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SUPREME COURT
STATE OF WASHINGTON
May 18, 2012, 3:14 pm
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

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

Respondent,

vs.

WASHINGTON MUTUAL BANK, a
Washington corporation, and

Defendant,

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

Appellants.

No. 87105-I

RESPONSE TO WSBA
AMICUS MEMORANDUM

F I L E D
MAY 18 2012
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

I. Identity of Responding Parties & Relief Requested

Respondents Quality Loan Service Corporation of
Washington and Quality Loan Service Loan Corporation
(collectively, "Quality") ask this Court to deny discretionary review.
Quality respectfully suggests that the Court read this response (to
the second of three amici) second.

ORIGINAL

II. Facts Relevant to Motion

The WSBA supports review of the Unpublished Opinion in this case, which it believes is of substantial public interest. The WSBA fails to note that this Court already denied direct review. It also fails to explain that the WSBA's Amicus Committee voted 11-2 that the WSBA should *not* file a brief supporting review in this case. The WSBA Board of Governors unanimously overruled its Amicus Committee without having read Quality's Answer to the Petition, which had not been filed when the Governors voted. Precipitously rejecting the Amicus Committee's recommendation without giving Quality's response due consideration speaks volumes about its position as "Amicus."

And its legal position fares no better. The Court of Appeals unequivocally and correctly held that the challenged conduct harmed no one (Unpub. Op. at 19):

we agree with Quality that Halstien received the full statutory period required for notice and that her legal rights were unaffected [by the predated notarizations].

Unfortunately, this correct holding fails to deter the WSBA from falsely stating that, "By predating the notice of sale, Quality . . . hastened a foreclosure to the detriment of a vulnerable property

owner" WSBA at 2 (no citation in original). It is impossible to square this assertion with the record. It also does not square well with the WSBA's mission. See WSBA at 3.

Just before the above quote from the Unpublished Opinion agreeing with Quality that Ms. Halstien was unharmed, the Court of Appeals states that "Quality all but admits that this practice was improper." *Id.* Apparently, Quality stating that it forbade the practice and reprimanded those responsible is not strong enough: Quality unequivocally admits that it was improper for its notaries in California to certify a date different than the date the documents were actually signed. It was also completely unnecessary. Had the California notaries certified the date the documents were actually signed, the documents properly would have been sent to Washington for timely service, posting, etc., no different than they were in this case. The date the documents are signed makes no difference under the statutes, the law, or in fact.

Either way, Ms. Halstien did receive – and would have received – her full statutory notice period. Unpub. Op. at 20 ("although Quality predated, signed, and notarized the notice of sale in San Diego, it nonetheless abided by the statutory

requirement of waiting 30 days before recording, transmitting, or serving the notice of sale"). As the appellate court held, PSG's CPA claim relied entirely on speculation that (a) Quality would have sent the notice a week later (for some unknown reason); and (b) PSG could somehow close within a week, despite the far-off closing date and the lack of evidence that it and the purchaser were ready, willing, and able to do so. *Id.* PSG's claims also imply that Ms. Halstien was (for some unstated reason) entitled to more than her statutory notice period. On the facts, the complete absence of evidence of causation and damages moots this issue.

By contrast, the jury determined that PSG's negligence caused 50% of Ms. Halstein's losses, and PSG has not petitioned for review of that verdict. As noted in Quality's Response to Amicus AAG, the verdict is amply justified by PSG's numerous failures to properly represent its incapacitated client, up to and including failing either to seek a stay of the foreclosure sale or to attend the sale with the signed REPSA and give the Trustee a last clear chance to stop the sale. The appellate court's unpublished opinion upholding the 50/50 jury verdict is well justified.

III. Grounds for Relief & Argument

A. Notarizations must be accurate, and it was wrong for a California notary to predate this notarization in 2007.

As noted above, Quality admits that it was wrong for a California notary to predate the notarization. And notarizations are, as the WSBA states, important. WSBA at 4-6. But it is not of substantial public interest that this happened when it harmed no one and Quality forbade it. Indeed, the trial court rejected PSG's request for an injunction under the CPA precisely because, in addition to the vague, overbroad, and unenforceable request, there also was no evidence contradicting Quality's COO's testimony that Quality forbade it; after listening to that testimony, the trial court ruled that it "assumes [Quality] will follow the law." CP 1588.

B. There is no dispute that Seth Ott actually signed the notice or that the date was incorrect, but again, predating the document harmed no one.

As the WSBA states, Seth Ott signed the notice a week earlier than the notarized date. WSBA at 6-8. No one has argued that his signature was forged. And as discussed above, had the date been correct (*i.e.*, a week earlier) nothing would have changed: the documents would have been sent to Washington when they were, and they would have been properly served, filed,

posted, etc., all in accordance with the appropriate statutory timelines, exactly as occurred in this case. Again, Ms. Halstien received nothing less than the full statutory notice to which she was legally entitled. Since no harm occurred, and Quality has acknowledged and forbidden the predated, the issue is moot.

Indeed, the WSBA agrees that Quality admitted at trial that the date on the notice in this case was improper (WSBA at 8), yet ignores employee Ott's testimony just a few pages earlier that Quality's management forbade him from predated documents when it discovered what he was doing. RP 353-54. Again, Quality both acknowledges and forbids predated, and the issue is moot.

C. The WSBA utterly fails to address the Court of Appeals' actual holding that PSG failed to establish that predated the notice caused harm to anyone, so PSG failed to establish a CPA violation.

Ultimately, the WSBA simply fails to address the Unpublished Opinion's holding that predated this notice did not harm Halstien (or anyone else) because she received her full statutory notice, so her legal rights were unaffected. WSBA 8-10. As the WSBA's brief states, it is perfectly clear under Washington law that predated the notice was improper. But there can be no CPA violation where, as here, PSG failed to prove that it harmed

anyone. See, e.g., *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784, 719 P.2d 531 (1986) (plaintiff must establish all five elements of a CPA claim to prevail).

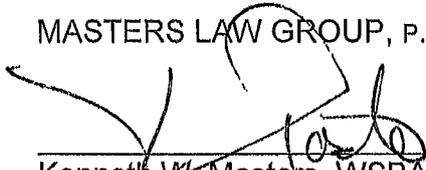
The WSBA also mischaracterizes the Court of Appeals' holdings, implying that the court simply looked at two statutes, found no violations, and reversed. WSBA 8-10. The Unpublished Opinion unequivocally rests on the complete absence of evidence that predated the notice harmed Halstien. Unpub. Op. at 19. It properly enforces the jury's 50/50 verdict. In the absence of any evidence of causation and damages, the the CPA claim is moot, regardless of the WSBA's claims.

IV. Conclusion

For the reasons stated above, this Court should deny review.

RESPECTFULLY SUBMITTED this 16 day of May, 2012.

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CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed a copy of the foregoing **RESPONSE TO WSBA AMICUS MEMORANDUM** this 18th day of May 2012 to the following counsel of record at the following addresses:

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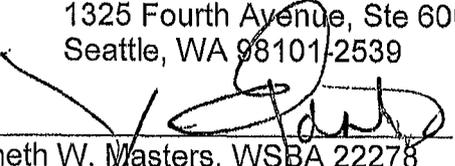
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OFFICE RECEPTIONIST, CLERK

To: Cheryl Fox
Subject: RE: 87105-1 Klem v. Washington Mutual Bank - Response to WSBA Amicus Memorandum

Received 5/18/12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Cheryl Fox [<mailto:cheryl@appeal-law.com>]
Sent: Friday, May 18, 2012 3:01 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: 87105-1 Klem v. Washington Mutual Bank - Response to WSBA Amicus Memorandum

Attached for filing, please find: RESPONSE TO WSBA AMICUS MEMORANDUM

Case: *Klem v. Washington Mutual Bank*

Case Number: 87105-1

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Thank you!

Cheryl Fox
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