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REPLACES PETITION FOR REVIEW FILED ON 7/24/19. AMENDED TO INCLUDE PROPER TABLE OF AUTHORITIES.

Case No. 77163-9-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STEVEN J. VILLEGAS,

Appellant,

v.

NATIONSTAR MORTGAGE, LLC; AURORA BANK, FSB; NORTHWEST TRUSTEE SERVICES, INC.; U.S. BANK, N.A. as Trustee for Lehman Mortgage Trust Mortgage Pass-Through Certificates, Series 2007-2,

Respondents.

STEVEN VILLEGAS' AMENDED PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

Petitioner Steven Villegas is a former homeowner who was denied a "good faith" mediation under the FFA ("Foreclosure Fairness Act"), RCW 61.24.163, *et seq.*, and who faced a wrongfully initiated non-judicial foreclosure. He is the Plaintiff in the underlying litigation.

II. CITATION TO COURT OF APPEALS DECISION

Mr. Villegas seeks review of the decision of the Court of Appeals, Division 1 ("Decision"), Case No. 77163-9-I. The published Opinion was filed on June 20, 2019 (Att. A) and Mr. Villegas' Motion for Reconsideration was denied on June 20, 2019 (Att. B).

III. ISSUES PRESENTED FOR REVIEW

1. Division I's decision is in direct conflict with this Court's numerous decisions regarding the proper analysis and application of the requirements to prove the injury and causation elements of a Consumer Protection Act ("CPA") claim. RCW 19.86, *et seq.*

2. The Opinion is predicated upon a faulty conclusion about how the facts presented at trial of the injury and damages sustained by Mr. Villegas, caused entirely by Nationstar, are analyzed under the CPA.

3. Division I's decision effectively destroys the ability of any homeowner to obtain relief under the FFA's *per se* CPA violation provisions. It vitiates the Washington Legislature's express purpose in holding entities that refuse to comply with the FFA provisions liable for that refusal. RCW 61.24.135(2)(a).

4. Division I's findings related to the grant of summary judgment are also contrary to this Court's decisions.

IV. STATEMENT OF THE CASE

1. Division I's Decision Affirming Trial Court's Refusal to Recognize Mr. Villegas' Damages and Injury Resulting Directly from the Actions of Nationstar Contravenes this Court's Decisions and Washington law.

Mr. Villegas lived in his residence located at 3457 12th Avenue West, Seattle, WA 98119 ("Residence") for years, with his family. He obtained a refinance of his mortgage in or about December 20, 2006 by signing a Promissory Note payable to Americahomekey, Inc. and a Deed of Trust, which also identified Americahomekey, Inc. as the Lender. The Note had a fixed interest rate of 6.5%. CP 520-523; 525-540.

Mr. Villegas made payments on the loan for several years but began to suffer financial problems in 2011 and into 2012 because of loss of business income and fell behind on his mortgage in January 2012, when he was making payments to Aurora. CP 898.

Mr. Villegas believed that he would have to sell the house and tried to accomplish a short sale, to no avail. He and his family wanted to stay in the house, so he tried to obtain a loan modification. CP 898. He submitted loan modification paperwork, but did not get any substantive response for months, as he fell further and further behind on his loan. He received a Notice of Pre-Foreclosure Options from Aurora's agent, and then a Notice of Default ("NOD") was posted at his Residence on or about June 28, 2012. CP 898; 903-905. The NOD was issued by Northwest

Trustee Services, Inc. ("NWTS") as the "duly authorized agent" for "Aurora Bank, FSB", but identifying U.S. Bank as the owner of the loan. However, the accompanying FDCPA notice identified Aurora as "the creditor to whom the debt is owed". *Id*.

Shortly thereafter, he was notified loan servicing transferred to Nationstar. Mr. Villegas was unable to cure the default and the foreclosure process continued. The following ensued:

a. Received Notice of Trustee's Sale ("NOTS") from NWTS. CP 899; 907-910. It read that the foreclosure was being conducted by Nationstar consistent with an Assignment of Deed of Trust recorded in King County on July 25, 2012. *Id*.

b. Nationstar identified on the NOTS as the "beneficiary" of Mr. Villegas' Deed of Trust, recorded in King County on August 27, 2012 with sale scheduled for November 30, 2012. CP 907-910.

c. Assignment signed by Brady Nicholas, Nationstar employee, July 20, 2012 as though he were an "Assistant Secretary" of "MERS, Inc. solely as nominee for Americahomekey, Inc." allegedly assigning the beneficial interest in Mr. Villegas' Deed of Trust to **Nationstar**. CP 554.

d. NOTS was also predicated upon an Appointment of Successor Trustee executed by another Nationstar employee, Jamesia Austin, falsely asserting that Nationstar was the "beneficiary". It was recorded in King County on August 6, 2012. CP 556.

e. Ms. Austin also signed the Beneficiary Declaration falsely asserting on July 27, 2012, that Nationstar was the "holder" of Mr. Villegas' Note. CP 2279.

Mr. Villegas sought legal advice regarding his rights in relation to the potential loss of the Residence and he was required to pay $350.00 to meet Ms. Huelsman to understand those rights and to investigate whether the attempted foreclosure was in compliance with Washington law. CP

899. Ms. Huelsman made a referral to participate in a mediation under the Foreclosure Fairness Act ("FFA"). RCW 61.24.163, *et seq.*

Deposition Testimony by Corporate Representatives

NWTS' corporate representative testified to the following:

a. There were issues from the outset about the identity of the loan owner and confirmation that U.S. Bank was the owner. CP 1846 (Pg. 38:3-17).

b. Confirmed that the NOD is completed by the computer and that it was sent out for service on the same day. CP 1847 (Pg. 41:23-45:11).

c. NWTS created all Nationstar signed documents to facilitate the speedy processing of the foreclosure. CP 1848 (Pg. 48:3-11.)

d. He also confirmed that NWTS received and relied upon the Beneficiary Declaration which falsely asserted that Aurora was the noteholder on April 4, 2012. CP 1822 (Pg. 65:18-68:15).

e. NWTS received a Beneficiary Declaration which had an incorrect loan number, name and property address and the witness, after coaching by his attorney, refused to indicate whether NWTS had relied upon the document or used it in connection with the attempted foreclosure. CP 1822-1823; 2279. He asserted that he had no idea why NWTS was in possession of the incorrect Beneficiary Declaration (CP 2279) or from whom it was received. He had no idea if there was a proper Nationstar Beneficiary Declaration that was ever produced to NWTS. CP 1823 (Pgs. 68:2-71:10).

Mr. Richardson, Nationstar's corporate representative, testified to the following:

a. He could not explain how MERS could transfer a beneficial interest in Mr. Villegas' Deed of Trust from Aurora and then later transfer that same interest from MERS to Nationstar, especially since Nationstar was never the noteholder. CP 1848 (Pgs. 45:3-46:2); 2273; 2275.

b. When testifying about the relationship between Nationstar, servicer, and U.S. Bank, beneficiary, he confirmed that while there were file notations about Nationstar continuing the foreclosure due to an "investor" decision, but he confirmed that the "investor" (U.S. Bank) left all such decisions up to Nationstar and that U.S. Bank had no role in any

decisions about the loan or in overseeing Nationstar's activities. CP 1853-1854 (Pgs. 107:23-109:15).

Summary judgment was granted dismissing Mr. Villegas' claims of wrongful attempted foreclosure, only issues on mediation went to trial.

2. Facts Related to the FFA Mediation Process.

Evidence presented at trial makes clear the following:

a. Mediation originally scheduled for February 13, 2013.

b. February 8, 2013, counsel for Nationstar emailed Ms. Huelsman & mediator asking for a continuance so that it could finish the review of Mr. Villegas' loan modification application. TE 37 (Pg. 5).

c. Ms. Huelsman agreed to a continuance and a new date was scheduled for the future. TE 37 (Pgs. 1-5).

d. Counsel for Nationstar did **not** advise Ms. Huelsman or the mediator that Nationstar had approved Mr. Villegas for a temporary loan modification ("TPP") on that same date. TE 12. VR 5/8/17 Vol. I (Pgs. 677-679).

e. The first TPP was never sent to Mr. Villegas. TE 37 (Pgs. 13-14).

f. New mediation date was scheduled for May 21, 2013. TE 37 (Pg. 1).

g. On May 20, 2013, counsel for Nationstar emailed Ms. Huelsman to inquire as to why Mr. Villegas had never returned the February TPP nor made the required payments. TE 37 (Pgs. 14-17) VR 5/8/17 Vol. I (Pgs. 542-561)

h. Ms. Huelsman confirmed that neither she nor her client had ever received the first TPP. TE 37 (Pgs. 11-14). VR 5/8/17 Vol. I (Pgs. 542-561)

i. Counsel for Nationstar and Nationstar **knew** that Mr. Villegas had never received the first TPP because it was not sent by the attorneys. VR, 5/4/17 (Pgs. 442-448); TE 37 (Pgs. 11-17). VR 5/8/17 Vol. I (Pgs. 542-561)

j. Counsel for Nationstar acted as though he did not know why Mr. Villegas did not have the first TPP and indicated Nationstar was going to "determine" whether another TPP "could" be generated. TE 37 (Pgs. 7-11). VR 5/8/17 Vol. I (Pgs. 542-561)

k. Nationstar was already in the process of generating a new

TPP before the first email was sent to Mr. Villegas' counsel. CP 1453-1454; VR 5/4/17 (Pgs. 442-448). VR 5/8/17 Vol. I (Pgs. 542-561)

l. Counsel for Nationstar continued to falsely represent that it needed to "decide" whether to create a new TPP and reported on May 20, 2013 to Ms. Huelsman and the mediator that Nationstar was going to generate a new TPP. TE 37 (Pgs. 7-11) VR 5/8/17 Vol. I (Pgs. 542-561)

m. When Mr. Villegas received the May TPP, he accepted the offer and made all three of the required payments on time. VR 5/8/17 Vol I (Pgs. 678-680)

n. The terms of the first TPP and the May TPP were somewhat similar, but the alleged escrow arrears on the May TPP were only $112.29. TE 12, 13, 14.

o. Mr. Villegas received the permanent modification offer in September 2013; however, it demanded amounts allegedly owed for the escrow shortage that were incorrect and differed substantially from the TPP monthly payments. TE 16. VR 5/8/17 Vol. I (Pgs. 683-688, 692-693).

p. Through the FFA mediation process, Mr. Villegas challenged the inaccuracies in the alleged escrow arrears and the amounts that were being included in the monthly payment. VR 5/8/17 Vol. I (Pgs. 684-689). The proposed new monthly mortgage payment under the permanent modification was more than $200.00 per month in excess of the May TPP payment, which was supposedly explained by escrow arrears. TE 16; VR 5/8/17 Vol. I (Pg. 688).

q. Mr. Villegas' dispute of the alleged escrow arrears were conveyed to the Nationstar attorney, and a response was requested. VR 5/8/17 Vol. I (Pg. 688).

r. The mediator and Ms. Huelsman made multiple requests for supporting documentation and information, to no avail. TE 37 VR 5/8/17 Vol. I (Pgs. 553-558).

s. There were responsive emails from counsel for Nationstar promising to get an answer, but none was ever provided. TE 37. VR 5/8/17 Vol. I (Pgs. 553-558).

t. No response was forthcoming from Nationstar and as a result, the mediator issued a "not in good faith" certification, noting that he would be willing to reconsider the finding if Nationstar would provide an explanation. TE 32; TE 15.

u. On the day after the Mediation Certificate was issued, counsel for Nationstar submitted a one-page document to the mediator and Ms. Huelsman without explanation. TE 15.

v. Nationstar's attorney asked the mediator to change the certification, but he refused. VR 5/8/17 Vol I (Pgs. 578-584).

w. A "not in good faith" certification is a *per se* violation of the CPA. RCW 61.24.163(10); 61.24.135(2).

In her Findings of Fact and Conclusions of Law, as affirmed in the Decision, Judge Andrus found that Nationstar did have a representative participating in the mediation with the full authority to settle. Op. 7; CP 1461-1462. Mr. Villegas challenged that factual finding, as the record made clear that the Defendants' representatives in the FFA mediation repeatedly demonstrated that there was no meaningful authority to reach resolution. VR 5/3/17 (pp. 80-83).[1]

Judge Andrus noted that RCW 61.24.163(10) provides,

> (10) A violation of the duty to mediate in good faith as required under this section may include:
> . . . . .
> (c) Failure of a party to designate representatives with adequate authority to **fully settle, compromise, or otherwise reach resolution with the borrower in mediation**;

RCW 61.24.163(10)(c); 61.24.135(2)(a) (emphasis added). Judge Andrus held that Nationstar did not participate in the FFA mediation in good faith, which was affirmed by the Court of Appeals. Op. 7.

Judge Andrus accepted as credible Mr. Villegas' testimony that he paid for Ms. Huelsman to provide him with an initial consultation about the legal options that were available to him prior to his entry into the FFA

[1] The Richardson deposition was published to the trial court and he testified that the mediation participants did **not** have authority to make decisions about a loan modification. RCW 61.24.163(7)(a)(ii). CP 1869 (Pgs. 130:21-132:16).

mediation and that he paid Ms. Huelsman at least $4,000.00 in attorneys' fees and costs for her work on the mediation. VR 5/11/17 (Pgs. 776-785); CP 1460. Mr. Villegas also paid Nationstar **$9,514.97** in fees, including "lender paid expenses" and "legal fees" when he sold the house. TE 29 (Pg. 14).

On the last day of trial, Ms. Huelsman realized that as a result of being rushed to conclude on the day prior by Judge Andrus, she needed to put Mr. Villegas back on the stand to testify about his out of pocket expenses. She was then required by Judge Andrus to merely make an offer of proof as to his out of pocket expenses because she wanted to expedite the matter. VR 5/11/17 (Pgs. 776-785). Judge Andrus also found as credible Mr. Villegas' testimony about the damage to his business income resulting from the foreclosure and the inability to obtain a modification because of uncertainty about whether the monthly payment would increase immediately after he accepted the offer because no explanation was provided about the change in terms. CP 1460. However, Judge Andrus blamed business expenses incurred because of the foreclosure and Mr. Villegas' inability to get a meaningful mediation and a modification with amounts that make sense on him. In fact, Judge Andrus held that those expenses were his fault because he defaulted in the first place. CP 1462. Such language is in direct contravention of Washington case law regarding

the injury and/or damages that can be incurred as a result of a wrongful attempted foreclosure, and in this case, a mediation not done in good faith. *Id.* This portion of the Findings was ignored entirely by the Court of Appeals. Even worse, both the trial court and the Court of Appeals completely ignored Mr. Villegas' argument that he was **injured** by not having a mediation that was done in "good faith", as mandated by the statute. RCW 61.24.163, *et seq.*

The Legislative Intent behind the passage of the Foreclosure Fairness Act is embodied in the following:

> (c) Provide a process for foreclosure mediation when a housing counselor or attorney determines that mediation is appropriate. For mediation to be effective, the parties should attend the mediation (in person, telephonically, through an agent, or otherwise), provide the necessary documentation in a timely manner, **willingly share information, actively present, discuss, and explore options to avoid foreclosure, negotiate willingly and cooperatively, maintain a professional and cooperative demeanor, cooperate with the mediator, and keep any agreements made in mediation.**" [2011 c 58 §1.]

RCW 61.24.005, Notes(2)(c) – Findings – Intent – 2011 c58 (emphasis added). Nationstar did **not** meet those requirements. Because of that refusal to participate truthfully **throughout** the mediation, Mr. Villegas was denied a mediation in good faith.

The Decision relied upon Judge Andrus' "new" findings following Mr. Villegas' Motion for Reconsideration (Op. 8) which are contradicted

by his testimony, which she held was credible in her Findings. CP 1460; VR 5/8/17 Vol. I (pgs. 687-689).

In Denial of the Motion for Reconsideration, Judge Andrus found that Mr. Villegas' expenditures in connection with the mediation "would have [been] incurred . . . whether or not the parties had entered into a loan modification agreement." The Court of Appeals agreed with this analysis and cited to it. Op. 8. This ignores the fact that Mr. Villegas was entitled, when he paid those amounts for representation ($4,000.00) and for mediator fees ($400.00), to have a mediation conducted in good faith. RCW 61.24.163. RCW 61.24.163(9); 61.24.005 Notes. Findings – Intent. He was deprived of a "good faith" mediation by the intentional actions of Defendants. The FFA does **not** require that the parties agree to a loan modification. A homeowner is not guaranteed anything by the statute other than the opportunity "to reach a resolution, including but not limited to reinstatement, modification of the loan, restructuring of the debt, or some other workout plan." When Mr. Villegas was presented with a payment plan that made no sense and he feared being faced with the prospect of having agreed to a plan that would change shortly thereafter, he rejected that offer. VR 5/11/17 Vol. I (Pgs. 683-689). Judge Andrus found that decision to be "reasonable". CP 1460. He was denied a meaningful opportunity to "reach a resolution" because of the Defendants'

misrepresentations and refusal to explain its numbers – even during the trial. CP 1450-160. VR 5/11/17 Vol. I (Pgs. 683-688).

In spite of the repeated and systemic unfair and deceptive practices by Defendants throughout the mediation, Judge Andrus found that he did not suffer an injury or damages as a result of his inability to obtain an FFA mediation that was conducted in "good faith" compliance with the requirements of the statute. CP 1460-1461. This was affirmed by the Court of Appeals. Op. 8.

Judge Andrus understood the actions and inactions by Nationstar and expressed her frustrations throughout the trial about the lack of credibility of the Nationstar witness and his testimony about the arrears (VR 5/4/17 (Pgs. 373-389), 5/11/17 Vol. I (Pgs. 585-591)), but she and the Court of Appeals did not apply her factual findings properly to the law. For that reason, the Opinion upholding her decision to dismiss Mr. Villegas' *per se* CPA claim based upon a lack of injury or damages resulting from the actions taken by Nationstar must be examined by this Court. Failure to do so will result in the gutting of any *per se* CPA claim, which is an essential component of the FFA when there is a finding of "not in good faith".

2. Division I Erroneously Found that Possession by a Custodian for the Benefit of the Noteholder Allowed the Custodian to also be Treated as the "Holder". Op. 10-11.

The Decision found that Aurora and Nationstar were "noteholders" because they possessed Mr. Villegas' original Note and cited to RCW 62A.3-201 in support of the position that a note may be held "directly or through an agent". Op. 10, fn. 19. However, the evidence presented to the trial court made clear that neither Aurora nor Nationstar (its successor) were ever the noteholders, as defined under Washington law. RCW 61.24.005(2) and that they only acted as servicers and custodians. Nationstar could not be an "agent" for the noteholder, U.S. Bank as Trustee, and the noteholder at the same time.

The Trust documentation presented to the trial court in connection with Defendants' Motion for Summary Judgment made this clear and was outlined in detail in Mr. Villegas' Opening Brief, which is incorporated herein by reference.

V. STANDARD ON REVIEW

1. Standard on Review at the Court of Appeals.

Division I maintained that it engaged in a *de novo* analysis under CR 56 as to whether summary judgment was appropriate, but Mr. Moorman maintains that the Court completely ignored its mandate.

The Court of Appeals reviewed the trial proceedings as follows:

> An appellate court limits its review of challenges of a trial court's findings of fact and conclusions of law "to

> determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment." Substantial evidence exists "'when there is a sufficient quantum of proof to support the trial court's findings of fact." An appellate court accepts unchallenged findings of fact as true on appeal.

Op. 14.

VI. ARGUMENT

A. The Decision Ignores Entirely This Court's Binding Decisions and the Intent of the Legislature in Passing the FFA.

1. The Court of Appeals Disregarded Binding Precedent and the Facts Associated with the "Not in Good Faith" Mediator Finding.

Washington case law makes clear that Mr. Villegas only needed to prove at trial that "but for" all of Nationstar's acts and/or practices, injury to him and his damages would not have occurred. *Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash. Inc*., 162 Wn.2d 59, 84 (2007). In *Indoor Billboard*, this Court adopted the proximate cause standard set forth in WPI 15.01. *Indoor Billboard*, 162 Wn.2d at 83-84 ("the proximate cause standard embodied in WPI 15.01 is required to establish the causation element in a CPA claim. A plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury."). Under WPI 15.01, "[a] cause of an [injury] [event] is a proximate cause if it is related to the [injury] [event] in two ways: (1) the cause produced the [injury] [event] in a direct sequence [unbroken by

any superseding cause], and (2) the [injury] [event] would not have happened in the absence of the cause. *See also, Schnall v. AT&T Wireless Services, Inc*., 171 Wn.2d 260 (2011). Moreover, under WPI 15.01, there may be more than one proximate cause of an injury. *See also, Jonson v. Milwaukee R.R.*, 24 Wn. App. 377 (1979) (parties disputed cause of injury so court instructed jury that there can be more than one proximate cause of injury). A superseding cause may preclude a finding of proximate cause only if the intervening act is not foreseeable and is "so highly extraordinary or improbable as to be wholly beyond the expectability." *Crowe v. Gaston*, *supra* at 519 (1998) to find a resolution

Mr. Villegas was injured because he was denied a "good faith" mediation. RCW 61.24.163(9); 61.24.005 Notes – Findings – Intent 2011 c58 §1(2)(c). He was deprived of a meaningful opportunity to obtain a resolution of his pending foreclosure due entirely to the actions of Defendants. This constitutes an injury as defined under the CPA. RCW 19.86, *et seq.* and relevant case law.

Mr. Villegas had a reasonable expectation that the FFA mediation would allow for him to participate in "a framework for homeowners and beneficiaries to communicate with each other to reach a resolution and avoid foreclosure whenever possible." RCW 61.24.005; Note: Finding – Intent – 2011 c58 (emphasis added). He never received "effective[]

communication" nor disclosures required by the mediator. *Id.* at 2(b) & (c). CP 1460 (Findings, Para. 37).

Both Courts cited to *Frias v. Asset Foreclosure Services, Inc*., 181 Wn.2d 412, 334 P.3d 529 (2014) in support of its determination that Mr. Villegas did not prove any monetary damages were caused by the actions of Nationstar, but did not separately analyze whether Nationstar's actions caused Mr. Villegas "injury" as described in *Frias.*

As this Court noted in *Trujillo v. NW Trustee Servs., Inc.,* 183 Wn.2d 820, 355 P.3d 1100 (2015),

> Following our recent decision in *Lyons v. U.S. Bank National Ass 'n,* 181 Wn.2d 775, 336 P.3d 1142 (2014), we hold that **a trustee cannot rely on a beneficiary declaration containing such ambiguous alternative language**. Trujillo therefore alleged facts sufficient to show that NWTS breached the DTA and also to show that that breach could support the elements of a Consumer Protection Act (CPA) claim.

Trujillo at 820 (emphasis added). In *Lyons v. U.S. Bank,* 181 Wn.2d 775, this Court analyzed the importance of the foreclosing trustee's reliance upon a defective beneficiary declaration to proceed with a non-judicial foreclosure. It held that Ms. Lyons had sufficiently demonstrated facts which would support her claim for a CPA violation because she suffered an **injury**. *Id.* The *Walker* Court also noted that Walker had valid claims even without the foreclosure being complete because he had suffered

harm:

> In Panag v. Farmers Insurance Co. of Washington, our Supreme Court held, "[T]he injury requirement is met upon proof the plaintiff's 'property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal.'" Investigative expenses, taking time off from work, travel expenses, and attorney fees are sufficient to establish injury under the CPA.
> ….
> Because Walker pleads facts that, if proved, could satisfy all five elements, we conclude that the trial court erred by dismissing his CPA claim.

Walker v. Quality Loan Serv. Corp., 308 P.2d 716, 720-724 (2014), citing to *Panag*, 166 Wn.2d at 53.

A plain reading of these cases demonstrates that Nationstar should be held liable for the **totality** of its actions during the FFA mediation and **not** just for the refusal to explain the increase in the amounts demanded in the final loan modification offer. It means that the amounts demanded in earlier versions of the Temporary Payment Plans ("TPP") were therefore incorrect. Further, Nationstar issued a second TPP because its attorneys did not provide the first offer to Mr. Villegas and then lied about it to his attorney. CP 1459. Liability may apply even where a defendant "consciously avoided knowing that they were facilitating unauthorized transactions." *FTC v. Wells*, 385 Fed. Appx. 712, 713 (9th Cir. 2010). In *Wells*, the defendants were held jointly and severally liable not because the

defendants actually made the transactions at issue, but because they merely *facilitated* them. *Id*. They merely played a "role" in the larger scheme. *Id*. Here, Nationstar knew that its lawyers did **not** forward the first TPP, adopted the law firm's lie that the first TPP was actually sent, and then allegedly reviewed Mr. Villegas again for a TPP, providing him with one that was founded upon the false assertion that he had refused the previous TPP. CP 1459-1460. After Mr. Villegas made the three required payments on time and in full, he received a permanent modification which Judge Andrus found at trial, was predicated upon numbers that did **not** make any sense. VR 5/11/17 Vol. I (Pgs. 585-591)

VII. CONCLUSION

Mr. Villegas respectfully requests that the Supreme Court accept review as this Opinion, and some other similar Opinions rendered by Division I result in a body of case law upon which trial courts can and will rely to destroy the only enforcement action available against "beneficiaries" and their agents in the context of an FFA mediation.

Respectfully submitted this 24th day of July 2019.

LAW OFFICES OF MELISSA A. HUELSMAN, P.S.

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CERTIFICATE OF SERVICE

I, Tony Dondero, declare under penalty of perjury as follows:

1. I am over the age of eighteen years, a citizen of the United States and state of Washington, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on Friday, August 9, 2019, I caused the foregoing document attached to this Certificate of Service plus any supporting documents, declarations and exhibits to be served upon the following individuals via the methods outlined below:

WITHERSPOON KELLEY Christopher G. Varallo, WSBA #29410 Steven J. Dixson, WSBA #38101 422 W. Riverside Avenue, Suite 1100 Spokane, WA 99201 Ph: (509) 624-5265 Fax: (509) 458-2728 Email: cgv@witherspoonkelley.com sjd@ witherspoonkelley.com Attorneys for Respondents	□ Legal Messenger ☒ Electronic Mail □ Federal Express Other: Regular U.S. mail, postage prepaid

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

Dated this Friday, August 9, 2019, at Seattle, Washington.

Tony Dondero, Paralegal

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEVEN J. VILLEGAS,

Appellant,

v.

NATIONSTAR MORTGAGE, LLC; AURORA BANK, FSB; NORTHWEST TRUSTEE SERVICES, INC.; U.S. BANK, N.A. as Trustee for Lehman Mortgage Trust Mortgage Pass-Through Certificates, Series 2007-2,

Respondent.

No. 77163-9-I

ORDER GRANTING MOTION TO PUBLISH OPINION

Respondents Nationstar Mortgage, LLC, and U.S. Bank, N.A., having filed a motion to publish opinion, and the hearing panel having reconsidered is prior determination and finding that the opinion will be of precedential value, now, therefore it is hereby

ORDERED that the unpublished opinion filed March 11, 2019, shall be published and printed in the Washington Appellate Reports.

FOR THE COURT:

Judge

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2019 JUN 20 AM 11:16

FILED
3/11/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STEVEN J. VILLEGAS,

Appellant,

v.

NATIONSTAR MORTGAGE, LLC; AURORA BANK, FSB; NORTHWEST TRUSTEE SERVICES, INC.; U.S. BANK, N.A. as Trustee for Lehman Mortgage Trust Mortgage Pass-Through Certificates, Series 2007-2,

Respondent.

No. 77163-9-I

DIVISION ONE

PUBLISHED OPINION

FILED: March 11, 2019

LEACH, J. — Steven Villegas appeals the summary judgment dismissal of his claims against Nationstar Mortgage LLC, Aurora Bank FSB, Northwest Trustee Services Inc. (NWTS), and U.S. Bank N.A. for violations of the Consumer Protection Act (CPA).[1] Villegas also appeals the trial court's findings of fact and conclusions of law entered in favor of Nationstar on two remaining CPA claims dismissed after a bench trial. We affirm.

[1] Ch. 19.86 RCW.

FACTS

In 2006, Americahomekey Inc. loaned Villegas $552,000 to refinance his home. Villegas signed a promissory note. It states that if he did "not pay the full amount of each monthly payment on the date that it is due," he would be in default. Americahomekey endorsed the note to Lehman Brothers Bank FSB. It later endorsed the note to Lehman Brothers Holdings Inc., which in turn endorsed the note in blank.[2]

Villegas also signed a deed of trust pledging his home as security for the note. The deed of trust identified Americahomekey as the lender, Talon Group as the trustee, and Mortgage Electronic Registration Systems Inc. (MERS) as "nominee for Lender and Lender's successors and assigns" as the beneficiary.

In February 2007, Lehman Brothers sold Villegas's note to a securitized trust called Lehman Mortgage Trust Mortgage Pass-Through Certificates Series 2007-2. A custodial agreement for the Trust established Aurora Loan Services LLC as the loan servicer and U.S. Bank as the custodian in possession of loan documents, including the original notes. The custodial agreement provided that the custodian would release any loan documents to the servicer upon request. Aurora Loan Services sent Villegas a letter telling him that it was the new loan servicer. Aurora Loan Services later notified Villegas that it had transferred the servicing rights to its parent company, Aurora Bank.

[2] The record does not contain the dates of the endorsements.

Undisputed evidence shows that Villegas stopped making note payments in January 2012.

On June 9, 2012, Aurora Bank instructed NWTS to start a nonjudicial foreclosure of Villegas's home. On June 25, 2012, Aurora Bank furnished NWTS with a beneficiary declaration. It stated that Aurora was the holder of the note. The beneficiary declaration, signed by Regina Lashley, states,

> DECLARATION OF BENEFICIARY
> PURSUANT TO RCW 61.24.030
> (SB 5810)
>
> Date: APRIL 4, 2012
>
> Loan Number: 5227
>
> Borrower Name: STEVEN J. VILLEGAS
>
> . . . .
>
> I am employed as Senior Vice President for Aurora Bank FSB. I am duly authorized to make this declaration on behalf of Aurora Bank FSB.
>
> Aurora Bank FSB is the holder of the Promissory Note evidencing the above-referenced loan.
>
> I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

On June 12, 2012, Nationstar acquired the servicing rights to Villegas's loan from Aurora. This included the right to obtain the original note from U.S. Bank, the document custodian. Aurora sent Villegas a letter informing him that Nationstar would become his loan servicer effective July 1, 2012.

On June 28, 2012, NWTS, acting as "duly authorized agent" for Aurora Bank, posted a notice of default at Villegas's home.

On July 4, 2012, Nationstar instructed NWTS to proceed with the nonjudicial foreclosure as agent for Nationstar. On July 23, 2013, Nationstar signed an appointment of NWTS as successor trustee.

On August 24, 2012, NWTS scheduled a trustee's sale of Villegas's home for November 30, 2012.

In September 2012, Villegas requested mediation under the Foreclosure Fairness Act (FFA).[3] Nationstar placed the foreclosure of Villegas's home on hold.

On December 13, 2012, Villegas, his attorney, and a representative from Nationstar met with the mediator. The parties discussed a loan modification. Nationstar analyzed Villegas's financial information and determined that he qualified for a federal Home Affordable Mortgage Program loan modification.

On May 20, 2013, Nationstar sent Villegas a trial payment plan (TPP) offer.[4] The TPP required that Villegas make three monthly payments of $3,117.86. Nationstar also identified an "escrow shortage" of $112.29. This required an additional monthly payment of $9.36.

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[3] Ch. 61.24 RCW.

[4] The record shows that Nationstar sent Villegas a prior TPP offer on February 8, 2013. Villegas contended that he never received the first offer. The trial court found Villegas's testimony credible.

Villegas satisfied the requirements of the TPP. On September 23, 2013, Nationstar sent Villegas a permanent loan modification offer. Nationstar recalculated the monthly payment to $2,471.85. But Nationstar also now identified an escrow shortage of $3,918.96. Nationstar told Villegas that the new monthly escrow payment would be $866.44, bringing his total monthly payment to $3,358.29. Villegas asked for an explanation for the much higher escrow amount. Nationstar did not provide one. Villegas did not accept the offer.

On January 13, 2014, the mediator closed the mediation process. He issued a certificate finding that Nationstar had not negotiated in good faith:

> The payment amount on the final modification ($3,358.29) was significantly higher than the trial payments ($3,117.86). The initial idea that the discrepancy would be explained by escrow analysis was incorrect. Attorneys for the beneficiary made great effort to escalate the matter with Nationstar and get an explanation for the increase. None has been forthcoming. I would be willing to consider amending the certification if the loan amount agreed to by the parties in mediation is honored.

On June 10, 2015, Nationstar sued Villegas, seeking to judicially foreclose the deed of trust. Villegas asserted counterclaims against Nationstar and crossclaims against Aurora Bank, NWTS, and U.S. Bank for violations of the CPA and intentional and negligent misrepresentation.[5] For his CPA claims, Villegas alleged that (1) Aurora Bank, Nationstar, and NWTS started nonjudicial foreclosure proceedings in violation of the deeds of trust act (DTA)[6] and (2)

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[5] Villegas abandoned the intentional and negligent misrepresentation claims at summary judgment.

[6] Ch. 61.24 RCW.

Nationstar failed to adequately review him for a loan modification or provide accurate information about the loan modification terms.

In October 2015, Villegas sold his home. After he paid the note in full, Nationstar voluntarily dismissed its complaint. The trial court then realigned the parties, designating Villegas as the plaintiff and Nationstar, Aurora Bank, NWTS, and U.S. Bank as the defendants.

The defendants jointly moved for summary judgment. The defendants relied on the declaration of Lashunda Carter, assistant secretary of Nationstar. It stated that Nationstar took physical possession of the note from U.S. Bank on May 16, 2013. Carter attached to her declaration copies of several documents showing the physical transfer of the note to Nationstar. The defendants also relied on the declaration of Tim Gaynor, vice-president of NWTS. Gaynor stated that NWTS initiated nonjudicial foreclosure proceedings at Aurora Bank's request. In doing so, Gaynor stated, NWTS relied on a beneficiary declaration identifying Aurora Bank as the holder of the note. Gaynor stated that after Nationstar assumed Aurora Bank's servicing obligations, Nationstar instructed NWTS to proceed with the foreclosure as Nationstar's agent.

On November 10, 2016, the trial court granted summary judgment dismissal of all of Villegas's claims except for "a per se violation of the Consumer Protection Act as it relates to a 'bad faith' certification against Nationstar resulting from statutory mediation." Nationstar filed a second motion for summary judgment to dismiss the remaining CPA claims. The trial court denied this

motion, ruling that "the public interest element of the CPA claim is per se satisfied due to a bad faith certification based upon RCW 61.24.163 and RCW 19.86.093."

The CPA claims against Nationstar involving mediation proceeded to a bench trial on May 3, 2017. Villegas contended that Nationstar violated the CPA by (1) failing to send a representative with the requisite settlement authority to participate in the mediation and (2) failing to adequately explain the calculations in the permanent loan modification offer.

The trial court considered the testimony of Villegas and Justin Laubscher, a senior default case specialist and Nationstar's corporate representative. The trial court also reviewed 41 exhibits and the CR 30(b)(6) deposition testimony of Aaryn Richardson, a litigation resolution analyst for Nationstar. Following four days of evidence and argument, the trial court issued 14 pages of findings of fact and conclusions of law. On Villegas's first claim, the trial court found that Nationstar "presented undisputed evidence that the individual who was assigned to participate in the mediation had the authority to settle with Villegas." On Villegas's second claim, the trial court agreed that Nationstar failed to mediate in good faith:

> The Court finds that Nationstar failed to mediate in good faith in that it failed to provide documentation requested by the mediator to explain how it had computed the escrow shortage in the permanent loan modification offer provided in September 2013. Nationstar conceded that the mediator and Villegas requested this information and that it did not provide an answer to the question raised. Nationstar's escrow shortage computations differed significantly in the February 2013 and May 2013 TPP offers, in the May 2013 escrow statement, and in the September 2013 permanent loan modification. Any reasonable borrower would have been perplexed

> by these different calculations. Seeking clarification from Nationstar was reasonable; Nationstar's inability or refusal to answer the question was not. For this reason, the Court finds Nationstar violated RCW 61.24.163(10)(b) during the mediation with Villegas.
>
> Under RCW 61.24.135, this violation constitutes an unfair or deceptive act or practice occurring in trade or commerce.

But the trial court also found that Villegas did not prove that Nationstar's violation of RCW 61.24.163 caused him any compensable damages. So the trial court entered a judgment in favor of Nationstar.

Villegas asked the trial court to reconsider its decision. The trial court denied this request, explaining,

> First, there was no evidence presented that the $4,000 Mr. Villegas incurred for mediation could have been avoided had Nationstar explained how it had computed the escrow amounts set out in the loan modification offer. Mr. Villegas would have incurred those expenses whether or not the parties had entered into a loan modification agreement. Thus, the Court does not find the evidence sufficient to find he incurred these mediation expenses as a result of Nationstar's bad faith.
>
> Second, this Court does not find sufficient evidence from which to find on a more probable than not basis that Mr. Villegas would have accepted an offer that had been fully explained to him. Had the past arrears in escrow payments been folded into a new loan balance, the new payment amount would have been much more in line with the first TPP offer extended to Mr. Villegas. That offer would have been monthly payments of $3,117.86 plus the escrow shortage of $139.02 a month, making his total payment around $3,256.88. The total monthly payment Nationstar requested in the permanent loan offer was $3,358.29, just $101 more a month than what the loan payment probably should have been. Yet, Mr. Villegas refused this offer—not only because he was unclear about the alleged escrow shortage—but also because he could not afford even this payment. Based on the evidence presented at trial, the Court reaffirms Mr. Villegas's failure to establish that Nationstar's bad faith caused him any injury.

Villegas appeals.

DISCUSSION

Washington's CPA provides that "[a]ny person who is injured in his or her business or property" by a violation of the act may bring a civil suit for injunctive relief, duplicative attorney fees and costs, and treble damages.[7] To succeed on a CPA claim, a plaintiff must show "(1) an unfair or deceptive act (2) in trade or commerce (3) that affects the public interest, (4) injury to the plaintiff in his or her business or property, and (5) a causal link between the unfair or deceptive act complained of and the injury suffered."[8] The plaintiff must establish all five elements to prevail.[9] A plaintiff may bring a claim under the CPA for violation of the DTA. We review whether a particular action constitutes a CPA violation as a question of law.[10]

1. Claims Dismissed on Summary Judgment

We review an order granting summary judgment de novo, considering all facts and reasonable inferences in the light most favorable to the nonmoving party.[11] Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.[12]

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[7] RCW 19.86.090.

[8] Trujillo v. Nw. Tr. Servs., Inc., 183 Wn.2d 820, 834, 355 P.3d 1100 (2015).

[9] Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 74, 170 P.3d 10 (2007).

[10] Leingang v. Pierce County Med. Bureau, Inc., 131 Wn.2d 133, 150, 930 P.2d 288 (1997).

[11] Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

[12] Lybbert, 141 Wn.2d at 34; CR 56(c).

Mere allegations or conclusory statements of fact unsupported by evidence are not sufficient to establish a genuine issue of fact.[13]

First, Villegas claims that neither Aurora Bank nor Nationstar were the holders of the note. So neither had authority to direct the foreclosure or appoint NWTS as the trustee.

The DTA defines a "beneficiary" as the "holder of the instrument or document evidencing the obligations secured by the deed of trust."[14] Only a lawful beneficiary has the power to appoint a successor to the original trustee named in the deed of trust.[15] Only a properly appointed trustee may proceed with a nonjudicial foreclosure of real property.[16] Thus, if an unlawful beneficiary appoints a successor trustee, that trustee lacks legal authority to carry out the foreclosure.[17]

A holder is a "person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession."[18] Possession may be either actual or constructive.[19] The holder of

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[13] CR 56(e); Baldwin v. Sisters of Providence in Wash., Inc., 112 Wn.2d 127, 132, 769 P.2d 298 (1989).

[14] RCW 61.24.005(2).

[15] Bavand v. OneWest Bank, FSB, 176 Wn. App. 475, 486, 309 P.3d 636 (2013).

[16] Bavand, 176 Wn. App. at 486-87.

[17] Walker v. Quality Loan Serv. Corp., 176 Wn. App. 294, 306, 308 P.3d 716 (2013).

[18] RCW 62A.1-201(21)(A).

[19] See RCW 62A.3-201 U.C.C. cmt. 1, at 307 (a holder may possess a note "directly or through an agent"); Gleeson v. Lichty, 62 Wash. 656, 659, 114 P. 518 (1911) ("But, if we assume that the note was not in [the defendant's] actual possession, it was clearly under his control, and therefore constructively in his possession.").

a note is the party entitled to enforce it.[20] The holder of the note is not necessarily the owner, and a holder does not need to own a note to enforce the note.[21]

Here, the record shows that both Aurora Bank and Nationstar were the holders of the note at the time that each directed NWTS to proceed with the nonjudicial foreclosure. As the servicer of Villegas's loan, both Aurora Bank and Nationstar had constructive possession of the note because they had the authority to request it from the document custodian at any time. And Nationstar had the note in its physical possession since May 16, 2013. Because the note was endorsed in blank and Nationstar had actual physical possession of the note, it was the holder of the note with the right to enforce it. The trial court properly dismissed Villegas's claims involving the identity of the beneficiary.[22]

Next, Villegas contends that NWTS violated its duty of good faith under RCW 61.24.010(4) and duty to comply with RCW 61.24.030(7)(a) because it did not adequately ascertain whether Aurora and Nationstar were the holders of the note.

"RCW 61.24.010(4) imposes a duty of good faith on the trustee toward the borrower, beneficiary, and grantor."[23] A trustee must "'adequately inform' itself"

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[20] RCW 62A.3-301.

[21] Brown v. Dep't of Commerce, 184 Wn.2d 509, 525, 359 P.3d 771 (2015).

[22] At trial on the mediation claim, the trial court found that "[i]n July 2012, Nationstar became the servicer on this loan and became the holder of the promissory note." Villegas does not challenge this finding.

[23] Lyons v. U.S. Bank Nat'l Ass'n, 181 Wn.2d 775, 787, 336 P.3d 1142 (2014).

about "the purported beneficiary's right to foreclose, including, at a minimum, a 'cursory investigation' to adhere to its duty of good faith."[24] A trustee's failure to act impartially between note holders and borrowers can support a claim for damages under the CPA.[25]

RCW 61.24.030(7)(a) requires that "for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the holder of any promissory note or other obligation secured by the deed of trust." "A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the holder of any promissory note or other obligation secured by the deed of trust" satisfies a trustee's obligations under RCW 61.24.030(7)(a).[26] But a trustee may determine the identity of the note holder "in a way other than through the beneficiary declaration."[27]

Aurora provided NWTS a beneficiary declaration made under penalty of perjury. It unambiguously stated that Aurora was the holder of Villegas's note. NWTS relied on this declaration before initiating the nonjudicial foreclosure process. Thus, Villegas fails to raise a genuine dispute of material fact that NWTS violated its statutory obligations with regard to Aurora.

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[24] Lyons, 181 Wn.2d at 787 (internal quotation marks omitted) (quoting Walker, 176 Wn. App. at 309).

[25] Lyons, 181 Wn.2d at 787.

[26] RCW 61.24.030(7)(a); see also Brown, 184 Wn.2d at 514 ("a party's undisputed declaration submitted under penalty of perjury that the party is the holder of the note satisfies the DTA's proof of beneficiary provisions").

[27] Lyons, 181 Wn.2d at 791.

NWTS did not receive a beneficiary declaration for Nationstar.[28] But NWTS had other proof that Nationstar had become the new holder of the note. First, NWTS received a notification through a secure messaging platform on June 28, 2012, that Nationstar had assumed Aurora's loan servicing obligations. And on July 4, 2012, Nationstar sent NWTS instructions to proceed with the foreclosure with Nationstar, not Aurora, as the beneficiary. In his declaration, Gaynor stated,

> Based on NWTS's experience in the non-judicial foreclosure industry, loan servicers typically advise NWTS when a change in the foreclosing beneficiary occurs. At no time after being informed to proceed with foreclosure in the name of Nationstar did NWTS receive information stating that Nationstar was not the foreclosing beneficiary.

Finally, NWTS knew that the county auditor had recorded an assignment of the deed of trust on July 25, 2012, showing Nationstar as the beneficiary. The record establishes that NWTS satisfied its obligations under RCW 61.24.030(7)(a) regarding the foreclosing beneficiary's identity. Villegas fails to raise a genuine issue of material fact that NWTS violated its statutory duties under the DTA.

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[28] The record on appeal contains a beneficiary declaration by Nationstar that references the wrong borrower's name and property address. It is unclear how, if at all, the declaration is relevant to Villegas's case. The declaration was filed several months after the notice of appeal. Because the declaration was not before the trial court and Villegas did not file a motion to supplement the record pursuant to RAP 9.11, we do not consider it further.

2. Villegas's Claims at Trial

An appellate court limits its review of challenges of a trial court's findings of fact and conclusions of law "to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment."[29] Substantial evidence exists "'when there is a sufficient quantum of proof to support the trial court's findings of fact.'"[30] An appellate court accepts unchallenged findings of fact as true on appeal.[31]

Villegas challenges the trial court's finding that Nationstar did not violate RCW 61.24.163(10) by failing to send a representative with settlement authority to the mediation. But uncontroverted evidence supports the trial court's finding. Laubscher testified that "[e]very default case specialist that attends an FFA mediation also has full settlement authority." Laubscher explained that "full settlement authority" includes "the authority to grant a foreclosure alternative option," including a loan modification. Villegas speculates that Nationstar's representative did not have settlement authority because "[i]f that person had had any authority or knowledge of the file, he could have provided an explanation regarding the change in monthly payment amounts." But the representative's inability to adequately explain the loan modification calculations does not prove that the representative lacked settlement authority.

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[29] Dickson v. Kates, 132 Wn. App. 724, 730, 133 P.3d 498 (2006) (citing Org. to Pres. Agric. Lands v. Adams County, 128 Wn.2d 869, 882, 913 P.2d 793 (1996)).

[30] Dickson, 132 Wn. App. at 730 (quoting Org. to Pres. Agric. Lands, 128 Wn.2d at 882).

[31] Dickson, 132 Wn. App. at 730.

Villegas also challenges the trial court's finding and conclusion that he did not prove the injury element of a CPA claim. The CPA limits compensable injuries to "'injury to [the] plaintiff in his or her business or property.'"[32] A claimant must show that the alleged injury would not have occurred "but for" the defendant's unlawful acts.[33] "Because the CPA addresses 'injuries' rather than 'damages,' quantifiable monetary loss is not required."[34] "Where a more favorable loan modification would have been granted but for bad faith in mediation, the borrower may have suffered an injury to property within the meaning of the CPA."[35] And expenses incurred in extra mediation sessions necessitated by an opposing party's failure to prepare or mediate in good faith can be a compensable injury under the CPA.[36]

At trial, Villegas and Nationstar stipulated that Villegas incurred $350 for an initial attorney consultation after receiving the notice of trustee's sale and that he paid $4,000 in legal fees in connection with the mediation.[37] But Nationstar's lack of good faith arose only after it offered Villegas a permanent loan

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[32] Frias v. Asset Foreclosure Servs., Inc., 181 Wn.2d 412, 430, 334 P.3d 529 (2014) (alteration in original) (quoting Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986)).

[33] Schnall v. AT&T Wireless Servs., Inc., 171 Wn.2d 260, 278, 259 P.3d 129 (2011) (quoting Indoor Billboard, 162 Wn.2d at 83-84).

[34] Frias, 181 Wn.2d at 431 (citing Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27, 57, 204 P.3d 885 (2009)).

[35] Frias, 181 Wn.2d at 431-32.

[36] Frias, 181 Wn.2d at 432.

[37] On appeal, Villegas contends that he actually paid $400 in mediation fees. Villegas fails to support this assertion with any citation to the record. In any event, the fees for mediation were not caused by Nationstar's subsequent inability to explain how it calculated the escrow shortage in Villegas's permanent loan modification offer.

modification in September 2013. Villegas did not present any evidence that Nationstar's conduct after September 2013 caused him to incur any of his expenses. Substantial evidence supports the trial court's finding that Villegas did not prove a compensable injury. This finding supports the trial court's conclusion of law.

Villegas argues, as he did below, that he incurred injuries by paying attorney fees for "representing him in the mediation that ended up being a waste." But, as the trial court correctly reasoned, Villegas would have paid these fees to have an attorney represent him at the mediation no matter what happened at it.

Villegas argues that the trial court should have found that damage to his credit score constituted an injury under the CPA. But Villegas did not present any evidence of a causal link between Nationstar's bad faith and the alleged damage to his credit score. And Villegas testified that he did not know what his credit score was, either before he defaulted on the loan or after mediation.

Finally, citing Frias, Villegas argues that a mediation conducted in bad faith, "irrespective of any out of pocket money damages, constituted an 'injury' under the CPA." But Frias held only that bad faith in mediation may result in injuries, and pleading this misconduct was sufficient to survive a CR 12(b)(6) motion to dismiss.[38] Villegas cites no authority in support of the proposition that a bad faith finding per se satisfies the CPA's injury requirement.

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[38] Frias, 181 Wn.2d at 431-32.

Affirmed.

WE CONCUR:

LAW OFFICES OF MELISSA HUELSMAN

August 09, 2019 - 1:06 PM

Transmittal Information

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