificates and then re-opened it at their urging, granting the Carters a discharge, while still administering their Property from 2012 to 2017 as part of the bankruptcy estate. CP 100-101. If the Carters had timely filed their required certificates, their case would never have been closed, their case closure argument would not exist, and the automatic bankruptcy stay unquestionably would have tolled any statute of limitations. The Carters do not show that their situation is common or is likely to happen again but will escape review if the Court does not address it right now.

C. The Court Should Deny Review Because There Is No Conflict Between Court Decisions.[3]

The Carters also argue that there is a conflict between the Court of Appeal's December 20, 2021 Opinion and other bankruptcy appellate court and Supreme Court decisions. A conflict exists when the two decisions come to opposite

[3] The Carters fleetingly reference constitutional due process in their Petition but do not list it as an issue for review or otherwise reference the constitutional issue prong of RAP13.4(b). Pet. 14, 15. They have waived review of any constitutional issue. *Aiken v. Aiken*, 187 Wn.2d 491, 499 fn.3 (2017).

holdings on similar facts and issues. Cf. *State v. Larson*, 184 Wn.2d 843, 847 (2015) (Division Two held tool did not meet the statutory definition, Division One held it did) with *Buchsieb/Danard, Inc. v. Skagit Cnty.*, 99 Wn.2d 577, 580–81 (1983) (Supreme Court ruling prohibiting county's postponement of land use decision did not conflict with appellate decision that county could consider environmental impact). The Carters identify no conflict here.

1. The Court of Appeals' Decision Does Not Present a Conflict with *Copper Creek* or the Unpublished *Luv*.

a. The "Conflict" the Carters Argue is Hypothetical.

The Carters cannot show that the Court of Appeals' decision conflicts with the bankruptcy issues decided in *Copper Creek* or *Luv* for a simple reason—the Court of Appeals' decision did not rely on bankruptcy law. The Carters assert that the Court of Appeals ***should*** have analyzed bankruptcy law and had it done so, they ***speculate***, the Court of Appeals' hypothetical decision ***may*** have followed the published *Copper*

Creek case instead of the unpublished *Luv*. But "this court will not render judgment on a hypothetical or speculative controversy, where concrete harm has not been alleged." *Walker v. Munro*, 124 Wn.2d 402, 415 (1994). The Court of Appeals' decision did not consider bankruptcy issues so it does not and cannot contradict any holding or decision in *Copper Creek* or *Luv*.

b. This Case Cannot Be a Vehicle for the Court to Review a Conflict between *Copper Creek* and the Unpublished *Luv*.

The "conflict" that the Carters claim exists is really a conflict between two cases involving other parties—the published decision in *Copper Creek* and the unpublished decision in *Luv*. But the Carters cannot ask the Court to review this case on a conflict between two other unrelated cases. *See* RAP 13.4(b) (limiting review to the Court of Appeals decision in the case at hand).

Even if the Carters could obtain the review they request (and they cannot), there is nothing that this Court should

reconcile. *Copper Creek* is published; *Luv* is not. Under GR 14.1(a), "[u]npublished opinions of the Court of Appeals have no precedential value and are not binding on any court." Thus, there cannot be any conflict between *Copper Creek* and the unpublished decision in *Luv* because no court can rely on Luv. Indeed, "Washington appellate courts should not, unless necessary for a reasoned decision, cite or discuss unpublished opinions in their opinions." GR 14.1(c).

D. PNC Is Entitled to Its Attorney Fees Here and Below.

PNC requested and the Court of Appeals awarded its attorney fees under RAP 18.1(a). The Carters' challenge to the award fails. This Court should also award PNC its attorney fees for opposing this Petition.

1. The Court of Appeals Correctly Awarded PNC Attorney Fees.

PNC's Deed of Trust allows it to recover attorney fees and costs for preserving its Deed of Trust. CP 12, § 10. The Carters' argument that PNC is not entitled to its attorney fees because their payment extinguished the Note and Deed of Trust

contracts fails. Pet. 21-22. The Court may award attorney fees even after a contract has been satisfied through a successful defense of a claim against its enforcement. *Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship*, 158 Wn. App. 203, 235 (2010); *Labriola v. Pollard Grp., Inc.*, 152 Wn.2d 828, 839 (2004).

The Carters also claim that the attorney fees provision is only triggered if a bankruptcy court awards fees. Pet. 21. They misread the Deed of Trust because it explicitly provides for attorney fees for all litigation. CP 12, § 10.

2. The Court Should Award PNC Its Fees Under RAP 18.1.

The Court should award PNC its attorneys' fees and expenses for opposing this moot and baseless petition. PNC's Deed of Trust contains a valid attorney fees provision allowing an award. CP 12, § 10; *Boyd v. Davis*, 127 Wn.2d 256, 264 (1995).

VI. CONCLUSION.

The Court should deny the Carters' Petition. The case is moot, and, regardless, they fail to show any matter of public interest or conflict in law. The Superior Court correctly granted PNC judgment, and the Court of Appeals correctly affirmed it.

RESPECTFULLY SUBMITTED this 30th day of March, 2022.

I certify that the number of words contained in this brief, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images, is 4,966.

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Proof of Service

The undersigned hereby declares under the laws of the State of Washington, that on this day, he filed the foregoing document using the Court's e-filing system, which will send notice of such filing to the following parties of record:

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