

Supreme Court No. 94516-1

Court of Appeals No. 34968-3-III

---

**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

---

ALICE LOPEZ,

Appellant,

v.

JP MORGAN CHASE & CO., a New York Company; JPMORGAN  
CHASE BANK NA, an Illinois National Association; DEUTSCHE  
BANK NATIONAL TRUST CO., a California Company; NORTHWEST  
TRUSTEE SERVICES, INC., a Washington Corporation; and JOHN  
DOES -10,

Respondents.

---

**JOINT ANSWER OF RESPONDENTS JPMORGAN CHASE  
BANK, N.A., DEUTSCHE BANK NATIONAL TRUST COMPANY  
AS TRUSTEE, AND NORTHWEST TRUSTEE SERVICES, INC.  
TO PETITION FOR REVIEW**

---

Joshua Saul Schaer, WSBA #31491  
RCO LEGAL, P.S.  
13555 SE 36th Street, Suite 300  
Bellevue, WA 98006  
425.458.2121  
Email: jschaer@rcolegal.com

Amy Edwards, WSBA #012492  
STOEL RIVES LLP  
760 SW Ninth Avenue, Suite 3000  
Portland, OR 97205  
503.224.3380  
Email: amy.edwards@stoel.com

*Attorneys for Northwest Trustee  
Services, Inc.*

*Attorneys for Respondents JPMorgan  
Chase Bank, N.A., and Deutsche Bank  
National Trust Company as Trustee*

## TABLE OF CONTENTS

	<b>Page</b>
TABLE OF AUTHORITIES .....	ii
I. INTRODUCTION .....	1
II. STATEMENT OF RELIEF SOUGHT .....	1
III. STATEMENT OF THE CASE.....	2
IV. ARGUMENT .....	4
A. Standard of Review.....	4
B. Ms. Lopez Has Not Demonstrated that Brown Was Wrongly Decided. ....	4
V. CONCLUSION.....	7

## TABLE OF AUTHORITIES

	Page
<b>Cases</b>	
<i>Bain v. Metro. Mortg. Grp., Inc.</i> , 175 Wn.2d 83, 285 P.3d 34 (2012).....	5
<i>Brown v. Department of Commerce</i> , 184 Wn.2d 509, 359 P.3d 771 (2015).....	1, 4, 5, 6
<i>Cummings v. Nw. Tr. Servs.</i> , 196 Wn. App. 1073, 2016 Wash. App. LEXIS 2886 (2016).....	6
<i>Leonard v. Reconstruct Co., N.A.</i> , No. 15-5866-RJB, 2016 WL 304802 (W.D. Wash. Jan. 26, 2016).....	6
<i>Lopez v. JP Morgan Chase &amp; Co., et al.</i> , Court of Appeals No. 34968-3-III (Apr. 18, 2017).....	1, 3, 7
<i>Worm v. Nw. Tr. Servs.</i> , 196 Wn. App. 1069, 2016 Wash. App. LEXIS 2844 (2016), <i>review denied</i> , 188 Wn.2d 1004 (2017).....	6
<b>Statutes</b>	
RCW 62A.1-201(21)(A).....	5
RCW 62A.3-301 .....	5
RCW 62A.3-310 .....	1, 4, 5, 6
UCC, Article 3 .....	5, 6
UCC, Article 9 .....	6
UCC § 3-310.....	5

## **I. INTRODUCTION**

The Court of Appeals correctly affirmed the trial court's decision dismissing Petitioner Alice Lopez's claims for the reasons set forth in the Court of Appeals' decision and in Respondents' appellate briefs submitted below. In her Petition for Review (the "Pet."), Ms. Lopez presents one issue for review: whether the Court's decision in *Brown v. Department of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015) conflicts with RCW 62A.3-310. Ms. Lopez provides no new argument or authority to challenge this Court's precedent in *Brown* or the Court of Appeals' application of *Brown* to the facts of this case, both of which concern settled rules of commercial law dealing with promissory notes and deeds of trust. Nor does she present any issue of constitutional dimension or of substantial public interest. To the contrary, the court performed its proper and ordinary duty in construing and applying Washington commercial and statutory law. The petition is without merit and should be denied.

## **II. STATEMENT OF RELIEF SOUGHT**

Respondents request that the Supreme Court decline to accept discretionary review of the unpublished decision in *Lopez v. JP Morgan Chase & Co., et al.*, Court of Appeals No. 34968-3-III (Apr. 18, 2017) ("Slip Op.").

### III. STATEMENT OF THE CASE

On or about November 29, 2004, Ms. Lopez executed the Note and Deed of Trust. (Clerk’s Papers (“CP”) 156-163, 165-192.) Washington Mutual Bank (“WAMU”) was the beneficiary of the Deed of Trust. (CP 165-192.) On or about July 19, 2012, the Federal Deposit Insurance Company (the “FDIC”), as Receiver for WAMU, assigned the Deed of Trust to Deutsche Bank National Trust Company as Trustee for WAMU Mortgage Pass-Through Certificates Series 2005-AR6 (“Deutsche Bank” or the “Trust”).<sup>1</sup> (CP 193.) On October 16, 2012, the Trust appointed Northwest Trustee Services, Inc. (“NWTS”) as successor trustee for the Deed of Trust. (CP 232-234.)

Ms. Lopez defaulted on the Note and Deed of Trust by failing to make payments when due. (CP 154.) On or about August 28, 2015, NWTS recorded an Amended Notice of Trustee’s Sale. (CP 194-198.) Ms. Lopez filed this action in Superior Court challenging the trustee sale on October 8, 2015. (CP 3.) She also sought a preliminary injunction to prevent the sale, which was originally scheduled for October 16, 2015.

---

<sup>1</sup> Ms. Lopez named “Deutsche Bank National Trust Co.” as a defendant in this action. The correct party—*i.e.*, the holder of Ms. Lopez’s Note—is Deutsche Bank solely in its capacity as Trustee for the Trust. (CP 154.)

(CP 48, 195.) The trial court denied her motion for preliminary injunction, and the Court of Appeals Commissioner denied her motion for discretionary review of that order. (CP 111; COA Case No. 48371-8-II, Ruling Denying Review.) Ms. Lopez’s property was subsequently sold at the trustee sale. (Reported Proceedings (“RP”) 5:14-16 (Feb. 12, 2016).)

The Trust and JPMorgan Chase N.A. (“Chase”) filed a motion for summary judgment seeking to dismiss Ms. Lopez’s claims, as did NWTs. (CP 201, 260.) The Trust presented the original Note, endorsed in blank, at the hearing as evidence that it was the holder of the Note. (RP 5:9-10 (Feb. 12, 2016).) The Trust argued that, as holder of the Note, it had authority to enforce the Deed of Trust and to foreclose on the property.<sup>2</sup> (CP 203-206.) The trial court subsequently granted Respondents’ motions for summary judgment, and the Court of Appeals affirmed.<sup>3</sup> (CP 328, 330; Slip Op. at 12-13.)

---

<sup>2</sup> The Trust and Chase presented other arguments to the trial and appellate courts that are not presented in Ms. Lopez’s petition and, therefore, are not addressed herein.

<sup>3</sup> Although the appeal was originally assigned to Division II, No. 48716-1-II, Division II transferred the case to Division III to expedite review pursuant to CAR 21(a).

#### **IV. ARGUMENT**

##### **A. Standard of Review**

The discretionary acceptance of a decision terminating review may only be granted based on the criteria set forth in RAP 13.4(b). Ms. Lopez contends that there is an issue of “substantial public interest.” (Pet. at 6.) However, the record does not support her contention.

##### **B. Ms. Lopez Has Not Demonstrated that *Brown* Was Wrongly Decided.**

Ms. Lopez argues that the appellate court erred in holding that the holder of a note secured by a deed of trust, regardless of note ownership, is the beneficiary of the deed of trust and, therefore, entitled to enforce the deed of trust in the event of default. (Pet. at 6.) She contends that the court’s decision conflicts with RCW 62A.3-310, because, she argues, pursuant to RCW 62A.3-310(b)(2)-(3), a holder of a note cannot enforce the note unless it is also the owner of the note.<sup>4</sup> (Pet. at 6-8.)

Ms. Lopez’s position is not supported by the plain language of RCW 62A.3-310 or the official commentary for § 3-310 of the Uniform

---

<sup>4</sup> It does not appear that Ms. Lopez properly preserved this argument. While she did argue on appeal that *Brown* was wrongly decided and that, to enforce a note through foreclosure, the holder of the note had to also be the owner of the note, she did not cite RCW 62A.3-310 in her opening brief and only referenced it in relation to other points in her reply brief. (See Lopez’s Opening Br., TOA; Reply Br. at 6, 16, 17, 23.)

Commercial Code (the “UCC”), both of which make it clear that this provision applies generally to payment of an obligation by check (*i.e.*, a buyer’s payment by check for goods to a seller). *See* UCC § 3-310 cmt. 3 (“Subsection (b) concerns cases in which an uncertified check or a note is taken for an obligation. The typical case is that in which a buyer pays for goods or services by giving the seller the buyer’s personal check, or in which the buyer signs a note for the purchase price.”).

Moreover, this Court did an extensive review of UCC, Article 3 in *Brown* and concluded that the holder of the note need not be the same as the owner of the note. This Court recognized that the “holder of the instrument” is the “person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession.” 184 Wn.2d at 525 (quoting RCW 62A.1-201(21)(A)). It further held that the “holder of the instrument” is a “person entitled to enforce the note” (or the “PETE”). *Id.* at 526 (citing RCW 62A.3-301); *see also Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 103-04, 285 P.3d 34 (2012) (“holder” of borrower’s note is entitled to commence and prosecute non-judicial foreclosure). The Court stated that the holder of the note need not be the same entity as the owner of the note. *Brown*, 184 Wn.2d at 527-28.



Through article 3 and article 9, the UCC authorizes parties to split PETE status from ownership status in certain circumstances. The PETE may modify and enforce the note. The borrower pays the PETE to discharge the borrower's obligation. All the while, the owner retains entitlement to the economic value of the note.

*Id.* at 529. Applying *Brown*, other courts have also rejected arguments that a party must both own and hold the note to enforce it. *See, e.g., Cummings v. Nw. Tr. Servs.*, 196 Wn. App. 1073 (table), 2016 Wash. App. LEXIS 2886 (2016) (unpublished opinion); *Leonard v. Reconstruct Co., N.A.*, No. 15-5866-RJB, 2016 WL 304802, \*6 (W.D. Wash. Jan. 26, 2016). While Ms. Lopez may disagree with the Court's interpretation of the UCC in *Brown*, she provides no basis for overruling that decision.<sup>5</sup>

In this case, the Trust established that it was the holder of the Note by presenting the original Note, endorsed in blank, at the summary judgment hearing. (RP 5:9-10 (Feb. 12, 2016).) Therefore, the trial court

---

<sup>5</sup> Ms. Lopez argues that no appellate court has addressed RCW 62A.3-310's application to non-judicial foreclosures. (Pet. at 6 n.2.) That is not correct. The issue has been raised several times in briefs to the Court of Appeals and petitions to the Supreme Court. *See, e.g., Worm v. Nw. Tr. Servs.*, 196 Wn. App. 1069 (table), 2016 Wash. App. LEXIS 2844, at \*9 (2016) (unpublished opinion) (considering and rejecting argument that RCW 62A.3-310 limits enforcement of obligations under note to person or entity owning note), *review denied*, 188 Wn.2d 1004 (2017); *Cummings*, 2016 Wash. App. LEXIS 2886, *review denied*, 188 Wn.2d 1006 (2017) (RCW 62A.3-310 discussed in Petition for Review).

and the Court of Appeals properly concluded that the Trust had the authority to enforce the Note through foreclosure. *See* Slip Op. at 13.

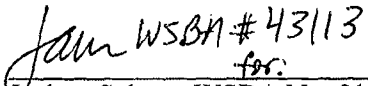
**V. CONCLUSION**

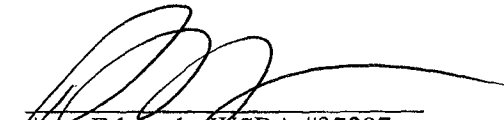
For these reasons, Respondents respectfully request that the Court deny Ms. Lopez's petition for discretionary review.

DATED: June 16, 2017.

RCO LEGAL PS

STOEL RIVES LLP

  
for:  
Joshua Schaer, WSBA No. 31491  
jschaer@rcolegal.com

  
Amy Edwards, WSBA #37287  
amy.edwards@stoel.com

*Attorney for Respondent Northwest  
Trustee Services, Inc.*

*Attorneys for Respondents  
JPMorgan Chase Bank, N.A., and  
Deutsche Bank National Trust  
Company as Trustee*

**CERTIFICATE OF FILING AND SERVICE**

I hereby certify that I caused to be filed **JOINT ANSWER OF RESPONDENTS JPMORGAN CHASE BANK, N.A., DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE, AND NORTHWEST TRUSTEE SERVICES, INC. TO PETITION FOR REVIEW** with the Supreme Court for the State of Washington via the Washington State Appellate Courts' web portal on June 16, 2017.

I further certify that I served a true and correct copy of the **JOINT ANSWER OF RESPONDENTS JPMORGAN CHASE BANK, N.A., DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE, AND NORTHWEST TRUSTEE SERVICES, INC. TO PETITION FOR REVIEW** on the following named persons by email and mailing with postage prepaid on June 16, 2017:

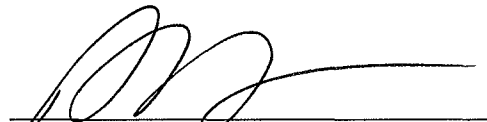
James A. Wexler, WSBA No. 7411  
2025 201st Ave SE  
Sammamish, WA 98075-9641  
wex@seanet.com

*Attorney for Petitioner*

Joshua Schaer, WSBA No. 31491  
RCO Legal PS  
13555 SE 36th St, Suite 300  
Bellevue, WA 98006-1489  
jschaer@rcolegal.com

*Attorney for Respondent Northwest  
Trustee Services, Inc.*

DATED: June 16, 2017 at Portland, Oregon.

  
\_\_\_\_\_  
Amy Edwards, WSBA #37287

**STOEL RIVES LLP**

**June 16, 2017 - 2:56 PM**

**Transmittal Information**

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94516-1  
**Appellate Court Case Title:** Alice Lopez v. JPMorgan Chase & Co., et al.  
**Superior Court Case Number:** 15-2-02794-1

**The following documents have been uploaded:**

- 945161\_Answer\_Reply\_20170616145037SC113516\_2735.pdf  
This File Contains:  
Answer/Reply - Answer to Petition for Review  
*The Original File Name was 2017.06.16 Joint Answer to Petition for Review.pdf*

**A copy of the uploaded files will be sent to:**

- jschaer@rcolegal.com
- kstephan@rcolegal.com
- lacey.gillet@stoel.com
- wex@seanet.com

**Comments:**

Joint Answer of Respondents JP Morgan Chase Bank, NA, Deutsche Bank National Trust Company as Trustee, and Northwest Trustee Services, Inc. to Petition for Review

---

Sender Name: Amy Edwards - Email: amy.edwards@stoel.com  
Address:  
760 SW 9TH AVE STE 3000  
PORTLAND, OR, 97205-2584  
Phone: 503-294-9586

**Note: The Filing Id is 20170616145037SC113516**