

FILED
OCT 25 2016
WASHINGTON STATE
SUPREME COURT

SC # 93750.0
73724-4

No. 15-2-0040-7SEA

DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

JOSEPH LUCAS, III; U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE LOAN
TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES 2006-3;
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC; AND JOHN DOE 1-50

Respondents,

v.

Jeff Bailey

Petitioner,

PETITION FOR REVIEW

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COURT OF APPEALS
STATE OF WASHINGTON

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IDENTITY OF APPELLANT

Jeff Bailey

10743 56th Avenue

Seattle, Washington 98178

The trial court erred in terminating and failing to uphold Bailey's contract with Lucas III, specifically violating Article I, Section 10 of the U.S. Constitution. Bailey is assigned the duty of defending contract against any outside assails and the courts determination that subject contract was subordinate to Deed of Trust encumbrance failed to take into consideration whether the particular parties involved in this litigation were, in fact, real parties of interest and "Note Holders" as defined by the Note Contract between Lucas, III and OWNIT.

See order attached

STATEMENT OF CASE

1. Bailey entered into a Real Estate Contract with Lucas III, in which Lucas III did grant to Bailey interest in said property and the right and obligation to defend the position of the contract and possession of the property. See Sub#7-Amended Complaint at point 7 & Exhibit 1.
2. Respondent Lucas III, did execute a Deed of Trust and Note in favor of OWNIT and MERS was nominated as beneficiary in the subject Deed of Trust.
3. Respondent Lucas III did file fail to continue payments in accordance with Note and did file Bankruptcy in 2012, though Appellant did not fail to make payments to Lucas III.
4. Respondent Lucas III failed to determine and challenge the relevant entities as "Note Holders" as defined by Note and therefore determine the real party in interest.

5. Respondent Lucas III further failed to discern that the encumbrance that was held by MERS on behalf of OWNIT was extinguished according to controlling New York law.^(see 4)
6. The trial court granted respondents Motion to Dismiss on Friday June 12, 2015.
7. Appellate did file a motion for continuance prior to the hearing held on June 12, 2015.
8. Trial court granted respondents motion to dismiss and appellant filed motion for consideration on June XX, 2015, which the trial court stated was untimely in error.

ARGUMENT

9. The appellate court erred when it computed the timeline as seventeen days because it counted the weekend days of Saturday and Sunday following the order that was issued on the 12th of June. Furthermore, Bailey did file his Motion on June 26th and not June 29th.

See
10. The Trial court did err and violated U.S. Constitution Article I, Section 10 when it stripped Appellant of his right to enforce and defend Contract between Appellant and Defendant Lucas III by the order issued at Sub#16A-Order granting Defendant's motion to dismiss with prejudice. The trial court's dismissal, specifically, with prejudice causes irreparable harm to Appellant's right and obligation to defend Appellant's interest in subject property and Appellant's right to due process. Appellant's contract with Respondent Lucas III provided Appellant with the right and obligation to possession and an interest in said property. Respondent Trustee, by way of counsel states that Appellant

is a stranger to the mortgage loan, yet Respondent Lucas III did grant interest in subject property to Appellant and further, the U.S. Supreme Court has accepted that when a third nonparty has an interest in a matter, such as Appellant's interest in subject property, then a third nonparty's interest may arguably fall within the zone of interest to be protected.¹ Appellant's contract with Respondent Lucas III provides Appellant with the right and obligation to defend Appellant's interest at, but not limited to, clause 34g of said contract. The trial court erred in terminating Appellant's rights and obligation of said contract and dismissing such with prejudice.

11. The Trial court further erred when it granted the order for dismissal at Sub#16A- Order granting motion to dismiss with prejudice because respondent Trustee acted ultra vires in contravention of the Trust by attempting to accept the assignment of Lucas III's Note after the Trust startup date. MERS is an unlawful beneficiary² and purports to assign the interest that it held to Trustee on or about January 5, 2012; six (6) years after the startup date of Trust according to Respondent Trustee's PSA that is filed in public records maintained by Securities and Exchange Commission.³ Trustee's PSA dictates the specific authority availed to the Trustee and the PSA indicates that New York Law governs the Trust and therefore action of the Trustee. New York Law⁴ plainly states that the ultra vires acts of the Trustee in this instant is "void"⁵ ab initio⁶ and not merely voidable. The assignment did not lawfully occur and therefore Respondent Trustee cannot show that Trustee has been injured. The New York Appellant court reversed the trial court's decision in favor of defendant Erobobo because Defendant failed to assert a defense of standing prior to appeal. Washington Courts hold a different view in that standing to assert a particular claim is a jurisdictional issue that may be raised for the first time on

appeal.⁷ In this matter the Plaintiff cannot show that Trustee and the Trust have endured an actual injury.

12. The Trial Court erred in denying, or failing to grant Bailey's Continuance denying Appellant's opportunity to be heard thus violating Bailey's right to due process, at sub#15A-Motion to Continue. Should the Court have merely dismissed Bailey's complaint without prejudice may have served justice better.

Bailey has paid out over two hundred thousand dollars in order to possess and purchase this property. It is no fault of Bailey that the alleged Mortgage, though legally questionable, is defaulted. Bailey paid regular payments to Lucas III and because of some arbitrary decision by Lucas III, the court then further strips Bailey of recourse by granting such a dismissal.

13. Lucas III did willfully breach the contract and failed to uphold the agreement between Bailey and Lucas III. Lucas III filed bankruptcy, case no. 13-13656-MLB, in an attempt to escape the duties, responsibilities and obligations that are, among others, established within the Real Estate Agreement between Bailey and Lucas III among. Lucas III had a duty to uphold and defend the subject property due to the contractual agreement that was entered into with Bailey and Lucas III failed to do so. Lucas III's failure to identify the various violations of Washington and Federal Laws, including Washington's Consumer Protections Act is a violation of Lucas III's duties and responsibility to maintain the agreement between Bailey and Lucas III. Respondent Lucas III actions and inactions are not only negligent but have caused and continue to cause significant harm to Bailey. See Sub#7-Plaintiff's Amended Complaint, filed on January 28, 2015

Lucas III's breach may have been due to the intentional interference of Trustee. The Trustee and its counsel was well aware of Bailey's agreement with Lucas III due to the adversarial hearing that Bailey brought in said bankruptcy. Trustee and Trustee's counsel are experts in their respective fields; that is counsel is/are expert(s) in law and Trustee is deemed an expert in its duties, obligation and rules concerning the Trust. Trustee had foreknowledge that assignments must be conducted in a specific manner and any action contravention to the PSA is void ab initio according to the plain language of New York Law that governs the Trust. Trustee is such of an empty Trust in regard to this specific matter. Therefore the Respondent Trustee has at least two strikes of violations of law against its actions; 1) The Trustee acted in ultra vires of its regulations of PSA and filed or caused to be filed false documents in public records. 2) Governing law of Trust specifically states in plain language that any act contravention to the PSA is void, and thus has unclean hands due to misrepresentations to Lucas III and it's investors alike. Trustee's PSA is filled with rules and regulations regarding things like operation, ownership, transfer of Notes of the trust and identities of those entitled to payments and therefore requires the PSA to be fully vetted in order to clear the murky waters that are created by the actions Trustee and neglectful inactions of Lucas III.

Furthermore, it is established that Washington State law does not permit MERS to be a lawful beneficiary if it holds no interest in the note. Therefore it is not legally possible for Trustee to have had interest conveyed to it by the assignment from MERS. Any claim contrary to this premise has no founding in law or reason and is clearly described by the legal maxims, "Mandatarius terminos sobi positos transgredi non potest. A mandatory cannot exceed the bounds of his authority."⁸ And "Nemo plus juris ad alienum transfere

potest, quam ispe habent. One cannot transfer to another a right which he has not.”⁹.

These actions by Respondent Trust violate Washington Consumer Protection Act for one because Washington’s Supreme Court in Bain and the appellate court in Walker¹⁰ stated clearly that MERS could not be a “lawful beneficiary” and possessed no beneficial interest to convey; yet Respondent Trustee is asserting rights that it never received. See Sub#7-Amended Complaint at points 16, 26 et seq. & 27 & Exhibit 3

14. The trial court erred in its findings in the order at sub#16A dated June 12, 2015 at point 4 when it stated that Appellant was not a party to Defendant’s Mortgage Contract because it failed to consider Appellant’s zone of interest that is established by the Real Estate Agreement (Agreement) between Lucas III and Bailey. Clause 10 of said Agreement that POSSESSION. Buyer is entitled to possession of the property from and after the date of this Contract subject to any tenancies described in paragraph 34, and, Clause 34(g) – OPTIONAL PROVISION—DUE ON SALE. If Buyer, without written consent of Seller 34(g) permits a forfeiture or foreclosure or trustee or sheriffs sale of any of the Buyer’s interest in the property or this Contract, Seller may at any time thereafter either raise the interest rate on the balance of the purchase price or declare the entire balance of the purchase price due to and payable. In this instance, the trial court erred in establishing Trust as a privileged and protected special class of entity that is not subject to rule of law & policy at the cost of Plaintiff’s natural rights and the rights and obligations created by the Agreement between Lucas III and Bailey
15. Trustee’s wrongful interference has caused Plaintiff’s contract to be unduly terminated and canceled and thus has stripped Plaintiff of his right to and possession of subject property. See court order June 12, 2015 at sub#16A

16. The trial court erred in amending the definition of “Note Holder” contrary or other than the agreement created by Lucas III, in which Bailey has an interest, found in Lucas III’s note, Exhibit 5 of Amended Complaint at sub#7 Respondent Lucas III’s Note clearly defines Note Holder in its plain language and states, ““I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer *and* who is entitled to receive payments under this Note is called the "Note Holder."”’. [Emphasis added]

Respondents have clearly attempted to use State statutes to convolute the meaning and definition of Note Holder to not include the second component of the compounded definition of Note Holder to be that of merely a holder without the right to payments. It is clear from the Respondent Trustee’s PSA that the Trust is a Real Estate Mortgage Investment Conduit (REMIC) or pass through trust receives a special exempt classification concerning taxes.¹¹ The PSA clearly states that the Trust itself is not entitled to payments but is afforded the status of Note Holder in spite of not fitting the definition of such. Respondent Trustee’s Pooling and Servicing Agreement (PSA) provides that the “Certificateholders” are paid the principal and interest of loans, minus fees paid to servicer and trustee and therefore Certificateholders are in fact the “Note Holder” in accordance with the terms of Defendant Lucas III’s note. PSA states in pertinent part;

”INVESTING IN THESE CERTIFICATES INVOLVES RISKS. YOU SHOULD NOT PURCHASE THESE CERTIFICATES UNLESS YOU FULLY UNDERSTAND THEIR RISKS AND STRUCTURE. SEE "RISK FACTORS" BEGINNING ON PAGE

S-18 OF THIS PROSPECTUS SUPPLEMENT AND PAGE 1 OF THE ATTACHED PROSPECTUS.

These certificates will be beneficial interests in a trust fund, and will be backed only by the assets of the trust fund. Neither these certificates nor the assets of the trust fund will be obligations of Merrill Lynch, Pierce, Fenner & Smith Incorporated, LaSalle Bank National Association, Litton Loan Servicing LP or any of their affiliates. These certificates will not be insured or guaranteed by any governmental agency or any other entity.”

Page 1 of document filed at sec.gov and found in prospectus filed in public record at Securities and Exchange Commission records;

<http://www.sec.gov/Archives/edgar/data/809940/000095012306004634/y19348e424b5.tx>

t

17. The court erred in upholding an assignment by an “unlawful beneficiary” pursuant to Washington State law to Trust without standing by hearing and granting MERS and Trust Motion to Dismiss at sub#13 filed on May 10, 2015; and order granting Motion to Dismiss at sub#16A that was issued June 12, 2015. MERS has clearly been established and involved in this matter for the intention of misrepresenting the truth and conceal the real party in interest from all pertinent parties. MERS reveals in its TERMS and CONDITIONS at point “2. The Member, at its own expense, shall promptly, or as soon as practicable, cause MERS to appear in the appropriate public records as the mortgagee of record with respect to each mortgage loan that the Member registers on the MERS® System. MERS shall serve as mortgagee of record with respect to

all such mortgage loans solely as a nominee, in an administrative capacity, for the beneficial owner or owners thereof from time to time. MERS shall have no rights whatsoever to any payments made on account of such mortgage loans, to any servicing rights related to such mortgage loans, or to any mortgaged properties securing such mortgage loans. MERS agrees not to assert any rights (other than rights specified in the Governing Documents) with respect to such mortgage loans or mortgaged properties. References herein to "mortgage(s)" and "mortgagee of record" shall include deed(s) of trust and beneficiary under a deed of trust and any other form of security instrument under applicable state law.”

18. The Court erred in its denial of Bailey’s Motion for Consideration and in its finding that Bailey’s Motion for Reconsideration was untimely at point #2 of Order at sub#16A, issued on June 12, 2015. Bailey did file Motion for Consideration with the Court on June 25th, ten computed days after the court June 12th order. Washington Rules of Civil Procedure indicates that the time for computation will begin on the business day following the Order. The Order was issued on June 12th, a Friday, and therefore the next computation for time began on June 15th 2015 making June 25th the due date for Bailey’s Motion for Reconsideration. The court administrators acknowledge receipt of the Motion for Reconsideration in email communication with the parties and Bailey did file a proof of service showing that the mailing to the Parties was made on June 25th 2015. I true a correct copy of email communication is attached.
- Even, should the Motion be deemed untimely, the court is permitted discretion to accept tardy motions due to mistake, inadvertence, excusable neglect, amongst other reasons, per CR60b, in order to uphold due process as long as the rights of another are not

irreparably harmed in the process and the court erred in its discretion to deny Plaintiff's pleadings; and in this instant matter where Bailey is able to show that Trust, and MERS, have not been injured and therefore are not real parties in interest.

CONCLUSION

22. The trial and appellate courts did violate the U.S. Constitution Article 1, sec. 10 when trial court terminated appellant Bailey's contract. The Appellate court erred when it failed to consider such violation.

23. Furthermore, the courts have redefined the term "note holder" as to its definition that was provided for in the Note.

24. The courts have permitted respondents to affect public record with deceptive practices, misconceptions and misrepresentations in order to effectively side-step the agreement between Appellant and Respondent Lucas III and steal subject Property;

25. With a reading in the plain language of the law it is clear that this matter is riddled with triable issues and therefore Respondents Trustee and MERS dismissal should have been denied and moved forward with discovery and then toward summary judgment for Plaintiff or trial.

APPENDIX

¹ National Credit Union Admin. v. First Nat. Bank & Trust Co., 522 U.S. 479, 493-494 (1998);

and Douglas M. Branson V Port of Seattle File Date: 11/18/2004 Oral Argument Date:

02/24/2004

² Bain v. Metropolitan Mortgage Group, Inc. et al, no. 86206-1 (2012)

³ <http://www.sec.gov/Archives/edgar/data/809940/000095012306004634/y19348e424b5.txt>

⁴ Estate, Powers and Trusts §7-2.4 Act of trustee in contravention of trust

If the trust is expressed in the instrument creating the estate of the trustee, every sale, conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void.

⁵ ***In re: Saldivar***, Case No. 11-1-0689 (S.D. Tex.) (June 5, 2013)

⁶ ***Wells Fargo Bank, N.A. v Erobo***, 2013 NY Slip Op 50675(U) (Sup. Ct. Kings, Apr. 29, 2013) - The assignment of the note and mortgage from Option One [the first assignee] rather than from the Depositor ABFC violates section 2.01 of the PSA which requires that the Depositor deliver to and deposit the original note, mortgage and assignments to the Trustee. The assignment of the Defendant's note and mortgage, having not been assigned from the Depositor to the Trust, is therefore void as in being in contravention of the PSA. The evidence submitted by Defendant that the note was acquired after the closing date and that assignment was not made by the Depositor, is sufficient to raise questions of fact as to whether the Plaintiff owns the note and mortgage, and precludes granting Plaintiff summary judgment. (13)

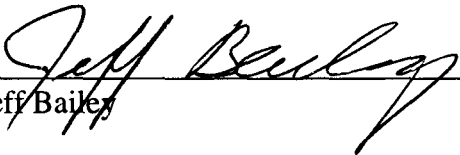
⁷ International Association of Firefighters, Local 1789, Respondent, v. Spokane Airports, Petitioner, 146 Wn.2d 207, (2002)

⁸ Jenk. Cent. 53

⁹ Dig. 50, 17, 54; 10 Pet. 161, 175.

¹⁰ WALKER v. QUALITY LOAN SERVICE CORP, et al, no: 65975-8-1 (2013)

¹¹ IRC26 U.S.C. § 860G(d)(1) “Except as provided in section 860G(d)(2), ‘if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution.’”


Jeff Bailey

PROOF OF SERVICE

Jeff Bailey

vs.

**JOSEPH LUCAS, III; U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE
LOAN TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES
2006-3; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC; AND JOHN
DOE 1-50**

I am a Citizen of the United States of America and domiciled in the County of
King. I am over the age of eighteen and not a party to the within
action; my domicile is in Seattle, Washington.

On Sep 26, I MAILED/EMAILED/or caused to be delivered, the within:

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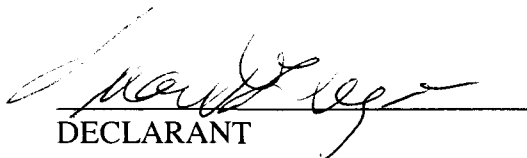
PETITION FOR REVIEW

to the parties in the within action by MAIL causing such document(s) to be delivered by
United States Postal Mail to the office(s) or person(s) of the addressees(s) as follows:

To: HOUSER & ALLISON, APC
1601 5TH AVENUE, STE 850
SEATTLE, WASHINGTON 98101
ATTN: SAKAE S. SAKAI /
ROBERT W. NORMAN, JR

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26 2015 at Seattle,
Washington.


DECLARANT

PROOF OF SERVICE

Jeff Bailey

vs.

**JOSEPH LUCAS, III; U.S. BANK, N.A. AS TRUSTEE FOR OWNIT MORTGAGE
LOAN TRUST, MORTGAGE LOAN ASSET BACKED CERTIFICATES, SERIES
2006-3; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC; AND JOHN
DOE 1-50**

I am a Citizen of the United States of America and domiciled in the County of King. I am over the age of eighteen and not a party to the within action; my domicile is in Seattle, Washington.

On Sept 26, I MAILED/EMAILED/or caused to be delivered, the within:

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STATE OF WASHINGTON
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PETITION FOR REVIEW

to the parties in the within action by MAIL causing such document(s) to be delivered by United States Postal Mail to the office(s) or person(s) of the addressees(s) as follows:

To: Gregory Jalbert
1001 4th Ave, #3200
Seattle, WA 98154

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 26, 2016 at Seattle, Washington.

Mania Purc
DECLARANT

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEFF BAILEY,)
)
)
Appellant.)
v.)
)
JOSEPH LUCAS, III; U.S. BANK,)
N.A. AS TRUSTEE FOR OWNIT)
MORTGAGE LOAN TRUST,)
MORTGAGE LOAN ASSET BACKED)
CERTIFICATES, SERIES 2006-3;)
MORTGAGE ELECTRONIC)
REGISTRATION SYSTEMS INC; AND)
JOHN DOE I-50)
Respondents,)
_____)

No. 73724-4-1

ORDER DENYING APPELLANT'S
MOTION FOR RECONSIDERATION

Appellant Jeff Bailey filed a motion for reconsideration of the opinion filed in this matter on August 1, 2016. A majority of the panel has determined the motion should be denied.

Now therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

DATED this 25th day of August 2016.

FOR THE COURT:

Spencer J.
Presiding Judge

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STATE OF WASHINGTON
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JEFF BAILEY,)	No. 73724-4-1
)	
)	
Appellant.)	DIVISION ONE
)	
v.)	
)	
JOSEPH LUCAS, III; U.S. BANK,)	UNPUBLISHED OPINION
N.A. AS TRUSTEE FOR OWNIT)	
MORTGAGE LOAN TRUST,)	
MORTGAGE LOAN ASSET BACKED)	
CERTIFICATES, SERIES 2006-3;)	
MORTGAGE ELECTRONIC)	
REGISTRATION SYSTEMS INC; AND)	
JOHN DOE I-50)	
Respondents,)	
_____)	FILED: <u>August 1, 2016</u>

SPEARMAN, J. – Jeff Bailey appeals orders dismissing his complaint for breach of contract, wrongful foreclosure, and quiet title, and denying his motion for reconsideration. We affirm.

FACTS

On January 20, 2006, Joseph Lucas executed a note and deed of trust against real property in exchange for a \$225,000 mortgage loan from Ownit Mortgage Solutions, Inc. Appellant Jeff Bailey was not a party to this loan agreement.

The next day, Lucas and Jeff Bailey executed, but did not record, a real estate contract on the same property. The contract recited that Bailey, the buyer, was in danger of “having the property foreclosed” and that the contract was part

of a plan to sell and later repurchase the property “as a viable alternative to avoid foreclosure and loss of the property.” Clerk’s Papers (CP) at 298. It further recited that the agreement would provide Bailey “a vehicle . . . to retain possession of [the] property through the utilization of existing equity and reacquiring the property at or below fair market value.” *Id.* Under the agreement, the repurchase price was “[t]he payoff(s) of any and all liens against the property plus all costs of sale . . . plus an additional \$1,000.00 . . . if exercised within 18 months of execution of this document.” CP at 299. Bailey agreed to pay \$2,458.18 per month “to obtain possession and keep option to repurchase available.” CP at 300. The agreement expressly acknowledged that it was subordinate to all existing mortgages and deeds of trust. The parties did not record the agreement until June 11, 2015.

In August 2011, Lucas stopped making payments on the note and deed of trust.

On January 5, 2012, respondent Mortgage Electronic Registration Systems, Inc. (MERS), as nominee for Ownit Mortgage, assigned its interest in the deed of trust to U.S. Bank N.A. as trustee for Ownit Mortgage Loan Trust, Mortgage Loan Asset Backed Certificates Series 2006-3.

On April 3, 2013, U.S. Bank N.A. filed a complaint to foreclose the deed of trust.

On April 22, 2013, Lucas filed a petition for bankruptcy under Chapter 7 of the bankruptcy code.

On July 22, 2013, Bailey filed an adversary proceeding against Lucas in bankruptcy court seeking to enforce his promissory note. The bankruptcy court ultimately dismissed that proceeding.

On September 11, 2014, the court entered a judgment and decree of foreclosure on Lucas's property. The property subsequently sold at a sheriff's sale, which the superior court later confirmed. Bailey did not attempt to stop the foreclosure and sale.

On January 7, 2015, Bailey filed this action for wrongful foreclosure and quiet title, later adding a breach of contract claim by amended complaint.

On May 12, 2015, all defendants except Lucas moved to dismiss Bailey's complaint on various grounds. Bailey did not file a response.

On June 10, 2015, two days before the scheduled hearing on respondents' motion to dismiss, Bailey moved for a continuance. He did not note the motion for hearing or serve it with six days' notice as required by KCLR 7(b)(4)(a) and (5)(a). Nor did he seek an order shortening time.

On June 11, 2015, Lucas and Bailey recorded the real estate contract they executed in 2006.

On June 12, 2015, the court held a hearing on the motion to dismiss, but Bailey did not appear. The court entered an order granting the motion to dismiss with prejudice under CR 12(b)(6). The order dismissed all defendants except Joseph Lucas with prejudice. The order also directed the King County auditor to cancel Bailey's recorded lis pendens and real estate contract with Lucas.

On June 29, 2015, seventeen days after the order of dismissal, Bailey moved for reconsideration.

On July 9, 2015, the court denied the motion for reconsideration, ruling in part that it “is untimely and fails to comply with the deadlines articulated in CR 59.” CP at 269.

Bailey appeals.

DECISION

Bailey challenges the dismissal of his complaint, the failure to rule on his motion to continue, and the denial of his motion for reconsideration. We review a trial court's CR 12(b)(6) dismissal de novo. Nissen v. Pierce County, 183 Wn.2d 863, 872, 357 P.3d 45 (2015). We review rulings on motions to continue or reconsider for abuse of discretion. Barrett v. Freise, 119 Wn. App. 823, 850, 82 P.3d 1179 (2003) (reconsideration); State v. Kelly, 32 Wn.App. 112, 114, 645 P.2d 1146 (1982) (continuance). We hold pro se litigants to the same standards as attorneys, including the Rules of Appellate Procedure (RAP).¹ Failure to comply with the RAP may preclude appellate review.²

Bailey's briefs on appeal violate numerous rules of appellate procedure. His opening and reply briefs contain no table of the cases, statutes and other authorities cited in the briefs as required by RAP 10.3(2). His “statement of the case” does not present a “fair statement of the facts and procedure relevant to

¹ In re Marriage of Olson, 69 Wn.App. 621, 626, 850 P.2d 527 (1993) (citing In re Marriage of Wherley, 34 Wn. App. 344, 349, 661 P.2d 155 (1983)).

² State v. Marintorres, 93 Wn.App. 442, 452, 969 P.2d 501 (1999).

the issues presented for review, without argument” as required by RAP 10.3(5). Most of his contentions lack supporting authority as required by RAP 10.3(6), and virtually all of them lack any mention or meaningful analysis of the applicable standards of review. Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 486, 254 P.3d 835 (2011) (“We will not consider an inadequately briefed argument.”) (quoting Bolan v. Cody, 119 Wn.2d 357, 368, 832 P.2d 71 (1992)); State v. Rafay, 168 Wn. App. 734, 843, 285 P.3d 83 (2012) (rejecting claim due to absence of meaningful argument or authority to support conclusory claim); Marintorres, 93 Wn. App. at 452 (appellate court need not consider pro se arguments that are conclusory).

In addition, because Bailey filed no response to the motion to dismiss below, did not appear at the hearing on the motion, and filed an untimely motion for reconsideration, we need not consider his challenges to the dismissal under RAP 2.5 since they are raised for the first time on appeal. See also New Meadows Holding Co. by Raugust v. Washington Water Power Co., 34 Wn. App. 25, 659 P.2d 1113 (1983) (because defendant did not contest summary judgment it waived any claim it may have asserted against the moving party) Taken together, these rule violations are fatal to Bailey’s appeal.³

³ We note that the two motions Bailey made below were not properly presented. He failed to note his motion for a continuance as required by local rules, did not argue it at the hearing on the motion to dismiss, and did not timely seek a ruling on the motion with his motion for reconsideration. Accordingly, the court did not err or fail to exercise its discretion in declining to rule on the motion. See State v. Wilson, 113 Wn. App. 122, 130, 52 P.3d 545 (2002) (where defendant did not note his motion as required by CrR 3.3(f), the matter never came before the trial court for a ruling and his claim on appeal was not reviewable). Contrary to Bailey’s assertions, his motion for reconsideration was untimely. Under CR 59(b), a party must file a motion for reconsideration no later than ten days after entry of the judgment or order at issue.

We affirm.

Leach, J.

Spelman, J.
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Bailey filed his motion for reconsideration seventeen days after the order of dismissal. It was therefore untimely.