No. 91779-5

(Court of Appeals No. 72016-3-I)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

SANDRA SHELLEY JACKSON,

Petitioner/Plaintiff,

v.

QUALITY LOAN SERVICE CORP. OF WASHINGTON, et al.,

Respondents/Defendants.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF ANSWERING PARTIES

JPMorgan Chase Bank, N.A., Mortgage Electronic Registration Systems, Inc., and U.S. Bank National Association are respondents in the appeal and defendants in the Superior Court action.

II. SUMMARY OF GROUNDS FOR DENYING REVIEW

The Court of Appeals correctly affirmed the Superior Court's decision to dismiss Jackson's complaint under CR 12(b)(6). Jackson's petition for review makes the same erroneous arguments this Court declined to consider on direct review, and raises other meritless arguments never before briefed on appeal.

Many courts have already rejected Jackson's argument that the Washington Deed of Trust Act, RCW 61.24, et seq. ("DTA"), is unconstitutional and all nonjudicial foreclosure efforts are wrongful. Even if Jackson had notified the Washington Attorney General of her constitutional challenge—a procedural prerequisite that bars further review—her arguments make no sense. The entire point of a nonjudicial foreclosure is that it is not judicial in nature and is not an adjudication of anything. If Jackson's argument were correct, every real property transaction—even buying or renting a home—would need to go through the courts. Taking her argument to its logical conclusion would require invalidating, as unconstitutional, every alternative-dispute-resolution method involving real property.

The DTA expressly preserves court jurisdiction to resolve any disputes over the foreclosure process (as does Jackson's deed of trust).

The very existence of this lawsuit demonstrates the DTA does not usurp Superior Court jurisdiction. Jackson's conviction that the Court of Appeals got it wrong falls far short of showing that its decision: (i) conflicts with a decision of this Court, RAP 13.4(b)(1); (ii) involves an issue of substantial public interest that should be determined by this Court, RAP 13.4(b)(4); or (iii) conflicts with another Court of Appeals decision, RAP 13.4(b)(2). The Court should deny Jackson's petition for review.

III. ISSUES PRESENTED IF REVIEW IS GRANTED

Jackson misstated the issues that would be before the Court if the Court grants review. The issues would instead be these:

1. Did the Court of Appeals properly affirm the Superior Court's order dismissing Jackson's claims, even though the Superior Court considered publicly recorded documents and documents discussed in Jackson's complaint?

2. Did the Court of Appeals properly determine that Jackson failed to preserve her Consumer Protection Act claims on appeal?

3. Did the Court of Appeals properly affirm the Superior Court's dismissal of Jackson's constitutional challenge to the DTA?

IV. COUNTERSTATEMENT OF RELEVANT FACTS

A. Factual Background

Jackson's Note. Jackson signed an Adjustable Rate Note, dated March 17, 2006, to obtain a $715,000 loan from Cameron Financial Group, Inc., d/b/a 1st Choice Mortgage, to refinance her home loan.

CP 87-88, ¶ 3.2; CP 29-34; CP 155-60. The Note explained Cameron Financial could transfer the Note and the right to receive payments. CP 29, ¶ 1.

Jackson's Deed of Trust. Jackson also signed a Deed of Trust, dated March 17, 2006, creating a lien on her Seattle property to secure her obligations under the Note. CP 88, ¶ 3.5; CP 38-53. Jackson agreed that Cameron Financial could sell Jackson's property without prior notice to her, and that unless she was told otherwise, the loan-servicing obligations (collection of payments and general servicing duties) would remain with the entity disclosed to her as loan servicer (not any new Note holder). CP 50, ¶ 20. Jackson also agreed that if she broke her promise to make payments, the trustee under her Deed of Trust could sell her property to recoup the loan proceeds. CP 51.

The Deed of Trust identified Cameron as "Lender." CP 39, ¶(C). That designation meant Cameron Financial (as Note holder) was beneficiary of the Deed of Trust as a matter of law until it transferred the Note to a new party. RCW 61.24.005(2). Jackson and Cameron Financial also agreed, however, to refer to MERS as the "beneficiary" under the Deed of Trust, but solely as a nominee (agent) for Cameron Financial and any successor or assign of Cameron Financial. CP 39, 40. Thus, in the Deed of Trust, MERS was identified by Jackson as an agent for a disclosed principal (Cameron Financial), and the parties agreed that

MERS would continue to act as an agent for any successor Note holder until that Note holder were to terminate MERS's agency interest.[1]

Jackson's Loan Was Sold to a Securitized Trust. Jackson concedes her loan was sold to U.S. Bank, as trustee for a securitized trust known as the "WaMu Mortgage Pass Through Certificate for WMALT 2006-AR4" but questions whether the trust or the trust's investors are the "note holders." CP 85-86 ¶ 2.6. Jackson does not, however, dispute that U.S. Bank possesses her Note (that is the only way the investors for that trust could be "note holders," as she alleges). The Note is endorsed in blank, making it payable to the bearer of the Note. *See* CP 6, ¶ 3.3, CP 36, 88. Jackson's complaint attached a copy of an unsigned allonge of unknown provenance. CP 36. Because the allonge is unsigned, it is a nullity. *See* RCW 62A.2-204.

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[1] The term "beneficiary" under the Deed of Trust is a contractual label (not a legal conclusion), useful for designating MERS as an agent for the Note holder (*i.e.*, the beneficiary as a matter of law), to ensure MERS will get notice of any competing claims recorded against the property; this allows MERS (as agent) to relay that information to its principal (the Note holder), whomever that may eventually be. This Court in *Bain* recognized that MERS's role is "plainly laid out in the deeds of trust," that there is "no reason to doubt that lenders and their assigns control MERS," and that MERS "certainly" provides "significant benefits," by creating "efficiency," and overcoming "a drawback of the traditional mortgage financing model: lack of liquidity." *Bain v. Metro. Mortg. Grp. Inc.*, 175 Wn.2d 86, 105, 107, 109 (2012) (citation omitted). Thus, MERS's beneficiary designation is a matter of routine agency and contractual convenience, not an attempt to contract around Washington law. Indeed, the Deed of Trust discloses Cameron Financial as the Note holder (and thus beneficiary as a matter of Washington law), and the Deed of Trust explains that to the extent any term in the Deed of Trust conflicts with applicable law, that law controls. CP 39, ¶ (C), 49 ¶ 16. Nothing in the Deed of Trust suggests MERS is claiming that it is Note holder (*i.e.*, beneficiary as a matter of Washington law). *See Bain*, 175 Wn.2d at 106 (recognizing DTA "approves the use of agents" and it is "likely true" that "lenders and their assigns are entitled to name MERS as its agent"). It also worth noting that on remand, on a complete record, MERS obtained summary judgment because the Deed of Trust was not split, MERS did have a principal for whom it acted, and MERS caused no injury. *See, e.g., Bain v. Metro. Mortg. Grp. Inc.*, 2013 WL 6193887, at *5 (Wash. Super. 2013). *See also Oltman v. Holland Am. Line USA, Inc.*, 163 Wn.2d 236, 248-49 (2008) (court may consider trial court orders).

MERS Terminates its Nominee Role. MERS—acting as nominee for U.S. Bank, as trustee and the successor and assign of Jackson's loan—assigned its nominee interest in the Deed of Trust back to its principal, U.S. Bank, thereby terminating MERS's agency interest. CP 162. No foreclosure sale was scheduled or pending at the time MERS's role ended.

Jackson Defaulted on Her Loan in January 2011. Beginning in January 2011—more than four years ago—Jackson defaulted on her loan payments. *See* CP 56, ¶ 2. Jackson received a Notice of Default. *See* CP 56; CP 61, § VI. That Notice of Default disclosed her loan had been sold to U.S. Bank (which owned her loan), Chase was her loan servicer, her arrears were approximately $127,000, and a foreclosure sale might be scheduled if she did not cure her default, but she "ha[d] recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground." CP 55-57.

U.S. Bank Appointed a New Trustee Under the Deed of Trust. After Jackson's default, U.S. Bank (as Note holder) appointed Quality Loan Service Corp. as the new trustee under the Deed of Trust. CP 164-66.

Quality Scheduled a Foreclosure Sale. Because Jackson did not cure her default, Quality recorded a Notice of Trustee's Sale. CP 89, ¶ 3.12; CP 60-63. The Notice of Trustee's Sale referenced the Notice of Default, identified the original parties to the Deed of Trust—to allow the recorder's office to link to the Deed of Trust—and identified U.S. Bank as

successor-in-interest to Jackson's loan. CP 60-61. The foreclosure sale did not occur, and the property has not been sold. (And under RCW 61.23.040(6) any foreclosure sale must start over, since the maximum 120-day-extension period has elapsed from the original sale date of April 26, 2013.)

B. Procedural Background

Jackson Filed Her Complaint. Jackson filed her complaint just 18 days before the scheduled foreclosure sale. Jackson alleged claims against U.S. Bank, JPMorgan Chase Bank, N.A., MERS, Quality, and McCarthy as legal counsel for Quality. *See* CP 1-63. Jackson then filed an amended complaint against the same entities for breach of contract, DTA violations, constitutional violations, CPA violations, negligence, and quiet title. *See* CP 82-108. Jackson does not dispute her default, does not dispute that U.S. Bank was disclosed to her as the owner of her loan in her Notice of Default, does not claim any other entity has ever tried to foreclose on her, and does not claim she can reinstate her loan but is afraid of paying the wrong entity. The evident impetus of Jackson's complaint is not that she does not know who to pay, but that she wants to find some way to avoid the consequences of defaulting on her loan.

The Superior Court Granted Defendants' Motions to Dismiss. In three separate orders, the Superior Court dismissed with prejudice all claims against all defendants. CP 167, 211-12, 214. The Superior Court then issued an order clarifying its dismissal against U.S. Bank, Chase, and

MERS, explaining it had considered Jackson's hypothetical arguments in dismissing those claims. CP 215-17.

Jackson Seeks Direct Review to the Supreme Court. Jackson then sought direct review to this Court. This Court denied direct review and transferred the case to the Court of Appeals. The Court of Appeals affirmed the Superior Court. *Jackson v. Quality Loan Serv. Corp.*, 347 P.3d 487 (Wash. Ct. App. 2015). The Court of Appeals correctly ruled that the Superior Court was not precluded from considering public records and documents referenced in Jackson's complaint. *Id.* at 491. The Court of Appeals also correctly held that Jackson's failure to assign error to and argue against the Superior Court's dismissal of Jackson's CPA claims waived any argument as to those claims. *Id.* Finally, the Court of Appeals also correctly held that the legislature had the authority to enact the DTA, and its enactment did not unconstitutionally encroach upon the jurisdiction of Superior Court. *Id.* at 492.

V. ARGUMENT

Review is appropriate in only four narrowly prescribed circumstances. RAP 13.4(b). This Court accepts a petition for review only if (1) the Court of Appeals' decision conflicts with a decision of the Supreme Court; (2) the decision conflicts with another appellate decision; (3) the case involves a "significant question of [constitutional] law"; or (4) the decision involves "an issue of substantial public interest." *Id.*

The Court should not accept review under RAP 13.4(b). The issues here are narrow, discrete, and specific to the facts of this particular matter and covered by established case law. Jackson's remaining claims on appeal are that the Superior Court should have converted motions to dismiss into motions for summary judgment (hardly a question that merits this Court's review) and that the DTA is unconstitutional (which Jackson cannot argue because she did notify the Washington Attorney General).

A. This Court Does Not Need to Review the Court of Appeals' Treatment of Public Records and Documents Relied On In Complaints Because There is No Controversy About Their Use.

1. There is No Conflict Between the Court of Appeals Decision in This Case and Other Appellate Decisions.

The Court of Appeals did not err in affirming the Superior Court's consideration of documents attached to and referenced in Jackson's complaint, as well as documents subject to judicial notice, without converting the motion to dismiss into one for summary judgment. Pet. at 7-10. The Court of Appeals decision is consistent with prior appellate decisions because there is no dispute "whether documents whose contents are referenced in a complaint may be considered" on a CR 12(b)(6) motion. Pet. at 9 (citing *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726 (2008); *Brummett v. Washington's Lottery*, 171 Wn. App. 664, 673 (2012), *review denied*, 176 Wn.2d 1022 (2013); *Merry v. Nw. Tr. Servs., Inc.*, No. 32474-5-III, 2015 WL 3532992, at *13 n.3 (2015).

The Court of Appeals affirmed the Superior Court's determination that consideration of public records and documents referenced in Jackson's complaint need not convert CR 12(b)(6) motions to CR 56. *Jackson v. Quality Loan Serv. Corp.*, 347 P.3d 487, 491 (Wash. Ct. App. 2015). Citing *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 726 (2008), the Court of Appeals found the Superior Court properly considered an "adjustable rate note, prepayment penalty addendum, and an allonge to the note for the loan, which were repeatedly referenced in [Jackson's] complaint." *Jackson*, 347 P.3d at 491. And citing *Berge v. Gorton*, 88 Wn.2d 756, 763 (1977), and ER 201(b)(2), the Court of Appeals also held that the Superior Court properly considered "a recorded corporate assignment of the deed of trust and a recorded appointment of successor trustee" because a court "may take judicial notice of public documents if the authenticity of those documents cannot be reasonably disputed." *Jackson*, 347 P.3d at 491.

Rodriguez and *Merry* held that documents whose contents are alleged in a complaint, and whose authenticity no party questions, may be considered in ruling on a motion to dismiss, even if those documents were not filed with the complaint. *Rodriguez*, 144 Wn. App. at 726; *Merry*, 2015 WL 3532992, at *13 n.3. *Brummett* is consistent with *Rodriguez* and *Merry*. *Brummett*, 171 Wn. App. at 673 n.13. Based on the procedural posture of that particular case, and in order to preserve judicial resources,

the court in *Brummett* decided to convert the motion because it would not affect the outcome of the appeal. *Brummett*, 171 Wn. App. at 673 n.13.

Jackson insinuates that the Court of Appeals' decision rested on *Trujillo v. Northwest Trustee Services, Inc.*, 181 Wn. App. 484 (2014), *as modified* (Nov. 3, 2014), *review granted*, 182 Wn.2d 1020 (2015), which "this Court accepted for review." Pet. at 7. But the Court of Appeals did not rely on *Trujillo* in affirming the Superior Court's consideration of documents outside the complaint. *See Jackson*, 347 P.3d at 491. And this Court did not accept *Trujillo* for review based on the Superior Court's review of documents referred to in the complaint. *Trujillo v. Nw. Tr. Servs., Inc.*, 182 Wn.2d 1020 (2015).

2. Jackson's Argument That the Superior Court Improperly Relied on "Hearsay" Was Not Raised on Appeal And is Waived.

Jackson argues that the Superior Court improperly considered publicly recorded documents for "the truth of facts contained therein." Pet. at 10. But Jackson failed to raise this argument either in the Superior Court below or in her opening brief to the Court of Appeals.

The appellate court may refuse to review any claim of error that was not raised in the trial court, with limited exceptions not applicable here. RAP 2.5(a). An appellate court will not consider new issues not raised to the trial court or in a party's initial brief to the Court of Appeals. *State v. Shale*, 182 Wn.2d 882, 886, 345 P.3d 776, 777 n.2 (2015).

Jackson has waived this ground to appeal and the Court should deny review on this basis. Additionally, Jackson's allegations fail as a matter of law. Jackson does not (and cannot) identify how the Superior Court relied on any alleged hearsay. Pet. at 11.

B. Jackson Cannot Assert on Appeal the Trustee Acted in Bad Faith Because She Has No Claims Under the DTA and Waived Her Right to Appeal Her CPA Claims.

Jackson asks this Court to declare the Court of Appeals "misread" her complaint and wrongly dismissed her "bad faith" allegations against Quality and McCarthy. *See* Pet. at 11-13. But the Court of Appeals properly found that Jackson had "failed to address her claims for violation of the CPA, breach of contract, unconscionability, negligence, and quiet title in her opening appellate brief" and thus her "failure to assign error to and argue against the [trial] court's decision for failure to state a claim on these issues, waive[d] any argument as to those claims." *Jackson*, 347 P.3d at 491 (citing RAP 10.3(a)(6)). And citing *Frias v. Asset Foreclosure Services., Inc.*, 181 Wn.2d 412, 428-30 (2014), the Court of Appeals also held that because there had been no foreclosure, Jackson had no claims under the DTA. *Id.* at 493. Thus, Jackson failed to preserve a cause of action for appeal under which she could even assert bad faith against Quality and McCarthy. *Id.* Jackson does not seek review of the Court of Appeals' findings that she waived these claims. *See* Pet. at 1-2.

C. Jackson's Constitutional Challenge Fails Procedurally and Lacks Merit.

Jackson improperly seeks a determination as to the constitutionality of the DTA. *See* Pet. at 13-19. Jackson did not send the required notice to the Washington Attorney General, which was a required procedural hurdle. Many courts have rejected Jackson's constitutional challenge (raised by the same counsel). *See Knecht v. Fid. Nat. Title Ins. Co.*, 2014 WL 4057148, *11 (W.D. Wash. 2014) (plaintiff asking "the court to rewrite [DTA], not to interpret it"); *Galyean v. Nw. Tr. Servs. Inc.*, 2014 WL 3360241, *6 (W.D. Wash. 2014) (same); *Robertson v. GMAC Mortg. LLC*, 2014 WL 2207505, *3 (W.D. Wash. 2014) (same).

1. Jackson's DTA Claim Fails Procedurally.

The Court of Appeals properly held that Jackson's attack on the constitutionality of the DTA is procedurally deficient because she failed to notify the Attorney General of her constitutional challenge. *Jackson*, 347 P.3d 487 (citing RCW 7.24.110, requiring notification to the state attorney general when there is a constitutional challenge to state legislation); *Camp Fin., LLC v. Brazington*, 133 Wn. App. 156, 160 (2006) (Attorney General must be served when a party challenges the constitutionality of a statute).

2. The DTA Does Not Violate the Washington State Constitution.

The Court of Appeals properly found that "[t]he legislature had authority to enact the DTA and its enactment did not encroach upon the jurisdiction of the superior court." *Jackson*, 347 P.3d at 493. Jackson mistakenly argues that a nonjudicial foreclosure is "judicial" in nature, and

that as a result, the DTA usurps jurisdiction from the courts over cases involving title or possession of real property. But the nonjudicial foreclosure process is (as the name suggests) not judicial at all, and the DTA expressly preserves the Superior Court's jurisdiction to resolve disputes stemming from nonjudicial foreclosures (as it did here).

a. Nonjudicial Foreclosure is Not Judicial.

Jackson's argument hinges on her theory that the nonjudicial foreclosure process involves a "judicial inquiry," *i.e.*, an inquiry she believes the constitution reserves to the courts. For support, Jackson cites *Klem v. Washington Mutual Bank*, 176 Wn.2d 771 (2013), claiming that case holds that a trustee under a deed of trust "acts as a judge" and engages in "judicial inquiries." Pet. at 14-16. Jackson misreads *Klem* and misunderstands the DTA.

In *Klem*, the Court addressed the duties of a trustee and drew an analogy between judicial and nonjudicial foreclosures, but it did not use dicta to convert a nonjudicial process into a judicial one. *Klem*, 176 Wn.2d at 789-90. In judicial foreclosures, an "impartial judge," rather than a trustee, directs a sale by court order. Because a nonjudicial foreclosure does not involve a judge, the trustee should likewise "act as an impartial third party who owes a duty to both parties to ensure that the rights of both the beneficiary and the debtor are protected." *Id.*

The point was not that the DTA makes trustees into judges, but rather that trustees should act impartially, just as a judge would. Rejecting

a similar challenge to the one Jackson raises here, this Court recognized that "[a] nonjudicial trustee sale is not made pursuant to a judgment," but instead is entirely voluntary, and thus there is no state action by the courts or otherwise. *Felton v. Citizens Fed. S&L of Seattle*, 101 Wn.2d 416, 423 (1984); *Kennebec, Inc. v. Bank of the W.*, 88 Wn.2d 718, 725 (1977).

Jackson next argues the legislature's decision to allow a trustee to rely on a sworn statement from the beneficiary involves a "judicial inquiry." Pet. 15-16 (citing RCW 61.24.030(7)(a)-(b)). But as this Court recognized in *Schroeder v. Excelsior Management Group Inc.*, 177 Wn.2d 94 (2013), RCW 61.24.030 "is not a rights-or-privileges-creating statute," but "[i]nstead, it sets up a list of "requisite[s] to a trustee's sale." *Id.* at 106-07. The Court examined the requirements under RCW 61.24.030 and held they were "not, properly speaking, rights held by the debtor; instead, they are limits on the trustee's power to foreclose without judicial supervision." *Id.* at 107. This requirement is no more judicial than requiring that the lender identify the deed of trust or issue a notice of default. The trustee is not adjudicating anything; it is merely ensuring compliance with the list of statutory prerequisites to a sale. Countless statutes contain notarization, certification, or other similar requirements as a condition of taking further action; Jackson's argument would mean that hundreds of statutes are unconstitutional.[2]

[2] *See, e.g.*, RCW 11.42.010 (a declaration and oath in affidavit form or under penalty of perjury is required for identification of a nonprobate notice agent to creditors); RCW 16.52.220 (written certifications must be signed under penalty of perjury for the transfer of certain mammals to research institutions); RCW 18.104.093 (application for a

b. The DTA Does Not Divest the Court of Jurisdiction.

Jackson asks this Court to find that the Washington legislature has no ability to legislate regarding the title and possession of real estate. Pet. at 14-19. Jackson bases her argument on Const. art. IV, § 6, and Const. art. II, § 1's alleged "exclusive" grant of jurisdiction to the courts for all real property concerns. *See* Pet. at 16. The "Superior Court shall have original jurisdiction in all cases at law which [sic] involve the title or possession of real property ...." Wash. State Constitution, Art. 4, § 6. But a nonjudicial foreclosure is not "a case at law," it is the enforcement of an entirely voluntary agreement between parties. The DTA "is entirely noncoercive." *Kennebec*, 88 Wn.2d at 725. Over 30 years ago, this Court emphasized the voluntary nature of nonjudicial foreclosure. *Felton*, 101 Wn.2d at 421-22.

Until, for instance, a party challenges the foreclosure, there is no "case at law" to bring to Superior Court. Indeed, the DTA specifically preserves the Superior Court's constitutional grant of jurisdiction: "Nothing contained in this chapter shall prejudice the right of the borrower" to file an action in Superior Court "to restrain, on any proper

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water well construction operator's training license requires a statement by a licensed operator signed under penalty of perjury verifying the applicant has the required field experience and assuming liability for all of the applicant's well construction activities); RCW 19.225.040 (athlete agent disclosure form must be signed under penalty of perjury); RCW 25.05.025 (partnership statement filed with the office of secretary of state must be signed under penalty of perjury); RCW 29A.08.510 (county auditor or Secretary of State may rely on a registered voter's signed statement "subject to the penalties of perjury" that another registered voter is deceased in canceling the deceased voter's registration from the official state voter registration list).

legal or equitable ground, a trustee's sale." RCW 61.24.130(2).[3] The DTA also provides that if a lender fails to acknowledge satisfaction of the mortgage by reconveyance 60 days from the date of the borrower's request, the lender is liable for damages and attorneys' fees in a court action. RCW 61.16.030; RCW 61.24.110. And even after the sale has occurred, Jackson has access to the Courts to seek damages associated with the foreclosure (and in some cases may unwind the sale). *See* RCW 61.24.127; *Albice v. Premier Mortg. Serv. of Wash.*, 174 Wn.2d 560, 568 (2012) (voiding sale in court action). This is precisely the access to Superior Court that Jackson denies exists. Yet this lawsuit is the very exercise of that right.[4]

The DTA clearly embraces the use of the courts should there actually be a "case at law" disputing the propriety of foreclosure.[5] As

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[3] *See also* RCW 61.24.030(8)(j) ("the borrower ... has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground"); RCW 61.24.040(2) ("You may contest this default *by initiating court action* in the Superior Court of the county in which the sale is to be held") (emphasis added); RCW 61.24.090(2) ("Any person entitled to cause a discontinuance of the sale proceedings shall have the right .... to *request any court*, excluding a small claims court, for disputes within the jurisdictional limits of that court, to determine the reasonableness of any fees demanded or paid as a condition to reinstatement") (emphasis added); RCW 61.24.130(1) ("Nothing contained in this chapter shall *prejudice the right of the borrower ... to restrain, on any proper legal or equitable ground, a trustee's sale*" in superior court) (emphasis added).

[4] Likewise, Jackson's Deed of Trust expressly preserves her right to access the Courts to resolve any disputes over the propriety of foreclosure, requiring that any default notice explain Jackson has "the right to bring a Court action to assert the non-existence of a default or any other defense of [Jackson] to acceleration and sale." CP 50, ¶ 22.

[5] The DTA does not purport to resolve any disputes as to "possession" of property, as it makes clear that any effort to enforce any possessory right must be done through the courts under RCW 59.12 *et seq.* *See* RCW 61.24.040(9) ("After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under chapter 59.12 RCW.").

such, Jackson's argument the DTA somehow usurps the court's position contradicts the words of the statute and Washington case law. The fact the Superior Court has original jurisdiction to resolve disputes over title and possession of real property issues also does not mean the legislature cannot enact laws that regulate real property title transactions.

Jackson, however, claims this Court held in *Moore v. Perrot*, 2 Wash. 1 (1891), that the courts have "exclusive" jurisdiction over real property. *Moore* actually holds the opposite: "The language of the constitution is not that the courts shall have exclusive jurisdiction." *Moore*, 2 Wash. at 4. Regardless, *Moore* does not apply. In *Moore*, the Court addressed whether a justice of the peace had jurisdiction to enter an order for $300 in money or property. *Moore*, 2 Wash. at 2. The Court analyzed the constitution's jurisdictional grant and held the justice of the peace lacked jurisdiction because "minor courts can[not] have concurrent jurisdiction with the superior courts." *Id.* at 5. The Court explained "[i]t is the enumeration of the particular matters which are within the original jurisdiction of the superior courts, which we interpret to mean that those matters pertain to them exclusively." *Id.* at 4-5. Thus, the exclusivity referred to in Article 4, section 6 exists between courts, not government branches. *Moore* did not address the legislature's ability to create law on matters touching the Superior Court's original jurisdiction.

Jackson also mischaracterizes *State v. Posey*, 174 Wn.2d 131, 135-36 (2012). In *Posey*, this Court held the legislature could not divest the

Superior Court of criminal jurisdiction over juveniles, and that "juvenile courts are properly understood, jurisdictionally, as a separate division of the superior courts." 174 Wn.2d at 139-40. The Court explained: "In these enumerated categories where the constitution specifically grants jurisdiction to the superior courts, the legislature cannot restrict the jurisdiction of the superior courts." *Posey*, 174 Wn.2d at 135 (citing *Blanchard v. Golden Age Brewing Co.*, 188 Wash. 396, 418 (1936)). Thus, *Posey* involved legislation regarding jurisdiction over cases at law. The DTA involves neither. Unlike in *Posey*, the legislature has not divested (or even attempted to divest) the Superior Court of jurisdiction over disputes involving nonjudicial foreclosures. *See, e.g.*, RCW 61.24.040(1)(f)(IX); RCW 61.24.130.

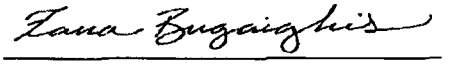
In short, the DTA does not limit the Superior Court's original jurisdiction. Instead, the DTA creates a statutory mechanism that allows lenders to enforce their contractual rights under Deeds of Trust efficiently and inexpensively, while protecting borrowers' ability to prevent improper foreclosures through court access.

VI. CONCLUSION

Jackson's issues do not warrant this Court's review.

RESPECTFULLY SUBMITTED this 8th day of July, 2015.

Davis Wright Tremaine LLP
Attorneys for JPMorgan Chase Bank, N.A., Mortgage Electronic Registration Systems, Inc., and U.S. Bank National Association

By 

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PROOF OF SERVICE

I declare under penalty of perjury that on this day I caused a copy of the foregoing document to be served upon the following counsel of record:

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Dated at Seattle, Washington this 8th day of July, 2015.

Zana Bugaighis

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Re: Jackson v. Quality Loan Service Corp. of Washington, et al.
Washington State Supreme Court No. 91779-5
Answer to Petition for Review

Dear Clerk,

Attached for filing is the Answer to Petition for Review submitted by:

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Thank you for your assistance.

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