FILED
COURT OF APPEALS
DIVISION II

2014 DEC 12 PM 1:15

STATE OF WASHINGTON

BY ____
DEPUTY

No. 46333-4-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

JOHN O'NEILL, vs. CHWEN-JYE JU and FRANCES DU JU,	Plaintiff, Defendants;
and	
FRANCES DU JU, vs. CHWEN-JYE JU,	Cross-claimant pro se, Cross-defendant;
and	
FRANCES DU JU, vs. JPMORGAN CHASE BANK, N.A. and BISHOP, MARSHALL & WEIBEL, P.S.	**Appellant** and Third Party Plaintiff pro se, **Respondents** and Third Party Defendants.

APPEAL FROM CLARK COUNTY SUPERIOR COURT
The Honorable David E. Gregerson, Case No. 13-2-02571-3

REPLY BRIEF OF APPELLANT

FRANCES DU JU
Appellant pro se
P. O. Box 5934, Vancouver, WA 98668
Tel: (360) 253-4530
E-mail: frances3688@gmail.com

pm 12/10/14

Attorneys for Respondents and Third Party Defendants:

Robert J. Bocko, Esq., Herbert H. Ray, Esq. and Arthur Simpson, Esq.
Keesal, Young & Logan
1301 Fifth Avenue, Suite 3300, Seattle, WA 98101;
Attorneys for JPMorgan Chase Bank, N.A.

David A. Weibel, Esq. and Barbara L. Bollero, Esq.
Bishop, Marshall & Weibel, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101-1801;

Attorney for Plaintiff:

Jean M. McCoy, Esq.
Landerholm
805 Broadway Street, Suite 1000
P. O. Box 1086
Vancouver, WA 98666; and

Cross-Defendant:

Mr. Chwen-Jye Ju
c/o. Mr. & Mrs. Chun Chin Chu
4 Fl., 9 Chien-Kang Road, Taipei, Taiwan, ROC.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

I. APPELLANT'S REPLY 1

A. Bishop's Brief of Respondent Failed to Respond to Frances Ju's "Issues Pertaining to the Assignments of Error", Included Numerous Errors, and Falsely Accused Frances Ju's 29 pages of Pleadings as Redundant and Voluminous. Bishop even Tried to Mislead this Court about the Date it was Sued. 1

B. RAP 2.5(a) and Case Law Authorize Frances Ju to Raise the Claimed Errors for the First Time in the Appellate Court. 2

C. The State Government's Multiple Violations of Frances Ju's Constitutional Rights Made Frances Ju's Daughter Afraid of Retaliation and Unlawful Acts from the Government. 7

D. Judge Gregerson's Persistent Requests that Frances Ju Should Retain an Attorney Might Have his Hidden Agenda. 10

E. It Would be Justified if This Court Orders Setting Aside the Trustee's Sale Because the Inadequate Sale Price was Arising from Fraud and Errors during the Sale Process. 12

F. Frances Ju has Supported her Claim with Authentic Documents that Bishop and Chase Conducted "False Notarization." Judge Gregerson Should have not Granted Motions for Summary Judgment. 19

G. Chase's Brief Tried to Misinterpret Caperton v. Massey. 21

H. Frances Ju Respectfully Requests that this Court Dismiss Mr. O'Neill's Lawsuit on Forum Non Conveniens Grounds with Specific Instructions. 24

I. Respondents' Wrongful Title Page. 25

II. CONCLUSION 25

TABLE OF AUTHORITIES

Aetna Life Ins. Co. v. Lavoie, 475 U. S. 813 (1986) 21

Ayers v. Johnson & Johnson Baby Prods. Co., 117 Wash.2d 747, 753-56, 818 P.2d 1337 (1991) 20

Bain v. Metropolitan Mortgage Group, Inc., 175 Wn.2d 90, 285 P.3d 34 (2012) 20

Biggers v. City of Bainbridge Island, 162 Wn.2d 683, 693, 169 P.3d 14 (2007) 21

Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868, 880 884 (2009) 21, 23

Davis v. Aetna Life Ins. Co., 279 F.2d 304, 307-08 (9th Cir. 1960) 13

Fahn v. Cowlitz County, 93 Wash. 2d 368, 373, 610 P.2d 857 (1980) 20

Hiatt v. Walker Chevrolet Co., 120 Wn.2d, 57, 66, 837 P.2d 618 (1992) 20

In re Murchison, 349 U.S. 133 (1955) 22-23

In re Worcester, 811 F.2d 1224, 1230 n. 6 (9th Cir. 1987) 13

Klem v. Washington Mutual Bank, 176 Wn.2d 771, 295 P.3d 1179 (2013) 20

Lovejoy v. Americus, 191 P. 790, 791 (Wash. 1920) 13

Nelbro Packing Co. v. Baypack Fisheries, L.L.C., 101 Wn. App. 24
517, 523, 525, 6 P.3d 22 (2000).

State v. Donna Green, 239 P.3d 1130 (No. 63001-6-1, Court of Appeals, Div. 1, 2010) 12

State v. Koss, (No. 85306-1, Supreme Court En Banc, decided September 25, 2014) 5

State v. Snapp, 174 Wn.2d 177, 275 P.3d 289 (2012) 8
7

Tatham v. Rogers, 170 Wn. App. 76, 87, 283 P.3d 583 (2012) 4, 21

Tumey v. Ohio, 273 U.S. 510 (1927) 22

Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wash.2d 299, 314, 858 P.2d 1054 (1993) 20

Withrow v. Larkin, 421 U.S. 35 (1975) 21

I. APPELLANT'S REPLY

Pursuant to Commissioner Bearse's December 2, 2014, Corrected Ruling, Frances Du Ju files her Reply Brief of Appellant as follows.

A. Bishop's Brief of Respondent Failed to Respond to Frances Ju's "Issues Pertaining to the Assignments of Error", Included Numerous Errors, and Falsely Accused Frances Ju's 29 pages of Pleadings as Redundant and Voluminous. Bishop even Tried to Mislead this Court about the Date it was Sued.

Bishop Br. at 2-3 stated that it made no assignments of error. However, its 34 pages of Brief failed to respond to Frances Ju's "Issues Pertaining to the Assignments of Error." Bishop's Brief included numerous errors. For example, Bishop Br. at 3 stated, "Ms. Ju cross-claimed against Mr. Ju, and filed a Third-Party Complaint against Third-Party Defendants Bishop and Chase. [CP 253-65.]" CP 253-65 are Frances Ju's July 29, 2013, Summons and "Defendants' Answer, ... and Third Party Complaint." Chase's parent company, JPMorgan Chase & Co. was the Third Party Defendant (CP 255, 263-265). Bishop's February 14, 2013, Notice of Trustee's Sale clearly identified "...Charter Title Corporation, as Trustee,..." (CP 75; CP 289). Bishop did not immediately identify itself as the Successor Trustee following this statement (CP 61; CP 133; CP 151). Frances Ju did not know about Bishop's Successor Trustee's identity until after JPMorgan Chase & Co. pointed out in September 2013 that Bishop was appointed as Successor Trustee. Frances Ju did not sue Bishop in July 2013, but sued Bishop in February 2014.

Another example is that Bishop Br. at 3, 7-8, 30-31, 33 falsely accused Frances Ju of filing redundant or voluminous pleadings. FRCP 7

defines "pleadings." During the course of this litigation, Frances Ju filed 29 pages of pleadings: (1) 2 pages of Summons and 11 pages of Defendants' Answer, Affirmative Defenses, Cross Claim and Third Party Complaint in July 2013; and (2) 4 pages of Summons and 12 pages of two Amended Third Party Complaints in February 2014. It was extremely meritless for Bishop to accuse Frances Ju's 29 pages of pleadings as "redundant or voluminous." Judge Gregerson disregarded the truth and grabbed the opportunity to grant Bishop's proposed Order that included the wrongful accusation (CP 484) even though Bishop apologized and agreed to strike the language (RP 5/2/14, 6:1-7:17). This also shows Judge Gregerson's bias and prejudice towards Frances Ju.

Bishop Br. at 4 stated, "Ms. Ju's third-party claims against Bishop and Chase are unclear." Frances Ju's "Prayer for Relief" ¶¶ B, D, E, F, G and H clearly stated what judgment Frances Ju requests from the Court.

B. <u>RAP 2.5(a) and Case Law Authorize Frances Ju to Raise the Claimed Errors for the First Time in the Appellate Court.</u>

Chase Br. ¶ IV.E. at 29-33 argued, "Appellant's allegations of judicial bias should be rejected because it is being raised for the first time on appeal..." This is contradictory to RAP 2.5(a).

RAP 2.5(a) regards "Errors Raised for First Time on Review." It sates, "... a party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right."

Frances Ju's Opening Brief ¶¶ V.B. and V.E. (Pages 25-32, 38-41) specifically addressed that Judge Gregerson did not care about the statutes, court rules or case law; that based on objective considerations, reasonable perceptions, and the Due Process standard, Frances Ju did not have fair hearings in a fair tribunal; and that Judge Gregerson's double standard, bias, and prejudice have arisen to violation of Frances Ju's Due Process right under the Fourteenth Amendment to the U.S. Constitution.

The record shows that on August 12, 2013, Frances Ju filed Defendants' Motion for Order to Recuse Judge Stahnke (Sub No. 21). The Superior Court set the August 23, 2013, hearing date. Nevertheless, Judge Stahnke issued his "Order Denying Motions to Dismiss, Stay & Recuse" on August 16, 2013 (Sub No. 27), which was seven days before the scheduled hearing date. Mr. Foster did not serve his Response upon Frances Ju until the afternoon before the hearing. The Order stated, "...Plaintiff appearing through Philip A. Foster, attorney at law, and by John O'Neill,..." Mr. O'Neill did not show up at the hearing. When Judge Stahnke signed the proposed Order, he did not even cross out Mr. O'Neill's name. The issuance of the Order is Judge Stahnke's retaliation against Frances Ju's filing Defendants' Motion for Order to Recuse Judge Stahnke. Mr. Philip Foster admitted in his e-mail that he did not file a Motion for an Order for Writ of Restitution.

A real estate property is involved. Judge Stahnke disregarded the court procedures, Code of Judicial Conduct, and the Due Process Clause

of the Fourteen Amendment to rule against Frances Ju. There is no reason to believe that Judge Gregerson would have acted in a better way if Frances Ju has filed a motion for his recusal; especially when Judge Gregerson's coming to preside over this case was very suspicious and might have his unlawful goal as stated in Opening Brief ll. 15 at 5 through ll. 18 at 6. Frances Ju could not afford receiving any further retaliation from Judge Gregerson or Judge Stahnke. Did Judge Gregerson timely solicit JPMorgan Chase & Co. and Bishop that he would take care of them and grant the Motion for Summary Judgment? Did JPMorgan Chase & Co. and/or Bishop ask Judge Gregerson to take over this case to rule in their favor? Respondents did not answer these questions in their Briefs.

Chase Br. at 30 argued, "Recusal decisions lie within the sound discretion ***of the trial court.***" Tatham v. Rogers, 170 Wn. App. 76, 87, 283 P.3d 583 (2012)...". Frances Ju does not believe that Judge Gregerson would give up his plan and goal by agreeing to recuse himself from this case. The Federal Judges would have had higher standards when they face a motion for recusal even though the chance that litigants file such a motion is rare in the Federal Courts. Frances Ju could only hope that Judge Gregerson would set a tipping point of balance for himself; and that at some point, integrity for judges could make him have a change of heart. Unfortunately, throughout Judge Gregerson's presiding over this case, Frances Ju did not see "balance" and "integrity" from Judge Gregerson.

Chase Br. at 30 argued, "... on September 5, 2013,... Appellant was free to file an affidavit of prejudice pursuant to RCW 4.12.050

because Judge Gregerson had not yet made any rulings in the matter." Chase made a ridiculous statement! Frances Ju challenged Judge Gregerson's unfair decisions. Frances Ju did not have any bias or prejudice against Judge Gregerson when he "walked past where she sat at least twice and looked at her" on September 5, 2013. Frances Ju even smiled friendly to Judge Gregerson at the time. Frances Ju always keeps objective and reasonable thinking toward everyone. Without sufficient evidence, Frances Ju would not do anything that Chase falsely suggested. When the recusal decisions lie within the sound discretion of the trial judges, Frances Ju would not "do it again and suffer retaliation again" to ask for Judge Gregerson's recusal as she had asked Judge Stahnke.

In State v. Koss, (No. 85306-1, decided September 25, 2014), the Supreme Court ruled, "recent controlling precedent of this court holds that he can raise this constitutional claim for the first time on appeal and that the trial court must address several factors on the record before closing a proceeding to which the constitutional right to a public trial attaches."

On July 29, 2013, when Frances Ju filed her "Defendants' Answer, Affirmative Defenses, Cross Claim and Third Party Complaint," the first Affirmative Defense was "Jurisdiction and venue" (CP 257). Chase Br. at 7 stated, "Appellant never filed proof that her cross-claim had been served on Chwen-Jye Ju". This is a false accusation. Sub No. 10 is the Certificate of Service that Frances Ju filed with the Superior Court. It is the proper way to serve upon a cross-defendant. Mr. O'Neill failed to serve upon Mr. Chwen-Jye Ju for 16 months. Frances Ju told the Superior

Court at the hearings that RCW 4.28 specifically stated the publication of Summons; and that CR 4(d)(3) and CR 4(i) specified how to serve Mr. Chwen-Jye Ju. Chase should have challenged the lawbreaker Mr. O'Neill. Instead, Chase falsely accused Frances Ju. During the course of this litigation, Chase, Bishop and Mr. O'Neill did not comply with RAP 10.2(h) and 18.5 to serve Briefs or Motions upon Chwen-Jye Ju.

When Judge Stahnke denied "Defendants' Motion to Vacate Judgment and to Stay Enforcement of Writ of Restitution" on August 16, 2013, he did not extend the eviction date accordingly (Sub No. 27). His August 9, 2013, Order only allowed Frances Ju to stay in her home until 11:59 p.m. on Tuesday, August 20, 2013 (CP 266-67, 271-73). The Sheriff department's procedures for Writs of Restitution states, "The defendant(s) and/or other occupant(s) have three judicial days to leave on their own. These three days do not include the day the eviction notice was served or holidays and weekends." Frances Ju called the Sheriff department. Thus, Frances Ju should have had until 11:59 p.m. on Wednesday, August 21, 2013, to leave on her own. Pursuant to RCW 59.12.090, Frances Ju should have had until at least August 29, 2013, to leave on her own. Frances Ju's daughter moved out of the premises on the evening of August 20, 2013. The next morning, Frances Ju was working to remove the case to the U.S. District Court; and Mr. O'Neill prematurely brought a deputy sheriff to the premises to arrest Frances Ju.

When Frances Ju filed her Motion for Change of Venue on October 1, 2013 (Sub No. 59), Mr. O'Neill did not file a Response. It was

Chase who did (Sub No. 71). At the October 18, 2013, hearing, Judge Gregerson did not want to lose his or Judge Stahnke's grasp of this case so he denied Frances Ju's Motion (Sub No. 73). Chase's argument at 29-33 is meritless because RAP 2.5(a) and case law authorize Frances Ju to raise the issue for the first time on appeal based on Judge Gregerson's biased and unconstitutional acts.

C. The State Government's Multiple Violations of Frances Ju's Constitutional Rights Made Frances Ju's Daughter Afraid of Retaliation and Unlawful Acts from the Government.

At the June 21, 2013, Trustee's Sale, Frances Ju's daughter witnessed how Mr. O'Neill placed his winning bid after a guy kept telling people "Wow! Wow! Wow! Stop! Stop!" (RP 17:17-21). Bishop and Chase did not properly challenge this "collusive bidding" issue during the Superior Court filings; but argued the issue in the appellate process with this Court.

Chase Br. at 11 stated, 'Other than Appellants vague, inadmissible claim that "a guy" told people to stop bidding at the trustee's sale, which Appellant did not attend and thus could not have witnessed, Appellant offered no evidence in support of this implausible story. 'Bishop Br. at 19-21 also made similar argument.

The Superior Court hearings and the foreclosure sales are held on Friday mornings. There were times Frances Ju stopped by and observed how the foreclosure sales worked. People added $1 to the ongoing bids from time to time especially near the last part of the bidding; and this was

the "norm" during foreclosure sales. Nevertheless, at the foreclosure sale on Frances Ju's property, this did not happen. The bidding stopped after the guy stopped other people from bidding and Mr. O'Neill placed the winning bid of $172,500. The auctioneer should have reported this abnormal sale process to Bishop; and Bishop should have voided the June 21, 2013, Trustee's Sale. Nevertheless, Bishop and Chase did nothing (RP 4/4/14, 18:7-9).

On August 9, 2013, Frances Ju's daughter and son also attended the hearing when Mr. O'Neill's attorney did not file a Motion for an Order for Writ of Restitution and Judge Stahnke issued the unlawful 10-day Writ. Frances Ju's daughter witnessed how a State court judge was in violation of the Due Process and Equal Protection clauses of the Fourteenth Amendment to the U.S. Constitution, the State statute RCW 59.12.090, the court rule 7(b)(1), and the Code of Judicial Conduct.

On August 21, 2013, Mr. O'Neill prematurely brought a deputy sheriff to the premises. After Frances Ju told the deputy that her daughter had already left, the deputy's face turned red. (CP 372-373). After the deputy arrested Frances Ju, he searched for Frances Ju's daughter at the premises without a warrant. The August 21, 2013, arrest falls under illegal search and seizure, in violation of the 4th Amendment; Article I, Section 7 of the Washington State Constitution; and the greater protection of State v. Snapp, 174 Wn.2d 177, 275 P.3d 289 (2012). The deputy's Incident Report clearly showed that the State deprived Frances Ju of "assistance of counsel", in violation of the 6th Amendment and CrRLJ

3.1(b). When Frances Ju was in custody, all of her attempts to call attorneys and her children were unable to go through. Other women also tried to place calls for Frances Ju. However, none of the attempts was successful. The State deprived Frances Ju's right to "assistance of counsel" again. Frances Ju's daughter had to walk miles to the hospital where she was volunteering on August 22, 2013, because Frances Ju's phone call was unable to go through.

The Due Process Clause of the 14th Amendment to the U.S. Constitution promises that before depriving a citizen of life, liberty or property, the State government must follow fair procedures. The requirement that government function in accordance with law and a commitment to legality is at the heart of all advanced legal systems; and the Due Process Clause is often thought to embody this requirement and commitment. After Frances Ju's daughter witnessed the State government judge's and officers' violations of the 4th and 6th Amendments, the State Constitution and statute, and court rules; and after the deputy's threat and intimidation that his goal was to arrest the very important witness, Frances Ju's daughter; her daughter does not want to get involved. On August 21, 2013, the deputy did not ask about Frances Ju's son.

If Judge Gregerson would have kept ER 103(a)(2), ER 601, and ER 901(b)(1) in his mind and allowed Frances Ju to tell her daughter that the Judge wanted her daughter to write an Affidavit, her daughter would have complied. Bishop did not challenge the "collusive bidding" issue until its Reply, which was filed four days before the hearing. Bishop's

challenge was not stated specifically but one of the eight facts that Bishop stated. (Sub No. 158, P.5). Chase Br. at 23 stated that Frances Ju did not file "a motion for reconsideration" or "present the affidavit at the hearing on Chase's motion for entry of final judgment." Frances Ju's Opening Brief addressed Judge Gregerson's double standard, bias and prejudice throughout his presiding over this case. A motion for reconsideration would have only wasted the Court's and the parties' time and resources. There were other significant issues of material fact raised in Frances Ju's Oppositions to Chase's and Bishop's Motions for Summary Judgment; and case law requires that this case proceed to trial for the jury to decide which facts to believe. Judge Gregerson refused to make his rulings impartially. As for "present(ing) the affidavit at the hearing on Chase's motion for entry of final judgment", Chase's Motion for Judgment or its Reply did not raise the issue; nor did Judge Gregerson change his mind to allow Frances Ju to tell her daughter to file an Affidavit.

D. Judge Gregerson's Persistent Requests that Frances Ju Should Retain an Attorney Might Have his Hidden Agenda.

Chase Br. at 31-32 stated, "Judge Gregerson... politely suggested that Appellant obtain legal counsel on several different occasions. (Appellant's Br. at 12-13,14)." "Appellant contends that Judge Gregerson (1) was prejudiced against Appellant for being unrepresented (Appellant's Br. at 14)..." Chase only cited Pages 12-14; and Frances Ju addressed the issue of attorney in Pages 12-16. If Judge Gregerson had only "politely suggested that Appellant obtain legal counsel," there would be no need

that the "CD that the Superior Court produced may have been modified to some degrees. Both Ms. McCoy's clothes and Frances Ju's brown suit top lost the color of red. Otherwise, Judge Gregerson's red face when he spoke to Frances Ju in most time during the hearing would have been able to be seen." (Opening Brief, P.13-14).

Frances Ju addressed the issues about Superior Court's procrastination in disbursement of Frances Ju's Surplus Funds and the difficulty in hiring an attorney without receiving the Funds; and in dealing with attorneys in Pages 15-16 of her Opening Brief. Without money, people cannot expect that an experienced attorney would work for free on most real estate cases. The Superior Court mailed the Surplus Funds on April 1, 2014, and Frances Ju's bank put most of the funds on "hold" for seven business days. This made Frances Ju impossible to hire a capable and ethical attorney before the April 4, 2014, Summary Judgment hearing.

Most judges may come from families whose members are attorneys. Thus, the difficulty in dealing with attorneys may have been unheard of by judges. Frances Ju presented this Court with a "live example" regarding the numerous problems arising from the attorneys that the Clark County Courts assigned to Frances Ju in Pages 11-14 of her November 14, 2014, Reply Brief, which this Court treated as a Motion to Strike Bishop's Brief according to Ms. Christina Mitchell's December 1, 2014, e-mail. The appellate attorney was unwilling to withdraw before he could hurt Frances Ju further. The Judge in the criminal appellate case ordered that the appellate attorney file a supplemental briefing schedule;

and Frances Ju's ready-to-file Supplemental Brief was right before the attorney's eyes. The attorney willfully initiated an "Order Affirming Conviction" instead; and asked for Frances Ju's thought. When Frances Ju told him that she objected to what he was doing, he shrugged.

In State v. Donna Green, 239 P.3d 1130 (No. 63001-6-1, Court of Appeals, Div. 1, 2010), the court held, "The court agreed with the State that the question of whether the order was lawful was an issue of law that must be decided by the court." The District Court Commissioner's ruling, "the lawfulness (of the Writ) ... is of course a material fact..." cannot survive the criminal appellate scrutiny. Nevertheless, the appellate attorney disregarded professional standards and did not care about causing prejudice and injury to Frances Ju.

This "live example" happened in Clark County courts. The case was the only criminal case that Frances Ju ever has. During the course of the criminal case, Frances Ju had to study from the very basic criminal law terminology to the unfamiliar statues and complicated case law. Is having attorneys like Frances Ju had better than when Frances Ju could represent herself to protect her rights and let the Courts be well informed of the truth? Judge Gregerson's persistent requests that Frances Ju should retain an attorney may have his agenda; such as making this "live example" recur in Judge Gregerson's courtroom.

E. It Would be Justified if This Court Orders Setting Aside the Trustee's Sale Because the Inadequate Sale Price was Arising from Fraud and Errors during the Sale Process.

RCW 61.24.127(1) states,

> The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages asserting:
>
> (a) Common law fraud or misrepresentation;
> (b) A violation of Title 19 RCW;
> (c) Failure of the trustee to materially comply with the provisions of this chapter; ...

Chase Br. ¶ IV.C. at 14-27 argued, "Summary Judgment was appropriate because Appellant's First Cause of Action was legally and factually baseless." Actions to set aside a nonjudicial foreclosure sale are equitable in nature. In re Worcester, 811 F.2d 1224, 1230 n. 6 (9th Cir. 1987). The overwhelming majority of states that permit nonjudicial foreclosure adhere to some version of the same general rule regarding set asides. The general rule is that the court has the equitable power to set aside a nonjudicial foreclosure sale if (1) the property was purchased for an inadequate price at auction; and (2) the debtor can show irregularity, unfairness, or fraud in connection with the sale. Lovejoy v. Americus, 191 P. 790, 791 (Wash. 1920) (great inadequacy of price requires only slight unfairness in the conduct of the party benefited by the sale to raise the presumption of fraud.) Due to an overriding public policy that no person is able to profit from his own wrongdoing, the Courts have found that wrongdoers forfeit rights to any money that they might otherwise have had. Davis v. Aetna Life Ins. Co., 279 F.2d 304, 307-08 (9th Cir. 1960).

After Mr. O'Neill was in violation of RCW 61.24.135(1) to obtain the premises at an inadequate price of $172,500, the auctioneer should have reported the fraud to Bishop. Bishop should have had obligation to examine the bidding record. At Trustee's Sales, people added $1 to the

ongoing bids from time to time especially near the last part of the bidding; and this was the "norm" during foreclosure sales. Nevertheless, at the foreclosure sale on Frances Ju's property, this did not happen. RCW 61.24.010(4) states, "The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor." Bishop was in violation of RCW 61.24.127(1)(c), "Failure of the trustee to materially comply with the provisions of this chapter."

Chase Br. at 14 stated, "Appellant did not dispute the sales price, the fair market value, or the tax-assessed value before the trial court." This is not true. Frances Ju clearly stated in her Oppositions to motions for Summary Judgment, "Third Party Plaintiff relies on the Declaration of Frances Du Ju, and the pleadings and documents filed in this case." (CP 131, 155). Frances Ju addressed the issues in ¶ V.E. "The Trustee chose to adopt 37% of the fair market value, instead of 52%, as the opening bid price to result in or contribute to a grossly inadequate sale price"; and ¶ V.F. "Grossly inadequate sale price and errors during the sale process make setting aside the Trustee's Sale proper." (CP 355-359). Frances Ju also presented to the Superior Court an exhibit (CP 149) and stated in her Oppositions that she received from Clark County a week before the June 21, 2013, Trustee's Sale regarding the assessed value of $232,678 to prove that Chase's statement, "The Property was sold for... 81 percent of its tax-assessed value ($211,951.00)" was inappropriate and misleading. Mr. O'Neill only paid 74.1% of the tax-assessed value after he was in violation of RCW 61.24.135(1). (CP 137, 162).

Pages 18-20 of Frances Ju's Opening Brief addressed the issues that (1) the erroneous opening bid price of $95,814.82 that Bishop and Chase identified in the Affidavit and Motion was "an error with the trustee foreclosure sale process" under RCW 61.24.050(2)(a)(i); (2) Mr. O'Neill's violation of RCW 61.24.060 kept Frances Ju from making the challenge and declaration within 10 days under RCW 61.24.050(2)(a); (3) Mr. O'Neill monetary gain of "$109,500 minus his costs" in 9 months was from his violations of RCW 61.24.135(1); and (4) Bishop should have set aside the Trustee's Sale. Mr. O'Neill should not be allowed to profit from his fraud and wrongdoing. The profit of "$109,500 minus his costs" in 9 months also proves that the sale price of $172,500 at the Trustee's Sale is inadequate. Most purchasers of the Trustee's Sales cannot make such a big percentage of profit in 9 months. This is very unfair not only to Frances Ju, but also to other bidders who wanted to purchase the premises at the June 21, 2013, Trustee's Sale. Mr. O'Neill is a lawbreaker and wrongdoer; and Bishop and Chase are not law-binding business entities. Judge Gregerson's double standard, bias, prejudice, and inappropriate protecting Mr. O'Neill, Bishop and Chase will have a chilling effect to the public. To help foster trust in our judicial system, and allow members of the public to see justice done in their communities; Frances Ju respectfully requests that this Court hold Mr. O'Neill, Bishop and Chase liable; and reverse and remand the case with specific instructions.

Chase Br. at 16 stated, 'Appellant's contention that "Mr. O'Neill sold the premises at $282,000 on April 1, 2014," while legally

insignificant in light of the above, is unsupported by any evidence that was submitted to the trial court. Appellant's Br. at 43).' Chase lied to this Court again. On April 30, 2014, Frances Ju presented an exhibit (CP 203) that the Clark County Property Information "Account Summary" showed that the premises was transferred to Mr. and Mrs. Jones on April 1, 2014, under a Special Warranty Deed. (CP 205). Frances Ju also challenged Chase, "After Frances Ju served Chase the Amended Third Party Complaint in February 2014, Chase has plenty of time to set aside the Trustee's Sale before Mr. O'Neill sold the premises at $282,000 on April 1, 2014... This issue, along with other issues, is direct and substantial matter that is not theoretical or hypothetical. The foreclosed homeowners are vulnerable to unfair or deceptive act or practice at the Trustee's Sale held by Beneficiaries or Trustees. Absent direction from the Court, Beneficiaries and Trustees may continue to do so. Frances Ju' request for declaratory and other relief meets all four justiciability requirements, and her request should proceed." (CP 211).

Chase Br. at 25 stated, "Washington law does not obligate the beneficiary of a deed of trust to make *any bid* at all. Chase was in full compliance with the Deed of Trust Act..." Bishop Br. at 17-18 also made similar argument. While the Deed of Trust Act does not require that the beneficiary, Chase, bid at the Trustee's Sale, it is important that Chase should have not perjured in the document that it filed with the Court. Chase stated, "At the time of the trustee's sale, the obligation secured by the Deed of Trust amounted to $95,814.82. Weibel Aff., Exh. 7...

JPMorgan Bank bid this amount as a credit bid at the trustee's sale, and this credit bid was the opening bid at the sale." (CP 333-334). This is contradictory to Chase's argument in Page 24 of its Brief; and Frances Ju has showed the Courts that this is a false statement.

Chase Br. at 24 argued,

> Appellant appears to argue that there was a "per se violation" of RCW 61.24.050(2)(a)(i) because of some apparent confusion on the part of David A. Weibel, who stated in his declaration dated September 6 that "JPMorgan Chase Bank credit bid $95,814.82" while he corrected in a declaration dated March 4, 2014, that "Bishop caused a credit bid for Chase to be made in the amount of $95,798.49." (CP 36, 276).

On October 4, 2013, Frances Ju's Opposition stated that Chase's Motion and Mr. Weibel's Affidavit lied about the opening bid price. Frances Ju then invoked RCW 61.24.050(2)(a)(i) that "an erroneous opening bid amount made by or on behalf of the foreclosing beneficiary at the trustee's sale" was "an error with the trustee foreclosure sale process". (CP 345, 358). There were 5 months between October 4, 2013, and March 4, 2014. Mr. Weibel had plenty of time to figure out how to "correct" his previous "confusion"; and either he falsified the accounting or he lied in his March 4, 2014, Declaration. Opening Brief at 19 stated, 'At the April 4, 2014, hearing, Frances Ju told Judge Gregerson, "Even people who did not take any accounting could claim and falsify that there was an additional cost of $16.33. Bishop must provide proof why this $16.33 was legitimate to serve as the principle of accounting." (RP 4/4/14, 25:2-5).'

Bishop Br. at 5-6 stated, "Bishop argued it satisfied its RCW 61.24.010(4) good faith duty to Ms. Ju and complied with the DTA by several means, including:... 6. Depositing the surplus funds, as required,

and serving Ms. Ju notice of that deposit on a date of its choosing…" The fact that Bishop withheld $75,819.44 of Surplus Funds in its pocket for forty-eight days before it filed the funds with the Superior Court made Frances Ju unable to obtain a "bridge loan" from her relatives. Frances Ju had no financial ability to rent a place or move to comply with the 20-day time frame that the Washington legislative set. It took an additional eleven days for Bishop to file Declaration of Mailing. (Sub No. 1 to 5 of Case No. 13-2-02832-1). Bishop still claimed that it satisfied its 61.24.010(4) good faith duties to Frances Ju without hesitation. Starting September 20, 2013, Frances Ju sent e-mails to Bishop asking for the complete information and accounting regarding the Surplus Funds (CP 359). Bishop has still not responded to Frances Ju's requests.

Bishop Br. at 4, 6-7, 32-33 addressed Frances Ju's settlement attempts. To reach an amicable resolution of the case, Frances Ju sent Bishop Settlement offers independent from other parties. Bishop Br. at 4 stated, "In short – other than Bishop's refusal to settle – Ms. Ju's claims against Bishop arise from its duty of care to her as foreclosing Trustee." In fact, as Frances Ju stated in Pages 8 and 14 *supra*, the auctioneer should have reported the abnormal sale process, violation of RCW 61.24.135(1), and fraud to Bishop; and Bishop should have examined the bidding record and voided the Trustee's Sale. Instead, Bishop transferred the Deed to Mr. O'Neill. Bishop did not comply with its 61.24.010(4) good faith duties to Frances Ju. Bishop was in violation of RCW 61.24.127(1)(c), "Failure of the trustee to materially comply with the provisions of this chapter."

Bishop Br. at 19 argued, "a challenge seeking sale avoidance must be brought within 10 days after the sale under RCW 61.24.050(2)(a)" Opening Br. at 17 stated that Mr. O'Neill did not send any written notice, in violation of RCW 61.24.060.

F. **Frances Ju has Supported her Claim with Authentic Documents that Bishop and Chase Conducted "False Notarization." Judge Gregerson Should have not Granted Motions for Summary Judgment.**

Chase Br. at 27-28 argued, 'Appellant did not support her claim that Chase was engaged in "False Notarization" with any evidence.' Bishop Br. at 13-14 also made the similar argument. These are not true. Frances Ju addressed the issue of "False Notarization" throughout her Oppositions to the Motions for Summary Judgment as shown in Pages 3, 12, 32-35. 38. 43-45 of her Opening Brief. The evidence that Frances Ju showed Judge Gregerson regarding "False Notarization" was the documents that Bishop and Chase filed with the Superior Court, including Affidavit and Declaration filed by Mr. David Weibel. Unless Bishop or Chase challenges the authenticity of its own documents, Frances Ju has supported her claim with authentic documents that Bishop and Chase conducted "False Notarization".

Judge Gregerson disregarded Frances Ju's Oppositions that Chase's and Bishop's documents might have been falsely notarized and that Bishop or Weibel did not include any evidence that Bishop published the Trustee's Sale in the newspaper (CP 139 ll.3-4; CP 164 ll.23-24) to comply with RCW 61.24.040(3); and did not rule that the Jury will decide

on the false notarization issue and that Chase and Bishop should have included a copy of the publications. The two cases: Bain v. Metropolitan Mortgage Group, Inc., 175 Wn.2d 90, 285 P.3d 34 (2012) and Klem v. Washington Mutual Bank, 176 Wn.2d 771, 295 P.3d 1179 (2013) made Frances Ju mention the possible false notarization of documents by the trustee. Frances Ju cited Klem, "The trustee argues as a matter of law that the falsely notarized documents did not cause harm. The trustee is wrong; a false notarization is a crime and undermines the integrity... There remains, however, the factual issue of whether the false notarization was a cause of plaintiff's damages. That is, of course, a question for the jury. Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wash.2d 299, 314, 858 P.2d 1054 (1993) (citing Ayers v. Johnson & Johnson Baby Prods. Co., 117 Wash.2d 747, 753-56, 818 P.2d 1337 (1991))..." "The moving party (in a summary judgment) has the initial burden of showing there is no dispute as to any issue of material fact." Hiatt v. Walker Chevrolet Co., 120 Wn.2d, 57, 66, 837 P.2d 618 (1992). Bishop and Chase did not meet this burden of proof. The court's inquiry is whether there is a genuine issue as to any material fact and whether the moving party is entitled to judgment as a matter of law. Fahn v. Cowlitz County, 93 Wash. 2d 368, 373, 610 P.2d 857 (1980). "If we determine there is a dispute as to any material fact, then summary judgment is improper." Hiatt, 120 Wash. 2d at 65. As the nonmoving party at summary judgment, Frances Ju is entitled to all facts and inferences drawn in her

favor. Biggers v. City of Bainbridge Island, 162 Wn.2d 683, 693, 169 P.3d 14 (2007).

G. Chase's Brief Tried to Misinterpret Caperton v. Massey.

Chase Br. at 32 ll. 6-10 stated,

> As the Tatham court stated, "'[M]ost matters relating to judicial disqualification [do] not rise to a constitutional level' and that '[p]ersonal bias or prejudice alone would not be sufficient basis for imposing a constitutional requirement under the Due Process Clause.'" *Id.* (quoting *Massey,* 556 U.S. at 876).

Frances Ju cited Caperton v. A.T. Massey Coal Co., Inc., 556 U.S. 868 (2009) in Page 23 of her "Summary of Argument"; Pages 26-30 of ¶V.B. "Judicial Impartiality and Due Process Clause of the Fourteenth Amendment"; and Pages 38-41 of ¶V.E. "Double Standard, Bias, and Prejudice may have played a vital role in Judge Gregerson's granting Chase's and Bishop's Motions against Frances Ju." The Caperton decision immediately before the Chase's quotation was:

> '"[n]o man is allowed to be a judge in his own cause; because his interest would certainly bias his judgment, and, not improbably, corrupt his integrity." The Federalist No. 10, p. 59 (J. Cooke ed. 1961) (J. Madison); see Frank, Disqualification of Judges, 56 Yale L. J. 605, 611-612 (1947) (same). Under this rule, "disqualification for bias or prejudice was not permitted"; those matters were left to statutes and judicial codes. *Lavoie, supra,* at 820; see also Part IV, *infra* (discussing judicial codes.)'

Also, immediately after the Chase's quotation, the Caperton decision stated,

> 'As new problems have emerged that were not discussed at common law, however, the Court has identified additional instances which, as an objective matter, require recusal. These are circumstances "in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable. *Withrow*, 421 U.S., at 47. To place the present case in proper context, two instances where the Court has required recusal merit further discussion.'

The two instances that the U.S. Supreme Court discussed were Tumey v. Ohio, 273 U.S. 510 (1927); and In re Murchison, 349 U.S. 133 (1955). In Murchison, "in the criminal contempt context, where a judge had no pecuniary interest in the case but was challenged because of a conflict arising from his participation in an earlier proceeding. This Court characterized that first proceeding (perhaps pejoratively) as a "one-man grand jury."

On January 2, 2014, Frances Ju filed Defendant's Motion for Contempt pursuant to Chapter 7.21 RCW. Frances Ju addressed in ¶¶ III.C, III.D and III.H that plaintiff Mr. O'Neill's contempt was beyond Civil Contempt (Sub No. 107, pp. 6-8, 11). On January 9, 2014, Judge Gregerson's judicial assistant, Ms. Stockman, sent the parties an e-mail stating, "Please be advised that Judge Gregerson is striking this hearing for January 10, 2014. It will need to be recited for when Mr. O'Neill is available after February 6, 2014." (Sub No. 119, Ex. C). Even though Mr. O'Neill did not file a "Notice of Unavailability," Judge Gregerson continued the hearing. On January 24, 2014, Frances Ju filed Defendant's Motion for Order to Show Causes with the Ex Parte department. Commissioner Carin Schienberg granted the Motion and issued Order to Show Causes re Contempt (Sub No. 115) requiring Mr. John O'Neill to appear before Judge Gregerson at the February 7, 2014, hearing. This was clearly "in the criminal contempt context." Nevertheless, Judge Gregerson still presided over the February 7, 2014, hearing. He did not

care about "a judge... was challenged because of a conflict arising from his participation in an earlier proceeding" and "one-man grand jury" as the U.S. Supreme Court identified in Murchison. He ruled against Frances Ju's Motion for Contempt and ordered that Frances Ju pay $800.00 attorney's fees to Mr. O'Neill. This Court did not want to grant a Discretionary Review (Case No. 46003-3-II) so Frances Ju has to pursue this part after the case is concluded at the Superior Court. This shows Judge Gregerson's bias, prejudice, and his desire to unfairly protect Mr. O'Neill regardless of the U.S. Supreme Court's ruling.

"If the judge discovers that some personal bias or improper consideration seems to be the actuating cause of the decision or to be an influence so difficult to dispel that there is a real possibility of undermining neutrality, the judge may think it necessary to consider withdrawing from the case." Caperton v. Massey at 880. "It is true that extreme cases often test the bounds of established legal principles, and sometimes no administrable standard may be available to address the perceived wrong. But it is also true that extreme cases are more likely to cross constitutional limits..." Caperton at 884. Frances Ju respectfully requests that this Court review this extreme case because Judge Gregerson crossed constitutional limits. Judge Gregerson's bias and prejudice have arisen to violation of Frances Ju's Due Process right under the Fourteenth Amendment to the U.S. Constitution.

This extreme case might be a tip of iceberg. It is possible that Frances Ju was not the only foreclosed homeowner who was the victim of

this organized lawbreakers' ring. Other vulnerable victims may not have the means to pursue their cases when they did not have the money to hire attorneys and were not able to protect their rights in the court of law.

H. Frances Ju Respectfully Requests that this Court Dismiss Mr. O'Neill's Lawsuit on Forum Non Conveniens Grounds with Specific Instructions.

Bishop Br. at 27-28 cited Nelbro Packing Co. v. Baypack Fisheries, L.L.C., 101 Wn. App. 517, 523, 525, 6 P.3d 22 (2000). Nelbro involved forum non conveniens issue. Mr. O'Neill sued Chwen-Jye Ju and Frances Ju on July 22, 2013. Frances Ju addressed at the Superior Court hearings numerous times that RCW 4.28 specifically stated the publication of Summons; and that CR 4(d)(3) and CR 4(i) specified how to serve Mr. Chwen-Jye Ju. For 16 months, Mr. O'Neill has still not served upon Mr. Chwen-Jye Ju. Mr. Chwen-Jye Ju has resided and worked in Taiwan for more than a decade. Mr. O'Neill's Complaint for Unlawful Detainer and Eviction Summons has been accomplished on August 21, 2013, "Invalid Eviction", as the Clark County District Court Judge, the Honorable John P. Hagensen, identified. Judge Gregerson does not want to lose his or Judge Stahnke's grasp of this case. This Court's October 31, 2014, Letter of Sanctions wanted Mr. O'Neill to file his Respondent's Brief to this appeal; but Mr. O'Neill did not want to.

As a matter of law, Mr. O'Neill's suit should be dismissed on forum non conveniens grounds. Frances Ju respectfully requests that this Court dismiss Mr. O'Neill's suit; that this Court specify a deadline for Mr.

O'Neill to re-file his suit in Taiwan or at the U.S. District Court in Tacoma, Washington; and that this Court authorize Frances Ju to file her Counterclaim, and re-file her Cross Claim and Third Party Complaint at the U.S. District Court in Tacoma, Washington.

I. Respondents' Wrongful Title Page.

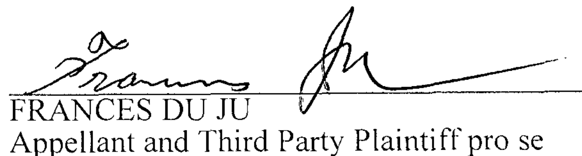
RAP 3.4 states, 'The title of a case in the appellate court is the same as in the trial court except that the party seeking review by appeal is called an "appellant," the party seeking review by discretionary review is called a "petitioner,"...' Both Bishop and Chase willfully created an inappropriate title for the Respondent's Briefs.

II. CONCLUSION

Based upon the forgoing and the Opening Brief of Appellant, Frances Ju respectful requests (1) that this Court review and reverse Judge Gregerson's rulings and remand the case; (2) that this Court dismiss Mr. O'Neill's suit and specify a deadline for Mr. O'Neill to re-file his suit in Taiwan or at the U.S. District Court in Tacoma; and (3) that this Court authorize Frances Ju to file her Counterclaim, and re-file her Cross Claim and Third Party Complaint at the U.S. District Court in Tacoma, WA.

DATED this 10th day of December, 2014.

Respectfully Submitted,



FRANCES DU JU
Appellant and Third Party Plaintiff pro se

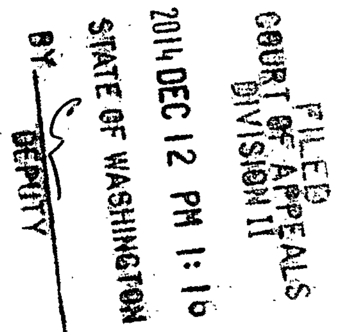
AFFIDAVIT OF PROOF OF SERVICE
Court of Appeals case No.: 46333-4-II

I, Frances Du Ju, hereby certify under penalty of perjury of the laws of the State of Washington that on **December 10, 2014,** I served the Reply Brief of Appellant on the following named persons:

(a) by e-mail and First Class Mail:

Robert J. Bocko, Esq., Herbert H. Ray, Esq. and Arthur Simpson, Esq.
Keesal, Young & Logan
1301 Fifth Avenue, Suite 3300, Seattle, WA 98101;

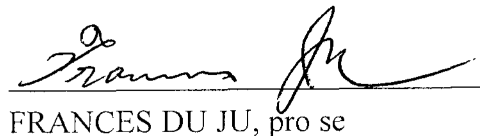
David A. Weibel, Esq. and Barbara L. Bollero, Esq.
Bishop, Marshall & Weibel, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101-1801;



Jean M. McCoy, Esq.
Landerholm
805 Broadway Street, Suite 1000
P. O. Box 1086
Vancouver, WA 98666; and

(b) by First Class International Mail, postage prepaid:
Mr. Chwen-Jye Ju
c/o. Mr. & Mrs. Chun Chin Chu
4 Fl., 9 Chien-Kang Road, Taipei, Taiwan, ROC.

Signed in Vancouver, Washington on December 10, 2014.



FRANCES DU JU, pro se