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**ORIGINAL**

Case No. 70628-4

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

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**HERBERT HEINTZ AND BARBARA HEINTZ, HIS WIFE,**

Appellants,

vs.

**JPMORGAN CHASE BANK, N.A., et. al.**

Respondents.

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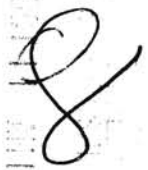
Appeal from an Order of the King County Superior Court  
Case No. 12-2-39861-5SEA

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**RESPONDENT QUALITY LOAN SERVICE CORPORATION OF  
WASHINGTON'S BRIEF**

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## I. INTRODUCTION

The subject lawsuit stems from the non-judicial foreclosure of Appellants' real property. CP at 33-34. Appellants defaulted on their Note and Deed of Trust by failing to make their monthly payments. CP at 6. Respondent Quality Loan Service Corporation of Washington ("Quality") was appointed successor trustee under the Deed of Trust to conduct the non-judicial foreclosure. CP at 59.

Quality issued the first statutory notice – the Notice of Default – in 2010. CP at 129-152. The Notice of Default was followed by the first Notice of Sale, scheduling a sale date for February 2011. CP at 2. In response, Appellants filed their first lawsuit, and the sale was postponed during the pendency of that action. CP at 2.

The first lawsuit was dismissed in October of 2011. CP at 7. The first Notice of Sale had expired by the time the lawsuit was dismissed<sup>1</sup>. Quality issued a second Notice of Sale in September of 2012. CP at 7. The second Notice of Sale concerned the same default from 2010. CP at 7. Quality did not issue a new Notice of Default in connection with the second Notice of Sale, nor did it need to because the default had not been cured. CP at 46.

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<sup>1</sup> As explained later in the brief, a Notice of Sale has an expiration date, and must be re-issued after it expires.

Appellants filed the subject lawsuit alleging Quality violated the Deed of Trust Act by not issuing a new Notice of Default prior to the second Notice of Sale. CP at 33-34. The sole issue in the case as it pertains to Quality (and on appeal) is a legal one – whether Quality was required to issue a new Notice of Default. The Trial Court correctly ruled that the law did not require a new Notice of Default, and the Trial Court’s order dismissing Quality should be affirmed. CP at 72.

## II. ARGUMENT

### A. Washington’s Deed of Trust Act – The Notices.

Washington’s Deed of Trust Act, RCW 61.24, sets forth the procedure for conducting a non-judicial foreclosure. The statute requires two notices. The two notices collectively create a minimum 120-150 day period of time before a sale can take place.

The first notice is a Notice of Default, which is required at least 30 days prior to the issuance of a Notice of Sale. RCW 61.24.030(8).

The second notice is the Notice of Sale. Thirty days after issuance of the Notice of Default, a Notice of Sale can issue. RCW 61.24.030(8). The Notice of Sale sets the scheduled auction date for the property. RCW 61.24.040(1)(f). The Notice of Sale is either a 90 or 120 day notice, depending on whether the property is owner occupied residential real property. RCW 61.24.040(1).

Following issuance of the Notice of Sale, the scheduled auction date can be continued for up to 120 days. RCW 61.24.040(6). After 120 days from the original auction date, the operative Notice of Sale expires. *Albice v. Premier Mortgage Services of Washington, Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012). At that point, a new Notice of Sale must issue to conduct the foreclosure. *Id.*

As long as the borrower remains in default, nothing prevents the re-issuance of a new Notice of Sale.

**B. Notice of Default Does Not Expire.**

Unlike the Notice of Sale, the Notice of Default does not expire by operation of law. Nothing in the Deed of Trust Act or the case law suggests that a Notice of Default expires by the mere passage of time. Absent the borrower bringing the loan obligation current (and curing their original default), a Notice of Default remains good, and Notices of Sale can continue to issue on the original default.

This Court's decision in *Reisinger v. Deutsche Bank National Trust*, 2013 Wash.App. LEXIS 973 (Div. 1, 2013), although unpublished, confirms the above. In *Reisinger*, the Notice of Default and Notice of Sale were issued in 2008. The borrowers filed for bankruptcy one day prior to the sale. In 2010, the beneficiary obtained relief from stay, and the trustee issued a new Notice of Sale. No new Notice of Default was issued. The

borrowers, like Appellants in this case, filed suit alleging a defective foreclosure because, among other reasons, a new Notice of Default was not issued. This Court affirmed the dismissal, holding that no new Notice of Default was required. *Id.* at 5-7.

Appellants cite RCW 61.24.040(6) and *Albice v. Premier Mortgage Services of Washington, Inc.*, et al, 174 Wn.2d 560, 276 P.3d 1277 (2012) for the proposition that the Notice of Default expires after 120 days. But RCW 61.24.040(6) and *Albice* concern only the Notice of Sale (and its 120 sale period), not the Notice of Default. These citations provide no support for the Appellants' claim that the Notice of Default should have been re-issued.

**C. Quality Complied with the Deed of Trust Act.**

The facts in this case are undisputed. The Notice of Default was mailed and posted on Appellants' property on October 1, 2010. CP at 129-152. The first and second Notices of Sale were issued more than 30 days after the Notice of Default, which Appellants acknowledge. (*See* AOB 7-8, 17.). *Id.*

None of the evidence allegations submitted by Appellants show that Quality violated the Deed of Trust Act in any way. Therefore, the trial court correctly dismissed Appellants' Complaint against Quality.

**D. Appellants Not Entitled to Attorney Fees.**


Appellants ask for attorney fees against Quality in connection with this appeal. Appellants cite no legal authority for awarding fees against Quality. Appellants' request for fees should be denied.

### III. CONCLUSION

For the foregoing reasons, the Court should affirm the dismissal of Appellants' Complaint against Quality.

Dated: October 11, 2013

Respectfully Submitted,  
McCarthy & Holthus, LLP

By:   
Joseph Ward McIntosh, WSBA # 39470  
Attorney for Quality Loan Service  
Corporation of Washington

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**COPY**

**CERTIFICATE OF SERVICE**

I certify that on October 11, 2013, I served a copy of the foregoing document, described as **RESPONDENT QUALITY LOAN SERVICE CORP. OF WASHINGTON'S BRIEF** on the following persons by U.S. First Class Mail:

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U.S. MAIL

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct, and that this Declaration was executed in Seattle, Washington.

Dated: October 11, 2013

  
\_\_\_\_\_  
Joel Springer  
Legal Assistant  
McCarthy & Holthus, LLP

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