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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

DUNCAN K ROBERTSON,

Plaintiff,

v.

GMAC MORTGAGE LLC, et al.,

Defendants.

CASE NO. C12-2017-MJP

ORDER DENYING MOTION TO  
CERTIFY QUESTIONS

This matter comes before the Court on Plaintiff’s motion to certify three questions to the Washington Supreme Court. (Dkt. Nos 159, 161.)<sup>1</sup> Having reviewed the motion, the responses (Dkt. Nos. 172-73, 175), the replies (Dkt. Nos. 178-79), and all related papers, the Court DENIES the motion.

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<sup>1</sup> These documents were filed separately, but appear to be identical in content and seek the same relief. The Court considers these two documents a single motion.

1 **Discussion**

2 Following this Court’s orders dismissing nearly all of the Defendants from this case, and  
3 denying Plaintiff’s motion to vacate those prior orders, Plaintiff asks the Court to certify three  
4 questions to the Washington Supreme Court:

- 5 1. Does a property owner (homeowner), not a party to the deed of trust, have  
6 standing to challenge a wrongful foreclosure of their property under the  
7 Washington Deed of Trust Act, RCW 61.24 et seq. (DTA), including seeking  
8 compensation for injury to property and damages which may have resulted  
9 from unlawful foreclosure procedures when a sale based upon the deed of  
10 trust has been discontinued?  
11 2. Does a party purchasing at a second-deed-of-trust trustee’s sale succeed to the  
12 rights of the “grantor” of a prior deed of trust, under RCW 61.24.005(7)?  
13 3. May a property owner asserting the strength of their own title bring an action  
14 to quiet title under RCW 7.28 et seq. to remove an invalid instrument clouding  
15 their title and preventing property use, under the principles affirmed in  
16 Robinson v. Khan, 89 Wn. App. 418, 948 P.2d 1347 (App. Ct. 1988)?

17 (Dkt. No. 161 at 6.)

18 A question may be certified to the Washington Supreme Court when “in the opinion of  
19 any federal court before whom a proceeding is pending, it is necessary to ascertain the local law  
20 of this state ... and the local law has not been clearly determined[.]” RCW 2.60.020. The  
21 certification process is intended to “build a cooperative judicial federalism” and serve the  
22 interests of judicial efficiency and comity. Lehman Bros. v. Schein, 416 U.S. 386, 391 (1974).  
23 There is a presumption against certifying a question to a state supreme court after the federal  
24 district court has issued a decision. Thompson v. Paul, 547 F.3d 1055, 1065 (9<sup>th</sup> Cir. 2008). A  
party should not be allowed “a second chance at victory” through certification by the appeals  
court after an adverse district court ruling. In re Complaint of McLinn, 744 F.2d 677, 681 (9<sup>th</sup>  
Cir. 1984). See also Perkins v. Clark Equip. Co., Melrose Div., 823 F.2d 207, 209–10 (8<sup>th</sup> Cir.

1 1987) (noting that request for certification was not made “until after the motion for summary  
2 judgment had been decided against them,” and stating that this “practice ... should be  
3 discouraged. Otherwise, the initial federal court decision will be nothing but a gamble with  
4 certification sought only after an adverse ruling.”).

5 The Court DENIES the motion for two reasons. First, Plaintiff’s request comes only after  
6 adverse rulings on the very questions he now wants the Washington Supreme Court to address.  
7 Yet Plaintiff fails to identify a “particularly compelling reason” to certify questions following  
8 these adverse rulings. He argues the same reasons that prompted this Court to certify questions  
9 in Frias v. Asset Forfeiture Servs., Inc., Case No. C13–0760–MJP, Dkt. No. 48 at 3 (W.D.Wash.  
10 Sept. 25, 2013), should apply here. Plaintiff’s case differs from Frias in meaningful ways. This  
11 Court certified questions in Frias only after an intermediate state appellate court reached a  
12 contrary result. (Id.) In contrast, the law regarding Plaintiff’s claims is not uncertain.

13 Second, the questions are unnecessary for the Court to dispose of these proceedings. The  
14 first two proposed questions address Plaintiff’s standing and remedies under the Deed of Trust  
15 Act (“DTA”). He claims to be entitled to relief under those provisions applying to a “grantor.”  
16 The Court has already ruled that Plaintiff lacks standing to sue under the DTA for pre-  
17 foreclosure irregularities because he does not meet any of the criteria to be a “grantor” under that  
18 statute. There is no uncertainty in Washington law on the issues raised by Plaintiff. Because this  
19 pivotal legal issue has already been decided and nearly all the Defendants dismissed from this  
20 case, there is also no reason to certify questions to the Washington Supreme Court.

21 Plaintiff also seeks to certify a question regarding his quiet title claim. The Court  
22 also DENIES this request. The Court has already ruled on the merits of Plaintiff’s claim,  
23 finding Defendants do not claim an ownership interest in the property and the quiet title  
24

1 claim fails as a matter of law. Nor is certification required under Robinson v. Khan, 89  
2 Wn. App. 418 (1988). In Robinson, the Washington Court of Appeals was asked whether  
3 title to property was clouded by a recorded agreement providing that upon the sale of the  
4 property, the defendants were entitled to 15 percent of the net proceeds of the sale. In  
5 that case, the court held that because a buyer would prefer to purchase without it, and  
6 because the recording had the potential to stand in the way of plaintiffs' exercise of their  
7 ownership rights. Unlike that case, the Court granted summary judgment in favor of  
8 Defendants because Plaintiff lacks a viable theory to assert a claim for quiet title. (See  
9 Dkt. No. 149.) Because Court has already addressed the merits of his claims and  
10 certification will not assist in the disposition of these proceedings, the Court DENIES the  
11 motion.

### 12 **Conclusion**

13 The Court DENIES the motion (Dkt. Nos. 159, 161) because: (1) the Court has already  
14 ruled on the merits of Plaintiff's claims; (2) he fails to overcome the presumption against  
15 certification where the Court has issued adverse rulings; and (3) certification will not assist in the  
16 disposition of these proceedings.

17 The Clerk is ordered to provide copies of this order to all counsel.

18 Dated this 23rd day of May, 2014.

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21 Marsha J. Pechman  
22 Chief United States District Judge  
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