IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DANIEL SZMANIA, Appellant. v. COUNTRYWIDE HOMES LOANS, INC., Respondent.	No. 39763-3-II UNPUBLISHED OPINION

Van Deren, J. — Daniel Szmania appeals pro se the trial court's denial of his summary judgment motion and its order granting summary judgment to Countrywide Home Loans, Inc. in their dispute over Szmania's residential mortgage loan.[1] Szmania contends that (1) Countrywide

[1] Szmania's notice of appeal expressly seeks review of the trial court's (1) denial of his motion for summary judgment for damages under the Real Estate Settlement Procedures Act of 1974, 12 U.S.C. § 2601; (2) award of attorney fees to Countrywide under RCW 4.28.328(2), the lis pendens statute; and (3) denial of his motion to reconsider the denial of his summary judgment motion to discharge his debt to Countrywide. Szmania submitted copies of the orders granting relief to Countrywide and some trial clerk's minutes with his notice of appeal. He attached the trial court's (1) February 3, 2009, letter indicating its ruling on the parties' cross motions for summary judgment, (2) February 27, 2009, order granting partial summary judgment to Countrywide, (3) January 23, 2009, order granting Countrywide's motion to cancel Szmania's lis pendens, (4) February 27, 2009, order denying Szmania's motion for reconsideration of the trial court's order awarding Countrywide attorney fees and removing the lis pendens, (5) July 9, 2009, final judgment ordering Szmania to pay $4,000 in attorney fees to Countrywide, (6) February 27, 2009, order denying Szmania's motion to vacate the deed of trust and his motion to discharge his debt, (7) July 9, 2009, order denying Szmania's motions for summary judgment and granting Countrywide's motions for summary judgment, and (8) August 14, 2009, order denying

is liable to him for the amount that his available credit decreased due to Countrywide's reporting to credit agencies that he was behind on his monthly mortgage payments, (2) the trial court erred in removing his lis pendens and awarding attorney fees to Countrywide under the lis pendens statute, and (3) his outstanding debt owed to Countrywide should be discharged and vacated because the parties "have no loan agreement." Br. of Appellant at 20. We affirm.

FACTS

On November 3, 2006, Szmania obtained a residential mortgage loan for $787,500.00 from E-Loan, Inc. The loan was secured by a deed of trust against his real property in Brush Prairie, Washington. The deed of trust stated, "Any forbearance by Lender in exercising any right or remedy including, without limitation, Lender's acceptance of payments . . . in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy." Clerk's Papers (CP) at 64. Interest on the loan was 6.25 percent per annum until November 30, 2013; thereafter, the interest rate would adjust annually. The first monthly payment, due January 1, 2007, was $4,101.56, plus $785.54 for taxes and insurance.

On January 19, 2007, Countrywide purchased the loan from E-Loan; this purchase included the adjustable rate note, the deed of trust, and the right to service the loan. Countrywide

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Szmania's motion for reconsideration. Even though Szmania's notice of appeal does not explicitly appeal the attached orders, we may use our discretion to disregard technical defects in the notice of appeal "if the notice clearly reflects an intent by a party to seek review." RAP 5.3(f). Here, Szmania's notice and attached orders reflect his intent to seek review of the trial court's substantive orders. *See* RAP 5.3(f); *S&K Motors, Inc. v. Harco Nat'l Ins. Co.*, 151 Wn. App. 633, 638-39, 213 P.3d 630 (2009). Thus, we treat his argument as though it pertains to the documents attached to the notice of appeal, as well as those expressly listed in the notice of appeal. To the extent Szmania may have intended to assert other grounds of appeal, we do not address them due to his failure to cite legal authority or to state other issues in a manner allowing us to discern them.

subsequently pooled and securitized the loan, thus passing title to the loan to EMC Mortgage Corporation trust, but Countrywide retained the servicing rights.

On June 11, 2008, Szmania both called and sent a letter to Countrywide requesting a loan modification based on economic hardship. Specifically, Szmania requested that Countrywide agree to reduce the interest rate on the loan from 6.25 percent to 3 or 3.25 percent.

On July 7, Szmania sent Countrywide another letter requesting that the loan be modified. Szmania enclosed a check for $2664.16 as his monthly loan payment in accordance with his proposed loan modification that reduced the interest to 3 percent per annum.[2] Szmania's letter stated that

> BY CASHING AND ACCEPTING THIS CHECK, COUNTRY WIDE FI[]ANANCIAL, COUNTRYWIDE HOME LOANS, IT[]S AFFIL[I]ATES AND PARTNER[]S AND SUBSID[I]AR[IE]S AND BANK OF AMERICA, ACCEPT NEW TERMS OF THE ABOVE NOTED LOAN AT 3%, INTEREST ONLY; WITH NO PREPAY PENALTIES FOR THE REMAINDER OF THE LIFE OF THIS LOAN OF 28 YEARS, 6 MONTHS. THESE NEW TERMS ARE EFFECTIVE FROM THE DATE OF: 6 JUNE 2008 (DATE OF LAST PAYMENT RECEIVED.) THESE NEW TERMS ARE LEGAL AND BINDING AND AGREED UPON BY ALL ABOVE MENTION[ED] PARTIES.

CP at 13. Additionally, Szmania attempted to enforce his unilateral loan modification by typing "Cashing this check is an acceptance of a 3% loan" on the front of the check and "Cashing & accepting this check is Countrywide's agreement & acceptance of 3% interest only with no [prepayment penalties] on loan #155820689, for 28 years & 6 months" on the back of the check.

[2] Szmania explained that the $740,000.00 balance of the loan at 3 percent interest equaled $22,200.00 in annual interest. He then divided the $22,200.00 annual interest by 12 months to determine the amount of interest he owed each month, which equaled $1850.00. Next he added the monthly tax and interest payments of $811.16 to the $1850.00. This resulted in a total monthly payment of $2661.16. He also added $3.00 because Countrywide would receive the payment between July 7, 2008, and July 11, 2008.

CP at 15-16. Countrywide cashed the check. Szmania continued to send Countrywide monthly payments that reflected his proposed loan modification reducing the interest rate to 3 percent. Countrywide disputed Szmania's attempted loan modification, thus Countrywide began calculating a past due balance and late charges.

On August 20, Szmania e-mailed Countrywide, claiming that a Countrywide employee named Ashley Harrison[3] informed him on June 10 that a specialist would contact him within 30 days to answer his proposed loan modification request. Subsequent written and telephonic communication showed an ongoing dispute over whether Countrywide had accepted Szmania's proposed loan modification. On September 4, Countrywide sent Szmania a letter pointing out that, when Szmania submitted the proposed loan modification that Countrywide received on July 11, Szmania "agreed that the applicable interest rate for [his] loan was 6.25% per annum and that [his] loan was current. In short, [Szmania] did not dispute the amount due and owing and did not dispute" the applicable interest rate. CP at 142. Countrywide made it clear that it had not accepted Szmania's proposed loan modification and that his "attempt to work an accord and satisfaction must fail because there was no underlying disagreement about the sums actually due and owing under the law." CP at 142.

On September 9, Szmania insisted in another letter that a loan modification occurred and that he would not pay any late fees. In correspondence on November 12, Countrywide repeated that it had not accepted his proposed loan modification. Countrywide also provided an approved loan modification agreement for Szmania to review, sign, and mail back if he accepted Countrywide's proposed loan modification terms. Szmania did not accept Countrywide's

[3] Countrywide disputes that they have employed anyone by the name of Ashley Harrison.

proposal.

On November 11, Swift Financial, one of Szmania's creditors, informed him that his account had been suspended due to unfavorable credit activity. The next day, Szmania filed a pro se[4] complaint against Countrywide, along with a motion for a temporary restraining order (TRO) and a motion for summary judgment. Szmania asked that the trial court (1) restrain Countrywide "from any and all foreclosure proceedings" in Washington, (2) have Washington's Attorney General's office review all foreclosures that occurred in Washington in the past 24 months, and (3) restrain Countrywide from securing new loans in Washington for 24 months.[5] CP at 316. Szmania's summary judgment motion asserted that Countrywide agreed to his proposed loan modification.

On November 14, Szmania sent Countrywide a proposed loan modification agreement "finalizing those terms [C]ountrywide has already accepted" and stating that, after "receiving an accepted, certified copy" he would "cancel said civil action." CP at 92. On December 8, Szmania filed a notice of lis pendens against his property and again requested a TRO preventing Countrywide "from any and all foreclosures and securing new loans for two full years, due to its deceptive business practices," as well as "damages in the amount of $1,244,300.00 for falsely reporting to credit agencies and ruining [hi]s credit." CP at 36. Bank of America subsequently informed Szmania that it had reassigned his credit line because of a delinquency with one of his creditors.

[4] Szmania has represented himself pro se in all stages of litigation with Countrywide.

[5] The clerk's papers also contain a motion requesting damages in the amount of Szmania's lost available credit. But this motion does not have a file date and thus, may not have been filed with the trial court.

Countrywide filed a motion to dismiss or for summary judgment, asserting that Szmania's "claims [were] based entirely on [his] theory that Countrywide agreed to a modification of [his] loan (on the terms requested by [him]) by negotiating the monthly payment checks sent by [Szmania] on and after July 7, 2008, the date of [his] letter proposing a modification of the loan." CP at 96. Countrywide stated that it had a legal right to accept partial payments from Szmania and that it had repeatedly informed Szmania that it had not accepted his proposed modification. In addition, Countrywide argued that Szmania's claim that "he has a binding loan modification agreement with Countrywide also fails because any such agreement would be void under Washington's Statute of Frauds." CP at 97. Moreover, because there was no binding modification agreement, Countrywide could not be liable for damages as it acted properly in reporting Szmania's payment history to credit agencies. Countrywide also asked Szmania to "stipulate to the cancellation of the Lis Pendens" because "the referenced matter does not affect title to real property." CP at 251.

Szmania filed an amended complaint claiming, *inter alia*, that (1) Countrywide breached its contract and his proposed modification should be enforced and (2) Countrywide violated the Real Estate Settlement Procedures Act of 1974 (RESPA), 12 U.S.C. § 2601, by reporting his overdue payment history to credit agencies and, as a result, his damages were $1,244,300, the amount of his formerly available credit. In the alternative, Szmania pleaded that (1) there was no loan agreement, (2) he was entitled to clear title to his property, (3) his debt with Countrywide should be discharged, (4) Countrywide should return all payments he made, (5) he should be awarded attorney fees and costs, and (6) Countrywide owed him damages equal to his lost credit and damages under RESPA.

Countrywide filed a motion to cancel Szmania's notice of lis pendens on the real property, arguing that the mortgage loan dispute did not affect title and thus, the lis pendens was not warranted and Countrywide was entitled to reasonable attorney fees. Szmania's opposition to Countrywide's motion to remove the notice of lis pendens was based on his belief that Countrywide did not have a legal right to address the lis pendens because Countrywide was not listed on the deed to his property.

The trial court granted Countrywide's motion to remove Szmania's notice of lis pendens and awarded Countrywide attorney fees. It also denied Szmania's motion for a TRO.

On both January 30 and February 2, 2009, it appears that Szmania filed the same motion for reconsideration and for amendment of his summary judgment motion, asking the trial court to find "that the parties have a 3% interest only loan, effective 6 June 2008."[6] CP at 387, 395. On February 3, the trial court informed the parties by letter that it would grant Countrywide's summary judgment motion on all issues. Szmania then filed four motions, asking the trial court to (1) reconsider summary judgment to Countrywide on his request for RESPA damages, stating that the trial court erred in relying on 24 CFR 3500.21(e)(2)(ii) because it "is a total different document than RESPA" and is "the wrong part of the law," CP at 211; (2) discharge his debt to Countrywide because he had "never signed" any loan documents with Countrywide, CP at 220; (3) reconsider removal of the lis pendens and to reverse its attorney fees award arising from the lis pendens, and (4) vacate the deed of trust.

On February 27, the trial court entered its orders on the pending matters. It (1) partially

[6] On February 18, Szmania again filed a similar motion for reconsideration and amendment of summary judgment that he had previously filed on January 30 and February 2.

granted Countrywide's motion for summary judgment, dismissing with prejudice Szmania's claims that the loan modification occurred, that his loan account was current, and that he should not pay late fees; (2) denied Szmania's request for a TRO; (3) denied Szmania's request for damages under RESPA due to the loss in the value of his credit; (4) denied Szmania's request that he not be ordered to pay Countrywide attorney fees or costs; (5) denied Szmania's motion for reconsideration of its ruling on attorney fees and removal of the lis pendens and granted Countrywide attorney fees in the amount of $4,000; (6) denied Szmania's motion for reconsideration of its ruling on Szmania's motion for damages; and (8) denied Szmania's motion to vacate the deed of trust and his motion to discharge his debt to Countrywide, as it was not properly before the trial court; but the trial court noted that either party could address these issues in a motion under CR 56.

Subsequently, Szmania filed a summary judgment motion requesting that the debt he owed Countrywide be discharged, arguing again that there was no agreement between the parties. Countrywide filed a summary judgment motion requesting dismissal of all Szmania's remaining claims and causes of action.

The trial court (1) denied Szmania's request that it vacate the deed of trust and that it discharge his debt to Countrywide and (2) granted Countrywide's motion, effectively dismissing all of Szmania's claims. The trial court also entered the final judgment on the attorney fees award previously granted. Szmania appeals.[7]

[7] Szmania submitted multiple documents, attached to his initial appellate brief, that were not designated as part of the record on appeal. Under RAP 10.3(a)(8), "An appendix may not include materials not contained in the record on review without permission from the appellate court." Because Szmania did not obtain the requisite permission, we do not consider them. *See Harbison v. Garden Valley Outfitters, Inc.*, 69 Wn. App. 590, 594-95, 849 P.2d 669 (1993).

ANALYSIS

I. Standard of Review

Szmania appears to appeal both the original summary judgment ruling by the trial court, as well as the trial court's denial of his reconsideration motions on (1) his summary judgment motion for damages under RESPA, (2) his motion to quash Countrywide's motion to cancel lis pendens, and (3) his motion for summary judgment to discharge his debt to Countrywide.

A. Summary Judgment

We review an order of summary judgment de novo, performing the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). We consider "the facts and the inferences from the facts in a light most favorable to the nonmoving party." *Jones*, 146 Wn.2d at 300.

Summary judgment is appropriate where "the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." *Jones*, 146 Wn.2d at 300-01; CR 56(c). "A material fact is one upon which the outcome of the litigation depends." *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963). The initial burden is on the moving party to show there is no issue of material fact. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). If the moving party meets this initial burden, then "[t]he nonmoving party must set forth specific facts showing a genuine issue of material fact and cannot rest on mere allegations." *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989); CR 56(e).

B. Motion for Reconsideration

"Motions for reconsideration are addressed to the sound discretion of the trial court and a

reviewing court will not reverse a trial court's ruling absent a showing of manifest abuse of discretion." *Wilcox v. Lexington Eye Inst.*, 130 Wn. App. 234, 241, 122 P.3d 729 (2005). An abuse of discretion exists only if no reasonable person would have taken the view adopted by the trial court, the trial court applied the wrong legal standard, or it relied on unsupported facts. *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 668-69, 230 P.3d 583 (2010).

In asking the trial court to reconsider its ruling, the litigant must "identify the specific reasons in fact and law as to each ground on which the motion is based." CR 59(b). "Under CR 59(a)(4), reconsideration is warranted if the moving party presents new and material evidence that it could not have discovered and produced" previously. *Wagner Dev., Inc. v. Fid. & Deposit Co. of Md.*, 95 Wn. App. 896, 906, 977 P.2d 639 (1999). If the evidence was available but not offered until after the opportunity passed, the party is not entitled to submit the evidence. *Wagner Dev.*, 95 Wn. App. at 907.

II. RESPA Damages

Szmania's pro se notice of appeal[8] states that he seeks review of the trial court's order denying his "SUMMARY JUDGM[E]NT: PLAINTIFF RESPA DAMAGES MOTION FOR SUMMARY JUDGMENT" entered on February 3, 2009. CP at 652. We are unable to locate an order entered on February 3, 2009, and can only assume that Szmania is appealing the trial court's February 27, 2009, order granting Countrywide's summary judgment motion and disposing of Szmania's RESPA damages claim. Szmania may also be appealing the trial court's denial of his motion for reconsideration of his motion for RESPA damages.

[8] Szmania, as a pro se litigant, is held to the same standard as an attorney and must comply with all procedural rules on appeal. *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997); *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993).

Szmania appears to argue that Countrywide violated 12 U.S.C. § 2605(e)(3)[9] by reporting the delinquency on his account to credit agencies within 60 days of receiving a qualified written request (QWR) from him. Additionally, Szmania states that the trial court "erred and referenced the wrong law in its ruling" when it cited 24 C.F.R. § 3500.21(e)(2)(ii) rather than 12 U.S.C. § 2605(e)(3). Under 44 U.S.C. § 1507, the Code of Federal Regulations (C.F.R.) is required to be judicially noticed. *See Cresap v. Pac. Inland Nav. Co.*, 2 Wn. App. 548, 553-55, 469 P.2d 950 (1970); *Hsuan Wei v. Robinson*, 246 F.2d 739, 743 (7th Cir. 1957) (C.F.R. and the Federal Register are required to be judicially noticed); *Kempe v. United States*, 151 F.2d 680, 684 (8th Cir. 1945). In addition, each volume of the C.F.R. contains an explanation of the legal status of the C.F.R., stating that "[t]he contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The [C.F.R]. is prima facie evidence of the text of the original documents (44 U.S.C. 1510)." 24 C.F.R. at v.

Here, the applicable C.F.R. explicitly states that "[a] written request does not constitute a qualified written request if it is delivered to a servicer more than 1 year after . . . the date of transfer of servicing." 24 C.F.R. § 3500.21(e)(2)(ii). The transfer of servicing from E-loan to Countrywide occurred on February 1, 2007. Szmania's first letter to Countrywide requesting a loan modification was dated June 11, 2008. Thus, Szmania's first potential QWR occurred almost 19 months after the transfer, well outside of the one year timeframe for it to qualify as a QWR. Szmania's opportunity to submit a QWR expired on January 31, 2008, one year after the

[9] 12 U.S.C. § 2605(e)(3) states:

> During the 60-day period beginning on the date of the servicer's receipt from any borrower of a qualified written request relating to a dispute regarding the borrower's payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency.

servicing transfer to Countrywide. Thus, Szmania's letter requesting the loan modification in June 2008 and all subsequent letters written by Szmania to Countrywide were not QWRs and Countrywide's report of his account status to the credit agencies was not improper.

We affirm the trial court's order granting Countrywide's summary judgment motion that disposed of Szmania's RESPA damages claim because Countrywide is entitled to judgment as a matter of law. Additionally, because Szmania repeated the same arguments already presented to the trial court in his motion for reconsideration without reference to "new and material evidence that [he] could not have discovered and produced" at the hearing on his original motion, we also affirm the trial court's denial of Szmania's motion for reconsideration on the RESPA issue. *Wagner Dev.*, 95 Wn. App. at 906.

III. Lis Pendens and Attorney Fees

Next, Szmania argues that the trial court "erred in denying [his] Motion to Quash Respondent's Motion to Cancel Lis Pendens" and his subsequent motion for reconsideration on the same issue. Br. of Appellant at 1. Specifically, Szmania argues that (1) Countrywide was not an aggrieved party and had no standing to file its motion to quash his lis pendens and (2) he had substantial justification to file the lis pendens thus, making the award of attorney fees to Countrywide improper. Again, Szmania cites no legal authority supporting his proposition that Countrywide was not an aggrieved party, and his reliance on the "substantial justification" language from the statute is misplaced. Countrywide argues that (1) the dispute between the parties did not affect title to real property and thus, lis pendens was not appropriate, (2) Countrywide is an aggrieved party under RCW 4.28.328(1), and (3) the trial court properly awarded attorney fees under RCW 4.28.328(2).

A "[l]is pendens" is any "instrument having the effect of clouding the title to real property." RCW 4.28.328(1)(a). The statute governing the use of a lis pendens provides, "At any time after an action affecting title to real property has been commenced . . . the plaintiff [or] the defendant . . . may file . . . a notice of the pendency of the action." RCW 4.28.320. "The purpose of [filing] a lis pendens is to give notice of pending litigation affecting the title to real property, and to give notice that anyone who subsequently deals with the affected property will be bound by the outcome of the action to the same extent as if he or she were a party to the action." *United Sav. & Loan Bank v. Pallis*, 107 Wn. App. 398, 405, 27 P.3d 629 (2001).

A. Countrywide's Ability To Request Cancellation of the Notice of Lis Pendens

First, Szmania challenges Countrywide's ability to request the trial court to cancel his notice of lis pendens, arguing that Countrywide was not an aggrieved party. We disagree.

RCW 4.28.320 states in part:

> [T]he court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record.

RCW 4.28.328(1)(c) defines an "[a]ggrieved party" as "a person against whom the claimant asserted the cause of action in which the lis pendens was filed." Here, Szmania filed a claim against Countrywide and, under his claims against Countrywide, he filed a notice of lis pendens. Thus, Countrywide is an aggrieved party under the statute and had standing to ask the trial court to remove Szmania's notice of lis pendens from the property's title.

B. Attorney Fees

The trial court awarded Countrywide "reasonable attorney fees pursuant to RCW

4.28.328(2)." CP at 206. RCW 4.28.328(2) states:

> A claimant in an action not affecting the title to real property against which the lis pendens was filed is liable to an aggrieved party who prevails on a motion to cancel the lis pendens, for actual damages caused by filing the lis pendens, and for reasonable attorneys' fees incurred in canceling the lis pendens.

Thus, under RCW 4.28.328(2), if a plaintiff's underlying claim does not affect the title to real property and a lis pendens is later cancelled on the defendant's motion, the plaintiff must pay the defendant's attorney fees and costs. Szmania's filing of the notice of lis pendens was not proper because his underlying claims, which focused on his desire to modify his debt to Countrywide, did not affect title to the property.

Szmania, claiming "substantial justification" for filing the lis pendens, improperly relies on RCW 4.28.328(3), which addresses the award of attorney fees and costs when a claimant has no "substantial justification" for recording the lis pendens. RCW 4.28.328(3) states:

> "Unless the claimant establishes a substantial justification for filing the lis pendens, a claimant is liable to an aggrieved party who prevails in defense of the action in which the lis pendens was filed for actual damages caused by filing the lis pendens, and in the court's discretion, reasonable attorneys' fees and costs incurred in defending the action."

Similarly, Szmania's reliance on *Keystone Land & Development Co. v. Xerox Corp.*, 353 F.3d 1070 (9th Cir. 2003) is misplaced. In *Keystone*, the court found that there was not a substantial justification for the lis pendens filing because the potential contract at issue violated the statute of frauds. 353 F.3d at 1075. The *Keystone* court did not address RCW 4.28.328(2), which is the relevant statute here, making *Keystone* inapplicable.

Because none of the claims in Szmania's amended complaint affect title to real property, the trial court did not err in relying on RCW 4.28.328(2) to award Countrywide reasonable

attorney fees. Szmania's filing of the notice of lis pendens was improper.

Thus, we hold that, because there are no genuine issues of material fact in dispute, the trial court properly cancelled the notice of lis pendens and awarded reasonable attorney fees to Countrywide. Again, because Szmania repeats the same arguments already presented to the trial court in his motion for reconsideration, we also affirm the trial court's denial of Szmania's motion for reconsideration on the lis pendens issue.

IV. Szmania's Motion to Discharge Debt and Vacate Deed

Szmania also argues that the trial court erred in denying his motion for summary judgment to discharge his debt to Countrywide, as well as his motion for reconsideration of the trial court's denial of his motion. Szmania contends that the trial court should have discharged the debt he owes to Countrywide because (1) "[t]here is NO written contract between the [parties]," (2) Countrywide "has never offered any proof or material facts that the said assignment or any transfer of agency truly occurred between E-Loan Inc. and [Countrywide]," and (3) the assignment was never recorded. Br. of Appellant at 18-20. Countrywide argues that (1) the sale and assignment of the loan from E-Loan to Countrywide was valid and (2) Szmania agreed to the sale and assignment of the loan when he signed the deed of trust.

Szmania fails to cite to any legal authority for his argument that his debt should be discharged because there is no written contract between the parties or that the assignment did not occur. RAP 10.3(a)(6) requires Szmania to present argument supporting the issues presented for review, citations to legal authority, and references to relevant parts of the record. Szmania fails to provide legal authority and his argument is not clear. Thus, we do not consider it. *Smith v. King*, 106 Wn.2d 443, 451-52, 722 P.2d 796 (1986).

Additionally, Szmania's reliance on RCW 65.08.070 and RCW 61.16.010 in support of his argument that his debt should be discharged because the assignment was not recorded is misplaced and he fails to articulate how either of these two provisions are relevant. RCW 65.08.070 states:

> A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent

> purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record.

"The purpose of the statute is to make a deed recorded first superior to any unrecorded conveyance of the property unless there is actual knowledge of an unrecorded transfer." *Altabet v. Monroe Methodist Church*, 54 Wn. App. 695, 697, 777 P.2d 544 (1989) (citing *Tacoma Hotel Inc. v. Morrison & Co.*, 193 Wash. 134, 74 P.2d 1003 (1938)); *Hu Hyun Kim v. Lee*, 145 Wn.2d 79, 86, 31 P.3d 665, 43 P.3d 1222 (2001). Additionally, "[t]he recording of a 'conveyance' is notice to subsequent purchasers of the interest which it creates." *Lazov v. Black*, 88 Wn.2d 883, 886, 567 P.2d 233 (1977).

Szmania's lawsuit does not involve a dispute regarding a subsequent land purchase or the recording of that land conveyance and the notice that the recording would provide. Because the dispute between Szmania and Countrywide does not involve a dispute regarding a subsequent purchaser or mortgagee against a holder of an unrecorded interest, his reliance on this statute is misplaced.

RCW 61.16.010 is similarly inapplicable because nowhere in its text does it require an assignee to record an assignment. RCW 61.16.010 states:

> Any person to whom any real estate mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record.

Because the minimal authority cited by Szmania is not applicable to his argument, and we are

unaware of any authority that would support his argument, we affirm the trial court's denial of Szmania's summary judgment motion to discharge his debt and its denial of Szmania's motion for reconsideration.

ATTORNEY FEES

Neither party has requested attorney fees and costs on appeal. As discussed above, we affirm the trial court's grant of attorney fees to Countrywide under the lis pendens statute.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Van Deren, J.

We concur:

Hunt, J.

Worswick, A.C.J.