

NO. 94880-1

IN THE SUPREME COURT
OF WASHINGTON

PAUL SCHMIDT,

Petitioner,

v.

U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE FOR
GREENPOINT MORTGAGE FUNDING TRUST MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2006-AR6,

Respondent.

ANSWER TO PETITIONER'S MOTION TO SUPPRESS

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Association, as trustee for Greenpoint Mortgage
Funding Trust Mortgage Pass-Through
Certificates, Series 2006-AR6*

I. IDENTITY OF RESPONDENT

The respondent is U.S. Bank National Association, as Trustee for Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2006-AR6, represented by Ryan M. Carson of the firm Wright, Finlay & Zak, LLP.

II. ISSUES PRESENTED

- A. Should this Court strike Respondent's Answer to Appellant's Petition for Discretionary Review under RAP 13.4D when any delay in filing and service of the Answer worked no prejudice on the Appellant/Petitioner?

III. FACTS

Petitioner has requested this Court take discretionary review of a Court of Appeals opinion affirming a judgment of foreclosure as to his property. On April 24, 2017, the Court of Appeals for Division One affirmed the lower court's judgment. On May 12, 2017, Petitioner Schmidt filed a Motion for Reconsideration, and on May 30, 2017, the Court of Appeals denied reconsideration. On June 27, 2017, Petitioner filed his Petition for Review with the Court of Appeals and delivered a copy to counsel for Respondent on June 29, 2017. On August 7, 2017, Respondent U.S. Bank filed its Answer to the Petition. On August 11,

2017, the Court of Appeals transmitted the case to this Court. Respondent's Answer raises no new issues for review. Petitioner has not filed any reply in support of his Petition for Discretionary Review.

III. ARGUMENT

Petitioner's Motion should be denied under the liberal interpretation of the Rules of Appellate Procedure. RAP 1.2 states:

These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits. Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands, subject to the restrictions in rule 18.8(b).

In addition, RAP 18.8(b) contains restrictions on the Court's discretion to extend time when considering notices of appeal, petitions and motions for discretionary review, or motions for reconsideration. In other instances, the general rule of RAP 1.2 and RAP 18.8(a) allows this Court and the courts of appeal to "waive or alter the provisions of any of these rules and enlarge or shorten the time within which an act must be done in a particular case in order to serve the ends of justice." Here, the Petition was served on June 29, 2017. Under RAP 13.4(d), the Answer should have been filed 30 days after service, which fell on Saturday, July 29, 2017. Thus, the Answer should have been filed on Monday, July 31, 2017.

Here, Petitioner presents no compelling circumstances mandating that Respondent's Answer be stricken. Rather, Petitioner simply argues that the Answer should be "suppressed and not considered" due to missing the 30 day deadline in RAP 13.4. This is precisely the sort of determination that RAP 1.2 cautions against. A week's delay caused no prejudice to Petitioner and did not prevent him from filing a Reply if he deemed necessary. RAP 13.4(d) sets the time for reply as 15 days to begin upon service of the Answer. Petitioner's time to reply was not cut short by the delay in filing and service of the Answer.

Finally, should this Court strike the Respondent's Answer, it must still undertake the inquiry required in RAP 13.4(b). In fact, under RAP 13.4(d) sets forth that the Answer is a discretionary act: "[a] party **may** file an answer to a petition for review." Thus, while the Court does not require an Answer to consider the Petition under RAP 13.4(b), the Answer provided by Respondent addresses the 13.4(b) factors in light of the Petitioner's arguments in favor of review. The Petitioner's failure to satisfy the RAP 13.4(b) factors in his Petition is fatal to review, notwithstanding any failure to timely answer by Respondent.

IV. CONCLUSION

In light of the foregoing, Petitioner's Motion should not be granted in this matter. There is no compelling reason not to consider the Answer to the Petition for Review filed by Respondent. Petitioner was not

prejudiced in any way by the late filing, and the Court will undertake consideration of the Petition under RAP 13.4(b) regardless of the filing of Respondent's Answer.

Dated this 18th day of September, 2017.

/s/Ryan M. Carson
Ryan M. Carson, WSBA# 41057
Wright, Finlay & Zak, LLP.
Attorneys for Respondent U.S. Bank,
N.A. as Trustee for Greenpoint
Mortgage Funding Trust Mortgage
Pass-Through Certificates, Series
2006-AR6.

CERTIFICATE OF MAILING

I, the undersigned, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I hereby declare that on September 18, 2017, I caused to be served a copy of the ANSWER TO PETITIONER'S MOTION TO SUPPRESS via first-class, postage prepaid mail as follows:

Paul Schmidt
PO Box 26
Black Diamond, WA 98010
Luape1@aol.com

Dated: September 18, 2017

/s/Karina Krivenko
Karina Krivenko, Declarant
Wright, Finlay & Zak, LLP

WRIGHT FINLAY & ZAK LLP

September 18, 2017 - 5:58 PM

Transmittal Information

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The following documents have been uploaded:

- 948801_Answer_Reply_20170918175421SC598174_4070.pdf
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