

NO. 47133-7-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FEDERAL NATIONAL MORTGAGE ASSOCIATION,

Respondent,

v,

RONALD & KATHLEEN STEINMANN,

Petitioners.

RESPONDENT'S BRIEF

Joshua B. Lane, WSBA #42192
Robert W. Norman, WSBA #37094
HOUSER & ALLISON, APC
1601 Fifth Avenue, Suite 850
Seattle, WA 98101
(206) 596-7838
Attorneys for Respondent Federal
National Mortgage Association

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I. INTRODUCTION

This case involves a disputed post-foreclosure eviction. The Federal National Mortgage Association (“Fannie Mae”) purchased the property of Defendants Ronald and Kathleen Steinmann (the “Steinmanns”) at a trustee’s sale after the Steinmanns defaulted on their residential loan. When the Steinmanns refused to vacate the property, Fannie Mae initiated the underlying unlawful detainer action. The Court of Appeals granted Fannie Mae’s motion for summary judgment and issued an order for writ of restitution.

The Steinmanns appealed, raising many issues not raised before the Trial Court and not preserved for appeal. The Court of Appeals affirmed the restitution order, granted Fannie Mae’s request for attorneys’ fees and costs, and denied the Steinmanns’ subsequent requests to submit additional evidence and for reconsideration.

In 2014, the Steinmanns sought discretionary review with the Washington Supreme Court, generally asserting the Court should reverse in the name of equity, and void the Trustee’s Sale. The Supreme Court denied review of the restitution order but vacated the Court of Appeals’

award of fees. The Supreme Court remanded this matter back to the Trial Court so that Fannie Mae could proceed with enforcing the writ of restitution.

Following remand, the Steinmanns asked the Trial Court to ignore the Washington Supreme Court's order affirming the writ, and vacate the Trial Court's judgment in favor of Fannie Mae, or alternatively, set the case for a new trial. The Steinmanns' motions presented two arguments: first, they re-raised the arguments made before the Court of Appeals in 2013. Second, they argued "newly discovered" evidence warranted a different result. However, the "new evidence" consisted of two documents recorded with the County Auditor on January 29, 2010, which could have been discovered with due diligence in time to move for a new trial under rule CR 59(b). The Trial Court concluded that these documents did not constitute "newly discovered" evidence and denied the Steinmanns' motion.

In a blatant attempt to drag this dispute on indefinitely by proceeding in circular appeals, the Steinmanns now appeal the Trial Court's order denying their motion to vacate/for a new trial. The

Steinmanns, in short, are seeking a sixth bite at the apple, and will undoubtedly move for a new trial once the Court of Appeals affirms the lower Court, and continue to appeal. The Steinmanns' appeal is frivolous and an undue burden on Fannie Mae and the resources of the Court of Appeals. There is no basis to support the Steinmanns' claims, and in addition to affirming the Trial Court's order, the Court of Appeals should award fees and costs pursuant to RCW 4.84.185 and RAP 18.1 to deter further frivolous appeals.

II. ISSUES PRESENTED FOR REVIEW

1. Should the Court of Appeals affirm the Trial Court's denial of the Steinmanns' motion to vacate/motion for new trial?
2. Should the Court of Appeals award Fannie Mae its attorneys' fees and costs?

III. RESTATEMENT OF THE CASE

A. Foreclosure Proceedings.

The facts pertaining to the underlying foreclosure proceedings are unchanged and undisputed, therefore Fannie Mae refers to the facts provided by the Court of Appeals in Borrower's previous appeal:

In 2008, Kathleen and Ronald Steinmann refinanced their home and secured the refinance with a deed of trust in favor of IndyMac Bank, F.S.B. In 2010, the Steinmanns defaulted on their obligations. Regional Trustee Services Corporation (Trustee) sent them default letters and then a Notice of Trustee's Sale.

In January 2011, the Trustee discontinued the scheduled Trustee's sale, but it specified that the discontinuance was not a waiver of breach or default and that it did not impair the Trustee's rights or remedies. Instead, it was only the Trustee's election to not go forward with the previously scheduled sale. The Trustee later sent another Notice of Default and Notice of Trustee's Sale. The February 2011 Notice of Trustee's Sale specifically stated:

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the same pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's Sale.

Clerk's Papers (CP) at 83.

In May 2011, the Steinmanns disputed that IndyMac Mortgage Services was the proper debt beneficiary and asked that the Trustee verify the chain of title and the real party in interest or holder of their deed of trust. IndyMac and the Trustee responded. The Trustee stated that it was proceeding with the scheduled foreclosure.

In June 2011, the Trustee held the Trustee's sale and conveyed the property by Trustee's deed to the highest bidder, Fannie Mae. Later that month, Fannie Mae sent the Steinmanns a 20-Day Notice to Quit, explaining that it had purchased the property at a Trustee's sale and was entitled to possession. The Steinmanns did not comply.¹

B. Fannie Mae's Action Against Borrowers for Unlawful Detainer.

The facts pertaining to Fannie Mae's Unlawful Detainer Action are unchanged and undisputed, therefore Fannie Mae refers to the facts provided by the Court of Appeals in Borrower's previous appeal:

In September 2011, Fannie Mae filed a complaint for unlawful detainer against the Steinmanns. The Steinmanns alleged that Fannie Mae wrongfully brought the unlawful detainer action because the Trustee's sale was defective and Fannie Mae had no right to the property.

In January 2012, Fannie Mae moved for summary judgment, arguing that there were no genuine issues of material fact and that it was entitled to possession as a matter of law because (1) the only issue in an unlawful detainer action is possession and (2) the Steinmanns waived their opportunity to challenge the foreclosure sale by failing to enjoin it before it occurred. The Steinmanns responded that they did not realize the significance of the pending Trustee's sale and that they did not restrain it, partially

¹ *Fannie Mae v. Steinmann*, No. 43133-5-II, 176 Wn. App. 1021, WL 5211622, slip op. at *1 (Sept. 10, 2013).

because the California law firm that they hired took their retainer but did not help them. Also, the Steinmanns argued that there were genuine issues of material fact regarding the validity of the foreclosure sale and other issues. In Kathleen's summary judgment declaration, the Steinmanns admitted having received a Notice of Default in January 2011 and a Notice of Trustee's Sale in February 2011 but they claimed that no one ever told them that they needed to obtain a restraining order to prevent the Trustee's sale from occurring. The superior court granted Fannie Mae's motion for summary judgment and ordered that a writ of restitution be issued, giving Fannie Mae possession of the property.²

C. The Court of Appeals Affirmed and Denied Additional Evidence and Reconsideration

On appeal, the Steinmanns argued that waiver does not apply to them and that they can seek relief from a void sale. *See* 2013 WL 5211622, at *2. Despite these arguments, the Court of Appeals concluded that, because the Steinmanns failed to restrain the foreclosure sale, they waived any objection to the foreclosure proceedings and their unlawful detainer action did not provide a forum for litigating claims to title. *Id.* at *4. Finding that the Steinmanns offered no defense relevant to an

² *Id.*

unlawful detainer action, the Court of Appeals affirmed the Trial Court's granting summary judgment to Fannie Mae. *Id.*³

The Steinmanns filed a Motion for Reconsideration and a Motion to Add Additional Evidence with the Court of Appeals, asking the Court to consider the same "newly discovered" evidence at issue on this current appeal, namely, two documents recorded on January 29, 2010. The Steinmanns argued that these documents, an Appointment of Successor Trustee and an Assignment of Deed of Trust, are evidence that the Trustee's Sale is void pursuant to *Bavand v. OneWest Bank, F.S.B.*, 176 Wn. App. 475, 309 P.3d 636 (2013), a Division I opinion published September 9, 2013 (one day before Division II's opinion in this case was reported as unpublished). The Court of Appeals denied both motions. *Fannie Mae v. Steinmann*, No. 43133-5-II, Order at 1 (Mar. 4, 2014). The Steinmanns then filed their Petition for Review.

D. The Supreme Court Denied Review on the Merits

³ The Court of Appeals also granted Fannie Mae's request for attorney fees on appeal. *Id.* at 9. The Supreme Court accepted review only on the issue of fees, and reversed. *Fannie Mae v. Steinmann*, 181 Wn. 2d 753, 336 P.3d 614 (2014).

The Steinmanns sought discretionary review with the Washington Supreme Court, making the same arguments already raised in their Motion for Reconsideration and Motion for Additional Evidence before the Court of Appeals. *See* Ex. 1 to the Lane Declaration (CP 114). Despite these arguments, the Supreme Court denied review on the merits. *Fannie Mae v. Steinmann*, 181 Wn. 2d 753, 336 P.3d 614 (2014). The Supreme Court filed its Mandate on November 18, 2014, remanding this matter back to the Trial Court for further proceedings in accordance with its October 23, 2014 opinion, i.e., its denial of review. *Fannie Mae v. Steinmann*, No. 90117-1, slip op. at 1 (Nov. 18, 2014).

E. The Trial Court Denied Petitioner’s Motion to Vacate Judgment and for a New Trial

Despite the express Mandate from the court of last resort of this state, which denied review of the Court of Appeals’ ruling in favor of Fannie Mae, the Steinmanns filed a Motion to Vacate Judgment/Motion for a New Trial, asking the Trial Court to ignore the Mandate. Once again, the Steinmanns rehashed the same arguments about equities and “newly discovered” evidence (the same documents recorded in 2010) already made before the Court of Appeals and the Supreme Court. (CP

108, 109). The Trial Court denied these motions, concluding that the documents recorded in 2010 did not constitute “newly discovered” evidence, and that the Steinmanns’ motions were untimely. (CP 119).

Now, the Steinmanns appeal again, once again rehashing the same arguments about equities and “newly discovered” evidence (the same documents recorded in 2010) already made before the Court of Appeals, the Supreme Court, and the Trial Court. This is the Steinmanns’ sixth (6th) bite at the apple, and they show every indication of dragging out the appeals indefinitely despite definitive orders from every level of the Washington Court system.

IV. ARGUMENT

A. The Court of Appeals Should Affirm the Trial Court’s Order Denying the Steinmanns’ Motion to Vacate and Motion for a New Trial

The Steinmanns, hoping to indefinitely postpone a resolution of this 2011 unlawful detainer action, argue that the Trial Court abused its discretion in denying their Motion to Vacate Judgment and Motion for a New Trial. This affords the Steinmanns the opportunity to rehash the same arguments regarding equity and the underlying Trustee’s Sale

already considered by the Court of Appeals in the Steinmanns' previous appeal, by the Supreme Court, and by the Trial Court. The arguments are frivolous, and a waste of the resources of the Court of Appeals and Fannie Mae.

i. The Trial Court Did Not Abuse its Discretion in Denying the Steinmanns' Motions

The Steinmanns brought a Motion for a New Trial pursuant to CR 59(a)(4), (9), and a Motion to Vacate Judgment pursuant to CR 60(b)(3), (6), (11). These Motions constituted thinly veiled attempts by the Steinmanns to challenge issues already decided by the appellate court. A trial court has no authority to review an appellate ruling. *Yurtis v. Phipps*, 143 Wn. App. 680, 690-91, 181 P.3d 849 (2008); *see also* RAP 12.2 ("After the mandate has issued, the trial court may, however, hear and decide postjudgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court"). The Trial Court did not abuse its discretion in denying the Steinmanns' Motions. Such decisions are reviewed for abuse of discretion and may be disturbed on appeal "only upon a showing of clear or manifest abuse." *In Re Marriage of Hardt*, 29 Wn. App. 493, 496, 693

P.2d 1386 (1985) (internal citations omitted); *see also Newlon v. Alexander*, 167 Wn. App. 195, 199, 272 P.3d 903 (2012) (Motions to vacate “are addressed to the sound discretion of the trial court, whose judgment will not be disturbed absent a showing of a manifest abuse of discretion”). The Steinmanns fail to demonstrate clear or manifest abuse in their current appeal.

a. Motion for a New Trial Pursuant to CR 59

Court Rule 59(a)(4) allows a party to bring a motion for a new trial or reconsideration on the grounds of “newly discovered evidence, material for the party making the application, which the party could not with reasonable diligence have discovered and produced at the trial. Court Rule 59(a)(9) allows a party to bring a motion for a new trial or reconsideration on the grounds of “that substantial justice has not been done.” However, parties have only ten days to move for reconsideration or for a new trial under CR 59. CR 59(b). The Steinmanns did not move for reconsideration or for a new trial under CR 59 within ten days of the Trial Court’s summary judgment order and order of restitution in favor of Fannie Mae; instead, the Steinmanns elected to waive their rights under

CR 59 and move straight to filing their first appeal. The fact that the Steinmanns lost their first appeal did not vitiate the express timing requirement of CR 59(b). The Steinmanns presented no argument or precedent to support a claim that the timing requirement was tolled by their appeal. (CP 108). Having failed to bring a motion for a new trial within ten days of the orders at issue herein, the Steinmanns' Motion for a New Trial was untimely.

Moreover, the Steinmanns did not provide "newly discovered evidence" as defined under CR 59(a)(4); the only evidence provided by the Steinmanns in support of their motion was the two documents recorded with the Clark County Auditor on January 29, 2010 (the same "additional evidence" they presented to the Court of Appeals on their initial appeal). Because these documents are a matter of public record, they could have been discovered with due diligence any time after January 29, 2010, and prior to the Trial Court's entry of its orders on February 24, 2012. Significantly, the Steinmanns concede that they did not submit this evidence because they did not "fully realize the importance of these documents and the sequence of their execution," not

because the Steinmanns were unable to timely discover them. (CP 108 at 3, ll. 24-25). The Steinmanns present no argument as to how the Trial Court manifestly abused its discretion in Denying their Motion for a New Trial. Because there was no abuse of discretion, the Court of Appeals should affirm the Trial Court's order denying this motion.

b. Motion for a New Trial Pursuant to CR 60(b)

The Steinmanns also moved to vacate the judgment pursuant to CR 60(b)(3), (6), and (11).

Court Rule 60(b)(3) allows the Court to vacate a judgment on account of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b).” Parties have one year to move to vacate a judgment under CR 60(b)(3). CR 60(b). The Steinmanns did not move to vacate the judgment pursuant to CR 60(b)(3) within one year of the Trial Court's summary judgment order and order of restitution in favor of Fannie Mae; instead, the Steinmanns elected to waive their rights under CR 60(b)(3) and moved straight to filing their first appeal with the Court of Appeals. The fact that the Steinmanns lost their appeal did not vitiate the express timing

requirement of CR 60(b)(3). The Steinmanns have presented no argument or precedent to support a claim that the timing requirement was tolled by their first appeal. (CP 108). Having failed to bring a motion to vacate the judgment within one year of the orders at issue herein, the Steinmanns' Motion to Vacate the Judgment pursuant to CR 60(b)(3) was untimely.

Moreover, even if the Steinmanns' had made a timely motion to vacate the judgment, CR 60(b)(3) requires "newly discovered" evidence that could not have been discovered with due diligence in time to move for a new trial under rule CR 59(b). But the only evidence provided by the Steinmanns in support of their motion was the same two documents recorded with the Clark County Auditor on January 29, 2010, and for the reasons set forth above, do not constitute "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b)." Courts have repeatedly held that permitting a party to supplement the record under these circumstances undermines principles of finality and invades the province of the Trial Court. *Hollis v. Garwall, Inc.*, 88 Wn. App. 10, 17, 945 P.2d 717, 721 (1997) *aff'd*, 137 Wn.2d 683, 974 P.2d 836 (1999) (*citing Washington*

Fed'n of State Employees, Council 28, AFL-CIO v. State, 99 Wn.2d 878, 884-885, 665 P.2d 1337 (1983)). The Steinmanns failed to provide the requisite evidence in support of their Motion to Vacate Judgment pursuant to CR 60(b)(3), and the Trial Court denied their Motion. The Steinmanns offer no argument as to how the Trial Court manifestly abused its discretion in Denying their Motion to Vacate Judgment pursuant to CR 60(b)(3).

As noted above, the Steinmanns moved to vacate the judgment under CR 60(b)(6) and 60(b)(11). These rules allow, respectively, for a motion to vacate when “it is no longer equitable that the judgment should have prospective application” or for “any other reason justifying relief from the operation of the judgment.” Parties must move to vacate a judgment under CR 60(b)(6) and CR 60(b)(11) within a reasonable time following the judgment. CR 60(b). The Steinmanns did not move to vacate the judgment pursuant to CR 60(b)(6) and/or CR 60(b)(11) within a reasonable time of the Trial Court’s summary judgment order and order of restitution in favor of Fannie Mae; instead, the Steinmanns elected to waive their rights under CR 60(b)(6) and CR 60(b)(11) and move straight

to filing their first appeal. The fact that the Steinmanns lost their first appeal did not vitiate the express timing requirement of CR 60(b). The Steinmanns presented no argument or precedent to support a claim that the timing requirement was tolled by their first appeal. (CP 108). Having failed to bring a motion to vacate the judgment within a reasonable time of the orders at issue herein, the Steinmanns' Motion to Vacate the Judgment pursuant to CR 60(b)(6) and CR 60(b)(11) was untimely.

Even if the Steinmanns' had made a timely motion to vacate the judgment pursuant to CR 60(b)(6) and CR 60(b)(11), their arguments rely upon readily distinguishable cases inapplicable to post-eviction unlawful detainer actions and motions to vacate summary judgment orders. The Steinmanns argue that pursuant to the Court of Appeals' decision in *Bavand*, the sale by Regional Trustees Services Corporation ("RTSC") to Fannie Mae was unlawful because RTSC lacked authority to make that sale. The Steinmanns concede in their motion that the primary issue here was whether the Steinmanns waived their objections to the sale pursuant

to RCW 61.24.040. RCW 61.24.040(1)(f)(IX) provides that failure to enjoin a foreclosure, waives setting the sale aside:

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections *if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130*. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

(Emphasis added). Unlike the Steinmanns, the borrowers in *Bavand* brought a lawsuit to restrain the sale pursuant to RCW 61.24.130, *prior* to the sale. 176 Wn. App. at 492. The Steinmanns waited to challenge the sale until after Fannie Mae purchased the property at the sale and filed an unlawful detainer action against the Steinmanns.⁴ *Fannie Mae v. Steinmann*, 2013 WL 5211622 at* 2-4. Additionally, the Steinmanns conceded that none of the other cases they cite involve a party's failure to bring a lawsuit to restrain a sale pursuant to RCW 61.24.130. (CP 108 Mot. at 11 l. 25 – 12 l. 1). Because the Steinmanns failed to cite any

⁴ “Sometimes it is said that, if a man neglects to enforce his rights, he cannot complain if, after a while, the law follows his example.” Oliver Wendell Holmes, *The Path of the Law*, 10 Harvard L. Rev. 457, 476 (1897).

applicable authority, the Trial Court denied their Motion to Vacate the Judgment pursuant to CR 60(b)(6) and CR 60(b)(11).

Moreover, even if *Bavand* was applicable to the Steinmanns' case, CR 60(b) does not authorize vacating judgments except for reasons extraneous to the action of the court or for matters affecting the regularity of the proceedings; thus, errors of law are not correctable through CR 60(b) but, rather, direct appeal is the proper means of remedying legal errors. *Burlingame v. Consolidated Mines & Smelting Co.*, 106 Wn.2d 328, 722 P.2d 67 (1986) (holding that "insufficiency of the evidence is not an error that is extraneous to the action or affects the regularity of the proceedings," and is therefore not subject to a CR 60(b) motion). There is no legal support for the Steinmanns' claim that CR 60(b) permits vacation of a judgment based on "a change in the law in an appeal setting." (CP 108 at 3 ll. 18-19).

For the first time on appeal, the Steinmanns argue that their circumstances are extraordinary for reasons extraneous to the action. Appellant Br. at 13. However, the Steinmanns concede that these "extraneous reasons" are limited to the *Bavand* opinion – which is readily

distinguishable for the reasons stated above – and the two recorded documents – which are not “newly discovered” nor “extraneous” for the reasons stated above. *Id.* Neither of these “extraneous reasons” are extraordinary, nor do they demonstrate a manifest abuse of discretion by the Trial Court. The Steinmanns appear to argue for retroactive application of the *Bavand* decision based upon *Flannagan v. Flannagan*, 42 Wn. App. 214, 709 P.2d 1247 (1985), which considered the issue of whether the Uniform Services Former Spouses Protection Act (USFSPA) may be applied retroactively to dissolution decrees that were final and were not appealed after the Supreme Court decision in *McCarty v. McCarty*⁵ and before enactment of the USFSPA. *Flannagan* has no role at all in this matter, nor do the Steinmanns cite case law for the proposition that appellate precedent may have a retroactive effect upon the circumstances here. Indeed, the Steinmanns offer no argument as to how the Trial Court manifestly abused its discretion in Denying their Motion to Vacate Judgment pursuant to CR 60(b)(6) and CR 60(b)(11).

ii. The Trial Court Did Not Err by Not Addressing the Steinmanns’ Arguments Regarding Equity

⁵ 453 U.S. 210, 101 S.Ct. 2728 (1981).

The Steinmanns argue that the Trial Court erred by “failing to balance the equities and applied the doctrine of finality,” claiming that they did not intend to waive their rights to seek relief from foreclosure and the holding in the *Bavand* opinion. Appellant Br. at 14-19. But neither waiver nor *Bavand* apply to *this* appeal, i.e., to whether the Trial Court manifestly abused its discretion in denying the Steinmanns’ Motion to Vacate Judgment. *Bavand* did not address CR 60(b), nor did it address the application of “newly discovered” evidence. Indeed, the Steinmanns’ argument here does not properly apply to this appeal at all, but rather to their previous appeal and motions for reconsideration to add additional evidence. Because the Steinmanns’ “balancing the equities” argument fails to address a manifest abuse of discretion by the Trial Court, the Court of Appeals should affirm.

iii. The Trial Court Did Not Err by Not Addressing the Steinmanns’ Arguments Regarding the Trustee’s Sale

Similarly, the Steinmanns argue that the Trial Court erred by “failing to address the issue of whether the Trustee’s Sale was void. Appellant Br. 19-24. Again, the Steinmanns’ argument is unrelated to the Trial Court’s Denial of their Motion to Vacate Judgment, but rather

appears to be a reply to the Court of Appeals' analysis of waiver in its previous unpublished decision. *See Fannie Mae v. Steinmann*, 2013 WL 5211622 at *4. The Court of Appeals has already responded to the Steinmanns' arguments regarding whether the Trustee's Sale was void, and the Steinmanns offer no defense relevant to their Motion to Vacate Judgment and the Trial Court's order denying the same. Because the Steinmanns' "void Trustee's Sale" argument fails to address a manifest abuse of discretion by the Trial Court, the Court of Appeals should affirm.

B. The Court of Appeals Should Enjoin the Steinmanns from Further Appeals and Lawsuits Against Fannie Mae

Fannie Mae respectfully requests the Court of Appeals enjoin the Steinmanns from further appeals and litigation against Fannie Mae arising out of this matter. As previously noted, this is the Steinmanns' sixth (6th) bite at the apple, and they show every indication of dragging out the appeals indefinitely despite definitive orders from every level of the Washington Court system. The Steinmanns have also recently filed a quiet title action against Fannie Mae. *See Clark County Superior Court Cause No. 15-2-00976-5*, filed April 8, 2015. While Washington Courts

appreciate the need for appellate review, they are also “mindful of the need for judicial finality and the potential for abuse of this revered system by those who would flood the courts with repetitive, frivolous claims which already have been adjudicated at least once.” *Yurtis*, 143 Wn. App. 680, 693, 181 P.3d 849, 856 (2008). In Washington, every court of justice has inherent power to control the conduct of litigants who impede the orderly conduct of proceedings. *Id.*, RCW 2.28.010(3). Accordingly, a court may, in its discretion, place reasonable restrictions on any litigant who abuses the judicial process. *Id.*

In Washington, trial courts have the authority to enjoin a party from engaging in litigation upon a “specific and detailed showing of a pattern of abusive and frivolous litigation.” *Id.* When issuing an injunction, the trial court “must be careful not to issue a more comprehensive injunction than is necessary to remedy proven abuses, and if appropriate the court should consider less drastic remedies.” *Id.*

An individual does not have an absolute and unlimited constitutional right of access to the court system. Rather, due process requires only that the individual be afforded a reasonable right of access,

or a meaningful opportunity to be heard, absent an overriding state interest. *Id.* at 694. Consequently, when access to the courts is not essential to advance a fundamental right, “access may be regulated if the regulation rationally serves a legitimate end.” *Id.* The opportunity for judicial access required in any particular case depends on the nature of the case and practical limitations. *Id.* An implicit requirement of access to the court system is that the litigation must proceed in good faith and comply with the court rules. *Id.* In *Yurtis*, the trial court granted the defendant’s motion to dismiss and the plaintiff, Yurtis, appealed. *Id.* at 684. The Court of Appeals affirmed and the Washington Supreme Court denied Yurtis’ petition for review. *Id.* Yurtis subsequently moved to vacate the trial court’s underlying order, which the trial court denied, and Yurtis appealed. *Id.* The Court of Appeals enjoined the plaintiff from further appeals and from filing additional lawsuits against the defendant where, despite the courts’ repeated rejections of plaintiff’s claims, she continued to pursue them. *Id.* at 695. Like the plaintiff in *Yurtis*, the Steinmanns have demonstrated unduly and excessive litigious behavior of a frivolous nature. The Court of Appeals should enjoin the Steinmanns

from further appeals and lawsuits against Fannie Mae arising out of the Trustee's Sale at issue.

C. The Court of Appeals Should Award Fannie Mae its Attorney Fees and Costs Pursuant to RCW 4.84.185 and RAP 18.1

Because the Steinmanns fail to make any colorable arguments in support of their current appeal but rather seek to further frustrate Fannie Mae's efforts to enforce the Trial Court's Order of Restitution, the Court of Appeals should find that their Appeal is frivolous and advanced without reasonable cause, and award Fannie Mae its attorneys' fees pursuant to RCW 4.84.185. "An appeal is frivolous if there are no debatable issues on which reasonable minds can differ and is so totally devoid of merit that there was no reasonable possibility of reversal." *Wright v. Dave Johnson Ins. Inc.*, 167 Wn. App. 758, 787, 275 P.3d 339 (2012) (citing *In re Recall of City of Concrete Mayor Robin Feetham*, 149 Wn.2d 860, 872, 72 P.3d 741 (2003)). Here, the Steinmanns cite no case law that would allow the Court of Appeals to reverse the Trial Court's Order denying the Steinmanns' Motion to Vacate Judgment. Fannie Mae therefore respectfully requests that the Court of Appeals

award Fannie Mae its attorneys' fees pursuant to RCW 4.84.185 and RAP 18.1.

V. CONCLUSION

For the reasons stated above, Fannie Mae asks the Court to affirm the Trial Court's Order denying the Steinmanns' motions, enjoin the Steinmanns from further appeals and lawsuits against Fannie Mae, and award Fannie Mae its attorneys' fees pursuant to RCW 4.84.185.

RESPECTFULLY SUBMITTED this 13th day of May, 2015.

HOUSER & ALLISON, APC

/s/ Joshua B. Lane
JOSHUA B. LANE, WSBA #42192
Robert W. Norman, WSBA #37094
Attorneys for Respondent

PROOF OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that on May 13, 2015, I caused the attached **Respondent's Brief** to be served via Legal Messenger and electronically by email to the Petitioners' counsel of record, Brian H. Wolfe, by previous agreement with Mr. Wolfe, to the following email address:

bwolfe@bhw-law.com.

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

DATED this 13th day of May, 2015, at Seattle, WA.

/s/ Shawn K. Williams _____
SHAWN K. WILLIAMS
Legal Assistant

HOUSER & ALLISON APC

May 13, 2015 - 12:25 PM

Transmittal Letter

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