

SUPREME COURT NO. 94214-5
COURT OF APPEALS NO. 73406-7
KING COUNTY NO. 13-2-29758-2

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FRANK BUCCI,

Appellant,

v.

NORTHWEST TRUSTEE SERVICES, INC., SUCCESSOR BY
MERGER TO NORTHWEST TRUSTEE SERVICES LLC FKA
NORTHWEST TRUSTEE SERVICES, LLC, a Washington corporation;
RCO LEGAL, P.S., Washington Professional Services Organization;
JPMORGAN CHASE BANK, N.A., a national banking association; U.S.
BANK, NATIONAL ASSOCIATION, INC., a national banking
association; SELECT PORTFOLIO SERVICING, INC., a Foreign
Corporation registered in Washington,

Respondents.

FRANK BUCCI'S REPLY TO ANSWER TO PETITION FOR REVIEW
OF RESPONDENTS NORTHWEST TRUSTEE SERVICES, INC. AND
RCO LEGAL, P.S.

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I. INTRODUCTION

In their answer to Frank Bucci's ("Mr. Bucci") petition for review, Northwest Trustee Services, Inc. ("NWTS") and RCO Legal, P.S. ("RCO") ask this court to hold the appeal to NWTS and RCO as patently frivolous. Answer of NWTS and RCO at *7-8. This was a new issue not addressed by Mr. Bucci in his petition. Accordingly, this reply addresses the new issue.

II. ARGUMENT

A. This Court should decline review of the frivolous appeal issue when (1) the Appellate Court held Mr. Bucci's appeal was not frivolous, (2) taken as a whole the appeal is not frivolous, and (3) NWTS did not argue in the appellate court that the appeal was frivolous to NWTS waiving this issue.

i. The Appellate Court held Mr. Bucci's appeal was not frivolous based on the standard set forth in the case, *Lee v. Kennard*, 176 Wn. App. 678, 310 P.3d 845 (Div. I 2013).

The Court of Appeals for Division I addressed this argument in the unpublished portion of their decision and held that inclusion of RCO in the appeal was not frivolous. The Court held:

Washington Rules of Appellate Procedure 18.9 allows this court to order a party or counsel who files a frivolous appeal to pay terms or compensatory damages to this court or any other party who has been harmed by the failure to comply. "An appeal is frivolous if there are no debatable issue upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal." *Lee v. Kennard*, 176 Wn. App. 678, 692, 310 P.3d 845 (2013). "RAP 18.9(a) does not

“speak in terms of filing one or more frivolous issues or assignments of error - only a frivolous appeal as a whole.” *Lee*, 176 Wn. App. at 693.

Here, while Bucci did not assign error to the trial court’s grant of summary judgment to RCO, and neglected to address RCO’s liability, the appeal, when considered as a whole, is not frivolous.

Bucci v. Nw. Tr. Servs., Inc., 197 Wn. App. 318, 333, 387 P.3d 1139, 1147 (Div. I 2016) (Because this reasoning comes from the unpublished portion of the Appellate court’s decision, “it has no precedential value, is not binding on any court, and is cited only for such persuasive value as the court deems appropriate” under GR 14.1.¹)

ii. The Appeal when taken as a whole is not frivolous

NWTS and RCO use the wrong standard in asking this Court to declare the appeal as frivolous. NWTS argues only that the appeal is frivolous as to them, and fail to offer any argument as to why this appeal is frivolous as a whole. Answering brief at *7-8. Aside from NWTS and RCO, there are three other respondents in this matter, JP Morgan Chase Bank, N.A., Select Portfolio Servicing, Inc., and US Bank National Association. Under the standard in *Lee*, the failure of NWTS and RCO to show why the appeal when taken as a whole is frivolous to all respondents, precludes the relief requested. *Lee*, 76 Wn. App. 678.

¹*Crosswhite v. Washington State Dep't of Soc. & Health Servs.*, 197 Wn. App. 539, 544, 389 P.3d 731, 733 (Div. III 2017).

Mr. Bucci has extensively laid out the importance of the issues of this appeal in his petition for review, which clearly demonstrate that the appeal is not frivolous.

iii. NWTS waived their argument by not making it at the Appellate Court

NWTS argues for the first time in its answer that inclusion of them as litigants in the appeal is frivolous. Answer of NWTS and RCO at *7-8. By not making this argument at the appellate court, NWTS has waived their right to make it in front of this court.

III. CONCLUSION

Accordingly, this Court should decline review of the frivolous appeal issue when (1) the Appellate Court held it was not frivolous, (2) taken as a whole the appeal is not frivolous, and (3) NWTS did not argue in the appellate court that the appeal was frivolous to NWTS waiving this issue.

Dated this 19th day of April, 2017 at Arlington, Washington.

Respectfully Submitted By:

JBT & Associates, P.S.

s/ Emily A. Harris
Joshua B. Trumbull, WSBA# 40992
Emily A. Harris, WSBA# 46571
Attorney's for Fran kBucci

CERTIFICATE OF SERVICE

I, Ashley Brogan, certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct:

1. At all times hereinafter mentioned I am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

2. That on the 19th day of April, 2017, I caused to be served a true and correct copy of Frank Bucci’s Reply to Answer to Petition for Review of Respondents Northwest Trustee Services, Inc. and RCO Legal, P.S. to Respondents in the above title matter by causing it to be delivered to:

John Glowney J. Will Eidson Stoel Rives, LLP 600 University St, Suite 3600 Seattle, WA 98101 jeglowney@stoel.com jweidson@stoel.com	<input type="checkbox"/> Facsimile <input type="checkbox"/> Express Mail <ul style="list-style-type: none"> • U.S. First Class Mail Postage Paid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Legal Messenger <ul style="list-style-type: none"> • Electronic-Email
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DATED this 19th day of April, 2017 at Arlington, Washington.

s/ Ashley Brogan
Ashley Brogan
Paralegal
JBT & Associates, P.S.