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SUPREME COURT
STATE OF WASHINGTON
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BY ERIN L. LENNON
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NO. 101047-8
IN THE SUPREME COURT OF WASHINGTON

John Earl Erickson and
Shelley Ann Erickson, *in propria persona*,
Plaintiffs/Appellants

v.

VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON, AND LANCE OLSEN,
Defendants/Respondents

APPELLANTS' **AMENDED** PETITION FOR REVIEW OF APRIL 25, 2022 DECISION OF COURT OF APPEALS, DIVISION ONE, RECONSIDERATION DENIED, MAY 24, 2022

On Appeal from King County Superior Court
No. 20-2-08633-9 KNT
Judge Ken Schubert Presiding

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I. INTRODUCTION

John Earl Erickson (Mr. Erickson) and Shelley Ann Erickson (Ms. Erickson), collectively, Petitioners or the Ericksons, hereby petition the Supreme Court of Washington for review of the April 25, 2022 UNPUBLISHED Decision of the Court of Appeals (Decision), Appendix 1, pursuant to Rule 13.4 of the Rules of Appellate Procedure (RAP). The Petition for Review was timely under RAP 13.4(a). It was submitted within 30 days after the filing of the May 24, 2022 Order Denying the Ericksons' Motion for Reconsideration (Order), Appendix 2. The Petition for Review was over-length. Leave to file a Petition for Review in compliance with the word count limit was granted by Clerk's Letter dated June 27, 2022.

II. ISSUES PRESENTED FOR REVIEW

Review should be granted under RAP 13.4(b)(3) and (4) for the reasons set forth below:

I. Review should be granted pursuant to RAP 13.4(b)(4) because it is of substantial public interest that the use of forged documents in litigation is fraud on the court which must be rejected.

II. Review should be granted pursuant to RAP 13.4(b)(3) because the demonstrated violations of Petitioners' Due Process Rights by the Superior Court and the Court of Appeals raise significant questions of law under Article One, Section 3 of the *Constitution of the State of Washington* and the Fourteenth Amendment to the *Constitution of the United States.*

III. STATEMENT OF THE CASE

Petitioners' Independent Action recognized in CR 60(c) was filed on May 13, 2019, titled *Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4*, King County Superior Court Case No. 19-2-12664-7 KNT (the Independent Action) in accordance

with *Wiese v. CACH, LLC*, 189 Wash.App. 466, 478, 358 P.3d 1213 (Wash. App. 2015) citing *Corporate Loan & Sec. Co. v. Peterson*, 64 Wn.2d 241, 243-244, (Wash. 1964), the Ericksons sought relief from the July 17, 2015 Order Granting Summary Judgment in *Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson*, King County Superior Court Case No. 14-2-00426-5 KNT (the Foreclosure Action) based upon fraud on the court.

Wiese v. CACH, LLC, 189 Wash.App. at 478, ¶27, acknow-ledged the availability of independent actions to obtain relief from judgments and orders procured by fraud. ("¶27 Typically, vacation of a judgment is sought under CR 60. However, Washington courts recognize that vacation of a judgment deemed to be void or procured through fraud may also be sought through an independent action in equity or a collateral attack.")

On June 16, 2020, the Superior Court granted summary

judgment against the Petitioners in the Independent Action, without notice that the Motion to Dismiss would be converted to a Motion for Summary Judgment to allow Petitioners to respond under CR 56, applying the time bar of one year under CR 60(b) and invoking the doctrines of res judicata/collateral estoppel. The Court of Appeals affirmed the Superior Court's Order Granting Summary Judgment in the Independent Action in No. 81648-9 on November 29, 2021. The Ericksons' Petition for Review was filed on December 29, 2021 and is pending before this Court.

New evidence was ultimately discovered, when, after years of communicating with numerous homeowners who had been affected by the appearance of endorsement displaying the initials of one Jess Almanza, purporting to be an officer of more than one entity including, but not limited to, Washington Mutual Bank and Long Beach Mortgage Company, the Ericksons and all other affected homeowners were unable to

locate the individual identified as Jess Almanza. Mr. Almanza was purportedly one of the endorsers of the document purported to be the Ericksons' March 3, 2007 "original Note". CP 2445-2447.

In August, 2018, the Ericksons were informed by a Minnesota homeowner that an individual named Jess Almanza had a LinkedIn profile, identifying him as being employed by Bank of America in Simi Valley California. The Ericksons obtained the Nora Declaration dated August 18, 2018 (CP 2338-2442) and provided it to Attorney Mary C. Anderson, who was investigating their allegations of fraud on the court.

Attorney Anderson filed the Ericksons' Independent Action on May 13, 2019 but was constrained to withdraw when the Superior Court Judge in the Independent Action threatened her with sanctions for raising the issue of fraud on the court in seeking relief from the Foreclosure Action. The Ericksons then sought to reorganize their financial affairs in Chapter 13

bankruptcy proceedings. The Ericksons were unsuccessful in their efforts to reorganize their indebtedness in Chapter 13 proceedings in 2019 and 2020 and returned to litigation in the Superior Court. The Ericksons proceeded on their own behalf.

On June 4, 2019, Ms. Erickson received an email from Ronaldo Reyes, an officer of Deutsche Bank National Trust Company, purported Plaintiff in the Foreclosure Action and the resulting Defendant in the Independent Action, informing her that STOEL RIVES, LLP (STOEL RIVES) was representing SPS in the Independent Action, notwithstanding Respondent Power's appearance on behalf of Deutsche Bank National Trust Company. *See* CP 233. Deustche Bank National Trust Company, in its purported capacity as Trustee, was, in actuality not represented by counsel. The identity of SPS as the corporate party actually represented by counsel appearing in the name of Deutsche Bank National Trust Company as Trustee of Long Beach Mortgage Loan Trust 2006-4 was concealed

from Petitioners and the Superior Court, depriving the Ericksons of the opportunity to counterclaim in the Foreclosure Action or bring claims in the Independent Action against SPS.

On May 7, 2020,[1] on their own behalf, the Ericksons filed *Erickson v. Power, et al.,* King County Superior Court No. 20-2-08633-9 against Defendants Vanessa Power ("POWER"), STOEL RIVES, Select Portfolio Services, Inc. ("SPS"), Will Eidson ("EIDSON") and John Glowney ("GLOWNEY") (hereinafter the "Respondents"). The Ericksons learned on June 4, 2019, in the course of the Independent Action, that STOEL RIVES and the named lawyers employed by STOEL RIVES were actually representing SPS in the Foreclosure Action and the Independent Action. *See* CP 233.

On June 4, 2020, the Defendants SPS, STOEL RIVES, Power, Eidson, and Glowney appeared by STOEL RIVES and

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1 The Ericksons' Motion for Reconsideration in this appeal erroneously stated that the present action was filed on April 27, 2020.

answered the Ericksons' May 7, 2020[2] Complaint and admitted that STOEL RIVES represented SPS in the Foreclosure Action and the Independent Action. CP 2333-2336 at 2333, line 21-2334, line 3. The June 4, 2020 admission of the actual representation of SPS by STOEL RIVES and its named attorneys is a judicial admission and is binding in the subject proceedings. The entity identified as

Thereafter, the Ericksons located a private investigator who had special investigative tools available, not available in the public domain. The private investigator was successful in locating Mr. Almanza who was residing more than five (5) hours from Simi Valley, California. *See* CP 2445-2447. According to Jess Almanza, his LinkedIn profile, retrieved in August, 2018 had not been updated since he was no longer seeking employment. *See* Almanza Declaration, ¶10. CP 2496.

The Court of Appeals misapprehended the proceedings

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2 *Id.*

in the Superior Court when it affirmed the Order Granting Summary Judgment misstating that the Superior Court had denied the Ericksons' Rule 56(f) Motion on March 26, 2021 thereby preventing the Ericksons from presenting evidence obtained from the Almanza Declaration. The Court of Appeals wrote, "Because the Ericksons did not [show cause for delay in discovering evidence regarding the Almanza endorsement] . . ., they fail to show the trial court abused its discretion by denying the CR 56(f) motion. [FN 50]. . . " FN 50 reads "Because we affirm on this basis, we do not reach the trial court's conclusion that Almanza's declaration did not present a genuine issue of material fact."

It is an undisputed procedural fact that the Superior Court did indeed consider the Almanza Declaration. The Ericksons were entitled to the benefit of all reasonable inferences arising from the Almanza Declaration as nonmovants in the proceedings for summary judgment. Tr.

40:10-16 (Appendix 13) demonstrates that the Almanza Declaration was considered by the Superior Court. *See also* the March 26, 2021 Order Granting Summary Judgment, CP 3508-3515, CP 3508, line 23, ". . . The Court also considered the pleadings and records on file . . ." and CP 3506, line 18, item 13: "Plaintiffs' Declaration of Jess G. Almanza." The Court of Appeals' stated grounds for affirming the Superior Court that is entirely unsupported by the record, to wit, that Summary Judgment was granted because Petitioners' CR 56(f) Motion was denied.

The issue of whether or not the Almanza Declaration created a genuine dispute of material fact was plainly before the Court of Appeals which ignored and disregarded the Superior Court's error of law in concluding that the Almanza Declaration did not create a genuine dispute of material fact. The Almanza Declaration establishes that Mr. Almanza was not working at the location of Washington Mutual Bank in

Stockton, California when the endorsement was placed on the Ericksons' purported "original Note"and he did not place the endorsement on the Ericksons' purported "original Note". CP 2496, ¶9 and CP 2497, ¶20.

Reasonable inferences arise from the Almanza Declaration that the endorsement which suddenly appeared in the summary judgment proceedings in the Foreclosure Action is a forgery in violation of RCW 9A.60.010(3) and (4) and RCW 9A.60.020 and is an invalid endorsement under RCW 62A.1-201(b)(19) and RCW 62A.1-201(b)(41). The Almanza Declaration is newly discovered evidence that the document purporting to be Petitioners' "original Note" was not lawfully endorsed and transferred under RCW 62A.3-201(b) and RCW 62A.3-203, a process known as negotiation, and could not be lawfully enforced under RCW 62A.3-301 by the alleged "holder" of the instrument based upon evidence that the Almanza "endorsement-in-blank" is a forgery.

In *McDonough v. Smith*, 139 S. Ct. 2149, 2155, 204 L. Ed. 2d 506 (2019), the United States Supreme Court recognized that Due Process Rights are violated by the use of fabricated evidence. The Ericksons maintain that violations of their Due Process Rights by the use of forged documents and perjured declarations, reinforced by false statements by officers of the court were apparent in the record on appeal and deprived them of their property rights. Respondents entirely failed to address the violation of the Ericksons' Due Process Rights by the use of forged documents authenticated by perjured declarations in the previous and present actions.

IV. ARGUMENT

A. Review should be granted pursuant to RAP 13.4(b)(4) because it is of substantial public interest that the use of forged documents in litigation is fraud on the court which must be rejected.

The application of Washington law defining fraudulent instruments and the applicable provisions of the Washington

Uniform Commercial Code in cases involving debt instruments purportedly secured by real estate is an issue of substantial public interest because the use of forged documents for the fraudulent purpose of claiming the right to the remedy of foreclosure must be rejected in the public interest.

Jess G. Almanza's Declaration (CP 2495-2525 at ¶¶6, 7, 8, 9, and 20 and Exhibit 2) establishes, on his personal knowledge, that he did not sign or authorize the signing of the endorsement appearing on the document purporting to be the Ericksons' "original Note." Accordingly, the Almanza Declaration raises material issues of fact as to whether or not the endorsement on the document purporting to be the Ericksons' original Note is a forgery.

RCW 9A.60.010(3) and (4), set forth in Appendix 5, defines fraudulent instruments.[3] RCW 9A.60.020(1)(a) and

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3 RCW 9A.60.010 defines fraudulent instruments as prohibiting acts:
(3) To "falsely alter" a written instrument means to change, **without authorization by anyone entitled to grant it**, a written instrument . . . or

(b), set forth in Appendix 6, makes it a crime to commit forgery and to uttered forged documents as genuine.[4] As to the documents at issue, the definitions in the Washington Uniform Commercial Code at RCW 62A.1-201(b)(19) and (41), set forth in Appendix 7, define a genuine instrument as being free of forgery and unauthorized signatures, reiterating that unauthorized signatures include forgeries.

There is a genuine dispute of material fact as to whether the document purporting to be the Ericksons' "original Note" is a genuine and whether the use of Mr. Almanza's initials was authorized. Summary judgment cannot be granted when

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(4) To "falsely complete" a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, **without the authority of anyone entitled to grant it**; . . . (Emphasis added.)

4 RCW 9A.60.020(1)(a) and (b) provide:
Forgery.
(1) A person is guilty of forgery if, with intent to injure or defraud:
(a) He or she falsely makes, completes, or alters a written instrument or;
(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

evidence of a genuine dispute of material fact is submitted by the nonmoving party.

In the face of evidence of forgery, Respondents produced no evidence. Assertions made by in the Foreclosure Action and the Independent Action by argument or by declaration without personal knowledge (i.e., the Eidson Declaration CP 1009-1016) that the entity identified as the Plaintiff in the Foreclosure Action and named as Defendant in the Independent Action was in possession of the "original Note" are not admissible evidence.

Whether or not the document is the "original Note", the issue of fact as to whether the entity is in possession of the document and entitled to enforce it, requires negotiation and transfer in accordance with Article Three of the Uniform Commercial Code.

RCW 62A.3-201, set forth in Appendix 8, provides, in part, that "negotiation requires transfer of possession of the

instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone."

There is no evidence in the record of any litigation between the Ericksons and the purported foreclosure claimant that the document purporting to be the original Note was lawfully endorsed. There is newly discovered evidence that the endorsement appearing on the document was not authorized by the purported endorser and is, therefore, a forgery. There is no evidence in the record of the prior proceedings and in the proceedings for which review is sought that the "original" Note was endorsed and transferred[5] to Deutsche Bank National Trust

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5 RCW 62A.3-201(b) provides that negotiation requires endorsement and transfer of the instrument when the instrument was originally payable to an identified person. Here, the identified person is Long Beach Mortgage Company, not Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4. There is no evidence of negotiation and transfer to the "Trust" in the record of the Foreclosure Action in which judgment was entered on the basis of a forged endorsement and an attorney's claim of possession, without personal knowledge.

Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 as required by RCW 62A.3-201(b).

RCW 62A.3-203, set forth in Appendix 9, provides, in part:

> 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 purpose of giving to the person receiving delivery the right to enforce 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 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.**
> (Emphases added.)

There is no evidence in the present action or the actions which preceded the present action that the instrument purporting to be the Ericksons' "original Note" was lawfully endorsed and transferred. To avoid the evidence of forgery, Respondents argued that the Almanza endorsement was

"ratified" but there is no evidence in the record that Long Beach Mortgage Company (the original payee) or Washington Mutual Bank (WaMU) as its purported successor in interest ratified the Almanza endorsement which Almanza did not himself authorize. WaMU was closed by the FDIC on September 25, 2008. CP 542-583. There is no evidence that the FDIC as purported successor in interest to Washington Mutual Bank, ratified the purported endorsement of the "original Note" by Jess Almanza.

Respondents relied on the unpublished decision in *Renata v. Flagstar Bank, FSB* (Wash. App. 2015) (Appendix 12). *Renata* appears to permit ratification of an unauthorized (forged) endorsement, but there is no evidence of ratification in the record of the Foreclosure Action, the Independent Action or this case on appeal nor has the entity with the authority to ratify a forged endorsement ever been identified.

RCW 62A.3-204(d), Appendix 10, provides, in part:

Indorsement.
(d) **If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.** (Emphasis added.)

As the parties against whom the instrument purporting to be the "original Note" is sought to be enforced, the Ericksons are not only entitled to require a valid endorsement before their homestead of over 40 years is foreclosed for payment of the instrument, but Washington law imposes a duty on the Ericksons to insist on the lawful endorsement of the instrument under *Koppler v. Bugge*, 168 Wash. 182, 184-185, 11 P.2d 236 (Wash. 1932). In *Koppler v. Bugge*, supra, this Court held:

> Where one advances money to an alleged agent of the holder to satisfy a mortgage and the notes which such mortgage secures, **it is his duty at his peril to see that the person whom he pays as agent is either (a) in possession of the instruments, or (b) has special authority to receive payment, or (c) has been represented by the owner and holder of the securities to have such authority.** (Emphasis added.)

The person entitled to enforce the instrument is described in RCW 62A.3-301, set forth in Appendix 11. The person with the right to enforce the instrument was not correctly identified in the Foreclosure Action and did not appear in the action as a corporate entity represented by counsel. The Respondent law firm and named attorneys have judicially admitted that they represented SPS in the Foreclosure Action and appeared on behalf of SPS in the Independent Action in the Respondents' June 4, 2020Answer (CP 2333-2336). The authorized agent, Ronaldo Reyes, of Deutsche Bank National Trust Company, identified as (purported) Trustee of Long Beach Mortgage Loan Trust 2006-4, admitted that SPS is the party represented by the Respondent law firm and named lawyers (CP 233). The identity of the entity appearing by counsel in the previous matters, SPS, was concealed by the Respondents, preventing the Petitioners for obtaining a full and fair adjudication of their claims and

defenses in both actions.

The use of forged documents to establish the right to a remedy, uttered and fraudulently authenticated by counsel for the prevailing party in civil actions, is fraud on the court and must be rejected as a matter of law. *Renata v. Flagstar Bank, FSB* (unpublished), produced as Appendix 12, is not precedential for a very good reason. *Renata* holds that an unauthorized endorsement, i.e., a forgery, can be ratified. That proposition is contrary to precedential Washington law. See *Ritterhoff et al. v. Puget Sound Nat. Bank of Seattle,* 37 Wash. 76, 79, 79 P. 601, (Wash. 1905) which affirmed . . .“ a decree . . . rendered in accordance with the prayer of the complaint, **adjudging said note**, as against respondents, **to be false, fraudulent, a forgery, and null and void**, and forever enjoining and restraining appellant from asserting any demand against respondents, or either of them, upon said pretended note, and from transferring or dealing with said pretended note

as against respondents, or either of them." See also *Klem v. Wash. Mut. Bank*, 176 Wash.2d 771, 295 P.3d 1179 (Wash. 2013) in which this Court held:

> We hold that, **consistent with due process**, RCW 4.28.185(1)(b) encompasses the tortious actions of nonresident notaries when a notarized forgery is affixed to a document affecting interests in immovables. (Emphasis added.)

But in *Renata*, it appears that the argument for ratification was upheld by the Court of Appeals. Perhaps there was evidence of ratification in *Renata*, but here, there is none. Instead, there is evidence of fraud on the court.

Discovery of new evidence of fraud on the court renders collateral estoppel inapplicable. In *State Farm Fire & Cas. Co. v. Ford Motor Co.*, 186 Wash.App. 715, 722, ¶ 14, 346 P.3d 771 (Wash. App. 2015) recited the doctrine of collateral estoppel, citing *Hadley v. Maxwell*, 144 Wash.2d 306, 27 P.3d 600 (2001). For purposes of this Petition for Review, the fourth factor, "(4) application of the doctrine must not work an

injustice on the party against whom the doctrine is to be applied", is sufficient. "The failure to establish any one element is fatal to the proponent's claim. *LeMond v. Dep't of Licensing*, 143 Wash.App. 797, 805, 180 P.3d 829 (2008) . . ." *State Farm Fire & Cas. Co. v. Ford Motor Co.* 186 Wash.App. at 722, ¶ 14.

Respondents relied on *Renata v. Flagstar Bank, FSB*, an unpublished opinion of the Court of Appeals, Appendix 12, and argued that Jess Almanza's unauthorized signature had been "ratified" **without any evidence of negotiation** under RCW 62A.3-201 in the Foreclosure Action, in the Independent Action or in the present action. See Tr. 18:14-19; Tr. 18:23-25; 19:12-25, Appendix 13. In the present case, there was no evidence of ratification whatsoever in the Foreclosure Action, the Independent Action or the present action against SPS and the named law firm and lawyers.

The judge in the Foreclosure Action relied on Eidson's

May 19, 2015 Declaration (CP 1009-1016) in support of the Motion for Summary Judgment and his representation at the hearing on the Motion for Summary Judgment that the document purporting to be the Ericksons' Note displayed a valid endorsement, that Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 was in possession of the Note (a negotiable instrument under RCW 62A.3-201, et seq.) The judge in the Independent Action granted Summary Judgment under the doctrine of Collateral Estoppel based on the judgment in the Foreclosure Action without notice of conversion of the Motion to Dismiss to the Motion for Summary Judgment, in violation of Petitioners' Due Process Rights.

In determining whether application of collateral estoppel will work an injustice, " 'Washington courts focus on whether the parties to the earlier proceeding had a full and fair hearing on the issue.' " *Hadley*, 144 Wash.2d at 311, 27 P.3d 600

(quoting *Neff v. Allstate Ins. Co.*, 70 Wash.App. 796, 801, 855 P.2d 1223 (1993)).

In *State Farm Fire & Cas. Co. v. Ford Motor Co.*, 186 Wash.App. at 725-726, 346 P.3d 775-776 (Wash. App. 2015), the Court of Appeals examined the equitable principle of the doctrine of collateral estoppel requiring "focus on whether the parties to the earlier proceeding had a full and fair hearing on the issue[s]*".*

In this case, there is newly discovered evidence of fraud on the court which was not available to the Ericksons due to the concealment of the identity of the Plaintiff in the Foreclosure Action and the true identity of Defendant in the Independent Action, combined with the difficulty in locating Jess Almanza, whose Declaration is evidence that his endorsement on the instrument is a forgery, it would be unfair to deny the Ericksons damages resulting from fraud on the court.

The Court of Appeals in *State Farm Fire & Cas. Co. v. Ford Motor Co.*, 186 Wash.App. 725-726, 346 P.3d 775-776 explained at ¶ 23, ". . . A number of courts have concluded that the opportunity to introduce evidence not before the fact finder in the prior action is a new procedural opportunity that precludes application of collateral estoppel. See e.g. *Rye v. United States Steel Mining Co.*, 856 F.Supp. 274, 279 (E.D.Va.1994) ('Because the defendants were unable to or precluded from introducing evidence which may have affected the Court's ruling [in the prior case] ... the Court does not believe it would be appropriate to preclude this issue from being litigated in [later] actions.); *Strietmatter v. Procter & Gamble Co.*, 657 F.Supp. 548, 550 (D.N.M.1983). . .' "

Newly discovered evidence of the concealed identity actual client of the STOEL RIVES Defendants and the new discovery of the fact that Jess Almanza was never in the offices of Washington Mutual Bank at any time at or after the time that

the Ericksons' refinancing occurred, and his unequivocal statement that he did not endorse the Ericksons' "original Note" makes the application of the doctrine of collateral estoppel fundamentally unfair.

B. Review should be granted pursuant to RAP 13.4(b)(3) because the demonstrated violations of Petitioners' Due Process Rights by the Superior Court and the Court of Appeals raise significant questions of law under Article One, Section 3 of the *Constitution of the State of Washington* and the Fourteenth Amendment to the *Constitution of the United States.*.

Petitioners' Due Process Rights were violated by the Superior Court's March 26, 2021 Order Granting Summary Judgment when the Petitioners were denied the benefit of all reasonable inferences arising from the Almanza Declaration to which they were entitled in proceedings under CR 56. There is more than sufficient evidence of fraud on the court in the record on appeal which gives rise to genuinely disputed issues of material fact to warrant a trial by jury for damages.

The Ericksons lawfully and constitutionally preserved

their right to trial by jury by timely filing their Demand for Trial by Jury of Twelve Persons and paying the fees for the trial by jury (CP 2439). Furthermore, the Ericksons contend that, as a matter of law, fraud on the Court by the production of a document displaying a forged endorsement-in-blank resulted in a foreclosure judgment which deprived them of their property rights in violation of their Due Process Rights. *McDonough v. Smith*, supra; *Klem v. Wash. Mut. Bank*, supra, which recognize that Due Process Rights are violated by the use of fabricated evidence to deprive a party of liberty *(McDonough v. Smith*) or property (*Klem v. Wash. Mut. Bank*).

The Ericksons maintain that violations of their Due Process Rights by the use of forged documents and perjured declarations, reinforced by false statements by officers of the court are apparent in the record on appeal and, if not corrected on appeal, will deprive them of their property rights. Respondents entirely failed to address the violation of the

Ericksons' Due Process Rights in their Brief to the Court of Appeals.

The April 25, 2022 Decision of the Court of Appeals misapprehended the record of the proceedings for summary judgment in the Superior Court because the Superior Court did not grant summary judgment based on its denial of the Ericksons'CR 56(f) Motion to Continue Summary Judgment Proceedings. The Superior Court considered the Almanza Declaration and erred by failing to give the Ericksons, as the nonmoving parties, the benefit of all reasonable inferences arising therefrom as required in proceedings under CR 56.

The Court of Appeals overlooked the procedural fact that the Superior Court considered the February 21, 2021 Declaration of Jess G. Almanza and concluded that the Declaration did not present a material issue of fact. As a matter of law, the Court of Appeals deprived the Ericksons' of their Due Process Rights by affirming the Superior Court on a basis

that is not supported by the record and then disposing of the appeal on the grounds of collateral estoppel when the Ericksons presented newly discovered evidence of fraud on the court.

Concealment of identity of Respondent SPS, the party actually represented by Respondent STOEL RIVES and its named attorneys, deprived the Ericksons of full and fair proceedings in the Foreclosure Action required by the Due Process Clause of the Fourteenth Amendment and Article One, Section 3 of the *Constitution of the State of Washington* by committing fraud on the court.

Evidence that the endorsement of Jess G. Almanza is a forgery created a material issue of fact was considered by the Superior Court in the present case. The Superior Court deprived the Ericksons, as nonmovants, all reasonable inferences arising from the Almanza Declaration. The Ericksons Due Process Rights were then ignored and

completely disregarded by the Court of Appeals when the Court of Appeals disposed of Petitioners' appeal on grounds completely unsupported by the record.

Review must be granted to provide the Ericksons with their Due Process Rights which have thus far been violated by the use of and allowing or ignoring the use of fabricated evidence in all previous court proceedings. Collateral estoppel cannot override the Ericksons Due Process Rights.

V. CONCLUSION

The Ericksons respectfully submit this Petition for Review and urge its acceptance by the Washington Supreme Court because the use of forged documents misrepresented as genuine and authentic in litigation by the Respondent officers of the court and agents of the concealed real party in interest is fraud on the court. Failure to grant relief from fraud on the court when evidence of the fraud is brought to the attention of the court is a violation of Petitioners' Due Process Rights,

whose rights were subjected to adjudication on fraudulent documents.

The Petition for Review must be granted to address the significant public interest that forged documents cannot be the basis for a judgment upon which substantial property rights consisting of real estate in the State of Washington and will not be allowed. Due Process Rights forbid such an outcome. *Klem*, supra; *McDonough*, supra.

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Dated this 6th day of July, 2022 at Auburn, Washington.

E-signed: */s/ John Earl Erickson*

_____

John Earl Erickson, *in propria persona*
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Email: john206erickson@icloud.com

Dated this 6th day of July, 2022 at Auburn, Washington.

E-signed: */s/ Shelley Ann Erickson*

_____

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CERTIFICATE OF COMPLIANCE

The foregoing Amended Petition for Review complies with RAP 18.17 in that is produced using a word processing program, is prepared in 14 point font, double-spaced except as otherwise allowed, and I am informed that the foregoing Petition for Review consists of 5,000 words, inclusive of footnotes and exclusive of the cover page, Table of Contents, Table of Authorities, signature blocks and Certifications according to the word count tool for the word processing program with which it has been prepared.

E-signed: */s/ Shelley Ann Erickson*

Shelley Ann Erickson, *in propria persona*

CERTIFICATE OF SERVICE

I hereby certify that on July 6, 2022, I caused a true and correct copy of the Petition for Review to be served via E-Filing as set forth below:

Attorney Vanessa Power
Attorney Ann Dorsheimer
STOEL RIVES, LLP
Attorney for Respondents Power, STOEL RIVES, SPS, Eidson and Glowney
600 University Street, Suite 3600
Seattle, Washington 98101

Dated this 6th day of July, 2022 in Auburn, Washington.

E-signed: */s/ Shelley Ann Erickson*

Shelley Ann Erickson, *in propria persona*

NO. 101047-8
IN THE SUPREME COURT OF WASHINGTON

John Earl Erickson and
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VANESSA POWER AND STOEL AND RIVES AND SELECT PORTFOLIO SERVICING, JOHN GLOWNEY AND WILL EIDSON, THOMAS REARDON, AND LANCE OLSEN,
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APPENDIX TO APPELLANTS' **AMENDED** PETITION FOR REVIEW OF APRIL 25, 2022 DECISION OF COURT OF APPEALS, DIVISION ONE, RECONSIDERATION DENIED, MAY 24, 2022

On Appeal from King County Superior Court
No. 20-2-08633-9 KNT
Judge Ken Schubert Presiding

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APPENDIX 1

FILED
4/25/2022
Court of Appeals
Division I
State of Washington

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

JOHN EARL ERICKSON and SHELLEY ANN ERICKSON, Appellants, v. VANESSA POWER, STOEL & RIVES, SELECT PORTFOLIO SERVICING, JOHN GLOWNEY, WILL EIDSON, THOMAS REARDON, LANCE OLSEN HOLTHUS & MCCARTHY, Respondents.	)	No. 82755-3-I UNPUBLISHED OPINION

VERELLEN, J. — This is the third appeal before this court regarding John and Shelley Erickson's 2009 default on their mortgage. The trial court granted summary judgment against the Ericksons, concluding collateral estoppel barred relitigation of their claims. Because the unrebutted evidence established that the Ericksons are attempting to relitigate the same issues previously resolved in several final prior adjudications, the trial court did not err by granting summary judgment.

The Ericksons argue the trial court erred by denying their CR 56(f) motion to continue the summary judgment hearing. Because the Ericksons failed to establish good cause existed to delay the hearing, the trial court did not abuse its discretion.

For the first time on appeal, the respondents request that we find the Ericksons to be vexatious litigants. Because this presents a fact-specific question affecting the Ericksons' ability to file claims in trial court, such a request should be pursued in trial court.

Therefore, we affirm.

FACTS

The Ericksons purchased a house in 2006 with a loan secured by a deed of trust from Long Beach Mortgage Company, which was part of Washington Mutual.[1] Long Beach soon sold the loan into a trust, and Deutsche Bank National Trust Company was the trustee.[2] When Washington Mutual failed, its assets were purchased by JP Morgan Chase.[3]

The Ericksons defaulted in 2009.[4] They brought a lawsuit against Deutsche Bank in August of 2010 (Erickson I).[5] The suit was removed to federal court.[6] The Ericksons sought an injunction against foreclosure, arguing the bank lacked standing to enforce the note because it was not the original creditor and could not

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[1] Deutsche Bank Nat'l Tr. Co. for Long Beach Mort. Loan Tr. 2006-4 v. Erickson, No. 73833-0-I, slip op. at 2 (Wash. Ct. App. Feb. 13, 2017), http://www.courts.wa.gov/opinions/pdf/738330.pdf (Erickson II).

[2] Id.

[3] Id.

[4] Id. at 3.

[5] Erickson v. Deutsche Bank Nat'l Tr. Co. for Long Beach Mort. Loan Tr. 2006-4, No. 81648-9-I, slip op. at 2 (Wash. Ct. App. Nov. 29, 2021) http://www.courts.wa.gov/opinions/pdf/816489.pdf (Erickson III).

[6] Id.

produce the original note.[7] The court granted summary judgment in favor of Deutsche Bank, concluding it held the note.[8]

In 2013, J.P. Morgan Chase assigned its interest in the Erickson's loan to Deutsche Bank, and Deutsche Bank filed suit in King County Superior Court to foreclose on the note (Erickson II).[9] Deutsche Bank moved for summary judgment, arguing that it was entitled to foreclosure because it held the note.[10] In 2015, the trial court granted summary judgment in favor of Deutsche Bank.[11] This court affirmed, concluding both that collateral estoppel prevented the Ericksons from relitigating whether Deutsche Bank held the note and that, regardless, as a matter of law, Deutsche Bank held the note.[12]

In 2019, the Ericksons filed a CR 60 motion in superior court to vacate the 2015 superior court judgment (Erickson III).[13] The trial court granted summary judgment for Deutsche Bank, dismissing the Erickson's claims.[14] This court affirmed,[15] concluding collateral estoppel barred the Ericksons from "present[ing]

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[7] Erickson v. Long Beach Mortg. Co., No. 10-1423 MJP, 2011 WL 830727, at *3 (W.D. Wash. Mar. 2, 2011) (Erickson I).

[8] Id.

[9] Erickson III, No. 81648-9-I, slip op. at 2.

[10] Erickson II, No. 73833-0-I, slip op. at 3.

[11] Id.

[12] Id. at 7.

[13] Erickson III, No. 81648-9-I, slip op. at 2.

[14] Id. at 3.

[15] Id. at 1.

identical issues as they did in a federal proceeding in 2010, and again in a superior court action in 2014."[16]

The law firm Stoel Rives, LLP, and several of its attorneys represented Deutsche Bank in both Erickson II and Erickson III. In May of 2020, the Ericksons filed a 190-page complaint and accompanying appendix of over 1,500 pages in superior court against Stoel Rives and the attorneys who worked on those past cases.[17] The Ericksons alleged "OUR ENTIRE RESIDENCE IS BEING SEIZED, AND TRESPASSED BY FRAUDS WITH A WRONGFUL FORECLOSURE AND SALE AT AUCTION BY FRAUDS WITH NO PERMISSION TO REPRESENT ANOTHER FRAUD WHOM NEVER HELD OUR NOTE."[18]

Stoel Rives moved for summary judgment, arguing collateral estoppel barred the Ericksons from relitigating whether Deutsche Bank held the note securing their loan. The Ericksons filed a CR 56(f) motion to continue, arguing more time was required to depose Jess Almanza, a former Washington Mutual employee whose signature appears on the back of the note, indorsing it in his capacity as a vice president of Long Beach. The trial court denied the CR 56(f) motion and granted summary judgment for Stoel Rives.

The Ericksons appeal.

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[16] Id. at 7.

[17] We refer to defendants collectively as "Stoel Rives."

[18] Clerk's Papers (CP) at 3-4.

ANALYSIS

I. CR 56(f) Motion to Continue

The Ericksons contend the trial court relied upon inadmissible evidence to deny their motion to continue.[19] We review denial of a CR 56(f) motion for abuse of discretion.[20] A court abuses its discretion when it acts based on untenable evidentiary grounds or on untenable legal reasons.[21]

Under CR 56(f), a court can grant a continuance to provide a party opposing summary judgment more time to conduct discovery.[22] The court can deny the motion when "(1) the requesting party fails to offer a good reason for the delay, (2) the requesting party does not state what evidence is desired, or (3) the desired evidence will not raise a genuine issue of material fact."[23]

In Coggle v. Snow, this court held a trial court abused its discretion by denying a CR 56(f) motion.[24] A patient sued his doctor for malpractice, alleging a particular mixture of drugs caused a respiratory problem.[25] The doctor filed for

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[19] Appellant's Br. at 15, 35-37.

[20] MRC Receivables Corp. v. Zion, 152 Wn. App. 625, 629, 218 P.3d 621 (2009) (citing Coggle v. Snow, 56 Wn. App. 499, 504, 784 P.2d 554 (1990)).

[21] Coggle, 56 Wn. App. at 507 (quoting State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971)).

[22] Bavand v. OneWest Bank, 196 Wn. App. 813, 821-22, 385 P.3d 233 (2016).

[23] Kozol v. Wash. State Dep't of Corr., 192 Wn. App. 1, 6, 366 P.3d 933 (2015) (citing Tellevik v. 31641 W. Rutherford St., 120 Wn.2d 68, 90, 838 P.2d 111 (1992)).

[24] 56 Wn. App. 499, 504, 784 P.2d 554 (1990).

[25] Id. at 501.

summary judgment and included an affidavit from a respiratory physician who declared that the doctor was not negligent for administering the drugs.[26] Less than one week later, the patient's counsel filed a CR 56(f) motion for a 15-day continuance.[27] The patient's counsel explained a continuance was necessary because, first, the patient's original counsel was retiring and he had replaced him days earlier, and, second, he had just met the patient's new physician and needed more time to file a declaration rebutting the respiratory physician's affidavit.[28] The trial court denied the motion and granted summary judgment for the doctor.[29] This court reversed, explaining good cause existed under CR 56(f) for the continuance because the patient's first counsel was "dilatory" in conducting discovery, the patient's new counsel associated after the summary judgment motion was filed, and the new counsel needed more time to gather the evidence necessary to rebut the respiratory physician's affidavit.[30]

In Bavand v. OneWest Bank, by contrast, this court affirmed the trial court's denial of a CR 56(f) motion.[31] A borrower fell behind on her payments, and her bank sent a notice of default.[32] The borrower filed a complaint against her bank in

[26] Id. at 501-02.

[27] Id. at 502.

[28] Id.

[29] Id. at 503.

[30] Id. at 508.

[31] 196 Wn. App. 813, 821, 385 P.3d 233 (2016).

[32] Id. at 820.

superior court, alleging federal claims and a state claim.[33] The case was removed to federal court, and it dismissed all of the federal claims on summary judgment.[34] The state claim was remanded to the superior court, and the bank moved for summary judgment.[35] The borrower requested a continuance under CR 56(f).[36] The superior court denied the CR 56(f) motion and granted summary judgment.[37] This court affirmed. It explained the borrower failed to explain why good cause existed for a continuance requested almost four years after first filing her complaint and more than two years after the federal court granted summary judgment.[38] And the borrower failed to explain why she had been unable to discover the evidence identified in her motion.[39]

Here, the trial court denied the Erickson's CR 56(f) motion because, among other reasons, they "did not exercise diligence in seeking any such discovery."[40] On January 19, 2021, the Ericksons requested a continuance of the summary judgment hearing scheduled for January 29[41] in order to depose former

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[33] Id. at 821.

[34] Id.

[35] Id.

[36] Id.

[37] Id.

[38] Id. at 822-23.

[39] Id. at 823.

[40] CP at 3513.

[41] The hearing was continued to March of 2021 because the judge set to hear the motion recused herself.

Washington Mutual employee Almanza.[42] But their motion fails to explain why they could not have located and deposed him earlier. In their opposition to summary judgment, the Ericksons admitted they first learned of Almanza and his potential significance to their legal theory during their 2015 case against Deutsche Bank.[43] In another opposition to summary judgment, the Ericksons explained they "discovered that Jess Almanza was never employed by and was never 'Vice President' of Long Beach Mortgage Company" in August of 2018 when they found his LinkedIn profile.[44] And in a November 31, 2020 filing from the instant case, the Ericksons listed Almanza as a potential witness, explaining he was "expected to testify that he was never a Vice President of or even an employee of Long Beach Mortgage Company."[45] Despite learning his significance in 2015, finding him on LinkedIn in 2018, and concluding by November 2020 that he could be a witness,

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[42] CP at 2389-90.

[43] CP at 3237-38.

[44] CP at 2297. The Ericksons allege the trial court erred because it took judicial notice of LinkedIn's messaging functions and based its decision on that fact. Appellant's Br. at 15, 35-36; Reply Br. at 28-29. The record does not support them. Before the trial court mentioned LinkedIn, it denied the CR 56(f) motion, explaining the Erickson's did not "identify a single thing that you haven't been able to obtain in discovery [or] explain why you haven't been able to obtain it in discovery." Report of Proceedings (Mar. 26, 2021) at 9, 11. The court mentioned the messaging function on LinkedIn merely to illustrate the Ericksons' failure to explain their alleged inability to depose Almanza. The Ericksons fail to establish the court took judicial notice of a fact and, even if it did, that the court relied on that fact to make its decision.

[45] CP at 1929-30.

the Ericksons did not serve Almanza with a deposition subpoena until February 5, 2021.[46]

Unlike the patient in Coggle and like the borrower in Bavand, the Ericksons knew of Almanza's potential significance and of his potential testimony years before requesting a continuance. Like Bavand, their motion failed to explain what prevented them from deposing Almanza or, at least, obtaining a declaration from him between August of 2018 and January of 2021. Indeed, Almanza provided a declaration only a few weeks after being served.[47] Contrary to the Erickson's belief,[48] CR 56(f) requires more than belated diligence. The party requesting a continuance must offer a good reason for the delay in discovering their desired evidence.[49] Because the Ericksons did not do so, they fail to show the trial court abused its discretion by denying the CR 56(f) motion.[50]

II. Summary Judgment

The trial court granted summary judgment for Stoel Rives and dismissed the Ericksons claims with prejudice because "the issues raised in the Complaint

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[46] CP at 2892.

[47] Id.

[48] Reply Br. at 29.

[49] Kozol, 192 Wn. App. at 6 (citing Tellevik, 120 Wn.2d at 90).

[50] Because we affirm on this basis, we do not reach the trial court's conclusion that Almanza's declaration did not present a genuine issue of material fact. See Bavand, 196 Wn. App. at 825 ("We may affirm on any basis supported by the record.") (citing First Bank of Lincoln v. Tuschoff, 193 Wn. App. 413, 422, 375 P.3d 687 (2016)).

are barred by collateral estoppel."[51]

We review a grant of summary judgment de novo.[52] Summary judgment is proper when "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law."[53] "'A genuine issue of material fact exists if reasonable minds could differ on the facts controlling the outcome of the litigation.'"[54]

We review de novo whether collateral estoppel bars relitigation of an issue.[55] "The doctrine of collateral estoppel prevents relitigation of an issue after the party estopped has had a full and fair opportunity to present its case."[56] Collateral estoppel, also called issue preclusion, "promotes judicial economy and prevents inconvenience or harassment of parties"[57] by "'preventing needless litigation.'"[58] The party asserting collateral estoppel must establish four elements:

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[51] CP at 3512.

[52] Bavand, 196 Wn. App. at 825 (citing Ranger Ins. Co. v. Pierce Cty., 164 Wn.2d 545, 552, 192 P.3d 886 (2008)).

[53] CR 56(c).

[54] Bavand, 196 Wn. App. at 825 (quoting Knight v. Dep't of Labor & Indus., 181 Wn. App. 788, 795, 321 P.3d 1275 (2014)) (internal quotation marks omitted).

[55] Schibel v. Eymann, 189 Wn.2d 93, 98, 399 P.3d 1129 (2017) (citing Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299, 305, 96 P.3d 957 (2004)).

[56] Hanson v. City of Snohomish, 121 Wn.2d 552, 561, 852 P.2d 295 (1993) (citing Malland v. Dep't of Retirement Sys., 103 Wn.2d 484, 489, 694 P.2d 16 (1985); Beagles v. Seattle-First Nat'l Bank, 25 Wn. App. 925, 929, 610 P.2d 962 (1980)).

[57] Schibel, 189 Wn.2d at 98 (citing Christensen, 152 Wn.2d at 306).

[58] State Farm Fire & Cas. Co. v. Ford Motor Co., 186 Wn. App. 715, 722, 346 P.3d 771 (2015) (quoting Parklane Hosiery Co. v. Shore, 439 U.S. 322, 326, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)).

> (1) the issue sought to be precluded is identical to that involved in the prior action; (2) the issue was determined by a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.[59]

The Ericksons dispute that any of the four elements were met.

To satisfy the first element and establish that the issues were identical, Stoel Rives had to show "substantial similarity between the facts in this case and the prior cases" and that "the controlling legal rules are the same in this case and the prior cases."[60] The basis of the Ericksons' present complaint against Stoel Rives is that it perpetrated fraud upon the court by representing entities without the authority to foreclose because the note was not properly held by Deutsche Bank.[61]

In Vanessa Power's declaration in support of summary judgment,[62] Stoel Rives presented unrebutted evidence that this is the same issue presented and resolved already in Erickson I and Erickson II. In Erickson I, the federal court concluded Deutsche Bank held the note and had the authority to foreclose.[63] In

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[59] Id. (citing Hadley v. Maxwell, 144 Wn.2d 306, 311-12, 27 P.3d 600 (2001)).

[60] Id. at 723 (citing Thompson v. Dep't of Licensing, 138 Wn.2d 783, 791-92, 982 P.2d 601 (1999); LeMond v. Dep't of Licensing, 143 Wn. App. 797, 805-06, 180 P.3d 829 (2008); Cloud v. Summers, 98 Wn. App. 724, 730-31, 991 P.2d 1169 (1999)).

[61] CP at 49-50; see also CP at 8 ("Stoel and Rives have made false pleadings from the start of their case in [Deutsche Bank National Trust Company] v. Ericksons [Erickson II]. Defendants mislead the courts. Misleading the courts to be defending a false defendant with false jurisdictional pleadings is no mistake and it VOIDS THEIR CASES FILED.").

[62] CP at 2022-24.

[63] CP at 2069-70 (Erickson I decision).

Erickson II, this court applied Washington law and concluded Deutsche Bank held the note and had the authority to foreclose.[64] And after the trial court granted summary judgment in the instant case, this court considered Erickson III and concluded the issues presented were identical to those decided in Erickson II.[65] Stoel Rives clearly established the first element for collateral estoppel.

As to the second element, the Ericksons contend Stoel Rives failed to establish final judgments were entered in the previous cases because "[n]o judgment on the merits has ever entered on the allegations of fraud arising from the concealed identity of [Select Portfolio Servicing, Inc.], the actual client of the STOEL RIVES attorneys."[66] But the basis of this argument is that Deutsche Bank and its agents committed fraud by foreclosing without holding the note. Final judgments entered in the previous cases already resolved this issue.

The Ericksons also argue no final judgments were ever entered because no "court ever heard or determined the new evidence discovered in the course of the proceedings in the action on appeal."[67] But the Ericksons presented evidence and argument about Almanza's signature in their Erickson III complaint to allege Deutsche Bank committed fraud.[68]

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[64] CP at 2270-71 (Erickson II decision).

[65] No. 81648-9-I, slip op. at 7.

[66] Appellant's Br. at 25-26.

[67] Id. at 26.

[68] CP at 1517-19 (Nora Decl.); CP at 2040-42 (complaint). Even if the Erickson III litigation had not already considered the Almanza evidence, the Ericksons fail to explain why new evidence of an issue already resolved should be considered in new litigation rather than in a CR 60 motion. Indeed, Erickson III was a CR 60 motion, and the Ericksons fail to explain why the Almanza

Stoel Rives established final judgments were entered in Erickson I, Erickson II, and Erickson III.

For the third element, the Ericksons contend collateral estoppel does not apply because there was not privity between Stoel Rives and Deutsche Bank or other parties to past cases.[69] But they misunderstand this requirement. Washington law used to require mutuality of parties, "meaning there had to be identity or privity of parties in the same antagonistic relationship in both proceedings."[70] But it now requires that only the party being estopped be the same, or, at least, be in privity with another party in both proceedings.[71] Because it is undisputed that the Ericksons were party to each of the past proceedings and they are the party being estopped, Stoel Rives established this element.

As to the fourth element, the Ericksons contend application of collateral estoppel would be unjust because no court has held a full hearing based upon the Almanza declaration.[72] But the Almanza declaration is merely an extension of the same argument and evidence presented in Erickson III. And, unlike the defendant

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declaration should be considered now when, without explanation, they failed to obtain it after recognizing Almanza's alleged significance in 2018 before filing Erickson III.

[69] Appellant's Br. at 30-31; Reply Br. at 26-27.

[70] State v. Mullin-Coston, 152 Wn.2d 107, 113, 95 P.3d 321 (2004) (citing Owens v. Kuro, 56 Wn.2d 564, 568, 354 P.2d 696 (1960)).

[71] Id. at 113-14 (citing Kyreacos v. Smith, 89 Wn.2d 425, 428-30, 572 P.2d 723 (1977); Nielson v. Spanaway Gen. Med. Clinic, Inc., 135 Wn.2d 255, 258, 269, 956 P.2d 312 (1998)).

[72] Appellant's Br. at 32-34.

in State Farm Fire & Casualty Co. v. Ford Motor Co.,[73] the Ericksons are being defensively, rather than offensively, collaterally estopped after having addressed a legally and factually identical issue in several past cases that included the opportunity to discover and present the Almanza evidence. Stoel Rives satisfied the fourth element.

Because Stoel Rives provided unrebutted evidence to establish the four elements of collateral estoppel, the trial court did not err by granting summary judgment on that basis.[74]

III. Vexatious Litigation

For the first time on appeal, Stoel Rives requests that we find that the Ericksons are vexatious litigants.

Courts have the inherent discretion to "place reasonable restrictions on any litigant who abuses the judicial process."[75] When a court limits a vexatious litigant's ability to file claims, it imposes an injunction on the litigant.[76] Under CR 65(d), a party seeking such an injunction must demonstrate a "'specific and detailed showing of a pattern of abusive and frivolous litigation.'"[77] Accordingly, "CR 65(d) requires every injunction to set forth the reasons for its issuance."[78]

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[73] 186 Wn. App. 715, 725-27, 346 P.3d 771 (2015).

[74] Because we can affirm on this ground alone, we decline to reach the question of whether the Ericksons failed to establish fraud.

[75] Yurtis v. Phipps, 143 Wn. App. 680, 693, 181 P.3d 849 (2008) (citing In re Marriage of Giordano, 57 Wn. App. 74, 78, 787 P.2d 51 (1990)).

[76] Whatcom County v. Kane, 31 Wn. App. 250, 253, 640 P.2d 1075 (1981).

[77] Yurtis, 143 Wn. App. at 693 (quoting Kane, 31 Wn. App. at 253).

[78] Kane, 31 Wn. App. at 253.

Whether to impose an injunction is a fact-specific question,[79] and the typical role of an appellate court is to review trial court actions and not to take or weigh evidence.[80] Unlike Yurtis v. Phipps, where an appellate court enjoined a litigant shown to be abusing the appellate judicial process,[81] Stoel Rives seeks to restrict the Ericksons' ability to file in trial court. Despite an ample record of the Ericksons' repetitive claims, a trial court is best positioned to make the fact-specific determination about whether they are vexatious litigants. We decline to consider Stoel Rives's request.

We affirm the trial court's grant of summary judgment and decline to consider Stoel Rives's vexatious litigants motion.

WE CONCUR:

[79] See Proctor v. Huntington, 169 Wn.2d 491, 503, 238 P.3d 1117 (2010) (court's equitable power to enter an injunction "is inherently flexible and fact-specific") (citing Young v. Young, 164 Wn.2d 477, 495, 191 P.3d 1258 (2008)).

[80] Bale v. Allison, 173 Wn. App. 435, 458, 294 P.3d 789 (2013) (quoting Quinn v. Cherry Lane Auto Plaza, Inc., 153 Wn. App. 710, 717, 225 P.3d 266 (2009)).

[81] 143 Wn. App. 680, 181 P.3d 849 (2008).

APPENDIX 2

FILED
5/24/2022
Court of Appeals
Division I
State of Washington

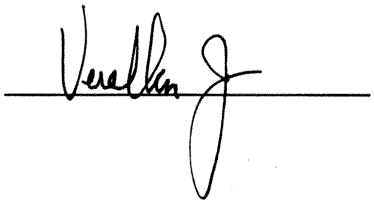
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

JOHN EARL ERICKSON and SHELLEY ANN ERICKSON, Appellants, v. VANESSA POWER, STOEL & RIVES, SELECT PORTFOLIO SERVICING, JOHN GLOWNEY, WILL EIDSON, THOMAS REARDON, LANCE OLSEN HOLTHUS & MCCARTHY, Respondents.	)	No. 82755-3-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellants filed a motion for reconsideration of the court's April 25, 2022 opinion. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that the appellants' motion for reconsideration is denied.

FOR THE PANEL:



APPENDIX 3

Section 1 of the Fourteenth Amendment to the Constitution of the United States due process of law:

Amendment XIV

Section 1.

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.

APPENDIX 4

Article I, Section 3 of the Constitution of the State of Washington guarantees due process of law:

> SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

APPENDIX 5

RCW 9A.60.010(3) and (4)

Definitions.

The following definitions and the definitions of RCW 9A.56.010 are applicable in this chapter unless the context otherwise requires:

(3) To “falsely alter” a written instrument means to change, without authorization by anyone entitled to grant it, a written instrument, whether complete or incomplete, by means of erasure, obliteration, deletion, insertion of new matter, transposition of matter, or in any other manner;

(4) To “falsely complete” a written instrument means to transform an incomplete written instrument into a complete one by adding or inserting matter, without the authority of anyone entitled to grant it;

APPENDIX 6

RCW 9A.60.020(1)

Forgery.

(1) A person is guilty of forgery if, with intent to injure or defraud:

(a) He or she falsely makes, completes, or alters a written instrument or;

(b) He or she possesses, utters, offers, disposes of, or puts off as true a written instrument which he or she knows to be forged.

APPENDIX 7

RCW 62A.1-201(b)(19) and (41)

General definitions.

. . .

(b) Subject to definitions contained in other articles of this title that apply to particular articles or parts thereof:

. . .

(19) “Genuine” means free of forgery or counterfeiting.

. . .

(41) “Unauthorized signature” means a signature made without actual, implied, or apparent authority. The term includes a forgery.

APPENDIX 8

RCW 62A.3-201

Negotiation.

(a) “Negotiation” means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.

(b) Except for negotiation by a remitter, if an instrument is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. If an instrument is payable to bearer, it may be negotiated by transfer of possession alone.

APPENDIX 9

RCW 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 purpose 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 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 rights under this Article and has only the rights of a partial assignee.

APPENDIX 10

RCW 62A.3-204

Indorsement.

(a) “Indorsement” means a signature, other than that of a signer as maker, drawer, or acceptor, that alone or accompanied by other words is made on an instrument for the purpose of (i) negotiating the instrument, (ii) restricting payment of the instrument, or (iii) incurring indorser’s liability on the instrument, but regardless of the intent of the signer, a signature and its accompanying words is an indorsement unless the accompanying words, terms of the instrument, place of the signature, or other circumstances unambiguously indicate that the signature was made for a purpose other than indorsement. For the purpose of determining whether a signature is made on an instrument, a paper affixed to the instrument is a part of the instrument.

(b) “Indorser” means a person who makes an indorsement.

(c) For the purpose of determining whether the transferee of an instrument is a holder, an indorsement that transfers a security interest in the instrument is effective as an unqualified indorsement of the instrument.

(d) If an instrument is payable to a holder under a name that is not the name of the holder, indorsement may be made by the holder in the name stated in the instrument or in the holder's name or both, but signature in both names may be required by a person paying or taking the instrument for value or collection.

APPENDIX 11

RCW 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.

APPENDIX 12

VALMARI RENATA, Appellant,
v.
FLAGSTAR BANK, F.S.B., a federally chartered savings bank; NORTHWEST TRUSTEE SERVICES, INC., a Washington corporation; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, a Delaware corporation
and DOE DEFENDANTS 1-10, Respondents.

No. 71402-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

July 27, 2015

UNPUBLISHED OPINION

BECKER, J. — The holder of a note is entitled to enforce it regardless of whether the holder is also the owner. Because respondent Flagstar Bank was the actual holder of the note given by the appellant, summary judgment was appropriate. We affirm.

On April 17, 2003, Capital Mortgage Corporation entered into a wholesale lending broker agreement with Flagstar. Under the agreement, Flagstar agreed to fund loans brought to it by Capital Mortgage so long as the loan documentation met Flagstar's underwriting standards and Capital Mortgage agreed to immediately indorse and deliver promissory notes to Flagstar.

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On August 4, 2006, Valmari Renata executed a note in favor of Capital Mortgage in the amount of $200,800. The note bears an indorsement by Christina Butler—Capital Mortgage's then-President—to Flagstar.

On August 7, 2006, Renata executed a deed of trust, securing the note against real property located in Everett, Washington. The deed listed Joan Anderson of Flagstar as the trustee and the Mortgage Electronic Recording System (commonly referred to as "MERS") as the beneficiary.

On August 11, 2006, Flagstar received Renata's note. From this point on, Flagstar was the holder of the note. Flagstar indorsed the note in blank.

In December 2009, Renata fell into default on the loan.

On July 23, 2010, Northwest Trustee Services Inc., acting as Flagstar's agent, delivered a notice of default to Renata.

On August 11, 2010, Flagstar appointed Northwest Trustee the successor trustee.

fastcase

On August 16, 2010, MERS assigned its interest in the deed of trust to Flagstar. MERS acted through its signing officer Sharon Morgan, who was also a Flagstar officer.

On September 7, 2010, Northwest Trustee recorded a notice of trustee's sale, setting the sale for December 10, 2010.

On December 9, 2010, Renata filed for bankruptcy. The scheduled sale did not occur.

On April 26, 2011, Renata's bankruptcy was dismissed.

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On May 3, 2011, Northwest Trustee recorded an amended notice of trustee's sale, setting a new sale for June 10, 2011. The sale did not occur, and the property has not been sold.

On June 1, 2011, Renata filed a complaint against Flagstar, Northwest Trustee, and MERS. In it, Renata alleged wrongful foreclosure and a violation of the Consumer Protection Act, chapter 19.86 RCW. Renata also sought a declaratory judgment that the deed of trust is "illegal" and to quiet title.

On November 15, 2013, Flagstar and MERS filed a motion for summary judgment. In their motion, Flagstar and MERS explained why each cause of action should be dismissed.

> *First*, Plaintiff's wrongful foreclosure claim fails because the evidence shows that Flagstar may enforce the Note and Deed of Trust, [Northwest Trustee] is a valid Trustee authorized to carry out the foreclosure, and [Northwest Trustee] has complied with Washington's Deed of Trust Act.
> *Second*, Plaintiff is not entitled to declaratory judgment because Flagstar is a holder of the Note, and there is no basis for voiding the Deed of Trust simply because the Deed of Trust designated MERS as the beneficiary in an agency capacity for the Note holder.
> *Third*, Plaintiff's claim for violation of the Consumer Protection Act (CPA) fails because she cannot show an unfair or deceptive act, a public interest impact, injury, or causation.
> *Fourth*, Plaintiff's claim for quiet title fails because she has not paid off her loan, and Defendants are not claiming an ownership or possessory interest in Plaintiff's property.

Northwest Trustee joined this motion.

On November 30, 2013, Renata filed a memorandum in opposition to respondents' motion for summary judgment.

On December 13, 2013, the trial court granted the motion for summary judgment. Renata appeals.

fastcase

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STANDARD OF REVIEW

We review an order granting summary judgment de novo, performing the same inquiry as the trial court. Owen v. Burlington N. & Santa Fe R.R. Co., 153 Wn.2d 780, 787, 108 P.3d 1220 (2005). A motion for summary judgment will be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The nonmoving party may not rely on speculation, argumentative assertions that unresolved factual issues remain, or on having its affidavits considered at face value. Wash. Fed. Sav. v. Klein, 177 Wn. App. 22, 311 P.3d 53 (2013). review denied, 179 Wn.2d 1019 (2014).

ANALYSIS

Morgan declaration

In the respondents' motion, they rely primarily on facts provided by the declaration of Sharon Morgan, an employee of Flagstar. Renata asserts that the trial court erred in admitting Morgan's declaration. Because the Morgan declaration provides the facts relied on by the motion and the court, this argument is addressed first.

In her declaration, Morgan states, among other things, that Flagstar has been in possession of the note since August 2006, Northwest Trustee acted as Flagstar's agent in transmitting the notice of default in July 2010, and Flagstar sent Northwest Trustee a beneficiary declaration, stating that Flagstar was the actual holder of the note in August 2010.

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Normally, we review a trial court's decision to admit or exclude evidence for an abuse of discretion. Discover Bank v. Bridges, 154 Wn. App. 722, 726, 226 P.3d 191 (2010). However, the de novo standard of review is used by an appellate court when reviewing all trial court rulings made in conjunction with a summary judgment ruling. Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

To be considered on summary judgment, a supporting declaration must be made on personal knowledge and the facts set forth must be admissible in evidence.

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

CR 56(e). Washington courts consider the requirement of personal knowledge to be satisfied if the proponent of the evidence satisfies the business records statute. See Discover Bank, 154 Wn. App. at 726. A business record is admissible as competent evidence under certain, enumerated circumstances.

> A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

RCW 5.45.020.

Morgan submitted two declarations in this case: the first on June 20, 2011, and the second on October 15, 2013. In her first declaration, Morgan stated that

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the information was compiled by employees of Flagstar. She did not state she had personal knowledge of the information therein.

> The information set forth in this declaration was assembled by employees of Flagstar, with the assistance of counsel, based on a review of Flagstar's records and from personnel in the appropriate offices and departments of said entity. The matters stated herein are true and correct to the best of my knowledge and belief, based upon records and information kept in the normal course of business available at this time.

In her second declaration, Morgan did state that she had personal knowledge of the information contained in her declaration.

> I have the personal knowledge required to execute this declaration, and can confirm the accuracy of the information set forth herein. If sworn as a witness, I could competently testify to the facts contained herein.
> 3. In the regular and ordinary course of business, it is Flagstar's practice to make, collect, and maintain business records and documents related to any loan it originates, funds, purchases and/or services (collectively, "Business Records"). I have continuing access to the Business Records, and I am familiar with how each document attached to this declaration was retrieved and compiled. I have personally reviewed each document attached to this declaration.
> 4. I am familiar with Flagstar's record-keeping practices for its physical receipt and possession of the original Note for the Subject Loan, which is tracked by the vault document management system.

fastcase

Renata asserts that Morgan's two declarations provide "contradictory statements regarding her qualifications and the source of information she relies upon." Renata is essentially arguing that because Morgan used different language in each declaration, her statements were contradictory. That argument fails. The fact that Morgan's second declaration does not use the same wording as the first is not evidence that the statements are contradictory.

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Morgan demonstrated the requisite personal knowledge by stating that she had personal knowledge of the way in which Flagstar's business records are created and maintained and that she reviewed each of the records that provided the information in her declaration. See Discover Bank v. Bridges, 154 Wn. App. 722, 226 P.3d 191 (2010).

In Discover Bank, debtors appealed from a judgment requiring them to pay their credit card debt. Relevant here is the debtors' argument that the trial court erred in considering business records and affidavits from three employees of a debt collection entity working on behalf of their creditor because "they do not contain sworn testimony by competent fact witnesses." Discover Bank, 154 Wn. App. at 726. This court rejected the debtors' argument.

> Here, [the declarants] collectively stated in their affidavits and declarations that (1) they worked for [the collections agency], (2) [two of the declarants] had access to the Bridgeses' account records in the course of their employment, (3) [the same two] made their statements based on personal knowledge and review of those records and under penalty of perjury, and (4) the attached account records were true and correct copies made in the ordinary course of business. The trial court properly considered the affidavits and declarations, and it did not abuse its discretion by considering the business records.

Discover Bank, 154 Wn. App. at 726 (footnote omitted).

Like the declarants in Discover Bank, Morgan declared under penalty of perjury that (1) she was an employee of Flagstar, (2) she had personal knowledge of her company's practice of maintaining business records, (3) she had personal knowledge from her own review of records related to Renata's note and deed of trust, and (4) the records she attached were true and correct copies

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of documents made in the ordinary course of business at or near the time of the transaction.

Renata does not identify any genuine issue of material fact as to Morgan's qualifications, her statements, or the authenticity of the attached documents. Renata asserts that Morgan presents information "this Court cannot reliably verify." But she cites no authority, and we have found none, suggesting that a declaration is inadmissible unless a court can independently verify the information it contains.

fastcase

We conclude that the trial court did not err by considering the declaration and attached business records.

Declaratory judgment

Renata asserted a claim for declaratory judgment, asking the court to find (1) that the subject deed of trust was void because it named MERS the beneficiary, (2) MERS' assignment of its beneficial interest in the deed of trust was void as a matter of law, and (3) Flagstar was not the holder or the owner of the note. Renata asked that the nonjudicial foreclosure process be "declared unlawful and permanently enjoined."

In their motion for summary judgment, the respondents argued that the trial court should dismiss Renata's claim for declaratory judgment because (1) no court has declared a deed of trust "void" for naming MERS as a beneficiary, (2) MERS had authority to assign its interest in the note to Flagstar, and (3) Flagstar was a valid holder of the note.

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Renata fails to cite any authority, and we have found none, to support an argument that deeds of trust that name MERS as the beneficiary are void.

Similarly, no authority supports Renata's assertion that an invalid assignment from MERS supports a declaratory judgment and permanent injunction prohibiting a trustee's sale.

On appeal, Renata adds that the deed of trust is "deficient" because no evidence in the record supports a finding that the original trustee named in the deed—Joan Anderson of Flagstar—met the qualifications of RCW 61.24.010. Renata appears to believe that this too renders the deed void. Renata cites no authority, and we have found none, that supports a finding that an attempted foreclosure is doomed by the designation of an unqualified original trustee in the deed of trust. Also, to the extent Renata suggests that Joan Anderson was unqualified because she was an employee of the beneficiary, that is no longer the law. Cox v. Helenius, 103 Wn.2d 383, 390, 693 P.2d 683 (1985), citing LAWS OF 1975, 1st Ex. Sess., ch. 129, §2 (amending the deed of trust act to allow an employee agent or subsidiary of a beneficiary to serve as trustee).

This court has persuasively and comprehensively rejected Renata's argument that an entity must be both the note holder and the owner to enforce it. In Trujillo, we held that "it is the status of holder of the note that entitles the entity to enforce the obligation. Ownership of the note is not dispositive." Trujillo v. Nw. Tr. Servs., Inc., 181 Wn. App. 484, 498, 326 P.3d 768 (2014), review granted, 182 Wn.2d 1020 (2015). In a related argument that Flagstar did not have "legal possession" of the note, Renata relies on article 9 of the Uniform

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Commercial Code, which controls security interests in notes. As we also held in Trujillo, nonjudicial foreclosure proceedings are not subject to article 9. Trujillo, 181 Wn. App. at 502-04; RCW 62A.9A-109(11); RCW 62A.9A-109, cmt. 7 (security interest in obligation secured by nonarticle 9 transaction). We adhere to our opinion in Trujillo.

Renata argues that Flagstar was not the holder of the note because Capital Mortgage's indorsement to Flagstar was forged and therefore ineffective. A declaration from the apparent indorser states that "the signature that appears in the endorsement is not mine."

This is not proof that the indorsement was ineffective. This is only evidence that the signature was not that of the apparent indorser.

Under the Uniform Commercial Code, unauthorized signatures are ineffective unless ratified.

> Unless otherwise provided in this Article or Article 4, an unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who in good faith pays the instrument or takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

RCW 62A.3-403(a). For a principal to be charged with the unauthorized act of its agent by ratification, it must act with full knowledge of the facts or accept the benefits of the act or intentionally assume the obligation imposed without inquiry. Swiss Baco Skyline Logging, Inc. v. Haliewicz, 18 Wn. App. 21, 32, 567 P.2d 1141 (1977).

Butler's declaration fails to create a genuine issue of material fact because she does not state that she did not authorize another person to indorse the note

on her behalf, a common practice. But even if she had stated she did not authorize another person to indorse on her behalf, Capital Mortgage ratified the indorsement when it complied with its contractual duty owed to Flagstar by intentionally delivering the indorsed note to Flagstar and accepting payment.

Renata asserts that a material issue of fact remains as to whether the indorsement was forged. "Indeed, a trier of fact could reasonably conclude that where the endorsement states that it is the signature of Ms. Butler, but she refutes its authenticity, the signature is a forgery under RCW 62A.1-201(43)." But if Capital Mortgage ratified the signature, the indorsement was effective even if Butler's signature was forged. We conclude that the indorsement was ratified by Capital Mortgage and Flagstar was the holder of the note. Under Trujillo, Flagstar was entitled to enforce the note.

The trial court properly dismissed Renata's claim for declaratory judgment.

Wrongful foreclosure

fastcase

The deed of trust act does not create an independent cause of action for monetary damages based on alleged violations of its provisions where, as here, no foreclosure sale has been completed. Frias v. Asset Foreclosure Servs., Inc., 181 Wn.2d 412, 417, 334 P.3d 529 (2014). But, under appropriate factual circumstances, violations of the deed of trust act may be actionable under the Consumer Protection Act, even where no foreclosure sale has been completed. Frias, 181 Wn.2d at 417. We consider the alleged violations in that context.

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Consumer Protection Act

To prevail on an action for damages under the Consumer Protection Act, the plaintiff must establish (1) unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or her business or property; and (5) causation. Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986). Whether a particular action gives rise to a Consumer Protection Act violation is reviewable as a question of law. Leingang v. Pierce County Med. Bureau, Inc., 131 Wn.2d 133, 150, 930 P.2d 288 (1997).

MERS' involvement

Renata asserts that an unfair or deceptive act or practice is presumed where MERS is involved, citing Bain v. Metro. Mortg. Group, Inc., 175 Wn.2d 83, 115-20, 285 P.3d 34 (2012). That is not the law. In Bain, our Supreme Court explicitly held that "the mere fact MERS is listed on the deed of trust as a beneficiary is not itself an actionable injury." Bain, 175 Wn.2d at 120. Renata points to the mere fact that MERS was listed as a beneficiary, which under Bain is not enough.

Trustee's violation of its duty of good faith

A trustee's violation of its duty of good faith may be actionable as a violation of the Consumer Protection Act. See Frias, 181 Wn.2d at 417.

While lenders, servicers, and their affiliates appoint trustees, a trustee is not their agent. "The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor." RCW 61.24.010(4). In a judicial foreclosure

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action, an impartial judge of the superior court acts as the trustee and the debtor has a one-year redemption period. RCW 61.12.040; RCW 4.12.010; RCW 6.23.020(1). In a nonjudicial foreclosure, by contrast, the trustee undertakes the role of the judge as an impartial third party who owes a duty to both parties to ensure that the rights of both the beneficiary and the debtor are protected. Cox, 103 Wn.2d at 389.

First, Renata argues that Northwest Trustee breached the duty of good faith by failing to investigate Sharon Morgan's "conflict of interest," allegedly arising out of Morgan's assignment of MERS' interest in the deed to Flagstar while acting as both a signing officer of MERS and an officer of Flagstar. MERS has no employees and takes all action through its signing officers who are also officers of its member entities. Bain, 175 Wn.2d 83. Renata cites no authority for her assertion that Morgan had a conflict of interest. We reject Renata's conclusory assertion that Northwest Trustee had a duty to investigate under these circumstances.

Second, Renata argues Northwest Trustee breached the duty of good faith by relying on Flagstar's beneficiary declaration without investigating whether Morgan truly had authority to execute the assignment on behalf of MERS. This argument lacks merit and is unsupported by any relevant authority.

Third, Renata asserts that Northwest Trustee violated the duty of good faith by engaging in a "systematic disregard" of statutory notarization requirements found in chapter 42.44 RCW. She refers to the notice of trustee's sale, which has an effective date of April 29, 2011, but was not notarized until

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May 2, 2011. Renata argues that these facts give rise to a reasonable inference that the document was not signed in the presence of the notary, in violation of Washington law. In support of this assertion, Renata relies on Klem v. Washington Mutual Bank, 176 Wn.2d 771, 295 P.3d 1179 (2013).

Klem does not support her assertion. In that case, Klem presented evidence that the trustee falsely predated notarizations of trustee signatures on notices of sale in order to expedite foreclosures unfairly. Klem, 176 Wn.2d at 777-78. Northwest Trustee persuasively explains that the effective date on a notice of sale is not the same as the signing date. Rather, it refers to the effective date of the amount due to reinstate, identified on that portion of the notice totaling the monthly payments in arrears along with late charges and the lender's and trustee's fees and costs. The effective date is unrelated to the date of signature and notarization. The fact that the notice listed an effective date that was earlier than the date of the notarization of the signature does not suggest that Northwest Trustee disregarded statutory notarization requirements in this case, let alone systematically as occurred in Klem.

Fourth, Renata asserts Northwest Trustee violated the duty of good faith by serving two notices of foreclosure that failed to identify the beneficiary of the deed of trust and owner of the obligation. RCW 61.24.040(2) requires trustees to send a notice of foreclosure with the notice of trustee's sale and includes a form. The first paragraph of the form notice asks the trustee to list the name of the beneficiary and owner of the obligation.

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As we noted in Trujillo, RCW 61.24.040 directs only that a notice of foreclosure must be in "substantially" the statutory form. RCW 61.24.040(1)(f), (2). Therefore, contrary to Renata's assertion, a trustee does not fail to strictly comply with the terms of the act by not strictly following the statutory form language in the notice of foreclosure. The accompanying notices of trustee's sale informed Renata of the date of the sale, the title of the entity enforcing the obligation, the amount needed to cure the default, the entity she should contact to cure her default, and her right to contest default. The notices of trustee's sale identified Flagstar as the beneficiary of the deed of trust. We conclude that taken together, the notices substantially complied with the statutory form. And in any event, Renata has not shown that she was harmed.

Fifth, Renata argues that Northwest Trustee violated the duty of good faith by misleadingly describing the original deed of trust. Trustees are statutorily required to include a description of the original deed of trust in the notice of trustee's sale. RCW 61.24.040(1)(f). Northwest Trustee's description identified MERS as the original beneficiary, succeeded by Flagstar. Renata claims that this reference to MERS made it impossible for her to identify the true and lawful holder of her loan. We disagree. The Notice of Trustee's Sale did not disguise the fact clearly stated in the notice of default that Flagstar was the beneficiary.

We conclude that Northwest Trustee did not violate its duty of good faith. Because Renata has failed to establish an unfair or deceptive act or practice, we need not consider whether she has established the remaining elements of a Consumer Protection Act claim.

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Renata's claim under the Consumer Protection Act was properly dismissed.

Quiet title

Through the same complaint, Renata seeks to quiet title in the property subject to the deed of trust. "Plaintiff's ownership interest may be subject to other liens, however for the reasons set forth above the subject deed of trust was irreparably severed from any underlying obligation." As a result, Renata asserts that "any security interest on the property arising from the deed of trust" is "null and void."

The respondents asserted no claim of ownership in Renata's property. Since quiet title actions are designed to resolve competing claims of ownership or the right to possess property, a quiet title action cannot survive where, as here, there is no competing claim. Kobza v. Tripp, 105 Wn. App. 90, 95, 18 P.3d 621 (2001).

We conclude the trial court properly dismissed Renata's action to quiet title.

Additional discovery

Renata claims that the trial court erred by denying her request to continue discovery under CR 56(f).

fastcase

We review a trial court's denial of a CR 56(f) motion for abuse of discretion. Qwest Corp. v. City of Bellevue, 161 Wn.2d 353, 369, 166 P.3d 667 (2007).

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Where the party opposing summary judgment cannot, for reasons stated, present essential facts to justify his or her opposition, courts may order a continuance to permit additional discovery.

> Should it appear from the affidavits of a party opposing the motion [for summary judgment] that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

CR 56(f). A party seeking such a continuance must provide an affidavit stating what evidence it seeks and how this evidence will raise an issue of material fact precluding summary judgment. Durand v. HIMC Corp., 151 Wn. App. 818, 214 P.3d 189 (2009). review denied, 168 Wn.2d 1020 (2010). The trial court may deny a motion for a continuance when (1) the requesting party does not have a good reason for the delay in obtaining the evidence; (2) the requesting party does not indicate what evidence would be established by further discovery; or (3) the new evidence would not raise a genuine issue of fact. Qwest, 161 Wn.2d at 369, quoting Butler v. Joy, 116 Wn. App. 291, 299, 65 P.3d 671, review denied, 150 Wn.2d 1017 (2003).

Renata did not file an affidavit. She made her request for a continuance at the end of her response to the respondents' motion for summary judgment. There, she stated that she needed a continuance to conduct depositions under CR 30(b)(6) to address "the issue of authorization" and "the issues surrounding the forged endorsement." Renata does not specifically identify the evidence she believes would be uncovered. And Renata does not provide a good reason for her delay in obtaining this evidence.

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Under these circumstances, we find that the trial court did not abuse its discretion by denying Renata's request for a CR 56(f) continuance.

Affirmed.

/s/_____

WE CONCUR:

/s/_____

/s/_____

APPENDIX 13

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

ERICKSON et ano,	)	
	)	
Plaintiffs,	)	
	)	King County Superior Court
v.	)	No. 20-2-08633-9 KNT
	)	
POWER, et al,	)	
	)	
Defendants.	)	

Verbatim Transcript from Recorded Proceedings

Before The Honorable KEN SCHUBERT

March 26, 2021

Maleng Regional Justice Center

Kent, Washington

APPEARANCES:

For the Plaintiffs:

John Erickson and
Shelley Erickson, pro se

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TRANSCRIBED BY: Grace Hitchman, AAERT, CET-663

(The Honorable KEN SCHUBERT presiding)

(Friday, March 26, 2021)

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(Recording begins 9:07 am.)

THE COURT: Thank you. This is John and Shelley Erickson, representing themselves, versus Vanessa Power, Stoel and Rives, Select Portfolio Servicing; John Glowney; Will Eidson; Thomas Reardon; and Lance Olson (indiscernible) McCarthy, although I believe there has been a notice of dismissal or Olson and McCarthy. And let me see, who else is covered by that? Oh, it didn't show up on mine.

Anyhow, and I have -- we just did a quick roll call off the record. Ms. Power is here. I can see she is appearing by video and audio on Zoom. Good morning, Ms. Power. Can you tell us the list of folks that you represent, please.

MS. POWER: Yes, good morning, Your Honor.

(indiscernible)

THE COURT: All right. Good morning.

MS. POWER: On behalf --

THE COURT: Oh, sorry. Good morning.

MS. POWER: Your Honor, I'm just hearing feedback. I apologize.

So Vanessa Power on behalf of Stoel Rives, Select Portfolio Servicing, John Glowney, Vanessa Power, and Will

Eidson.

THE COURT: All right. Yeah, for some reason, when you speak there is a delay. And I don't know if you're getting an echo on your end or what the problem is, but there's a little bit of a delay when you speak.

MS. POWER: Yes. I'm seeing that and I'm -- when I speak, the screen lights up for other people perhaps who are all not muted.

THE COURT: Yeah. It's lighting up for some reason in the Erickson phone number and that shouldn't be the case, because they're not making noise. So I'm not sure what's going on on their end.

Is there more than one person using a phone in the Erickson room?

MS. ERICKSON: Just I and my husband.

THE COURT: Okay. Because sometimes if there was one more person that's also logged in, you would have kind of a circular sound and that would create the problem. But it's just the two of you that have one phone in your room?

MS. ERICKSON: Correct.

THE COURT: Okay. Well, hopefully we'll be able to figure out why we're having a little bit of audio problem with Ms. Powers -- with Ms. Power. Not Powers. Singular. Erickson there's no problem that I can tell or at least any delay.

And then we had -- I apologize. I didn't write down the name, although I think I've got some filings from her. Just give me a second. So we have -- it's Wendy Allison Nora, who is calling in at 4144, and then we had someone that was observing, a member of the public, that had also called in regarding, I think, Mortgage Alliance or something to that effect.

Anyhow, we're here on -- there's a plethora of motions that have been filed. All the briefing was finished for the summary judgment hearing that was noted before Judge Darvas, and then Judge Darvas recused herself. And in my view, the only thing left to do then was to simply find you a new hearing date in front of a different judge, which we've done. But for some reason, it seems that there was a view, primarily by plaintiffs, that that renoting of the hearing date allowed for further briefing, and I'm not quite sure where that assumption came from. Maybe they'd like to fill me in on why they filed a bunch of papers after the briefing was done for the original motion.

MS. ERICKSON: It was not finished. And we had that in our brief as to why it wasn't finished. And we're pro se so we have to -- (indiscernible) what I have to say today to respond to all of this. So it's in my response. But being a pro se, I need to have it prepared and read through this and go through it, but it was not finished. There was no

reason for the Court to feel that it was finished, and we have that response in our brief. That's why.

THE COURT: Sure, but -- there's very much a reason why the court would think it's finished, because the motion was filed. There was an opposition and then there was a reply. And those are the only things that the court rules allow. And so once those three things are filed with any supplemental -- with any supporting documentation, like declarations or affidavits, the briefing is done. And it was all done based on that hearing date in front of Judge Darvas. All you did is have a new hearing date in front of a different judge. That doesn't reopen the briefing and allow people to file a host of additional documents. That's not the way it works.

MS. ERICKSON: Well, the law, from what I understand, which is in the briefing as we discussed, states that (indiscernible) submitted before the hearing. The hearing never happened. The hearing was -- there were so many dates submitted for the hearing, and the hearing never happened -- hasn't happened until now.

THE COURT: Okay. Well, I just disagree with the way you're reading the rule. That rule provides for, assuming that there's not going to be a new hearing date. So sometimes hearing dates are moved. Maybe someone's sick. Maybe in this case, for example, a judge recuses themselves,

A new hearing date doesn't reopen the briefing schedule. The briefing was done. Just because something like that happens doesn't give someone, oh, I get another bite at the apple. I get to submit new things. That's not the way it works.

But let's put that aside for the moment. There's -- it's the defendant's motion for summary judgment. One of the responses to that motion was a CR56(f) response or motion, I should say. And that I'll deal with first.

And it's plaintiff's motion for CR56(f) relief. And I can hear from them briefly on it, but they haven't satisfied the three elements. So they haven't even addressed the three elements that they need to satisfy to obtain a continuance under Rule 56(f).

So, Ms. Erickson, you're speaking on behalf of yourself, obviously. You guys can't represent each other, but you seem to be the one speaking so far. What's the -- help me understand how you can satisfy CR 56(f) when you don't even have an affidavit that you need to by court rule. Here are the three things that you have to satisfy, by the way: The requesting party, which is you, needs to offer a good reason for the delay in obtaining the desired evidence. The requesting party needs to state what evidence would be established through additional discovery. And the requesting party needs to show how the desired evidence will

raise a genuine issue of material fact.

So where in your motion and supporting affidavit do you do any of those things?

MS. ERICKSON: We have supplied a case schedule, and the defendants have just basically jumped the gun on our case schedule and our discovery. We hadn't even finished discovery before they filed an SMJ while our discovery was in play. So their SMJ is way ahead and forcing us to waste our time with all these motions to be timely in order to stop them from SMJing in the middle of our discovery.

THE COURT: And you're referring to the case schedule that was issued back on May 7 of 2020?

MS. ERICKSON: I'm sorry? Repeat that?

THE COURT: You're referring to a case schedule. Is that the case schedule that was issued when you filed the complaint back on May 7th of 2020?

MS. ERICKSON: Yes.

THE COURT: I don't see any deadlines in there that would prevent them from moving for summary judgment. Technically, they can move for summary judgment the day after receiving the complaint if they want to. That might be a much better avenue then for a CR 56(f) request to say, whoa, this case just started. But this case was filed last May. It's been pending, based on just quick math, for over nine months. And this is also the at least third lawsuit

relating to the same issues. So it seems to me there's been ample time to -- for you to conduct any discovery you needed to conduct.

But more to the point, the -- again, if you just look at the burden -- the facts that the Court considers on a request to continue a motion for summary judgment, first, there's no -- there's no reason at all that is put forth of delay in obtaining the desired evidence. The desired evidence is also not even identified in the motion, and there's no explanation in the motion of what material fact the desired evidence would create. So I -- so you haven't satisfied any of the factors that you need to satisfy looking -- your motion and supporting declaration are filed in docket No. 65, and it just says -- all the factual statements, and here's your declaration: All the factual statements and the response in opposition to the December 31, 2020 motion for summary judgment are true and correct except for asserted (indiscernible) information (indiscernible) then you say a number of exhibits are true and correct copies of what they purport to be.

And this declaration is opposition -- it doesn't identify a single thing that you haven't been able to obtain in discovery, explain why you haven't been able to obtain it in discovery, and show what that thing would -- what issue of material fact that thing would create. So I'm going to

deny the motion for a continuance under CR 56(f) because none of the factors that are necessary to prevail on that motion have been addressed or satisfied.

And then --

MS. ERICKSON: I assume -- I just (indiscernible) Your Honor if you allowed -- I have addressed that in what I prepared today, and I should be able to have my say in the court today on explaining exactly what -- how I prepared it and why in my preparation for my time today as my hearing time in this court.

THE COURT: I didn't understand what that meant. So you filed a motion --

MS. ERICKSON: Okay. I'm sorry. I'm a little bit nervous because I'm pro se. But I have -- I feel that I have answered the questions you're answering me in what I've prepared to say here today. If I could -- respectfully,Your Honor -- if I could do my oral argument today.

THE COURT: Well, so I don't -- your motion was so that there wouldn't be a hearing at all today. That was the 56(f) motion. That's saying please continue the hearing. Right? So that's why I addressed that first. Because if I continue the hearing, there's no oral argument at all, right? Are you on the same page with me?

MS. ERICKSON: So -- I see, I see, yes. Okay. Got it.

THE COURT: So the only way I would get to your oral argument is if I deny the motion for a continuance. And in considering your motion under rule 56(f), I have told you there are three things that you need to address in that motion with the supporting affidavit. And your motion doesn't do any of those three things. And your affidavit doesn't do any of those three things. So just as a matter of law, you have not satisfied rule 56(f), so there's no basis in law for me to provide you with a continuance. So that's why I'm denying it.

MS. ERICKSON: Okay. I felt that we did. We explained that we were able to schedule and receive our discovery and our -- and get a hold of Jeff Almonza (phonetic) before we scheduled the deposition. Our discovery -- and could have had that discovery if we hadn't been blocked before the rule said that we are -- our discovery cutoff date was applied, we were blocked from our discovery. But we did have discovery pending and going and scheduled discovery in plenty of time before the court hearing.

THE COURT: See, that's where I disagree with you, ma'am. And so you filed this case back on May 7th of 2020. So you had months to do the depositions that you noted for March of this year. You had months to do it last year prior to the original hearing date. You didn't do it at all. And

you haven't identified what --

MS. ERICKSON: We --

THE COURT: Ma'am, you didn't, right?

MS. ERICKSON: We were -- we explained that we were trying to find Jeff Almonza, which has been almost impossible. And many people have tried, and it took a long time to find Jeff Almonza in order -- He was one of the major discoveries in our case in order to have a case. And we were continually trying to have an investigator find him. And that was what we had filed in our case, that we were in the process of paying an investigator to find him in order to have the discovery for our case.

THE COURT: So, ma'am, whether or not you were able to find him has nothing to do with your ability to depose anyone else in this case, first of all. Second of all, as I understand it, the reason why you were so intrigued about him was because his name was stamped on the back side of the note. This is a note that you've known about since at least 2014, if not earlier. You have had seven years to track this guy down and, frankly, I don't see why it was difficult. He's on LinkedIn. All you have to do is type his name on LinkedIn and you've got --

MS. ERICKSON: Well --

THE COURT: -- and he comes up.

MS. ERICKSON: I haven't put this in my brief, but I

-- I had some -- a lot of difficulty with attorneys. I had one very sick attorney that wound up -- actually two of them passed away on me that didn't do their job because they were very sick. And one that stole $10,000 from me because she took on the case and waited for months. And putting me on the side telling me that she was preparing. And then I have a state bar statement from the state bar saying that she owes me and that she can't be -- get a new license until she does pay me.

So I have some external circumstances that have put this off for a long time. And my -- one of my first attorneys is filing bankruptcy in the middle of my case and not telling me and let my case slide, as I've gone from attorney to attorney trying to find somebody that wasn't sick or wouldn't take my money and run with it to get to this point.

THE COURT: But none of that -- none of those things that you just described occurred in this lawsuit, correct?

MS. ERICKSON: No, but it's brought me to this point. Of still trying to defend my case in a fair way.

THE COURT: Well, you're not trying to defend your case. You're trying to prosecute your case. But putting that semantics aside, the point is you've known about the existence of this individual for at least seven years, and he's about as easy to find as anyone. He's on LinkedIn, as

his own declaration states. Just -- and as one would expect --

MS. ERICKSON: His LinkedIn information -- his LinkedIn information is false. It says he lives about a five hour drive from where he is. And there have been multiple people from the past 10, 12 years trying to find him that were never successful. We were told by everybody that we know that has the same endorsement or know of it, that it was impossible to find, that we would never find him. And I've been trying to find him and track him down and finally did.

THE COURT: Doesn't his declaration say my LinkedIn information is accurate?

MS. ERICKSON: No. It doesn't -- he hadn't updated it. And he had allowed somebody else to put it in. It doesn't say in his declaration that it's accurate, and it wasn't accurate. Says he lives five hours away from where we found him.

THE COURT: Well, even if that's true, LinkedIn, you can email people and can send them a direct message. Doesn't matter -- they could live in Timbuktu and it doesn't matter. You can -- that's -- a direct source of contact is provided by LinkedIn. All you have to do is type in this individual's name, find someone that has his background at Washington Mutual, and send him a direct message. Boom,

you're done. That would take five minutes.

MS. ERICKSON: When you do that, it doesn't happen. I mean, they don't answer you back.

THE COURT: Well, anyhow, putting that aside, that's one individual who, again, you've known about for years. It's not clear to me what allowed your investigator to suddenly find him now that couldn't have allowed your investigator to find him years ago.

But that has nothing to do with the fact that you've waited until March to try to note up depositions. That -- the delay is on you, frankly. And secondly, you haven't identified what evidence would be established through the depositions you want to take. And third, you haven't identified how the described evidence would raise a genuine issue of material fact.

So we need to move into the substance of the motion for summary judgment because, I'm denying the motion for a CR 56(f) continuance.

And, Ms. Power has been patient. It's her motion, and the moving party always gets to go first because they're the ones that have the burden, so that's why they get to go first. And then they also get to go last and respond to any arguments. So, Ms. Power? When you're ready.

MS. POWER: Thank you, Your Honor. And I expect that they -- the feedback I'm hearing would disappear if

folks were willing to mute their phone while I'm speaking. That's what I've found when I use computer audio.

THE COURT: It's already better.

MS. ERICKSON: How do I mute it?

THE COURT: Don't -- Ms. Erickson, don't sweat it. Her audio is already better, and I don't want you to lose your connection somehow by hitting the wrong button.

So Ms. Power, I can hear her much better now. Thank you. Thank you again. I appreciate you offering, Ms. Erickson.

MS. POWER: Thank you. Thank you, Your Honor. So I'm just going to speak very briefly to defendant's motion for summary judgment, and happy to answer any specific questions.

But in essence, this arises from three prior judgments against the Ericksons. There was a 2010 federal case in Western District of Washington. There was a 2014 case which quoted in a (indiscernible) foreclosure exempt property at issue here. And then there was a 2019 action which resulted in a 2020 judgment that sought to vacate that foreclosure judgment.

THE COURT: I'm sorry. I am going to see if I can either ask my bailiff to mute the Ericksons -- while you're talking, their rectangle keeps popping up, which shows that there's noise from their end. And they're not making noise

purposely. I think it is some kind of feedback or something. And so I'm going to ask my bailiff -- there we go. She's now muted them. And then, of course, we'll unmute them when it's time for them to argue.

So go ahead, Ms. Power, let's see if this makes any -- makes it better.

MS. POWER: Very good. Thank you, Your Honor. That does appear to be better.

So long story short, there are three underlying judgments against the Ericksons. This case, from defendant's perspective, is simply an attempt to collaterally attack those prior judgments by seeking relief against the service providers of the trust at issue. And so the service providers here are obviously the loan servicers like Portfolio Servicing and the lawyers, sole reason the individual lawyers who have played roles at various point along the way.

The Ericksons are seeking $10 million in some form of compensation, but there simply is no basis for the relief that they seek here. They continue to contend that the trust did not have authority to foreclose on the note at issue, but that would force this court to, in essence, vacate three underlying judgments that have found otherwise if the Court were to reach that conclusion today. And there simply is not a basis for it.

The fundamental point is that they're -- on collateral estoppel alone, this Court can grant summary judgment. And that's because the claims at issue here, the parties are in privity, and the prior judgments are all on point. And we'll certainly walk through those, but there are really just two key things that I will focus on for the Court's purposes.

One is that the Erickson claim that the defendants engaged in some form of fraud or misrepresentation on the Court in their -- in the prior actions and in bringing these actions on behalf of the trust. And there is no evidence of fraud. In fact, to the contrary. We have addressed every specific allegation that came up in one of the multiple supplemental briefings.

And so the last one came through on, I believe, Tuesday of this week and was addressed in part and to dispose of it in our reply brief that was submitted on Wednesday. Now that reply was specifically on our motion to quash, but because it -- there were multiple additional issues raised, I just wanted to give the Court notice that that is addressed in full there.

But in sum, the Ericksons appear to be conflating argument with factual allegations. And what they contend are factual misrepresentations are simply not -- not so. And the bottom line is that the Ericksons contend that they

now have evidence -- of course, many years after the fact -- that the note is an alleged forgery. So this --

THE COURT: Well, the endorsement -- all they're really saying is that the endorsement signature was -- looking at the facts in light most favorable to them and, if I consider Mr. Almonza's (phonetic) declaration, he is saying that's not my signature. That I didn't authorize a signature block to be used or stamp to be used on the back of that -- that note. But that doesn't make -- I don't understand why that would make the note invalid or something that is not enforceable by the note holder. I don't -- I didn't understand that.

MS. POWER: We're in agreement with that, Your Honor. The -- at best, even assuming that the Court takes into consideration today these late filed pleadings and this late filed Almonza declaration, it doesn't create that genuine issue of fact, because the declaration itself even if taken at face value at best calls into question the endorsement. At best. We don't believe it even does specifically what they're arguing. It simply says he doesn't recall whether there was authority. He doesn't recall whether he authorized this stamp to be used.

But, again, taking it in the light most favorable to the plaintiffs, the Ericksons here, that doesn't create a genuine issue of fact that would preclude summary judgment.

And that is because the trust does still have -- and it's in my safe here at Stoel Rives today -- the original note. Still is the holder of the note. This is this same note that was at issue in the 2010 federal action, in the 2014 foreclosure action, in which Judge Darvas reviewed that original note during the summary judgment hearing in which the Ericksons sought an extension of that hearing so that they could have their forensic expert review that note. The same note that was at issue in the last action in 2019 to seek to vacate that judgment and, again, same note that's at issue here.

So even if that endorsement is called into question, it doesn't change the effectiveness of the note. And this is based on reference to the Renata v Flagstar case that we referenced for Your Honor most recently in our omnibus response that was filed on Monday of this week. And that specifically had a similar fact pattern, where the borrower argued that the endorser, the apparent endorser, submitted the declaration saying that, you know, that wasn't my signature. The Court said the note is still effective. That's because even if that were not the individual's signature, it's not proof that the endorsement was ineffective. And that's because in that instance, as here, the trust and the bank in that instance was still the holder of the note. Here as there, there was ratification.

Now ratification is governed by the UCC. There is evidence in particular in multiple prior judgments that the loan here was held into a securitized pool of loans. And that's what -- the Long Beach mortgage trust, that's the trust at issue here. And there's evidence through all those cases on which all of the prior judges have also relied to show that the trust is the holder of the note.

So unless Your Honor has specific questions, I'll stop there. And I will be happy to address anything further on reply.

THE COURT: No. I appreciate that. And you mentioned that Mr. Almonzo was only going to say I don't recall doing various things. And I agree with you. That that's what his declaration says. And under Overton v. Consolidated insurance company, it's a Washington state Supreme Court case, citation is 145 Wn2nd 417. It's a 2002 case. And there the Supreme Court specifically held that lack of recall is not sufficient to controvert clear opposing evidence on a summary judgment motion.

So here we have his signature. He's acknowledged that that's his signature but he says I don't recall signing it. Okay. That -- under Overton, that doesn't create an issue of fact. If he said that's my signature, but I know I didn't sign that, that would create an issue of fact. But that's my signature and I don't recall signing it, while,

frankly, at the same time saying I signed all kinds of things. I sign things at the request of different people. I signed a lot of stuff. And, frankly, no one would expect him to have a specific recollection of signing this document unless something extraordinary happened the moment he signed it. Oh, I remember signing that because someone dropped a file cabinet on my foot right as I was signing it. And it was a lot of pain, and I thought this -- boy, what are the chances. Or there was an earthquake that happened or something, right? There would be some reason why this would stand out compared to the thousands of documents that he signed in his role. Of course, there's nothing that stood out about this particular document and so it's not surprising he doesn't recall signing it.

And under Overton, his lack of recall does not create an issue of fact when he's actually acknowledged that that's his signature.

So no, I understand what your position is, Ms. Power.

Ms. Erickson, sounds like you had something that you -- an actual presentation. I tend to be more of a -- in my oral argument with people, I ask questions and get answers. Because I've read the briefing, and so I don't need someone just to tell me what the brief said. But if it's easier for you, if you're more nervous talking to me, I'm happy to just

listen to you.

But I want to be sure you understand Ms. Power is going to get a chance to -- she'll get the last word as the moving party, and I do have a hearing that starts at 10:00. So go ahead, ma'am, what was your argument, please.

MS. ERICKSON: Okay. I ask the Court to allow me to read my prepared argument without interruption for two reasons. My husband and I are representing ourselves. And two, the relationship between all the pending motions, responses, and replies are essential to an understanding of why the defendant's motion for summary judgment must be denied.

I have thoroughly reviewed all of the filings several times and prepared this argument to assist the Court in determining the defendant's motion for summary judgment in full and fair and proceedings, which us, the plaintiffs have never received before.

Defendant seeks summary judgment as a matter of law under CR 56(f) relying on the doctrine of collateral estoppel. They write, collateral estoppel prevents relitigation of an issue after the party has sought -- has had a full and fair opportunity to present their case. Hanson v. City of Snohomish, 121 wn2d 552,561,852 P. 2d 295 1993. Collateral estoppel requires four elements. One, identical issues; two final judgment on the merits; three

same parties or parties in privity; and four, application of the doctrine but not work as an injustice on the party against whom it is to be applied. Hadley v Maxwell 144 Wn2d 306, 311-12, 27P3d 600 200 2001. Without substantive analysis, defendants argue that the issues in the present action are identical to those raised in both the foreclosure action and 2019 action.

The issues are not identical. The presentations and actions for damages against Stoel Rives, its employees Power, Jensen, and Glowney under actual (indiscernible) Select Portfolio Servicing, commonly known as SPF, none of the present defendants were party to the foreclosure action in the independent action. Their alleged litigation misconduct was not known at the time of the foreclosure action, and the involvement of SPF was still concealed until the independent action was filed.

The foreclosure action sought to foreclose on the home that we, the plaintiffs, built with our own bare hands and have occupied since 1988, in a claim of debt supposedly owed to what defendants call the trust. Defendants' disregard of the actual facts has been addressed in January 19, 2021, response to the motion for summary judgment and supporting documents as throughout these proceedings.

The independent action sought relief from the judgment and foreclosure against the trust because that is

the name in which the defendants Eidson Glowney and SPF took judgment, that SPF Stoel Rives and the named attorney defendants were not parties to the independent actions.

What purports to be final judgments on the merits were entered in both cases. There is a genuine dispute of material fact as to whether or not the final judgment in the foreclosure action and the independent action were the result of full and fair proceedings in which plaintiffs had the opportunity to defend.

Defendants claim in our motion for summary judgment that they are in privity with the trust, which was a party to the foreclosure action and the 2019 action because defendants were acting on the trust's behalf as agents and service providers. There is a genuine dispute of material fact as to whether or not Stoel Rives and the named attorney defendants were acting in the trust's behalf. See response to the SMJ Exhibit 3. June 6, 2019 email from Deutsche Bank National Trust employee Ronaldo Reyes to Shelley Erickson,, in which he states Stoel and Rives represents SPF. SPF did not identify itself as the entity pursuing the foreclosure action which the defendants answer. Response to SMJ Exhibit 4 establishes it was -- it was, and the Stoel and Rives attorneys pretend to be representing the trust in both actions, when they were actually representing SPF.

If SPF had been identified as the entity pursuing

the foreclosure action and had brought the action in its name, plaintiffs would have had the opportunity to counterclaim against SPF and to establish the true nature of the transaction in which Long Beach Mortgage Company was acting as an unlicensed, unregulated securities broker, pretending to be the lender for the sole purpose of acquiring the note and deed of trust for resale to the unidentified party.

Plaintiffs could join the parties involved in the security scheme in order to determine what entity, if any, is entitled to claim security interest and receive payments, all of which remain concealed to this day. Discovery has been propounded to obtain evidence of a concealed fact. Although defendants contend that the Stoel and Rives attorneys are in privity of the trust, the nature of the relationship to the trust has not been established by evidence in support of the motion for summary judgment. Plaintiffs to produce evidence only with a jury could determine as matter of fact that the Stoel and Rives attorney did not represent the trust but represented a concealed party in the trust, SPF.

Defendants' assertion that the Ericksons contend that the trust was falsely identified in the foreclosure action is simply incorrect. They argue the foreclosure complaint identifies the trust as Deutsche Bank National

Trust Company as trustee for Long Beach Mortgage Loan 2064 and reverse the Power's declaration Exhibit D without any evidence of the existence of an entity identified as Deutsche Bank National Trust Company as trustee for Long Beach Mortgage Loan Trust 2064. They claim that is the trust.

They attempt to escape from the lack of evidence of the trust's existence in this record, or in the foreclosure action, arguing the alleged misrepresentation stems from the identification of the trust in the complaint as a Delaware corporation when, in fact, the trust is a national banking association. It is illegal and possibility for the trust to be a national banking association. Deutsch National Trust Company appears to be a national banking association, but there is no evidence whatsoever the trust is a national banking association. There is no evidence that the trust was formed under the laws of any state. The defendant's attempt to concede that an error which the trust readily acknowledged and corrected on the record, Exhibit G, (indiscernible) foreclosure action summary judgment hearing at (indiscernible).

The transcript of the foreclosure action does not establish the existence of the trust. Defendant's argument there is no evidence, let alone clear convincing evidence, of fraud on the Court with respect to identification of the

trust depends entirely on whether or not the trust is a national banking association. There is no evidence that the trust is a national banking association, and as a matter of law, it is not.

It is up to the jury to determine whether or not there is clear and convincing evidence of fraud in the misidentification of the trust. Defendant Power declared under penalty of perjury that Stoel and Rives LP is counsel for the trust. By defendant's own admission in its June 4, 2020, answer, Stoel and Rives actually represents SPF in their underlying foreclosure action and would be in possession of the document purporting to be the Erickson's note as counsel for SPF. See paragraph 9 of defendant Power's February 25, 2021 declaration in support of the motion to quash the Almonzo deposition which reads, No. 9, as counsel for the trust, this confirms that the original note remains in the possession of Stoel and Rives as counsel. Since the pendency of the trust foreclosure actions against the Ericksons in 2014, the note has been and remains stored in a secure safe at Stoel and Rives Seattle office.

(interruption)

MS. ERICKSON: Hello?

THE COURT: Ms. Erickson, I don't know why somebody was calling some University -- I don't know why that

happened.

MS. ERICKSON: Yeah, I don't know either, but that interrupted me. I hope that doesn't cut my time. Anyhow, I will continue.

Defendant Powers declared under -- I don't know where I ended or where I left off now. This type of hearing is just not a good thing for people.

Defendant Power has declared under penalty of perjury that Stoel Rives LP is counsel for the trust. By defendant's own admission in its June 4 2020 answer, Stoel and Rives actually represented SPF in the underlying foreclosure action and would be in possession of the document purporting to the Ericksons note as counsel for SPF. See paragraph 9, defendant power's February 25, 2021, declaration in support of the motion to quash the Almonzo deposition, which reads, paragraph 9, as counsel for the trust, this confirms that the original note remains in the possession of Stoel and Rives as counsel. Since the pendency of the trust foreclosure action against the Ericksons in 2014, the note has been and remained stored in a secure place at the Stoel and Rives Seattle office.

The Power declaration paragraph 9 contradicts the defendant's June 2020 answer at Page 2, Line 2 to 3, which reads, as servicer, SPF is attorney in fact for the trust and pursuant to that authority have hired Stoel and Rives LP

in the past to represent the trust. Defendant Power's declaration at paragraph 9 says yet another false statement of material fact under penalty of perjury in these pretrial proceedings.

There was a genuine dispute of material fact as to who Stoel and Rives attorneys represent in the foreclosure action and the independent action. The misapplication of the doctrine of -- the doctrine of collateral estoppel works an injustice in the foreclosure action and the independent action by preventing the Ericksons from having a full and fair opportunity to obtain evidence that the Almonza endorsement is a forgery.

The Ericksons can now establish fraud as a matter of fact in law based on the February 2021 Almonza declaration filed on February 25, 2021, trying to minimize the impact of the Almonza declaration, which is determinative of defendant's motion for summary judgment and clearly establishes a genuine dispute of material fact regarding the application of the doctrine of collateral estoppel. Shows it is new evidence, a fraud upon the Court, and there is no SOL of fraud upon the Court.

And the Ericksons would not have been discovered with due diligence before Jeff Almonza was finally located by the investigator hired by the Ericksons. While the defendants argue that to establish fraud, the Ericksons must

show, among other things, reliance on the truth of representation citing Stylie v. Block (phonetic)130 Wn2d 486 505 925 p 2d 194 1996. They assert the plaintiffs contend on the one hand they relied on the trust's representation that the original note was authentic, that at the same time, the records showed the opposite, that the Ericksons have made multiple vain attempts to challenge the authenticity of the note.

Plaintiffs do not contend that they rely on the representation of defendant will (indiscernible) that the documents attached to the January 3, 2014, complaint as Exhibit A was authentic. They contend that they knew that the punitive plaintiffs reached by virtue of the trust was not to the holder of the document according to be a true and correct copy of their note attached to the complaint, because the document was not endorsed. The document also stamped certified copy, see exhibit 4a, to the supplemental response to the motion for summary judgment, and the original note would not be stamped certified copy. The document was an unendorsed copy, an undated certified copy of a document purporting to the plaintiff's note.

The endorsement which suddenly prepared on the document purported to be plaintiff's note attached to the declaration of defendant (indiscernible) on May 19, 2015 displayed the name of an -- apparent initials of Jeff

Almonza. Compares this endorsement on Exhibit 5, page, supplemental response to the motion for summary judgment, the complete signature of Mr. Almonza on his declaration dated February 21, 2021. Plaintiffs, as well as everyone else with an Almonza endorsement in the nation with whom plaintiff communicated, were unable to locate Jeff Almonza, whose LinkedIn profile established the location of his current employment since September 2006 in Simi Valley, California. See the January 19, 2021 declaration of Wendy Ellison and Nora in opposition to the defendant's motion for summary judgment.

Jeff Almonza was finally located with the assistance of private investigator hired by us, the plaintiffs, who discovered that he was residing over five hour distance from the reported location of his employment in Lodi, California. See the January 19, 2021 declaration of Shelley Erickson in opposition to defendant's motion for summary judgment.

Defendant Powers and this court have been aware since January 19, 2021, that the discovery related to report the endorsement of the Ericksons noted by the nonparty deposition of Jeff Almonza was being pursued. On February 2, 2021, the notice of deposition was filed. And on February 9, 2021, the declaration service of the Washington and California deposition subpoena on Jeff Almonza on January 5, 2021, was filed. Plaintiffs filed a February 21,

2021, Almonza declaration on February 25, 2021 in good faith effort to assist the defendants in preparing for the Almonza deposition, scheduled by the agreement with Mr. Almonza for February 26, 2021.

It is beyond reason for the defendants to claim even then it was unclear how the Ericksons sought to rely on the Almonza declaration as (indiscernible) with regard to anything specific in their March 24, 2021 (indiscernible) reply. The Almonza declaration was filed on February 25, 2021, with the accompanying supplemental declaration of Wendy Ellison Nora in opposition to the motion for summary judgment in their March 15, 2020, motion to quash a protective order against plaintiff's discovery to relitigate the most important issue in this action to footnote 3, which reads, the Ericksons now rely on the declaration of Jeff Almonza for the quote proposition that the note is invalid. The Ericksons argument (indiscernible)

The Almonza declaration even accept -- has been accepted as true and states -- only calls into question the validity of the note's endorsement, not the note itself. The declaration reads, there is no question about the Ericksons signature on the note or whether the note itself is authentic. Every court that has reviewed the note has accepted its authentication and as a matter of law deems the trust as the holder of the note authorized to enforce the

note. The Almonza declaration is a nonstarter for purposes of creating a dispute for summary judgment.

The previous courts were deceived. Only the plaintiffs, who became aware of the serious questions regarding the validity of the document created by employees of JP Morgan Chase Bank NA after the seizure of Washington Mutual on September 25, 2008, by the FDA FDIC sought evidence of the validity in which the June 31, 2013, assignment of their deed of trust from JP Morgan Chase national association (indiscernible) interest by purchase from the FDIC as receiver of the Washington Mutual successor interest to the Long Beach Mortgage Loan Company was created. Under RCW 52a 3-201b and Bain v. Metropolitan Mortgage Group, 175 Wn2d 83 285 P3d 34 Washington 2012, the assignment of a deed of trust is only valid if the note was negotiated and transferred to JP Morgan Chase.

In opposing plaintiff's rule 56(f) motion, defendants argued the Erickson's request for a continuance to obtain discovery from a nonparty to question its position at this time (indiscernible) the note is futile. Even if Mr. Almonza's signature was somehow authorized, and there is no evidence that it was, such effect is not material to in Renata v. Whitestar Bank. And (indiscernible) 189 Washington Aplic 1004's, 215 Wl 452 844 2015 unpublished, the Washington Court of Appeals held that an allegedly

forged endorsement was (indiscernible) right to foreclose the (indiscernible) original (indiscernible) to ratify endorsement to the lender.

The same analysis applies here. Here there is no dispute the endorsement note (indiscernible) trust, which is now the holder in light of the ratification of the endorsement, reflected provision of the original note to the trust, the note is valid and enforceable. The defendant asks the Court to find Renata v. Flagstaff a unpublished, to be persuasive authority in this action. Renata reads, as pertinent part (indiscernible) declaration the individual whose signature appears on the endorsement on Ms. Renata's note failed to create a genuine issue of material fact, because she does not state that she did not authorize another person to endorse the note on behalf.

By (indiscernible) in this action, Jeff Almonza's declaration states that he did not endorse the Ericksons note He did not authorize another person to endorse the note. He states that he did not authorize the creation of the signature stamp displaying his identity. He states that he was not physically present at the location of his employment with Washington Mutual Bank in Stockton, California, after July of 2005 but that he was being paid as a nonworking retainer until July 2006. The purported transaction involving the Ericksons occurred in March 2006.

The Court of Appeals in Renata continues, even if she had stated she did not authorize another person to endorse on her behalf, which Almonza states in his declaration, Capital Mortgage ratified the endorsement when it complied with its contractual duty owed to (indiscernible) delivery endorsed note to Flagstar in accepting payment. Renata asserts that the material issue of fact remains as to whether the endorsement was forged.

Indeed (indiscernible) fact (indiscernible) conclude that where the endorsement states that it is the signature of Ms. Butler but she refutes its authenticity the signature is a forgery under RCW 62a 1-201, in parentheses 43, that if Capital Mortgage ratified the signature, the endorsement was effective, even if it thought the signature was forged. We conclude that the endorsement was ratified with Capital Mortgage and that Flagstar is the holder of the note. Under Trujillo, Flagstar was entitled to endorse the note.

No evidence has ever been produced in any court that Long Beach Mortgage Loan Company ratified the signature displaying the identity of Jeff Almonza as vice president of Long Beach Mortgage, because the evidence that suggests Almonza did not authorize the use of his signature was not discovered until February 2021. For the same reason, no evidence has ever been produced that Long Beach Mortgage Loan Company transferred the note for value to any entity,

including Deutsch Bank national trust company as trust for the Long Beach Mortgage Loan Trust 2004-2006-4. Instead, JP Morgan Chase NA claimed to be the successor by purchase of the Erickson's collateral document note the deed of trust from the FDIC as receiver of the assets of Washington Mutual Bank on January 31st of --

THE COURT: Hey, ma'am, are you about done? Because it's 9:57, and Ms. Power has the right to respond, right? She gets the last word, and you have been talking for almost a half hour just straight. And --

MS. ERICKSON: Okay. I would like to reserve the right to send in a copy of this -- of my oral argument, since I had interruptions and got disconnected.

THE COURT: Well, you didn't get disconnected. Actually, one -- for some reason, the person that has dialed in at 4144 has dialed in twice somehow at the same number. I'm not sure how that works. But it was actually their dial-in that caused that very brief, like maybe 5, 10 second interruption. And you lost your place for a second and then quickly found it.

And ma'am -- no -- I'm not allowing you to submit your oral argument. You've already submitted a briefing beyond what I think the rules allow you to submit. I have considered it, frankly, even though I don't think it was proper for you to have submitted it. But your

representation or your understanding, would be a more charitable way to put it, of what Mr. Almonza said is not consistent with his declaration. He specifically says that his signature is displayed on the note. He says he didn't place the endorsement stamps on exhibits 2, 3, 4, 5, or 6 but notice, everything else he says is "I do not recall." Not I didn't do it. I know I didn't to it. I didn't authorize -- he never says the words I didn't authorize. He says I do not recall, and that is critical under the Overton case. I do not recall does not create an issue of fact, ma'am.

But anyhow, Ms. Power gets the last word. Go ahead, Ms. Power, when you're ready.

MS. POWER: Thank you, Your Honor. I'll take one minute.

So as set forth in our briefing in full, defendants believe that collateral estoppel would result in summary judgment in favor of defendants here dismissing all claims (indiscernible) claims (indiscernible) allegation are similar in the same legal defenses and arguments challenging (indiscernible). The only thing that is new here is the Almonza declaration, which Your Honor has noted, as Overton does not create a genuine issue of fact.

So for those reasons, we would ask that summary judgment be entered.

THE COURT: Thank you. So what's at issue here is an attempt to relitigate what has been litigated many times before. And the decision they seek would be based on essentially, this court undoing the rulings of other courts, which is improper, to rule that this note was a forgery and therefore none of the actions that were taken adverse to plaintiffs should have occurred.

And I do believe collateral estoppel applies in this case. There are four elements in collateral estoppel. The issue decided in the earlier proceeding was identical to the issue presented in the later proceeding. Here the parties have already litigated the validity of the note. That's what's at issue here. The earlier proceeding ended in a judgment on the merits. That is true, and the plaintiffs in this case lost that case on the merits. The party against whom collateral estoppel is asserted was a party to or privity with the party to the earlier proceeding. Ms. Power and Stoel Rives and the others were all involved in that case; otherwise, they wouldn't be involved in this case. They're being sued here based on their roles in that prior litigation.

The application of collateral estoppel does not work an injustice on the party against whom it is applied, and since there has been ample opportunity for plaintiffs to litigate these exact issues over a span of ten years now,

there is no injustice that I can conceive of.

Further, even if I reached the actual merits of the claims, they have not been able to satisfy the nine elements of fraud, and that is a representation of an existing fact was made, the fact is material, the fact is false, the defendant knew that the fact was false or was ignorant of its truth, the defendant intended the plaintiff to act on the fact, the plaintiff did not know the fact was false, the plaintiff relied on the truth of the fact, the plaintiff had a right to rely on it, and the plaintiff had damages. The plaintiff, frankly, has not been able to satisfy even a majority of those, let alone every single one of them.

And as I said, the Almonza declaration is neither a game-changer nor determinative in this case, because all he said was I did not place my endorsement, my signature on that, on those exhibits, but I don't recall anything else. I don't recall whether or not I authorized someone to use my signature for a stamp. I don't recall whether or not someone used it as a stamp. I don't recall anything else. And "I do not recall" does not create an issue of fact.

So I am going to grant the motion for summary judgment. I'm denying the motion to dismiss Ms. Power's declaration that was brought. The motion -- defendant's motion to quash the Almonza deposition is moot at this point, because there is no litigation ongoing that says

dismissal of the entire case. I'm also -- defendant's motion to quash and seek a protective order limiting plaintiff's discovery request is also moot. Plaintiff's motion to extend discovery and the trial, I already denied their 56(f) request. And any further request for discovery is obviously moot, since there is no litigation ongoing as of this order. And as I said, I'm also denying the motion to strike.

So this resolves the entirety of the litigation. If Ms. Power will send the Court a proposed order that sets forth -- and it can go ahead and set forth all the supplemental materials, please, that the parties filed -- that the plaintiffs filed -- frankly, without authorization in contravention of the court rules -- but since I did read those and review them, I would ask please that Ms. Power add those to her proposed order. Circulate that proposed order. I assume that the Ericksons have an email address and copy them on it, and then I'll take a look at it, see if I agree with it. And if I do, then I will enter that order dismissing this matter later this afternoon.

But I appreciate everyone's advocacy, and I appreciate the time and energy that the Ericksons have spent in this litigation. But they simply, as a matter of law, cannot continue to relitigate these same issues over and over and over again. There has to be finality and there is

finality. So this matter is dismissed.

Thank you very much, everybody. I've got a -- I'm now late for my next hearing by a few minutes, but I also was a few minutes late for yours, so it's like going to the doctor's office. The doctor is always late. I apologize for keeping you guys a few minute late and wish everyone the best. Take care, everybody.

MS. POWER: Thank you, Your Honor.

(Recording ends 10:04 am)

C E R T I F I C A T E

STATE OF WASHINGTON)
COUNTY OF KING)

I, the undersigned, under my commission in and for the State of Washington, do hereby certify that the foregoing audiotape, videotape, and/or hearing was transcribed under my direction as a transcriptionist; and that the transcript is true and accurate to the best of my knowledge and ability; and that I am not a relative or employee or any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of April, 2021.

/s/Grace Hitchman

Grace Hitchman, AAERT, CET-663
In and for the State of Washington,
residing at Seattle.
Certification expires May 16, 2021

SHELLEY ANN ERICKSON - FILING PRO SE

July 06, 2022 - 9:45 AM

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