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STATE OF WASHINGTON

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No. 89623-2
(COA2 No. 43899-2-II)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARK OLLA, an individual,
Petitioner Appellant,

v.

ROBERT H. WAGNER, as an individual and as Trustee of THE
ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN
(aka "THE ROBERT H.W WAGNER PENSION PLAN") and DOES 3
through 50, Inclusive,

Respondents

PETITIONER'S REPLY BRIEF

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Petitioner Appellant Plaintiff Pro Se

I. SUMMARY

The Answer, as filed by Respondents, ROBERT H. WAGNER, as an individual and as Trustee of THE ROBERT H. WAGNER MONEY PURCHASE PENSION PLAN (aka "THE ROBERT H. WAGNER PENSION PLAN") and DOES 3 through 50, Inclusive ("WAGNER") to Petitioner Appellant Mark Olla's ("OLLA's") Petition for Review raises additional issues, and unfairly so having not separately enumerated them outside the body of the text, first among which is that OLLA's Complaint contained causes of action which independently invoked the subject matter jurisdiction of the lower court [WAGNER's Answer, p.3], second of which relates to OLLA's Complaint's introductory remarks [WAGNER's Answer, p. 3] as ostensibly operative, without regard to such Complaint's causes of action, confer, in and of itself, subject matter jurisdiction on the lower court regarding the parties' Settlement Agreement notwithstanding that such statement, were it to be taken at face

value, would logically exclude OLLA's action's subject Loan No. 1 as a subject of his action thereby excluding the one loan that had any connection to the subject Washington State real property.

Thirdly, WAGNER's Answer at pages 1, plain falsely asserts that OLLA's Petition for Review "simply argues that the court of appeals misapplied settled law relating to subject matter jurisdiction in a civil lawsuit" [WAGNER's Answer, p.2] and does not indicate "any conflicts between the decision of the court of appeals and the decisions of other courts of appeal or this Court", "does not raise any constitutional questions" and "does not identify any genuine issue constituting a substantial public interest."

Each of OLLA's Complaint's variously enumerated causes of action were based on allegations of rights in the subject properties based upon alleged rights under the subject three loans requiring declaratory relief and/or judgment as requested. WAGNER continues to disregard, as did the lower courts, the jurisdictional requirement on claims involving declaratory relief such that those claims be justiciable in nature and that because no set of facts

peculiar to OLLA's action could actually result in return of possession of or otherwise affect title of the subject Washington State real property, OLLA's action was first and foremost an incorrectly filed in rem action involving only California real property which could not be entertained by any Washington State court. Alternatively, OLLA's action, thus, was one which, though involving otherwise purely transitory claims had they been filed naked without any request for the court to act directly in respect to non-Washington State real property, was nonetheless not an in personam action but in fact a local action as being outside of the subject matter jurisdiction of the lower court pursuant to RCW 4.12.010 in accordance with various decisions of this Court and the various Washington State courts of appeals delineating such statutory jurisdictional limits on Washington State superior court subject matter jurisdiction.

While WAGNER additionally suggests that OLLA's Petition for Review is incomprehensible, it is quite apparent that WAGNER wishes any discussion defining those attributes of OLLA's Complaint which bear the earmarks of an in rem action or, in any

case, a local action outside of the subject matter jurisdiction of the lower court, be incomprehensible lest their import be recognized and WAGNER's legal fiasco cease and lower courts' jurisdictional errors be brought to light in the interests of substantial justice which would require that OLLA's mere ignorance of the law and errors in having filed the subject lower court action not be equated under a false proposition that subject matter jurisdiction may somehow be conferred on a court.

In such respects, WAGNER has simply sought to obfuscate the issues which were on appeal and in regards to which OLLA alleges that the October 29, 2013 decision by the Court of Appeals, Division II panel of judges denying OLLA's motion to modify the Commissioner's August 29, 2013 Motion on the Merits to Affirm the lower court's August 3, 2012 Judgment in denial of OLLA's CR 60 (b) (5) motion to vacate its January 15, 2010 Judgment and Orders as void for lack of subject matter jurisdiction was erroneous as conflicting with settled law found in the decisions of this Court as well as the various Washington State courts of appeals.

WAGNER's Answer objecting to this Court accepting OLLA's

Petition for Review as such is simply without merit for the further reasons explained below.

II. ARGUMENT IN REPLY

1. The COA2 Commissioner's Ruling regarding subject matter jurisdiction over the parties' Settlement Agreement conflicts with numerous Washington State Supreme Court and appellate court decisions and OLLA's Petition for Review is rife on such account

WAGNER's Answer, pages 6-7 limits its argument that OLLA's Petition for Review does not identify any conflicts between the COA2's decision and decisions of this Court and/or the various Washington State courts of appeals by stating that the test adopted by this Court in In re Marriage of Brown¹ as the standard under which a reviewing court might evaluate whether a final judgment might be subject to vacation as void for lack of subject matter jurisdiction is not in conflict with the current, more simple standard applied by the Washington State courts of appeals as articulated in Allstate Ins. Co. v. Khani², cited by OLLA's Petition for Review.

In so limiting such argument, WAGNER has chosen to disregard all those cases both in refinement of the stance taken by this Court

¹ In re Marriage of Brown, 98 Wn.2d 46, 653 P.2d 602 (1982)

² Allstate Ins. Co. v. Khani, 75 Wash. App. 317, 323, 877 P.2d 724, 727 (1994)

in **Snyder** interpreting RCW 4.12.010 as jurisdictional in nature in limitation of Washington State superior court subject matter jurisdiction as granted by Wash. Const. Art. IV, sec. 6 and various Washington State appellate cases in refinement of such as Washington State's quasi local action rule of sorts. WAGNER has also, by limiting such argument, chosen to disregard all those cases defining the requirement that any action seeking declaratory relief present justiciable claims in order for the subject matter jurisdiction of the Washington State superior courts to be invoked in regards thereto. Three of the most glaring examples are enumerated as follows:

i. The Commissioner's Ruling that the lower court possessed subject matter jurisdiction over the Settlement Agreement to authorize an adjudication of such Agreement's legal enforceability, which was a substantive issue in the case, conflicts with both this Court's requirement that a court must possess subject matter jurisdiction over the action without which the superior court is rendered powerless to pass on the matters before it³ and this Court's enunciated principle that the nature of a claim for relief is determined by the facts alleged in the Complaint and as adduced thereunder, and by the relief requested⁴.

ii. The Commissioner's Ruling that the lower court was not obligated to vacate its January 15, 2010 Judgment as void for lack of subject matter jurisdiction, despite circumstances presented by OLLA's Complaint wherein the court was requested to act directly in

³See OLLA's Petition for Review, at page , citing to Deaconess Hosp'l v. Washington State Hwy Comm'n, 66 Wn.2d 378 at 409, 403 P.2d 54 (1965).

regard to subject California real property based upon declaratory relief first determining OLLA's rights in such real property, conflicts with the Court of Appeals, Division One, decision in Ralph v. Washington State Department of Natural Resources⁵.

2. **The three causes of action in OLLA's Complaint which WAGNER contends in any case independently successfully invoked the lower superior court's subject matter jurisdiction did not and therefore WAGNER's assertions on point are purposely misleading**

WAGNER's factual assessment [WAGNER's Answer, page 3] that OLLA's Complaint's inclusion of three causes of action, namely for quiet title, damages for violations pursuant to RCW 18.85.230 and fraudulent and intentional deceit based upon Washington law are purposely misleading and advanced in bad faith.

Plainly, each of such causes of action were based upon necessary declaratory relief and/or judgment as requested as OLLA's Complaint's Twelfth Cause of Action for Declaratory Relief for determination of the parties' respective rights under the subject three loans and the subject real properties. Washington State courts require that claims based upon or involving declaratory relief be justiciable, as painstakingly established by OLLA's Petition for Review and as based upon this Court's case law on point. Because no set of facts based upon rescission could result in or affect title to

⁴ See OLLA's Petition for Review, at page, citing to Silver Surprise v. Sunshine Mining Co., 74 Wn.2d 519 at 522, 445 P.2d 334 (1968).

⁵ See OLLA's Petition for Review, page 3, citing to Ralph v. State of Washington Department of Natural Resources, 286 P.3d 992 (2012).

the subject Washington State real property in any way there was no in rem jurisdiction invoked let alone as to quiet title to any Washington State real property. Additionally, no cause of action for fraudulent or intentional deceit could be justiciable in any Washington State court regarding the subject loans since it is on record that each of the subject loans were done in California and the first subject loan was consummated prior to purchase of any Washington State real property and while OLLA had not yet moved to or resided at the subject Washington State real property. Finally, in such regard, no claim pursuant to RCW 18.85.230 is justiciable since the loans were not Washington State loans, were each secured by California real property and WAGNER was an independent mortgage broker/lender.

3. OLLA's Complaint fully indicates that OLLA's action was an in rem action which could not be entertained by any Washington State superior court

OLLA's action was an in rem action whose claims were wholly dependent on the declaratory relief and/or judgments requested as to the parties' rights with regard to the subject loans and properties but which claims were only justiciable in regard to the action's

subject California real property which the action sought for the lower court to directly act on and thus the action could not have been entertained by the lower court as a Washington State superior court

4. OLLA's action was subject to the limits imposed by RCW 4.12.010 on Washington State superior court subject matter jurisdiction constitutionally conferred by Wash. Const. Art. IV, sec. 6 and thus not an in personam action

Based upon the constitutional grant of subject matter jurisdiction to the lower court as a superior court by Wash. Const. Art. IV, sec. 6 and statutory limits imposed by the legislature on such jurisdiction by RCW 4.12.010, OLLA's claims seeking for the lower court to act directly in regard to the Complaint's subject California real property transformed what might have been a purely in personam action had it merely involved transitory claims for judicial rescission of the subject loans.

III. CONCLUSION

Based upon the foregoing, WAGNER's assertions that OLLA's Petition for Review does not seek review of an appellate opinion, ruling or decision which conflicts with either Washington State Supreme Court or appellate case law is plainly inaccurate, and

WAGNER's charge that such Petition simply proceeds to incomprehensibly to request that the COA2's Ruling denying OLLA's motion to modify the Commissioner's Ruling granting WAGNER's Motion on the Merits to Affirm be reviewed as a "misapplication of settled law relating to subject matter jurisdiction in a civil lawsuit"⁶. Moreover, WAGNER's assertions that OLLA's Petition neither presents constitutional issues nor involves issues and/or matters which affect the substantial interest of the public are obviously false since statutory jurisdictional limits on Washington State constitutional grant of subject matter jurisdiction to the various Washington State superior courts are involved and the requirements before and extent to which a Washington State superior court action involving requests for declaratory relief may successfully invoke Washington State superior court subject matter jurisdiction is a matter affecting the substantial public interest as it relates to fairness of access to the courts.

The COA2 Commissioner's Ruling and the Decision of COA2 panel of three judges designated as "Order Denying Motion To

⁶ WAGNER's Answer, p. 2.

Modify" which ratified it were made in error which this Court should properly rectify by granting review as warranted under RAP 13.4 (b) and OLLA hereby respectfully requests that upon review this Court decide anew OLLA's MTM and its issues, including those before the COA2 in WAGNER's underlying MOTMTA and whether such was properly granted in accordance with the applicable standards for doing so pursuant to RAP 18.14 (e) (1), a determination which necessarily involves de novo review of the issue of the trial court's subject matter jurisdiction over OLLA's action from which may be concluded whether or not the procedures employed by the trial court entry of the judgment for which vacation was sought were inappropriate and constituted a manifest abuse of authority in any case because void for a lack of subject matter jurisdiction and in which case the trial court's denial of such motion to vacate would clearly be an abuse of discretion thereby subjecting the Judgment as entered by the trial court on August 3, 2012 to reversal on appeal and therefore the COA2 panel of three judges' October 29, 2013

Decision and the Commissioner's Ruling as entered August 29,
2013 should be disaffirmed and equally reversed at this Court.

Dated: January 18, 2014

Respectfully Submitted,



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DECLARATION OF MAILING

I, Margaret Boone state and declare as follows:

1. I am a citizen of the United States of America and a resident of the state of Oregon. I am over the age of 21 years. I am neither a party to nor am affected in any way by the foregoing document for filing as bearing the captions Supreme Court of the State of Washington and Case 89623-2.

2. My business address is: 2226 N Coast Hwy

3. On this 21 day of January, 2014, I caused to be served on the following interested parties in the manner as indicated below true and correct copies of the foregoing documents which can be individually accurately described as:

PETITIONER APPELLANT MARK OLLA'S REPLY BRIEF

By placing a true and correct copy of such above described document in the mail by manner as indicated below, all postage thereon having first been prepaid by Mark Olla, and as addressed to the following recipient interested parties at both listed addresses

Isaac A. Anderson, PS via U.S.P.S. First Class Mail
Law Office of Isaac A. Anderson
P.O. Box 1451
and also at 19586 Tenth Avenue, Suite 300
Poulsbo, WA 98370
Telephone: (360) 779-4292, E-mail: isaac@isaacandersonlaw.com

I declare the foregoing to be true and correct under penalty of perjury under the laws of the state of Washington on this 21 day of January, 2014 at 2226 N Coast Hwy

Receipt # 973605

Signed :

Margaret Boone

Print name here:

Margaret Boone

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MARK OLLA,

Plaintiff/Petitioner

vs

No. 89623-2

ROBERT H. WAGNER; et al.,

DECLARATION OF
EMAILED DOCUMENT
(DCLR)

Defendant/Respondent

I declare as follows:

1. I am the party who received the foregoing email transmission for filing.
2. My address is: 3400 Capitol Blvd. SE #103, Tumwater WA 98501
3. My phone number is (360) 754-6595.
4. I have examined the foregoing document, determined that it consists of 15 pages, including this Declaration page, and that it is complete and legible.

I certify under the penalty of perjury under the laws of the State of Washington that the above is true and correct.

Dated: January 21, 2014 at Tumwater, Washington.

Signature: 

Print Name: James Lincoln