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STATE OF WASHINGTON
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No. 102863-6

SUPREME COURT
OF THE STATE OF WASHINGTON

CYNTHIA HEBERT and JAMES D. HEBERT,
husband and wife

Petitioners

vs.

SPRING CREEK EASEMENT OWNERS ASSOCIATION
(RMA) BOARD OF TRUSTEES

Respondents

MEMORANDUM OF *AMICUS CURIAE*
KING COUNTY ASSESSOR JOHN ARTHUR
WILSON ON REVIEW

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I. INTRODUCTION

There is great danger of this case slipping past a searching judicial lens. King County Assessor John Arthur Wilson has seen first-hand a growing trend in King County and the state at large of attempts to divest individual landowners of their valuable real estate by any legal means necessary. In this case, as in many others, that means using technicalities in the law to make it difficult for individuals like Cynthia and James Hebert to preserve their property rights in the face of a debt collection action. While nothing illegal may have occurred here, something inequitable did. And Division III wrongfully allowed that to happen despite the many authorities briefed in the Heberts' petition for review showing that the redemption statute at issue is construed liberally to do justice and avoid forfeitures.

There is great risk that this case goes unreviewed because it seems like a one off, turning on specific facts. But this Court should grant review to draw a line in the sand and make it clear to the many parties with interests in Washington real estate that the

law favors justice and individual property owners. It does not favor windfalls that benefit speculative debt collectors and land developers.

Review of this issue of substantial public importance is paramount. RAP 13.4(b)(4).

II. IDENTITY AND INTEREST OF AMICUS CURIAE

The interest of *amicus curiae* King County Assessor John Arthur Wilson is set forth in detail in its motion for leave to submit this memorandum and is incorporated herein by reference.

III. STATEMENT OF THE CASE

Wilson adopts the statement of the case submitted in the Heberts' petition. But he submits this brief to add that this case reflects a growing trend in Washington to speculate on vulnerable real estate. More and more, we are seeing developers and buyers target vulnerable homes that are subject to forfeiture, due to foreclosure or some other lien or debt, and then use every tactic in the book to divest those homes from the individuals who own them. Buyers and speculators can search Washington's broadly

disclosable public records for these properties, and then use any means the courts will allow to obtain them.

While Spring Creek and Filbert Hill may not have done anything illegal, the forfeiture imposed in this case was inequitable. It is clear the Heberts tried to redeem their home and tendered nearly the entire redemption amount in a timely period. That should have been enough, and as described below, courts need to push back on unjust forfeitures, not make the rules more favorable to allow them. This Court should grant review and reverse because Division III's opinion is bad public policy.

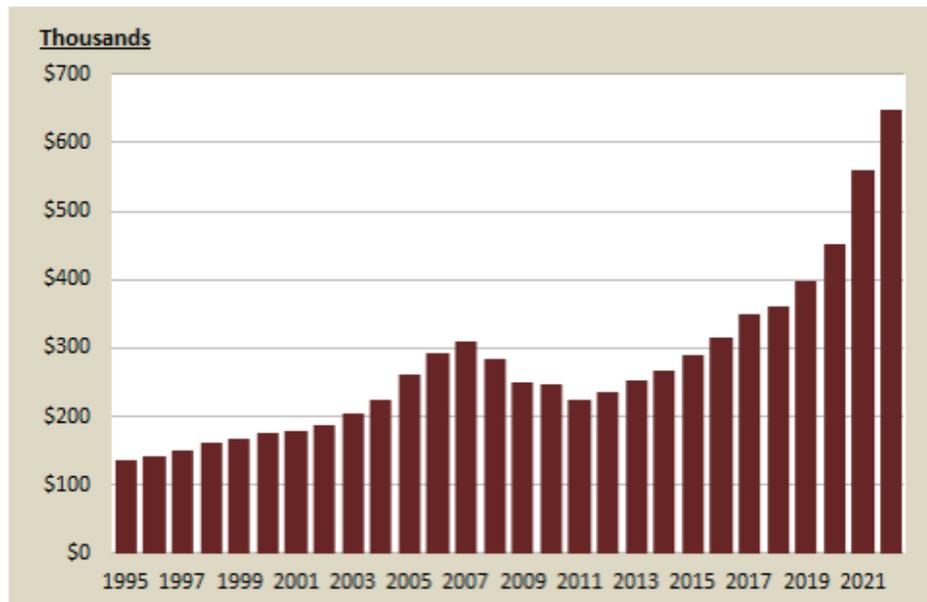
IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

This Court should grant review to buck the growing trend in Washington to try to profit from valuable homes subject to foreclosure at the expense of individual property owners. While this case deals with redemption rights, there should be equitable safeguards in any scenario where individuals may lose valuable property over technical enforcement of the law.

Washington real estate is no doubt one of the most desirable assets around. The median home price in Washington is at all-time highs, and has increased almost exponentially in recent years:

Median home price in Washington

1996 - 2022



Office of Financial Management, *Median home price*, Aug. 18, 2023, available at <https://ofm.wa.gov/washington-data-research/statewide-data/washington-trends/economic-trends/median-home-price> (last visited Apr. 25, 2024). Moreover, housing is at a premium in this state, this Court well knows that

issues of homelessness and housing affordability are at the forefront of the issues that face our communities across Washington.

Thus, there is great incentive for developers, speculators, and investors to acquire real estate, and especially homes, in Washington by any means necessary. More and more, this means accessing public records, identifying vulnerable properties, like those up for sheriff's sale or otherwise for foreclosure, and use whatever advantages they can find to acquire vulnerable property.

There are enough advantages inherent in our system, with rising costs of living, inflation, and the rest that pose a challenge to many Washingtonians trying to make ends meet. We do not need court-sanctioned advantages like Division III's opinion that construed the redemption statutes in a way that allows for more forfeitures.

As has long been the case, the trial court should have recognized that it had the equitable capacity to grant the Heberts' relief from strict interpretations of remedial debt collection

statutes. The Heberts note that this has been the norm for decades in Washington. *See* pet. at 18 (citing *e.g.*, *Albice v. Premier Mortg. Servs. of Washington, Inc.*, 157 Wn. App. 912, 935, 239 P.3d 1148 (2010), *aff'd*, 174 Wn.2d 560 (2012) (equitable principles applied to set aside foreclosure sale); *Cox v. Helenius*, 103 Wn.2d 383, 388, 693 P.2d 683 (1985) (equity could require voiding a deed of trust foreclosure sale “even if the statutory requisites to foreclosure had been satisfied.”); *Glepco, LLC v. Reinstra*, 175 Wn. App. 545, 555, 307 P.3d 744 (2013) (equitable principles like “mutual mistake” applied to foreclosure sale).

It makes no sense that the trial court and Division III pushed the other way, especially at a time when housing is so scarce and real estate in Washington is so precious. Individuals like the Heberts should have more security and leniency under the law, not less. Equity should protect homeowners like the Heberts in future cases.

It is vital that this Court grant review and course correct. There must be protections for homeowners when it comes to

housing and foreclosures, or the public will suffer. This case is ripe for Supreme Court review because it presents an issue of substantial public importance. RAP 13.4(b)(4).

V. CONCLUSION

This Court should grant review and reverse.

This brief consists of 942 words in compliance RAP 18.17(c)(6).

Dated this 6th day of May, 2024.

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CERTIFICATE OF SERVICE

I, Catherine C. Clark, hereby certify that on May 6, 2024, I caused the foregoing document, to be served upon counsel of record in the manner described below.

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DATED May 6, 2024.

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