No. 94498-9

THE SUPREME COURT
OF THE STATE OF WASHINGTON

MUFG UNION BANK, N.A., successor-in-interest to the Federal Deposit Insurance Corporation, as the Receiver of Frontier Bank,

Appellant,

v.

RANDY CAMPADORE, a single person; RAYMOND E. PELZEL, and the marital community composed of RAYMOND E. PELZEL and MERRILEE PELZEL; WILLIAM RILEY and ALTHEA RILEY, husband and wife, and the marital community composed thereof,

Respondents.

ANSWER OF APPELLANT MUFG UNION BANK, N.A., TO RESPONDENT RANDY CAMPADORE'S PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

This Answer is from Appellant MUFG Union Bank, N.A. ("Union Bank").

II. CITATION TO COURT OF APPEALS DECISION

Respondent Randy Campadore ("Respondent") has filed a Petition for Review ("Petition") of the unpublished decision of Division II of the Court of Appeals in *MUFG Union Bank, N.A., v. Campadore*, Court of Appeals No. 47755-6, 198 Wn. App. 1006, 2017 WL 943471 (2017).

III. COUNTERSTATEMENT OF ISSUES PRESENTED FOR REVIEW

Respondent says that his "petition for review concerns issues of substantial public interest and questions of constitutional law." Petition at 4. RAP 13.4(b)(4) provides that a "petition for review will be accepted by the Supreme Court only . . . [i]f it involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(3) provides that a "petition for review will be accepted by the Supreme Court only . . . [i]f a significant question of law under the Constitution of the State of Washington or of the United States is involved."

The issues that he raises in his Petition are (1) whether the Deed of Trust Act ("DTA") supersedes the Receivership Act ("RA") to prevent a deficiency from arising when a receiver conducts a judicial sale, and (2) whether the RA provides for sufficient notice for due process purposes.

The real issue is whether the Court of Appeals' decision in *Umpqua Bank v. Shasta Apartments, LLC*, 194 Wn. App. 685, 378 P.3d 585 (June 21, 2016), *review denied*, 186 Wn.2d 1026 (December 7, 2016), controls.

IV. COUNTERSTATEMENT OF STATEMENT OF CASE

Respondent Campadore and the other Respondents are guarantors of indebtedness to Frontier Bank. The note evidencing the indebtedness and the Respondents' guaranties were purchased from the FDIC by Union Bank. The trial court granted summary judgment in favor of Respondent and against Union Bank.

On March 7, 2017, the Court of Appeals reversed because its decision in *Umpqua Bank* "controls the primary question presented—the receivership statute does not preclude a deficiency judgment after receiver's sale." Slip op. at 1.

First, as to whether the DTA supersedes the RA, the Court of Appeals said:

> Campadore further argues that the receivership statute should not be read to allow a creditor to circumvent the protections given to guarantors in nonjudicial foreclosures under the deed of trust act, Chapter 61.24 RCW. Again, we disagree. In *Umpqua Bank*, we addressed the appellants' argument that the receiver's sale was essentially a nonjudicial foreclosure and thus that a deficiency judgment was not allowed. We noted that even under the deed of trust

> act, a deficiency judgment may be brought after a *judicial* foreclosure. And we held that
>
> > because [the bank] did not sell or attempt to foreclose on the property nonjudicially through a trustee's sale, because a receiver's sale is not a foreclosure sale but a judicial sale, and because the Receivership Statute does not preclude deficiency judgments after a receiver's sale of property, [the bank] was entitled to pursue a deficiency judgment.
>
> As in *Umpqua Bank*, Union Bank did not attempt to nonjudicially foreclose on the property and the receiver's sale was a judicial sale. As discussed, we adhere to *Umpqua Bank's* holding that the receivership statute's plain language does not foreclose a deficiency judgment.

Slip op. at 8-9 (citations omitted).

Second, as to due process and notice under the RA, the Court of Appeals said:

> Campadore argues that the Guarantors were not named as parties in the separate receivership action and did not have the opportunity to appear or defend, whereas the guarantor in *Umpqua Bank* was a party to the separate receivership action who elected not to appear in the proceedings. Campadore claims that *Umpqua Bank* is therefore distinguishable. We disagree.
>
> RCW 7.60.190(2) provides that "[a]ny person having a claim against or interest in any estate property or in the receivership

> proceedings may appear in the receivership." And a "party in interest has a right to be heard with respect to all matters affecting the person, whether or not the person is joined as a party to the action." RCW 7.60.190(2). RCW 7.60.260(2)(ii) states that the superior court "may order" a receiver's sale free and clear of liens and rights of redemption, whether or not the sale proceeds will satisfy all claims, unless the property owner or a creditor with an interest in the property files an opposition.
>
> The premise of Campadore's alleged distinction—that the Guarantors could not appear or defend in the receivership action—fails because the Guarantors were interested parties with the right to appear and be heard. *See* RCW 7.60.190(2). Further, the Guarantors had the opportunity to appear and defend, and at least one of them actually participated in the sale authorization hearing. When the receiver moved to authorize the property's sale, William Riley filed an objection to the sale price as "one of the owners and guarantors of Voight Creek." CP at 199. The superior court considered and was unpersuaded by this objection.
>
> Because Campadore is incorrect that the Guarantors lacked the opportunity to appear or defend, this asserted reason for distinguishing *Umpqua Bank* fails.

Slip op. at 10-11.[1]

[1] The objection to the receiver's sale was, in fact, filed by Respondent Campadore's attorneys, Foster Pepper PLLC. CP at 199.

Further, the Court of Appeals in footnote 5 said:

> Campadore briefly argues that the Guarantors could not participate in the receivership proceedings because only a property owner or creditor with an interest in the property can object to a receiver's sale. Campadore is incorrect. RCW 7.60.260(2)(ii) provides that a superior court "may" authorize a sale free and clear of liens and rights of redemption "unless" the property owner or an interested creditor objects. RCW 7.60.260(2). The exception does not say that *only* the property owner or an interested creditor may object.

Slip op. at 11.

And, in footnote 6, the Court of Appeals said:

> At oral argument, Campadore claimed for the first time that due to lack of notice of the superior court's approval of the receiver's sale, his due process right under article I, section 3 of the Washington Constitution had been denied. Wash. Court of Appeals oral argument, *MUFG Union Bank v. Campadore*, No. 47755–6–II (Dec. 15, 2016), at 15 min., 56 sec. to 16 min., 10 sec. (on file with court). We decline to consider Campadore's constitutional due process argument, which was not addressed in his briefing.

Slip op. at 12 (citations omitted).

V. ARGUMENT

A. The Petition Does Not Involve an Issue of Substantial Public Interest

The decision of the Court of Appeals simply applies the law set forth in *Umpqua Bank*, a case where the Supreme Court had already denied a petition for review, to the facts of this case. It does not have sweeping implications, create confusion, impact a significant segment of the population, or affect virtually all similar proceedings.

This case is unlike *State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005). Review was granted there under RAP 13.4(b)(4) because the case "present[ed] a prime example of an issue of substantial public interest." 155 Wn.2d at 577. A prosecuting attorney distributed a memorandum to all county judges announcing a general policy that the prosecuting attorney would follow regarding recommendations for drug offender sentencing. The Court of Appeals held that the memorandum was an *ex parte* communication by a public official and, as a result, the decision that had sweeping implications and broad application.

The Supreme Court discussed the factors it considered to decide that the decision by the Court of Appeals raised an issue under RAP 13(4)(b)(4) of substantial public interest that needed to be determined by the Supreme Court:

- The decision had the potential to affect every similar proceeding;
- It invited unnecessary litigation;
- It created confusion generally;
- It had the potential to chill policy decisions taken by attorneys and judges;
- It immediately affected a significant segment of the population;
- It presented a question of a public nature that was likely to recur;
- It was desirable to provide an authoritative determination for future guidance of public officials.

155 Wn.2d at 577-578.

None of the factors are present here. The Court of Appeals decision is not confusing, will not create unnecessary litigation, and does not affect a significant segment of the population or virtually all cases by lenders against guarantors.

B. The Petition Does Not Involve a Significant Question of Law Under the Constitution of the State of Washington or of the United States

There is no significant constitutional question because there are no facts to show a due process issue about notice of the Receivership. Each

guarantor (including Respondent) received notice, had actual knowledge of and participated in the Receivership. The order appointing the general receiver was an "Agreed Order" and, when it was amended, the two orders of amendment were signed by guarantors themselves in their own handwriting. CP 561-566. They were given written notice of the pendency of the receivership in accordance with RCW 70.60.210. CP 485, 487, 490, 491-521, 523-556. After the Receivership was commenced, guarantors communicated with Receiver and actually met with Receiver at the Property itself. CP 370. Notice of the Sale Motion was served on guarantors, and a written Objection to the motion was filed by the attorneys for Respondent Campadore. CP 199-212, 372.

This is unlike *State v. Halstien*, 122 Wn.2d 109, 115, 857 P.2d 270 (1993), where a convicted juvenile's petition for review was granted under RAP 13.4(b)(3) to review a newly enacted statute challenged in the Court of Appeals below as unconstitutionally vague and overbroad. There, the juvenile's sentence was enhanced pursuant to the new statute that permitted a prosecutor to add a special allegation of sexual motivation in criminal cases other that sex offenses. 122 Wn.2d at 115-117. In contrast, the RA is not new. It was enacted 13 years ago in 2004 and it has comprehensive notice provisions. Respondent and all other Guarantors received actual and

constructive notice as required by the RA, so they have no basis to raise a constitutional due process issue.

Finally, Respondent did not raise this constitutional issue in his briefing to the Court of Appeals and concedes that, "[a]s it relates to this case, the issue is not dispositive. . . ." Petition at 5.

VI. REQUEST FOR ATTORNEYS' FEES

Union Bank requests its attorneys' fees in connection with its Answer to Respondent Randy Campadore's Petition for Review. The note and each guaranty includes an attorneys' fee clause permitting Union Bank to recover all costs and fees of the enforcement of the note and each guaranty, and this includes costs and fees on appeal. CP 95, 99, 101, 103, 105, 106, 125, 129, 133, 137, 141. *Marine Enters. v. Sec. Pac. Trading Corp.*, 50 Wn. App. 768, 750 P.2d 1290, *review denied*, 111 Wn.2d 1013 (1988).

VII. CONCLUSION

Union Bank asks the Supreme Court to deny the Petition.

RESPECTFULLY SUBMITTED this 14th day of June, 2017.

FOX ROTHSCHILD LLP

By _____
Joseph E. Shickich, Jr., WSBA #8751
Attorneys for Respondent MUFG Union Bank, N.A.

CERTIFICATE OF SERVICE

I, Cynthia Concannon, certify that:

1. I am an employee of Fox Rothschild LLP, attorneys for Respondent MUFG Union Bank, N.A., in this matter. I am over 18 years of age, not a party hereto, and competent to testify if called upon.

2. On June 14, 2017, I served a true and correct copy of the foregoing document on the following party, attorney for Appellant, via email and U.S. Mail as follows:

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

SIGNED at Seattle, Washington, this 14th day of June, 2017.

Cynthia Concannon

Cynthia Concannon