Supreme Court No. 90509-6

Court of Appeals No. 70592-0-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

ROCIO TRUJILLO,

Petitioner,
v.

NORTHWEST TRUSTEE SERVICES, INC.

Respondent,

and

WELLS FARGO BANK, N.A.

Defendant.

ANSWER OF RESPONDENT NORTHWEST TRUSTEE SERVICES, INC. TO PETITION FOR REVIEW

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I. IDENTITY OF ANSWERING PARTY

Respondent Northwest Trustee Services, Inc. ("NWTS") hereby answers the Petition for Review of Appellant Rocio Trujillo ("Petition for Review") as follows below.

II. STATEMENT OF RELIEF SOUGHT

NWTS requests that the Washington Supreme Court decline to accept discretionary review of the decision in *Trujillo v. NWTS*, 326 P.3d 768, 2014 WL 2453092 (Jun. 2, 2014).

III. FACTS RELEVANT TO THE PETITION FOR REVIEW

On or about March 29, 2006, Ms. Trujillo executed a promissory note (the "Note") in the amount of $185,900.00, payable to Arboretum Mortgage Corp. CP 18 at ¶ F. Ms. Trujillo secured repayment of the Note by granting the lender a Deed of Trust. CP 17-34.

Ms. Trujillo admitted to defaulting on the terms of the Note and Deed of Trust when she failed to make the payments due for November 1, 2011 and each monthly payment due thereafter. Brief of Appellant at 5-6, *see also* Compl. at ¶ 10, 17.

On or about March 14, 2012, Wells Fargo Bank, N.A. ("Wells Fargo") executed a sworn declaration (the "Beneficiary Declaration") stating that it was the actual holder of the Note. CP 36.

On or about May 30, 2012, as a result of Ms. Trujillo's default, NWTS sent her a Notice of Default. CP 37-39.[1]

On June 8, 2012, an Appointment of Successor Trustee, naming NWTS as Successor Trustee and vesting NWTS with the powers of the original trustee, was recorded with the King County Auditor. CP 40.

On or about July 10, 2012, a Notice of Trustee's Sale was recorded. CP 41-44. On March 7, 2013, Ms. Trujillo obtained an order enjoining the foreclosure from being completed. CP 46-47. On May 31, 2013, the Hon. Judge Beth Andrus granted NWTS' CR 12(b)(6) Motion to Dismiss, and entered an order to that effect. CP 80-81.

On June 28, 2013, Ms. Trujillo appealed to the Court of Appeals, Division One, and raised two assignments of error. *See* Brief of Appellant, Case No. 70592-0-I, at 5. On December 5, 2013, the Court of Appeals requested supplemental briefing from the parties.

Ms. Trujillo retained counsel approximately two months before oral argument, and on April 24, 2014, the parties appeared before the Court of Appeals. On June 2, 2014, the Court of Appeals affirmed the trial court's dismissal order in a published decision (the "Opinion").

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[1] Under RCW 61.24.031, a Notice of Default may be issued by the trustee, beneficiary, or an authorized agent. NWTS acted in the latter capacity prior to its appointment as successor trustee.

IV. ANSWER TO ISSUES PRESENTED

1. The Court of Appeals' decision does not conflict with Washington Supreme Court precedent. Further, the Court of Appeals properly interpreted RCW 61.24.030(7)(a) in a manner consistent with the Deed of Trust Act, RCW 61.24 *et seq.* ("DTA") and its purpose.

2. The Beneficiary Declaration provided NWTS with sufficient proof required by the DTA that Wells Fargo was the Note holder. Ms. Trujillo did not challenge the Beneficiary Declaration language at the trial court level, thereby waiving the issue for appeal.

3. The Court of Appeals' decision does not raise an issue of substantial public interest because this case involved a private transaction and the documentation provided was accurate.

V. AUTHORITY AND ARGUMENT

A. Standard for Review.

Discretionary acceptance of a decision terminating review may be granted only if:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

R.A.P. 13.4(b). Ms. Trujillo appears to address only the first and fourth criteria. Petition for Review at 1-2.

B. The Court of Appeals' Decision Does Not Conflict With Supreme Court Precedent or Misread DTA Requirements.

The Court of Appeals' analysis of RCW 61.24.030(7)(a) examined "certain key terms of this statute – 'beneficiary,' 'owner,' and 'holder.'" Opinion at 11. The Court of Appeals looked to the plain meaning of these terms, what "related statutes say about them," and "technical meanings" where appropriate. *Id.*

1. *Trujillo* Agrees With *Bain* that the Uniform Commercial Code Governs the Enforcement of a Note in the DTA Context.

Bain v. Metro. Mtg. Grp., Inc. expressly provides that the Uniform Commercial Code ("UCC") definition of "holder" is consistent with the term as found in the DTA. 175 Wn.2d 83, 104, 285 P.3d 34 (2012). *Bain* states:

> Stoebuck and Weaver note that the transfer of mortgage backed obligations is governed by the UCC, which certainly suggests the UCC provisions may be instructive for other purposes.

Id. at 103, *citing* 18 STOEBUCK & WEAVER, § 18.18 at 334.[2]

[2] However, while the term "holder" under the DTA is consistent with the UCC, it cannot be exclusively governed by that Code; otherwise, a Deed of Trust could only ever secure negotiable instruments, which is not the case. *See, e.g., Rodgers v. Seattle-First Nat. Bank*, 40 Wn. App. 127, 129-30 & n.1, 697 P.2d 1009 (1985) (discussing notes secured by Deed of Trust, where the notes were not negotiable instruments).

Basic principles of negotiable instruments set forth in Washington's version of the UCC establish that, if a note is payable to bearer, it may be negotiated by transfer of possession alone. RCW 62A.3-201. If a note is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. *Id.* This may be either a special indorsement, which identifies a person to whom the note is now payable, or a blank indorsement that makes the note bearer paper. RCW 62A.3-109. "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder.[3]

Despite Ms. Trujillo's suggestion to the contrary, the Court of Appeals directly follows "the analysis and conclusion set forth by the Supreme Court in *Bain*." Opinion at 18; *cf.* Petition for Review at 7. The result was a proper "conclusion about the status of Wells Fargo... consistent with the Supreme Court's analysis in [*Bain*] regarding the Deeds of Trust Act's definition of 'beneficiary'." Opinion at 12.[4] The conflicting decision requirement set forth in R.A.P. 13.4(b)(1) is not met on this basis alone.

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[3] After negotiation of a note, the holder possesses the right to enforce it, as well as the right to enforce any instrument securing the note's repayment. *See Kennebec, Inc. v. Bank of the West*, 88 Wn.2d 718, 724-25, 565 P.2d 812 (1977); RCW 62A.9A-102(55).

[4] And also consistent with Trujillo's acknowledgment that Wells Fargo obtained possession of the Note indorsed in blank before initiation of foreclosure. Compl. at ¶ 26.

2. The Ownership of a Note Does Not Confer Beneficiary Status.

Ms. Trujillo argued to the Court of Appeals that, because RCW 61.24.030(7) requires a trustee to obtain proof of a note's owner before recording a sale notice, the beneficiary and owner "must be the same person." Brief of Appellant, Case No. 70592-0-I, at 13. Thus, she contended "if anyone other than the *owner* of the promissory note (i.e., the beneficiary) provides the declaration," RCW 61.24.030(7)(a) has been violated. *Id.* at 15 (emphasis in original).

However, as the Court of Appeals held, "where one has the status of both 'owner' and 'holder,' it is the status of *holder* of the note that entitles the entity to enforce the obligation. Ownership of the note is not dispositive." Opinion at 14 (emphasis added).

The Court of Appeals based this conclusion on the reasoning of multiple sources. First, consistent with *Bain*, the Court of Appeals looked to the UCC. Opinion at 13, *citing* RCW 62A.3-203, cmt. 1. The UCC plainly differentiates between enforceability and ownership of a note, stating:

> [t]he right to enforce an instrument and ownership of the instrument are two different concepts.... Ownership rights in instruments may be determined by principles of the law of property, independent of Article 3, which do not depend upon whether the instrument was transferred under Section 3-203. Moreover, a person who has an ownership right in an instrument

might not be a person entitled to enforce the instrument.

Id. at 13-14 (emphasis omitted).

Second, the Court of Appeals relied on precedent in *John Davis & Co. v. Cedar Glen No. Four, Inc.*, 75 Wn.2d 214, 450 P.2d 166 (1969). In *John Davis & Co.*, the Supreme Court found that "it is not necessary for the holder [of an instrument] to first establish that he has some beneficial interest in the proceeds." *Id.* at 222-23. As the Court of Appeals observed, "payment to the holder discharged the debt evidenced by the note, regardless of ownership." Opinion at 16; *see also* Opinion at 17, *citing* RCW 62A.3-301 ("[a] person may be... entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.").

Ms. Trujillo's attempt to distinguish *John Davis & Co.* fails because the non-judicial process set forth in RCW 61.24 *et seq.* simply codifies the common law enforcement of mortgages through judicial means. *See Rustad Heating & Plumbing Co. v. Waldt*, 91 Wn.2d 372, 375, 588 P.2d 1153, 1154 (1979); *see also Kennebec*, *supra.* at 725; *cf.* Petition for Review at 17. While the DTA does contain "more" notice requirements, along with avenues such as mandatory mediation to assist homeowners with avoiding foreclosure, it does not change the UCC-based prescription for enforcement of a secured note. *See Rustad Heating &*

Plumbing Co., *supra.* at 376 ("we hold that a statutory deed of trust is indeed a species of mortgage."); *Kennebec*, *supra.* at 725[5]; *see also* RCW 61.24.020 ("Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property.").

In sum, *Trujillo* correctly identifies that, under the UCC, the authority to foreclose on a secured note is not affected by ownership interests in the debt instrument. The Court of Appeals' reasoning is consistent with Supreme Court precedent in *Bain* and *John Davis & Co.*, among other cases[6], and the *Trujillo* holding should remain untouched.

3. *Trujillo* Properly Interprets RCW 61.24.030(7)(a).

Ms. Trujillo asserts that the Court of Appeals' reading of RCW 61.24.030(7)(a) created an "irreconcilable inconsistency." Petition for Review at 10. But Ms. Trujillo's position is based on the erroneous assumption that ownership of a note is critical to enforcement through foreclosure of the property securing it. Opinion at 9-10.

By contrast, the Court of Appeals' decision harmonizes both sentences of RCW 61.24.030(7)(a) in light of both the UCC and Supreme Court precedent, as outlined above. Opinion at 17.

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[5] "Since 1965, deeds of trust providing for nonjudicial foreclosure have been permissible in this state as they would have been at common law when Washington was first a territory."

[6] *See also State Fin. Co. v. Moore*, 103 Wash. 298, 174 P. 22 (1918).

Trujillo comports with the unambiguous definition of "beneficiary" in the DTA as the note holder. RCW 61.24.005(2).[7] This definition does not give any credence to the belief that ownership rights convey the authority to foreclose. *Id.*[8] Ms. Trujillo's argument completely ignores this fact, and she seeks to vitiate RCW 61.24.005(2) based on the unsupported notion that ownership matters when identifying a beneficiary. Petition for Review at 10.

Trujillo's analysis of "beneficiary" for purposes of a DTA-based claim was recently cited by the United States Bankruptcy Court for the Western District of Washington. *In re Butler*, 2014 WL 3360481 (Bankr. W.D. Wash. July 9, 2014). Like *Trujillo*, *Butler* also looks to *Bain* and the UCC definition of "holder". *Id.* at *13, *citing* RCW 62A.1-201(a)(21) ("'holder' means 'the person in possession of a negotiable instrument that

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[7] Notably, *Bain* interprets "beneficiary" as encompassing not just a holder pursuant to former RCW 62A.1-201(20), but also under RCW 62A.3-301 ("Persons Entitled to Enforce Instrument") including both holders and non-holders "with the rights of a holder." 175 Wn.2d at 104. This fact is evident as *Bain* cites to *both* former RCW 62A.1-201(20) *and* RCW 62A.3-301, stating:

> [t]he plaintiffs argue that our interpretation of the deed of trust act should be guided by *these UCC definitions*, and thus a beneficiary must either actually possess the promissory note or be the payee.... We agree. This accords with the way the term 'holder' is used across the deed of trust act and the Washington UCC.

175 Wn.2d at 104 (emphasis added).

[8] *Accord Bank of America, N.A. v. Cloutier*, 61 A.3d 1242 (Me. Supr. Ct. 2013) (Maine Supreme Court holds that the term "certify proof of ownership" requires identification of the "owner or economic beneficiary of the note," and "if... not the owner, to indicate the basis for... authority to enforce the note pursuant to Article 3-A of the UCC.").

is payable either to bearer or to an identified person that is the person in possession.'") (emphasis omitted).

Butler also finds that Washington law permits possession of a note through an agent. *Id.* at *14, *citing Bain* at 106, Permanent Editorial Board for the UCC, Application of the UCC to Selected Issues Relating to Mortgage Notes, p. 7 (Nov. 14, 2011). *Butler* correctly concludes that no DTA violation occurred when the note holder executed a beneficiary declaration, despite Freddie Mac's presence as investor, *i.e.*, owner. *Id.* at *3, 18.

Additionally, Ms. Trujillo's contentions relating to RCW 61.24.030(7)(a) would render the second sentence of that provision meaningless; the language in question states:

> [a] declaration *by the beneficiary* made under the penalty of perjury *stating that the beneficiary is the actual holder* of the promissory note or other obligation secured by the deed of trust *shall be sufficient proof as required under this subsection.*

(Emphasis added). Nowhere does this law require a trustee to have a declaration from the note owner, nor does it suggest that the holder must *also* be the owner.

Instead, a note holder's declaration as to its status is "sufficient proof" for a trustee to rely upon. RCW 61.24.030(7)(a); *see also In re Brown*, 2013 WL 6511979, *9 n. 23 (B.A.P. 9th Cir. Dec. 12, 2013) ("a

statement that the beneficiary is a note holder suffices.").[9] If one has "sufficient proof" of compliance, nothing else should be required.

4. NWTS Was Entitled to Rely on the Beneficiary Declaration Before Recording a Notice of Sale.

Ms. Trujillo misinterprets RCW 61.24.030(7)(b) to suggest that relying on a beneficiary declaration can, by itself, form the very lack of good faith that prohibits a trustee from engaging in such reliance. Petition for Review at 10-11. This circular reasoning is predicated on the argument that a borrower's *ex post facto* allegation of error in the declaration (which is not recorded or issued) should automatically lead to successful claims against a trustee receiving that document. *Id.* at 11-13.

But, in this case, not a single line in Ms. Trujillo's Complaint or Petition for Review claims that NWTS participated in conduct constituting a lack of good faith. As a result, Ms. Trujillo cannot identify any specific violation of NWTS' duty of good faith besides the reliance on Wells Fargo's accurate representation of its status as Note holder. Her only contention is that NWTS "knew Wells Fargo was not the owner of [the]

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[9] RCW 61.24.030(7)(b) states, "unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection." It would be "too great a demand" for a trustee to "conduct a secondary investigation into the papers filed by the beneficiary." *Mickelson v. Chase Home Fin. LLC*, 2011 WL 5553821 (W.D. Wash. Nov. 14, 2011), *aff'd* 2014 WL 2750133 (9th Cir. June 18, 2014); *accord Badgett v. Security State Bank*, 116 Wn.2d 563, 807 P.2d 356 (1991) (good faith "requires only that the parties perform... the obligations imposed by their agreement.").

note" and therefore it was precluded from relying on a truthful declaration of Wells Fargo's actual holder status. Petition for Review at 13.

Thus, the Court of Appeals properly found Ms. Trujillo was unable to "substantiate... any breach of any duty by NWTS under RCW 61.24.010(4)." Opinion at 29. The Court of Appeals further noted that citing cases like *Schroeder v. Excelsior Mgmt. Grp.*[10] and *Klem v. Wash. Mut. Bank*[11] do not establish a violation of the good faith duty without factual support. *Id.* Hence, "NWTS was entitled to rely on this Wells Fargo declaration, as the plain words of the statute provide." *Id.*

C. The Court of Appeals' Decision is Consistent With a Significant Majority of Federal Court Rulings.

Ms. Trujillo references two federal cases in support of her Petition, but these matters were outliers relative to other decisions from the same court. Petition for Review at 15, *citing Beaton v. JPMorgan Chase Bank, N.A.*, 2013 WL 1282225 (W.D. Wash. Mar. 26, 2013), *Pavino v. Bank of America*, 2011 WL 834146 (W.D. Wash. Mar. 4, 2011).[12]

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[10] 177 Wn.2d 94, 297 P.3d 677 (2013).
[11] 176 Wn.2d 771, 295 P.3d 1179 (2013).
[12] In *Beaton*, the court reasoned: "*[i]f Chase was not the holder of the note*, it did not have the authority to appoint NWTS as a successor trustee, and NWTS did not have authority to initiate foreclosure proceedings without knowledge of the beneficiary as required by RCW 61.24.030(7)." *Id.* at *5 (emphasis added). Unlike in *Trujillo*, the judge in *Beaton* could not assess the note holder's identity. And notably, *Beaton* does not support Ms. Trujillo's views on ownership being a prerequisite to DTA enforcement. *Id.* at *4 ("[a]lthough there are probably many ways to satisfy the statute's proof requirement, the statute itself establishes one way.").

Federal judges that have reviewed claims related to RCW 61.24.030(7) since *Bain* uniformly agree that a declaration of holder status is acceptable proof for a trustee to rely on. *See, e.g., In re Butler, supra.*; *Mulcahy v. Fed. Home Loan Mtg. Corp.*, 2014 WL 1320144 (W.D. Wash. Mar. 28, 2014) ("Contrary to plaintiffs' assertion, 'owner' in this context does not mean the entity or entities that have a beneficial interest in the note.")[13]; *Bakhchinyan v. Countrywide Bank, N.A.*, 2014 WL 1273810 (W.D. Wash. Mar. 27, 2014); *Blake v. U.S. Bank Nat. Ass'n*, 2013 WL 6199213 (W.D. Wash. Nov. 27, 2013), *recons. denied*, 2014 WL 119067 (W.D. Wash. Jan. 13, 2014); *Rouse v. Wells Fargo Bank, N.A.*, 2013 WL 5488817 (W.D. Wash. Oct. 2, 2013), *appeal dismissed* ("Wells Fargo's declaration that it is the 'actual holder' meets this requirement."); *Petheram v. Wells Fargo Bank*, 2013 WL 4761049 (W.D. Wash. Sept. 3, 2013); *Elene-Arp v. Fed. Home Fin. Agency*, 2013 WL 1898218 (W.D. Wash. May 6, 2013); *Abram v. Wachovia Mtg.*, 2013 WL 1855746 (W.D. Wash. Apr. 30, 2013); *Knecht v. Fid. Nat. Title Ins. Co.*, 2013 WL 7326111 (W.D. Wash. Mar. 11, 2013); *Moseid v. Selene Fin. LP*, 2013 WL 766277 (W.D. Wash. Feb. 28, 2013) ("so long as the trustee has valid proof [the beneficiary] is the holder of the note, then the foreclosure can

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[13] *Mulcahy* was decided by the same judge who wrote the *Pavino* decision three years earlier, before *Bain* was decided.

move forward."). The Ninth Circuit Court of Appeals has also looked favorably on the reasoning of *Trujillo*, recently citing it with approval in *Brodie v. NWTS*, 2014 WL 2750123 (9th Cir. June 18, 2014).

It is clear that the overwhelming body of federal case law interpreting RCW 61.24.030(7) agrees with the Court of Appeals in *Trujillo*. Ms. Trujillo cannot justifiably claim that her reading of the statute is supported by judges in both the Western District of Washington and Ninth Circuit.

D. Ms. Trujillo Has Waived a Challenge to the Inclusion of RCW 62A.3-301 in the Beneficiary Declaration.

Ms. Trujillo also seeks review on the purported question of a reference to RCW 62A.3-301 in the subject beneficiary declaration. Petition for Review at 13-14. But *no error was ever assigned on this issue*, and it should be deemed waived. *See Brundridge v. Fluor Fed. Servs., Inc.*, 164 Wn.2d 432, 441, 191 P.3d 879 (2008); R.A.P. 2.5; *see also Malstrom v. Kalland*, 62 Wn.2d 732, 735, 384 P.2d 613, 616 (1963) (Supreme Court will not "search the record for error, or... try the case de novo....").

Ms. Trujillo's Assignments of Error were twofold:

> 1) "the trial court erred in finding that... NWTS was not the real party in interest," and 2) "the trial court erred in ruling that NWTS was authorized by RCW 61.24.030(7)(a) to record a notice of trustee's sale after receiving a declaration from Wells Fargo Bank,

> NA... stating that Wells was the actual holder of the promissory note."

Brief of Appellant at 5. Indeed, neither her Opening Brief nor Reply Brief contained a single citation to RCW 62A.3-301.

Rather, much like other new assertions, Ms. Trujillo's counsel raised a theory involving RCW 62A.3-301 for the first time at oral argument before the Court of Appeals.[14] The appellate process does not permit an ever-expanding scope at each stage. Further review of an issue not appropriately raised below is waived. *Int'l Ass'n of Fire Fighters, Local 46 v. City of Everett*, 146 Wn.2d 29, 37, 42 P.3d 1265, 1268 (2002), *citing State v. Clark*, 124 Wn.2d 90, 104–05, 875 P.2d 613 (1994) ("[t]his court will generally decline to decide issues that were not raised below.").

E. Even if Ms. Trujillo's Claim Regarding RCW 62A.3-301 Was Possibly Reviewable, Her Argument is Legally Incorrect.

Ms. Trujillo calls the inclusion of RCW 62A.3-301 in the beneficiary declaration "unauthorized language." Petition for Review at 15. But the declaration does not set forth a blanket reliance on the UCC; Wells Fargo specifically limits its statement to *requisite* authority under RCW 62A.3-301. CP 36.

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[14] Counsel also brought up arguments based on the Report of the Permanent Editorial Board for the UCC and Washington Practice manual in Ms. Trujillo's oral presentation. *See* Opinion at 19.

As set forth by *Bain*, only a note holder has the requisite authority to act as a beneficiary under the DTA. *See also* RCW 61.24.005(2), and RCW 61.24.030(7)(a). While the declaration mentions the UCC definition of "persons entitled to enforce an instrument," Wells Fargo's authority is plainly described as shown in the document's header, *i.e.*, "*Note Holder*." CP 36.

In *Bakhchinyan v. Countrywide Bank, N.A.*, the Hon. Judge Coughenour of the Western District of Washington addressed the validity of a Beneficiary Declaration just like the one at issue in this case. 2014 WL 1273810 (W.D. Wash. Mar. 27, 2014). The *Bakhchinyan* decision states, in relevant part:

> [h]ere, Bank of America's assertion, signed under penalty of perjury, that it was the "actual holder" of the promissory note is sufficient to trigger the protections of RCW § 61.24.030(7)(b). *The reference to RCW 62A.3-301 is not to the contrary*, as that statutory section merely defines who is entitled to enforce the relevant promissory note.

Id. at *5 (emphasis added); *see also Cole v. JPMorgan Chase Bank, N.A.*, 2014 WL 1320140 (W.D. Wash. Mar. 31, 2014); *Corales v. Flagstar Bank, FSB*, 822 F.Supp.2d 1102 (W.D. Wash. 2011).

The Ninth Circuit Court of Appeals also recently agreed that a "reference to a provision of Washington's [UCC] is consistent with the Washington Supreme Court's use of that same provision to interpret the

meaning of the word 'holder' in the DTA." *Mickelson v. Chase Home Fin. LLC*, 2014 WL 2750133 (9th Cir. June 18, 2014).

Thus, many courts agree that the presence of language stating that a foreclosing beneficiary was the "actual holder... or has requisite authority under RCW 62A.3-301 to enforce said obligation" does not make a RCW 61.24.030(7) declaration defective or defeat a trustee's reliance on it. In this case, there was only one form of "requisite" authority under the DTA that Wells Fargo possessed, *i.e.*, having the rights of a Note holder.

F. Ms. Trujillo Agreed that Wells Fargo was the Right Party to Foreclose After Her Default.

Ms. Trujillo admitted her assent to the terms of the Note and Deed of Trust, and the fact of her later default. Brief of Appellant at 5-6, *see also* Compl. at ¶ 10, 17. Ms. Trujillo also openly asserted Wells Fargo possessed the secured Note "as soon as [they] began the foreclosure process...." *Compare* Compl. at ¶ 26-28, Compl. at ¶ 36. As the Court of Appeals observed, "this concession is significant in that it is consistent with the beneficiary declaration before us." Opinion at 12.

While Ms. Trujillo now contends that her recognition of Wells Fargo's authority was defeated by another statement that "Wells [Fargo] is not the beneficiary and... had no right to commence the... foreclosure,"

that latter comment is a legal conclusion and not a fact which the Court of Appeals was required to accept as true for purposes of CR 12(b)(6). Petition for Review at 14, n. 15.[15]

Regardless of whether one chooses to believe Ms. Trujillo's factual recitation or not, *Wells Fargo* was not a party to this appeal, and *NWTS* need not prove a lender's right to foreclose beyond the proper reliance on an accurate beneficiary declaration. RCW 61.24.030(7) was designed as a safe harbor for trustees, not a sword to be used when borrowers seek to undermine a foreclosure's validity.

G. There is No Issue of Substantial Public Interest.

Ms. Trujillo's last argument in her Petition seems to summarily impugn the "mortgage industry" generally, and insinuates that NWTS did not provide her with "fair treatment." Petition for Review at 18.[16] Ms. Trujillo also argues, without any foundational basis, that "thousands of Washington homeowners" are affected by the Court of Appeals' decision. *Id.* However, this cannot be the standard for demonstrating a substantial

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[15] It must also be noted that Trujillo selectively appealed NWTS's dismissal, yet not Wells Fargo's successful summary judgment. *See* Case No. 13-2-06928-8 SEA, Dkt. 36. Had Wells Fargo been a respondent before this Court, a more complete record of its authority as Note holder would exist. *Id.*, Dkt. 27 (Dep. of Trujillo) at 21 (admitting modification from Wells Fargo and her default); Dkt. 28 (Dec. of Weatherly) at ¶ 6 (Wells Fargo possessed Note indorsed in blank since 2006).

[16] "Fair treatment" is not the duty proscribed in the DTA, and Ms. Trujillo has never claimed that NWTS was not acting in good faith outside of obtaining the beneficiary declaration itself. *See* RCW 61.24.010(4).

public interest, or else the Supreme Court would be compelled to accept review of every case attacking a foreclosure's propriety.

In the matter of *In re Disciplinary Proceedings Against Bonet*, 144 Wn.2d 502, 29 P.3d 1242 (2001), a substantial public interest was identified for purposes of the Rules of Lawyer Discipline on the question of whether a prosecutor may "offer an inducement to a defense witness to not testify at a criminal proceeding." In *LaVergne v. Boysen*, 82 Wn.2d 718, 513 P.2d 547 (1973), the Court found "there exists a substantial public interest in the finality of elections, necessitating prompt challenges." And in *Curtis v. City of Seattle*, 97 Wn.2d 59, 639 P.2d 1370 (1982), it was held that public morals regulations promoted "an important or substantial public interest." These cases are not at all like *Trujillo*, which involved solely a private dispute over whether Wells Fargo – again, not a party on appeal – could non-judicially foreclose based on Ms. Trujillo's unqualified default.

Moreover, *Trujillo* is not like *Klem*, where it was noted in support of a R.A.P. 13.4(b)(4) argument that the trustee "cedes its discretion to postpone sales to the banks – contrary to its duty of good faith...." *Klem*, *supra.*, Petition for Review at *18, 2012 WL 3135655 (Mar. 9, 2012). In *Trujillo*, NWTS did not violate its statutory good faith duty. Rather, NWTS followed its obligations as set forth in the DTA, including the

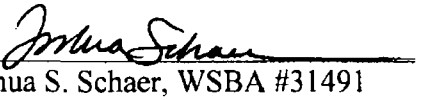
receipt of and reliance on Wells Fargo's *accurate* beneficiary declaration. And, unlike *Klem*, NWTS did not proceed to sale – and the Property has remained not subject to foreclosure throughout the pendency of this litigation. This fact pattern does not present a substantial public interest with respect to Ms. Trujillo's claims.[17]

VI. CONCLUSION

NWTS respectfully requests that the Supreme Court decline to accept Ms. Trujillo's Petition for Review. R.A.P. 13.4(b)(1) and (4). The Court of Appeals' decision in *Trujillo* is consistent with this Court's precedent, such as *Bain*. *Trujillo* is a detailed, well-reasoned decision already being accepted in state and federal courts throughout Washington.

DATED this 21st day of July, 2014.

RCO LEGAL, P.S.

By: 
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Of Attorneys for Respondent
Northwest Trustee Services, Inc.

[17] Ms. Trujillo advanced allegations of Criminal Profiteering, Intentional Infliction of Emotional Distress, and violations of the Consumer Protection Act. She did not, however, assign error to the dismissal of any particular cause of action.

Declaration of Service

The undersigned makes the following declaration:

1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action; and I am competent to be a witness herein.

2. On July 22, 2014, I caused a copy of the **Answer of Respondent Northwest Trustee Services, Inc. to Petition for Review** to be served in the following in the manner noted below:

Matthew Geyman Columbia Legal Services 101 Yesler Way, Suite 300 Seattle, WA 98104 Attorneys for Appellant Rocio Trujillo	[X] US Mail, Postage Prepaid [ ] Hand Delivery [ ] Overnight Mail [ ] Facsimile [ ] Email:
Ronald E. Beard Abraham K. Lorber Lane Powell, PC 1420 Fifth Ave., Suite 4200 Seattle, WA 98101-2338 Attorneys for Respondent Wells Fargo Bank, N.A.	[X] US Mail, Postage Prepaid [ ] Hand Delivery [ ] Overnight Mail [ ] Facsimile [ ] Email:

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

Signed this 22nd day of July, 2014.

Kristine Stephan, Paralegal

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, July 22, 2014 2:17 PM
To: 'Kristi Stephan'
Cc: Joshua Schaer
Subject: RE: Trujillo v. Northwest Trustee Services, Inc., et al. (Petition for Review) / No Supreme Court number assigned / Court of Appeals No. 70592-0-I

Rec'd 7-22-14

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Kristi Stephan [mailto:kstephan@rcolegal.com]
Sent: Tuesday, July 22, 2014 2:15 PM
To: OFFICE RECEPTIONIST, CLERK
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Rocio Trujillo (Appellant) v. Northwest Trustee Services, Inc. (Respondent), et al.
Supreme Court No. _____
Court of Appeals No. 70592-0-I
Filed by: Joshua Schaer
WSBA #31491
425-457-7810
jschaer@rcolegal.com

Please file the attached **Answer of Respondent Northwest Trustee Services, Inc. to Petition for Review.**

If there are any questions, please contact us. Thank you.

Kristi Stephan
Senior Litigation Paralegal

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Fax: 425.283.0901
kstephan@rcolegal.com