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SUPREME COURT  
STATE OF WASHINGTON  
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No. 73016-9

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IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

LORINA DELFIERRO,

**FILED**

Appellant,

**EMAR 7 2016**  
WASHINGTON STATE  
SUPREME COURT

v.

BSI FINANCIAL SERVICES; DEL TORO LOAN SERVICING, INC.;  
MARINERS INVESTMENT FUND, LLC; MARINERS INVESTMENT FUND II  
REO, LLC; MARINERS SECOND FUND II REO, LLC; SECOND MARINERS  
INVESTMENT FUND II REO, LLC; SECOND MARINERS RES FUND II REO,  
LLC; AMERICAN DEFAULT MANAGEMENT; PENSICO TRUST COMPANY  
CUSTODIAN FBO JEFFERY D. HERMANN, IRA ACCOUNT NUMBER  
20005343; April Smith in her individual and official capacity; Teresa Cenicerros in  
her individual capacity; Jeffery D. Hermann in his individual capacity; Jennifer Tait  
in her individual and official capacity; and Steve Olson, in his individual capacity  
and in his official capacity,

Respondents.

**RESPONDENTS' BRIEF**

*-CDS to DRU-*

Wesley Werich, WSBA No. 38428  
Nicolas Daluiso, WSBA No. 23505  
Joe Solseng, WSBA No. 16855  
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ORIGINAL

**TABLE OF CONTENTS**

A. IDENTITY OF RESPONDENT.....1

B. COURT OF APPEALS DECISION.....1

C. ISSUE PRESENTED FOR REVIEW.....1

D. STATEMENT OF THE CASE.....2

E. ARGUMENT.....3

F. CONCLUSION.....5

**TABLE OF AUTHORITIES**

**Cases**

*Davis v. Dep't of Labor & Indus.*  
94 Wn.2d 119, 124, 615 P.2d 1279 (1980).....4

*In re Personal Restraint of Duncan,*  
167 Wn.2d 398, 402-03, 219 P.3d 666 (2009).....4

*Port of Seattle v. Pollution Control Hr'gs Bd.*  
152 Wn.2d 568, 588, 90 P.3d 659 (2004).....4

*Raven v. Dep't. of Soc. & Health Servs.,*  
177 Wn.2d 804, 817, 306 P.2d 20 (2013).....4

*Ridgeway Props. V. Starbuck,*  
96 Wn.2d 716, 719, 638 P.2d 1231 (1982).....4

*Rivers v. Wash. State Conf. of Mason Contractors,*  
145 Wn.2d 674, 684, 41 P.3d 1175 (2002).....5

*Salas v. Hi-Tech Erectors,* 168 Wn.2d 664, 669, 230 P.3d 583 (2010).....4

*State v. Stenson,* 132 Wn.2d 668, 701 940 P.2d 1239 (1997).....4

**A. IDENTITY OF RESPONDENT**

Respondents MARINERS INVESTMENT FUND II REO, LLC; MARINERS SECOND FUND II REO, LLC; SECOND MARINERS INVESTMENT FUND II REO, LLC; MARINERS INVESTMENT FUND, LLC (“Mariners Entities”); PENSICO TRUST COMPANY CUSTODIAN FBO JEFFERY D. HERMANN, IRA ACCOUNT NUMBER 20005343 (“PENSICO”); MERCHANTS BONDING INSURANCE COMPANY; Steve Olson; April Smith; and Jeffery D. Hermann respectfully request this Court deny Petitioner’s Petition for Discretionary Review.

**B. COURT OF APPEALS DECISION**

Del Fierro is appealing the decision in Del Fierro v. BSI Financial Services et al., Court of Appeals No. 73016-9, filed on November 16, 2015 and the Order Denying Appellant’s Motion for Reconsideration dated December 9, 2015.

**C. ISSUE PRESENTED FOR REVIEW**

Should this Court accept review of this case where the Court of Appeals’ decision is not in conflict with a Washington Supreme Court decision nor another Court of Appeals decision, does not involve a significant question of law under the Constitution of the State of Washington or of the United States, and does not involve an issue of substantial public interest?

#### **D. STATEMENT OF THE CASE**

In 2007, Lorina Del Fierro refinanced a mortgage she had on the property commonly known as 4009 SW 323rd Street, Federal Way, Washington ("Property"). The mortgage was for \$572,850.00, Equifirst Corporation was the lender, and it was secured by a deed of trust on the Property.

Equifirst Corporation sold its interest in the loan to Sutton Funding LLC. Sutton Funding LLC sold its interest to FCDB FF1, LLC on September 12, 2008. On April 14, 2009, FCDB FF1, LLC, as part of a group of entities known collectively as Fortress Investment Group, sold their interests in a number of residential first lien mortgage loans, including Del Fierro's loan to Second Mariners Investment Fund II REO, LLC, and Mariners Investment Fund II, LLC ("Mariners"). As part of this sale, the Fortress Investment Group provided Mariners with the original Note.

Del Fierro defaulted on the loan and Mariners initiated foreclosure in early 2009. The Property reverted back to Mariners at the foreclosure sale and Mariners moved to evict Del Fierro. At the eviction trial, the court voided the foreclosure sale because the foreclosing trustee had misled Del Fierro about postponing the sale date.

In 2010, Mariners again initiated foreclosure proceedings on the Deed of Trust. In response, Del Fierro filed for Chapter 13 bankruptcy. Del Fierro converted her bankruptcy action to a Chapter 11 in August, 2011. Del Fierro's bankruptcy action was dismissed in November, 2012.

On May 19, 2011, Mariners sold its interest in the loan to Pensco. At the time, the law firm of Robinson Tait, P.S., represented both Mariners and Pensco. Mariners had sent the original Note to Robinson Tait, P.S. for use in Del Fierro's bankruptcy. On April 3, 2012, Robinson Tait, P.S. returned the original Note to Mariners with the understanding that Mariners would then forward the Note to Pensco. The Note was received by Mariners but then misplaced and never forwarded to Pensco. At the trial that led to this appeal, several witnesses testified to the exact events that led to the Note being misplaced. Robinson Tait, P.S. also produced a color copy of the original Note.

Del Fierro sued numerous entities in King County Superior Court. Following trial, the trial court entered judgment in favor of the defendants and dismissed all of Del Fierro's claims. Del Fierro appealed, and the Washington Court of Appeals upheld the trial court's decision. Del Fierro asked the Court of Appeals to reconsider its decision, but that motion was denied. This Motion for Discretionary Review followed.

#### **E. ARGUMENT**

Del Fierro's confusing jumble of arguments do not lay out any basis for Supreme Court review per RAP 13.4(b). All she does is reiterate the same arguments that she was not able to prove at trial and were rejected by the Court of Appeals. Although she now frames them in terms of due process violations by the trial court, her arguments remain the same and are without merit.

Once a trial court has reviewed the evidence in a case, review is limited to determining whether the trial court's findings are supported by substantial evidence, and if so, whether those findings support the conclusions of law. *Ridgeway Props. V. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982). Findings of fact will be upheld on appeal if they are supported by "a sufficient quantity of evidence to persuade a fair-minded person of [the order's] truth or correctness." *Raven v. Dep't. of Soc. & Health Servs.*, 177 Wn.2d 804, 817, 306 P.2d 20 (2013) (quoting *Port of Seattle v. Pollution Control Hr'gs Bd.* 152 Wn.2d 568, 588, 90 P.3d 659 (2004)). The reviewing court should not substitute their judgment for that of the trial court or weigh evidence or credibility of witnesses. *Davis v. Dep't of Labor & Indus.* 94 Wn.2d 119, 124, 615 P.2d 1279 (1980).

A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010). A trial court abuses its discretion when its decision "is manifestly unreasonable or based on untenable grounds or reasons." *Id.*, quoting *State v. Stenson*, 132 Wn.2d 668, 701 940 P.2d 1239 (1997)). A "manifestly unreasonable decision is one that adopts a view that no reasonable person would take." *Id.*, (quoting *In re Personal Restraint of Duncan*, 167 Wn.2d 398, 402-03, 219 P.3d 666 (2009)). A decision is based on untenable grounds or reasons if the trial court applies the wrong legal standard or relies on unsupported facts. *Id.*, Review of a trial court's sanctions for a party's noncompliance with discovery orders is also based

on the abuse of discretion standard. *Rivers v. Wash. State Conf. of Mason Contractors*, 145 Wn.2d 674, 684, 41 P.3d 1175 (2002).

All of Del Fierro's arguments were previously made at the trial court and appellate level and correctly rejected by those tribunals. Although she now cloaks them in claims of due process violations in a futile attempt to make them reviewable yet again, this obvious attempt at getting around the requirements of RAP 13.4(b) should be rejected.

Del Fierro's numerous complaints about the alleged insufficiency of the evidence, alleged problems with the title documents, and alleged fraud have been fully vetted and rejected. As the record below shows, she has vocally and repeatedly made all of these claims previously but was unable to prove any of them. She still believes she is entitled to a free house after failing to make any mortgage payments for the last nine years.

Clearly the trial court did not abuse its discretion in the admission or rejection of evidence nor in how that evidence was weighed in reaching its findings of fact and conclusions of law. Ms. Del Fierro's abuse of the legal process to continue living in her house without paying the mortgage she took out to pay for it must come to an end.

**F. CONCLUSION**

Because Del Fierro has utterly failed to raise any issue worthy of Supreme Court review and all of her claims have been fully vetted at the trial and appellate court level, her request for discretionary review should be denied.

Respectfully submitted this 8<sup>th</sup> day of February, 2016.

By: /s/ Joe Solseng  
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CERTIFICATE OF SERVICE

I, Natalie Quarnstrom, hereby certify under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am a paralegal at Robinson Tait, P.S., attorneys for Appellant, and am competent to be a witness herein.

On February 8, 2016, I caused to be served via first class, U.S. Mail a true and correct copy of the foregoing RESPONDENTS' BRIEF to the following:

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DATED this 8<sup>th</sup> day of February 2016.

/s/ Natalie Quarnstrom  
Natalie Quarnstrom

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**Subject:** Filing/Del Fierro/Case: 60330-0111-JUD-1

**Case Name:** Lorina Del Fierro v. BSI Financial Services, et al.

**Case Number:** 73016-9

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Hello,

Attached, please find our Respondent's Brief we are submitting for filing. Please advise if any further information is necessary in order to complete the filing.

Thank you!

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For escalation, please contact my Managing Attorney, Nicolas Daluiso at [ndaluiso@robinsontait.com](mailto:ndaluiso@robinsontait.com) or (206) 876-3268.

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