CASE NO. 91928-3

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON
(Court of Appeals Division III, Case No. 32315-3-III)

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MICHAEL URIBE and HELEN URIBE husband and wife,

Appellants,

v.

LIBEY, ENSLEY & NELSON, PLLC, a Washington professional limited liability company; GARY LIBEY and JANE DOE LIBEY, husband and wife and the marital community comprised thereof, RANDALL RUPP AND LUZ DARYL-RUPP, husband and wife and the marital community comprised thereof; and 7HA FAMILY, LLC, a Washington limited liability company,

Respondents

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**Rupp and 7HA Family, LLC's Answer to Petition for Discretionary Review and Motion to Dismiss**

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## I. INTRODUCTION

Respondents Randall Rupp, Luz Daryl-Rupp and 7HA Family, LLC ("Rupp") agree with and join in the arguments made by Libey, et al., in their answer to the Petition for Discretionary Review. Rupp also submits the following to emphasize the arguments that pertain to Rupp.

A default notice was sent to Uribe on June 4, 2009, at which time he filed for bankruptcy protection. A trial was held on November 30, 2009, in the Bankruptcy Court. The Bankruptcy Court Judge held that Uribe's plan to reorganize was not feasible and gave him three months, until February 21, 2010, to file an acceptable plan. No acceptable plan was provided and on June 29, 2010, the Bank filed a Motion for Relief from Stay which was granted. The case was dismissed on Uribe's motion on October 29, 2010.

The Notice of Trustee's Sale and the RAST were both filed on September 8, 2010. Forty-nine (49) days elapsed between then and the date the Bankruptcy case was dismissed. The Benton County property was sold at 11:00 a.m., on December 17, 2010.

This lawsuit was not filed until October 27, 2011, one year after the Bankruptcy case was dismissed. The Rupp defendants were not added to the lawsuit until October 17, 2012, two years after the property was sold. This is the first time the two-hour technical error in recording the Notice of Trustee's Sale and the RAST was brought up in the lawsuit. In other words, Uribe's three attorneys did not discover this error for two years.

## II. ARGUMENT

Uribe claims that there are conflicts between the Supreme Court cases, other Court of Appeals cases, and this case. However, Uribe's contention is misplaced. The Supreme Court cases, the other Court of Appeals cases, the current Court of Appeals, and trial court in this case all agree. Uribe does not and has never understood that a technical error must be substantial and prejudicial before it makes a difference. Uribe cannot and has never been able to show he was prejudiced by this technical error. Specifically, Uribe argues that "strict means strict" and that Libey filed the RAST after the Notice of Trustee's Sale, which he contends means that everything following must be invalid. But, Uribe offers no authority for that contention. Obviously, when the RAST was recorded, Libey was properly appointed as the Successor Trustee and had all the authority he needed to proceed with the sales. Uribe can show no prejudice because of this two-hour delay and therefore the technical irregularity is neither substantial nor prejudicial.[1]

There is no statutory authority to set aside a sale once it has taken place. That is why the legislature provides a pre-sale remedy. Once the sale is completed, the legislature intended the purchaser to gain possession quickly and with no need for further lengthy proceedings.

The three goals of the Deed of Trust Act are: (1) the non-judicial foreclosure process should be efficient and inexpensive; (2) the process

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[1] *Vawter v. Quality Loan Serv. Corp.*, 707 F. Supp. 2d 1115 (2010) and *Galladora v. Richter*, 52 Wn. App. 778, 784, 764 P.2d 647 (1988)

should result in interested parties having adequate opportunity to prevent wrongful foreclosures; and (3) the process should promote the stability of land titles.[2] Additional considerations from *Amresco*, *supra*, are that if a trustee's deed is easy to challenge, title insurers will not insure them, secured lenders will not lend on them, and buyers will not purchase property obtained through a Trustee's Sale.[3]

Uribe admits in his Interrogatory answers that he had actual notice of Libey's lack of authority to sell the Benton County property when the instruments for the non-judicial foreclosure were recorded.[4] Further, in his Petition for Review, Uribe emphasizes his knowledge stating that "Uribe obviously had constructed notice that the Trustee [allegedly] misrepresented his authority when he recorded the Notice of Trustee's Sale."[5] Uribe filed his lawsuit against the Rupp defendants alleging that they had constructive notice based on this same fact pattern and therefore they cannot be bona fide purchasers for value. What Uribe has never admitted is that he and the Rupp defendants are in exactly the same position. If Rupp had a duty to find a technical error, so did Uribe. If Uribe had a duty to find a technical error, he also had a duty to file a pre-sale lawsuit to prevent the wrongful sale. If he failed in that duty, then he waived his right to attack the sale.[6]

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[2] *Amresco v. SPS Props.*, 129 Wn. App. 532, 538-540, 119 P.3d 884 (2005)
[3] *Id.*
[4] CPs 348-362, also see p. 8 of Libey's Answer
[5] Petition at page 20
[6] *Klein v. Lackey*, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003)

If Uribe had a duty to find the error and if it was material and prejudicial, he had an obligation to file a lawsuit to prevent the unlawful sale. If he had no such duty to investigate to find the technical error, then neither did the Rupp defendants. Either way, the Rupp defendants should not be a party to this lawsuit.

## III. MOTION

The only reason Rupp is involved in this case is based on that technical error. Rupp is not involved in any claim of damages Uribe may have against the Libey defendants.

The Court of Appeals did not address the issue that was peculiar to Rupp which was that they were bona fide purchasers for value of the Benton County property.[7] Instead, the Court of Appeals practically ignored Rupp, removed them from the caption and only mentions them once in the Opinion where it states that Uribe filed a lawsuit against the Libey defendants and the Rupp defendants.[8]

After the Court of Appeals' decision, Uribe filed a Motion for Reconsideration. The Motion for Reconsideration does not mention the Rupp defendants and does not ask the Court of Appeals to reverse its decision and consider the issue that is pertinent to the Rupp defendants.

In addition, the Petition for Review to this Court does not mention the Rupp defendants and does not ask this Court to reverse the Court of

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[7] *Biles-Coleman Lumber Company v. Victor Lesamiz, et al.*, 49 Wn.2d 436, 302 P.2d 198 (1956)

[8] See page 3 of the Unpublished Opinion

Appeals' decision and to consider any claims they allege to have against the Rupp defendants.

RAP 13.4 (a) requires that a petition for review be filed within thirty (30) days after an order is filed denying a timely motion for reconsideration. Uribe has failed to file a petition for discretionary review with this Court asking it to review any issues that pertain to the Rupp defendants. Therefore, this Court should issue an order determining that the Rupp respondents are not parties to this Petition for Discretionary Review and that the Court of Appeals should issue a mandate to the trial court dismissing Rupp from the case.

## IV. CONCLUSION

This Court should deny the Petition for Review. The decision of the Court of Appeals is consistent with all prior Supreme Court and Court of Appeals' decisions on the issues presented.

If the Petition is granted, the Rupp defendants should be dismissed from it because Uribe did not include them in their Motion for Reconsideration or in their Petition for Review.

DATED this 30th day of July, 2015.

Respectfully Submitted,

LANDERHOLM, P.S.

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Attorneys for Respondents

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This is being filed on behalf of Michael Simon, attorney for Respondents Rupp and 7HA Family, LLC.

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Supreme Court Case No. 91928-3

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