NO. 90399-9

THE SUPREME COURT OF THE STATE OF WASHINGTON

CHRISTOPHER L. SHORT,

Petitioner,

v.

WELLS FARGO BANK, N.A.,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

Ann T. Marshall, WSBA No. 23533
Barbara L. Bollero, WSBA No. 28906
BISHOP, MARSHALL & WEIBEL, P.S.
720 Olive Way, Suite 1201
Seattle, Washington 98101
(206) 622-5306
Attorneys for Respondent,
Wells Fargo Bank, N.A.

I. INTRODUCTION

Christopher Short appealed the summary judgment of judicial foreclosure awarded to Respondent Wells Fargo Bank, N.A., in its capacity as Trustee ("Wells Fargo") of WaMu Mortgage Pass-Through Certificates Series 2005-PR1 Trust (the "Trust"), a securitized mortgage loan trust. Division III affirmed that Judgment, in an unpublished opinion.

The Trust owned the debt, and Wells Fargo as Trustee was assignee of the Deed of Trust's beneficial interest, pre-suit and through summary judgment. Wells Fargo's servicing agent and the note holder, JPMorgan Chase Bank, N.A. ("Chase"), prosecuted the foreclosure suit.

As Wells Fargo's servicing agent, Chase submitted sufficient admissible evidence proving its possession of the Note and entitlement to foreclose. At oral argument, Mr. Short acknowledged the default, did not controvert Chase's evidence, and submitted additional evidence supporting Wells Fargo's summary judgment entitlement. Given the absence of any dispositive disputed facts, the trial court properly awarded summary judgment to Wells Fargo, and Division III properly affirmed the Judgment. Thus, Mr. Short's Petition for Review should be denied.

II. ASSIGNMENTS OF ERROR

Wells Fargo makes no assignments of error, as the Judgment and affirmation were correct. Wells Fargo restates the issues as follows:

1. The appellate court properly concluded that the uncontroverted, competent, admissible evidence proving the promissory Note and Deed of Trust terms, Mr. Short's default, Chase's possession of the original Note, its servicing agency, and authority to foreclose, entitled Wells Fargo to judgment of judicial foreclosure as a matter of law.

2. The appellate court properly considered Mr. Short's oral argument acknowledgements, which were not sworn testimony, in concluding the trial court did not err in granting summary judgment.

3. The trial court did not abrogate Mr. Short's Seventh Amendment right to a jury trial by questioning him, at his invitation, as a *pro se* Defendant during oral argument of the summary judgment motion.

4. Because Mr. Short's arguments that the Washington State Constitution, Article IV, Section 24, requires uniform rules were not raised in the trial court or Division III, they may not be considered.

5. Mr. Short's asserted Article IV, Section 24 entitlement to uniform court rules was not abrogated by the failure to adopt a superior court rule similar to Whatcom County Civil Rule 54(c).

II. STATEMENT OF THE CASE

A. Mr. Short Makes Note and Grants Deed of Trust to WaMu.

In November of 2004, Appellant Christopher L. Short ("Borrower") borrowed $114,750.00 from Washington Mutual Bank

("WaMu"), executing a promissory note payable to WaMu's order (the "Note"). (CP 110, ¶6; CP 116-22.) The Note was secured by a Deed of Trust encumbering real property. (CP 110, ¶7; CP 124-49.) The Deed of Trust was recorded on December 7, 2004, under Auditor's Instrument No. 3082930 (the "Deed of Trust"). (CP 111, ¶8; CP 125, 141.) The Deed of Trust is against real property owned by Mr. Short (CP 409, ¶3; CP 615, ¶3), commonly known as 600 Cape La Belle Road, Tonasket, Okanogan County, Washington 98855 (the "Property"). (CP 110, ¶7; CP 127.)

B. Mr. Short's Loan is Securitized, Interest is Assigned to the Loan Owner's Trustee, and Chase Acquires Servicing Rights.

The ownership interest in Mr. Short's loan was assigned to a securitized mortgage loan trust, the Trust. (CP 39, ¶14.) The Trust's Trustee is Wells Fargo. (CP 40, ¶14.) An Assignment reflecting the transfer of interest to Wells Fargo was recorded on August 17, 2010 – before the judicial foreclosure action was started – under Auditor's Instrument No. 3157196 (the "Assignment"). (CP 111, ¶10; CP 155-57.)

In 2008 all WaMu assets, including all loan debts and servicing rights, were acquired by Chase under a Purchase and Assumption Agreement between the Federal Deposit Insurance Corporation as Receiver for WaMu ("FDIC-R") and Chase (the "WaMu Agreement"). (CP 111, ¶9; CP 150-53.) FDIC-R's Affidavit attesting to the asset

transfer was recorded on October 3, 2008, under King County Auditor's Instrument No. 20081003000790 (the "FDIC-R Affidavit"). (CP 111, ¶9; CP 150-53.) Thus, on September 25, 2008, Chase replaced WaMu as servicing agent and note holder for Mr. Short's loan. (CP 112, ¶14.)

C. Mr. Short Defaults and Wells Fargo Institutes Foreclosure.

Beginning on April 1, 2010, and continuing for the nearly three years thereafter, Mr. Short failed to make any of the monthly payments due on his Note – facts which Appellant admits. (CP 95; CP 111, ¶11; RP 01/27/12, p. 10, l. 8 – p. 13, l. 5.) Wells Fargo filed its foreclosure Complaint in Okanogan County Superior Court on November 16, 2010. (CP 408-13.) The Complaint attached the Note, Deed of Trust, FDIC-R Affidavit, and Assignment. (CP 414-54.) Mr. Short answered, *pro se,* admitting that he owned the Property. (CP 409, ¶3; CP 615, ¶3).

D. Wells Fargo's Summary Judgment Motion is Granted.

1. Wells Fargo's Summary Judgment Evidence.

Wells Fargo filed a Motion for Summary Judgment on October 17, 2011 (CP 348-52), supported by the Declaration of a Chase employee, Araceli Urquidi, dated September 21, 2011. (CP 353-56.) The Declaration exhibits were identical to the Complaint exhibits. (*Compare,* CP 357-97 to CP 414-54.) Ms. Urquidi's Declaration attested to the

foregoing facts, provided foundation for all the exhibits, and swore to Mr. Short's default and the loan balance due. (CP 353-56.)

2. Mr. Short's Opposition and Supporting Evidence.

Mr. Short timely opposed Wells Fargo's motion, contending: (1) Wells Fargo's declarations contradicted its discovery responses (CP 333-38); (2) the declarations were "defective" in form and inadmissible (CP 333, 339-45); (3) it was "deliberately misleading" the trial court as to the Plaintiff's identity (CP 333-34); and (4) it neglected to filed the original Note, proving entitlement to foreclose (CP 335, 338, 347).

The only opposing evidence was Mr. Short's Declaration (CP 329-32), attaching Wells Fargo's amended discovery responses (CP 598-610), and other exhibits (CP 611-14). Those responses stated, in part:

> The subject loan ... was securitized into a mortgage-backed security identified as the WaMu Mortgage Pass-Through Certificates Series 2005-PR1 Trust (the "Trust"). As such, the owners of the Loan are the Trust and its investors. The Trust is governed by a Pooling and Servicing Agreement (the "PSA") .... The PSA explains ... the Trustee may allow the Trust Servicer or Custodian to hold the subject loans for the benefit of the Trust ... [B]ecause the Notes are endorsed in blank, ... the Servicer is the holder of the Note for the benefit of the Trust, which owns the subject loan. When Chase acquired the assets of WaMu from the FDIC, it acquired the loan servicing rights of WaMu, and became the servicer of loans that comprise the Trust's assets, including the subject loan.

(CP 604.) In addition, the evidence introduced by Mr. Short stated:

> The original promissory note evidencing Mr. Short's loan ... is physically located in Chase's secure warehouse in Monroe, Louisiana.

(CP 609.)

Mr. Short provided no evidence disputing the authenticity of the Note or Deed of Trust introduced by Wells Fargo and contesting his default; nor did his briefing address any of those issues. (CP 333-47.)

3. Wells Fargo's Reply and Supporting Evidence.

Wells Fargo replied that Mr. Short did not dispute either the Note or his default. (CP 100-08.) It argued that Chase, his loan servicer, possessed his Note and had power to foreclose under RCW 61.24.005. (CP 107-08.) Because the Trust owned the loan, the Pooling and Servicing Agreement ("PSA") granted Wells Fargo, acting through its agent Chase, authority to foreclose. (CP 112, ¶14; CP 158-272.)

Wells Fargo presented the reply Declaration of its counsel, Albert Lin[1] (CP 273-74), and a second Declaration of Ms. Urquidi[2] (CP 109-13), virtually identical to her previous Declaration, and in part word-for-word identical to Wells Fargo's discovery responses submitted by Mr. Short. (*Compare,* CP 604 and 609 to CP 111-12, ¶¶14-16.) Ms. Urquidi's reply

[1] Mr. Lin's reply Declaration was a Request for Judicial Notice concerning Chase's acquisition of WaMu's assets. (CP 275-328.)

[2] Ms. Urquidi's reply Declaration has the same title as her Declaration filed with the moving papers; however, it is dated January 19, 2012. (CP 109-13.)

Declaration stated Chase currently possessed the original Note, was the authorized servicing agent, and had authority to enforce the Note by foreclosing for the loan owner, the Trust. (CP 111-12, ¶¶14-16.) It stated:

> The subject loan ... was securitized into a mortgage-backed security identified as the WaMu Mortgage Pass-Through Certificates Series 2005-PR1 Trust (the "Trust"). As such, the owners of the Loan are the Trust and its investors. The Trust is governed by a Pooling and Servicing Agreement (the "PSA") .... The PSA explains ... the Trustee may allow the Trust Servicer or Custodian to hold the subject loans for the benefit of the Trust ... [B]ecause the Notes are endorsed in blank, ... the Servicer is the holder of the Note for the benefit of the Trust, which owns the subject loan. ... The original promissory note ... is physically located in Chase's secure warehouse in Monroe, Louisiana.

4. Oral Argument and Entry of Summary Judgment.

The summary judgment motion was heard on January 27, 2012. (CP 94-95.) Mr. Short was not under oath when he argued *pro se*. (RP 01/27/12, p. 8, ll. 11-13; p. 16, ll. 11-16.) Mr. Short acknowledged he had presented no evidence controverting Wells Fargo's proof:

> THE COURT: So you agree that on or about November 30, 2004, you signed a note with Washington Mutual Bank secured by a deed of trust in the amount of a hundred and fourteen thousand seven hundred and fifty dollars ($114,750)? I'm hearing you say you agree.
>
> MR. SHORT: I – I – I – I do agree – I do admit to that, yes your Honor.

THE COURT: Okay. And the – the Plaintiff, as named, alleges – basically agrees that you apparently made the payments on that note until April of 2010. Is that correct?

MR. SHORT: I—I did make payments on that until approximately that day.

THE COURT: Okay, and are – are you prepared today or can you point to any evidence, Mr. Short, that – that you made the payments on this note to someone? Anyone?

MR. SHORT: Absolutely not.

THE COURT: Okay. Has ... anyone other than Washington Mutual Bank or Wells Fargo Bank or JPMorgan Chase – has anyone other than any of those three entities made any demand of you for payment?

MR. SHORT: No.

...

THE COURT: Did you – can you show payments then tendered to Washington Mutual Bank?

...

MR SHORT: --I—I initially made payments to Washington Mutual Bank.

THE COURT: But you agree not since April of 2010?

MR. SHORT: Yeah.

(RP 01/27/12, p. 10, l. 8 – p. 13, l. 5.)

Based on the arguments and evidence, the trial court found no material fact issue precluded judgment entry. (RP 01/27/12, p. 16, ll. 18-21.) It noted Mr. Short executed the Note, paid on it for over five years, stopped paying, loan ownership was transferred, and no evidence contradicted Wells Fargo's proof that no entity other than Plaintiff claimed payments were due to it. (RP 01/27/12, p. 16, l. 21- p. 18, l. 9; CP 95.)

The trial court ruled Plaintiff's Declarations established original Note possession, and ownership transfer did not absolve Mr. Short's payment obligations. (RP 01/27/12, p. 18, ll. 14-20.) Finding no controverting evidence, the court awarded Wells Fargo summary judgment (RP 01/27/12, p. 18, l. 21 - p. 19, l. 4), entered the proposed Order Granting Summary Judgment (RP 01/27/12, p. 19, l. 5 – p. 20, l. 5; CP 92-93), and later entered Judgment of Foreclosure (CP 456-59).

E. Argument and Denial of Mr. Short's Reconsideration Motion.

Mr. Short filed a CR 56 and CR 59 reconsideration motion. (CP 67-77.) No new assertions challenging the evidence were supported by any result-changing facts; thus, Mr. Short again failed to carry his burden. At the reconsideration hearing Mr. Short – again arguing *pro se* and unsworn – acknowledged his default and invited questions:

> THE COURT: [Y]ou'll recall from our discussion in January at the time of that hearing, that you agreed you had signed the note and deed of trust

> and you agreed that you undertook or you obtained the loan proceeds and thereby incurred the repayment obligation. In light of your comments this afternoon, ... who – who do you contend that you should have – have paid?
>
> MR SHORT: I honestly don't know sir but it's not these people.
>
> THE COURT: But you agree you owed somebody the –
>
> MR. SHORT: --I—I—I do not dispute that ....

(RP 03/15/12, p. 15, l. 16 - p. 6, l. 5.)

After hearing arguments, the trial court complimented Mr. Short:

> THE COURT: Mr. Short, ... you obviously have done a fine job of representing yourself .... [I]n my experience, very very very few people who represent themselves are capable of submitting anything in writing that is supported by what they feel to be appropriate legal authority, case law, statute, or otherwise, and you have done that, and I commend you for that, and ... in terms of pro se representation, ... you've done as good a job probably as anybody that I've seen. ...

(RP 03/15/12, p. 10, ll. 6-12.)

The court again commented on the undisputed facts of Mr. Short's loan document execution, payment default, and Plaintiff's entitlement to enforce. (RP 03/15/12, p. 10, l. 20 - p. 11, l. 10.) After the court summarized Mr. Short's evidence and argument, he responded, "That's exactly correct your Honor." (RP 03/15/12, p. 10, l. 19 – p. 11, l. 19.)

The court also overruled Mr. Short's evidentiary objections, finding he failed to prove a triable fact issue existed. (RP 03/15/12, p. 11, l. 10 – p. 14, l. 1) Remarking on the undisputed facts and lack of controverting evidence, the court denied the motion and entered the Order that same day. (RP 03/15/12, p. 14, ll. 2-16; CP 6-8.) Mr. Short's Notice of Appeal designates only the summary judgment order. (CP 1-5.)

F. **Contested Presentation of Foreclosure Judgment.**

Wells Fargo presented its Judgment of Foreclosure on July 2, 2012. (CP 568-89.) Mr. Short requested judicial notice of the Attorney General's *amicus* brief in *Bain v. Met. Mtg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012), concerning Mortgage Electronic Registrations Systems, Inc.'s authority to foreclose. (CP 530-58.) The opposition arguments were previously considered and rejected. (CP 559-61.)

Mr. Short returned to his earlier arguments concerning Wells Fargo's failure to present the original Note. (RP 07/02/12, p. 5, l. 15 – p. 6, l. 7.) The court again recited that Chase held the original Note in its warehouse (RP 07/02/12, p. 6, ll. 8-13), that no payments had been made for some time, nor had any lender other than Plaintiff demanded payments (RP 07/02/12, p. 7, ll. 3-8). The Court entered the Judgment of Foreclosure as presented (RP 07/02/12, p.10, ll. 9-14; CP 456-59), and the Notice of Appeal was not amended.

G. Summary Judgment is Affirmed on Appeal.

Mr. Short timely appealed the summary judgment. (CP 1-5.) He assigned error to admission of Ms. Urquidi's Declarations and exhibits, the failure to require that Wells Fargo produce his original Note, and validity of the beneficial interest assignment. (Appellant's Brief, pp. 1-3.)

Wells Fargo argued its entitlement to initiate foreclose through Chase as its servicing agent, Ms. Urquidi's Declarations were neither contradictory nor mutually exclusive, adequately founded, the exhibits were appropriately authenticated, and the court did not abuse its discretion in admitting evidence. (Respondent's Brief, pp. 17-34.) Wells Fargo also asserted that it need not present Mr. Short's original Note to the trial court to prevail on summary judgment of judicial foreclosure. (*Id.*, pp. 14-17.)

Division III's unpublished opinion affirmed the summary judgment award to Wells Fargo, foreclosing the Deed of Trust. It held the trial court did not err in: (1) finding Ms. Urquidi's Declarations and exhibits to be well-founded, competent, admissible evidence; (2) allowing the action to be maintained by Wells Fargo as the Trust's Trustee, the Note owner; and (3) not requiring the original Note be filed with the court.

Mr. Short timely moved for reconsideration. He asserted for the first time that reliance on his unsworn statements violated his Seventh Amendment right to a jury trial. He argued that some Superior Courts

require the original Note be filed before judgment thereon, and failure to establish a uniform rule violated the state Constitution, Article IV, §24. He claimed a fact question existed concerning the beneficial interest assignment, and assailed the Urquidi Declarations' admissibility. Reconsideration was denied, and this Petition for Review timely filed.

IV. ARGUMENT

A. Summary Judgment Awards are Reviewed *De Novo*.

The appellate standard is *de novo* summary judgment review, the reviewing court inquiring the same as the trial court. *Del Guzzi Constr. Co. v. Global Northwest Ltd.*, 105 Wn.2d 878, 882, 719 P.2d 120 (1986).

B. Appellant has Failed to Show Appropriate Grounds for Review.

RAP 13.4(b) identifies the only four grounds on which this Court accepts review, including an issued opinion which: conflicts with (1) a Supreme Court decision, or (2) an appellate court decision; or involves (3) a significant question of constitutional law, or (4) a substantial public interest.

Although Mr. Short's Petition references all four grounds (p. 7), it does not address how the decision implicates any of them. The Petition mentions no case authorities, other than Division I's unpublished opinion affirming a nearly identical foreclosure Judgment against Mr. Short[3]

[3] *See, Bank of America, N.A., v. Short,* 176 Wn. App. 1032, -- P.3d -- (Div. I No. 68545-7-I, Sept. 23, 2013).

[Petition, pp. 3, 10], and relies on only the Seventh Amendment, Article IV, §24 of the State Constitution, RCW 9A.72.85, CR 56, and various Superior Court's local rules. No analysis of these authorities is provided.

Because Division III's opinion does not conflict with any published Supreme Court or appellate court decisions, and it involves neither a significant question of constitutional law nor an issue of substantial public interest, Mr. Short's Petition for Review should be denied.

1. No Conflicting Court Decisions are Identified.

> [The Washington Supreme C]ourt will only take review if [it is] satisfied that review is warranted under RAP 13.4(b). Thus, the petitioner must persuade [it] that either the decision below conflicts with a decision of th[e Washington Supreme C]ourt or another division of the Court of Appeals; that it presents a significant question of constitutional interest; or that it presents an issue of substantial public interest that should be decided by th[at c]ourt. RAP 13.5A(a)(1), (b); RAP 13.4(b).

In re Coats, 173 Wn.2d 123, 132-33, 267 P.3d 324 (2011).

Because Mr. Short has not identified any conflicting decisions, he has not carried his burden of persuasion under RAP 12.4(b)(1) and/or (2). Review cannot be accepted under either subsection of RAP 12.4(b).

2. No Issue of Substantial Public Interest is Identified.

Despite failing to identify any substantial public interest issue, the Petition asserts RAP 13.4(b)(4) as a basis for relief. To determine whether a matter is of continuing and substantial public interest and thus reviewable,

this Court considers: (1) the issue is public or private; (2) an authoritative determination providing future guidance to public officers is desirable; and (3) the issue is likely to recur. *In re Cross,* 99 Wn.2d 373, 377, 662 P.2d 828 (1983) (citing, *Sorenson v. Bellingham,* 80 Wn.2d at 558, 496 P.2d 512 (1972)). "[A] fourth factor [arguably] exists, ... the level of genuine adverseness and the quality of advocacy ...." *Hart v. Dep't. of Soc. & Health Servs.,* 111 Wn.2d 445, 447, 759 P.2d 1206 (1988).

The issues identified here satisfy none of the three standards. Judicial foreclosure due to loan default is a private matter limited to the contracting parties. Division III's opinion did not add to or expand on the body of foreclosure law. There is no issue requiring determination to guide public officers. Judicial foreclosures have been prosecuted for at least a century, and no statutory interpretations were contested here.

Although both judicial foreclosures and summary judgments will continue, a Supreme Court decision in this matter is unlikely to affect future foreclosures. The underlying rulings were limited to the specific facts and do not expand the law. Because no substantial public interest issue has been identified or exists, the Petition should be denied.

3. No Significant Constitutional Law Question is Identified.

Mr. Short claims his Seventh Amendment jury trial right was abrogated by the trial judge questioning him, as a *pro se* litigant, at oral

argument. (Petition, pp. 2-3.) He asserts, "CR 56 makes no provision for *oral testimony.* Hearing *oral testimony* would be in fact a jury function ...," and that Division III "considered[ed] inappropriate and unruly *testimony* elicited by the trail *(sic)* judge ...." (*Id.*, pp. 1-2 (emphasis supplied).)

But the Seventh Amendment claim's premise is flawed. Mr. Short presented oral arguments *pro se,* and was *not* under oath when he did so. (RP 01/27/12, p. 8, ll. 11-13; p. 16, ll. 11-16.) Indeed, he *invited* the trial court's questions after arguing. (CP 03/15/13, p. 5, ll. 2-14.)

This Court has repeatedly rejected the contention that the Seventh Amendment is violated by a summary judgment award. In *Nave v. City of Seattle*, 68 Wn.2d 721, 725, 415 P.2d 93 (1966), the Court held:

> The plaintiff claims his right to a jury trial guaranteed in civil actions under U.S.Const. amend. 7, and by Wash.Const. art. 1, s. 21 were infringed by the summary judgment proceedings. This exact contention was before the United States Court of Appeals, 7th circuit, in *United States v. Stangland,* 242 F.2d 843 (1957) and was rejected upon the authority of the decision of the United States Supreme Court in *Fidelity & Deposit Co. of Maryland v. United States,* 187 U.S. 315, 23 S.Ct. 120, 47 L.Ed. 194 (1902). This court has adopted the same reasoning in proceedings where there are no issues of facts to be determined by the jury.

Similarly, citing the *Nave* decision, this Court more recently held:

> [Petitioners] argue that this conclusion [that summary judgment was properly entered against them due to their failure to introduce controverting

> evidence] violates their constitutional right to a jury trial. Const. art. 1, § 21. We are well aware that summary judgment decisions should not involve the resolution of factual issues. Such is the province of the factfinder at trial. Yet, Washington courts have held many times that summary judgment should be granted when reasonable persons, giving all reasonable inferences to the nonmoving party, could only conclude that the moving party is entitled to judgment. ... *When there is no genuine issue of material fact, as in the instant case, summary judgment proceedings do not infringe upon a litigant's constitutional right to a jury trial.*

LaMon v. Butler, 112 Wn.2d 193, 199, n. 5, 770 P.2d 1027 (1989) (citations omitted; emphasis supplied).

Because the only opposing evidence Mr. Short submitted was identical to the supporting evidence, both courts found no fact issue existed. Mr. Short's unsworn arguments bind him as a party's representative; regardless, absent his admissions the undisputed evidence was sufficient to award summary judgment. Without a material fact issue, summary judgment does not infringe on a party's constitutional jury right.

4. No Constitutional Entitlement to Uniform Rules Exists.

Mr. Short asserts the trial and appellate courts erred by not establishing a uniform rule that the original Note be submitted before entering Judgment, violating the State Constitution, Article IV, §24,

requiring: "The judges of the superior courts ... establish uniform rules for the government of the superior courts." Mr. Short mis-reads §24.[4]

There may be multiple superior court *judges*, "but there is only *one* superior *court* in *each* county." *State ex re. Campbell v. Sup. Court for King Co.*, 34 Wn.2d 771, 775, 210 P.2d 123 (1949) (emphasis supplied). The same article provides: "There shall be in *each* of the organized counties of this state *a* superior court for which at least one judge shall be elected ...." RCW Const. Art. 4, §5; *see, State ex rel. Lytle v. Sup. Court of Chehalis Co.*, 54 Wn. 378, 384, 103 P. 464 (1909) ("The plain mandate of this section is one court, with as many sessions as there are judges.")

Section 24 means that *all* superior court judges in a *single* county are tasked with establishing uniform rules for *that* county's court – not *all* counties' courts. As this Court explained when it first construed §24:

> It seems to us that the purpose of section 24 was to insure *uniform* rules of minute procedure, and that it should be construed, ... requiring that the customary rules having to do with the minutae *(sic)* of court government should be uniform in character so that ... [there are not] petty rules in each court *differing according to the views of the particular judge who presided over the tribunal.*

[4] Mr. Short also mis-states the holding of *Bank of America, N.A., v. Short*, 176 Wn. App. 1032, -- P.3d -- (Div. I No. 68545-7-I, Sept. 23, 2013). Div. I affirmed the summary judgment of judicial foreclosure, but remanded for the Respondent to file the original promissory Note in compliance with Whatcom County Civil Rule 54(c). No abuse of discretion was found, as stated by Appellant. (Petition, p. 10.)

State ex re. Foster-Wyman Lumber Co. v. Sup. Court for King Co., 148 Wash. 1, 10, 267 P. 770 (1928) (both original and supplied emphasis).

Mr. Short has failed to assert a significant constitutional issue arising from Article IV, §24, requiring this Court's review under 13.4(b).

C. **Div. III "Manufactured" No Facts; the Affirmation is Correct.**

Mr. Short never introduced any evidence controverting the undisputed facts that: (1) his loan was owned by the securitized Trust; (2) the Trust agreement allowed the servicing agent to hold the Trust loans for the Trust's benefit; (3) although WaMu was the original servicing agent, Chase assumed those duties in September of 2008; and (4) Chase held Mr. Short's Note for the benefit of the Trust.[5] (CP 113-15.) Appellant's own evidence confirmed these facts. (CP 604, 609.) As held by this Court:

> The UCC provides: *"Holder" with respect to a negotiable instrument, means the person in possession* if the instrument is payable to bearer .... [and] *"Person entitled to enforce" an instrument means (i) the holder of the instrument, ...* The plaintiffs argue that our interpretation of the deed of trust act should be guided by these UCC definitions, and thus *a beneficiary must either actually possess the promissory note or be the payee. ... We agree.*

Bain v. Metro. Mortgage Grp., Inc., 175 Wn.2d 83, 103-04, 285 P.3d 34 (2012) (citations omitted; emphasis supplied).

[5] Mr. Short's attempt to show the existence of a triable material fact issue by reference to the unsworn Complaint is unavailing, when Wells Fargo's sworn supporting Affidavits and discovery responses are uniform. (Petition, pp. 11-12.)

Because Chase, as the undisputed loan owner Trust's servicing agent, at all pertinent times held Mr. Short's original Note, it had authority to foreclose on behalf of the Trustee, Wells Fargo. Both the trial court's summary judgment and Division III's affirmation are correct decisions.

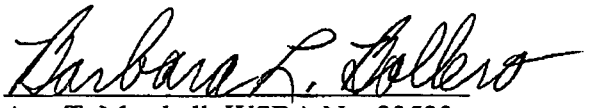
V. CONCLUSION

After the movant shows no fact issues exist, the inquiry shifts to the opposing party. *Young v. Key Pharmaceuticals,* 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the non-moving party then fails to establish the existence of an element essential to his case, the movant is entitled to summary judgment as a matter of law. *Id.,* at 225.

Here, Wells Fargo carried its summary judgment proof by uncontroverted, competent, admissible evidence. Mr. Short did not dispute the facts by introducing controverting evidence; instead, he further supported Wells Fargo's moving evidence. Accordingly, Respondent Wells Fargo respectfully requests the Petition for Review be denied.

RESPECTFULLY SUBMITTED this 14th day of July, 2014.

BISHOP, MARSHALL & WEIBEL, P.S.



Ann T. Marshall, WSBA No. 23533
Barbara L. Bollero, WSBA No. 28906
Attorneys for Respondent Wells Fargo
720 Olive Way, Suite 1201
Seattle, WA 98101

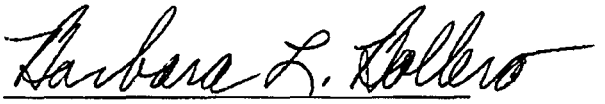
DECLARATION OF SERVICE

Barbara L. Bollero, upon oath and duly sworn, states the following is true and correct to the best of her knowledge and belief.

On July 14, 2014, I caused to be delivered in the U. S. Postal Service and via electronic mail, the foregoing Answer to Petition, addressed to the following parties:

Christopher L. Short
P. O. Box 1080
Republic, WA 99166

DATED this 14th day of July, 2014, at Seattle, Washington.



Barbara L. Bollero, WSBA No. 28906

OFFICE RECEPTIONIST, CLERK

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Importance: High

Dear Supreme Court Clerk,
Apologies, See attached please find **Respondent's Answer to Petition for Review**. The attorney's name is Barbara L. Bollero, phone: (206) 622-5306, Ext. 5918, email address is bbollero@bwmlegal.com.

Ana Todakonzie | Litigation

Bishop, Marshall & Weibel, PS.
720 Olive Way, Suite 1201, Seattle, WA 98101
Telephone (206)622-5306 | Ext.5911 | Fax (206)622-0354
Email:atodakonzie@bwmlegal.com
www.bwmlegal.com