

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

SUSAN KRUSEE, an individual,  
Plaintiffs,  
vs.  
BANK OF AMERICA, N.A., THE BANK  
OF NEW YORK MELLON, FKA THE  
BANK OF NEW YORK, AS TRUSTEE  
FOR THE CERTIFICATE HOLDERS OF  
THE CWALT INC. ALTERNATIVE  
LOAN TRUST 2006-29T1, AND BISHOP,  
WHITE, MARSHALL & WEIBEL  
Defendants.

Case No. C13-824 RSM  
ORDER DEFERING MOTION FOR  
RECONSIDERATION AND STAYING  
CASE

This matter comes before the Court on Plaintiff’s Motion for Reconsideration (Dkt. # 24). Plaintiff requests that the Court reconsider dismissal of her first cause of action for breach of the Washington Deed of Trust Act (“DTA”). *See* Dkt. # 22. Previously, the Court dismissed that cause of action for failure to state a claim on the basis that a borrower has no cause of action for the initiation of wrongful foreclosure under the DTA until a trustee’s sale of the property has occurred. *Id.* at p. 4. Plaintiff now brings to the Court’s attention new authority issued by Division I of the Washington State Court of Appeals. In *Walker v. Quality Loan Serv. Corp.*, 308 P.3d 716 (Wash. Ct. App. Aug 5, 2013), the court held that

1 a borrower has an actionable claim against a trustee who, by acting  
2 without lawful authority or in material violation of the DTA, injures the  
3 borrower, even if no foreclosure sale occurred. Additionally, where a  
4 beneficiary, lawful or otherwise, so controls the trustee so as to make the  
trustee a mere agent of the beneficiary, then, as principal, it may have  
vicarious liability.

5 *Id.* at 724. Because *Walker* rejected the position taken by this Court in foreclosure actions,  
6 Plaintiff seeks reinstatement of her dismissed DTA claim. Although *Walker* is not controlling  
7 authority as federal courts sitting in diversity are bound only by the state’s highest court (*In re*  
8 *Kirkland*, 915 F.3d 1236, 1238-39 (9th Cir. 1990)), this Court has since certified two questions  
9 to the Washington Supreme Court for its consideration. The Court posed whether (1) “[u]nder  
10 Washington law, may a plaintiff state a claim for damages relating to a breach of duties under  
11 the Washington Deed of Trust Act and/or failure to adhere to the statutory requirements of the  
12 Deed of Trust Act in the absence of a completed trustee’s sale of real property,” and (2) “[i]f a  
13 plaintiff may state a claim for damages prior to a trustee sale of real property, what principles  
14 govern his or her claim under the Consumer Protection Act and the Deed of Trust Act?” Order  
15 Certifying Questions to the Washington Supreme Court (Dkt. # 48), *Frias v. Asset*  
16 *Foreclosures Serv. Inc.*, Case No. C13-760-MJP (W.D. Wash. Sept. 25, 2013).

17  
18  
19 In light of the Order Certifying Questions to the Washington Supreme Court, the Court  
20 finds it appropriate to defer ruling on Plaintiff’s motion for reconsideration and stay this action  
21 until after the Washington Supreme Court has provided additional guidance. Accordingly, the  
22 case is hereby STAYED pending resolution of the certified questions.

23 Dated this 13<sup>th</sup> day of November 2013.

24  
25 

26 RICARDO S. MARTINEZ  
27 UNITED STATES DISTRICT JUDGE