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SUPREME COURT
STATE OF WASHINGTON
8/4/2022 11:42 AM
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No. 101012-5

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 38547-7-III
COURT OF APPEALS, DIVISION III
(TRANSFERRED FROM DIVISION II)
STATE OF WASHINGTON

LINDA AMES,

Appellant,

vs.

HSBC BANK USA, NATIONAL ASSOCIATION
as Trustee for Wells Fargo Asset Securities Corporation, Mort-
gage Pass-Through Certificates Series 2006-AR16,

Respondent.

**RESPONDENT'S ANSWER
TO PETITION FOR REVIEW**

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AR16

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I. INTRODUCTION

Plaintiff-Appellant Linda Ames (“Ames”) seeks review by the Washington State Supreme Court for a second time, following her third unsuccessful appeal challenging a routine nonjudicial foreclosure by Defendant-Respondent HSBC Bank USA (“HSBC”).¹² Despite a full and final resolution of her claims through petitions for review to the Washington³ and US Supreme Courts, Ames is trying to re-litigate those claims in this petition. She cannot do so, and this review is limited only to the single issue on appeal - namely the trial court’s denial of her post-judgment and post-appeal motion to set aside the judgment under CR 60.

Once again, Ames seeks to continue litigating this matter

¹ Unpublished Opinion affirming summary judgment in favor of HSBC, *Linda Ames v. HSBC Bank USA, NA*, Wash. Ct. App. Div. II, No. 51941-1-II (Nov. 5, 2019) (“Opinion 1”)

² Unpublished Opinion affirming denial of Ames’s motion to vacate, *Linda Ames v. HSBC Bank USA, NA*, Wash. Ct. App. Div. III, No. 38547-7-III (Apr. 5, 2022)

³ *Linda Ames v. HSBC Bank USA, NA*, Wash. Sup. Ct., No. 98110-8

squandering judicial resources in another hollow attempt to unwind the foreclosure of her home. Ames's current Petition stems from Ames's third lawsuit against HSBC regarding the same completed foreclosure already examined over two years ago by the Court of Appeals. Footnote 1, *ante*. The Court of Appeals determined that Ames had waived her claims, that her post-sale Deeds of Trust Act claims were barred by the applicable two-year statute of limitations, that leave to amend was properly denied, and affirmed the trial court's granting summary judgment in favor of HSBC. *Id.* The Court of Appeals issued its mandate on August 26, 2020.

Prior to the mandate being issued, Ames filed a Motion to Vacate, Alter, or Amend Final Judgment Based on Newly Discovered Evidence with the trial court on January 21, 2020. The trial court denied that motion on February 10, 2020.

Ames waited another year and then filed a "Motion for Order to Show Cause (Vacate Judgment/Order)" in the trial court on March 8, 2021. She invoked CR 60(b)(3)'s provisions for

setting aside a judgment based on newly discovered evidence. The motion to vacate was denied. Ames appealed and the denial was affirmed⁴.

The trial court's denial, and the Court of Appeals' affirmation of that denial, is the only permissible subject of review by the Washington Supreme Court. All other issues have not been raised on appeal.

II. IDENTITY OF ANSWERING PARTY

This Answer is by HSBC Bank USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16.

III. COUNTERSTATEMENT OF ISSUES

The only matter at issue before the Court is whether the trial

⁴April 5, 2022, Unpublished Opinion, Court of Appeals Division III, *Ames v. HSBC Bank USA, Nat'l Ass'n as Tr. for Wells Fargo Asset Sec. Corp., Mortg. Pass-Through Certificates Series 2006-Ar16*, 21 Wash. App. 2d 1049 (2022), No. 38547-7-III ("Opinion 2"). This matter was originally No. 55753-3-II before it was transferred from Division II to Division III pursuant to the Division II Order Transferring Cases on November 15, 2021.

court and the Court of Appeals Division III erred in denying Ames's March 8, 2021, Motion for Order to Show Cause (Vacate Judgment/Order).

IV. RESTATEMENT OF THE CASE

A. Factual Background

This case arises from the foreclosure and subsequent trustee's sale of Appellant's Vancouver, Washington property. The relevant facts were previously examined by Division II of the Court of Appeals in Ames's prior appeals in Nos. 46585-0-II, 51941-1 II (Footnote 1, *ante*), and Division III in No. 38547-7-III (Footnote 2, *ante*). All underlying facts pertaining to the issues in Ames's Petition are further addressed in Opinion 1 and Opinion 2.

More than sixteen years ago, Ames borrowed \$590,000 from Sierra Pacific Mortgage Company, Inc., in March 2006. Opinion 2 at 1. The \$590,000 loan to Ames was memorialized in a promissory note. *Id.* To secure the loan, she executed a deed of trust in favor of Mortgage Electronic Registration Systems, Inc.

(MERS), as nominee for beneficiary Sierra Pacific, its successors and assigns. *Id.* The deed of trust was recorded against Ames's Vancouver, Washington property. *Id.*

The loan to Ames was subsequently sold to a securitized trust, HSBC BANK USA, National Association as Trustee for Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16 (HSBC), which owned the loan and held the note. *Id.* While Wells Fargo Bank, N.A. (Wells Fargo) serviced the loan and served as HSBC's attorney-in-fact, HSBC remained the note holder, and was the assignee of the trust deed's beneficial interest. *Id.*

Ames stopped making her monthly loan payments in September 2011. *Id.* HSBC appointed Quality Loan Service Corporation of Washington (QLS) several months later in March 2012 as successor foreclosure trustee on the trust deed securing her defaulted loan. *Id.* Wells Fargo, as HSBC's servicer and attorney-in-fact, executed the successor trustee appointment. *Id.*

HSBC commenced nonjudicial foreclosure in September

2012 by issuing a notice of default. *Id.* at 2. Ames was notified that reinstatement funds could be paid to Wells Fargo and was instructed how to make the payment. *Id.*

Ames did not reinstate her loan in response. *Id.* QLS, as foreclosure trustee, recorded a notice of trustee sale for the sale scheduled on August 9, 2013. *Id.*

Four days before the sale date, Ames filed her first lawsuit in Clark County Superior Court against HSBC, Wells Fargo, MERS, and QLS. *Id.* She asserted causes of action for an alleged statutory violation of Washington's Consumer Protection Act, for injunctive relief, declaratory judgment, slander of title, to quiet title, and for fraud. *Id.*

Though she asked for an injunction restraining foreclosure in her complaint, she never moved to restrain the trustee's sale, nor did she ever obtain any such injunction. *Id.* The trustee's sale proceeded on November 22, 2013, in Vancouver, Washington. *Id.* HSBC took ownership of the property by virtue of its credit bid. *Id.* QLS issued a trustee's deed conveying the prop-

erty HSBC. *Id.*

B. Procedural History

On April 8, 2014, HSBC filed an unlawful detainer action in Clark County Superior Court. *Id.* Ames asserted that HSBC failed to follow the Deeds of Trust Act, wrongfully foreclosed, lacked standing to seize her property, and that the deed should be declared void for fraud. *Id.* The trial court granted HSBC's writ of restitution. *Id.*

On November 24, 2015, Ames filed her second lawsuit, naming HSBC only. *Id.* This was two years and at least one court day after the trustee's sale took place. She again sought to set aside the trustee's sale and asserted seven causes of action. *Id.* Furthermore, Ames raised allegations that the deed of trust and foreclosure sale were illegal, there were irregularities with the sale, the property's title was fraudulently transferred, and the entities involved in foreclosing on the property had conspired to commit criminal and civil acts. Opinion 2 at 1.

Summary judgment on Ames's second lawsuit was granted

in favor of HSBC on February 5, 2018. *Id.* Ames also sought to amend her complaint to add Wells Fargo, N.A. as a party which was implicitly denied. *Id.* Ames appealed resulting in the denial of leave to amend and summary judgment being affirmed. *Id.*; See Opinion 1. Ames petitioned for review by the Washington Supreme Court which was denied in April of 2020. *Id.* at 2. Ames further petitioned the United States Supreme Court for a writ of certiorari and was denied in November of 2020. *Id.*

While her requests for review by the Washington Supreme Court were pending, Ames filed an action against Wells Fargo in state court. *Id.* Wells Fargo removed to federal court where Ames's claims of wrongful foreclosure, conversion, fraud, misrepresentation, and civil conspiracy were dismissed with prejudice in April of 2020. *Id.*; See *Ames v. Wells Fargo Bank NA*, No. C20-5246 BHS, 2020 WL 5105458 (W.D. Wash. 2020). The federal court concluded that Ames's claims had been fully litigated and decided by the state court. *Id.*

Despite her claims being rejected at every turn by the trial

court, the Court of Appeals, and the Western District of Washington, Ames filed a Motion to Vacate, Alter or Amend Final Judgment Based on Newly Discovered Evidence with the trial court on January 21, 2020, prior to the Court of Appeals issuing its ruling. This motion was denied on or about February 10, 2020.

Ames made the same claim a year later on March 8, 2021, by filing a Motion for Order to Show Cause (Vacate Judgment/Order) under CR 60(b). Ames asserted that in light of newly discovered evidence, the trial court should “vacate, alter or amend its final summary judgment and permit Plaintiff to file an amended complaint against Wells Fargo.” Opinion 2 at 2. Ames identified three pieces of newly discovered evidence as follows:

[C]ertificates of tax exemption that HSBC filed with New Jersey’s Division of Taxation when it sold New Jersey properties. CP at 2689. She construed them as proving “there is no trust” and HSBC “had no capacity to sue or foreclose.” CP at 2685-86. Relatedly, she represented that HSBC Bank USA had ceased actively doing business in

Washington in 2004. Second, she relied on a settlement entered into on August 1, 2018, between the United States Department of Justice (DOJ) and Wells Fargo, resolving civil claims against Wells Fargo that she contended resolved “illegal acts which are identical to those complained of by the Plaintiff.” CP at 2688. Third, she relied on a securities fraud class action by allegedly defrauded investors, *In re Wells Fargo Mortgage-Backed Certificates Litigation*, 712 F. Supp. 958 (N.D. Cal. 2010) that was “just discovered.” CP at 2688.

Id. at 2.

This motion was subsequently denied by the trial court on March 30, 2021, and Ames appealed. *Id.* at 3. The Court of Appeals Division III affirmed the trial court’s March 30, 2021, denial of Ames’s March 8, 2021, Motion for Order to Show Cause (Vacate Judgment/Order). *Id.* at 1. That denial is the only matter at issue designated in Ames’s Notice of Appeal filed on April 26, 2021.

V. ARGUMENTS WHY REVIEW

SHOULD BE DENIED

A. Standard of Review

To obtain this Court’s review, Ames must show: (1) that the

Court of Appeals' Decision is in conflict with a decision of the Supreme Court; or (2) that the Court of Appeals' Decision is in conflict with a published decision of the Court of Appeals; or (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

Ames's Petition for Review neither mentions nor addresses any of the four grounds implicated by Division III's April 5, 2022, decision. None of the cases cited by Ames addresses the four grounds for Washington State Supreme Court review above. Ames's Petition is simply a regurgitation of arguments previously made in the trial court and then again in her appellate briefing.

Because Division III's decision does not conflict with any issued Supreme Court or appellate court decisions, does not involve either a significant question of constitutional law or an issue of substantial public interest, the Petition for Review

should be denied.

B. The Decision Below Is Not In Conflict With Any Decision Of This Court

Of the twelve cases cited⁵ in the Petition for Review, eight are Washington State Supreme Court decisions.

Ames fails to offer any argument as to how Opinion 2 conflicts with any of the Washington Supreme Court cases cited in her Petition. In fact, the Court of Appeals applied the correct standards set forth by this Court to affirm the denial of Ames's March 8, 2021, motion.

To decide whether a motion to vacate a judgment under CR 60(b)(3) should be granted, the courts consider whether newly discovered evidence:

- (1) would probably change the result if a new trial were granted,
- (2) was discovered since trial,
- (3) could not have been discovered before the trial by the exercise of due diligence,
- (4) is material, and
- (5) is not merely cumulative or impeaching.

⁵ Ames's Table of Authorities lists 20 cases and 1 Law Review Article cited in her Petition. This is not an accurate list of all cases cited; however, Respondent addresses all Washington State Court cases cited.

Coogan v. Borg-Warner Morse Tec Inc., 197 Wash. 2d 790, 821, 490 P.3d 200 (2021).

These are exactly the factors applied by Division III in reviewing Ames's newly discovered evidence. Opinion 2 at 3. When deciding upon Ames's March 8, 2021, motion, Division III properly applied the abuse of discretion standard, consistent with this Court's prior holdings. *Id.*(citing *In re Marriage of Tang*, 57 Wn. App. 648, 653, 789 P.2d 118 (1990)); *In re Adamec*, 100 Wash.2d 166, 173, 667 P.2d 1085 (1983).

Ames's Petition cites cases regarding the summary judgment standard. Whether summary judgment should be affirmed is not at issue before the Court. Only the trial court's denial of Ames's March 8, 2021, Motion for Order to Show Cause (Vacate Judgment/Order) is at issue.

As stated in HSBC's brief to Division III, appeal of a denial of a motion to vacate judgment cannot be the basis for an appeal of the underlying judgment. *Matter of Marriage of*

Orate, 11 Wash. App. 2d 807, 814, 455 P.3d 1158 (2020).

Additionally, when the final judgment of the trial court is not designated in the Notice of Appeal, the court will not review the final judgment unless:

[T]he notice designates an order deciding a timely motion based on (1) CR 50(a) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) CR 59 (reconsideration, new trial, and amendment of judgments), ...

RAP 2.4(c).

Furthermore, Ames has already appealed the February 5, 2018, summary judgment in favor of HSBC and that summary judgment was affirmed. See Opinion 1. That ruling is final and Ames cannot challenge the underlying judgment again here. Based on the foregoing, the Court need not review the summary judgment. The Court need not review Ames's arguments that the statute of limitations was improperly applied on summary judgment. See Petition at 16. The only matter at issue before the Court is Ames's CR 60(b) motion of March 8, 2021, and the subsequent denial of March 30, 2021. No Washington Supreme

Court decision conflicts with Division III's affirmation of the denial and Ames has failed to demonstrate otherwise.

C. The Decision Below Is Not In Conflict With Any Published Decision Of The Court Of Appeals

Ames cites to a single decision from the Court of Appeals which does not conflict with Division III's decision rendered in this case. Ames's Petition cites to *Doyle v. Planned Parenthood of Seattle-King County, Inc.*, 31 Wash. App. 126, 639 P.2d 240 (1982). However, Ames fails to offer any argument as to how Division III's decision in Opinion 2 conflicts with *Doyle*.

Ames's CR 60(b) motion of March 8, 2021, sought, in addition to vacating the summary judgment, leave to amend Ames's complaint to add Wells Fargo as a party based on her newly discovered evidence. Opinion 2 at 4. Ames cites to *Doyle* stating:

Leave to amend a complaint is to be freely given when justice requires.

Petition at 13(citing *Doyle*, 31 Wash. App. at 130).

However, Ames provides no argument other than a

regurgitation of her appellate brief to support the notion that “justice so required” she be granted leave to amend. Division III explained, at length, that Ames failed to present facts demonstrating evidence to succeed on appeal. Opinion 2 at 7. Like Ames’s appellate brief, her Petition merely provides conclusory allegations. There are no citations to the record. Ames offers no argument as to how the various class action lawsuits against Wells Fargo are related to the instant action and could change the result of the trial court’s summary judgment. In fact, Ames offers no argument that her newly discovered evidence satisfies the factors found in *Coogan*.

Division III stated:

Her motion to vacate needed to be supported by *evidence of facts* learned from the DOJ/Wells Fargo settlement and class action that had a direct bearing on the foreclosure of her property and that would demonstrate directly some fact specific to her foreclosure and her lawsuit was disputed.

Id.

Ames further fails to offer any argument that her newly

discovered evidence could not have been discovered by due diligence earlier pursuant to CR 60(b)(3). Additionally, Ames fails to offer any argument that her CR 60(b) motion was timely. CR 60(b) requires that a motion under that rule be made within 1 year after the judgment, order, or proceeding was entered or taken. See also *In re Marriage of Thurston*, 92 Wash. App. 494, 499-500, 963 P.2d 947 (1998). Summary judgment in favor of HSBC was entered on February 5, 2018. Ames's CR 60(b) motion in this matter was brought by her on March 8, 2021, well over the 1-year period allowed by the rule.

Ames claims that the time to bring her March 8, 2021, began tolling upon the denial of her Petition for Review to the United States Supreme Court on November of 2020. Petition at 16-17. This assertion is egregiously inconsistent with CR 60(b) which states "not more than 1 year after the judgment, order, or proceeding was entered or taken." Ames's CR 60(b) motion sought to vacate the summary judgment entered on February 5, 2018. Accordingly, the tolling period to vacate summary

judgment began on February 5, 2018. It belies all sense to consider the 1-year tolling period as having begun on the date the Supreme Court of the United States issued its denial as if Ames was seeking to vacate that decision.

Based on the foregoing, Division III's decision is aligned with that of *Doyle*. Ames failed to demonstrate that "justice so requires" leave to amend her complaint and the Court need not review.

D. The Decision Below Does Not Create A Significant Question Of Law Under Either The Constitution of Washington State Or The United States Constitution

Ames's Petition is devoid of any significant questions of law under either the Washington State Constitution or the United States Constitution. Furthermore, she never raised a constitutionality claim in either the trial court or Division III, and accordingly those claims are barred under RAP 2.5(a). That rule's exception for manifest error affecting a constitutional right does not assist Ames:

Because RAP 2.5(a)(3) is an exception to the general rule that parties cannot raise new arguments on appeal, we construe the exception narrowly by requiring the asserted error to be (1) manifest and (2) "'truly of constitutional magnitude'." ...The policy behind RAP 2.5(a)(3) is simply this: Appellate courts will not waste their judicial resources to render definitive rulings on newly raised constitutional claims when those claims have no chance of succeeding on the merits.

State v. WWJ Corp., 138 Wash.2d 595, 602-03, 980 P.2d 1257, 1261 (1999) (citations omitted). Given the established law that summary judgment does not infringe on a litigant's jury trial right, any claimed error Ames may argue is neither manifest nor of true constitutional magnitude; accordingly, it is barred by RAP 2.5(a).

E. The Petition Does Not Involve An Issue Of Substantial Public Interest That Should Be Determined By This Court.

Ames offers no argument as to how Division III's decision implicates an issue of substantial public interest. Rather, Ames merely points to tax documents filed in other jurisdictions and other litigations without demonstrating how they are related.

In determining whether a matter, though moot, is of

continuing and substantial public interest and thus reviewable, this 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. *In re Cross*, 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (citing, *Sorenson v. Bellingham*, 80 Wn.2d at 558, 496 P.2d 512 (1972)). “Arguably a fourth factor exists, that being the level of genuine adverseness and the quality of advocacy of the issues.” *Hart v. Dep’t. of Soc. & Health Servs.*, 111 Wn.2d 445, 447, 759 P.2d 1206 (1988) (citations omitted).

As explained by the *Hart* court:

The continuing and substantial public interest exception has been used in cases dealing with constitutional interpretation, ...; the validity and interpretation of statutes and regulations, and matters deemed sufficiently important by the appellate court,

Most of the public interest exception cases fall into the first two categories as they tend to present issues which are more public in nature and are more likely to arise again. Further, decisions involving the

constitution and statutes generally help to guide public officials. The public interest exception has not been used in statutory or regulatory cases that are limited on their facts, ..., or involve statutes or regulations that have been amended.

The third category includes cases taken by the appellate courts within their discretion because of the importance of the issues involved [such as] ...case involving definition of death; ... public campaign financing and election limit ordinance in Seattle; ... Seattle's building and zoning ordinances; ... negligence of a third party supplying liquor to a minor; ... large development project and Environmental Impact Statement requirements; [and] ... referendum to repeal city ordinance.

Id., at 449-50 (citations omitted).

The issues noted for review satisfy none of the three substantial public interest standards. First, foreclosure of a secured property interest due to loan default is a private matter limited to the contracting parties. Division III's decision did not add to or expand on the developing body of foreclosure law.

Second, there is no issue requiring an authoritative determination to provide future guidance to public officers. Non-judicial foreclosures have been prosecuted for at least a

century in Washington State, and no statutory interpretations pertaining to the construction of the non-judicial foreclosure statutes were argued or contested in the trial or appellate courts.

Finally, although non-judicial foreclosures and summary judgments are likely to recur, a Supreme Court decision in this case is unlikely to affect any such future proceedings. The underlying rulings were limited to the specific facts of this case, and they do not expand the law of either non-judicial foreclosures or summary judgments.

Because no issue of substantial public interest has been identified or exists, the Petition for Review is unsupported.

VI. CONCLUSION

Division III's decision does not 1) conflict with any decision by the Washington Supreme Court, 2) conflict with any decision by the Court of Appeals, 3) create a significant question of law under the Constitution of Washington State or the United States Constitution, or 4) involve an issue of substantial public interest. Ames has failed to offer any

argument to support the foregoing. Rather, Ames merely regurgitates arguments from her appellate brief which Division III found deficient.

Ames's newly discovered evidence fails to satisfy the factors set forth in *Coogan* and Ames fails to address how the 1-year limit to bring motions to vacate judgment based on newly discovered evidence was incorrectly applied. As a result, this matter severely falls short of the standards of review set forth in RAP 13.4(b).

Accordingly, Respondent HSBC respectfully requests the Petition for Review be denied.

I certify, in compliance with RAP 18.17, that the foregoing document contains 3,872 words.

RESPECTFULLY SUBMITTED this 4th day of August 2022.

LAGERLOF, LLP

/s/ Justin T. Jastrzebski

Justin T. Jastrzebski, WSBA #46680

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Attorneys for Respondent

HSBC BANK USA, National Association
as Trustee for Wells Fargo Asset Securities
Corporation, Mortgage Pass-Through Certifi-
cates Series 2006-AR16

CERTIFICATE OF SERVICE

I, Karrie Blevins, certify that on this 4th day of August 2022, I caused the foregoing Respondent HSBC's Answer to Ames's Petition to Review to be delivered to the following parties in the manner indicated below:

Pro Se Appellant

Linda Ames
11920 NW 35th Avenue
Vancouver, WA 98685-2210

By United States Mail
 By Legal Messenger
 By CM/ECF e-Service
 By Electronic Mail
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Signed this 4th day of August 2022 at Seattle, Washington.

/s/ Karrie Blevins
Karrie Blevins, Paralegal
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August 04, 2022 - 11:42 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 101,012-5
Appellate Court Case Title: Linda Ames v. HSBC Bank USA, et al.
Superior Court Case Number: 15-2-03226-1

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