No. 85454-2-I

On appeal from Snohomish County No. 19-2-09056-31

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

Christopher E. Larson, et al.,

Appellant,

v.

Deutsche Bank National Trust Company,

Appellee.

LARSON'S CONSOLIDATED PETITION FOR DISCRETIONARY REVIEW AND STATEMENT OF ADDITIONAL GROUNDS FOR DIRECT REVIEW

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A. IDENTITY OF PETITIONERS:

Appellant Larson Family composed of Christopher Larson and Angela Larson (husband and wife), their daughter Hayden Larson, and three minors dependent on them (hereafter collectively referred to as the "Family") asks this Court to accept review of the Court of Appeals decision terminating review of the Superior Court's grant of a summary judgment ordering the Snohomish County Sheriff to remove the Family from the possession of their home pursuant to Washington State's Landlord-Tenant statute RCW 52.12.039.

A copy of the Court of Appeals decision terminating review and that Court's denial of the Family's motion for reconsideration of that decision and motion to publish that decision for which decisions review is being sought are designated in Part B of this Petition.

B. COURT OF APPEALS DECISIONS:

The parts of the January 13, 2025, decision terminating review by the Court of Appeals which the Family wants reviewed include the Court of Appeals' failure to consider the Family's claims that the Superior Court for Snohomish County refused to conduct a CR 56 judicial inquiry based upon the presentation of parties. A copy of this Decision terminating review appears at Appendix at App. 2-20[1]. Further, the Family requests discretionary review of the Court of Appeals February 7, 2025, denials of the Family's motion for

[1] A copy of this Order terminating review is also accessible at: https://www.academia.edu/127074126/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_National_Trust_Company_as_Trustee_in_Trust_for_the_Holders_of_Mortgage_Pass_through_Certicates_Series_2007_HE2_v_Larson_Court_of_Appeals_unpublished_per_curiam_opinion

reconsideration[2], which appears at App. 22, and the Family's motion to publish[3], at App. 24.

C. ISSUES PRESENTED FOR REVIEW:

1) Whether the judicial officer assigned by the Superior Court to adjudicate this unlawful detainer action properly considered the facts and law presented by the parties when ruling on Deutsche Bank's (hereafter "DB") Civil Rule 56 motion to evict the Larson Family from their home.

2) Whether the judicial officer presiding over this unlawful detainer action properly adjudicated her own impartiality, as required under RCW 2.28.030 and the Fourteenth Amendment, before issuing a ruling transferring possession of the Larson home

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[2] A copy of the Order denying reconsideration is also accessible at: https://www.academia.edu/128104141/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_v_Larson_order_denying_reconsideration_of_order_terminating_appeal

[3] A copy of the Order denying motion to publish is also accessible at: https://www.academia.edu/128104179/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_v_Larson_order_denying_motion_to_publish_decision_terminating_appeal

to DB as trustee for the owners of mortgage-backed securities.

3) Whether DB presented undisputed evidence to the Superior Court to establish compliance with RCW 59.12.032, thereby justifying summary judgment and the removal of the Larson Family through a government-enforced eviction pursuant to Washington State's judicial power.

4) Whether DB presented any evidence rebutting the Larson Family's judicial inquiries, which asserted that DB defrauded the Superior Court and the Court of Appeals in prior title actions by falsely claiming it obtained the original promissory note from the New Century Bankruptcy Liquidating Trustee.

5) Whether the Larson Family presented relevant evidence in support of their constitutional defenses to preclude summary judgment ordering the Snohomish County Sheriff to remove them from possession of their home for the benefit of DB as trustee for the owners of mortgage-backed securities.

6) Whether the Court of Appeals erred by failing to conduct a proper appellate judicial inquiry based on the parties' appellate presentations regarding the Superior Court's summary judgment order, which directed the Snohomish County Sheriff to remove the Larson Family from their home for the benefit of DB—an entity which purportedly held legal title to the mortgage but refused to present

evidence that it possessed the pertinent promissory note signed by Christopher Larson.

7) Whether the Court of Appeals erred when the "judges" assigned to adjudicate this appeal failed to consider and adjudicate their impartiality and appearance of impartiality with regard to adjudicating this case.

8) Whether the Court of Appeals erred by failing to hold that DB waived its right to present factual and legal arguments in support of the Superior Court's summary judgment order by refusing to file an answering brief in this appeal asserting that DB and its trustee had not defrauded Washington courts in Larsons' title cases.

9) Whether the Court of Appeals erred by acting as an advocate for DB in a manner that would lead reasonable observers to question the impartiality of the judges, given the circumstances suggesting that Washington's political branches have incentivized the enforcement of mortgage-backed securities for the economic benefit of that State, its officials, employees, and its "judges[4]".

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[4] The term "judge" is put in quotation marks because Washington statutory law (which is consistent with the Due Process Clause of the Fourteenth Amendment) provides that elected and appointed judges are judicial officers who may exercise Washington State's judicial power ***only if they are not interested in the cases to which they are assigned***. *See* RCW 2.28.030, titled

D. STATEMENT OF THE CASE:

1. *Factual Background relating to litigations involving those bundle of rights which make up property in Washington State and these United States.*

The prophet Isaiah warned that those who "join house to house and add field to field till no space is left" (Isaiah 5:8) disobeyed God's justice by accumulating wealth and land at the expense of their neighbors, leaving no place in God's world for most others to live.

"Judicial officer defined -- When disqualified." This statute mandates:

> A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases:
>
> (1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.

This statute applies to all elected and appointed "judges" in Washington State, including those in Washington State's Superior Courts, Court of Appeals, and Supreme Court.

Similarly, during his time on earth Jesus rebuked the money changers in the temple, declaring, "It is written: 'My house will be called a house of prayer, but you are making it a den of robbers.'" (Matthew 21:13).

Long before Jesus was sent into this world as a man, our human ancestors understood that money changers could not be trusted to ensure that God's creations would be used for God's purposes, which include love, righteousness, truth and justice. Indeed, this recognition led humanity's early civilizations to develop equitable principles applicable to the dispossession of land—principles designed to ensure that blind adherence to the law does not obstruct justice.

This Court explains much of this history related to deed of trust contracts in *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 92-94 (2012). In doing so, *Bain* also established that notwithstanding the money changers

intent that paid Washington State Trustees would be able to take homes without adjudicative proceedings, Washington, many other states, and commonwealth nations held that this was not equitable and required that deed of trust contracts should be considered to be a form of mortgage subject to equitable principles and mortgage laws.

Modern day money changers who came up with the boilerplate MERS "deed of trust" contracts, like the one involved in this case, tried to get around law and equity in much the same way as the wealthy unsuccessfully tried to in ancient times. The moneychangers in the late Twentieth Century and early Twenty-first Century wrote contracts which purportedly required property owners to treat MERS -- which claims to have created a four party deed of trust based on a claim ownership of the legal (as opposed to beneficial)

interest in the deed of trust contact -- as if it is a fourth party to the promissory Note instrument; notwithstanding that such a contract is contrary to Washington law as announced in *Bain*.

This factual circumstance, i.e. that equitable principles and Washington Statutory law applicable to 2006 mortgages prevented *successors and assigns* of MERS legal interest in deed of trust contracts from enforcing the promissory note unless that MERS or its *successor and assign* possessed the promissory note, was well known to everyone in Washington State prior to *Bain* in 2012. *See Bain* at 38-41 and 48. And this Court clearly told the *successors and assigns of the same boilerplate MERS deed of trust as is at issue in this case (as had adjudicative courts since ancient times) that they could not amend Washington's law and equitable*

principles by writing a contract which abrogates property owners' rights.

Before moving on to the next section of this Petition the Family wants to explain why they refer to DB, other banks (including shadow banks), government agencies, and possibly even Washington "judges" as money changers. The Family uses this term because it is an accurate way of describing America's financial industry in these times. *See e.g.* Clerk's Papers Volume 2, 683 (hereafter "CP" and "V."), "Office of the Comptroller of the Currency, Advisory Letter -- Re: Electronic Record Keeping (AL 2004-9)" addressing the financial industry as including: "Chief Executive Officers of All National Banks, Federal Branches and Agencies, Service Providers and Software Vendors, Department and Division Heads, and All Examining Personnel.

2. Proceedings before the Snohomish County Superior Court.

a) DB's motion for summary judgment filed on 2/25/2020.

This is an appeal of the Superior Court's summary judgement order directing the Sheriff of Snohomish County to evict the Family from their home. The original motion for summary judgment was filed on February 25, 2020, by an attorney who is different (and was employed by a different law firm), CP V.4, 1655-1800, than the attorney who purported to refile the same summary judgment motion over two years later on September 6, 2022. CP V.3, 1127-29.

The motion for summary judgment, which was granted on May 31, 2023 (over three years after it was filed) does not acknowledge that it is based on RCW 59.12.032, which states:

> An unlawful detainer action, commenced as a result of a trustee's sale under chapter

> 61.24 RCW, must comply with the requirements of RCW 61.24.040 and 61.24.060.

See CP V.4, 1656, (asserting the only issue is whether DB "is entitled to possession of the property following a Trustee's Sale held pursuant to RCW 61.24.060" as opposed to whether DB has complied with RCW 61.24.040 and 61.24.060).

The peculiar timing of this motion for summary judgment, which occurred well before Larsons' title cases were adjudicated, is an important fact here because DB had not at that point obtained title to Larsons' property by virtue of DB's later fraud complained of by the Family in this case. The Family asserts that a reasonable trier of fact regarding the dispossession issues in the eviction case would likely conclude that the reasons DB has refused to respond to the Family's claims of fraud is that in order to dispute

them DB and its attorneys are aware that they will have to engage in further fraud, which fraud can be easily proved.

b) The Family's presentations filed in opposition to DB's motion for a summary judgment.

With regard to DB's 2/25/2020 motion for summary judgment the Larsons argued to the superior court and the court of appeals 1) that DB had not proved its compliance with RCW 59.12.032; 2) that DB had not presented opposing evidence or argument that it had complied with RCW 59.12.032; and 3) that the "judges" of those courts were not free to ignore the judicial inquiries the Family presented for adjudication.

The Larsons assert to this Court that the "judges" of the courts below were required to decide this eviction case in the context of longstanding real estate property law. In these United States the bundle of rights

characterized as real property includes several different rights including the right of possession, the right of control, the right of exclusion, the right of enjoyment, and the right of dispossession. Each of these are separate rights which must be adjudicated pursuant to the law applicable to it. *See* generally, https://en.wikipedia.org/wiki/Bundle_of_rights for a description of this "bundle of rights" concept throughout the world. *See also Cedar Point Nursery v. Hassid*, 549 U.S. 139, 150 (2021) for a recent Supreme Court case discussing its application in the United States pursuant to this Nation's organic law.

It is the Family's position in this appeal that each member of their Family is/was a tenant in this home and cannot/should not be removed by government under Landlord-Tenant law unless the language of RCW 59.12.032 is/was complied with. Accordingly, because

the Family 1) disputed that DB had presented facts proving that RCW 59.12.032 had been complied with; and 2) DB chose not to respond to their factual and legal presentations in this regard in this eviction case both the superior court and the court of appeals erred by advocating for DB factual and legal positions that DB refused to assert because DB and its attorneys knew this would constitute fraud on the court with regards to these eviction proceedings.

Under the circumstances of this case the Family asserts reasonable people must wonder why these "judges" appear to be advocating for money changer DB.

The Family asserted in their April 13, 2023, opposition to DB's 2/25/2020 Motion for Summary Judgment (CP V.2, 667-681) that DB had defrauded the superior court and the court of appeals in the title

proceedings reported at *Larson v. Snohomish County*, supra. Specifically, the Larsons asserted:

> Recently the Larsons' counsel took the deposition of an agent for the liquidating trustee of that same bankruptcy debtor [New Century], i.e., Carrington Mortgage Company. That agent's testimony creates material factual issues about the Larson eviction because it demonstrates that New Century Mortgage likely destroyed the original promissory note signed by the Larsons in 2006. This factual scenario is supported by the Larsons' Requests for Judicial Notice and the declarations of several experts …
>
> Washington law requires that lost or destroyed promissory notes must be foreclosed pursuant to RCW 62A.3-309. *See e.g. Brown v. Dep't of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015); *JPMorgan Chase Bank, Nat'l Ass'n v. Morton*, 3 Wn. App. 2d 1004 (2018) (Unpublished); *See also*, Revised Code of Washington 62A.3-301 …
>
> Washington law, as well as the law of other common law nations associated with England have long held that fraud vitiates everything it touches. *See e.g. Coson v. Roehl*, 63 Wn.2d 384, 387 P.2d 541, 544-45 (1963)("[F]raud vitiates everything which it touches, and destroys the very thing which it was devised to support; the law does not temporize with trickery or duplicity. ...") *Id.*

at 63 Wn.2d at 388. *See also Stoddard v. Chambers*, 43 U.S. (2 How.) 284, 318, 11 L.Ed. 269, 283 (1844) where the Supreme Court held that "[n]o title can be held valid which has been acquired against the law" and by way of a fraud regarding that illegality. *Id.* at 318. This is because if the title to land is fraudulently obtained and/or obtained in violation of law by way of a judgment, that judgment is void because "[f]raud vitiates all transactions. *See also Takher v Gracefield Developments Limited and others,* [2019] UKSC 13 (2019)[5] (The Supreme Court of England holding foreclosure judgment secured by fraud is void).

The Larsons also claim that this Court ordering that they must be evicted from their home, by use of governmental force, would constitute a taking of property in violation of the Fourteenth Amendment. *See e.g.* Larsons' Answer at ¶¶ 4.6: "A principle purpose of the Takings Clause is "to bar Government from forcing some people to bear public burdens which, in fairness and justice, should be borne by the public as a whole." *See also Murr v. Wisconsin*, 137 S. Ct. 1933, 1950, 198 L.Ed.2d 497, 517 (2017) quoting *Armstrong v. United States*, 364 U.S. 40, 49, 80 S. Ct. 1563, 4 L. Ed. 2d 1554 (1960). *See also* generally Rappaport,

[5] Accessible at: https://www.supremecourt.uk/cases/uksc-2017-0072

> Originalism and Regulatory Takings: Why the Fifth Amendment May Not Protect Against Regulatory Takings, but the Fourteenth Amendment May", 45 San Diego L. Rev. 729 (2008) (describing the debate among scholars over those questions).

CP V.2, 670-672. *See also* Motion for Reconsideration, discussed *infra*.

DB and its attorney, Ryan Carson, chose not to dispute or refute the above stated legal arguments, and the evidentiary submissions of facts upon which they were based[6]. In fact, neither DB nor its attorney objected to any of the evidence the Family presented. *See* CP V.1, 126-500 through V.2, 501-738. Why?

The Larson Family members assert as a matter of fact and law that the most likely reason DB and its attorney chose this course of action is because they were aware in 2023 that the fraud upon the Court in the title cases about which the Family complained had in fact

[6] *See* CP V.1, 126-V.2, 738.

occurred. *See* supra. Otherwise, the Family asserts, these "judges" would not have presumed to inappropriately exercise those courts' adjudicative judicial power to make arguments that DB wisely refused to make on its own behalf.

Presentations which were in the record before the superior court pursuant to the Family's opposition to DB's motion for summary judgment which tended to prove the Family's factual and legal contentions that money changers in the United States had purposely written contracts designed to change controlling Washington State law and equitable principles included *without limitation*:

1. The facts and arguments involving the same judicial inquiries posed by the Larsons in this eviction case and their title cases as are/were asserted by the Bergeron's in *DB v.*

Thomas Bergeron, a title case also being litigated in the Snohomish County Superior Court, Case no. 20-2-00225-31, based on the same MERS New Century boilerplate contract as are involved in this case. *See* CP V.1, 128 (authenticating testimony) 128 at 6 A and 132-157 (Bergerons' Opposition to Summary Judgment Motion).

2. The facts and arguments the Bergeron's asserted in their judicial proceedings contending that DB had through a witness working for bankruptcy liquidating trustee had admitted that New Century likely did not hold the Note Christopher signed notwithstanding their assertions to the contrary in the title proceedings reported at *Larson v. Snohomish County*. CP V.1, 158-

171 (Bergerons' Objection to and/or motion to strike testimony and exhibits from the Declaration of Janine McFarland in support of DB's motion for summary judgment.)

3. The facts and arguments the Bergeron's contended in their title proceedings demonstrated that DB's attorney was inappropriately attempting to mislead the Superior Court of Snohomish County into concluding DB received the original note from New Century's liquidating trustee. CP V.1, 173-176 (Bergerons' Objection to and/or Motion to Strike Declaration of [purported DB attorney Joseph T. McCormick).
4. The entire Deposition Upon Oral Examination of Janine McFarland, a mediation manager, employed by the

liquidating trustee for New Century tending to prove that DB likely had not received the original note Christopher signed from the liquidating trustee. CP V.1, 178-180 (authenticating testimony) and 182-210 (the McFarland deposition). This testimony corroborated Angela Larson's testimony in the title case (reported at *Snohomish County v. Larson*, supra) that she was told by an attorney for that same trustee that the Note Christopher signed was not provided to DB because New Century didn't have it.

5. The facts and arguments the Bergeron's submitted in opposition to DB's motion for summary judgment in the Bergeron's case, which include the same factual contention and legal arguments that Christopher and

Angela Larson assert constituted a fraud on the courts of Washington in their title proceedings. *See Larson v. Snohomish County*, supra. CP V.1, 229-253. (The Family now contends in the light of the facts demonstrated by this eviction case that there is also a question of fact in this eviction case as to whether the "judges" of Washington's state courts are part of the fraud being perpetrated upon Washington's Homeowners by Washington's government (including its "judges") and its money changer allies.

6. The "Declaration of Ronald J. O'Donnell in support of defendant Bergeron's Opposition to the Motion for Summary Judgment purportedly filed on behalf of named Plaintiff

Deutsche Bank, as indenture trustee for New Century Home Equity Loan Trust 2006-1." CP V.1, 324-333. O'Donnell testifies, without objection from DB, that:

> 5. Based on my education, training, and experience as well the court documents I reference above it is my opinion on a more likely than not basis that it cannot be determined what entity, if any, owns the Bergerons' loan. Furthermore, it is also my opinion based on this same expertise that I am unable to determine on a more likely than not basis what entity, if any, presently possesses the Bergerons' original Note with New Century or possessed that Note at the time this case against the Bergerons was filed.

CP V.1, 326.

7. The complaint that was filed jointly by the United States and this Nation's 50 states (including Washington State) with the

United States District Court for the District of Columbia in *United States et al. v Bank of America Corporation, et al.* CP V.1, 365-464. This complaint, which was settled within days of its being filed, alleged among other things that:

> COUNT III: UNFAIR AND DECEPTIVE CONSUMER PRACTICES WITH RESPECT TO LOAN ORIGINATION
>
> * * *
>
> 109. The loan origination conduct of the Banks, as described above, constitutes unfair and deceptive practices in violation of the consumer protection laws of each State.
>
> 110. The Banks' unlawful conduct has resulted in injury to the States and citizens of the States who have had home loans serviced by the Banks. ***The harm sustained by such citizens includes payment of improper fees and charges, unreasonably high mortgage payments, unaffordable mortgages, and loss of homes. The harm to the States includes the subversion of their legal processes***

and the sustained violations of their laws. ....

COUNT IV: VIOLATIONS OF THE FALSE CLAIMS ACT, ...

* * *

112. ***By virtue of the acts described above, the Banks knowingly presented or caused to be presented to the United States false or fraudulent claims for payment or approval, including but not limited to improper claims for payment of FHA residential mortgage insurance or guarantees.***

113. ***In so doing, the Defendants acted knowingly; that is, the Banks possessed actual knowledge that the claims for payment were false or fraudulent; acted in deliberate ignorance of the truth or falsity of the claims for payment; or acted in reckless disregard of the truth or falsity of the claims for payment.***

114. ***By virtue of the acts described above, the Banks made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim.***

115. ***In so doing, the Defendants acted knowingly; that***

is, the Banks possessed actual knowledge that the information, statements and representations were false or fraudulent; acted in deliberate ignorance of the truth or falsity of the information, statements and representations; or acted in reckless disregard of the truth or falsity of the information, statements and representations.

116. ***By virtue of the acts described above, the Banks made, used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, and concealed or improperly avoided or decreased an obligation to pay or transmit money or property to the United States.***

117. ***In so doing, the Defendants acted knowingly; that is, the Banks possessed actual knowledge that the information, statements and representations were false or fraudulent; acted in deliberate ignorance of the truth or falsity of the information, statements and representations; or acted in reckless disregard of the truth or falsity of the information, statements and representations.***

118. ***By virtue of the acts***

described above, the Banks conspired with one or more persons: to present or cause to be presented to the United States false or fraudulent claims for payment or approval; to make, use, or cause to be made or used, a false record or statement material to a false or fraudulent claim; and, to make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government; or to conceal or improperly avoid or decrease an obligation to pay or transmit money or property to the United States.

* * *

COUNT VII: DECLARATORY JUDGMENT UNDER 28 U.S.C. §§ 2201 AND 2202 REGARDING BANK BANKRUPTCY MISCONDUCT

* * *

134. The Banks implemented and relied on inadequate bankruptcy procedures and thereby has prejudiced debtors, creditors, including the United States, and the courts in bankruptcy cases, has led to increased errors, delays, and costs of administration in bankruptcy cases, and constitutes a continuing abuse of the bankruptcy

process.

135. ***The Banks' abuse of the bankruptcy process violated a duty or duties owed by the Banks to the debtors, the courts, and other parties in such bankruptcy cases, including the United States.***

136. The Banks' abuse of the bankruptcy process violates a federal policy, reflected in the Bankruptcy Code and the Bankruptcy Rules, in favor of the efficient and equitable administration of bankruptcy cases, as well as the policy of ensuring accuracy in claims submitted to the bankruptcy courts.

137. ***The Banks' unlawful conduct has resulted in injury to the United States and to debtors in bankruptcy who have had their home loans serviced by the Banks. The harm sustained by such debtors includes payment of improper fees and charges, unreasonable delays and expenses in their bankruptcy cases, and loss of homes due to improper, unlawful, or undocumented foreclosures***. ...

CP V.1, 406-412.

10. The Family also presented evidence in

opposition to the motion for summary judgment which demonstrates that the political branches of Washington's government inappropriately enacted a myriad of laws intended to deny persons like Christopher and Angela (in the title cases) and the Family (in this eviction case) of their rights to have their MERS contract enforced pursuant to the terms in effect when Christopher executed them in 2006. Among those inappropriate changes to 2006 contracts the Family asserted were made by Washington's political branches enactments of statutes changing the terms of the pertinent statutes were a) enactment of a statute in 2006 which made "judges" retirement funds dependent on the same mortgage-backed securities investments as supported other Washington government

employees, programs, and services. CP V.1, 467-666; b) enactment of amendments to Washington's Deed of Trust Act in 2011 which are used by Washington State trustees to perform nonjudicial sales of homes in circumstances where notes have been lost and are not enforceable pursuant to RCW 62A.3-309; CP V.2, 702-730; and c) repeal of Washington's public title registration system which was created in 1907 through the Torrens Act, Chapter 65.12 RCW, in order to promote the interests of the money changers in obscuring the title protections intended to be available to Washington's property owners.

11. Among this "not objected to" evidence are reports from Washington State's Investment Board, and executive branch agency, which demonstrate substantial investments in

mortgage-backed securities (approximately equivalent to the money Washington State invested in treasury bonds) during the years 2010 (CP V.2, 599-666); 2012 (CP V.2, 529-597); and 2013 (CP V.1, 468-V.2, 528).

c) DB chose not to reply to the Family's opposition presentations, which included affirmative defenses, including those related to standing and fraud.

DB refused to reply to any of the aforementioned presentations of evidence or argument by the family.

d) The superior court's -- through its "judge" and her staff -- interactions with the parties regarding the motion for summary judgment.

Notwithstanding that DB refused to present any factual or legal argument replying to the Family's opposition presentations the "judge" sent an email to the parties stating that oral argument would not be allowed. The "judge's" denial of oral argument appeared

peculiarly inappropriate under the circumstances because DB's motion for summary judgment and supporting materials had been filed by a different attorney over three years before the "judge" was to rule on it and that motion did not reflect those facts which had occurred in the title proceedings after the motion authorizing a summary judgment of eviction had been filed.

Accordingly, by denying oral argument the "judge" appears to have intended that DB would be able to evict the Family without DB ever having to reply to the judicial inquiries involving fraud by DB which the Family asserted required a trial of these issues.

e) The superior court's order granting DB's motion for summary judgment authorizing the government to evict the Family from their home for the benefit of that money changer.

The "judge" for the Superior Court granted DB's

2/22/2020 motion for summary judgment in a "substitute order" eventually dated May 31, 2023. CP V.1, 9-12. As can be seen from that Order the "judge" did not consider any legal arguments made by DB except for those made pursuant to the opening motion, which was filed long before the title proceedings were finally adjudicated.

The Superior court's Order granting summary judgment (which appears to have been crafted by the "judge" and DB's counsel through collaborations not reflected in the record) does so based on several erroneous and inappropriate legal and factual contentions, including *without limitation*:

> 1) The factual contention that it is "undisputed that DB holds the original note". CP V.1, 9-10.
>
> But this is not true for purposes of this case to dispossess the Family from possession through

use of government force. Indeed, the Larsons clearly asserted in their opposition to the old motion for summary judgment that any contentions by DB that it possesses Larsons' original promissory note were fraudulent and voided the consequences of those judgments. Significantly, DB chose not to dispute either the facts or legal arguments the Family raised in these judicial inquiries. So it is not known how the "judge" reached her conclusions. The Family claims the most likely explanation the judge did so was because of her bias.

2) The "judge's" failure to admit the Family's evidence that "it was the practice of New Century to keep electronic copies of notes in 2006." CP V.1, 10-11.

DB never objected to the admission of this evidence. Thus, it appears the "judge" has done so for her own purposes. The Family asserts this was

inappropriate conduct by the "judge" most likely based on bias because there is no other obvious explanation for this inappropriate judicial conduct.

3) The "judge's" findings that the two filings from the New Century bankruptcy proceedings which the "judge" admitted into evidence can be ignored because "their relevance to this case is limited." CP V.1, 10

DB never argued as a matter of fact and law that these pleadings had limited relevance. The Family disputes this because these pleadings clearly demonstrate that in 2006 it was the policy of New Century to destroy original notes in favor of keeping electronic copies of those notes. In any event, the "judge" should not be acting as DB's advocate by making arguments DB never advanced. Again, it is the Family's position that this is evidence of the "judge's" bias.

4) The legal contention that "the limited issue before this court is whether the Plaintiff purchased the issue property and has ownership rights, whether 20 days has elapsed since the date of sale, and whether the Larsons have vacated the property". CP V.1, 11.

But this contention is wrong because RCW 59.12.032 sets forth a different standard which must be complied with in order to dispossess the Family from their home, i.e. RCW 59.12.032. *See supra*. And this is a standing requirement which DB had to prove. The Family did not have to prove (but they did through undisputed evidence) that DB did not comply with RCW 59.12.032.

f) The Family's Motion to Reconsider the superior court's order granting summary judgment authorizing eviction.

The Family timely filed a motion to reconsider the Superior Court's first Order granting the DB's summary judgment (CP V.1, 71-84)

The issues included 1) whether the superior court

had erred by failing to "set forth in its summary Judgment Order those specific materials which the parties brought to the Court's attention for purposes of adjudicating the motion for summary judgment that was ruled upon?"; 2) whether the superior court had inappropriately resolved issues of fact pursuant to CR 56; and 3) whether "Judge" Langbehn should recuse herself? CP V.1, 72.

With regard to the second issue which was premised on CR 56's absence of any material factual dispute the Family argued, among other things, that "[t]he evidence submitted by the Larson Family created issues of law and fact precluding summary judgment". CP V.1, 78. In this regard the family argued the court had not addressed their defense that DB had not shown compliance with RCW 59.12.032 and that this was necessary to prove DB's right to dispossess the Larson

Family from their tenancy pursuant to Chapter 59.12.

Further, the Family asserted:

> there was a question of fact with regard to whether Deutsche Bank had (1) complied with RCW 61.24.030 and RCW 61.24.060; and (2) committed fraud on this Court when its attorneys purported that Deutsche Bank possessed the original promissory note/negotiable instrument signed by Chris Larson and thus avoided having to comply with RCW 62A.3-309 (which deals with lost and destroyed notes). In support of their factual position regarding these legal theories, the Larsons offered the following evidence, none of which was objected to, which included without limitation:
>
> The Request for Judicial Notice which this Court references in its Order. It is the Larsons' position that these ancillary Bankruptcy Court filings demonstrate that New Century's business practice in 2006 (the year the Larson Note was signed) was to destroy original notes in favor of keeping an electronic copy of such notes.
>
> The Request for Judicial Notice also included, among other things, a statement by the Florida Bankers Association made to the Supreme Court of Florida which admitted that it was the general business practice of lenders at that time to destroy the original promissory notes signed by makers in favor of making

electronic copies of such notes[7].

* * *

Additionally, the Larsons' attorney submitted filings with this Court from another case, *Deutsche Bank National Trust, as Trustee, as Indenture Trustee, for New Century Home Equity Loan Trust 2006-1 v. Bergeron*, Snohomish County Superior Court No. 20-2-00225-31. That case also involves factual issues regarding New Century's business practices with regards to destroying those promissory notes that were signed by makers in 2006.

* * *

Additionally, the Larsons argued in their opposition to Deutsche Bank's motion that the Office of the Comptroller of the Currency had warned entities like New Century Mortgage in 2004 to stop destroying original promissory notes signed by makers because they may not be able to enforce their electronic copies of those original notes. *See* Opposition, pp. 9-10.

While the Larsons understand that this Court may not want to believe that people have been evicted from their homes based on this type of fraud, it is their position that courts cannot ignore their obligation to hold a

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[7] *See* CP V.1, 87-88 and CP V.2, 692-701. The public can access this document at: https://www.floridasupremecourt.org/content/download/328731/file/09-1460_093009_Comments%20 (FBA).pdf

> trial where facts are disputed. *See e.g. Keck v. Collins*, 184 Wn. 2d 358, 369-370 (2015).
>
> Accordingly, this Court should reconsider and reverse its summary judgment Order because there is no basis for its evidentiary rulings as no objections to the Larsons evidence was ever made by Deutsche Bank and also because issues of fact precluded a summary judgment with regard to Deutsche Bank's compliance with RCW 59.12.032 and with regard to Larsons' affirmative defenses, including fraud and an unconstitutional "taking" of their home without compensation. Granting a summary judgment under these circumstances constitutes an irregularity in the proceedings of this Court, is contrary to law and does not do substantial justice and therefore should be reconsidered pursuant to CR 59(a)(1), (7), and (9).

CP V.1, 78-80.

As part of the evidence supporting their motion for reconsideration, the Family presented additional evidence tending to prove their factual claims, including without limitation:

1) The Statement of the Florida Bankers Association to the Florida Supreme Court.

CP V.1, 87-88 and CP V.2, 692-701[8];

2) Cong. Hearing Before the Subcomm. on Hous. and Cmty. Opportunity of the H. Fin. Servs. Comm., 111th Cong. 2d Sess., Robo-Signing, Chain of Title, Loss Mitigation, and Other Issues in Mortgage Servicing, (2010) (testimony of Adam J. Levitin, Associate Professor of Law, Georgetown University Law Center). CP V.1, 88-89[9];

3) U.S. Gov't Accountability Office, GAO-11-433, Mortgage Foreclosures Documentation Problems Reveal Need for Ongoing Regulatory Oversight (May 2011). CP V.1,

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[8] Accessible at: https://www.floridasupremecourt.org/content/download/328731/file/09-1460_093009_Comments%20 (FBA).pdf

[9] Accessible at: https://www.congress.gov/111/chrg/CHRG-111hhrg63124/CHRG-111hhrg63124.pdf

87[10].

4) CONGRESSIONAL OVERSIGHT PANEL, EXAMINING THE CONSEQUENCES OF MORTGAGE IRREGULARITIES FOR FINANCIAL STABILITY AND FORECLOSURE MITIGATION (Nov.16, 2010). CP V.1, 89[11].

5) Douglas J. Whaley, *Mortgage Foreclosures, Promissory Notes and the Uniform Commercial Code*, 39 W. St. U. L. Rev. 313

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[10] Accessible at: http://www.gao.gov/assets/320/317923.pdf

[11] This document has been removed from the government website where it was published at the time the Family filed their presentation against the court granting DB a summary judgment evicting these family members from their home. It is still available, however, from Yale University at: https://elischolar.library.yale.edu/ypfs-documents/4272/

(2012). CP V.1, 10[12].

6) Motion of the New Century Liquidating Trust for an Order authorizing the immediate abandonment and destruction of certain mortgage loan files and non-mortgage loan business files in In Re: New Century TRS Holdings, Inc., US Bankruptcy Court for the District of Delaware Case no. 07-10416 (KJC). CP V.1, 97-115.

With regard to their contention that the superior court "judge" should have and should still recuse herself from this case, the Family asserted that her handling of DB's motion for summary judgment appeared to be biased; *i.e.* notwithstanding DB refused to file any factual or legal reply presentations disputing the

[12] Accessible at: http://douglaswhaley.blogspot.com/2013/02/mortgage-foreclosures-missing.html

Family's evidence offered in support of the Family's allegations, affirmative defenses and claims against DB the Judge decided the summary judgement in favor of the money changer. CP V.1, 49 at ¶3[13] and 59.

The Family asserts that such uniformed judicial decision-making with regard to the presentations of the parties to a dispute is not consistent with this Nation's system of adjudication. *See e.g.* Black's Law Dictionary, Ninth Edition (2009) which defines "adjudication" to

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[13] The declaration of the Family's attorney states with regards to the "judge's" conduct:

> 3. I was admitted to practice law in the courts of Washington in 1976. I cannot remember any other occasion in all those years where any clients of mine have been denied oral argument of a motion for summary judgment in a superior court of Washington. I think denying oral argument in this case was particularly inappropriate regarding this motion for summary judgment because, among other things, the motion was stale (over two years old), not signed by the attorney who wrote it, did not set forth the correct legal standard to be applied to the facts of the case, and also because Deutsche Bank filed no reply brief.

mean: "The Legal Process of resolving a dispute; the process of judicially deciding a case." *See also Greenlaw v. United States*, 554 U.S. 237, 244 (2008); Stephen Landsman, *The Adversary System*: *A Description and Defense* (1984).

Indeed, when the day came to adjudicate DB's motion for summary judgment the "judge" practically begged DB to present a proposed order when she realized the money changer had not responded or replied to any of the Family's presentations opposing summary judgment or asserting DB's lack of standing. *See* CP V.1, 49 and 53-57. The "judge" obviously realized she needed DB to do something in support of the arguments she wanted to make on its behalf as otherwise it would have been apparent to all that this "judge" was deciding this motion for summary judgment without any input from the money changer. Why would

an impartial "judge" do that?

In supporting the Family's CR 59 motion for reconsideration of superior courts grant of summary judgment based on the "judge's" failure to recuse herself the Family's attorney testified under the penalty of perjury that:

> 12. This Court, as a judicial institution, does itself and those it serves a disservice when its judicial officers as neutral judges fail to address those judicial inquiries raised by adverse parties. This is because the Court's only legitimate role in a society like ours is the adjudication of disputes; not the resolution of policy issues.
>
> 13. When ordinary lawyers, like myself, justifiably lose faith in the integrity of the judicial process our system of government will, and likely should collapse. This is because "Justice is the end of government. It is the end of civil society. It ever has been and ever will be pursued until it be obtained, or until liberty be lost in the pursuit."
>
> 14. In this case it appears to me (and I assume to others) that Larsons' liberty right to pursue justice through the courts of Washington State has been violated in these eviction proceedings and those other judicial

> proceedings upon which these proceedings are premised because in both cases the judicial officers appear to manipulate the evidence the Larsons presented to the Court.

CP V.1, 51-52.

The Family very clearly asserted in their motion for reconsideration with regard to the need for the "judge's" recusal that:

> Judge Langbehn, the judicial officer who granted the summary judgment against them should have recused herself based on this request [in the complaint]. *See e.g. Isom v. Arkansas*, 140 S. Ct. 342 (2019).
>
> Judge Langbehn was a named defendant, along with Deutsche Bank, in the underlying litigation which this case is based on, i.e. *Christopher Larson, et al. vs Snohomish County et al*, Snohomish County Superior Court No. 19-2-01383-31. ***Judge Langbehn recused herself from that action based on the assertions that Snohomish County judges deliberately avoided implementing Washington's Torrens Act in Snohomish County and thereby harmed the Larsons' ability to protect themselves against this unlawful foreclosure.***
>
> The Larsons assert those same concerns which caused Judge Langbehn's

> recusal in that previous action required her recusal here and that this Due Process requirement is highlighted by Judge Langbehn's conduct here which includes without limitation: (1) denying the Larson family an opportunity to orally argue their opposition to Deutsche Bank's motion for summary judgment; (2) not considering whether the stale motion for summary judgment, which was not signed by the attorney of record for Deutsche Bank, should be allowed to proceed; (3) not considering the obviously applicable statute, RCW 59.12.032; (4) not considering the Larsons' affirmative defenses; (5) not requiring Deutsche Bank to object to evidence (but excluding it for their benefit on her own review); and (6) failing to determine whether there were any issues of outstanding fact which precluded a grant of summary judgment pursuant to CR 56.

CP V.1, 81-82.

These contentions in the Family's motion for reconsideration were consistent with the allegations about judicial neutrality that were stated in the Family's original unfiled answer (which was served on DB's first attorney, but never filed with the court by the

Family) as well as with the Answer, Affirmative Defenses, Counterclaims and Crossclaims the Family ultimately did file with the Superior Court. The filed answer can be found at CP V.2, 743-870 (hereafter referred to as "filed answer").

These allegations regarding and pertaining to her judicial neutrality included those set forth at ¶¶2.1-2.52, which clearly should have put the "judge" on notice that her authority to act as a judge adjudicating the facts and law of this case was being challenged. *Cf.* Note 4. *supra.*

g) The superior court's order denying the Family's motion for reconsideration.

In the Superior Court's Order denying reconsideration the "judge" acknowledges the money changer did not file a response to the Family's motion to reconsider. CP V.1, 34.

The "judge" next acknowledges that she erred by not setting forth the specific presentations she relied

upon in granting the summary judgment in favor of the money changer. The Family asserts that more likely than not this was intentional error on behalf of a "judge" interested in attempting to insulate her summary judgment order from any meaningful appellate review.

With regard to the Family's claim that the court, though its "judge" had failed to properly adjudicate the CR 56 judicial inquiry the "judge" ordered the Court had not decided issues of fact only issues of law. But it is the Family's position that this is judicial nonsense steeped in bias because DB failed to meet its burden of presenting evidence proving there was no question of material fact that 1) DB had complied with RCW 59.12.032; and 2) had not engaged in fraud upon the superior court and the court of appeals in the title cases by falsely claiming that it possessed the original Larson Note.

It is the Family's position that the Court -- through an authorized judge -- was required to determine what the material facts were and then to apply the law to those facts; which for purposes of this summary judgment required presenting evidence establishing the absence of any material fact regarding 1) DB's compliance with RCW 59.12.032; and 2) DB's fraud on Washington courts in the title cases with regards its claims that it possessed the original Note signed by Christopher.

Finally, the "judge" held with regard to her recusal that "Larsons were well aware that Judge Langbehn was assigned to hear this case. However, they made no specific request for Judge Langbehn to recuse herself." The Larsons disagree with Langbehn's self-serving finding because the request for "judges" in her position to recuse themselves was stated in both the original and

filed complaints in this case. Further, Langbehn had recused herself in the Larsons' title cases. And finally, the Larsons dispute that Langbehn was ever assigned as the "judge" to preside over this case and request she prove this fact or testify under the penalty of perjury that it is true.

It is the Family's position that both the Fourteenth Amendment and RCW 2.28.030 require judicial officers, i.e. elected and appointed judges, to determine before they act as judges whether they have -- or appear to have -- an interest a case which a court of law has been asked by adverse parties to adjudicate.

The Larsons timely filed a notice of appeal. CP V.1, 4-29.

3. The Proceedings before Division One of the Court of Appeals.

a) The Family's Opening Appeal Brief.

On February 5, 2024, the Larsons filed their Opening Appeal Brief with Division One[14]. Among others it posed the same issues as those which are also raised herein, see infra., with regard to the Superior Court. The Family presented two arguments based on the facts which gave rise to these issues: 1) The trial court's failure to consider the facts and law presented by the Larsons was contrary to an appropriate execution of judicial power based on CR 56; and 2) The trial, its judicial officers, and its administrative officers violated judicial norms when they refused to apply the law applicable to the facts presented during the adversary process.

b) DB refuses to file an Answering Appeal Brief.

[14] Accessible at: https://www.academia.edu/128089198/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_National_Trust_Company_vs_Christopher_Larson_Open_Appeal_Brief_filed_by_the_Larson_Family_on_February_5_2024

On March 27, 2024, the Court wrote a letter to the counsel for the parties which stated:

> Counsel:
>
> Our records indicate the Respondent's [DB's] Brief in the above referenced case was due on March 6, 2024. To date, it has not been filed. If the Respondent's Brief or a motion for extension of time is not filed by April 8, 2024, this matter will be referred for a ruling imposing sanctions in accordance with RAP 18.9(a)[15].

c) The Family moves for a default against DB or alternatively for Division One to establish a briefing schedule.[16]

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[15] Accessible at: https://www.academia.edu/116768771/Division_One_of_Washington_Court_of_Appeal_Deutsche_Bank_National_Trust_Company_v_Christopher_E_Larson_et_al_E mail_from_Court_of_Appeals_to_Deutsche_Bank_reminding_counsel_that_the_Banks_answering_brief_was_due_on_March_6_2024

[16] Accessible at: https://www.academia.edu/122322106/Washington_Court_of_Appeals_Division_One_Larson_v_Deutsche_Bank_National_Trust_Company_Larsons_AMENDED_Motion_for_Default_and_or_to_establish_briefing_schedule

The judicial inquiries stated in Larsons' motion for default or alternatively to establish a briefing schedule included:

1) Whether the Division One's failure to require DB to file an answering brief indicated (or appeared to indicate) bias by that Court of Appeal's judicial and administrative officers in these types of cases involving financial institutions like DB being pitted against homeowners made tenants in Washington State?;

2) Whether DB was required to file an answering brief on or before March 6, 2024, as the Clerk ordered?;

3) Whether the Court of Appeal's threat to impose sanctions on DB if its answering brief was not filed by April 8, 2024, required DB to file that brief by April 8, 2024?; and

4) Whether DB was in default. Motion for Default, 1-3.

Included as part of Larsons' contentions about that applicable law which should be applied to the facts for which the Larsons were seeking relief in this Court was one related to *judicial neutrality*; which asserted that

the conduct of Division One's officials indicated that they were likely biased in favor of money changers like DB, *i.e.* the *successors and assigns of mortgages*, and against homeowners.

With regards to the bias of Division One, the Larsons stated:

> The Fourteenth Amendment established a constitutional component to state judicial officers' and quasi judicial officers, i.e. clerk's, exercise of governmental judicial power which cannot be again ignored by this Court of Appeals when adjudicating the Larsons' claim that this Court of Appeals is once again ignoring their claim of this Court's -- and its officers and employees -- violations of those constitutional norms which are controlling here. *See e.g. Tumey v. Ohio*, 273 U.S. 510 (1927).
>
> Among those long established due process principles necessary for any legitimate exercise of judicial power by this Court of Appeals through a judicial officer or a clerk is the compliance with the maxim that "no person can be judge in his own case. [Citations]

Motion for Default, 5-7.

The Family also urged in this default presentation that Division One through its judicial officers and staff was purposely violating the Larsons' rights to a fair adjudication of their appeal. *Id.* 6-10.

The Family asserted the answering brief was due March 6, 2024. The Family argued the most likely reason DB was failing to file an answering brief in its appeal was because of that money changer's expectation that Washington judicial and administrative officers would likely protect the money changers' interests because they were aligned with government officials best interests:

> "... the most likely reason [Deutsche Bank has not filed an answering brief] is because those persons who operate Washington's courts receive a benefit from allowing their allies to steal homes from owners of real property in Washington State. As further support for this position the Larsons and their counsel ask why no Washington court has ever addressed the merits of the judicial inquiries they are raising here, including

> without limitation that lien holders who do not possess the original Note executed in 2006 cannot enforce lost notes by way of foreclosure except pursuant to RCW 62A.3-309 and other applicable provisions of the Uniform Commercial Code. *See Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83 (2012).
>
> To the extent the foreign Bank has chosen not to file a brief this Court needs to nonetheless adjudicate this appeal based on the briefing it has before it or decide the case based on the foreign Bank's default. The Larsons prefer this appeal not be decided by a default as they are eager to present their claims against the foreign Bank and the Snohomish County Superior Court to this Court pursuant to that appeal which they have properly brought.

Id., at 11-12.

The Family's attorney filed a declaration supporting this motion[17].

[17] Accessible at: https://www.academia.edu/122288301/Washington_Court_of_Appeals_Division_One_Larson_v_Deutsche_Bank_National_Trust_Company_Declaration_of_Scott_Stafne_in_support_of_Larsons_motion_for_default_and_or_to_establish_a_briefing_schedule

d) The Court of Appeals ruling regarding the Family's Motion for Default.[18]

On August 5, 2024 the Court of Appeals issued a ruling which stated:

> If respondent's brief is not filed by August 21, 2024, this appeal will be considered without the brief of respondent.

e) The Family files Motion on the Merits with the Court of Appeals.[19]

The Family filed a motion on the merits seeking a summary reversal of the judgment authorizing its

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[18] Accessible at: https://www.academia.edu/128123162/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_v_Larson_Decision_of_Court_of_Appeals_requiring_Deutsche_Bank_to_file_an_appellate_brief_answering_the_Familys_Opening_Brief_by_August_21_2024

[19] Accessible at: https://www.academia.edu/123595479/Washington_Court_of_Appeals_Division_One_Larson_v_Deutsche_Bank_National_Trust_Company_as_Trustee_for_Morgan_Stanley_2007_HE2_Trust_Motion_on_the_Merits_to_Reverse_Summary_Judgement_awarding_the_possession_of_the_Larsons_home_to_Deutsche_Bank_as_trustee

members eviction from their home and shelter. That motion stated:

> Based on DB's failure to file an Answering Brief the parties seeking relief set forth in Section 1 hereby move pursuant to RAP 18.14 for rulings (1) reversing the eviction of the Larsons from their home because that eviction was not supported by the application of law to undisputed material questions of fact; (2) reversing the eviction of the Larsons from their home because that eviction was contrary to the law presented by the Larsons as applicable to the 2006 boilerplate agreements; (3) directing that judicial officer Langbehn either be disqualified from any future consideration of cases involving the Larsons' ownership of this parcel or directing Judicial Officer Langbehn to demonstrate on the record her compliance with RCW 2.28.030(1) and those judicial neutrality requirements established by the Fourteenth Amendment to the United States Constitution for public officials exercising governmental judicial power. See e.g. [citations]; *See also Tumey v. Ohio*, 273 U.S. 510, 532 (1927); and 4) restoring possession of the Larson home to the Larson family.

Id. at 4-5.

The Family's Merits Motion reiterated and expanded upon those judicial inquiries the Family advanced in their Opening Appeal Brief, to which Deutsche Bank refused to respond. Those judicial inquiries specifically addressed in this Merits Motion included:

1.) that principle of equity that fraud vitiates all that it touches.

Specifically, the Motion on the Merits states:

> [T]his Motion by the Larsons asks this Court to more fully address the Larsons' constitutional arguments related to those frauds they assert Deutsche Bank has perpetrated upon the Snohomish County Superior Court as an institution of government. *See* [numerous citations to Larsons' Opening Brief]
>
> As can be seen from the above referenced judicial presentations made by the Larson family members the Larsons opposed Deutsche Bank's motion for summary judgment of eviction based on numerous grounds including among other things, their factual contention that DB committed fraud upon the court by claiming

> a) that DB possessed the original note signed by Christopher Larson as trustee for the MSAC 2007-HE2 Trust; and b) that DB acquired possession of that original paper note through MERS assignment of that original Note and mortgage to the MSAC 2007-HE2 Trust in 2010.

Id. at 6-8.

The Family's Merits Motion submitted additional evidence tending to prove, among other things, that judicial officers (of both the trial court and this court) had been incentivized to adjudicate cases in favor of money changers, with whom those officers had become economically aligned by way of unconstitutional laws passed by Washington's political branches. Merits Motion at 9-10.

The Merits Motion also asserted:

> it is the Larsons' position that the judges of this Court should at least acknowledge that this Nation's organic law requires not only impartial adjudicators but adjudicators which appear to be impartial. And it is the

> Larsons' position that a question of fact exists with regards to whether the courts of Washington State ever complied with this constitutional obligation in this case, which is also an enforceable obligation guaranteed the Larsons and others by customary international law.

Id. at 13.

The Merits Motion also asserted that "equity requires possession of Larsons' deteriorating home be returned" to them before winter. *Id*. at 13-19.

f) The Clerk refers the Family's Merits Motion to the Panel of "judges" assigned to adjudicate the appeal.[20]

A notation ruling by a Commissioner was entered on September 12, 2024, which states:

> Appellants filed an opening brief on February 5, 2024. Respondents have not filed

[20] Accessible at: https://www.academia.edu/123850011/Washington_Court_of_Appeals_Division_One_Larson_v_Deutsche_Bank_National_Trust_Company_as_Trustee_for_Morgan_Stanley_2007_HE2_Trust_Clerks_notation_ruling_referring_Larsons_Motion_on_the_Merits_to_Reverse_on_to_a_panel_of_the_Court_for_possible_consideration

> a brief. This matter is referred to a panel of judges for consideration on the merits without a brief of respondents.
>
> On September 5, 2024, Appellants filed a motion on the merits to reverse. According to this Court's General Order: In re Motions on the Merits Under RAP 18.14 – 2014, this Court does not use the motion on the merits procedure described in RAP 18.14. ***Accordingly, Appellant's September 5 motion will be placed in the file without action, with the understanding that the panel may review the motion and/or treat it as a supplemental brief as a matter of discretion.***

(Empasis Supplied)

g) The Court of Appeals orders the Family's appeal shall be decided without oral argument[21].

Like the superior court, the Court of Appeals also refused to allow oral argument. Why?

h) NO SURPISE: The Court of Appeals decides

[21] Accessible at: https://www.academia.edu/124604484/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_National_Trust_Company_v_Larson_Letter_indicating_Larsons_eviction_appeal_will_be_heard_without_oral_argument

the appeal in favor of the Money Changer.

The Family asserts the "judges" of Division One assigned to adjudicate their appeal inappropriately exercised the judicial power of the State of Washington to decide the Family's appeal in favor of money changer DB in an unpublished decision notwithstanding that DB advanced no evidence or legal argument in support of that court of law doing so. A link to this decision is available for the public in this footnote[22].

i) The Family timely files consolidated motions for reconsideration and to publish the "judges" decision terminating review.[23]

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[22] Accessible at: https://www.academia.edu/127074126/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_National_Trust_Company_as_Trustee_in_Trust_for_the_Holders_of_Mortgage_Pass_through_Certicates_Series_2007_HE2_v_Larson_Court_of_Appeals_unpublished_per_curiam_opinion

[23] Accessible at: https://www.academia.edu/127174845/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_National_Trust_Company_in_Trust_for_Holders_of_Pass_Throu

The Family presented five main arguments for reconsideration in these consolidated motions, which shall hereafter be collectively referred to in this sections as "Motions".

The Family's first main argument asserted the Panel's decision should be reconsidered because the facts set forth at parts I and II A of those "judges'" decision, i.e. that the pertinent facts applicable to this eviction were the same as those applicable to the previously adjudicated title cases, were not advocated by any of the parties to the appeal and had no evidentiary basis in record of this eviction case. Motions 18-19. Additionally, it should be noted that the superior court "judge" whose decision the Court of Appeals "judges" purport to be

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affirming specifically found that the facts of the Larsons' title proceedings are not applicable to this eviction case. *See* CP V.1, 15 (The superior court states in denying the Family's motion for reconsideration of its summary judgment order that: "the Larsons improperly assert that this case is based on *Larson v. Snohomish County, et al.*, 19-2-01383-31. While both cases relate, in different ways, to the same subject property, one case does not flow from the other." *Id.*)

The second grounds for reconsideration the Larsons argued was that the law applied by the Court of Appeals was not advocated by the money changer and that the "judges" had no authority to make legal arguments on behalf of a party that had elected to waive them. Motions, 19-21. Among other things the Family specifically asserted:

> In Part II B of its Opinion this Court through its three allegedly biased judicial officers, *see*

infra., state that "[o]ur decision in *Larson*" resolved the "following issues" in the case below and this appeal. Opinion, 4. The Larsons disagree with this assertion because 1.) DB chose not to present any facts or argument to this Court that *Larson v. Snohomish* established compliance with RCW 59.12.032; and 2.) the factual and legal contentions which apply to cases involving title and legal ownership of real property are not the same as those which apply to judicial inquiries involving the possession of real property under Washington landlord-tenant law.

> This is important because:
>
> In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present. …."

United States v. Sineneng-Smith, 140 S. Ct. 1575, 1579 (2020); *Greenlaw v. US*, 554 U.S. 237, 244 (2008).

Under Washington State's adversary system of adjudication the three judicial officers of this Court were not free to become legal advocates for the Bank simply because they wanted to do so. And the Larsons assert such conduct was clearly inappropriate in

> light of the accusations of bias made by them. *See infra*.
>
> This Court's claim through these three judicial officers that resolution of the title and ownership judicial inquiries resolves the possession issues posed by Washington Landlord Tenant law is specious because
>
> > RCW 59.12.032 provides:
> >
> > An unlawful detainer action, commenced as a result of a trustees sale under chapter 61.24 RCW, must comply with the requirements of RCW 61.24.040 and 61.24.060.
>
> Under the applicable statute DB had the burden of proving compliance with both RCW 61.24.040 and .060, but never made an attempt to do so either in this Court or the superior court.

Motions, 19-21.

The Family asserted in their third main argument that the Court of Appeals "should reconsider whether it -- through these allegedly biased judicial officials -- had the authority to advocate for DB by claiming that preclusion doctrine supported its rights to possession." Motions, 21-23. The Family demonstrated in this part of

these Motions that the appellate "judges'" preclusion rationales for upholding the superior court "judge's" were not tenable because DB had the burden of both presenting the preclusion doctrines as a legal position and proving the facts necessary to establish those equitable doctrines applied to this eviction case.

The Larsons demonstrated that under applicable appellate procedure in Washington State by not advocating this position on its own behalf, DB waived its opportunity to make these arguments. *Id*. Further the Family asserted and continues to assert before this Court that by inappropriately advocating this argument for the money changer the Panel's "judges" demonstrate their bias (and appearance of bias) in favor of allowing the money changer to evict the Family from their home, notwithstanding there is no evidence in the record that RCW 59.12.032 was ever complied with. *Id*. The Larsons

assert to this Court that this improper conduct by these Court of Appeals "judges" demonstrates economic or other bias. Otherwise, why would these "judges" have forsaken their neutrality in order to become faux lawyers for this money changer?

The Family's fourth main argument section asserted that the Court of Appeals "should reconsider whether it -- through these allegedly biased judicial officials -- appropriately adjudicated Larsons' claim that DB did not establish factual or legal bases to evict the Larsons." Motions, 23-36. This argument section contained 5 sub-arguments sections, each of which is described below.

The first sub-argument asserted that the Family had set forth the necessary facts and law to demonstrate the Family is entitled to a trial with regard to their contention that DB had defrauded the superior court

and court of appeals in Christopher and Angelas' title proceedings. Motions, 23-24.

With regards to these purportedly biased "judges" dismissal of the Family's factual and legal arguments proving fraud because "this court previously rejected the Larsons' claim that the note was invalid because the signature on the note was a forgery" in *Larson v. Snohomish*, the Family asserted this was an outright falsehood by these "judges"

> because 1.) the evidence of fraud that was presented in this eviction case (but not in the title case) was to the effect that the Larsons' note was purposely destroyed by DB's predecessor, which had in place in 2006 a business practice which required the destruction of promissory notes. As the Larsons' OB makes clear this new allegation, that the entire note had been fabricated, was supported by abundant evidence which both this Court and the trial court inappropriately ignored, because of their alleged bias. *See* OB 37-41, citing evidence in the CP.

Motions, 25.

It is the Family's position that a reasonable person familiar with the circumstances of this case would conclude that the reason no one representing DB has ever presented any facts or argument asserting DB possessed the original note signed by Christopher is because this is not true. Indeed the Family asserts this Court of Appeals willingness to overlook the fact that since February, 2020 no person has been willing to testify that DB ever held the original note is more demonstrative of that Court's "judges'" bias, than is of the contention that DB ever possessed the Note signed by Christopher Larson.

The Family's second argument for reconsideration was based on CR 56's summary judgement standard was that "The "Rule of Necessity" is not the law which should be applied to promote judicial neutrality in Washington. The Larsons argued, and no party disputed them, that

the pertinent standards for neutrality of judges adjudicating cases in Washington State are those mandated by organic (i.e. the Fourteenth Amendment), statutory, (i.e. RCW 2.28.030(1)) and international law." Motions, 26-28.

The "judges" asserted in the Court's decision being challenged here that: "Under the common law rule of necessity, a judge may decide a case despite having a personal interest in the outcome if 'the case cannot be heard otherwise'" Decision 16-17. The Larsons asked for reconsideration of this holding because Washington State's founders -- unlike this Nation's founders -- wrote into this State's Constitution a mechanism for assuring that lawyers could be obtained from the bar association to act as pro tempore judges to adjudicate cases in which all of the elected and/or appointed judges of this State

have been given a personal, pecuniary interest in the outcome of cases. Motions 26-27.

The Family contended that the facts leading to the evolution of Article IV, § seven as well as its language demonstrated that there is no "necessity" in Washington State for permitting judicial officers with a vested interest in the outcome of evictions to preside over cases like this one, citing *Tumey v. Ohio*, supra; *Cain v. White*, 937 F.3d 446, 448 (5th Cir. 2019); and *Caliste v. Cantrell*, 937 F.3d 525 (5th Cir. 2019), cert. denied, 140 S. Ct. 2550 (2020). *Id.* at 27-28.

The Family asserted that if the Court of Appeals disagreed with this undisputed premise, the "judges" adjudicating the Family's appeal should set forth reasoning explaining why. *Id.*

The third sub-argument section relating to summary judgment standards asserted the Court of

Appeals "does not have the authority to ignore the judicial inquiries the Larsons raise about the political branches corruption of judicial neutrality in these types of cases." Motions 28-30. This sub-argument states:

> The Larsons assert that this Court must adjudicate the judicial inquiries they have raised concerning the political branches' systemic corruption of the judiciary through judicial retirement laws. *Id*. These laws … create a pecuniary interest for judges deciding cases that transfer ownership and possession of property to financial institutions such as DB. The Larsons emphasize that this Court's Opinion must do more than dismiss concerns about individual judicial bias. Instead, it must address their broader claim that legislative amendments to Washington's retirement laws have institutionalized bias among all state judges in enforcing mortgage backed securities.
>
> The Larsons contend that this judicial inquiry is vital because it challenges the political branches' authority to enact laws designed—or appearing designed—to economically incentivize judges to favor financial institutions like DB and their government official allies at the expense of this State's property owners. *See Tumey v. Ohio*, supra., *Cain v. White*, supra., and

> related authority cited in the Larsons' Opening Brief and Motion for Default.
>
> This Court has a duty to address the Larsons' claims, which arise under (1) the Due Process Clause of the Fourteenth Amendment, (2) Washington statutory law, and (3) international law.
>
> In their Motion for Default, pp. 6–8, the Larsons cite well-established legal principles, including the rule that "no person can be a judge in their own case," a core component of due process recognized by the U.S. Supreme Court. No party to this appeal has contested this principle. If this Court disputes its application to its judicial officers, it should explicitly say so.
>
> Otherwise, the Court must address the Larsons' claims that Washington's judicial officers have been improperly incentivized by retirement laws to favor financial institutions over homeowners and tenants like the Larsons. Ignoring systemic abuses of power that align judicial and governmental interests with private entities undermines public trust in the judiciary and causes significant damage to its credibility. *See* citations in the Larsons' Motion for Default, pp. 7–8.

Motions, 28-29.

The Family's fourth argument based on CR 56 was that the Court of Appeals had misinterpreted the

meaning of RCW 59.12.032, *see* Motions 30-32, by ruling:

> The Larsons do not own the property. Having no recognized property interest in the property land, the Larsons cannot demonstrate that the government took their property in violation of due process.

Decision 17-18.

RCW 59.12.032 does not condition possession or dispossession rights to property under Washington's Landlord-Tenant law on the ownership of title in these types of cases. The statutes dealing with possession and dispossession of former owners from real property in this type of case required proof of compliance with RCW 61.24.040 and RCW 61.24.060. The proof of such facts is an undisputed condition precedent to courts in Washington State evicting these properties pursuant to the nonjudicial sale of properties pursuant to Chapter 61.24 RCW. DB purposely chose not to present any

evidence of such compliance. And it was inappropriate for the Court of Appeals to argue through its "judges" that the language of the statute could be ignored.

The Family's fifth sub-argument for reconsideration based on CR 56 (*see* Motions, 32-36) asserted that the Court of Appeals "judges" improperly concluded that the evidence they submitted could not have created an issue of material fact, including without limitation the following evidence:

- The 2004 OCC Advisory Letter (CP 674–675, CP 684–691);
- Statement by the Florida Bankers Association submitted to the Florida Supreme Court on September 28, 2009 (CP 675, CP 693–701);
- Two federal laws enacted in 2008 (CP 676–678);
- Complaints filed by the United States and the State of Washington against financial institutions acting as servicers for government-backed loans (CP 678–679);
- Evidence of Washington State's interest in mortgage-backed securities from 2010 to 2013 (CP 679);

- Statutory changes to RCW 61.24.030(7) made in 2011 (CP 679–680); and
- The TARP Congressional Oversight Panel report, *Examining the Consequences of Mortgage Irregularities for Financial Stability and Foreclosure Mitigation*, published in November 2010 pursuant to Section 125(b)(1) of Title I of the Emergency Economic Stabilization Act of 2008, Pub. L. No. 110-343[24].

The Family continues to contend that these documents, as well as those documents discussed supra., constitute relevant historical evidence tending to

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[24] This Congressional Report contains factfinding by Congress which the Larsons claim this Court cannot ignore to the extent that factfinding is relevant to the judicial inquiries posed by the Larsons. See e.g. sections 104 and 105 to the original "Act To provide authority for the Federal Government to purchase and insure certain types of troubled assets for the purposes of providing stability to and preventing disruption in the economy and financial system and protecting taxpayers, to amend the Internal Revenue Code of 1986 to provide incentives for energy production and conservation, to extend certain expiring provisions, to provide individual income tax relief, and for other purposes," accessible at: https://www.govinfo.gov/content/pkg/PLAW-110publ343/html/PLAW-110publ343.htm

prove 1) that it was a common practice of money changers in 2006 to destroy original notes signed in wet ink in favor of keeping electronic copies of such notes and 2) that it was New Century's business practice in 2006 to destroy the original notes signed by borrowers. The Family also contends that if DB did not possess the original signed by Christopher it could not have enforced pursuant to a nonjudicial sale pursuant to Chapter 64.21 except by way of compliance with RCW 62A.3-309, which it never did.

Finally, in the consolidated Motion to Publish the Family asserted publication was warranted pursuant to the standards set forth in RAP 12.3(d)[25]. As this Court

[25] These standards are (1) Whether the decision determines an unsettled or new question of law or constitutional principle; (2) whether the decision modifies, clarifies or reverses an established principle of law; (3) whether a decision is of general public interest

likely knows these standards are very similar to those set forth RAP 13.4(b)[26] as providing a basis for discretionary review of decisions terminating review.

The Larsons argued publication of its decision is warranted 1) to clarify the legal standards for evictions post nonjudicial transfers of title Motions, 36-37; 2) to preserve the distinction between Title rights, possession rights and dispossession rights related to property. Motions, 37; 3) to address concerns about Washington's political branches enactment of retirement laws which

---

or importance; or (4) whether a case is in conflict with a prior opinion of the Court of Appeals.

[26] These standards are (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

appear to have been intended to incentivize the way in which judicial officers exercise judicial power. Motions, 38; and to assure the public and litigants that Washington courts remain neutral forums which litigants can rely upon to adjudicate judicial inquiries based on the facts and law the parties advocate. Motions, 38-39

j) The Court of Appeals through "judge" Hazelrigg issues two sentence orders denying the Family's Motion for Reconsideration[27] and to Publish.[28]

[27] Accessible at: https://www.academia.edu/128104141/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_v_Larson_order_denying_reconsideration_of_order_terminating_appeal

[28] Accessible at: https://www.academia.edu/128104179/Washington_Court_of_Appeals_Division_One_Deutsche_Bank_v_Larson_order_denying_motion_to_publish_decision_terminating_appeal

The Family asserts that it appears under the circumstances of this case and appeal that the Court of Appeals through these apparently biased "judges" is actually using the procedure relating to the publishing of decisions for the promotion of rule of law for the hypocritical purposes of "judges" having an interest in the case they are adjudicating. And the Larsons contend this is not fair to them or the People.

E. SUMMARY OF ARGUMENT

1. Courts as institutions of government adjudicate judicial inquiries presented by adverse parties through impartial judges applying applicable law to those facts which an appropriate factfinder has determined actually exist.
2. Neither the "judge" of the superior court nor the "judges" of the Court of Appeals performed or had performed for their benefit by a jury the

appropriate factfinding required by the Family's presentations to those courts.

3. The "judge" of the superior court and the "judges" of the Court of Appeals are not impartial adjudicators of this case because Washington's political branches have enacted laws incentivizing "judges" to enforce four party deed of trust mortgages. This statute is consistent with the political branches enactment of other laws for this same purpose, including the changes to Washington's DTA and repeal of Washington's public land registration act, i.e. the Torrens Act.

F. ARGUMENT:

1. There is no basis in fact to argue that Washington State law as it existed in 2006 did not control the enforcement of Larson's note by way of foreclosure.

The boiler plate promissory Note instrument Christopher Larson signed states:

> BORROWER'S PROMISE TO PAY
>
> In return for a loan that I have received, I promise to pay U.S. 218,000. (this amount is called "principle"), plus interest to the order of the Lender. The Lender is New Century Mortgage Corporation.
>
> I understand that the lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder"

CP V.1, 370.

As can be seen from this and other provisions of the Note contract Larson is only obligated contractually to pay the Note Holder. The Note Holder arguably also includes, however, anyone "who is entitled to receive payments" pursuant to the Note. At the time Christopher executed the Note on October 6, 2006, RCW 62A.3-309 provided that only entities which had possession of an original Note and lost that Note could enforce its payment obligations.

This wasn't something the money changers didn't understand. It was something they disliked and have used their money to obtain inappropriate changes of law by government officials.

This historical fact isn't even debatable.

The money changers were warned in 2004 by the Office of the Comptroller of the Currency to stop destroying signed original notes because electronic copies of them might not be enforceable pursuant to many state's laws.

But the money changers couldn't be bothered.

Indeed, about three months after New Century filed for bankruptcy on April 2, 2007, then Treasury Secretary Paulson (the former head of money changer Goldman Sachs who had been appointed Secretary of the Treasury by then President Bush) announced that the federal government needed to create a committee to

investigate changing state laws and equitable principles applicable to mortgages to help those same money changers who had been informed they should not keep destroying original note instruments. *See* Treasury June 27, 2007, Press Release "Paulson Announces Next Steps to Bolster U.S. Markets' Global Competitiveness"[29].

Then on March 31, 2008, (after Bear Stearns collapsed and the government had been warned that the money changers' likely illegal behavior had put the economy of the United States at risk) the Treasury released its *Blueprint for Modernized Financial Regulatory Structure* (hereafter "Blueprint").

Recognizing that the boilerplate mortgage contracts created by the moneychangers in the late

[29] A copy of this Press Release is accessible at: https://home.treasury.gov/news/press-releases/hp476

nineteenth century and early twentieth century purported to change longstanding mortgage laws and equitable procedures established by the states, Treasury's Blueprint proposed creating a federal agency to force states to modernize property laws. At that time, *i.e.* March 31, 2008, the law applicable to Transfer of Mortgages and Obligations Secured by Mortgages in most states, including Washington State, was set forth in the *Restatement (Third) of Property: Mortgages* § 5.4 (1997), which observed: "A mortgage may be enforced only by, or on behalf of, a person who is entitled to enforce the obligation the mortgage secures." As *Bain* demonstrates the whole purpose of the MERS deed of trust contracts, like the one Christopher signed, was to create a four party deed of trust mortgage in violation of these laws.

Thus, the problem with Treasury's March 31,

2008, proposal to create a federal agency to preempt state mortgage regulation was that under this Nation's federalism structure of government states have ultimate power to enact laws dealing with the dispossession of property within their borders. *See e.g. United States v. Burnison*, 339 U.S. 87, 91-92 (1950); *United States v. Fo*x, 94 U.S. 315 (1867); *American Land Company v. Zeiss*, 219 U.S. 47 (1911); *Arndt v. Griggs*, 134 U.S. 316 (1890).

Indeed, that is likely why Treasury ultimately backed off from its proposal to create a federal agency for purposes of preempting state mortgage regulation. Nonetheless, Treasury's acknowledgment that existing state laws needed to be changed makes the point that in 2008 the money changers were still destroying these notes and trying to force the federal government to help them evade existing law.

Proof of these assertions is available at the following links to historical government documents related to this Blueprint which were provided to the public by the United States Treasury on March 31, 2008:

Press Release relating to the Blueprint: https://home.treasury.gov/news/press-releases/hp476

Secretary Paulson's speech related to the Blueprint:

https://home.treasury.gov/news/press-releases/hp897#:~:text=The%20Blueprint%20is%20about%20structure,current%20balkanized%20system%20as%20optimal.

The Fact Sheet related to the Blueprint:

https://home.treasury.gov/system/files/136/archive-documents/Fact_Sheet_03.31.08.pdf.

The Blueprint released by Treasury:

https://home.treasury.gov/system/files/136/archive-documents/Blueprint.pdf.

For purposes of this Petition, the Larsons assert that Treasury's 2008 proposal to create a federal agency

to preempt state mortgage laws in order to allow money changers—who were only the *successors and assigns of the legal (as opposed to beneficial interest) in the mortgage*—to enforce the payment provisions of promissory notes they did not possess is further acknowledgment that government knew that these money changer created contracts intended to change state mortgage loans likely couldn't do so.

2. *That a material question of fact exists in the record of this case and appeal with regard to whether New Century's business practice in 2006 was to destroy original notes in favor of keeping electronic copies of them is not disputable.*

Although the above title to this section is premised on the absence of material fact standard applicable to summary judgment motions pursuant to the CR 56, it is the Family's position that there is no evidence whatsoever supporting the factual proposition that the New Century Bankruptcy Trustee ever obtained the

promissory note Christoper signed. The evidence in this case and appeal that the liquidating trustee did not obtain that original note is legion and includes without limitation:

1) The Family's original unfiled answer served on DB's first attorney. CP V.3, 1192-1330.
2) The verified Answer, Affirmative Defenses, and Counterclaims filed on 12/5/2022. CP V.2, 743-870.
3) Affidavit, including exhibits, in opposition to DB's motion for summary judgment filed on 4/13/2023. V.1, 126-V.2, 666.
4) Affidavit, including exhibits, in opposition to DB's motion for summary judgment filed on 10/5/ 2022. CP V.2, 873-V.3, 1105.
5) Affidavit, including exhibits, in opposition to motion for summary judgment filed on 7/20/2022. CP V.2, 1331-1475.

Given the magnitude of this evidence demonstrating that DB likely did not possess the original Note Christopher signed, reasonable people contemplating why DB did not dispute this evidence would likely conclude DB knew the Family's premise that DB did not possess the original was likely true or not reasonably disputable.

And notwithstanding that Washington "judges" let moneychangers get away with murder (literally) and theft (plunder) DB and its attorneys may have had some concerns given the Family's aggressive litigation tactics in these title and tenancy cases and appeals.

DB's concerns were reasonable, as even those "judges" who allow moneychangers to commit legal plunder—have, on occasion, held bad actors accountable for their frauds.

For example, in *United States v. Soria*, [Case No.

2:19-cr-00158 (C.D. Cal.)], Patrick Soria was convicted for orchestrating a fraudulent mortgage scheme in which he filed false ownership documents, deceived homeowners into making payments to him, and manipulated the judicial system's reluctance to scrutinize foreclosure claims. *Cf. e.g. Nationstar Mortg. LLC v. Soria,* 2018 U.S. Dist. LEXIS 82643, 2018 WL 3357514 (CD Cal. 2018); *Nationstar Mortg. LLC v. Soria*, 2018 U.S. Dist. LEXIS 227874, 2018 WL 6136145 (CD Cal. 2018); *Nationstar Mortg. LLC v. Soria*, 2018 U.S. Dist. LEXIS 238869 (CD Cal. 2018); *Nationstar Mortg. LLC v. Soria*, 2018 U.S. Dist. LEXIS 224359, 2018 WL 6167943 (CD Cal. 2018); *Nationstar Mortg. LLC v. Soria*, 2021 U.S. Dist. LEXIS 65809, 2021 WL 1238224 (CD Cal. 2018)

Soria's scheme thrived in an environment where courts routinely accepted questionable foreclosure

claims at face value, failing to ensure that mortgage enforcers had legal standing to foreclose. The parallels between DB's actions in this case and Soria's fraudulent scheme are clear—both relied on false claims of mortgage ownership, procedural manipulation, and "judge's" interests in enforcing such fraudulent documents to carry out their schemes.

Similarly, the 2012 National Mortgage Settlement between the U.S. government, 49 states, and the five largest mortgage servicers (Bank of America, JPMorgan Chase, Wells Fargo, Citigroup, and Ally Financial) exposed how widespread foreclosure fraud had become in the aftermath of the 2008 financial crisis. The settlement addressed the use of "robo-signing"—the fraudulent practice of approving foreclosure documents without verifying ownership or legal standing. The fact that DB and its attorneys failed to contest the Larson

Family's evidence that DB did not possess the original promissory note is consistent with the same fraudulent foreclosure tactics exposed in the National Mortgage Settlement.

3. The "judges" of both the superior court for Snohomish County Washington and the Court of Appeals Division One failed to perform legitimate judicial inquiries.

This Nation's system of adjudication is an adversarial one.

> Since at least the time of the American Revolution, courts in the United States have employed a system of procedure that depends upon a neutral and passive fact finder (either judge or jury) to resolve disputes on the basis of information provided by contending parties during formal proceedings. This sort of dispute-resolving mechanism is most frequently referred to as the adversary system.
>
> Stephen Landsman, *The Adversary System: A Description and Defense* (1984).

Courts in our federal system are not supposed to engage in judicial decision-making on behalf of

governments unless the exercise of judicial power is based on factfinding by an impartial factfinder, i.e. either a jury or a judge. *See* e.g. *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987). *See also Korematsu v. United States,* 584 F. Supp. 1406 (ND Cal. 1984)(granting writ of coram nobis based on Government concealment of critical contradictory evidence in *Korematsu v. United States*, 323 U.S. 214 (1944).

The courts below in this case -- through allegedly biased judges -- were not permitted under this Nation's system of adjudication to ignore the fact that DB did not dispute any of the Family's factual contentions or legal arguments. This is because:

> In our adversarial system of adjudication, we follow the principle of party presentation. As this Court stated in *Greenlaw* v. *United States*, 554 U. S. 237, 128 S. Ct. 2559, 171 L. Ed. 2d 399 (2008), "in both civil and criminal cases, in the first instance and on appeal . . .,

> we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present." … [O]our system "is designed around the premise that [parties represented by competent counsel] know what is best for them, and are responsible for advancing the facts and argument entitling them to relief."

United States v. Sineneng-Smith, 140 S. Ct. 1575, 1579 (2020).

4. Additional reasons this Court should accept review.

The Washington Supreme Court should grant review in this case under RAP 13.4(b) because:

1. The Court of Appeals' Decision Conflicts with Decisions of the Washington Supreme Court.

The Court of Appeals' decision affirming the Superior Court's grant of summary judgment in favor of Deutsche Bank (DB) conflicts with established Washington Supreme Court precedent that requires courts to resolve cases based on the application of law to facts established in the record, including:

- *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83 (2012): This Court held that mortgage-backed securities trustees must demonstrate their authority to enforce a promissory note under Washington law. Here, DB failed to prove it had obtained the original note from the New Century Liquidating Trustee, as required under *Bain* and RCW 62A.3-309. The Court of Appeals ignored this binding precedent.

- *Brown v. Dep't of Commerce*, 184 Wn.2d 509 (2015): Washington law requires that lost or destroyed promissory notes be enforced pursuant to RCW 62A.3-309. The evidence presented in the record demonstrates that New Century's practice was to destroy original promissory notes and retain only electronic copies. By affirming the lower court's decision despite these material factual disputes, the Court of Appeals departed from *Brown* and other Washington Supreme Court precedents requiring strict compliance with Washington's Uniform Commercial Code.

2. The Court of Appeals' Decision Conflicts with Published Decisions of the Court of Appeals.

The Court of Appeals' refusal to conduct a proper judicial inquiry into DB's compliance with Washington's foreclosure statutes contradicts prior published decisions of the Court of Appeals, which have

emphasized the importance of factual findings in summary judgment proceedings:

- *JPMorgan Chase Bank, N.A. v. Morton*, 3 Wn. App. 2d 1004 (2018) (unpublished): In this case, the court recognized that where a financial institution claims the right to enforce a lost promissory note, it must provide evidence that it meets the requirements of RCW 62A.3-309. Here, DB failed to provide such evidence, and the Court of Appeals ignored the same principles it applied in *Morton*.
- *Keck v. Collins*, 184 Wn.2d 358 (2015): This Court reaffirmed that courts must not decide material factual disputes on summary judgment. The Court of Appeals' failure to address the substantial factual disputes in this case—particularly DB's refusal to rebut the Family's evidence regarding

the destruction of the original note—contradicts the holding in *Keck*.

3. This Case Involves a Significant Question of Law Under the State and Federal Constitutions.

This case presents significant constitutional questions concerning the fundamental rights of Washington homeowners to due process, judicial neutrality, and protection against unlawful takings:

- **Violation of Due Process under the Fourteenth Amendment**: The Court of Appeals failed to address whether DB's foreclosure practices violated due process by circumventing the requirement that a party seeking foreclosure must establish possession of the original promissory note. The Washington Constitution, Article I, § 3, guarantees due process protections consistent with the U.S. Constitution.
- **Judicial Bias and Separation of Powers**: The

systemic bias in favor of financial institutions in Washington's courts raises serious concerns about the impartiality of judicial proceedings. As demonstrated by the procedural irregularities in this case—such as the superior court's denial of oral argument and the Court of Appeals' decision to rule in DB's favor despite its failure to rebut critical evidence—this case implicates judicial neutrality principles under *Tumey v. Ohio*, 273 U.S. 510 (1927), *Ward v. Monroeville*, 409 U.S. 57 (1972), and *Cain v. White*, 947 F.3d 817 (5th Cir. 2019).

- **Unconstitutional Taking**: The forced eviction of the Family, based on fraudulent foreclosure practices, raises Takings Clause concerns under both the Washington Constitution (Article I, § 16) and the Fifth Amendment to the U.S.

Constitution. The Family has demonstrated that DB failed to establish its right to enforce the promissory note, yet the courts have nevertheless facilitated its acquisition of the property through eviction proceedings. This constitutes a government-assisted taking without just compensation, warranting review under *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

4. This Case Involves an Issue of Substantial Public Interest that Should Be Determined by the Supreme Court.

The Washington Supreme Court has a duty to review cases where systemic legal errors threaten fundamental rights and the integrity of the judicial system. The issues in this case are not unique to the Larson Family but are part of a broader pattern of judicial deference to fraudulent foreclosure practices.

The Family asserts this Court has an obligation to

address:

- **The Role of Financial Institutions in Manipulating Washington's Courts**: The 2012 National Mortgage Settlement between the U.S. government, 50 state attorneys general, and major banks, including Bank of America and JPMorgan Chase, established that these institutions engaged in widespread fraudulent foreclosure practices. The settlement recognized that banks had systematically misled courts by filing false documents, a practice that remains unchecked in Washington's courts.
- **The Need for Judicial Oversight of Foreclosure Proceedings**: *United States v. Soria (C.D. Cal., Case No. 2:19-cr-00158)* illustrates how fraudulent foreclosure schemes, like those perpetrated by Patrick Soria, thrive

when courts fail to scrutinize title claims. This case presents a strikingly similar situation, where DB failed to establish its ownership of the original note, yet the courts failed to conduct a proper judicial inquiry.

- **The Risk of Financial Institutions Using Washington's Courts as Instruments of Fraud**: The repeal of the Torrens Act, Washington's changes to its judicial pension funding, and amendments to the Deed of Trust Act have created an environment in which courts are incentivized to facilitate the dispossession of homeowners without proper adjudication. This raises fundamental concerns about judicial independence and the role of Washington State's purported courts of justice in protecting the lives, health and property rights of homeowners.

G. CONCLUSION:

This Court should grant discretionary review to resolve these critical issues of judicial impartiality, due process, and private rights related to liberty interests and property ownership. The Court of Appeals' decision, which allowed DB to evict the Family without proving that it had not engaged in fraud in *Larson v. Snohomish County*, supra., conflicts with longstanding principles of law and equity. It also undermines public confidence in Washington's judiciary, particularly with regard to the Court of Appeals affirmation of the Superior Court's fact-finding and the Court of Appeals own apparently biased factual determinations in this case.

This case presents an opportunity for the Washington Supreme Court to reaffirm the rule of law and restore faith in Washington's judicial branch of

government by ensuring that the rights of Washington homeowners are protected against those fraudulent foreclosure practices which most informed people know exist. But if Washington's judiciary continues to allow the political branches to systemically incentivize the exercise of judicial power in favor of financial institutions, i.e. the money changers of today, it risks further eroding courts' role as a neutral arbiter of justice for the People.

DATED this 10th day of March 2025, at Arlington, Washington.

Respectfully submitted,

by: *s/ Scott E. Stafne*

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Attorney for Appellants

CERTIFICATE OF COMPLIANCE

I hereby certify that my word processing program, Microsoft Word, counted 15,537 words in the foregoing consolidated petition for discretionary review and statement of additional ground for direct review, exclusive of the portions excluded by Rule 18.17(b).

s/ Scott E. Stafne WSBA No. 6964
Scott. E. Stafne

TABLE OF APPENDICES

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing documents with the Clerk of the Court using the Appellant's Court Portal utilized by the Washington State Appellate Court electronic filing system, which will provide service of these documents to those attorneys of record.

DATED this 10th day of March 2025.

By: *s/ Scott E. Stafne*
Scott E. Stafne, Attorney

APPENDIX 1

FILED
1/13/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR THE REGISTERED HOLDERS OF MORGAN STANLEY ABS CAPITAL I INC. TRUST 2007-HE2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-HE2 Respondent, v. CHRISTOPHER E. LARSON; JOHN/JANE DOE; UNKNOWN OCCUPANTS OF THE PREMISES, Appellant.	No. 85454-2-I DIVISION ONE UNPUBLISHED OPINION

PER CURIAM — Christopher and Angela Larson appeal from the trial court's summary judgment determination declaring unlawful detainer and authorizing a writ of restitution in favor of Deutsche Bank. The Larsons assert that the trial court was biased against them and failed to consider their evidentiary and legal arguments, thereby effecting an unlawful taking of their home. The sole meritorious issue raised is that the trial court's order granting summary judgment did not specifically list all materials called to the trial court's attention before it was entered. But because these materials could not result in a material question of fact warranting trial, the error was harmless. We therefore affirm.[1]

[1] On September 5, 2024, the Larsons filed a motion on the merits to reverse. A commissioner of this court ruled that the motion "will be placed in the file without action, with the

I

The facts pertaining to this appeal are largely set forth in this court's opinion affirming the dismissal of two separate lawsuits related to the nonjudicial foreclosure of the Larsons' home. Larson v. Snohomish County, 20 Wn. App. 2d 243, 499 P.3d 957 (2021), review denied, 199 Wn.2d 1016 (2022), cert. denied, 143 S. Ct. 575, 214 L.Ed.2d 341 (2023). Additional pertinent facts are known to the parties and will be discussed herein only when necessary to explain our decision.

II

A

In October 2006, Christopher Larson borrowed $218,000 from New Century Mortgage Company to purchase a house in Snohomish County. Larson, 20 Wn. App. 2d at 253. Christopher and his wife Angela executed a deed of trust securing the loan. Larson, 20 Wn. App. 2d at 253. The Larsons made no mortgage payments after July 2007, with the sole exception of one partial payment made in 2017. Larson, 20 Wn. App. 2d at 253-54. On December 22, 2017, the successor trustee issued a notice of default on behalf of the note holder, Deutsche Bank. Larson, 20 Wn. App. 2d at 254. In February 2018, the successor trustee recorded a notice of trustee's sale and set a sale date in June 2018. Larson, 20 Wn. App. 2d at 254. On June 5, 2018, the Larsons filed an

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understanding that the panel may review the motion and/or treat it as a supplemental brief as a matter of discretion." The motion is rendered moot by our decision to decide the case by a panel determination memorialized in an opinion.

"Application for 'Torrens' Registration of Title to Land" in Snohomish County Superior Court. Larson, 20 Wn. App. 2d at 254.

The Larsons did not move to enjoin the scheduled nonjudicial foreclosure sale. Larson, 20 Wn. App. 2d at 255. Their property was sold to Deutsche Bank on November 16, 2018. Larson, 20 Wn. App. 2d at 256. On November 21, 2018, the trustee recorded a notice of trustee's sale. Larson, 20 Wn. App. 2d at 256. Deutsche Bank served the Larsons with a 20-day notice to vacate but the Larsons refused to comply.

Meanwhile, on October 18, 2018, the Larsons filed a lawsuit in Skagit County Superior Court alleging several causes of action against numerous public and private defendants, including the State of Washington, Snohomish County, its superior court judges, the successor lender, the foreclosure trustee, and the loan servicer. Larson, 20 Wn. App. 2d at 251-52, 255. The Larsons sought declaratory and injunctive relief compelling the public defendants to comply with the Torrens Act or, alternatively, to quiet title. Larson, 20 Wn. App. 2d at 255. The Larsons also sought damages and injunctive relief against the private defendants for alleged violations of the Consumer Protection Act (CPA)[2] and the "Deeds of Trust Act" (DTA),[3] as well as equitable claims against Deutsche Bank to preclude foreclosure. Larson, 20 Wn. App. 2d at 255-56.

Following a hearing in December 2018, the trial court denied the Larsons' motion for recusal and dismissed all claims against the public defendants without prejudice. Larson, 20 Wn. App. 2d at 256. The court separately granted the

[2] Ch. 19.85 RCW.
[3] Ch. 61.24 RCW.

private defendants' motion to dismiss with prejudice the Larsons' quiet title claim and transferred their remaining claims to Snohomish County Superior Court. Larson, 20 Wn. App. 2d at 256-57. On November 11, 2019, the trial court granted the private defendants' motions for summary judgment dismissal of all remaining claims against them. Larson, 20 Wn. App. 2d at 258. On August 19, 2020, the trial court denied the Larsons' motion for recusal and granted Deutsche Bank's motion to dismiss their Torrens Act application on the ground that the Larsons no longer owned the property. Larson, 20 Wn. App. 2d at 258.

B

Our decision in Larson resolved the following issues adversely to the Larsons:

1. The trial court did not lack subject matter jurisdiction over the adequacy of the Larsons' Torrens Act application under the "prior exclusive jurisdiction doctrine" or the "priority of action rule." The Larsons invoked the Skagit County Superior Court's jurisdiction by filing a lawsuit in that court and seeking relief for Snohomish County's alleged inaction as to their Torrens Act application. Larson, 20 Wn. App. 2d at 263-65.
2. The trial court did not err in dismissing without prejudice the Larsons' claim that Snohomish County failed to follow mandatory procedures regarding their Torrens Act application. This is so because the Larsons did not file their application with an abstract of title, as mandated by statute. Larson, 20 Wn. App. 2d at 265-67. Moreover, the Larsons had the opportunity to amend their Torrens Act application by filing an abstract of title prior to the nonjudicial

foreclosure sale or by moving to enjoin the sale in order to give them more time to remedy the defect, but chose not to do so. Larson, 20 Wn. App. 2d at 267.

3. The trial court correctly ruled that the public defendants did not have the duty or the authority to force the county or its superior court judges to compel Snohomish County to develop a Torrens Act system. Larson, 20 Wn. App. 2d at 267. Such an order is not authorized by the Torrens Act and would therefore violate the doctrine of separation of powers. Larson, 20 Wn. App. 2d at 268.
4. The trial court did not err in dismissing the Larsons' quiet title claim against the private defendants. This is so because the Larsons' Torrens Act application did not preclude the nonjudicial foreclosure sale, and their failure to move to enjoin the sale waived their quiet title claim. Larson, 20 Wn. App. 2d at 269-71.
5. RCW 61.24.127, the DTA waiver statute, did not unconstitutionally deny the Larsons the right to pursue a common law cause of action against lenders and foreclosure trustees. The statute does not bar such actions; rather, it reasonably requires parties to bring their claims prior to the nonjudicial foreclosure sale. Larson, 20 Wn. App. 2d at 271-73.
6. The Larsons claimed that the trial court erred in dismissing their CPA claim against the private defendants because the October 2006 promissory note was not authentic, the assignment of the deed of trust to Deutsche Bank was invalid, their loan was never funded, and their lender breached its contractual

obligation by refusing to accept the Larsons' August 2007 mortgage payment. But these arguments were either frivolous or unsupported by the record. Larson, 20 Wn. App. 2d at 273-80.

7. The trial court properly granted summary judgment dismissal of the Larsons' constitutional challenges to the DTA. First, the Larsons did not allege state action to support their due process claim and failed to establish a deprivation of due process. Second, the Larsons are incorrect that a 2018 amendment to the DTA impaired their contractual relationship with their lender, thereby depriving the private defendants of authority to foreclose on their home. Third, because the DTA grants the borrower the right to file an action in superior court against the beneficiary of the deed of trust, nonjudicial foreclosure sales do not infringe on the original jurisdiction of the superior courts. Larson, 20 Wn. App. 2d at 280-85.
8. The trial court properly dismissed the Larsons' Torrens Act application because they no longer owned the property after the nonjudicial foreclosure sale and had no statutory right to pursue title registration. Larson, 20 Wn. App. 2d at 285.
9. The trial court did not err by denying the Larsons' motion to amend their complaint to reallege claims against the public defendants and to add additional office holders and entities. The Larsons claimed they had no other way to seek a ruling that Snohomish County and its officials did not comply with the Torrens Act, but they could have remedied the defect in their Torrens

Act petition by filing and recording an abstract of title. Larson, 20 Wn. App. 2d at 285-86.

10. The Larsons alleged that both trial court judges erred by failing to recuse from the cases because the judges had an interest in the outcome. But the Larsons sought to disqualify every judge in both counties in which they filed their cases, so the rule of necessity defeats their assertions of bias. Additionally, the Larsons failed to establish any personal connection between their cases and the judges. Larson, 20 Wn. App. 2d at 286-90.

11. The Skagit County Superior Court did not err in transferring venue to the Snohomish County Superior Court. RCW 4.12.010(1) provides that actions relating to the title of real property must be brought in the county in which the real estate is situated, and the Larsons' lawsuit was an action relating to the title of real property. The Larsons claimed that they were entitled to remain in the Skagit County Superior Court under RCW 4.12.030, which gives courts discretion to change venue when there is reason to believe an impartial trial cannot be held therein. But all Snohomish County superior court judges recused themselves, and a visiting judge was appointed to hear the Larsons' case. Larson, 20 Wn. App. 2d at 289-90.

C

This matter is again before us because, on October 8, 2019, Deutsche Bank filed a complaint for unlawful detainer against the Larsons. In response, the Larsons alleged that Deutsche Bank did not own the property because the nonjudicial foreclosure sale was illegal. On February 25, 2020, Deutsche Bank

filed a motion for summary judgment, along with a declaration in support of its motion. The declaration included as an exhibit an unfiled copy of the Larsons' answer, affirmative defenses, and counterclaims. On March 25, 2020, Deutsche Bank filed an agreed motion and order to continue the trial date and case schedule, and the hearing on Deutsche Bank's motion for summary judgment was stricken the next day.

On February 22, 2022, approximately nine months after this court issued its opinion in Larson, activity in the unlawful detainer case resumed when Deutsche Bank filed a notice of withdrawal and substitution of attorney. On June 21, 2022, Deutsche Bank filed a motion for order to show cause why a writ of restitution should not be entered. The Larsons opposed the motion and filed a supporting declaration.

On October 5, 2022, the Larsons filed their opposition to Deutsche Bank's motion for summary judgment. They argued that the assigned trial court judge was biased, that Deutsche Bank did not meet its burden to establish an absence of material fact related to its right of possession, and that the summary judgment motion filed in February 2020 violated CR 11 because it was not signed and refiled by Deutsche Bank's new attorney. They also asked the court to take judicial notice of voluminous additional materials, including pleadings from unrelated cases and materials regarding the Larsons' former lender's business practices in 2006. On December 15, 2022, the Larsons filed their answer to Deutsche Bank's complaint.

On April 20, 2023, the trial court issued an order granting Deutsche Bank's motion for summary judgment. The court also ruled that it would take judicial notice of the pleadings from unrelated cases, but declined to review the remaining materials.

The Larsons moved for reconsideration under CR 59. They argued that the trial court erred by failing to designate in its summary judgment order materials which the parties brought to the court's attention. They further argued that the trial court should reconsider and reverse its ruling because it inappropriately resolved issues of fact and because the trial court judge should have recused herself.

The trial court granted the Larsons' motion to the extent that the summary judgment order did not set forth the specific materials reviewed, but denied the motion as to the remaining issues. However, the court acknowledged that additional clarification regarding its legal reasoning was required. Accordingly, on May 30, 2023, the court issued a substitute order granting summary judgment. Therein, the court expressly noted that it had considered the following documents in deciding the motion for summary judgment:

1. Plaintiffs' Motion for summary judgment filed on February 25, 2020;
2. Affidavit in Support of motion for summary judgment filed on February 25, 2020;
3. Carson declaration in support of Motion for Summary Judgment dated September 6, 2022;
4. Larsons' Opposition to Motion for Summary Judgment filed on October 5, 2022;
5. Larsons' Answer, Affirmative Defenses, Counterclaims and Crossclaims filed December 15, 2022;
6. Larsons' Motion for Extension of Time filed March 20, 2023;
7. Declaration of Scott Stafne in Support of Motion for Extension of Time filed March 20, 2023;

8. Larsons' Opposition to Motion for Summary Judgment dated April 13, 2023;
9. Stafne declaration in support of Larsons' Opposition to Motion for summary judgment filed on April 13, 2023;
10. Larsons' Request for Judicial Notice filed April 13, 2023.

The court explained that summary judgment was appropriate because there is no pending action seeking to overturn the sale of the home, Deutsche Bank followed the mandatory procedures for foreclosure, the Larsons never sought to enjoin the sale, and the Larsons' lawsuits challenging the foreclosure were dismissed. The court thus concluded that there was no issue of material fact warranting trial on the question of Deutsche Bank's right to possess the property. Accordingly, the court issued an order for writ of restitution.

The Larsons appealed.

III

We review an order granting summary judgment de novo, performing the same inquiry as the trial court. Nichols v. Peterson Nw., Inc., 197 Wn. App. 491, 498, 389 P.3d 617 (2016). When reviewing an order granting summary judgment, we engage in the same inquiry as the trial court, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. Brown v. Brown, 157 Wn. App. 803, 812, 239 P.3d 602 (2010). "The motion should be granted if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Mayer v. City of Seattle, 102 Wn. App. 66, 75, 10 P.3d 408 (2000).

We review a trial court's order on reconsideration for abuse of discretion. Rivers v. Wash. State Conf. of Mason Contractors, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002).

IV

The trial court was unquestionably correct in concluding that the Larsons raised no issue of material fact warranting trial on the question of Deutsche Bank's right to possession of the property.

The DTA sets out the procedures that must be followed to properly foreclose a debt secured by a deed of trust. Chapter 61.24 RCW. "The [DTA] has three goals: an efficient and inexpensive process, adequate opportunities for parties to prevent wrongful foreclosure, and stability of land titles." Patrick v. Wells Fargo Bank, N.A., 196 Wn. App. 398, 405, 385 P.3d 165 (2016). To further these goals, the DTA provides a procedure to contest and enjoin a trustee's sale once the grantor has received notice of sale and foreclosure. RCW 61.24.130. "This statutory procedure is 'the only means by which a grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure.'" Plein v. Lackey, 149 Wn.2d 214, 226, 67 P.3d 1061 (2003) (quoting Cox v. Helenius, 103 Wn.2d 383, 388, 693 P.2d 683 (1985)). A party waives "any objection to the trustee's sale . . . where presale remedies are not pursued." Plein, 149 Wn.2d at 229 (citing RCW 61.24.040(1)). Waiver occurs if the party received notice of the right to enjoin the sale, knew of a defense to foreclosure prior to the sale, and failed to petition the court to enjoin the sale. Plein, 149 Wn.2d at 227.

Here, Deutsche Bank purchased the property at the nonjudicial foreclosure sale. It is undisputed that the Larsons did not avail themselves of their statutory right to petition to enjoin the sale. And this court affirmed the dismissal of the Larsons' lawsuits related to the foreclosure and sale.

V

A

In this appeal, the Larsons assign error to the trial court's alleged failure to appropriately perform judicial inquiries pursuant to CR 56 and to consider their evidentiary and legal arguments. They assert numerous issues arising from these alleged errors. They further argue that the trial court abused its discretion pursuant to CR 59 by denying in part their motion for reconsideration and issuing a substitute summary judgment order that failed to comply with controlling law.

We conclude that the Larsons have raised only one meritorious issue: whether the trial court's substitute summary judgment order failed to specifically list all materials called to the trial court's attention before it was entered. See RAP 9.12 (the trial court in its order "shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered"); CR 56(h) ("The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered."). The trial court granted the Larsons' motion for reconsideration to the extent that its summary judgment order did not designate materials which the parties brought to the court's attention, and issued a substitute order designating

10 items. Nevertheless, as the Larsons point out, it appears that the substitute order did not comprehensively designate all documents and evidence called to the attention of the trial court, as is required.

However, for the reasons discussed below, any additional documents could not possibly result in a material question of fact warranting trial. We therefore conclude that the error was harmless. See Budd v. Kaiser Gypsum Co., 21 Wn. App. 2d 56, 79, 505 P.3d 120 (2022) ("'A harmless error is an error which is trivial, or formal, or merely academic, and was not prejudicial to the substantial rights of the party assigning it, and in no way affected the final outcome of the case.'" (internal quotation marks omitted) (quoting Nguyen v. City of Seattle, 179 Wn. App. 155, 159 n.2, 317 P.3d 518 (2014))).

B

The Larsons allege that summary judgment was improper because material questions of fact exist as to whether the nonjudicial foreclosure process violated the DTA. They assert that the sale did not comply with RCW 61.24.040, that the original 2006 promissory note was destroyed and replaced with a forged note, that the beneficiary's assignment of the deed of trust to Deutsche Bank was invalid, and that the lender never funded the Larsons' loan. But because they failed to avail themselves of the DTA's presale remedies, any claims of error regarding issues governed by the DTA are statutorily barred. See Plein, 149 Wn.2d at 228 (the DTA contains no provision for setting aside a sale once it has occurred).

Moreover, to the extent the Larsons asserted claims or issues in the unlawful detainer action that they raised or could have raised in Larson, such claims or issues are barred by the doctrines of res judicata and/or collateral estoppel. Generally speaking, res judicata bars the relitigation of claims and issues that were litigated or could have been litigated in a prior action. Loveridge v. Fred Meyer, Inc., 125 Wn.2d 759, 763, 887 P.2d 898 (1995). Res judicata applies where a prior final judgment is identical to the challenged action in "(1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made." Loveridge, 125 Wn.2d at 763. Collateral estoppel applies when "'(1) [t]he issue decided in the prior adjudication is identical with the one presented in the second action; (2) the prior adjudication must have ended in a final judgment on the merits; (3) the party against whom the plea is asserted was a party or in privity with the party to the prior adjudication; and (4) application of the doctrine does not work an injustice." Gosney v. Fireman's Fund Ins. Co., 3 Wn. App. 2d 828, 876-77, 419 P.3d 447 (2018) (internal quotation marks omitted) (quoting Thompson v. Dep't of Licensing, 138 Wn.2d 783, 790, 982 P.2d 601 (1999)).

C

The Larsons raise five issues that are not waived by application of the pertinent statute. But there is no possibility of these claims giving rise to a question of material fact because, even assuming the Larsons' assertions are correct, no relief is available.

1

The Larsons argue that they presented evidence of fraud by Deutsche Bank regarding its assertion of possession of the original promissory note. They allege that the original note was likely destroyed in 2006 and that the note produced at trial was a forgery. This claim is not necessarily barred by statute. See Miebach v. Colasurdo, 102 Wn.2d 170, 685 P.2d 1074 (1984) (a foreclosure sale may be set aside on equitable grounds where the buyer or his successor is not a bona fide purchaser, the price paid for the property is grossly inadequate, and there are "irregularities" surrounding the sale). But this court previously rejected the Larsons' claim that the note was invalid because the signature on the note was a forgery, Larson, 20 Wn. App. 2d at 275-76, so this claim is now barred by collateral estoppel. To the extent that the Larsons attempt to assert new facts in support of this claim, it is also barred by res judicata.

2

The Larsons argue that the superior court judge refused to consider her bias before granting summary judgment in favor of Deutsche Bank. In Larson, this court previously rejected the Larsons' claim that the trial court judges who issued the rulings at issue in that case were self-interested in the outcome and erred by failing to recuse themselves. 20 Wn. App. 2d at 286-89. This was so, the Larson court explained, because the rule of necessity defeats their argument and the Larsons failed to establish any personal connection between the judges and the Larsons' cases. Larson, 20 Wn. App. 2d at 287-88.

The trial court judge in this unlawful detainer action did not participate in the rulings at issue in Larson, so this issue is not barred by collateral estoppel or res judicata. Nevertheless, the same reasoning applies. Under the common law rule of necessity, a judge may decide a case despite having a personal interest in the outcome if "'the case cannot be heard otherwise.'" United States v. Will, 449 U.S. 200, 213, 101 S. Ct. 471, 66 L. Ed. 2d 392 (1980) (quoting FREDERICK POLLACK, A FIRST BOOK OF JURISPRUDENCE FOR STUDENTS OF THE COMMON LAW 270 (6th ed. 1929)); Ignacio v. Judges of United States Court of Appeals for Ninth Circuit, 453 F.3d 1160, 1163 (9th Cir. 2006). The rule of necessity "'provides for the effective administration of justice while preventing litigants from using the rules of recusal to destroy what may be the only tribunal with power to hear a dispute.'" Larson, 20 Wn. App. 2d at 287-88 (quoting Glick v. Edwards, 803 F.3d 505, 509 (9th Cir. 2015)). This rule "has been consistently applied in this country in both state and federal courts." Will, 449 U.S. at 214. It has also "been applied by the highest courts of several common law jurisdictions." In re Remuneration of Judges of Provincial Ct. of P.E.I., [1998] S.C.R. 3 (Can.) at 5.

Here, the Larsons contend that Washington's judicial officers, including the trial judge who ruled in their case, are biased in favor of entities such as Deutsche Bank because their retirement accounts have long been invested in mortgage-backed securities. They cite cases holding that due process requires recusal where "'the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'" Rippo v. Baker, 580 U.S. 285, 287, 137 S. Ct. 905, 197 L. Ed. 2d 167 (2017) (quoting Withrow v.

Larkin, 421 U.S. 35, 47, 95 S. Ct. 1456, 43 L. Ed. 2d 712 (1975)); Williams v. Pennsylvania, 579 U.S. 1, 8, 136 S. Ct. 1899, 195 L. Ed. 2d 132 (2016) (recusal may be required where an unconstitutional potential for bias exists). But if this argument were to prevail, every judge in Washington would be disqualified from ruling in their case. The authorities cited by the Larsons in support of their claim do not account for the rule of necessity. Because this rule applies, no relief is available regarding the Larsons' claim that the superior court judge was biased in Deutsche Bank's favor.

3

The Larsons next argue that evicting them from their home by use of governmental force without public benefit violates the takings clause of the United States and Washington Constitutions.[4] They contend that the court lacked judicial power to order that the Larsons' home be forcefully taken and awarded to a plaintiff that has no legal or equitable basis for a governmental taking.

This claim arises from the consequences of the unlawful detainer action, so it could not have been raised in the previous litigation. Regardless, the claim necessarily fails. As discussed above, the Larsons did not seek to enjoin the nonjudicial foreclosure sale, and their post-sale challenges were dismissed. The Larsons do not own the property. Having no recognized property interest in the

[4] The takings clause of the Fifth Amendment to the United States Constitution provides, "[N]or shall private property be taken for public use, without just compensation." Similarly, article I, section 16 of the Washington Constitution provides, "No private property shall be taken or damaged for public or private use without just compensation having been first made."

land, the Larsons cannot demonstrate that the government took their property in violation of due process.

4

The Larsons argue that Deutsche Bank violated CR 11 because its new attorney re-noted the February 2020 motion for summary judgment without refiling it. They point out that the motion was signed by Deutsche Bank's prior counsel before he withdrew and that Deutsche Bank's present counsel did not sign it. They further argue that Deutsche Bank did not respond to this argument below and that the trial court appears to have purposely avoided adjudicating the issue by manipulating the court record so as not to consider it.

"CR 11 requires attorneys to date and sign every pleading, motion, and legal memorandum filed with the court, certifying the pleading motion or memoranda 'is well grounded in fact[,] . . . is warranted by existing law or a good faith argument[,] . . . [and] is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.'" Just Dirt, Inc. v. Knight Excavating, Inc., 138 Wn. App. 409, 417, 157 P.3d 431 (2007) (alterations in original) (quoting CR 11(b)). "The purpose behind CR 11 is to deter *baseless* filings and to curb abuses of the judicial system." Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992).

These concerns are not present here. In a declaration, Deutsche Bank's present counsel stated that he had reviewed the previously filed summary judgment motion and "adopt[ed] all of the legal reasoning in the plaintiff's Motion as if I had authored it myself." And even assuming counsel's failure to refile the

motion implicated CR 11, the Larsons do not seek sanctions and the alleged error does not give rise to a material question of fact warranting trial. Relief is unavailable.

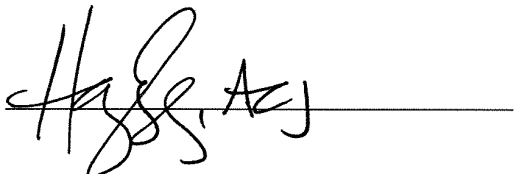
5

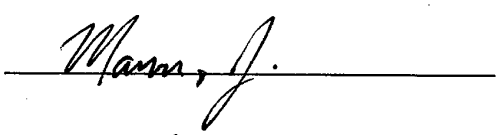
The Larsons argue that the trial court properly granted their request to take judicial notice of pleadings filed in the lender's bankruptcy proceedings, but that it erred in qualifying its ruling by stating that "their relevance to this case is limited." They contend that the court lacked authority to resolve factual issues pursuant to CR 56. But the court's comment regarding relevance did not resolve any issues of fact. The Larsons also appear to challenge the court's refusal to take judicial notice of materials relating to the lender's alleged practice in 2006 of destroying paper promissory notes in favor of retaining an electronic copy. But even if the court erred in doing so, these materials could not have raised a material issue of fact regarding the Larsons' right of ownership.

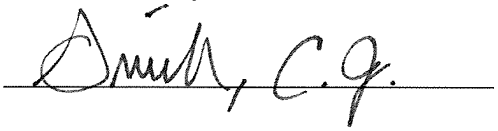
The trial court did not err in declaring unlawful detainer and authorizing issuance of a writ of restitution.

Affirmed.

For the Court:







APPENDIX 2

FILED
2/7/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

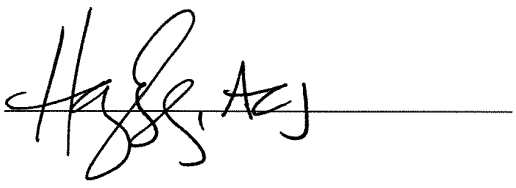
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR THE REGISTERED HOLDERS OF MORGAN STANLEY ABS CAPITAL I INC. TRUST 2007-HE2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-HE2 Respondent, v. CHRISTOPHER E. LARSON; JOHN/JANE DOE; UNKNOWN OCCUPANTS OF THE PREMISES, Appellant.	No. 85454-2-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant filed a motion for reconsideration on January 21, 2025. After consideration of the motion, the panel has determined that the motion for reconsideration shall be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

FOR THE COURT:



APPENDIX 3

FILED
2/7/2025
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

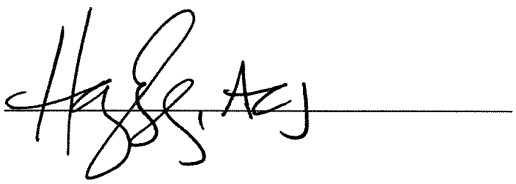
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN TRUST FOR THE REGISTERED HOLDERS OF MORGAN STANLEY ABS CAPITAL I INC. TRUST 2007-HE2, MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-HE2 Respondent, v. CHRISTOPHER E. LARSON; JOHN/JANE DOE; UNKNOWN OCCUPANTS OF THE PREMISES, Appellant.	No. 85454-2-I DIVISION ONE ORDER DENYING MOTION TO PUBLISH

Appellant filed a motion to publish on January 21, 2025. After consideration of the motion, the panel has determined that the motion to publish shall be denied.

Now, therefore, it is hereby

ORDERED that the motion to publish is denied.

FOR THE COURT:



STAFNE LAW ADVOCACY & CONSULTING

March 10, 2025 - 4:05 PM

Filing Petition for Review

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Filed with Court:	Supreme Court
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Appellate Court Case Title:	Deutsche Bank National Trust Company, et al., Res. v. Christopher E. Larson, et al., Apps. (854542)

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APPELLANT LARSON’S CONSOLIDATED PETITION FOR DISCRETIONARY REVIEW AND STATEMENT OF ADDITIONAL GROUNDS FOR DIRECT REVIEW

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