No. 70140-1-I

90353-1

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

U.S. BANK NATIONAL ASSOCIATION, as trustee of the Banc of America Funding 2007-D, its successors in interest and/or assigns,

Respondents,

v.

BLAIR LA MOTHE,

Petitioner.

PETITION FOR REVIEW

Philip A. Talmadge, WSBA #6973
Sidney Tribe, WSBA #33160
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A. IDENTITY OF PETITIONER

Blair La Mothe asks this Court to accept review of the published Court of Appeals decision terminating review designated in Part B.

B. COURT OF APPEALS DECISION

The Court of Appeals filed its unpublished decision on May 12, 2014. A copy of this decision is in the Appendix pages A-1 through A-6. La Mothe's timely motion for reconsideration was denied on August 13, 2014. A copy of the order denying publication is in the Appendix page B-1.

C. ISSUE PRESENTED FOR REVIEW

Is standing a jurisdictional issue if it is grounded in a particular statute that only permits certain parties to bring an action?

D. STATEMENT OF THE CASE

The recitation of the facts in the Court of Appeals opinion omits some facts relevant to the resolution of this case. La Mothe presents these relevant facts.

La Mothe is the owner of real property located in Kirkland, Washington. CP 46-50. A deed of trust and note were recorded against the property in 2005, naming Wells Fargo Bank, National Association ("Wells Fargo") as the trustee. CP 12-37. Through a series of transactions La Mothe contested below, Wells Fargo claimed that U.S.

Bank became assignee of the note and deed of trust. CP 51, 225-27, 230. This issue was contested at trial and on appeal. CP 84-90; Br. of Appellant at 5-24.

The improperly documented "assignment" of the note and deed of trust arose in the wake of mortgage loan securitization, "robo-signing," bundling, and other questionable bank practices that led to the 2008 recession. *See Bain v. Metro. Mortgage Grp., Inc.*, 175 Wn.2d 83, 118, n.18, 285 P.3d 34 (2012). Officers entrusted with proper documentation often issued assignments without verifying the underlying information, which resulted in incorrect or fraudulent transfers. *Id.* Problems with chains of title for the securitized mortgages are ongoing. *Id.* at 88.

The Court of Appeals stated that La Mothe did not raise the standing issue at trial. Op. at 3. He did raise it, and U.S. Bank admitted that. Br. of Resp't at 16. The arguments about which bank was the proper plaintiff were admittedly confusing and based on various court rules, *see* br. of resp't at 16-18, but the issue was raised.[1]

The Court of Appeals stated that La Mothe did not assign error to the trial court's factual finding that U.S. Bank was the real party in interest. Op. at 5. However, the Court of Appeals did not acknowledge that La Mothe's assignment of error was framed thus: "The Judge of the

Superior Court committed reversible error in *not dismissing the underlying Amended Complaint* because Respondent was not the real party in interest and lacked standing to seek a judicial foreclosure." Br. of Appellant at 1. La Mothe's appeal was predicated on jurisdictional issues that negated standing at the outset of the claim, such that the trial court was not empowered to reach the merits and its order was void, including all of its factual findings. Reply Br. at 2.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED[2]

Review is merited here under RAP 13.4(b)(1) and (2). The Court of Appeals decision is contrary to decisional law on the question of whether standing can sometimes be a jurisdictional requirement, depending on the nature of the standing issue raised, and whether a court can entertain an action brought by an improper party simply because the parties "concede" standing.

(1) This and Other Court of Appeals Opinions Dismiss a Conflicting Opinion from this Court as a "Drive-By" Ruling Not to Be Followed

La Mothe argued that U.S. Bank was not the proper party to bring the foreclosure action. Op. at 3. La Mothe contended that the original

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[1] However, whether La Mothe raised the issue at trial is not dispositive of the issues raised in this petition, as explained infra section E(1).

[2] This Court is fully familiar with the criteria set forth in RAP 13.4(b) governing acceptance of review of a Court of Appeals decision.

lender, Wells Fargo, never properly negotiated or transferred the subject note and deed of trust to U.S. Bank. As such, La Mothe contended the trial court did not have jurisdiction to hear U.S. Bank's complaint. He raised the standing issue at trial, but raised for the first time on appeal that U.S. Bank was not the proper party at trial, but that instead Wells Fargo should have brought the foreclosure action as the only demonstrable holder of the note. He was entitled to do this under RAP 2.5(a)(1).

The Court of Appeals concluded that in Washington, a plaintiff's lack of standing is never a matter of jurisdiction. Op. at 3. The Court cited its own recent ruling in *Trinity Universal Ins. Co. of Kansas v. Ohio Cas. Ins. Co.*, 176 Wn. App. 185, 312 P.3d 976 (2013), *review denied*, 179 Wn.2d 1010 (2014). The Court of Appeals acknowledged that this Court has held that standing is a jurisdictional issue that can be raised for the first time on appeal. Op. at 4, citing *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 146 Wn.2d 207, 212 n.3, 45 P.3d 186, *amended on denial of reconsideration,* 50 P.3d 618 (2002). However, the Court of Appeals disregarded this Court's holding in *Int'l Ass'n of Firefighters,* describing it as a "drive-by jurisdictional ruling" that it would decline to respect. Op. at 4, quoting *Trinity,* 176 Wn. App. at 199 n.7.[3]

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[3] The Court of Appeals did not address its obligation to follow the opinions of this Court, as opposed to its own opinion. *See State v. Gore,* 101 Wn.2d 481, 681 P.2d

There is a plain conflict between Division I of the Court of Appeals and this Court on the issue of standing and when it is a jurisdictional issue, if ever. This Court has repeatedly and recently affirmed that standing is a jurisdictional issue in many circumstances, including the case at bar. Division I acknowledged this conflict, yet followed its own opinion rather than apply this Court's precedent, or distinguish this case from *Int'l Ass'n of Firefighters* and similar authority.

In the opinion that the Court of Appeals expressly disregarded, this Court's holding was explicit, even if it was contained in a footnote. *Int'l Ass'n of Firefighters,* 146 Wn.2d at 212 n.3. Far from being a "drive-by" ruling as Division I has contended, that footnote referred interested persons to the standing analysis conducted by Division III of the Court of Appeals in that case. *Id.* Thus the Court of Appeals incorporated by reference Division III's analysis and holding that "Because standing is a jurisdictional issue, however, it may be raised for the first time in appellate court." *Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports*, 103 Wn. App. 764, 768, 14 P.3d 193 (2000), *aff'd*, 146 Wn.2d 207 (2002) *amended on denial of reconsideration*, 50 P.3d 618 (2002).

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227 (1984) (once the Washington State Supreme Court decides an issue of state law, that interpretation is binding on all lower courts until overruled by the Supreme Court).

This Court reaffirmed the *Int'l Ass'n of Firefighters* principle of standing as jurisdiction in *Lane v. City of Seattle*, 164 Wn.2d 875, 885, 194 P.3d 977 (2008). In *Lane*, a group of ratepayers ("Lane") challenged Seattle Public Utilities' charges for fire hydrant payments. *Id.* at 880-81. Although Lane had dropped the argument on appeal, this Court addressed it. *Id.* at 885. This Court felt compelled to address the standing argument because it considered the matter jurisdictional:

> Seattle challenged Lane's standing to challenge the tax at trial but has dropped the argument here. *However, standing is a matter of our jurisdiction.* Without jurisdiction, we cannot hear a case, even if every party concedes standing.

Id. (emphasis added).

In another standing-as-jurisdictional requirement case, this Court considered whether certain plaintiffs had standing to challenge a tax statute based on the asserted negative impact the statute has on third parties. *High Tide Seafoods v. State*, 106 Wn.2d 695, 701, 725 P.2d 411 (1986). This Court held that the plaintiffs had no standing to challenge the statute on behalf of third parties because they had not alleged "a personal injury fairly traceable to the challenged conduct and likely to be redressed by the requested relief." *Id.* at 702. This Court held, "If a plaintiff lacks standing to bring a suit, courts lack jurisdiction to consider it." *Id.*

The confusion about the jurisdictional nature of standing seems to stem from the fact that Washington courts, unlike federal courts, have no constitutional "case or controversy" constraint. Division I of the Court of Appeals recently overturned its own prior authority regarding standing as a jurisdictional issue, citing article IV, section 6 of the Washington Constitution. *MHM & F, LLC v. Pryor*, 168 Wn. App. 451, 459, 277 P.3d 62 (2012). The Court observed – correctly – that under the Constitution, superior courts are vested with general subject matter jurisdiction over most common law cases by virtue of the constitution, and that power cannot be revoked by the Legislature. *Id.* at 460.

However, the Court ignored that the fact that this Court's analysis has differed in cases that were not common law causes of action enumerated or otherwise implied in article I, section 4. When the Legislature *creates* a cause of action not enumerated in the Constitution, it can limit what persons have standing to bring that action, and thus limit the courts' jurisdiction to hear it. *High Tide Seafoods*, 106 Wn.2d at 701; *Lane,* 164 Wn.2d at 885.

Thus, the principle of jurisdictional standing is properly invoked against plaintiffs when the cause of action asserted is statutorily created and limited to named parties under the statute. *See, e.g., Spokane Airports v. RMA, Inc.*, 149 Wn. App. 930, 942, 206 P.3d 364 (2009), *review denied,*

167 Wn.2d 1017 (2010) ("a court lacks subject matter jurisdiction when a necessary party under a statute is not a party to the action before it"). In such a case, the jurisdictional argument can be raised at any time by either party or by the Court. RAP 2.5(a)(1); *Lane,* 164 Wn.2d at 885.

Despite this Court's pronouncements on the issue, Division I of the Court of Appeals continues to hold that standing is never a jurisdictional issue even when a cause of action is statutory and the Legislature has specified the parties in interest.[4] Op. at 4; *Trinity,* 176 Wn. App. at 199; *Cole v. Harveyland, LLC*, 163 Wn. App. 199, 209, 258 P.3d 70 (2011) (Division I holding that "The statutory eight employee threshold for antidiscrimination claims is a matter of substantive law to be raised at trial, not a prerequisite of subject matter jurisdiction").

Without jurisdiction, a court cannot hear a case. *High Tide Seafoods,* 106 Wn.2d at 702. This is true even if "every party concedes standing." *Id.* The issue of jurisdiction can be raised at any time in a case, even for the first time on appeal. RAP 2.5(a)(1).

Thus, Division I's opinion conflicts with opinions of this Court on multiple grounds. It conflicts with this Court's jurisprudence on statutory standing and jurisdiction, and it conflicts with this Court's authority ruling

[4] Divisions II and III of the Court of Appeals recognize the finer distinction that this Court has drawn between jurisdictional and non-jurisdictional standing. Those

that when standing is a jurisdictional issue, it cannot be conceded. Op. at 4, 5.

Division I's opinion here applies its own ruling in *Trinity* and *explicitly* conflicts with this Court's precedent on standing as a jurisdictional issue. Op. at 4. When a particular cause of action is statutorily created, and that statute identifies a particular party as the party with standing to bring the claim, the lack of standing is a question of jurisdiction that can be raised at any time. This Court should accept review to address this conflict between the Court of Appeals opinion and the opinions of this Court. RAP 13.4(b)(1).

(2) There Is a Conflict Between Divisions of the Court of Appeals Regarding Standing and Jurisdiction Under RAP 2.5(a)(1)

Division I held that standing is not a jurisdictional issue and thus may not be raised for the first time on appeal. Op. at 3. Citing RAP 2.5(a)(1), that rule is the authority permitting jurisdiction to be raised for the first time on appeal, the Court held that it would not consider La Mothe's argument on the merits. Op. at 5.

Divisions II and III of the Court of Appeals do not agree with Division I in its analysis of the standing-as-jurisdiction issue, particularly

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Divisions' treatment of this issue and the conflict between the divisions is discussed *infra* section E(2).

in the context of applying RAP 2.5 (a)(1). Those Divisions have allowed parties to raise standing issues for the first time on appeal under RAP 2.5(a), albeit for different reasons.

Division III has framed the matter thus: "A court lacks subject matter jurisdiction when a necessary party under a statute is not a party to the action before it." *Spokane Airports*, 149 Wn. App. at 942. Division III expressly equated statutory standing with jurisdiction, citing this Court's opinion in *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County,* 135 Wn.2d 542, 556–57, 958 P.2d 962 (1998). *Id.* at 943-44. The holding of this case is in direct conflict with Division I's holding here and in *Trinity.*

Division II, while not expressly holding that lack of standing is a lack of jurisdiction, has analyzed the two issues identically for purposes of deciding whether standing can be raised for the first time on appeal:

> Jurisdiction—the power of the court to entertain a proceeding—can be raised for the first time on appeal. The rationale for this is self-evident. It would be pointless to consider claimed errors where the proceeding itself was incurably defective for lack of jurisdiction. The same rationale applies to standing, the right of a person to press a claim. Facts establishing standing are as essential to a successful claim for relief as is the jurisdiction of a court to grant it. Thus, we hold that the insufficiency of a factual basis to support standing may also be raised for the first time on appeal in accordance with RAP 2.5(a)(2).

Mitchell v. Doe, 41 Wn. App. 846, 847, 706 P.2d 1100 (1985). Thus, Division II's view is that standing is not expressly a matter of jurisdiction, but is so similar in nature that it should be considered for the first time on appeal under RAP 2.5(a). Thus, Division II also conflicts with Division I on the issue of whether standing – as a jurisdictional issue or in its own right – is such a fundamental issue that the Court of Appeals should address the issue, even if it is raised for the first time on appeal.

Thus, there is a clear conflict between the divisions of the Court of Appeals on the issue of standing as jurisdiction, and on the issue of standing being properly raised for the first time on appeal. Although the opinion in this case is unpublished, it relies on two published opinions – *Trinity* and *Cole* – that clearly establish this conflict. Op. at 4.

When there is a conflict between divisions of the Court of Appeals, and this Court does not address the conflict, it puts trial courts in a difficult position. Mark DeForrest, *In the Groove or in A Rut? Resolving Conflicts Between the Divisions of the Washington State Court of Appeals at the Trial Court Level*, 48 Gonz. L. Rev. 455, 459 (2013). "Since the court of appeals is one court with jurisdiction over the entire state, a trial court judge faces a difficult task when deciding issues for which there are conflicting authorities from the court of appeals." *Id.*

The Court of Appeals' conflict creates a catch-22 for a trial court judge. This comes into focus by examining the Court of Appeals decision in *Marley v. Dep't of Labor & Indus.*, 72 Wn. App. 326, 864 P.2d 960 (1993), *aff'd sub nom.*, 886 P.2d 189 (1994), a Division I case. In *Marley*, the state appealed an order of summary judgment, arguing in part that the trial court's decision permitted the plaintiff to evade a time limitation for an appeal. *Id.* at 965. The trial court in *Marley* had followed a ruling set out in a Division III case, *Fairley v. Department of Labor and Industries*, 29 Wn. App. 477, 627 P.2d 961, *review denied,* 95 Wn.2d 1032 (1981), in making its ruling that the time limitation did not apply to the plaintiff's cause of action. *Id.* at 962. Division I expressly stated that while it was not obligated to follow Division III's ruling in formulating its own opinion, the earlier decision by the trial court was obligated to follow Division III's ruling: "the trial court was bound by the court's decision in *Fairley*." *Id.* While Division I was free to disagree with Division III and formulate a different conclusion to the legal problem, *id.*, the trial court, facing the situation prior to Division I's examination of the issue, did not have that freedom. *DeForrest*, 48 Gonz. L. Rev. at 461 (2013).

The conflict between the divisions can only be resolved definitively by this Court. RAP 13.4(b)(2); *see Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 18, 109 P.3d 805 (2005) (noting

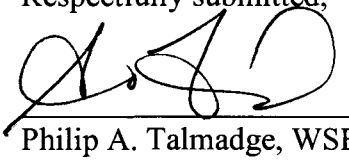
conflict between Divisions I and II needing this Court's resolution). This conflict will continue unless and until this Court exercises its authority to resolve it. This Court should accept review.

F. CONCLUSION

This Court should grant review of the Court of Appeals' decision. Blair La Mothe is entitled to examination of the standing issue on the merits. Whether U.S. Bank was the proper party to foreclose on his property is not an issue that can be waived or conceded. It is a jurisdictional issue that U.S. Bank, not La Mothe, had the burden of proving at the outset of its case. This Court should reverse the Court of Appeals opinion and the trial court's judgment and remand the case to the trial court for further proceedings.

DATED this 11th day of September, 2014.

Respectfully submitted,



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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

U.S. BANK NATIONAL ASSOCIATION, as trustee of THE BANC OF AMERICA FUNDING 2007-D, its successors in interest and/or assigns Respondent, v. BLAIR LA MOTHE, Appellant.	NO. 70140-1-I DIVISION ONE UNPUBLISHED OPINION FILED: May 12, 2014

LAU, J. — Blair La Mothe appeals a judgment and a decree of foreclosure entered in favor of U.S. Bank after a bench trial. For the first time on appeal, he contends U.S. Bank was not the real party in interest and lacked standing to seek a judicial foreclosure, and the trial court improperly admitted the note as a trial exhibit. Because the record shows La Mothe (1) conceded that U.S. Bank is the real party in interest, (2) failed to preserve his standing argument, and (3) failed to object to the note's admission at trial, we affirm the judgment and decree of foreclosure.

FACTS

In 2005, La Mothe obtained a $700,000 loan from Wells Fargo, secured by a deed of trust encumbering his residential property. He defaulted on the loan in 2009. Wells Fargo endorsed the promissory note to U.S. Bank National Association, as trustee for a loan trust known as Banc of America Funding 2007-D. In May 2010, Wells Fargo assigned its beneficial interest under the deed of trust to U.S. Bank. In August 2011, U.S. Bank brought this judicial foreclosure action against La Mothe.[1] Following a bench trial, the trial court entered judgment and a decree of foreclosure for U.S. Bank.

In relevant part, the trial court found, "The promissory note is endorsed . . . to Plaintiff," and there is "an Assignment of [the] Deed of Trust to Plaintiff which was recorded . . . ." It then concluded, "Pursuant to the terms of the note and deed of trust, Plaintiff is entitled to foreclose" and "[t]he correct party in interest was before the court . . . by and through . . . Wells Fargo Bank, N.A., attorney in fact for Plaintiff." La Mothe assigned no error to the court's factual findings or conclusions of law. La Mothe appeals.

ANALYSIS

La Mothe's sole assignment of error states, "The Judge of the Superior Court committed reversible error in not dismissing the underlying Amended Complaint because Respondent was not a real party in interest and lacked standing to seek a

[1] La Mothe initially defended the action pro se but hired counsel on the eve of trial. At trial, defense counsel stated, "And so I just want to apologize that I was not able to get this case into shape. Mr. La Mothe was—it's pretty hard to get a lawyer under these circumstances. I—most lawyers would say, you know, I can't get into this, but I felt it would be better if he had a lawyer, even one that was not completely prepared, than to come in here on his own and try to resolve the case. So I've—I'm here and I'm going to do the best I can, Your Honor." Report of Proceedings (Feb. 13, 2013) at 8-9.

judicial foreclosure." Br. of Appellant at 1. La Mothe contends the core issue is "[w]hether [U.S. Bank] was the real party in interest and/or had standing to initiate the foreclosure and whether the Amended Complaint should have been dismissed." Br. of Appellant at 1. For the reasons discussed below, we affirm.

Standing

La Mothe contends for the first time on appeal that the trial court erred in failing to dismiss U.S. Bank's complaint for lack of standing.[2] Implicitly acknowledging he failed to raise lack of standing below, La Mothe argues that standing is a jurisdictional issue that "may be disputed at any stage of a proceeding, even on appeal."[3] Reply Br. of Appellant at 3. We are not persuaded by this jurisdiction claim. The argument conflicts with controlling authority. In Trinity Universal Insurance Co. of Kansas v. Ohio Casualty Insurance Co., 176 Wn. App. 185, 312 P.3d 976 (2013), Ohio argued lack of standing means the trial court lacked subject matter jurisdiction so the default order is void. We held that "in Washington, a plaintiff's lack of standing is not a matter of subject matter jurisdiction." Trinity, 176 Wn. App. at 199. We reasoned:

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[2] Standing and real party in interest are "distinct doctrines." Sprague v. Sysco Corp., 97 Wn. App. 169, 176 n.2, 982 P.2d 1202 (1999). "Standing requires that the plaintiff demonstrate an injury to a legally protected right. The real party in interest is the person who possesses the right sought to be enforced." Sprague, 97 Wn. App. at 176 n.2; see also 14 KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE § 11:2, at 380 (2d ed. 2009) ("Standing to sue is a separate doctrine [from CR 17(a) real party in interest] and is most commonly used to determine whether a party may raise a constitutional challenge to some governmental action.").

[3] La Mothe's reply brief claims U.S. Bank raised an "additional argument that the doctrine of res judicata functions as a waiver of the requirement that a plaintiff have standing . . . ." Reply Br. of Appellant at 3. Our review of U.S. Bank's appellate brief shows U.S. Bank raised no res judicata issue on appeal.

> A court enters a void order only when it lacks personal jurisdiction or subject matter jurisdiction over a claim. We use caution in characterizing an issue as jurisdictional or a judgment as void, because the consequences of a court acting without subject matter jurisdiction "are draconian and absolute."

Trinity, 176 Wn. App. at 198 (quoting Cole v. Harveyland, LLC, 163 Wn. App. 199, 205, 258 P.3d 70 (2011)). We also observed that "the critical concept in determining whether a court has subject matter jurisdiction is the type of controversy." Trinity, 176 Wn. App. at 199 (citing Cole, 163 Wn. App. at 209). We also observed:

> Ohio cites a footnote from a 2002 Washington Supreme Court opinion that says, "[S]tanding is a jurisdictional issue that can be raised for the first time on appeal." Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207, 212 n. 3, 45 P.3d 186, 50 P.3d 618 (2002). This is the type of "drive-by jurisdictional ruling" we recently declined to rely on in Cole. 163 Wn. App. at 208.

Trinity, 176 Wn. App. at 199 n.7 (alteration in original).

We also cited our precedent in Ullery v. Fulleton, 162 Wn. App. 596, 256 P.3d 406 (2011). There, we explained that "article IV, section 6 of the Washington Constitution does not exclude any sort of causes from the jurisdiction of its superior courts, leaving Washington courts, by contrast with federal courts, with few constraints on their jurisdiction." Ullery, 162 Wn. App. at 604. Under Ullery, standing is a defense that may be waived by the defendant.[4] Ullery, 162 Wn. App. at 604. Because "lack of standing is not a matter of subject matter jurisdiction," La Mothe's lack of standing claim is waived. Trinity, 176 Wn. App. at 199; see also RAP 2.5(a); Ullery, 162 Wn. App. at 604.

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[4] La Mothe's reply brief cites International Association of Firefighters and Spokane Airports v. RMA, Inc., 149 Wn. App. 930, 939, 206 P.3d 364 (2009). La Mothe also argues that U.S. Bank "confuses jurisdictional standing with prudential standing." Reply Br. of Appellant at 3. We disagree and adhere to our analysis in Trinity and Ullery. While La Mothe acknowledges U.S. Bank's reliance on Trinity, we note that he never discusses or analyzes Trinity or Ullery.

Real Party in Interest

La Mothe also contends U.S. Bank was not a real party in interest under CR 17(a) because a different party, Wells Fargo, held the note and deed of trust. We need not address this claim because, as noted above, La Mothe's counsel properly conceded the issue at oral argument before this court. We accept his concession. La Mothe advanced the opposite real-party-in-interest theory at trial and thus failed to preserve the present argument for appeal.[5] RAP 2.5(a). The claim also fails because La Mothe assigned no error to the trial court's written finding, stating in part, "The correct party in interest was before the court . . . ."[6] Unchallenged findings of fact are verities on appeal.[7] RAP 10.3(a)(4); RAP 10.3(g); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

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[5] At trial, La Mothe was asked by his lawyer, "Do you know who is entitled to collect money from you on this loan?" Report of Proceedings (RP) (Feb. 13, 2013) at 87. La Mothe responded, "U.S. Bank." RP (Feb. 13, 2013) at 87. And later, during a discussion with La Mothe's counsel near the end of trial, the court confirmed, "You're saying U.S. Bank is the real party in interest." RP (Feb. 13, 2013) at 110. Counsel responded, "Yes." RP (Feb. 13, 2013) at 110.

[6] The court expressly found that Wells Fargo endorsed the original note and assigned the deed of trust to U.S. Bank:

"F. Wells Fargo Bank, N.A., executed an Assignment of Deed of Trust to Plaintiff [U.S. Bank] which was recorded on May 25, 2010, under King County Recording Number 20100525001201.

"G. Plaintiff, through their attorney, brought the original promissory note to court during the trial. The promissory note is endorsed by Wells Fargo Bank, N.A. to Plaintiff. The correct party in interest was before the court on February 13, 2013, by and through Brock Wiggins, VP of Loan Documentation at Wells Fargo Bank, N.A., attorney in fact for Plaintiff."

[7] In his reply brief, La Mothe argues he "timely appealed from the King County Superior Court's formal findings, conclusion, judgment, order and decree of foreclosure and attorney fee and cost award." Reply Br. of Appellant at 1. This argument is immaterial. It is undisputed that La Mothe timely filed his notice of appeal.

CONCLUSION

For the reasons discussed above, we affirm the judgment and decree of foreclosure.

Jan, J.

WE CONCUR:

Cox, J.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

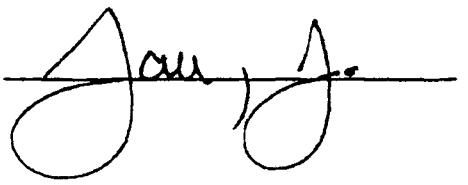
U.S. BANK NATIONAL ASSOCIATION, as trustee of THE BANC OF AMERICA FUNDING 2007-D, its successors in interest and/or assigns Respondent, v. BLAIR LA MOTHE, Appellant.	NO. 70140-1-I DIVISION ONE ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Blair La Mothe filed on July 3, 2014, a motion for reconsideration of the opinion filed May 12, 2014. The respondent filed a response on July 14, 2014. The court determines the motion should be denied. Therefore,

IT IS ORDERED that the motion for reconsideration is denied.

DATED the 13th day of August 2014.

FOR THE PANEL:



DECLARATION OF SERVICE

On said day below, I emailed a courtesy copy and deposited with the U.S. Postal Service for service a true and accurate copy of the Petition for Review in Court of Appeals Cause No. 70140-1-I to the following parties:

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Gary V. Dubin Zeina Jafar Dubin Law Offices 55 Merchant Street Suite 3100 Honolulu, HI 96813	Shawn T. Newman Attorney at Law 2507 Crestline Dr NW Olympia, WA 98502-4327
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Original with filing fee check delivered by ABC messenger to:

Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101-1176

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

Dated: September 12, 2014 at Seattle, Washington.

Roya Kolahi, Legal Assistant
Talmadge/Fitzpatrick