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**SUPREME COURT OF THE STATE OF WASHINGTON**

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CEDAR WEST OWNERS ASSOCIATION,

Petitioner,

v.

QUALITY LOAN SERVICE CORP. OF WASHINGTON,

Respondent,

and

NATIONSTAR MORTGAGE LLC,

Respondent.

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**RESPONDENT NATIONSTAR MORTGAGE LLC'S ANSWER TO  
PETITION FOR REVIEW**

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MICHAEL J. KAPAUN, WSBA No. 36864  
STEVEN J. DIXSON, WSBA No. 38101  
WITHERSPOON · KELLEY  
422 West Riverside Avenue, Suite 1100  
Spokane, Washington 99201-0300  
Phone: (509) 624-5265

Counsel for Respondent  
Nationstar Mortgage LLC

## **I. INTRODUCTION**

Petitioner Cedar West Owners Association (“Cedar West”) petitions the Court to interfere with solid legal precedent based on vague public policy considerations and contradictory conclusions of law unsupported by the record. Nothing in Cedar West’s Petition for Review (“Petition”) identifies one of the four limited bases on which the Court might exercise discretionary review, and none exists. For this reason, as elaborated below, Respondent Nationstar Mortgage LLC (“Nationstar”) respectfully asks the Court to deny Cedar West’s Petition.

## **II. IDENTITY OF RESPONDENT**

This Answer is submitted on behalf of Nationstar Mortgage LLC, Respondent herein, Appellee before the Court of Appeal and Defendant in the Superior Court.

## **III. COUNTERSTATEMENT OF THE ISSUES**

1. Whether the statute of limitations accrues for each payment due under a written installment contract from the time a payment becomes due, subject to tolling if appropriate under the facts and circumstances of a particular non-judicial foreclosure.

#### **IV. COUNTERSTATEMENT OF THE CASE**

##### **A. Origination and History of the Subject Mortgage Loan**

The underlying case relates to a June 2008 mortgage loan of \$158,847 (“Loan”) to Judith Allen by Countrywide Bank, FSB, secured by a deed of trust (“Deed of Trust”) with respect to real property located at 1910 West Casino Road, Apartment 111, Everett, Washington 98204. CP 188-98. The Deed of Trust identifies Allen as the borrower, Countrywide Bank, FSB as the lender and Mortgage Electronic Registration Systems, Inc. (“MERS”) as beneficiary, solely as nominee for the lender and its successors and assigns. CP 188. The Deed of Trust also incorporates a condominium rider, which identifies Cedar West Condominiums as the condominium project encompassing the property. CP 195-97.

The Loan was an installment contract requiring monthly payments over thirty years, maturing on July 1, 2038. CP 188. Nationstar is the current beneficiary under the Deed of Trust. CP 215.

Allen defaulted on the Loan in June 2010, when she stopped making the required monthly installment payments. CP 12-19, 201. A Notice of Default was issued in October 2015, reflecting arrearages of \$72,988.92 and containing all notices to borrower required by applicable law. CP 12-19. Thereafter, a Notice of Trustee’s Sale was recorded in

October 2016, indicating that the foreclosure sale was scheduled for February 24, 2017, and further stating that:

A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower(s) and Grantor(s) by both first class and certified mail, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. The list of recipients of the Notice of Default is listed within the Notice of Foreclosure provided to the Borrower(s) and Grantor(s). These requirements were completed as of 10/7/2015.

CP 201. No sale was held due to the commencement of this action.

**B. Relevant Procedural History of This Case**

On February 10, 2017, Cedar West filed suit against Nationstar and the foreclosure trustee, seeking to enjoin the impending foreclosure, quiet title, claiming damages and alleging wrongful foreclosure. CP 301-07. Cedar West alleged that it acquired title to the property through a Trustee's Deed in April 2015 and argued that the foreclosure was untimely according to the six-year statute of limitations in RCW 4.16.040. CP 302-03. Cedar West filed a nearly identical Amended Complaint on February

10, 2017,<sup>1</sup> asserting the same causes of action and factual allegations against the same parties. CP 214-20.

Nationstar moved to dismiss in March 2017, arguing that the foreclosure was timely commenced by issuance of the Notice of Default in October 2015. CP 186-207. Cedar West opposed the motion and Nationstar filed its reply in April 2017. CP 131-85. The trial court granted Nationstar's motion to dismiss on April 4, 2017. CP 129-30.

On April 14, 2017, Cedar West filed a motion for reconsideration under CR 59(a), arguing only that Nationstar "did not submit any admissible evidence to the Court to support its claim that the Notice of Default was issued prior to the expiration of the statute of limitations." CP 25-128. Nationstar opposed the motion, noting that the Notice of Trustee's Sale confirmed the Notice of Default was timely issued, that Cedar West did not allege otherwise or challenge the recitals in the Notice of Trustee's Sale and, therefore, the trial court was "entitled to assume the truth of the recitals." CP 7-24. Cedar West filed a premature notice of appeal on May 4, 2017, and the trial court denied Cedar West's reconsideration motion on May 10, 2017. CP 1.

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<sup>1</sup> The only apparent differences between the original Complaint and the Amended Complaint are the addition of "Amended Complaint" in the caption on page 1 and addition of "incorporated in the State of Delaware" in paragraph 2. *See* CP 214-15.

The Court of Appeals issued its published opinion on February 5, 2019, rejecting Cedar West’s “argument that the first missed payment on an installment promissory note triggers the six-year statute of limitations to foreclose on [a] deed of trust” and instead following the earlier “decision in *Edmundson v. Bank of America, N.A.*, 194 Wn. App. 920, 378 P.3d 272 (2016),” in confirming that “the six-year statute of limitations on an installment promissory note is triggered by each missed monthly installment payment at the time it is due.” Appendix A to Petition for Review, Court of Appeals Opinion in No. 76812-3-I (“Op.”), 1-2. The Court of Appeals further ruled that “when a nonjudicial foreclosure action tolls the statute of limitation involves a factual inquiry,” which in this case occurred with the recording of the Notice of Trustee’s Sale. *Id.* at 2. Cedar West filed its Petition for Review (“Petition”) on March 6, 2019.

**V. REASONS WHY THE COURT SHOULD DENY REVIEW**

Cedar West does not identify in its Petition any basis for the Court to accept review under RAP 13.4(b)(1), but asks the Court to rule contrary to both governing statutes and existing published case law properly cited and applied by the Court of Appeals in its ruling. Invoking vague considerations of public policy and neglecting recent developments in case law, Cedar West contends there is a “pressing need” for the Court’s guidance on how statutes of limitations apply to non-judicial foreclosure,

thus giving rise to a reviewable issue of substantial public interest. Petition at 6-7. Cedar West also implicitly asks the Court to overturn the 2016 *Edmundson* ruling based on Cedar West's interpretation of "how nonjudicial foreclosures . . . are supposed to work." Petition at 20.

The Court should deny the Petition, which fails to state grounds for discretionary review. Moreover, this case does not raise any issue of substantial public interest because applicable law is clear on when and how the statutes of limitation accrue in non-judicial foreclosure. No constitutional considerations are implicated, nothing in the Court of Appeals' decision conflicts with an opinion of the Court, and the decision is consistent with published opinions of the Court of Appeals. *Cf.* RAP 13.4(b). The Petition therefore fails to identify a valid basis for review and is properly denied.

A party seeking discretionary review must identify at least one of four permissible bases for such review, including a conflict between the decision to be reviewed and either a decision of the Court or a published Court of Appeals opinion, or a substantial issue of constitutional significance or public interest. RAP 13.4(b). A case presents an issue of substantial public interest if the Court of Appeals holding has the potential to affect not only the parties to the litigation before it, but also a large portion of the public at large, or the ruling might "invite[ ] unnecessary

litigation on” the issue raised or generally create confusion about it. *See State v. Watson*, 155 Wn. 2d 574, 577, 122 P.3d 903 (2005) (citation and footnote omitted); *see also In re Marriage of Ortiz*, 108 Wn. 2d 643, 645-46, 740 P.2d 843 (1987) (finding issue of substantial public interest where garnishee sought review to determine effect on child support obligations of subsequent decision of Supreme Court).

No such issue is presented here. Cedar West does not contend that the Court of Appeals ruled contrary to any decision of the Court or a published opinion of the Court of Appeals, and it did not. *See generally* Op. Cedar West also fails to identify a significant constitutional question implicated by the Court of Appeals’ ruling, and none exists. *Compare id. with* Petition. Rather, Cedar West implicitly asks the Court to invalidate existing Court of Appeals decisions consistent with the ruling in this case based on Cedar West’s contradictory interpretations of law and general statements of “public policy” considerations. Petition at 6-20.

Cedar West somewhat misleadingly argues that there is an issue of substantial public concern by raising the specter of a thirty-six or forty-six year foreclosure period under existing authorities, because the statute of limitations accrues separately for each payment due under an installment contract. Petition at 6-20. Without referencing the recent slate of case law finding otherwise, and acknowledging that the right to enforce a deed of

trust by non-judicial foreclosure is not realized until the trustee's sale is complete, Cedar West asks the Court to declare that a borrower's first installment default immediately triggers the statute of limitations for the entire obligation (including future payments that are not yet due). Stated differently, Cedar West asks the Court to reverse sound legal principles and limitations articulated by the Court of Appeals in this case and others, based solely on its *ipse dixit*. *See id.* This argument misconstrues the standard of review.

Despite the arguments in Cedar West's Petition, existing law provides clear guidance concerning the statute of limitations as applied to non-judicial foreclosures, beginning with *Edmundson* and continuing until and beyond the date of the Court of Appeals' decision here. *See Edmundson*, 194 Wn. App. at 927 ("As an agreement in writing, the deed of trust foreclosure remedy is subject to a six-year statute of limitations."); *id.* at 930 ("[W]hen recovery is sought on an obligation payable by installments [such as for monthly mortgage payments], the statute of limitations runs against each installment from the time it becomes due."). *See also 4518 S. 256th, LLC v. Karen L. Gibbon, PS*, 195 Wn. App. 423, 434, 382 P.3d 1 (2016); *Merceri v. Bank of N.Y. Mellon*, 4 Wn. App. 2d 755, 759-60 & fn. 1, 434 P.3d 85 (2018). *Accord Erickson v. Am.'s Wholesale Lender*, No. 77742-4-I, 3 Wn. App. 2d 1023, 2018 WL

1792382, \*2 (Apr. 16, 2018); *Kerrigan v. Qualstar Credit Union*, No. C16-1528-JCC, 2016 WL 7103750 (W.D. Wash. Dec. 06, 2016); *Fujita v. Quality Loan Serv. Corp. of Wash.*, No. C16-925-TSZ, 2016 WL 4430464 (W.D. Wash. Aug. 22, 2016); *Lake v. MTGLQ Investors, LP*, No. C17-0495JLR, 2017 WL 3839590 (W.D. Wash. Sept. 1, 2017); *Heintz v. U.S. Bank Tr., N.A.*, No. 76297-4-I, 2 Wn. App. 2d 1007, 2018 WL 418915, \*2 (Jan. 16, 2018); *Creagan v. Nationstar Mortg. LLC*, Case No. C17-5138 RBL, 2018 WL 4095091, \*1 (W.D. Wash. Aug. 28, 2018); *Spesock v. U.S. Bank, N.A.*, Case No. C18-0092JLR, 2018 WL 4613163, \*3-4 (W.D. Wash. Sep. 26, 2018); *Umouyo v. Bank of Am., N.A.*, Case No. 2:16-CV-01576-RAJ, 2019 WL 359268, \*3 (W.D. Wash. Jan. 29, 2019); *Bahnean v. HSBC Bank USA, N.A.*, No. 35423-7-III, 2019 WL 365802, \*2 (Wash. App. Jan. 29, 2019); *CitiMortgage, Inc. v. Moseley*, No. 50895-8-II, 2019 WL 1040391, \*5 (Wash. App. Mar. 5, 2019).

All of the cases above - none of which is mentioned in Cedar West's Petition - presume that the six-year statute of limitations in RCW 4.16.040, as interpreted in *Edmundson* and *Karen L. Gibbon*, applies in non-judicial foreclosures, and further that the statute accrues separately as each installment comes due. Default on a single installment alone does not trigger the six-year statute of limitations for the entire debt. This is an overwhelming body of authority, including three published cases in

addition to, and not conflicting with, the published opinion of the Court of Appeals in this case. *See Edmundson*, 194 Wn. App. at 920, 927, 930; *Karen L. Gibbon*, 195 Wn. App. at 434; *Merceri*, 4 Wn. App. 2d at 759-60 & fn. 1. *See also* Op. at 8-10, --- Wn. App. 2d ---, 434 P.3d 554, 560 (2019). This clear guidance provides certainty to lenders and borrowers alike and needs no further elaboration. To entertain Cedar West's Petition would jeopardize the existing certainty that has resulted from the uniform application in the cases listed above of the statute of limitations as set forth in *Edmundson*.

On the issue of tolling, although there is somewhat less clarity concerning exactly what event tolls the limitations period in a non-judicial foreclosure, the Court of Appeals in this matter resolved any resulting issue rather than aggravating it. *See* Op. 10-15, 434 P.3d at 562. Declaring that "*Edmundson* has been interpreted too broadly to mean filing a notice of default definitively tolls the statute of limitations," the Court of Appeals explained that tolling depends upon the circumstances of each particular case and clarified "that after filing a notice of default, the lender must act diligently to pursue and perfect nonjudicial foreclosure remedies under the [Deeds of Trust] Act." *Id.* Review is therefore unnecessary and inappropriate as to this issue, because granting Cedar West's request would actually undermine the clarity Cedar West purports to seek by

unwinding the guidance offered in the Court of Appeals' published opinion below.

In the final analysis, no issue of substantial public interest would be advanced by entertaining Cedar West's Petition for Review, and Cedar West fails to identify any of the other permissible bases for review in its Petition. *See* RAP 13.4(b). The Court should deny the Petition.

## **VI. CONCLUSION**

For the reasons stated above, Nationstar asks the Court to deny Cedar West's Petition for Review and leave undisturbed the Court of Appeals' published opinion.

RESPECTFULLY SUBMITTED this 5th day of April, 2019.

**WITHERSPOON · KELLEY**

*s/ Michael J. Kapaun*  
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MICHAEL J. KAPAUN, WSBA No. 36864  
STEVEN J. DIXSON, WSBA No. 38101  
Counsel for Respondent  
Nationstar Mortgage LLC

**DECLARATION OF SERVICE**

I declare that on the 5<sup>th</sup> day of April, 2019, I caused a true and correct copy of the foregoing to be served by the method indicated below and addressed to the following:

<p>Michael A. Padilla                  Law Offices of James L. Strichartz                  201 Queen Anne Avenue North                  Suite 400                  Seattle, WA 98109                  mike@condo-lawyers.com                  jennifer@condo-lawyers.com</p> <p><i>Counsel for Plaintiff/Appellant Cedar West Owners Association</i></p>	<p><input type="checkbox"/> By Hand Delivery  <input checked="" type="checkbox"/> By U.S. Mail  <input type="checkbox"/> By Overnight Mail  <input type="checkbox"/> By Facsimile  <input checked="" type="checkbox"/> By Electronic Mail</p>
<p>Robert McDonald                  Quality Loan Service Corp. of WA                  108 1st Avenue South                  Suite 202                  Seattle, WA 98104                  rmcDonald@qualityloan.com                  rockymcdonald@gmail.com</p> <p><i>Counsel for Respondent/Defendant Quality Loan Service Corp. of WA</i></p>	<p><input type="checkbox"/> By Hand Delivery  <input checked="" type="checkbox"/> By U.S. Mail  <input type="checkbox"/> By Overnight Mail  <input type="checkbox"/> By Facsimile  <input checked="" type="checkbox"/> By Electronic Mail</p>

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

DATED this 5th day of April, 2019.

*/s Karina Hammond*  
 Karina Hammond, Legal Assistant

# WITHERSPOON KELLEY

April 05, 2019 - 2:24 PM

## Transmittal Information

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