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Supreme Court No. 871054 RONALD T. CARPENTER

Court of Appeals No. 66252-0-1 CLERK

SUPREME COURT  
OF THE STATE OF WASHINGTON

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DIANNE KLEM, as administrator of the estate of Dorothy Halstien,

Plaintiff-Petitioner,

v.

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, a  
Washington corporation, and QUALITY LOAN SERVICE  
CORPORATION, a California corporation,

Defendants-Respondents.

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**DIANNE KLEM'S ANSWER TO THE AMICUS CURIAE  
MEMORANDA FILED IN SUPPORT OF HER PETITION FOR  
REVIEW BY THE ATTORNEY GENERAL, UNIVERSITY LEGAL  
ASSISTANCE, AND THE WASHINGTON STATE BAR  
ASSOCIATION**

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## I. INTRODUCTION

Pursuant to RAP 10.1(e), Dianne Klem (“Klem”), the petitioner and the administrator for the estate of Dorothy Halstien, answers the Brief of Amicus Curiae Attorney General of State of Washington in Support of Petitioner, the Memorandum of Amicus Curiae University Legal Assistance, and the Amicus Curiae Memorandum of Washington State Bar Association Supporting Review. Klem concurs with the arguments of the Attorney General, University Legal Assistance (“ULA”) and the Washington State Bar Association (“WSBA”), and requests that this Court consider those arguments because they directly address the factors governing acceptance of review set forth in RAP 13.4(b).

## II. DISCUSSION

- A. The Attorney General demonstrated that the Court of Appeals’ opinion on the Consumer Protection Act claim contradicts another Court of Appeals’ decision and thereby presents an issue that should be reviewed by the Supreme Court.**

Quality Loan Service Corporation (“Quality”) has a practice of entering into side agreements with banks that divests it from the ability to exercise discretion as an independent trustee. (RP 215-17, 395; Ex 12). In this case, the practice was unfair because it: (1) resulted in Quality ignoring a \$235,000 cash offer and selling Ms. Halstien’s home at a

foreclosure sale for only \$83,087.67;<sup>1</sup> (2) violated the Deed of Trust Act, which requires trustee's to treat both the banks and the borrowers in "good faith";<sup>2</sup> and (3) was inconsistent with this Court's directives that trustees "must act impartially" and "take reasonable and appropriate steps to avoid the sacrifice of the debtor's property."<sup>3</sup> Therefore, as articulated by the Washington Attorney General, because Quality's practice is unfair it is covered by the Consumer Protection Act ("CPA").<sup>4</sup>

However, the Court of Appeals was confused about what is covered by the CPA and that confusion resulted in an incorrect reversal of the trial court's judgment on Klem's CPA claim and an opinion that contradicts another Court of Appeals' decision.<sup>5</sup> To resolve the

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<sup>1</sup> Ms. Halstien's guardian requested that Quality postpone the foreclosure for a few weeks because a \$235,000 sale was pending, but Quality refused the request because it had abrogated to the bank its discretion to do so. RP 131. Quality had a side agreement with the bank that precluded it from postponing any sale without the bank's permission. Ex 12; and RP 215-17, 395. As a result, Quality, as the trustee, sold 75-year-old Dorothy Halstien's home for only \$83,087.67. RP 103. The buyer at the foreclosure then promptly re-sold Ms. Halstien's former home for \$235,000. RP 132; Ex 69.

<sup>2</sup> RCW 61.24.010(4).

<sup>3</sup> *Cox v. Helenius*, 103 Wn.2d 383, 389, 693 P.2d 683 (1985).

<sup>4</sup> "The CPA [RCW 19.86] is a broad net to trap any malfeasance that injures consumers or the marketplace." Brief of Amicus Curiae Attorney General of State of Washington in Support of Petitioner, at p. 7.

<sup>5</sup> See *State v. Kaiser*, 161 Wn. App. 705, 254 P.3d 850 (2011); and Brief of Amicus Curiae Attorney General of State of Washington in Support of Petitioner, at pp. 3-9.

inconsistency in the Court of Appeals' decisions, the Attorney General correctly asserts that "this Court should accept review under RAP 13.4(b)(2)."<sup>6</sup>

**B. University Legal Assistance confirmed that Quality Loan Service Corporation continues to violate the Deed of Trust Act and that, as a result, this case involves an issue of substantial public interest that should be determined by the Supreme Court.**

ULA notes that in 2012, Quality, as a foreclosure trustee, continues with the same unfair business practices that caused Ms. Halstien to suffer damages in 2008; Quality still cedes to the banks its discretion to postpone foreclosure sales even when doing so is contrary to Washington law and can cause the sacrifice of a borrower's home equity.<sup>7</sup> In short, regarding a borrower's request for a sale postponement, Quality continues to say: "Quality as Trustee has no authority to postpone the sale."<sup>8</sup> Therefore, ULA is correct to assert that "the petition satisfies RAP 13.4(b)(4) because

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<sup>6</sup> Brief of Amicus Curiae Attorney General of State of Washington in Support of Petitioner, at p. 2.

<sup>7</sup> Trustees are vested by the Washington Legislature, in RCW 61.24.040(6), with the discretion to postpone a sale. Nevertheless, Quality has given up its discretion to postpone sales to the banks and Quality will not change its position even when its failure to do so could cause a homeowner to lose substantial equity. RP 215. Moreover, as noted above, Quality's practice is in violation of RCW 61.24.010(4), which requires trustees to treat both the borrowers and banks in "good faith," and is contrary to the rulings of this Court that require a trustee to act "impartially" and to "take reasonable and appropriate steps to avoid the sacrifice of the debtor's property." *Cox v. Helenius*, *supra*. at p. 389.

it is in the public's interest for the Supreme Court to clarify the duties of a foreclosure trustee so that Quality's continued violation of RCW 61.24.010(4) can be stopped."<sup>9</sup>

**C. The Washington State Bar Association correctly asserted that Quality Loan Service Corporation's practice of falsely notarizing foreclosure notices is an issue of substantial public interest that should be addressed by the Supreme Court.**

As noted by the WSBA, it was an unfair practice for Quality to predate and then falsely notarize Notices of Sale.<sup>10</sup> Moreover, at trial Klem proved that Quality's lie about the date of the Halstien Notice of Trustee Sale enabled Quality to hold the foreclosure earlier than otherwise possible and thereby prevented Klem from closing a \$235,000 sale and preserving \$151,912.33 of Ms. Halstien's home equity.<sup>11</sup> Therefore, the

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<sup>8</sup> Memorandum of Amicus Curiae University Legal Assistance Supporting Petition For Review, at ¶ 17.

<sup>9</sup> *Id.*, at pp. 4-10.

<sup>10</sup> Amicus Curiae Memorandum of Washington State Bar Association Supporting Review, at pp. 2-3.

<sup>11</sup> Relevant to this case:

- (1) Quality admitted that the Deed of Trust Act provides that a Notice of Trustee's Sale cannot be issued until thirty days have expired after the posting or service of the Notice of Default (RP 162 and RCW 61.24.030(8));
- (2) The Notice of Default in the Halstien foreclosure was posted on October 25, 2007 (Ex 81);

WSBA correctly argues that the “[t]he practice of falsely dating notarized documents is especially injurious to the public” and that “review is

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- (3) The first business day that was at least thirty days after the posting of the Halstien Notice of Default was Monday, November 26, 2007;
  - (4) The Notice of Trustee’s Sale for Ms. Halstien’s home was dated November 26, 2007 (Ex 8);
  - (5) Contrary to the date that Quality put on the Notice of Sale, and contrary to the sworn statement of the notary employed by Quality, the Notice of Trustee’s Sale for Ms. Halstien’s home was actually signed and sent out of Quality’s office in San Diego, California, on November 19, 2007, which is one week earlier than the date that appears on its face and one week earlier than when the notice could have been properly issued in accordance with the Deed of Trust Act (RP 385-86 and RCW 61.24.040(1));
  - (6) Quality uses a multi-step process to get Notices of Sale out of its San Diego office and recorded in the county where the subject property is located (RP 172-175);
  - (7) It took eight days from when the Notice of Sale left Quality’s San Diego, California, office until it was recorded in Island County, Washington on November 27, 2007 (Ex 8);
  - (8) Quality admitted at trial that if the recording of the Notice of Sale would have been delayed by just four days, the foreclosure sale, which occurred on Friday, February 29, 2008, could not have been scheduled until Friday, March 7, 2008 (RP 385-88);
  - (9) Quality produced no evidence at trial to support an argument that, if it waited one week to honestly date and notarize the Halstien Notice of Sale before sending it out for recording, it could have caused the notice to be recorded in Island County in time to schedule a sale prior to March 7, 2008; and
  - (10) Klem testified at trial that it would have been “very possible” to close the \$235,000 sale, and thereby preserve \$151,912.33 of equity, if the foreclosure sale had been scheduled for March 7, 2008, instead of February 29, 2008 (RP 131).

warranted pursuant to RAP 13.4(b)(4).”<sup>12</sup>

### III. CONCLUSION

Klem agrees with the Attorney General, the ULA and the WSBA that this Court should accept review of this case.

DATED this 15<sup>th</sup> day of May, 2012.

NORTHWEST JUSTICE PROJECT

By Frederick P. Corbit  
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Attorney for Plaintiff-Petitioner

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<sup>12</sup> Amicus Curiae Memorandum of Washington State Bar Association Supporting Review, at pp. 2-3.

CERTIFICATE OF SERVICE

I certify that I mailed or caused to be mailed a copy of DIANNE KLEM'S ANSWER TO THE AMICUS CURIAE MEMORANDA FILED IN SUPPORT OF HER PETITION FOR REVIEW BY THE ATTORNEY GENERAL, UNIVERSITY LEGAL ASSISTANCE, AND THE WASHINGTON STATE BAR ASSOCIATION postage prepaid, via U.S. mail on the 15<sup>th</sup> day of May, 2012, to the following counsel of record at the following addresses:

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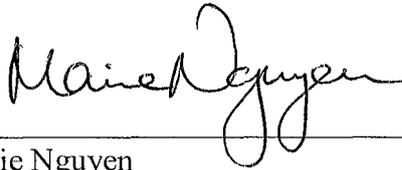
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SIGNED at Seattle, Washington, this 15<sup>th</sup> day of May, 2012.

NORTHWEST JUSTICE PROJECT

A handwritten signature in black ink, appearing to read "Marie Nguyen". The signature is written in a cursive style with a large, looping initial "M".

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