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COURT OF APPEALS
DIVISION II

2014 OCT 17 PM 12:44

STATE OF WASHINGTON

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DEPUTY

NO. 46333-4-II

IN THE COURT OF APPEALS

OF THE STATE OF WASHINGTON

DIVISION II

FRANCES DU JU,

Appellant,

v.

JPMORGAN CHASE BANK, N.A., and BISHOP, MARSHALL &
WEIBEL, P.S. f/k/a BISHOP, WHITE, MARSHALL & WEIBEL, P.S.,

Respondents.

BRIEF OF RESPONDENT BISHOP, MARSHALL & WEIBEL, P.S.

APPEAL FROM CLARK COUNTY SUPERIOR COURT
The Honorable David E. Gregerson

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I. INTRODUCTION

Pro se Appellant Frances Du Ju appeals the summary judgment of dismissal and Order granting entry of Partial Final Judgment awarded the foreclosing Trustee of her Deed of Trust, Respondent Bishop, Marshall & Weibel, P.S. f/k/a Bishop, White, Marshall & Weibel, P.S. (“Bishop”). [CP 214-15.] She appeals the same Orders and Judgment awarded to the beneficiary of her Deed of Trust, Respondent JPMorgan Chase Bank, N.A. (“Chase”). [CP 214-15.]

In the trial court and here, Ms. Ju contests several aspects of the nonjudicial foreclosure conducted by Bishop for Chase. She asserts Bishop violated the Deeds of Trust Act, RCW 61.24, *et seq.* (“DTA”), and that the DTA violations constitute *per se* violations of the Consumer Protection Act, RCW 19.86, *et seq.* (“CPA”). [CP 3.] But Ms. Ju has offered no admissible evidence or legal authority supporting her claims that:

- Bishop’s executed foreclosure documents were “falsely notarized”;
- Bishop did not publish required DTA notices;
- Bishop submitted an erroneous opening bid for Chase;
- The trial court abused its discretion by denying a continuance to submit evidence concerning the sale conduct;

- Bishop unlawfully delayed depositing surplus sale funds;
- Bishop unlawfully delayed serving notice of that deposit;
- Triable fact issues exist such that Bishop's summary award was error; and
- Insufficient notice of Bishop's partial final judgment motion was provided such that entry of Judgment was error.

Because the trial court did not err in entering summary judgment, and did not abuse its discretion in entering Partial Final Judgment for Bishop, the appealed Orders and Judgments should be affirmed.

II. ASSIGNMENTS OF ERROR

Bishop makes no assignments of error, as the Orders and Partial Final Judgment entered were correct. Bishop restates the issues pertaining to Ms. Ju's assignments of error as follows:

1. Pursuant to CR 56(c), the trial court did not err in holding Ms. Ju showed no triable fact issue supporting her claims that Bishop violated the DTA, breached its RCW 61.24.010(4) good faith duty to her, or committed a CPA violation, and properly awarded Bishop summary judgment of dismissal with prejudice.

2. Pursuant to CR 54(b), the trial court did not abuse its discretion in holding no just reason for delay existed and entering Partial Final Judgment for Bishop, because Ms. Ju is a prolific litigant who files

redundant pleadings and arguments, and there was no reason for Bishop to continue incurring time, effort, and expense by remaining a party.

III. STATEMENT OF THE CASE

A. Facts Underlying and Parties to Unlawful Detainer Suit.

Defendant, Third-Party Plaintiff, and Appellant, Ms. Ju, and her former spouse, Defendant Chwen-Jye Ju, owned real property and improvements thereon in Vancouver, Clark County, Washington (the "Property"), encumbered by a first priority mortgage lien serviced by Respondent Chase, the holder of their Note. [CP 2-3, 34, 40-41.] Chase appointed Bishop as Successor Trustee of the Deed of Trust to foreclose the Property. [CP 35, 42-46.] Bishop caused the Trustee's Sale to be conducted, sold the Property to the winning bidder, Plaintiff John O'Neill, and delivered its Trustee's Deed. [CP 35-36, 103-06.]

After purchasing the Property, Mr. O'Neill commenced an unlawful detainer suit in Clark County Superior Court to evict Defendants Mr. and Ms. Ju. [CP 242-52.] Ms. Ju cross-claimed against Mr. Ju, and filed a Third-Party Complaint against Third-Party Defendants Bishop and Chase. [CP 253-65.] She later was granted leave and amended her Third-Party Complaint. [CP 1-11; RP 2/7/2014, p. 10, ll. 8-14.]

B. Ms. Ju's Trial Court Claims Against Bishop.

Mr. O'Neill's claims against Mr. and Ms. Ju were solely for possession and damages. [CP 244-48.] Ms. Ju's third-party claims against Bishop and Chase are unclear, but were premised on these and other allegations against Bishop:

1. After Chase appointed Bishop as Successor Trustee, Bishop did not inform Ms. Ju [CP 3-4];

2. During the Trustee's Sale, collusive bidding occurred resulting in an unfair Trustee's Sale price and the winning bid was inadequate [CP 3];

3. After the Trustee's Sale, Bishop adjusted its calculations of the sale proceeds [CP 3];

4. After the Trustee's Sale, Bishop delayed depositing surplus funds from the sale and serving Ms. Ju notice of the deposit [CP 4];

5. Bishop committed a *per se* CPA violation by the above actions constituting DTA violations [CP 3]; and

6. Bishop refused to settle the litigation with Ms. Ju [CP 5].

In short – other than Bishop's refusal to settle – Ms. Ju's claims against Bishop arise from its duty of care to her as foreclosing Trustee.

C. Award of Summary Judgment to Bishop.

Bishop moved for and was awarded summary judgment on all claims on April 4, 2014. [CP 22-32, 221-23; RP 4/4/2014.] Bishop argued it satisfied its RCW 61.24.010(4) good faith duty to Ms. Ju and complied with the DTA by several means, including:

1. Timely and appropriately serving Ms. Ju, as required, with all foreclosure notices under the DTA [CP 27-28; RP 4/4/2014, p. 12, ll. 4-15];

2. Proceeding to sale, as allowed, in the absence of any satisfaction of the default, continuance request, and/or restraining order under RCW 61.24.130 [CP 28, 35];

3. Relying, as entitled, on RCW 61.24.050(2)(a)(i)'s requirement that only the Trustee, beneficiary, or beneficiary's authorized agent – not the Deed of Trust Grantor – may declare a Trustee's Sale void for an "erroneous opening bid amount" [CP 28-29];

4. Including, as required, Trustee's Deed recitals as *prima facie* evidence that the Trustee's Sale was "conducted in compliance with all of the requirements of [the DTA] and of the deed of trust," under RCW 61.24.040(7) [CP 30, 103-06];

5. Applying, as required, the sale proceeds to the expenses of sale under RCW 61.24.080(1) [CP 29; RP 4/4/2014, p. 12, l. 16 – p. 13, l. 3]; and

6. Depositing the surplus funds, as required, and serving Ms. Ju notice of that deposit on a date of its choosing, as allowed, under RCW 61.24.080(3) [CP 30-31; RP 4/4/2014, p. 13, ll. 14-21].

Bishop also argued it violated no duty and breached no contract to Ms. Ju by refusing to abide by a settlement offer she made to Mr. O’Neill when Bishop was not a named party, which Bishop never entered, and of which Bishop had no prior knowledge. [CP 31-32.]

In summary, Bishop urged and the trial court found no fact issue existed that Bishop did not breach its RCW 61.24.010(4) good faith duty to Ms. Ju, did not violate the DTA, and thus committed no *per se* CPA violation. [CP 221-23; RP 4/4/2014, p. 11, l. 15 – p. 14, l. 10; p. 16, ll. 18 – p. 17, l. 13; p. 30, l. 18 – p. 31, l. 21; p. 32, ll. 3-9.]

D. Ms. Ju’s Post-Summary Judgment Communications to Bishop.

After summary judgment was granted, Ms. Ju communicated with Bishop demanding it settle the litigation. [CP 455, 464-66.] She asserted improper motives, fabrications, and discourteous treatment by Bishop’s counsel. [CP 455, 464-66.] Bishop’s counsel politely and professionally responded to each such communication. [CP 454-55, 467-69.] Bishop

declined to settle the litigation against it on the terms Ms. Ju proposed.
[CP 455, 468.]

E. Entry of Partial Final Judgment for Bishop and Express Findings of Reasons for Finality.

By joining Chase's CR 54(b) motion [CP 178-82], Bishop moved for entry of Partial Final Judgment dismissing Bishop as a party [CP 183-85]. Bishop contended that Ms. Ju was a prolific *pro se* litigant, who filed lengthy redundant pleadings. Bishop asserted it was representing itself and had clients who required its attention to other litigation. It asked to be relieved of the time and expense of further participation in the remaining claims by Mr. O'Neill against Mr. Ju, to which it was uninvolved and not a party. [CP 184, 437; RP 5/2/2014, p. 4, l. 22 – p. 5, l. 6.]

In response, Ms. Ju asserted Bishop's counsel had improper motives, misrepresented facts, and treated her discourteously and abusively. [CP 191-93; RP 5/2/2014, p. 6, ll. 1-16.] She accused Bishop of "recklessly and willfully includ[ing] ... a statement and accusation in [its] Proposed Order." [CP 193.] At oral argument, Ms. Ju asserted:

Bishop's proposed order Item No. 3 in page 3 wanted the Court to include that I have filed several redundant pleadings in this action. ... Ms. Bollero has been acting abusive for me, and then she wants this Court to include the language to reflect her abusive attitude toward me. ... [R]ules of professional conduct required the counsel treat the pro se adversary fairly. I respectfully strongly request that this Court strike this abusive language from Bishop's proposed

order. If this Court wants to grant the Bishop's order, Ms. Bollero's biased and abusive personal opinion should not be included in this Court's order.

[RP 5/2/2014, p. 6, ll. 1-16.]

In Bishop's written response, its counsel denied any abusive behavior towards Ms. Ju and apologized to Ms. Ju to the extent Ms. Ju may have felt disrespected. [CP 451-52, 454.] At oral argument, Bishop's counsel reiterated her apology, and invited the trial court, should it believe Bishop overstated the circumstances, to strike the allegedly abusive, unfair, and disrespectful proposed order language that Ms. Ju was a "prolific *pro se* litigant who has filed several redundant pleadings in this action." [RP 5/2/2014, p. 7, l. 11-17.]

At the hearing of the Partial Final Judgment motions, Judge Gregerson found:

The question is whether to include the language in Paragraph 3. I don't find that the request for that language is abusive or unprofessional in any way on the part of Ms. Bollero. In fact, this Court is very familiar with this case and has been privy through multiple hearings filed by Ms. Ju. At every single hearing the Court has attempted to point out some of the procedural and substantive deficiencies in her filings and has strongly advised -- I cannot even count how many times I've advised Ms. Ju to get a competent attorney on board to help her. And there is definitely a redundant flavor to many of the motions that are here and the arguments made. So we'll keep that language in [Bishop's] order.

[RP 5/2/2014, p. 12, ll. 1-14.]

On May 2, 2014, the trial court entered its Orders granting entry of Partial Final Judgment to Bishop and Chase. [CP 392-95, 482-85; RP 5/2/2014, p. 9, l. 21 – p. 11, l. 24; p. 12, ll. 16-25.] On the same day, it entered both Partial Final Judgments of Dismissal of Bishop and Chase under CR 54(b), dismissing them with prejudice from the litigation. [CP 486-87, 492-94; RP 5/2/2014, p. 11, ll. 9-14; 5-10; p. 12, ll. 16-19.]

F. Ms. Ju's Appeal and Commissioner's CR 54(b) Ruling.

Ms. Ju timely filed her Notice of Appeal on May 30, 2014. [CP 215-36.]

She appealed six orders, three each for Bishop and Chase:

1. Both summary judgment Orders entered April 4, 2014;
2. Both Partial Final Judgment Orders entered May 2, 2014;

and

3. Both Partial Final Judgments entered May 2, 2014.

After requesting and reviewing briefing on whether both Partial Final Judgments were adequately supported by findings, on July 21, 2014, the Commissioner ruled that the trial court's Orders met the CR 54(b) requirements, and this appeal may proceed.

IV. STANDARD OF REVIEW AND ARGUMENT

A. The Trial Court Did Not Err in Awarding Summary Judgment Because Bishop did Not Violate the DTA and did Not Breach its Good Faith Duty to Ms. Ju.

1. Summary Judgment Awards are Reviewed *De Novo*.

The appellate standard of review of a summary judgment order is *de novo*, with the reviewing court performing the same inquiry as the trial court. *Del Guzzi Constr. Co. v. Global Northwest Ltd.*, 105 Wn.2d 878, 882, 719 P.2d 120 (1986); *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985). Evidence not presented to the trial court is not considered on appeal. *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 390, 715 P.2d 1133 (1986); *Herron v. Tribune Pub. Co., Inc.*, 108 Wn.2d 162, 169, 736 P.2d 249, 255 (1987).

2. No Evidence of Bishop Committing an Unfair or Deceptive Act was Submitted.

Ms. Ju asserts Bishop committed a *per se* CPA violation by not voiding the sale due to alleged collusive bidding and/or an erroneous opening bid. [Brief, pp. 1, 4; RP 4/4/2014, p. 20, l. 14 – p. 21, l. 10.]

The DTA provides:

It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted

pursuant to a power of sale in a deed of trust. The trustee may decline to complete a sale or deliver the trustee's deed and refund the purchase price, if it appears that the bidding has been collusive or defective, or that the sale might have been void.

RCW 61.24.135(1)

Ms. Ju asserts the trial court erred in rejecting her argument that collusive bidding resulted in an "unfair" sale price of \$172,500. But she offered no evidence – other than her own sheer speculation – that collusive bidding occurred. [RP 4/4/2014, p. 31, ll. 6-17.]

A Trustee's Sale price for more than twenty percent of the property's value is not so deficient as to be actionable. *Albice v. Premier Mortgage Servs. of Washington, Inc.*, 174 Wn.2d 560, 576, 276 P.3d 1277 (2012) (Stephens, J., concurring). In addition to a grossly inadequate sales price, a "set of circumstances indicating additional unfairness" is required to set aside a Trustee's Sale. *Udall v. T.D. Escrow Svcs., Inc.*, 159 Wn.2d 903, 914, 154 P.3d 882 (2007). Without unfair circumstances, a Trustee Sale will not be rescinded solely because the sale price is allegedly inadequate. *Steward v. Good*, 51 Wn. App. 509, 517, 754 P.2d 150 (1988).

Chase and Bishop submitted evidence proving that the Property sold for sixty-six percent of market value, eighty-one percent of assessed value, and \$75,000 greater than Ms. Ju's outstanding debt to Chase. [CP

276, 313-16.] This is far more than the benchmark twenty percent of market value deemed inadequate under Washington law.

Absent any contrary evidence, as a matter of law the Trustee's Sale price was sufficient. Because Ms. Ju failed to prove any viable CPA violation by Bishop in conducting the sale, the trial court did not err in awarding summary judgment.

3. A Foreclosing Trustee Owes a Duty of Good Faith to a Deed of Trust Grantor.

A Deed of Trust Trustee's duty is established in RCW 61.24.010(4): "The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor." Subsection (3) of that statute proscribes that duty, providing: "The trustee or successor trustee shall have no fiduciary duty or fiduciary obligation to the grantor ... having an interest in the property subject to the deed of trust." *See, Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 790, 295 P.3d 1179 (2013) ("An independent trustee who owes a duty to act in good faith ... to act impartially to fairly respect the interests of both the lender and the debtor is a minimum to satisfy the statute, the constitution, and equity").

Although she does not specifically address the statute, Ms. Ju appears to be arguing that Bishop's alleged good faith duty breach is a *per se* CPA violation under RCW 61.24.135(2)(a). But she fails to establish:

(1) that Bishop violated either the DTA or her Deed of Trust in foreclosing; and (2) how any alleged violation amounted to Bishop's breach of its good faith duty to her.

As she did in the trial court, on appeal Ms. Ju adopts a scattershot approach to her claims of error against Bishop's summary judgment award. In chronological order below, Bishop addresses Ms. Ju's complaints.

4. Bishop Breached No Duty in Recording Its Appointment as Successor Trustee.

Ms. Ju asserts an undue delay in recording Bishop's Appointment as Successor Trustee, the lack of a recorded resignation by the former Trustee, and Bishop's failure to advise her of its appointment, raised a triable fact issue that foreclosure documents were falsely notarized. [Brief, pp. 32-35, 37-38, 43-45.] These claims are founded on her misreading of the Appointment, speculation, and flawed surmise of a Trustee's duties. Absent any evidence controverting the notarized and recorded Appointment, the trial court correctly held no triable fact issue existed.¹ [RP 4/4/2014, p. 19, l. 4 – p. 20, l. 13; p. 27, ll. 4-19.]

¹ Appellant's Brief cites no evidence supporting a triable fact issue concerning the Appointment's notarization. Her contention that she "showed the Superior Court that it was likely that Chase and Bishop conducted false notarization of documents" [Brief, p. 3], appears to be premised on her submission of one page of the *Klem* opinion to the trial

The Appointment of Bishop as Successor Trustee reveals it was executed by Chase on January 18, 2013, and recorded just over two weeks later on February 5, 2013.² [CP 35, 42-46.] Bishop’s payment of a non-standard recording fee does not evidence a significant delay between execution and recording, nor does it create a triable fact issue. For the same reason, any arguments that “late” recording supports “false notarization” claims are wholly unsubstantiated. Ms. Ju’s suggestion that the notarization on January 18, 2013, may not have “really happened,” thus creating “an issue as to material fact for the jury,” is sheer unsupported speculation. [RP 4/4/2014, p. 19, l. 4 – p. 20, l. 13.]

To the extent Ms. Ju claims Bishop was not the Successor Trustee as of February 5, 2013, and thereafter [RP 4/4/2014, p. 22, ll. 3-7; p. 23, ll. 9-10; p. 28, ll. 12-18], her contention is rebuffed by RCW 61.24.010(2). It provides: “Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.” The trial court accepted the undisputed evidence that Bishop’s Appointment was recorded in Clark County on February 5, 2013. [CP 35, 42-46.]

court at oral argument, which the trial court found readily distinguishable. [Brief, pp. 43-45; RP 4/4/2014, p. 15, l. 23 – p. 16, l. 11; p. 30, l. 25 – p. 31, l. 5.]

² Ms. Ju apparently admits the trial court correctly accepted Bishop’s evidence of the Appointment and its recording. [Brief, p. 37.]

Further, nothing mandates that the former Trustee, Charter Title Corporation (“Charter”), must resign before Bishop could be appointed.

The DTA *permissively*, not *mandatorily*, provides *two* alternatives:

The trustee *may* resign at its own election *or* be replaced by the beneficiary. The trustee *shall* give prompt written notice of its resignation to the *beneficiary*.

RCW 61.24.010(2) (emphasis supplied).

Accordingly, the beneficiary may appoint a Successor Trustee at any time, regardless whether the original Trustee resigns.³ Further, only the beneficiary – not the Grantor – is entitled to written notice *if* the Trustee resigns, which did not occur here. Thus, it was unnecessary for Charter to resign as Trustee, and for either Bishop or Charter to provide notice of the change in Trustees to Ms. Ju. [RP 4/4/2014, p. 28, l. 22 – p. 29, l. 8.]

Although Ms. Ju rails that she was not notified of Bishop’s Appointment, she cites no requirement that Bishop so notify her, and there is none in the DTA. Further, it is black letter law that recording of a document serves as constructive notice to all members of the public concerning the matters stated therein. RCW 65.08.070; *Strong v. Clark*,

³ Ms. Ju acknowledges she was aware “the Trustee might have [been] ... replaced by the beneficiary.” [Brief, p. 33.]

56 Wn.2d 230, 232, 352 P.2d 183 (1960); *Allen v. Graaf*, 179 Wash. 431, 439, 38 P.2d 236 (1934).

The trial court correctly held no triable fact issue existed concerning the Successor Trustee Appointment's execution, recording, and notification to Ms. Ju and no DTA violations were committed, and did not err in awarding Bishop summary judgment.

5. Bishop Breached No Duty in Publication of the Notice of Trustee's Sale.

Ms. Ju claims Bishop submitted no proof that it published the Notice of Trustee's Sale, thereby creating a triable fact issue defeating summary judgment. [Brief, p. 4, Issue 2, and pp. 12, 42-43.] That is incorrect. Bishop submitted the uncontroverted and recorded Trustee's Deed, which states:

The Trustee ... in accordance with law ... caused a copy of said "Notice of Trustee's Sale" to be published once between the thirty-five (35) and twenty-eighth (28) day before the date of sale, and once between the fourteenth (14) and seventh (7) day before the date of sale in a legal newspaper in each county in which the property or any part thereof is situated

[CP 35-36, 103-06.]

Recitals in the Trustee's Deed are *prima facie* evidence that the sale was "conducted in compliance with all of the requirements of [the DTA] and of the deed of trust" RCW 61.24.040(7). The DTA creates

“a rebuttable presumption that the sale was conducted in compliance with the procedural requirements of the act.” *Albice v. Premier Mortgage Servs. of Washington, Inc.*, 174 Wn.2d 560, 570-71, 276 P.3d 1277 (2012).

Accordingly, Bishop introduced *prima facie* evidence of not only sales notice publication, but compliance with all sale requisites. [CP 33-120, 274-330.] Ms. Ju did not submit any evidence rebutting the presumption of DTA compliance. The trial court correctly held no triable fact issue existed concerning publication of the Notice of Trustee’s Sale, and did not err in awarding Bishop summary judgment.

6. Bishop Breached No Duty in Calculating the Opening Trustee’s Sale Bid.

Ms. Ju asserts that conflicting evidence concerning the opening bid amount reveals a triable fact issue preventing summary judgment for Bishop. [Brief, pp. 18-19, 42.] She claims a \$16.33 difference in the opening bid and her debt due to Chase constitutes an error in the Trustee’s Sale process that voids the sale and violates the CPA. [CP 3, ¶¶3.6-3.8.] Ms. Ju’s contentions are incorrect for five reasons.

First, the DTA allows the Trustee to “credit toward the beneficiary’s bid all or any part of the monetary obligations secured by the deed of trust.” RCW 61.24.070(1). Thus, Chase was not required to bid

its full debt. Accordingly, an opening bid of \$16.33 less than the debt then due was allowed by statute.

Second, Chase was considerably outbid by Mr. O’Neill, the winning bidder. The opening bid is of no consequence when it is not the prevailing bid. Ms. Ju introduced no evidence proving her contention that “the mistakenly low [by \$16.33] opening bid price ... resulted in or contributed to a grossly inadequate sale price” [Brief, p. 42]. There was no evidence linking the opening bid with the allegedly inadequate winning bid.

Third, the Trustee was mandated to apply the sale proceeds to the sale expenses. The DTA provides: “The trustee *shall* apply the proceeds of the sale as follows: (1) To the *expense* of sale” RCW 61.24.080 (emphasis supplied). Because Bishop incurred a \$16.33 expense, it was necessary to charge that expense to Chase, which charged it to Ms. Ju.

Fourth, the statute on which Ms. Ju relies, RCW 61.24.050(2)(a)(i) [CP 3, ¶3.8; CP 19], applies only to the Trustee, beneficiary, or beneficiary’s authorized agent, not the Grantor or borrower. Even if the opening bid was statutorily “erroneous” – which Bishop denies – only one of the three parties allowed by statute could declare the sale void, not Ms. Ju, the Deed of Trust Grantor.

Fifth, a challenge seeking sale avoidance must be brought within 10 days after the sale under RCW 61.24.050(2)(a). Even if Ms. Ju could challenge an allegedly erroneous opening bid amount under RCW 61.24.050(2)(a)(i), she delayed several months past the limitations date to do so. Her claim is time-barred.

The trial court did not err in finding no triable fact issue and no DTA violations concerning the opening bid amount, and properly awarded Bishop summary judgment.

7. The Trial Court Correctly Denied Additional Time to Submit a Proposed Affidavit First Mentioned in an Offer of Proof During Summary Judgment Argument.

Mr. Ju asserts the trial court erred when it refused to admit an Affidavit – not yet drafted or signed – of an unwilling witness first mentioned in an offer of proof during the summary judgment hearing.⁴ [Brief, pp. 4-5, Issue 2, and pp. 7, 11-12, 16, 35-37.; RP 4/4/2014, p. 17, l. 14 – p. 18, l. 6.] The proposed Affidavit of Ms. Ju’s daughter purportedly would have attested that during the Trustee’s Sale, a man stopped others from bidding by saying either “Wow! Wow! Wow! Stop! Stop!” or

⁴ “If Judge Gregerson would have granted Frances Ju’s request ... so that Frances Ju can tell her adult daughter that the Court wants her to file an Affidavit ... her daughter *would have complied* and filed her Affidavit. ... Frances Ju’s daughter *did not want to get involved if she had not had to ...*” [Brief, p. 11 (emphasis supplied).]

“whoa, whoa, whoa, stop, stop.” [CP 127, ll. 1-2; RP 4/14/2014, p. 17, l. 17 – p. 18, l. 6; p. 27, l. 21 – p. 28, l. 3; p. 28, ll. 9-11.]

A trial court may continue a summary judgment hearing to allow submission of additional evidence under the circumstances set forth in CR 56(f). “The trial court may, however, deny a motion for continuance where: (1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) the requesting party does not state what evidence would be established through the additional discovery; or (3) the desired evidence will not raise a genuine issue of material fact.” *Turner v. Kohler*, 54 Wn. App. 688, 693, 775 P.2d 474, 476-77 (1989).

The trial court’s grant or denial of a motion for continuance will not be disturbed absent a showing of manifest abuse of discretion. *Lewis v. Bell*, 45 Wn. App. 192, 196, 724 P.2d 425 (1986). When a continuance is not explicitly requested, and there is no explanation why the discovery could not have been pursued prior to the summary judgment proceeding, the trial court properly exercises its discretion in denying a continuance for submission of additional evidence. *Turner, supra*, 54 Wn. App. at 693-95.

Ms. Ju never moved for an extension of time to present additional evidence, never requested an extension from the parties, and never explained the relevance of the evidence, other than asserting that Bishop

“should have voided the trustee sale but they did nothing.” [RP 4/4/2014, p. 17, l. 1 – p. 18, l. 9; p. 26, ll. 4-10; p. 30, ll. 22-25.] She did not argue and cited no authority for the proposition that – even if proven – a bystander yelling during a Trustee’s Sale is grounds to void the sale.

Ms. Ju implies that had Bishop’s and Chase’s summary judgment motions been filed after (rather than before) discovery was performed, she would have had more time to obtain evidence of the bystander yelling. [Brief, pp. 7, 11-12, 36.] But she was aware of the manner in which the sale was conducted the same day it occurred on June 21, 2013.⁵ She alleged the Trustee’s “irregularity and mistake” and that the sale should be set aside in her Answer filed nine months before the hearing.⁶ [CP 259, ¶9.] There was clearly ample time for her to obtain the evidence, especially from a family member.

In the absence of a CR 56(f) motion, the trial court appropriately exercised its discretion in refusing additional time for Ms. Ju to file an Affidavit which would not create a triable fact issue regarding Bishop’s alleged breach of its good faith duty to her. Summary judgment was correctly awarded to Bishop.

⁵ “Frances Ju challenged a wrongful foreclosure that Frances Ju became aware [of] during and after the day of the Trustee’s Sale.” [Brief, p. 17.]

⁶ “[S]ince July 29, 2013, Frances Ju has asked the Superior Court to set aside the ... Trustee’s Sale.” [Brief, p. 19.]

8. Bishop Breached No Duty in Handling the Surplus Funds of the Trustee's Sale.

Ms. Ju claims Bishop unreasonably withheld the surplus funds from the Trustee's Sale, violating the DTA and breaching its good faith duty to her. [Brief, pp. 1, 17, 33.] The surplus funds statute does not support any such claim. It provides:

The surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the notice of trustee's sale, and an affidavit of mailing as provided in this subsection, with the clerk of the superior court of the county in which the sale took place. The trustee shall mail copies of the notice of the surplus, the notice of trustee's sale, and the affidavit of mailing to each party to whom the notice of trustee's sale was sent pursuant to RCW 61.24.040(1). ... Upon compliance with this subsection, the trustee shall be discharged from all further responsibilities for the surplus. ... A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be personally served upon, or mailed ... to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion.

RCW 61.24.080(3) (emphasis supplied).

No requirement exists that the Trustee: (1) deposit the funds within any specific time after the sale; or (2) serve notice of that deposit within any specific time after it is made. The state legislature could have

included a deadline for the Trustee to act but chose not to, unlike the 20 days' notice required for a surplus funds disbursement motion.

It was undisputed on summary judgment that Bishop filed the surplus funds with the Clark County Superior Court.⁷ [CP 36, ¶14, 107-16.] Ms. Ju now asserts that “[s]he was not informed by ... any other trustee or company about the filing of Surplus Funds with the Court.” [Brief, p. 33.] She did not deny service in the trial court, nor introduce any evidence rebutting Bishop’s proof of service on her. [CP 36-37, ¶15, 117-20.]

Because the evidence proved Bishop complied with RCW 61.24.080(3), it was discharged from all further responsibilities for the surplus. Accordingly, without evidence of DTA non-compliance, the trial court did not err in finding Bishop met its good faith duty to Ms. Ju and correctly granted summary judgment to Bishop.

B. The Trial Court Did Not Abuse its Discretion in Entering Partial Final Judgment Because There was No Just Reason For Delay.

1. Partial Final Judgment Orders are Reviewed Under the Abuse of Discretion Standard.

⁷ To the extent Ms. Ju asserts that the Court delayed in distributing the surplus funds [Brief, pp. 13, 15-16], that claim is not relevant to whether Bishop breached its good faith duty to her and whether the trial court properly awarded Bishop summary judgment.

The decision to enter a judgment under CR 54(b) is reviewed for abuse of discretion. *Gull Indus., Inc. v. State Farm Fire & Cas. Co.*, 181 Wn. App. 463, 481, 326 P.3d 782 (2014); *Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now (C.L.E.A.N.)*, 119 Wn. App. 665, 694, 82 P.3d 1199 (2004). “A trial court abuses its discretion by issuing manifestly unreasonable rulings or rulings based on untenable grounds, such as a ruling contrary to law.” *In re Estate of Toland*, 180 Wn.2d 836, 851, 329 P.3d 878 (2014) (citing *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 919, 296 P.3d 860 (2013)).

2. The Trial Court Did Not Err in Determining as Timely a CR 54 Motion Served and Noted with Less Than 28 Days’ Notice.

Ms. Ju asserts as error that Bishop’s and Chase’s Partial Final Judgment motions were “actually Dispositive Motions in disguise, for which CR 56(c) requires 28-day motion calendar.” [Brief, pp. 5, 47.] Her arguments are not persuasive.

Both Chase’s motion and Bishop’s joinder specifically sought relief under CR 54(b). It provides:

When more than one claim for relief is presented in an action, ... or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties *only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment.* The

findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. In the absence of such findings, determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the right and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties

Civil Rule 54(b) (emphasis supplied).

Neither of Respondents' motions and supporting evidence sought any relief other than entry of Partial Final Judgment; the underlying facts and claims were not addressed. The only new evidence submitted was the one page Declaration of Bishop's counsel regarding the reasons Bishop requested Judgment be entered, including that "Ms. Ju has proven to be a prolific *pro se* litigant." Thus, Ms. Ju's assertion that the motions were disguised dispositive motions is meritless.

Accordingly, CR 6(a), (d), and (e) – not CR 56 – established the notice time necessary for hearing and service of the Partial Final Judgment motions as five court days, plus three by mail. Chase served its motion by mail on April 11, 2014 – 21 days in advance of the hearing on May 2, 2014 [CP 182], and Bishop served its joinder by mail 14 days before the hearing date [CP 446-47]. Consequently, Ms. Ju was provided more than twice the length of notice required.

The trial court did not err in determining Ms. Ju received the requisite notice under CR 6 of Chase's Partial Final Judgment motion and

Bishop's joinder. Its Orders granting entry of Partial Final Judgments to Bishop and Chase should be affirmed.

3. Any Other Claimed Errors in Entering Partial Final Judgment have Been Waived and Abandoned.

Ms. Ju assigns error to entry of both Bishop's Order granting entry of Partial Final Judgment and the Judgment itself. [Brief, p. 3, ¶2.] However, other than urging the final judgment motions were "disguised" summary judgment motions, Appellant does not explain how the trial court abused its discretion, nor does she address CR 54(b)'s requirements.

Failure to provide argument or authority in support of an assignment of error precludes review of that alleged error on appeal. *State v. Bello*, 142 Wn. App. 930, 932, 176 P.3d 554, *rev. den'd.* 164 Wn.2d 1015, 195 P.3d 88 (2008). Arguments that are not supported by citation to legal authority will not be considered on appeal. *Pacific Sound Resources v. Burl. Northern Santa Fe R.R. Corp.*, 130 Wn. App. 926, 940, n. 21, 125 P.3d 981, *rev. den'd.*, 158 Wn.2d 1011, 145 P.3d 1214 (2005).

Because Ms. Ju did not support her assignment of error to the trial court's Orders granting entry of Partial Final Judgment and the final Judgments themselves, she has waived and abandoned any such claims, and this Court should not consider the asserted errors.

4. The Trial Court Appropriately Exercised its Discretion in Finding All CR 54(b) Requisites Satisfied.

Entry of partial final judgment under CR 54(b) requires there be: (1) multiple claims for relief or parties against whom relief is sought; (2) an express determination that there is no just reason for delay; (3) written findings supporting the determination that there is no just reason for delay; and (4) an express direction for the entry of the judgment. *Doerflinger v. N.Y. Life Ins. Co.*, 88 Wn.2d 878, 881, 567 P.2d 230 (1977); *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 523, 6 P.3d 22 (2000).

To enter partial final judgment, “there must be some danger of hardship or injustice through delay which would be alleviated by immediate appeal.” *Doerflinger, supra*, 88 Wn.2d at 882 (citing *Campbell v. Westmoreland Farm, Inc.*, 403 F.2d 939, 942 (2d Cir. 1968); *Curtiss-Wright Corp. v. General Electric Corp.*, 446 U.S. 1, 100 S.Ct. 1460, 64 L.Ed.2d 1 (1980) (interpreting FRCP 54(b)). When the party moving for entry of partial final judgment makes no showing of hardship, and the trial court’s order does not describe any, a *pro forma* CR 54(b) certification is of no effect. *Fox v. Sunmaster Products, Inc.*, 115 Wn.2d 498, 504, 798 P.2d 808 (1990).

The relevant factors determining whether there is no just reason for delay are:

(1) [T]he relationship between the adjudicated and the unadjudicated claims, (2) whether questions which would be reviewed on appeal are still before the trial court for determination in the unadjudicated portion of the case, (3) whether it is likely that the need for review may be mooted by future developments in the trial court, (4) whether an immediate appeal will delay the trial of the unadjudicated matters without gaining any offsetting advantage in terms of the simplification and facilitation of that trial, and (5) the practical effects of allowing an immediate appeal.

Nelbro, supra, 101 Wn. App. at 525 (citing *Schiffman v. Hanson Excavating Co.*, 82 Wn.2d 681, 687, 513 P.2d 29 (1973)).

Substantial deference is given the trial court's judgment to certify a partial judgment as final. *Curtiss-Wright, supra*, 446 U.S. at 10; *Nelbro, supra*, 101 Wn. App. at 525. Because the four standards for CR 54(b) certification were satisfied, the trial court appropriately exercised its discretion.

First, this case has multiple claims consisting of an initial claim by Mr. O'Neill against Ms. Ju for unlawful detainer, cross-claim by Ms. Ju against Mr. Ju for breach of contract and monies due, and third-party complaint by Ms. Ju against Chase and Bishop. There are also multiple parties, two of whom were entirely dismissed by the appealed orders.

Second, both Partial Final Judgments state, "there is no just reason for delay in entering partial final judgment under CR 54(b) dismissing all claims against Bishop [and Chase] and dismissing Bishop [and Chase] as a

party to this action, and Judgment should be entered accordingly.” [CP 394, 490.] This fulfills the second requirement.

There is no relationship between the adjudicated and unadjudicated claims and parties, other than that Ms. Ju continues as a Defendant despite dismissal as a Third-Party Plaintiff. The events resolved by Bishop’s and Chase’s summary judgments all occurred before Mr. O’Neill purchased the Property and filed his unlawful detainer complaint, except for the surplus funds deposit, which is not implicated in the unlawful detainer claims. The facts pertinent to the unlawful detainer all occurred after Chase’s and Bishop’s involvement, and involve neither of them.

No issues appealed by Ms. Ju remain for determination by the trial court. The two summary judgment awards completely disposed of her third-party claims against Bishop and Chase. She has not and cannot show that any remaining unlawful detainer issues relate to the matters determined by the trial court’s summary judgment awards to Bishop and Chase. Because the issues are not related, the trial court’s future unlawful detainer rulings cannot moot any issues now on appeal.

Likewise, immediate appeal will not delay the trial of the unadjudicated matters. No issues to be tried regarding Mr. O’Neill’s claims for possession were addressed on summary judgment. Ms. Ju has

not asserted any reasons this appeal cannot proceed while the trial court litigation continues.

The Partial Final Judgment decrees that “[t]he Clerk shall ENTER this Partial Final Judgment forthwith” [CP 493], consequently, the requirement that the Judgment include an express direction for entry has been met. CR 54(b); *Doerflinger, supra*. 88 Wn.2d at 881. Finally, the trial court made written findings supporting the determination that there is no just reason for delay, and they are set forth in the Orders. [CP 225-26.] The fact that the findings and conclusions are not included in the Partial Final Judgment itself is inconsequential, as that Judgment specifically references those findings and conclusions twice, and the trial court entered both orders at the same time. [CP 493; RP 5/2/2014. p. 9, l. 21 – p. 11, l. 24; p. 12, ll. 16-25.]

Having satisfied the CR 54(b) requirements, the trial court considered the practical effect of allowing an immediate appeal. Both Bishop and Chase provided uncontroverted evidence that:

1. Ms. Ju regularly filed voluminous pleadings;
2. Those pleadings repetitively addressed the same issues and arguments;
3. Bishop and Chase incurred substantial legal fees and time responding to Ms. Ju’s voluminous and redundant pleadings; and

4. Bishop was representing itself and has and had clients who require its attention to other litigated matters. [CP 424, 437.]

At the judgment motion hearing on May 2, 2014, due to Ms. Ju's objections to Bishop's characterization of her, Bishop's counsel stated it had no objection to the trial court striking Bishop's proposed finding, "Frances Du Ju is a prolific *pro se* litigant who has filed several redundant pleadings in this action[.]" The court declined, expressly finding and commenting on the accuracy and veracity of that statement from its own perspective of Ms. Ju's several appearances and pleadings before it. [RP 2/7/2014 p. 6, l. 10 – p. 7, l. 18; p. 14, ll. 6-11; p. 18, l. 16 – p. 20, l. 20; RP 4/4/2014, p. 6, ll. 6-10; p. 24, ll. 11-14; p. 29, ll. 20-25.]

Bishop and Chase argued, and the trial court agreed, the practical effect of allowing immediate appeal was to relieve them, the trial court, and the Superior Court Clerk's office, of the burden, time, expense, and effort of the litigation. [CP 184, 474-77.] The docket revealed and the trial court was personally aware of Ms. Ju's persistent refusal to accept any ruling of any court without challenge.

The four CR 54(b) certification requirements having been met, and there being no just reason to delay appeal, the trial court appropriately exercised its discretion. Its entry of Partial Final Judgment for Bishop should be affirmed.

C. **No Settlement was Entered or is Enforceable Against Bishop.**

Ms. Ju asserts that although she attempted settlement with Bishop, it did not agree. [Brief, p. 21.] Her Amended Third-Party Complaint asserts she presented Mr. O’Neill a settlement offer and – because it was not rejected – it became a binding contract. Ms. Ju appears to claim that Bishop is bound by the purported “settlement,” or should be.

As the Washington Supreme Court stated in its previous Ruling Denying Review:

Ms. Ju asks that this court enforce an *alleged* settlement in which she agreed to vacate the premises in exchange for payment from Mr. O’Neill. *Although it appears that Ms. Ju communicated the settlement terms to Mr. O’Neill’s counsel during the proceedings below, there is no evidence that Mr. O’Neill agreed to the terms.* Ms. Ju only appends a copy of *the purported settlement agreement, which contains neither a date nor the parties’ signatures.*

Bishop was not a party when Ms. Ju’s original settlement offer was made, and had no knowledge of it until it received the Third-Party Complaint. It is black letter law that a contract is not binding without consideration and mutual assent. *Draft v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 571, 161 P.3d 473 (2007). The same holds true for Ms. Ju’s subsequent settlement communications to Bishop, and she admits “Bishop did not reach a settlement with Frances Ju” [Brief, p. 21.]

To the extent Ms. Ju is arguing that Bishop breached a settlement contract or duty to settle, the trial court correctly awarded Bishop both summary judgment and entry of Partial Final Judgment. [RP 4/4/2014, p. 31, ll. 16-22.]

V. CONCLUSION

Pursuant to CR 56(c), the trial court did not err in holding Ms. Ju showed no triable fact issue supporting that Bishop violated the DTA, breached its RCW 61.24.010(4) good faith duty to her, or committed a CPA violation. It properly awarded Bishop summary judgment of dismissal with prejudice. The summary judgment Order should be affirmed.

Pursuant to CR 54(b), the trial court did not abuse its discretion in holding no just reason for delay existed, because Ms. Ju is a prolific litigant who files redundant pleadings and arguments, and there was no reason for Bishop to continue incurring time, effort, and expense by remaining a party. It properly entered both an Order granting Bishop's final judgment motion and Partial Final Judgment for Bishop. Both the Order and Judgment should be affirmed.

RESPECTFULLY SUBMITTED this 15th day of October, 2014.

BISHOP, MARSHALL & WEIBEL, P.S.

A handwritten signature in cursive script, reading "Barbara L. Bollero". The signature is written in black ink and is positioned above a horizontal line.

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Dated this 15th day of October, 2014

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SIGNED AND SWORN TO (or affirmed) before me on the 15th day of
October, 2014.



Ana I. Todakonzie

ANA I. TODAKONZIE
Notary Public in and for the
State of Washington.
Residing in Seattle, Washington.
My appointment expires: 2/28/2015.