

FILED

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WASHINGTON STATE
SUPREME COURT

SUPREME COURT NO. 93244-1

**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

**IOAN A. PAUNESCU and DANIELA
PAUNESCU,**

Appellants/Petitioner,

v.

**GERHARD H. ECKERT and MARGARETHE
ECKERT AS TRUSTEES OF THE ECKERT
FAMILY TRUST, and SCOTT RUSSON and
JANE DOE RUSSON, husband and wife**

RESPONDENTS,

**ANSWER TO RUSSON'S ANSWER FOR PETITION FOR
REVIEW**

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I. IDENTITY OF THE ANSWERING PARTIES

This Answer to Russons Answer for Petition of Review is submitted on behalf of Daniela Paunescu and Ioan A. Paunescu.

II. ISSUES PRESENTED FOR REVIEW.

The Petitioners have a right by law to bring forth proof where new points exist based on the following law: RAP 13.4(d)

III. INTRODUCTION/ STATEMENT OF THE CASE

Mr. Scisciani brought forth a new point that the Deed of Trust was obviously the foundation of the Petitioners' claims against the Eckert and Russon. Mr. Scisciani brought this point as if it's the only point in the original complaint. (CP 14).)Now that's a new claim because if we look from before the Deed of Trust before that the Promissory note and before that Fidelity Title Company lets looks at all the points and see if Mr. Scisciani has a right to Attorney Fees and to see if that was the foundation. Mr. Scisciani states on page 10 of Scott Russon's Answer to Petition for Review at the bottom of the page that The Deed of Trust was obviously the foundation of Petitioners claims to show that he is trying to hid the original points let's take a look, at the original points and claims

that were brought fourth were the following and the explanation for each,

A. THE FIRST CLAIM WAS DECLARATORY JUDGMENT INVALIDATING ECKERT DEED OF TRUST, SUBSEQUENT TRUSTEE'S SALE AND CONFIRMING PLAINTIFF'S SUBSISTING AND SUPERIOR INTEREST IN THE RESIDENTIAL PROPERTY OVER THE DEFENDANTS.

- That the Eckert Note which lists the Eckert Trust, a non-entity, as holder, is tantamount to not listing any holder on a promissory note and that the Eckert Note was defective, invalid and non-effectual against the interests of the Plaintiff;
- That the Eckert Deed of Trust which list the Eckert Trust, a non-entity, as the beneficiary, is tantamount to not listing any beneficiary on a deed of trust and that Eckert Deed of Trust was defective not a valid lien against the Residential Property, and non- effectual against the interests of the Plaintiffs;
- That because the Eckert Deed of Trust listed an invalid beneficiary, the Appointment of a successor trustee was invalid and Russon had no authority to carry out a non- judicial foreclosure sale of the Residential Property and the trustee's sale was invalid and non- effectual against the interests of the plaintiff;

- That Russon failed to comply with RCW 61.24.030 and .031, as it pertains to the foreclosure of a primary residence and that Plaintiff was denied proper notice and the opportunity to engage in alternative options to avert foreclosure as required in RCW 61.24 et al., resulting in the trustee's sale being invalid and non-effectual against Plaintiff's interest in the Residential Property and causing damage to Plaintiff's.
- That the Quit Claim Deed describing the Residential Property and recorded under Clark County Auditor's number 5055228 from the Eckert Trust to Gerhard H. Eckert and Margarethe Eckert as Trustees of the Eckert Family Trust; (a) is invalid for want of a valid grantor; (b) conveyed no interest in the Residential Property to the grantee; and (c) is junior to the interests of Plaintiff if any interest in the Grantee was created by said deed;
- That Plaintiff 'still has a valid subsisting interest in the Residential Property and is senior to any interest claimed by Eckert Family Trust and Russon.

B. FOR ORDER INVALIDATING TRUSTEE'S SALE AND FAILURE TO COMPLY WITH THE PROVISIONS OF RCW 61,24 ET AL.

- Plaintiff are entitled to a Judgment and Order declaring the trustee's sale held February 7, 2014, for the purpose of foreclosing the Eckert Deed of Trust as invalid, as well as Trustee's Deed executed by Scott E. Russon, Successor Trustee, conveying Plaintiff's property to the Eckert Trust, as invalid, non-binding, and ineffective against the Plaintiffs.
- Plaintiffs is also entitled to an order quieting title to the residential property in Plaintiff's name and against Gerhard H. Eckert and Margarethe Eckert as Trustees of the Eckert Family Trust and any other interests and or entities in which the Eckert's may claim some type of interest in the property.

C. REQUEST FOR INVALIDATION OF ECKERT DEED OF TRUST PER RCW 6.13 ET AL AND CLAIM FOR HOMESTEAD EXEMPTION AMOUNT INRESIDENTIAL PROPERTY

- Pursuant to RCW 6.13 et al., Plaintiff resided at the Residential Property and it was Plaintiffs homestead pursuant to the chapter.
- Pursuant to RCW 6.13.060, the Eckert Deed of Trust was not executed by both Plaintiff's, who are husband and wife, Per RCW 6.13.060, the Eckert Deed of Trust should be deemed invalid and

ineffective against the Residential Property, the trustee's sale should be deemed invalid and any interest disclosed of the public record arising from the invalid sale should be deemed invalid as to the Plaintiff's homestead interest.

- Plaintiffs have a valid homestead in the Residential Property in the amount of \$125,000, which is superior to the interest of the Eckert Family Trust and to any interest it may claim or be associated with.

D. VIOLATION OF WASHINGTON'S UNFAIR BUSINESS PRACTICE ACT RCW 19.86 AND WASHINGTON'S CONSUMER LOAN ACT RCW 31.04

- Eckert Family Trust violated RCW 31.04.025 by making loans secured by Plaintiff's primary residence, without complying and being licensed pursuant to RCW 31.04 et. al.
- Said violations under RCW 31.04 are a violation of Washington's Unfair Business Practice Act, (RCW 19.86 et. al.) As a result of said violation, Plaintiff has sustained damage. Plaintiff is entitled to an award of damages, treble damages, and attorney's fees and costs pursuant to the provisions of RCW 19.86.090. And related statute.

E. VIOLATION OF WASHINGTON USURY STATUTE RCW 19.52 ET. AL

- Eckert Family Trust violated the Washington usury laws pursuant to RCW 19.51 et. al. by charging a rate of interest on a Residential Loan that exceeded the statutory limit.
- Plaintiff has been damaged as a result of the application of a usurious interest rate by Eckert Family Trust.
- Plaintiff is entitled to an award of damages, cost and attorneys' fees pursuant to RCW 19.52.030.
- Furthermore, said violation of RCW 19.52 is a per se violation of Washington Unfair Business Act, RCW 19.86 et.al., and plaintiff has been damaged as a result and are entitled to an award of damages, treble damages and attorneys' fees and costs pursuant to the provisions of RCW 19.86.090 and related statues.

F. SLANDER OF TITLE

- Eckert Family Trust and Russon have promoted an illegal void instrument referred to herein as Eckert Deed of Trust and said instrument has been filed in the official records of the Clark County Auditor's Office placing a cloud upon the Plaintiff's title of the Residential Property.

- As direct and approximate cause Eckert Family Trust and Russon's actions, Plaintiffs has sustained general and special damages in an amount to be proven at trial.
- Plaintiff's is entitled to an order nullifying the Eckert Deed of Trust, the subsequent non-judicial trustee action, as well as voiding the instrument from any further force and effect.

G. QUIET TITLE

- Plaintiff is entitled to an Order of this Court quieting title to the Residential Property in favor of Plaintiff, and extinguishing all rights and claims of the Eckert Family Trust and Russon in this action and to any claim upon the contested Residential Property.
- Plaintiff asserts their right to clear title as fee simple interest free of any encumbrances or interests asserted by the Eckert Family Trust and Russon in this action.
- Further, this Court should find in favor of Plaintiff in this action, and issue an award of damages and injunctive relief as necessary to protect Plaintiff's fee simple interest in the Residential Property.

H. BREACH OF FIDUCIARY DUTY BY RUSSON

- That Russon breached his fiduciary duties to Plaintiffs acting in the capacity of successor trustee of the Eckert Deed of Trust.

These above points show us what Mr. Scisciani that the foundation for Plaintiffs have quite a few roots that they are trying to set aside and bring only what points they want to be seen, this is what the Respondents Attorneys have done throughout this whole case is trying to hid the proof that exist and only showing what they want to be seen.

I. ARGUMENT

We have another point in Mr. Scisciani answer to Petition for Review that is a new point from the Respondents answer and it's where Mr. Scisciani states on page 7 that "As discussed below, Petitioners were given a fair hearing. This is a new point where Mr. Scisciani doesn't state the fact that a fair hearing was not true, because of the following issues:

- The Court of Appeals didn't take in consideration that before anything on July 31, 2015 that an objection was made by the Petitioners and that The Court of Appeals granted Petitioners

objection(8/3/2015) for 5 points to be left in the case and those points are the following: Mr Russon had a duty as a lawyer and as a matter of Law to check Eckerts Proof of what The Loan was originally. That the loan from the beginning in May 2007 that fidelity title and all the documents from them show that the loan was a Residential Refinance and never a Commercial Loan like Mr. Russon Characterized. These documents from Fidelity are signed and notarized and do not lie. Mr. Russon didn't check with Fidelity because The Eckerts payed him well not to check. Mr. Shafton asked Fidelity in August 2014 subpoena Fidelity for records and received them on Sept 1, 2014 and Mr. Scisciani and Mr. Russon both received these documents and set them aside so nobody knows the truth about the loan. We call this here in America corrupt Lawyers, who have the truth but to win their case will do anything to sabotage the Petitioners. As a Lawyer there is a code of conduct and all these Attorneys and judges do not obey the law and try winning cases by sabotage.

- Russon had no authority to foreclose and yet this RCW 61.24.030(7)(a) has to do with Residential which we showed proof to The Court of Appeals of what the Loan was originally and that

Russon didn't follow procedure(LAW). And also to The Lower Court but yet everyone set aside the truth, thinking if we can sabotage the Paunescus we can win the case, All these Attorneys have no proof and cannot provide proof if the Supreme Court puts an investigation into this case so a fair trial can be accorded to the Petitioners.

- Russon could not have foreclosed the way he went about it stating that is was a Commerical Loan when the proof shows us it A RESIDENTIAL REFIANANCE. And would have needed to provide documentation for a Residential Foreclosure.
- Russon by stating he legally did this foreclosure legally is a terrible lie because he lied he closed down my care home for 20 years and evicted us out of our home illegally.
- On April 1, 2014 we personally delivered a letter asking Mr. Russon how he went about the foreclosure letter he called us the next morning on April 2, 2014 and said it none of your business how I did the foreclosure,(CP 83- EX-19) we asked nicely but he acted unprofessional the same as he did like on March 3, 2014 saying either you sign the lease or I am calling DSHS on your home. He had a fiduciary duty to both parties but yet He acted unprofessional and tried threatening us with the law.

- We have the proof from Fidelity that Mr. Shafton subpoena for and we can send it to the Supreme Court to show that The Eckert were in 2nd position and that is was a Residential Refinance and that nowhere in the contract did it specifically say for Commercial Property. The Eckerts didn't even meet face to face with the Paunescus and didn't follow state law by not being registered with the state for doing business in Washington State.
- Mr. Russon cannot Characterized a loan something he wants it to be after so many years, when there is documentation providing the truth from Fidelity.
- All the Respondents Attorneys if we look throughout this case is that there is no mention of anything from Fidelity or Subpoena from Fidelity showing the truth, again we see sabotage.
- The promissory note was not initialed by both the maker and holder that doesn't activate the commercial property clause or due of sale clause. (CP 83-EX-5). It say "**commercial Property- optional- not applicable unless initialed by holder and Maker to this Note**" Eckert's never signed so not valid wasn't a commercial property.

- At the deposition Daniela Paunescu spoke about what a commercial loan requires to be able to take one out and about the difference between commercial, business, Residential.
- Daniela Paunescu spoke about the Settlement from fidelity at the deposition that shows a breakdown of the Loan from the Eckerts. On May 15, 2007 Fidelity National Title on The Borrower Settlement Statement states that there was Title Charges of a Refinance Fee of \$ 497.72 and Title Insurance of Lender Residential Refi in the amount of \$517.20 for The Respondents refinance Loan for the” Property” . Assessor’s Parcel # 160748-005 and Lot 2 of short Plat, recorded in Book 2, Page 348. Records of Clark County, Washington. (CP 83 Ex-9,11)., made for Residential Refinance and the \$290,000 were insured.
- Respondents ignored the general rule that “Summary Judgement is premature unless all parties have “had a full discovery to conduct discovery.”684 F.3d 93, 99 (D.C. Cir 2012) (quoting Anderson v. Liberty Lobby, Inc ., 477 U.S. 242, 257 (1986); Due process requires courts to “afford the parties a full opportunity to present their respective cases “before ruling on the merits” Univ. of TX V. Camenisch, 451 U.S. 390, 395 (1981) see also Edward Brunet, The Timing of Summary Judgment, 198 F.R.d. 679,687 (2001) (“It

would be patently unfair to permit a judgment a judgment against a person without affording the party the opportunity to gather and submit evidence on his or her behalf’.) Rule 56(b) sets the default deadline for filing a motion of summary judgment at “30 days after the close of all discovery”. On Dec. 12, 2014 Judge Clark never asked where everyone was in the discovery process and Mr. Shafton never said anything about it, and I didn’t know the rule at that time. Judge Clark stated On Dec 12,2014 that Mr. Shafton is flip flopping because you maybe that you inartfully stated it because you’re not an attorney. Dec 12, 2014 (RP page 4 line 12-13). The appointment for Dec. 12, 2014 was for Status concerning Judge but Judge Clark and Mr. Shafton flipped it around to be for Summary Judgment date. Which the letter he sent we have and where can Mr. Scisciani say it was legal what they did.

- On January 30, 2015 Judge Clark will send by February 13, 2015 letter to Appellants if Attorney fees for Mr. Scisciani and file objection with The Superior Court Clerk office. And send a written decision on what those fees are. (RP 1/30/2015 page 11 line 12-25).
- Judge Clark stated on January 30, 2015 that she will send a written decision if she will approve Mr. Scisciani claim on Attorney Fees.

Appellants never received any written decision from Judge Clark.

January 30, 2015(RP-1/30/2015 page 11 line 12-25). (CP-97).

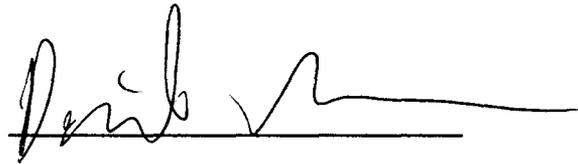
- We never received anything anytime I wanted to show her proof she always said I don't need to see them, how can you judge clearly and by law if you don't want to see any proof. (RP-1/30/2015 page 11 12-25).
- February 13, 2015 came and went and never received a written order from Judge Clark not even til this day did we receive the decision from Judge Clark.

J. CONCLUSION

Mr. Scisciani states that the Paunescus Petition for Review should be denied. The Paunescus object to this because as a letter of law Mr. Russon has no Authority to Characterized the loan as Commercial when he didn't do his job and did an illegally foreclosure. The law states that either someone does a foreclosure or get a judgment against someone but nowhere does it state to do an illegally foreclosure and close down a business and evict someone out of their home illegally based on something you Characterized. We ask The Supreme Court to take in consideration all these points that Respondents Attorneys were trying to hide and keep

aside. And we also ask the court to put an investigation into this case, the Paunescus are aware they still have options ahead and will go as far as needed to show what money from Eckerts and corrupt Attorneys along with Judges do in this day and age. Mr. Scisciani or Mr. Shafton should not be granted Attorney fees until the court investigates this case.

DATED THIS 26TH DAY OF JULY, 2016

A handwritten signature in black ink, appearing to read 'Daniela & Ioan Paunescu', is written over a horizontal line. The signature is fluid and cursive.

PRO SE DANIELA & IOAN PAUNESCU

Certification of Service

I, Daniela Paunescu, the undersigned, declare under the penalty of perjury that

I served a true and correct copy of the above Answer to Russon's Answer for Petition for Review on Respondents' attorneys

Sending FIRST CLASS delivery using USPS.

DATED this 26 day of July, 2016, in Vancouver, Washington,

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