

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
5/6/2024 2:26 PM  
BY ERIN L. LENNON  
CLERK

No. 102863-6

SUPREME COURT  
OF THE STATE OF WASHINGTON

---

CYNTHIA HEBERT and JAMES D. HEBERT,  
husband and wife,

Petitioners,

v.

SPRING CREEK EASEMENT OWNERS ASSOCIATION  
(RMA) BOARD OF TRUSTEE,

Respondents.

---

MEMORANDUM OF *AMICUS CURIAE*  
REPRESENTATIVE FRANK CHOPP ON REVIEW

---

Andrew R. Escobar  
aescobar@seyfarth.com  
SEYFARTH SHAW LLP  
999 Third Avenue, Suite 4700  
Seattle, Washington 98104-4041  
(206) 946-4910

Attorneys for *Amicus Curiae*  
Representative Frank Chopp

**TABLE OF CONTENTS**

Table of Authorities..... ii

I. INTRODUCTION ..... 1

II. IDENTITY AND INTEREST OF  
*AMICUS CURIAE*..... 2

III. STATEMENT OF THE CASE..... 3

IV. ARGUMENT WHY REVIEW SHOULD  
BE ACCEPTED ..... 3

V. CONCLUSION..... 6

**TABLE OF AUTHORITIES**

**Page(s)**

**Table of Cases**

**Washington Cases**

*GESA Fed. Credit Union v. Mut. Life Ins. Co. of New York*,  
105 Wn.2d 248, 713 P.2d 728 (1986)..... 4

**Federal Cases**

*Tyler v. Hennepin County, Minnesota*,  
598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023) ..... 3

**Rules**

RAP 13.4(b)..... 3  
RAP 13.4(b)(4)..... 2, 5-6

## **I. INTRODUCTION**

Homeownership in Washington is a paramount public concern. Having served in the Washington House of Representatives since 1994, Representative Frank Chopp knows that one of the most difficult questions facing our State at this time is making homeownership achievable across Washington. Related to that paramount concern is the notion that once Washingtonians achieve the goal of owning a home, they should not forfeit their homes over technicalities. There is too great an incentive for developers, speculators, and creditors to play games when assessing or collecting debts that could result in Washingtonians losing their homes, which provide not only immediate shelter, but long-term financial security and a way to access a piece of the American Dream.

In this case, Division III condoned a ruling in which the superior court determined it had no power to grant equitable relief to prevent the forfeiture of Cynthia and James Hebert's home. That was wrong, and if left undisturbed it will undermine

housing security in Washington. There is no doubt the Heberts put all parties on notice they intended to redeem their home sold at the sheriff's sale to satisfy a debt. And they substantially complied with their obligations, posting over \$130,000 to the court registry attempting to follow a valid court order. They should not lose their home under these facts, and the court had the equitable power to prevent that. Leaving Division III's opinion as is will only provide more ammunition to debt collectors and other speculators at the expense of housing security in Washington.

This Court should grant review and reverse. RAP 13.4(b)(4).

## **II. IDENTITY AND INTEREST OF *AMICUS CURIAE***

The interest of *amicus curiae* Rep. Chopp 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**

Rep. Chopp has nothing to add to the statement of the case presented in the Heberts' petition for review, and therefore adopts it for purposes of this memorandum.

### **IV. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

This Court should grant review and reverse because this case presents an issue of substantial public importance. RAP 13.4(b). Housing security is a pervasive public issue in Washington, and our justice system should make it more difficult to effect forfeitures, not easier. Nothing in the redemption statutes at issue in this case, chapter 6.23 RCW, requires the formalistic approach taken by the trial court and condoned by Division III at the expense of homeowners like the Heberts.

Instead, courts should favor the individual rights of homeowners like the Heberts who tried to redeem their property after it was sold at sheriff's sale to satisfy a debt. Courts should disfavor windfalls to debt collectors. That is what the Federal

Supreme Court recently held in *Tyler v. Hennepin County, Minnesota*, 598 U.S. 631, 143 S. Ct. 1369, 215 L. Ed. 2d 564 (2023), where it found a takings clause violation when a local government seized and sold property to satisfy a tax debt. The government could not keep the windfall funds that exceeded the debt and had to return them to the individual property owner.

The Heberts point out that “redemption statutes [are] remedial in nature, designed to help creditors recover their just demands, nothing more.” *GESA Fed. Credit Union v. Mut. Life Ins. Co. of New York*, 105 Wn.2d 248, 255, 713 P.2d 728 (1986). Remedial laws like the redemption statute in this case should be liberally interpreted and subject to equitable considerations. The trial court missed this point, and Division III was wrong to affirm without recognizing the effect its thinking will have on future cases.

While in this case the debt was incurred in connection with the Hebert’s homeowners’ association, Division III’s decision will no doubt be championed by other creditors seeking to

foreclose upon or otherwise obtain valuable real estate via forfeiture. Division III's opinion incentivizes debt collectors to play unfair, or, at the very least, set up unclear factual and procedural roadblocks in front of individual debtors, to try to make the process of satisfying their debts more difficult. That is bad policy.

What is so striking about this case is that all parties can be made whole so easily. The Heberts posted substantial sums into the court registry, nearly the entire amount they owed to satisfy their outstanding debts. They should be afforded the opportunity to cure their error, pay the full amount owed, and all parties can walk away fulfilled. Why the trial court refused to allow them to cure and Division III bent over backward to uphold a windfall for a speculative debt purchaser is baffling.

This Court should grant review. Division III departed from the law and the remedial nature of the redemption statutes designed by our Legislature to secure the payment of debts while *protecting debtors* from unjust windfalls like the one that

occurred here. Division III's opinion sets bad public precedent that will injure Washingtonians if followed in future cases. RAP 13.4(b)(4).

## V. CONCLUSION

For these reasons, *amicus* Rep. Chopp believes the Court should grant review and reverse.

This document contains 844 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 6th day of May, 2024.

Respectfully submitted,

/s/ Andrew R. Escobar

Andrew R. Escobar

aescobar@seyfarth.com

SEYFARTH SHAW LLP

999 Third Avenue, Suite 4700

Seattle, Washington

98104-4041

(206) 946-4910

Attorneys for *Amicus Curiae*  
Representative Frank Chopp

**SEYFARTH SHAW LLP**

**May 06, 2024 - 2:26 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 102,863-6  
**Appellate Court Case Title:** Cynthia and James Hebert v. Spring Creek Easement Owners Association  
**Superior Court Case Number:** 18-2-00104-1

**The following documents have been uploaded:**

- 1028636\_Motion\_20240506141659SC984995\_3543.pdf  
This File Contains:  
Motion 1 - Other  
*The Original File Name was Chopp Motion for Leave to File Memorandum of Amicus Curiae.pdf*
- 1028636\_Motion\_20240506141659SC984995\_7143.pdf  
This File Contains:  
Motion 2 - Amicus Curiae Brief  
*The Original File Name was Chopp Memorandum of Amicus Curiae on Review.pdf*

**A copy of the uploaded files will be sent to:**

- Aaron@tal-fitzlaw.com
- aducich@barkermartin.com
- aescobar@seyfarth.com
- cat@loccc.com
- catherineclark499@gmail.com
- dnicholson@lwhsd.com
- gbarrington@seyfarth.com
- jrichards@barkermartin.com
- jslothower@lwhsd.com
- kbailes@lwhsd.com
- matt@tal-fitzlaw.com
- mhawkins@calgnw.com
- phil@tal-fitzlaw.com

**Comments:**

1) Motion for Leave to File Memorandum of Amicus Curiae Representative Frank Chopp; and 2) Memorandum of Amicus Curiae Representative Frank Chopp on Review

---

Sender Name: Andrew Escobar - Email: aescobar@seyfarth.com

Address:

999 3RD AVE STE 4700  
SEATTLE, WA, 98104-4041  
Phone: 206-946-4910

**Note: The Filing Id is 20240506141659SC984995**