73016-9

93859-2

IN THE SUPREME COURT OF WASHINGTON

BSI Financial Services, et al.

Respondent,

v.

Lorina G Delfierro,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE

STATE OF WASHINGTON FOR KING COUNTY

The Honorable Carol A. Schapira

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Lorina G. Delfierro asks this Court to accept review of the unpublished Court of Appeals decision terminating the review designated in Part B of this petition.

B. COURT OF APPEALS DECISION

Delfierro requests review of the decision in Delfierro v. BSI Financial Services et al, Court of Appeals No. 73016-9 (filed on November 16, 2015) which is attached herein as Appendix A. Delfierro also requests review of the Court of Appeals' decision as to Delfierro's Motion for Reconsideration, Court of Appeals No. 73016-9 (filed December 9, 2015) which decision is attached herein as Appendix B. Review is being sought under[1] RAP 13.4(b)(1)-(4) particularly subpart (4).

C. ISSUES PRESENTED FOR REVIEW

RECONSTRUCTION OF CHAIN

1. Did the trial court violate Ms. Delfierro's rights when it improperly and inaccurately reconstructed (as did the court of appeals when it inappropriately accepted the trial court's ruling) the chain of title in this matter which led to its making a number of incorrect decisions in resolving the subject dispute? Did the trial court (and court of appeals) improperly allow certain entities to be involved in making claims in this matter even though the claiming parties never actually established that they were part of the chain of title?

Did the court's actions amount to a due process violation as to Ms. Delfierro's rights? In doing so, did the trial court and court of appeals ignore the mandates of RCW 61.24 et seq., RCW 61.16.10, RCW 65.08.070 when it allowed certain parties to be part of the chain of title even though these parties did not show up on record, where these parties were not part of the lawsuit and

[1] These issues are being raised in the context of Ms. Delfierro's constitutional and due process rights. Ms. Delfierro is also asserting these claims under the Consumer Protection Act.

that offered no proof that they had ever or were associated with the subject the loan.

PERVASIVE FLAWS

2. Did the trial court and court of appeals deny Ms. Delfierro her due process rights when it ignored a multitude of actions that were either improper/inappropriate or deliberate mistake when it concluded that Second Mariners Investment Fund II, REO, LLC (M4) ended up owning the subject Note?

The following are just a few examples:

-A variety of key documents contained drafting errors or were otherwise faulty such as: Successor Trustee Form (AST #1), Notice of Trustee's Sale (NOTS#1), Trustee's Deed (TDUS), Assignment of Successor Trustee (AST#2), Notice of Trustee Sale (NOTS#2) and Assignment Deed of Trust (ADOT#1) where each such document incorrectly and inappropriately identifies MERS as the beneficiary in contravention of Washington law. In addition, the TDUS improperly vests property ownership in what was ultimately admitted to be a non-existing entity: Defendant Mariners Second Fund II Reo, LLC (M1[2]); MERS had no rights as a beneficiary under RCW 61.24.005 (MERS' only has authority when the note actually belonged to a MERS member which was never the case here.)

WRONG ENTITIES IN CHAIN/ NO CREDENTIALS

3. Ignoring inappropriate assumptions, did the trial court and court of appeals deny Ms. Delfierro her due process and contract rights when it inappropriately accepted parties as being in the chain of title when there were no recordings, no assignments and no documentary proof.

Did the trial court and court of appeals ignore the premise that the 2009 foreclosure could only take place when directed by the beneficiary and as such

[2]The Mariners entities are denominated as follows: M1 – Second Mariners Fund II REO LLC, M2 – Mariners Investment Fund II LLC, M3 – Second Mariners Residential Fund II LLC, M4 – Second Mariners Investment Fund II REO, LLC, M5 – Mariners Investment Fund LLC, M6 – Mariners Strategic Fund II LLC.

MERS was not an authorized party? Under the circumstances, was this-in effect an inappropriate denial of Ms. Delfierro's property interest?

FCDB NOT A PARTY SELLING NOTE

ISSUES WITH FORTRESS

4. Did the trial court and court of appeals improperly accept-out of hand- a number of unestablished assignments thereby coming to the wrong conclusion regarding the path of the chain of title in this matter?

5. Were Ms. Delfierro's due process rights violated when the trial court and court of appeals improperly rule that FCDB FFC LLC sold the subject note to Mariners 4, a non-MERS member?

-Did the court violate Ms. Delfierro's rights when it improperly allowed "Fortress" to play a role in this dispute without having established any foundation/ substantiation/ proof?

-Was the court incorrect in accepting M4's unsubstantiated argument that it purchased the subject Note from non-MERS member FCDB FF1, LLC/ Fortress-given that no substantive evidence was provided of any such transaction?

6. Ignoring the issues presented above, did the trial court and court of appeals incorrectly rule that the so-called transfers of the subject Note from Defendant Second Mariners Investment Fund II REO, LLC (M4) to Defendant Mariners Investment Fund, LLC (M5) and later from M5-Hermann were appropriate? Did this sequence of events amount to a denial of Ms. Delfierro's due process and contract rights? RCW 65.08.070

LATER TRANSFERS

7. Did the court violate Ms. Delfierro's property rights and her due process rights and improperly apply the uniform commercial code to the subject Note when it was lost while in the Mariners' possession? RCW 62A.3.309 (b)

PURCHASE AND SALE AGREEMENT

8. Did both the courts violate Ms. Delfierro's contract rights and rights to due process when throughout the course of the trial proceedings, the court consistently rejected certain documents that had been offered by Mariners and

then-after the parties had rested and it was no longer possible to question witnesses, the court admitted this crucial evidence-documents that had not been testified or had foundation laid or reliability established? RP11/4 23, Exh. PSA (3).

D. STATEMENT OF THE CASE

The issues in this case first arose on July 16, 2007, when Ms. Delfierro refinanced her then-existing loan. She signed a new note with MERS member Equifirst Corporation. (EC) EC had been previously purchased by another MERS member-Barclay's-sometime during March of 2007 (RCW 23B.11.060 (1) Ex. (103) DOT, RP 10/29 57. CP 16, 17. MERS[3] was the nominee of the lender as well as the lenders' successor and assignee and the beneficiary on Ms. Delfierro's DOT (page 2 and page 3.) Importantly, MERS was never the beneficiary in the Delfierro Note, however.

Almost one month after signing the refinance papers-on August 8, 2007-EC[4] asserted that it had sold the subject loan to Sutton Funding LLC ("Sutton,") a non MERS member[5]. Throughout the entire course of this litigation, EC has

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[3]MERS makes no decisions, moves nothing, holds nothing, and creates nothing. MERS is an echo for its membership to control and withhold information and hide their identity from the borrower. A MERS loans history and ownership is held exclusively by MERS and MERS is exclusively owned and managed by the major investors in the mortgage industry. Unlike the public records, MERS records are available to the industry for undetectable modification which can, and does, destroy the borrower's ability to obtain reliable information.

[4]EC (later Barclay) was the only claimant to the note that was ever a member of MERS. Unless an unrecorded sale occurring after August 8, 2007 to a MERS member was identified no MERS authorized recordings are legitimate. Equifirst the original beneficiary of the DOT and MERS failed to abide by their mandated contract by failing to record an assignment of the DOT when the note is conveyed to a non MERS member thereby exposing Delfierro's loan to trespassing and manipulation without Delfierro's ability to defend it.

[5] MERS rules require a member to record an assignment of sale to non- MERS member to avoid break in the chain of possession. Section 11. http://www.mersinc.org/join-mers-docman/979-mers-system-rules-final-1/file

On 2013 Discovery, MERS declared Sutton Funding LLC and FCDB FF1 LLC, are non MERS. also see Member search http://www.mersinc.org/about-us/member-search

never produced a reliable assignment or endorsement or any other documentation substantiating that this loan had ever been assigned. The parties never presented information regarding an exchange of value and they provided no evidence of the recording of any transaction. Also, there was testimony that Sutton sold the subject note to FCDB FF1 LLC, ("FF1") another non MERS member on September 12, 2008. EC, Sutton and FF1 have all failed to produce written assignments (RCW 61.16.10) [6] and endorsements. They never adequately established that there was an exchange of value and they never provided recorded documents to substantiate their claims, RCW 65.08.070.[7] RP 9/30 81, RP 10/29 49, 52-54.

Before and during early litigation, the Trial Court repeatedly rejected requests to consider or admit the so-called Purchase and Sale Agreement (PSA) regarding Equifirsts' sale of the Delfierro note (among other notes) to Sutton. Presumably the Purchase and Sale Agreement was rejected because of a marked lack of foundation. The PSA was literally full of blanks and none of the critical documents were attached and it was unsigned. Additionally, all of the

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[6] RCW 61.16.010 Assignments, how made—Satisfaction by assignee.
Any person to whom any real estate mortgage is given, or the assignee of any such mortgage, may, by an instrument in writing, signed and acknowledged in the manner provided by law entitling mortgages to be recorded, assign the same to the person therein named as assignee, and any person to whom any such mortgage has been so assigned, may, after the assignment has been recorded in the office of the auditor of the county wherein such mortgage is of record, acknowledge satisfaction of the mortgage, and discharge the same of record.[1995 c 62 § 13; 1897 c 23 § 1; RRS § 10616.]Validating—1897 c 23: "All satisfactions of mortgages heretofore made by the assignees thereof, where the assignment was in writing, signed by the mortgagee or assignee, and where the same was recorded in the office of the auditor of the county wherein the mortgage was recorded, are hereby validated, and such satisfactions of mortgages so made shall have the same effect as if made by the mortgagees in such mortgages." [1897 c 23 § 2.]

[7] Without question, an unrecorded conveyance is admittedly still valid as between the parties, if it is void against a subsequent good faith purchaser. RCW 65.08.070 (unrecorded conveyance is void against subsequent purchaser in good faith); Chelan County v. Wilson, 49 Wn. App. 628,632, 744 P.2d 1106 (1987) ("The intention of the recording act is to require persons claiming an interest in real property to record such instrument as will give notice of their claims. Unrecorded conveyance of realty, however, is valid as between the parties."(Citations omitted.) A real estate contract by itself, even if unrecorded, transfers an equitable interest in the property and confers in the buyer certain substantial rights with respect to the possession, control and legal title to the property. Chelan County, 49 Wn. App. at 632

attachments were missing. CP 275-281. Making matters worse, at trial no witnesses testified for FF1 or Fortress. RP 9/30 34, 64-65, 68-69, 81 RP 11/3 44-48 RP 12/8 11-13. Perhaps this explains why all of the closely related parties-EC, Homeq, Fidelity, MERS, SLS-all failed to produce copies of the note with appropriate endorsements or assignments or allonges.

Essentially, this key document was not credible.

Put simply because of an absolute failure to produce substantiating documents, no supportable chain of title was ever established through reliance on the Purchase and Sale Agreement.

In addition, this document was never testified to by a knowledgeable witness.

Making the matter even more confusing, MERS appeared to be wearing multiple hats: 1) it was acting as the nominee of the original lender EC, 2) At the same time it was acting as beneficiary- see pages 2, 3, 13 paragraph 22 of the Delfierro DOT. Also, see RCW 61.24.005 (2)[8], CP 16-18, 171, 181, 232, 239. Against this backdrop, in January 2009, after the Note was transferred to Sutton (and MERS was no longer involved), subsequently MERS injected itself back into the Delfierro's DOT. This was apparently done of MERS' own volition. MERS appointed Fidelity to act as the successor Trustee in early 2009 (AST#1)[9].

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[8]Bain (Kristin), et al. v. Mortg. Elec. Registration Sys., et al., No. 86206 As amicus, the attorney general contends that MERS is claiming to be the beneficiary "when it knows or should know that under the Washington Law it must hold the note to be the beneficiary" and seem to suggest we hold that claim is per se deceptive and/or unfair. AG Br. at 14. This contention finds support in Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 162 Wn.2d 59, 170 P.3d 10 (2007), where we found a telephone company had committed a deceptive act as a matter of law by listing a surcharge "on a portion of the invoice that included state and federal tax charges." Id. at 76. We found that placement had "capacity to deceive a substantial portion of the public "into believing the fee was a tax. Id. (emphasis omitted) (quoting Hangman Ridge, 105 Wn.2d at 785).

[9]Only a lawful beneficiary has the power to appoint a successor to the original trustee named in the deed of trust. Bavand v. OneWest Bank, F.S.B., 176 Wn. App. 475, 486, 309 P.3d 636 (2013). Only a properly appointed trustee may proceed with a nonjudicial foreclosure of real property. 176 Wn. App. at 486 -87.

During February, 2009 MERS apparently instructed Fidelity[10] to issue NOTS#1. RCW 61.24.005(2) CP 17, 18, CP 32, CP 175, 176. In trial 2009 and during discovery in 2013, there was no beneficiary declaration that authorized SLS[11], loan servicer to act as an agent of the real beneficiary. Similarly, in May 2009, MERS, acting as the beneficiary and holder of the indebtedness, issued a Trustee's Deed (TDUS) for the benefit of Defendant Mariners Second Fund II REO, LLC (M1) CP 19-21, (later on during November of 2013 M1 expressly admitted for the first time that it was a non-existent entity.) RCW 40.16.030[12] Ex 297 (interrogatory 6), RP 11/3 13, 14, 16, 17, 18. RCW 61.24.010(4), RCW 61.24.030(7). This did not stop Fidelity from filing an Excise Tax Affidavit in favor of non-existent M1 and executed by someone by the name of Les Poppit (Trustee and signing as buyer.) Poppit was not affiliated with M1-nevertheless he signed for the non-existent entity M1. In taking these actions MERS-because it was not the actual beneficiary-violated RCW 61.24 et seq and it essentially asserted a false claim, RCW 40.16.030 and it acted deceptively and violated the CPA and RCW 19.86. Ex. DOT (Ex 103), AST#1(Ex 105), NOTS#1 (Ex 106), TDUS (Ex 107) Ex.ADOT#1(5), Excise Tax (120). RP 11/03 16.

All of a sudden, on September 30, 2014, shortly before trial in this matter began and after four full years of pre-litigation (and Mariners' continuing

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[10]Fidelity needs the proof as to who is the holder of the note before commencing the foreclosure.
The note's holder is the person or entity entitled to enforce the note. Trujillo, 181 Wn. App. at 500. Conversely, the note's owner is the person or entity entitled to the note's economic benefits. 181 Wn. App. at 497. RCW 61. 24.030(7)(a) and (b) Under RCW 61. 24.030(7)(a), a successor trustee needs proof that the beneficiary is the note' s holder, not that the beneficiary is the note' s owner, to initiate a nonjudicial foreclosure. Trujillo, 181 Wn. App. at 502. Accordingly, under RCW 61. 24. 030(7)(b), the declaration from beneficiary is sufficient.

[11]On July 2011, SLS responded on the QWR that the lender was US BANK Indenture Trustee N.A., but did not produce supporting documents.

[12]RCW 40.16.030 Offering false instrument for filing or record. Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

testimony that it had purchased the Note from Equifirst in this matter) Mariners underwent an abrupt shift.

Mariners were now claiming as follows: 1) during April, 2009 Mariners bought the subject note from non-MERS member FCDB SNPWL TRUST c/o Fortress Investment Group ("Fortress") [13]and not from Equifirst (during April 2009. CP 355 RP 9/30 9, 66, 85, RP 10/29 43 RP11/4 23 12/8 7, 12-13 Ex. 3 (PSA.) (Prior to this "about face" Mariners-for years- had consistently argued that it had purchased the Note from the first Delfierro lender Equifirst. The problem: there was no written assignment or other documentation to substantiate either transaction, no exchange of consideration was ever established, no endorsement was demonstrated and nothing was recorded. RCW 61.16.010 and RCW 64.08.070.

Frankly, Delfierro argues that this was a phantom transaction and was necessary for Mariners to wrest control of the property and associated rights from Delfierro.

Based on documents that were issued, Mariners were on constructive notice[14] during January and February, 2009 that MERS was claiming to be the subject beneficiary. Recorded documents are public records and Respondents and their counsel have constructive knowledge of their contents. Respondents and their counsel took five years to change their story. (Before the NOTS can be recorded the successor trustee needs proof that the beneficiary is the note's

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[13] Delfierro did not have time to know that these entities were non MERS. FCDB SNPWL TRUST has trustee, the WELLS FARGO DELAWARE TRUST COMPANY is Statutory Trust doing business in Delaware since December 2008, 2009 in Massachusetts and started in New York c/o Fortress on 2013. see The MASSACHUSETTS Secretary Of State search for registered Corporations and LLC.

[14] Newport Yact Basin Ass'n of Condo. Owner v. Supreme Northwest, Inc., 168 Wn. App. 56, 80, 277 P.3d.18 (2012) (parties are deemed to have constructive knowledge of Matters disclosed in the public records.) Washington State Supreme Court has long held to the contrary. In Johnson v. Spokane & I.E.R Co., 104 Wash. 562,569,177 P.810 (1919).The court stated that, " We have always held that a party whose rights rest upon a written instrument which is plain and unambiguous, and who has read or had the opportunity to read the instrument, cannot claim to have been misled concerning its content or to be ignorant of what is provided therein." Respondents and their counsel took five years to change their story.

holder and Fidelity declared MERS to be the beneficiary on NOTS#1 (not M1 or M4 or Fortress or FCDB SNPWL TRUST but MERS).[15] RCW 61. 24.030(7) (a) [16].

Regarding the Purchase and Sale documents, Mariners failed to comply with Washington rules of discovery (CP 613, 614), it produced an incomplete, unsigned and unverified Purchase and Sale Agreement (PSA) which indicated "for a scratch and dent sale" and it did not list FCDB FF1 LLC (FFL) as one of the sellers and M4 (Real Estate Own buyer) failed its own identification on the PSA. M4[17] claimed that it had purchased a mortgage loan but on the PSA Schedule One and substantiating the transfer, the subject loan was identified as REO. The fact is Delfierro's loan was not a REO. Indeed, during discovery Mariners produced its Interrogatory answers and produced its Documents,

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[15] In Federal Home Loan Mortgage Corp. v. Schwartzwald, 2012 Ohio 5017, 2012 Ohio LEXIS 2628 (Ohio 2012), the Supreme Court of Ohio joined other courts that have refused to allow banks to foreclose if they cannot prove by written evidence at the time of foreclosure that they have a legal right to foreclose. {¶ 16} The court of appeals certified that its decision conflicted with Wells Fargo Bank, N.A. v. Byrd, 178 Ohio App.3d 285, 2008-Ohio-4603, 897 N.E.2d 722, ¶ 15-16 (1st Dist.); Bank of New York v. Gindele, 1st Dist. No. C- 090251, 2010-Ohio-542, ¶ 3-4; and Wells Fargo Bank, N.A. v. Jordan, 8th Dist. No. 91675, 2009-Ohio-1092, ¶ 21, cases that held that a lack of standing cannot be cured by substituting the real party in interest for an original party pursuant to Civ.R. 17(A). We accepted the conflict and the Schwartzwalds' discretionary appeal on the same issue.

[16] Footnote: Lyons v. US. Bank Nat'l Ass 'n, No. 89132-0 WA Supreme Court).
Bain emphasized that the act requires a trustee to have proof that the beneficiary is the actual owner of the note to be foreclosed on. 175 Wn.2d at 102 (citing RCW 61.24.030(7)(a)), 111 ("If the original lender had sold the loan, [it] would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions."). Seeking to foreclose without being a holder of the applicable note in violation of the DTA is actionable in a claim for damages under the CPA. Id. at 115-20.

[17]M4 injecting itself in 2009 and declaring itself as the beneficiary as well as the note holder by using a late incomplete unverified PSA had misrepresented itself in an effort to deceive. The CPA does not define the term "deceptive," but implicit in that term is "the understanding that the actor misrepresented something of material importance." Hiner v. Bridgestone /Firestone, Inc., 91 Wn. App. 722, 730, 959 P.2d 1158 (1998), rev' d on other grounds, 138 Wn.2d 248 (1999). For an unfair or deceptive act, "[a] plaintiff need not show that the act in question was intended to deceive, but that the alleged act had the capacity to deceive a substantial portion of the public." Hangman Ridge Training Stables Inc., 105 Wn.2d at 785.

claiming that M2 bought the note from EC. Exh. PSA (3), Ex. 2 (Interrog 9A, 9, 11, 12, 13). The PSA was accepted by the court without foundation and after everybody had rested. This was extremely prejudicial to Delfierro.[18]

For literally years the Mariners claimed to have purchased the Note from Equifirst. They filed a Proof of Claim in bankruptcy court to that affect. Regardless however, starting in 2013 Mariners were now disclaiming the 2010 ADOT#1 and the Equifirst "sale", the document that they had long relied on to establish their "purchase" of the Note from Equifirst.

Now in 2014 they were saying that they did not buy the note from EC. Instead, for the first time Mariners were now blaming MERS for executing and recording ADOT #1. Ex. ADOT#1(5), RP9/30 31, 32, 68, 69, RP 10/29 5, 11-14, 33. CP 377-378. (Realizing that during September 2014 they just nullified the assignment that they had consistently claimed perfected their lien (and where they received more than $44,000 dollars from the Bankruptcy Trustee in 2010, on October 28, 2014, Mariners was now taking back what it said at trial. CP 702, 703.

Against this backdrop, Mariners argue that they purchased the subject property at the foreclosure sale which took place during May 15, 2009. The following month, M1[19] filed an Unlawful Detainer action against Delfierro. RCW

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[18]On 04/14/2009 MERS was actively pursuing a non-judicial foreclosure on Delfierro's Deed of Trust. Delfierro contends this order was arbitrary and fails the "sufficient quantity of evidence to persuade a fair-minded person of the orders truth or correctness" test set forth by Raven v. Dep't. of Soc. & Health Servs., 177 Wn.2d 804, 817, 306 P.2d 920 (2013) (quoting Port of Seattle v. Pollution Control Hr'gs BdL, 151 Wn.2d 568, 588, 90 P.3d 659 (2004))

[19]All Mariners entities, ADM and Del Toro have no certificate of authority from the Secretary of the State of Washington. M1 was never incorporated. M1 failed the RCW 25.15.303. On May 14, 2009 the Washington Supreme Court ruled five to four that a Washington LLC cannot sue or be sued once its certificate of formation has been canceled and any pending lawsuits by or against the LLC abate upon cancellation of the certificate of formation. The result is the same whether the certificate of formation is canceled by the LLC's voluntary filing of a certificate of cancellation, or by the Secretary of State because of the LLC's failure to pay its license fees, have a registered agent, or file its annual report. The court also held that those who improperly wind up an LLC can face personal liability to the creditors of the LLC. Chadwick Farms Owners Ass'n v. FHC LLC (May 14, 2009).

59.12.032. On September 1 2009, after a hearing on the matter Judge McDermott dismissed Mariners' eviction action. As a result, the Trustee's Deed issued to Mariners' was stricken and the lien was returned to its' "original position." CP 22, 23 CP 356, Exh. 122 (Eviction), Ex.107 (TDUS), Ex. 108 (UD order), 109 (Amended Order), RP 10/28 20-22, 95-98, 126.

In essence, Judge McDermott essentially returned the rights in the Deed of Trust to Equifirst. CP 517. This ruling was ignored by the Trial court in this matter. In a earlier hearing the Trial Court agreed with Mariners that Judge McDermott would not have returned the lien to EC because EC did not exist. Disregarding that EC did not dissolve but merged with Barclays making Barclays successor to EC. The Trial Judge in this matter ignored ADOT#1, a document ruled legitimate by Judge Dore and Steiner in 2010 which gave Mariners standing in Bankruptcy court because they claimed they bought the note directly from EC at that time. The Trial court overruled the two previous judicial decisions.

On December 29, 2009 an Amended Order was filed by Mariners' counsel the Robinson Tait law firm. Ex.108 (UD order), 109 (Amended Order), CP 22, 23 RP 10/28 96-100.

Within a month or two of this filing, Mariners 3 was now being identified as the Note holder. Importantly, no documentation was ever produced showing how Second Mariners Residential Fund II REO LLC (M3) became holder of the Note. As before, no written assignment, no evidence of value exchanged and no evidence of recording was ever established. During March, 2010, M3-the unexplained beneficiary-appointed ADM to act as Trustee though ADM was not licensed to act as substitute Trustee in Washington State. RCW 61.24.005(2). Ex. AST#2 (6), Ex. 297 (Interrog 9B), CP 24, RP 11/3 20.

Ass'n v. FHC LLC, 207 P.3d 1251, 2009 WL 1333004 (Wash. May 14, 2009) (NO. 80450-8, 80459-1).Dibon Solutions, Inc. v. Martinair Holland N.V., No. 05-11-01586-CV Non-Existent Corporation Cannot Sue on Contract. M1 held this false claim for 5 years and never corrected in the public record.

On or before April 2010, even though no documentation had ever ever been produced showing how the note was conveyed to CT Residential Note/Pool LLC, "CT" was now calling itself the Note holder. As was the case before, even after Delfierro's discovery had been answered no written assignment, no consideration and no recording was ever produced. Ex. NOTS#2 (113) RCW 61.24.005, RCW 40.16.030 and RCW 19.86 et seq.

CT apparently instructed ADM to record Notice of Trustee's Sale "NOTS#2" and again commences the foreclosure process. RCW 61.24.010(4), RCW 61.24.030(7), RCW 61.16.010, RCW 61.24, RCW 19.86, RCW 40.16.030 (false claim).RCW 65.08.070 (no recording), Ex. 131, Id Ex. 130, RP 11/3 22-24.

Of critically importance in this matter, during March of 2010, MERS sold the note to Second Mariners Investment Fund II REO, LLC (M4) and it recorded an assignment of the DOT to M4 for value ("ADOT#1"). Again, no proof of value was ever established.

(ADOT#1 was the assignment that was relied upon by the Mariners to gain creditor's rights in Delfierro's Bankruptcy case. The bankruptcy was initially filed during April, 2010. (The proof of claim allowed the then-active loan servicers to receive more than $44,000 from the Trustee-this was Delfierro's money that was supposed to pay for the homeowner's insurance, taxes and where a portion would go to the real beneficiary. (During the September 30, 2014 Summary Judgment hearing, Mariners claimed that ADOT#1 was an erroneous assignment made by MERS. RCW 40.16.030, RCW 61.24, and RCW 19.86. Ex. ADOT#1 (5) Exh. Stipulation (147)) Ex. 297 (Interrog 9A, 11, 12, 13, 16). CP 377-378,702,703, RP 9/30 31,32,68,69, RP 10/29 5, 11-14, 33 ,RP11/3 33-36.

In June, 2010, during these same bankruptcy proceedings, Mariners filed what they alleged was a true and correct copy of the note as part of their proof of claim (along with the DOT where identification of loan accounts was obliterated, not redacted in violation of the Fed. Rule 1937.) Additional documents were also filed at the time such as the Allonge, the Affidavit of Olson and the Trustee's calculated billing. Exh. 301, RP 10/29 90-93, 97-98.

The allonge provided by Mariners did not meet the RCW 61A.3.309 (b), because it was not firmly affixed, it was undated and the original was not produced. It is undisputed that the subject allonge was first presented by M4 on June 16, 2010 when the proof of claim was filed. M4 was the only Defendant that produced an allonge[20] during discovery. Exh 301, Ex 35, CP 456-459, CP 792-799.

Judge Schapira did not rule on the efficacy of the allonge, however she did state that-given that there was adequate room in the Note, it was unnecessary to use an allonge. She indicated that a formal ruling in this matter would be left "for another court to decide." RP 9/30 69-70 RP 12/8 25-26. Appeal Court erred in referencing Ms. Delfierro to a non-existing Statute, RCW 63A-309.

The Court cited the two cases which were consistent with Delfierro's contention that the allonge must be firmly affixed.[21] TALLAHASSEE BANK & TRUST COMPANY v. RAINES et al. and RALPH G. DUXBURY vs. JACK E. ROBERTS et. al.

There was no foundation testimony from a live witness who could testify that a signor on the note knew the allonge existed. There was no one that testified or declared on their affidavit that an endorsement was stamped or written on the page of the note or that the allonge was firmly affixed to the original note only. 10/29 RP 22-28, 81-83, 49-60, 62-63, 109-111, 112, 118-119, 121-122, RP 11/3 38, 41, 69-72. RCW 62A.3-204. Tait testified "that the last page of the note and the promissory note were part of the proof of claim which was filed in Bankruptcy Court in 2010. Tait testified as to the 2nd note-the copy of the 2 colored note received from Mariners in 5/2011, that the title "Note Endorsements" was part of all one package with the originals."

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[20]The allonge is a separate piece of paper that must be firmly attached to the original note to be part of the instrument that can be used to insert language or signatures when the original document does not have sufficient space for the inserted material which contain terms, conditions or provisions that are relevant to the duties and obligations of the parties to the original instrument so as to become a part of the instrument. New York UCC §3-202(2), RCW 62A.3-204.

[21]RCW 62A.3-204

Mariners were basing their claim on the notion that they purchased the Note from Equifirst. Against this backdrop on December 2010, Second Mariners Investment Fund II REO, LLC ("M4") then allegedly sold the note to (Mariners Investment Fund, LLC)[22] ("M5"). Id. Ex.11 (unrecorded ADOT), RP12/8 16, 17.

As to the unrecorded ADOT between M4 and M5, the Trial court had ruled that this unrecorded assignment was valid between the two signatories but was not valid as to others. Id. Ex. 11 (unrecorded ADOT) RP 12/8 16, 17, 18.

Importantly, on May 18, 2011, Defendant Atty. Hermann called counsel for the sellers (Mariners' counsel) for the status of the Delfierro case in Bankruptcy. Robinson Tait was already billing Pensco. Id. Ex (Billing) 177. before the sale had been completed. Contrary to Mariners' contestants this was not an arm's length transaction. Id. Exh (Billing) 177 RP 10/29 (Swanee's Testimony) 103, 104.

On May 25, 2011, Attorney Jeffrey D. Hermann recorded an Assignment of Deed of Trust (ADOT#2) to the effect that M5 sold the note to Pensco Trust Company Custodian for benefit of Jeffrey D Hermann Account # 005343. Id Ex. 12 (ADOT#2) BSI and Del Toro received money. These actions violated RCW 61.24 et seq, RESPA, CP 30-35 RP 9/30 73, 74, RP 10/28 32, 33, 131,132.

In November 2011, Delfierro asked and was permitted to be dismissed from Bankruptcy and her lawsuit reverted to the State court for the benefit of the creditor and debtor. RP 10/29 8.

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[22] Footnote: Without question, an unrecorded conveyance is admittedly still valid as between the parties, if it is void against a subsequent good faith purchaser. RCW 65.08.070 (unrecorded conveyance is void against subsequent purchaser in good faith); Chelan County v. Wilson, 49 Wn. App. 628,632, 744 P.2d 1106 (1987) ("The intention of the recording act is to require persons claiming an interest in real property to record such instrument as will give notice of their claims. Unrecorded conveyance of realty, however, is valid as between the parties."(Citations omitted.) A real estate contract by itself, even if unrecorded, transfers an equitable interest in the property and confers in the buyer certain substantial rights with respect to the possession, control and legal title to the property. Chelan County, 49 Wn. App. at 632

On July 26 2012, Delfierro filed this lawsuit in State court; however the matter was transferred to the Bankruptcy court. CP 282-287.

On January 14, 2013, the First amended complaint was filed in the state court.[23] CP 1-102.

In February 2013, the Robinson Tait Law firm emailed Pensco, the IRA Custodian about representation. Pensco declined to retain Robinson Tait on March 2013. CP 839. Pensco delegated Herman authority to defend the IRA (Pensco account-owner). Robinson Tait Law firm told the court that they represent the Pensco Custodian (the Holder of the note). CP 801-858. Robinson Tait's law firm has no billing invoice for Pensco Custodian. There was no communication between Pensco the Custodian and the Robinson Tait Law firm. CP 839, 801-858. RP 10/29 86-89, RP 10/30 49, 63.

During November, 2013 and later during the September 2014 hearing on Mariners' Motion for Summary Judgment Mariners produced (and they alleged that it was producing a true and correct copy of the original note with 3 punched holes) and on November 3, 2014 Olson Testified about the 3 punched holes note in that it was the original note he received from Fortress. Exh 297, CP 456-459, CP 792-799.RP 11/3 40, 41, 68, 79, 81-83.

On September 30, 2014, during a hearing Mariners produced for the first time an extremely late, unverified and incomplete purchase and sale agreement that was dated April 14, 2009. On November 3, 2014, this PSA was admitted after everybody has rested. Exh. PSA (3). RP 9/30 9,-11, 33, 34, 64-66, 68, 81-84, 86, RP11/4 23.

Amazingly, the 2009 Purchase and Sale Agreement was not produced until 2014.

Exacerbated by an already bad situation on October 24, 2014 two days before trial, Olson of Mariners, Hermann and their counsels filed affidavits of lost note and provided what they said was a true and correct copy of the "colored" note. The oral testimony contradicted the allegations contain in the affidavits that

[23] This is the complaint that serves as the basis for this lawsuit.

were provided to the court. RP 10/28 13 Ex. 2 Colored copy of note. Exh. 35, 297, CP 407-411, CP 456-459, CP 792-799 Id Affidavit (37, 38, 39, 40), RP 9/30 13-15, 69, 70 RP 10/28 22-25, RP 10/29 74, 82, 83, 109-112,118 RP 11/3 41, 69-72, 12/8 25, 26, CP 817. The testimony referenced the two colored copy Exh. 35 which is noticeably a different document than the 3 holed note Olson testified to as the one he received from Fortress.

Mariners lost the Note when it was allegedly owned by Hermann. Under the circumstances Hermann is not permitted to bring a claim under the Uniform Commercial Code.

E. ARGUMENT (SUMMARY)

DECEPTIVE PRACTICES

These were deceptive practices underlying the foreclosure and the various transfers and assignments that took place. Undisputed facts in this matter show many deceptive and unfair business practices starting with the use of MERS in a double role as nominee as well as a lender, it injected itself back in the Delfierro's DOT and naming itself as the beneficiary and holder of the note. (Ex DOT (103), AST#1 (105), NOTS#1 (106), TDUS (107 and ADOT#1(5), AST#2(6), NOTS#2 (113). These were fraudulent transfers, unsubstantiated signers and deceptions designed to produce false transfer documents, etc. This deception, promoted by Olson and his Mariner Companies led to the court making decisions on incomplete, unverified documents in court during the Motion for Summary Judgment and Trial. The tactic of ambush[24] by the Mariners counsels.[25] All stand within and around acts of deceptive and unfair business

[24] 622 P.2d 1270 (1981). A trial court should not exclude testimony for abuse of discovery without showing intentional or tactical nondisclosure, willful violation of a court order, or otherwise unconscionable conduct. Barci v. Intalco Aluminum. Corp.. 11 Wn. App. 342, 351, 522 P.2d 1159 (1974).

[25] 25 Lyons v. US. Bank Nat'l Ass 'n, No. 89132-0 WA Supreme Court There were material issues of fact for trial regarding whether NWTS violated provisions of the DT A, which could be used to support Lyons' CPA claim, so granting summary judgment to NWTS on Lyons' CPA claim was improper. A CPA claim is a preexisting statutory cause of action with established elements. Id. at 537. A claim under the CPA based on violations of the DTA must meet the same requirements applicable to any other CPA

practices that were worked on Delfierro; plus, theses entities' officers and their counsel's stand as breaches of their fiduciary duties and obligations owed. (CP 272-275, 355, 377, 378, 393-406, 480, 485-491, 596, 597, 702, 703, 817, 839, Exh. 3, 5, 6, 35, 41, 103, 105, 106, 107, 108, 109, 113, 116, 120, 122, 123, 131, 147, 177, 198, 211, 297, 301, Id Affidavit (20, 21, 37, 38, 39, 40). RP 41-46, 66, 69, 88-89 ,99-100, 101-105, 11-114, 130-139, RP 11/3 4,10-28,33,36,55,56,96,97. If any of these individual issues are not enough to warrant relief then the cumulative effect denied due process and certainly should be enough to reverse the decision of the trial court and Court of Appeals.

The direct facts and corroborating evidence showing the recorded documents during the 1st and 2nd foreclosure[26], then the claim of error or mistake and after 5 years of litigation and introduced during the Motion for

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claim. 3 The availability of redress for wrongs during nonjudicial foreclosure under the CPA is well supported in our case law. Id.; Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83, 119, 285 P.3d 34 (2012) (a plaintiff may bring a claim under the CPA arguing the facts specific to the case); Walker v. Quality Loan Serv. Corp. of Wash., 176 Wn. App. 294, 320, 308 P.3d 716 (2013) (actions taken during the nonjudicial foreclosure process were sufficient to support all five elements of a CPA claim and survive pretrial dismissal); Vawter v. Quality Loan Serv. Corp. of Wash., 707 F. Supp. 2d 1115, 1129-30 (W.D. Wash. 2010) (court discussed the five elements for a CPA claim and considered the factual allegations supporting Vawter's DTA claim to support the CPA claim as well); Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 295 P.3d 1179 (2013) (property as sold in this case, but court discussed action amounting to CPA claims in depth, focusing on acts of defendants, not the fact the property was sold). The absence of a completed sale of the property does not affect the availability of this cause of action Whether a plaintiff will prevail on a CPA claim is a case by case determination of whether the plaintiff can satisfy the requisite elements.

[26]Lyons v. US. Bank Nat'l Ass 'n, No. 89132-0 WA Supreme Court. A. Without a nonjudicial foreclosure sale, a party may not bring a claim for damages under the DTA, but they can bring a claim under the CPA. Recently we decided Frias v. Asset Foreclosure Services, Inc., Wn.2d 334 P.3d 529 (2014). We hold that the DTA does not create an independent cause of action for monetary damages based on alleged violations of its provisions where no foreclosure sale has been completed. . . . We further hold that under appropriate factual circumstances, DTA violations may be actionable under the CPA, even where no foreclosure sale has been completed .... [T]he same principles that govern CPA claims generally apply to CPA claims based on alleged DT A violations. 334 P.3d at 531. Without the sale of the property, damages are not recoverable under the DTA, but a CPA claim may be maintained regardless of the status of the property. Frias clearly resolves the first issue in this case. Lyons cannot bring a claim for damages under the DT A in the absence of a sale, but she may bring a claim for similar actions under the CPA.

Summary Judgment after the discovery cut off and these were witnesses to testify regarding the authenticity of the PSA. This PSA, which is unverified, incomplete. Olson has admitted the existence of the ADOT#1 was erroneous, (this assignment was relied upon by Mariners to gain standing in bankruptcy and defendants took more than $44,000 dollars of Delfierro's money. What was worse they left the Delfierro property without hazard insurance and property taxes being paid. CP 282-287, CP 358, 517, Exh. 147 Id. 21. Later discovery identified far more deception was portrayed and these conclusions are supported by case law.

The facts were properly before the court and they established the illegal acts and deceptions. Ex 3, 5, 6, 9, 35, 36, 41, 45, 46, 107, 108, 109, 115, 116, 120 122, 123, 131,133, 147,164, 198, 211, 290, 291, 297, 301, Id. 8, 15,19,20,21,130, 37, 38, 39, 40, CP 454, 480, 817, 839.) MERS, as beneficiary and holder of the note, in this case, is at least an irregularity because MERS does not meet the requirements of RCW 61.24.005(2) and therefore, cannot transfer interests in the Deed of Trust to the Respondent Mariners and to itself and cannot assign Fidelity as successor trustee and ADM to foreclose. Between Bain (supra) and Klem v. Washington Mutual Bank (supra) deceptive and unfair business practices are clear. Of note, criminal liability includes the omission of duty prescribed by law. The false recording and no recording and illegally taking Delfierro's home and her money is a given fact. These acts meet the legal definition of fraudulent business practices. This Court has an opportunity to protect Delfierro's home and return the money that their servicers have taken and hold involved entities accountable for their actions against Delfierro.

CONSTITUTIONAL DUE PROCESS RIGHT TO A FAIR TRIAL

Consider the Purchase and Sale Agreement-admission of which-caused a seismic shift in the parameters of this case.

Delfierro's constitutional rights and her contract rights were violated by the court in allowing this document to be entered into evidence without foundation, after both parties had rested and witnesses that would have had

knowledge as to these documents had been released. Constitutional violations raised for the first time is allowed per RAP 2.5(a)(3) and this is consistent with the holding of Klem v. Washington Mut. Bank (2013). Washington Courts are required to apply Washington State Law consistently when the facts warrant. Due process' prohibitive language enumerated in Article 1 § 2, 3 and 29 of the Wash. Const., and the Fourteenth Amendment Equal Protection Clause are substantially identical and citing prior rulings reaching the same conclusion. In other words, failure to apply case law consistently to the facts here stands as a due process violation and warrants relief. Wash Canst. Article 1 § 2 is violated when the fundamental rules of evidence are not followed by allowing admission of documents obtained in breach of the plain language of RCW Title 5 chapter 5.45.010 & .020; RCW 5.46.010 and .020; Washington Deed of Trust's codified under RCW 61.24 et seq., and when said evidence (documents) were created out of thin air and used to deceive the Courts and Delfierro creating the illusion of Respondent's legal standing in a note when no legal standing existed. Respondents were artful in their deceptions. These facts showed a wrongful decision based on an illegally deceitful documents and confusing tactics.

DEFECTIVE FINDINGS OF FACT AND CONCLUSIONS OF LAW

The attached per CR 52 (CP 15), which was part of the Motion for Reconsideration. Findings of facts and conclusions of law were rendered. As the court concluded in Wesco Distribution v. MA Mortenson Co. (supra), a civil action required a remand to gain the insight of the trial court to enable the determinations by the review court in making their decisions.

"In Bowman v. Webster, [13] our Supreme Court held that where the findings of fact are incomplete or defective, the reviewing court may look to the oral or memorandum decision of the trial court. The court there determined that the findings and conclusions were inadequate for review. As a result, and because there was no oral or memorandum decision to supplement the findings and conclusions, it remanded the case with instructions to the trial court to enter

findings on the material issues and conclusions." Id. 88 Wn. App. 712, 946 P.2d 413 (Ct. App. 1997).

F. CONCLUSION

In conclusion there was an unending series of miscues and/or deliberate actions taken which obscured and greatly undermined the fact finding function in this matter.

However, what is breathtaking here is the sheer number of issues many of which-taken by themselves might have been minor.

Improper identification of the authorized parties, assignments of key documents by unauthorized parties, improper actions taken by MERS, the cumulative effect of the Mariners persistently arguing that it purchased the Note from Equifirst and then doing a complete about face.

These issues-and others, similar issues-were unremitting-they were everywhere. How was a non-lawyer to know what to do. This made it extremely difficult for Ms. Delfierro and the lower courts to determine cause and effect.

Perhaps most importantly Mariners rely on the Purchase and Sale Agreement to make their argument-a document that should never have been admitted in trial of this matter.

There is no question that the mistakes and false statements were overwhelming. This is why Ms. Delfierro said the court's ruling seems to suggest that the inconsistencies were minor.

Ms. Delfierro, of course argues that the court ruled incorrectly and asks this court to remedy this situation.

Respectfully submitted this 8th day of January, 2016.

TRIAD LAW GROUP

By: _____

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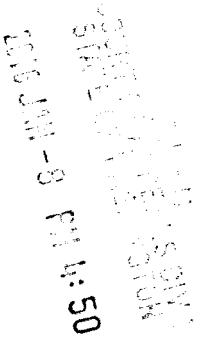

CERTIFICATE OF SERVICE

I certify under penalty of perjury in accordance with the laws of the State of Washington that on January 8th, 2016, I caused the attached PETITION FOR REVIEW to be emailed to the following email address:

Joe Solseng
Robinson Tait, P.S.
710 Second Avenue, Suite 710
Seattle, Washington 98104
jsolseng@robinsontait.com

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

s/ Zachary D. Greenberg
Zachary D. Greenberg, Paralegal

APPENDIX A

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

LORINA DEL FIERRO, Appellant, v. BSI FINANCIAL SERVICES; DEL TORO LOAN SERVICING, INC.; MARINERS INVESTMENT FUND, LLC; MARINERS INVESTMENT FUND II REO, LLC; SECOND MARINERS RES FUND II, LLC; AMERICAN DEFAULT MANAGEMENT; PENSCO TRUST COMPANY CUSTODIAN FBO, JEFFERY D. HERMANN, IRA ACCOUNT NUMBER 20005343; APRIL SMITH in her individual and official capacity; JEFFERY D. HERMAN in his individual and official capacity, JENNIFER TAIT in her individual and official capacity; and STEVE OLSON in his individual and official capacity. Respondents.	)	No. 73016-9-I DIVISION ONE UNPUBLISHED OPINION FILED: November 16, 2015

SPEARMAN, C.J. — This appeal is from a trial court's findings of fact and conclusions of law regarding a borrower's claims against a series of entities involved in the transfer of her loan. We find no error and affirm.

FACTS

In 2006, Lorina Del Fierro purchased property real property located at Lot 83, Twin Lakes No. 4, Vol. 91, pgs. 44-46, tax parcel No. 873196-0830-00, commonly known as 4009 SW 323rd Street, Federal Way, Washington (the Property). She refinanced the property in 2007 with EquiFirst Corporation (EquiFirst), taking out a loan of $572,850.00 to be repaid according to the terms

of an Adjustable Rate Note (Note). EquiFirst endorsed the Note in blank. The Note was secured by a deed of trust (Deed of Trust) on the Property that listed First American Title Insurance Company (First American) as trustee and Mortgage Electronic Registration Systems (MERS) as the beneficiary. The loan itself was serviced by Specialized Loan Servicing, Inc., (Specialized). In 2008, Del Fierro ceased making payments on the loan.

The Note and the Deed of Trust were transferred multiple times before arriving in the hands of respondent Pensco Trust Company (Pensco). Equifirst sold the loan to Sutton Funding LLC (Sutton). On September 12, 2008, Sutton sold its interest in the loan to a third party known as FCDB FF1, LLC. On January 5, 2009, MERS recorded an Appointment of Successor Trustee, appointing Fidelity National Title Insurance Company (Fidelity) as trustee. On April 14, 2009, FCDB FF1, LLC, as part of a group of entities known collectively as Fortress Investment Group (Fortress)[1], sold their interests in number of residential first lien mortgage loans, including Del Fierro's loan, to Second Mariners Investment Fund II REO, LLC, and Mariners Investment Fund II, LLC (individually, Mariners 4 and Mariners 5; collectively, "Mariners"). As part of this sale, Fortress provided Mariners with the original Note.

Specialized, on behalf of MERS, began foreclosure proceedings in early 2009. Fidelity issued a Notice of Trustees Sale on February 9, 2009, setting the

[1]During trial, there was some confusion over whether FCDB FF1, LLC, the entity that purchased the loan from Sutton, was the same as any of the entities that sold the series of loans to Mariners. Steve Olson testified that Mariners purchased the Del Fierro loan from Fortress, which "had multiple sellers, different entities internally when [Mariners] purchased from them," and that Fortress had purchased the loan from Sutton. Verbatim Report of Proceedings (Nov. 3, 2014) at 48-49.

sale date for May 15, 2009. Del Fierro began working with a loan modification representative, Michael Colwell, who contacted Fidelity on her behalf. On May 7, 2009, the sale was placed "on hold." Somewhere around the 7th or the 8th, Fidelity informed Colwell that the sale was on hold, and that it would not take place on the 15th as originally set. On May 12, 2009, however, the sale was taken off "on hold" status and the servicing rights were transferred to BSI Financial Services (BSI). Del Fierro and Colwell were both told that the sale was on hold and would not proceed, even after each made separate inquiries up to the scheduled date of sale. On May 15, 2009, Fidelity proceeded to sell the Property at auction. Mariners 4 purchased the Property for $370,000 and initiated an unlawful detainer action on June 4, 2009.

The King County Superior Court dismissed the unlawful detainer action, finding that Fidelity had made material misrepresentations and breached its duty to act in good faith and impartially to both parties. The trial court voided the trustee's sale and reinstated the Deed of Trust to its original lien position.

On March 11, 2010, MERS assigned the Deed of Trust to Mariners 4.[2] On December 8, 2010, Mariners 4 assigned the Deed of Trust to Mariners 5. Ex. 11. On May 19, 2011, Mariners 5 executed a Residential Mortgage Loan Sale

[2] In Bain v. Metropolitan Mortg. Group, Inc., 175 Wn.2d 83, 110, 285 P.3d 34 (2012), our Supreme Court held that if MERS never held the promissory note or other debt instrument, it was not a lawful beneficiary and could not appoint a successor trustee. MERS therefore did not have independent authority to assign the Deed of Trust to Mariners. The Bain court declined to decide the legal effect of MERS acting as an unlawful beneficiary, but that "the equities of the situation would likely (though not necessarily in every case) require the court to deem that the real beneficiary is the lender whose interests were secured by the deed of trust or that lender's successors." Id. at 111. Based on this notion, Mariners would likely have been deemed the beneficiary anyway, having succeeded to EquiFirst's interest (via transfers involving Sutton and Fortress) in the Note. Mariners was also the holder of the Note at that time and MERS's involvement would not have affected the validity of the Deed of Trust or Mariners' interest.

Agreement, selling its interest in Del Fierro's loan, including the Note and the Deed of Trust, to Pensco.

In 2010, Mariners initiated foreclosure proceedings on the Deed of Trust. Del Fierro filed for Chapter 13 bankruptcy on April 5, 2010. In July 2010, Del Fierro filed an Adversary Proceeding in bankruptcy court to determine the amount of the lien. The bankruptcy court reduced the secured debt from $572,291.63 to $325,000.00. Mariners appealed and lost. On October 18, 2010, Del Fierro stipulated to an order requiring her to make monthly payments to the court. Mariners transferred its claim on June 6, 2011 to Pensco and listed Del Toro Loan Servicing, Inc. ("Del Toro") as the loan's servicer. Del Fierro did not object to this transfer. She continued making payments as per the stipulation until August of 2011, when she converted her bankruptcy action to a Chapter 11. Her bankruptcy action was dismissed on November 13, 2012.

The original Note remained in Mariners' possession until it was requested by Mariners' counsel, Robinson Tait P.S. (Robinson Tait), in case it was needed in the bankruptcy litigation. The original Note was shipped to Robinson Tait on March 24, 2011, along with a bailee letter. On March 25, 2011, Robinson Tait acknowledged receipt of the Note. Because Robinson Tait had the original Note, Mariners did not forward it to Pensco when the sale closed in May 2011. Pensco then retained Robinson Tait and asked them to continue holding the Note.

Even though they were holding the original Note for Pensco, Robinson Tait sent it back to Mariners on April 3, 2012, under the terms of the bailee letter executed with Mariners. The intent was for Mariners to send the original Note to

Pensco. Mariners received the original Note, but was unable to find it after a diligent search. Pensco never received the original Note.

In 2012, Del Fierro filed a lawsuit in King County Superior Court regarding the transfer of the loan, alleging claims such as fraud, conversion, slander of title, unjust enrichment, quiet title, and violations of chapter 19.86 RCW, the Consumer Protection Act; RCW 19.86.010, the Uniform Deceptive Trade Practices Act, and chapter 19.182 RCW, the Fair Credit Reporting Act. She named multiple defendants including BFI, Del Toro, Mariners,[3] Equifirst, MERS, American Default Management, Pensco's custodian, Jeffrey Hermann,[4] and other named individuals who were involved in notarizing the transfer documents.

Del Fierro argued that Pensco had no right to enforce the Note because it did not have the original Note. Mariners, Hermann, and Robinson Tait each filed Lost Note Affidavits indicating that the original Note was held by Robinson Tait, counsel for Pensco, at the time Pensco purchased the loan, and that it had been lost after Robinson Tait sent it back to Mariners. Mariners and other defendants moved for summary judgment. The court granted summary judgment and dismissed Del Fierro's claims for conversion, slander of title, violation of the Uniform Deceptive Trade Practices Act, violation of the Fair Credit Reporting Act, and portions of the claim for Unjust Enrichment. The remaining claims including Notary Malfeasance, Notary Negligence, Unjust enrichment (pending evidence of

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[3] Del Fierro also named a number of additional Mariners entities in her complaint but only Mariners 4 and Mariners 5 are involved in the transfer and sale of Del Fierro's loan.

[4] Del Fierro argues that it is important to note that "counsel for Mariners represented Hermann in his individual capacity but [] did not represent Pensco the company..., the real player in this litigation." Brief of Appellant at 40. However Del Fierro did not name Pensco as a defendant in this action.

the price Pensco paid for the loan), and quiet title, proceeded to a bench trial on October 28, 2014.

The trial court found that the Note had been endorsed in blank and that Pensco had the right to endorse it as the holder at the time it was lost under RCW 62A.3-309. The court entered judgment in favor of defendants and reserved an award of fees and costs. Del Fierro appeals.

DISCUSSION

Del Fierro assigns error to a number of the trial court's findings regarding the transfers of the Note and Deed of Trust. When a trial court has reviewed the evidence, our review is limited to determining whether the trial court's findings are supported by substantial evidence, and if so, whether those findings support the conclusions of law. Ridgeview Props. v. Starbuck, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982). Findings of fact will be upheld on appeal if they are supported by "'a sufficient quantity of evidence to persuade a fair-minded person of [the order's] truth or correctness." Raven v. Dep't. of Soc. & Health Servs., 177 Wn.2d 804, 817, 306 P.2d 920 (2013) (quoting Port of Seattle v. Pollution Control Hr'gs Bd., 151 Wn.2d 568, 588, 90 P.3d 659 (2004)). We will not substitute our judgment for that of the trial court or weigh evidence or credibility of witnesses. Davis v. Dep't of Labor & Indus. 94 Wn.2d 119, 124, 615 P.2d 1279 (1980).

Endorsement of the Note

Del Fierro first argues that the allonge endorsing the note in blank was defective and that as a result, Mariners 4 was never the holder of the Note. She contends that because the endorsement was on a separate sheet of paper, and there were "no clip marks, folds, or glue marks," it was not "firmly affixed" to the

Note in order to make it negotiable. Brief of Appellant at 21. Respondents argue that testimony from witnesses clearly established that the Note included the allonge, which was sufficiently affixed to it, and Del Fierro has not presented any evidence to the contrary.

Under RCW 62A.3–204(a), an indorsement is a signature made on an instrument for the purposes of negotiating the instrument. An indorsement-in-blank is an indorsement that is not payable to an identified person. RCW 62A.3–205(b). Thus an instrument indorsed-in-blank becomes payable to bearer and any person who possess the instrument becomes its holder. RCW 62A.3–204(a) also provides that for the purposes of determining whether a signature is made on an instrument, a paper affixed to the instrument is part of the instrument. Comment 1 to RCW 62A.3–204. This section requires an allonge to be "so firmly affixed" to the check "as to become a part thereof." Id. A separate paper, or one pinned or clipped to the check, will not suffice. 7 WASHINGTON PRACTICE, Uniform Commercial Code (UCC) Forms § 3–205 Form 2 (2015) (citing Tallahassee Bank & Trust Co. v. Raines, 125 Ga.App. 263, 187 S.E.2d 320, 312 (1972); Duxbury v. Roberts, 388 Mass. 385, 446 N.E.2d 401 (1983) (separate document assigning the note did not constitute an endorsement).

Respondents argue that even though the allonge is on a separate page, there is ample testimony in the record showing that the allonge in blank was affixed to the original Note. Jennifer Tait of Robinson Tait testified that the last page of the note, titled "'Note Endorsements,'" was part of all one package with the original Note. VRP (Oct. 29, 2014) at 121-22. Steve Olson of Mariners also testified that while Mariners purchased the Note from Fortress, Equifirst was the

originator and "sign[ed] on the note endorsement on the last page." VRP (Nov. 3, 2014) at 38-39. Olson also testified that he was familiar with the requirements of endorsements in blank and that Mariners would have checked to make sure that the Note was endorsed in such a way that it would permit them to negotiate that note to someone else. Del Fierro has presented no controverting evidence demonstrating that the allonge was not included or attached to the Note.[5] We find no error in the trial court's finding that the Note was properly endorsed in blank and the allonge was "firmly affixed" under chapter 63A-309 RCW.

Del Fierro assigns error to a number of the trial court's other factual findings, including findings that Mariners purchased its interest in the loan from FCDB FF1, LLC, that the sale was a good faith, arms-length transaction in which Mariners paid value for the beneficial interest in the loan, and that the sale of the loan to Pensco was an arms-length transaction. These challenges all fail, because there is sufficient evidence in the record to persuade a fair-minded person of the truth of the finding.

Enforcement of Lost Instrument

Del Fierro argues that the trial court erred when it concluded that Pensco had proved it was entitled to enforce the Note and Deed of Trust. She argues that Pensco does not meet the requirements of RCW 62A.3–309(a) because it never had possession of the Note.

[5] Del Fierro argues that the testimony should be disregarded because the Mariners failed to lay any foundation for the allonge at trial. The record shows, however, that the testimony by Tait and Olsen established their personal knowledge of the Note and its contents, including the allonge.

Article 3 of the UCC governs who is entitled to enforce a promissory note. RCW 62A.3–301 provides that a "[p]erson entitled to enforce" an instrument"

> means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3–309 or 62A.3–418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

A holder, in this case, is a "person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." RCW 62A.1–201(21)(A).

RCW 62A.3–309 governs the enforcement of lost instruments. The statute requires:

> (a) A person not in possession of an instrument is entitled to enforce the instrument if (i) the person was in possession of the instrument and entitled to enforce it when loss of possession occurred, (ii) the loss of possession was not the result of a transfer by the person or a lawful seizure, and (iii) the person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

The trial court found that Robinson Tait was in possession of the original Note on behalf of Pensco as the purchaser, even though it sent the Note back to Mariners in 2012. The record contains testimony from Robinson Tait about the terms of the bailee letter in which they agreed to hold the original Note in custody for Mariners. After the note was purchased, Pensco retained Robinson Tait and asked them to continue holding the Note. The law firm's policy was to return original documents to the entity that sent it to them and for which they have a

bailee letter, unless they receive information that they should send it elsewhere. Even though they were holding the original Note on behalf of Pensco, Robinson Tait sent it to back to Mariners as per their document policy. It is undisputed that the intent of the parties was that Mariners would then forward the original Note to Pensco.

We find that there is sufficient evidence in the record to support the trial court's findings of fact, which in turn, support the conclusion that Pensco was entitled to enforce the Note under RCW 62A.3–309. The trial court did not err in concluding that Pensco was in possession of the original Note, endorsed in blank, when its loss occurred; the loss was not a result of a transfer by Pensco or a lawful seizure; and Pensco could not reasonably obtain possession of the original Note because its whereabouts could not be determined.

Evidentiary Rulings and Discovery Sanctions

We review a trial court's decision to admit or exclude evidence for an abuse of discretion. Salas v. Hi-Tech Erectors, 168 Wn.2d 664, 669, 230 P.3d 583 (2010). A trial court abuses its discretion when its decision "is manifestly unreasonable or based on untenable grounds or reasons." Id., (quoting State v. Stenson, 132 Wn.2d 668, 701, 940 P.2d 1239 (1997)). A "'manifestly unreasonable decision is one that adopts a view that no reasonable person would take.'" Id., (quoting In re Personal Restraint of Duncan, 167 Wn.2d 398, 402-03, 219 P.3d 666 (2009)). A decision is based on untenable grounds or untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts. Id. We also review a trial court's sanctions for a party's

noncompliance with discovery orders for an abuse of discretion. Rivers v. Wash. State Conf. of Mason Contractors, 145 Wn.2d 674, 684, 41 P.3d 1175 (2002).

Del Fierro claims that a number of documents relating to the loan transfer should have been excluded because they were incomplete or unsigned, including the Residential Mortgage Loan Sale Agreement and Master Asset Sale and Interim Servicing Agreement. Br. of Appellant at 24. According to Del Fierro, the documents were "not fully executed,... replete with blanks and didn't include cited attachments." Id. She also argues that the purchase and sale agreements should have been excluded because respondents failed to provide them until after the discovery cutoff, and because they lacked foundation, were not authenticated, and were submitted after the parties had rested.

Along with the documents, Del Fierro objects to the trial court's admission of testimony of Mariners and Robinson Tait, because respondents did not ask the court to admit the witnesses' Lost Note affidavits. Del Fierro also argues that because Mariners did not mention Fortress or any of its sub-entities in discovery, the court should not have allowed testimony about them.

A trial court necessarily has broad discretion in ruling on evidentiary matters and imposing sanctions for discovery violations; we will not overturn a trial court's ruling absent manifest abuse of discretion. Sintra, Inc. v. City of Seattle, 131 Wn.2d 640, 662-23, 935 P.2d 555 (1997). Courts may sanction parties under CR 37(b)(2) for two reasons: (1) failure of a party to comply with an order to provide or permit discovery and (3) failure of a party to respond to a request for discovery under CR 33 or CR 34, or to appear after proper notice for a deposition. Pamelin Industries, Inc. v. Sheen-U.S.A., Inc., 95 Wn.2d 398, 401,

622 P.2d 1270 (1981). A trial court should not exclude testimony for abuse of discovery without showing intentional or tactical nondisclosure, willful violation of a court order, or otherwise unconscionable conduct. Barci v. Intalco Aluminum, Corp., 11 Wn. App. 342, 351, 522 P.2d 1159 (1974).

Del Fierro has not shown that respondents have engaged in any such unconscionable conduct. The record shows that respondents produced discovery in response to Del Fierro's request. Del Fierro did not move to compel more complete answers nor did she move for sanctions other than exclusion of the contested documents. We find that it was within the trial court's discretion to refrain from excluding the testimony and documents as a discovery sanction.

Finally, Del Fierro argues that the trial court erred when it dismissed Del Toro from the case with prejudice. She also assigns error to the court's dismissal of the CPA claim on summary judgment and the quiet title claim. But she does not provide factual or legal arguments in support of these assignments. Thus, we do not consider them. RAP 10.3(a)(5); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Del Fierro asks for an award of attorney's fees on appeal based on the provisions of the Note and the Deed of Trust and presumably RCW 4.84.330 and RAP 18.1. Because we affirm the trial court in all respects, we deny her request.

Affirm.

Spearman, C.J.

WE CONCUR:

Leach, J.

Ian, J.

APPENDIX B

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

LORINA DEL FIERRO, Appellant, v. BSI FINANCIAL SERVICES; DEL TORO LOAN SERVICING, INC.; MARINERS INVESTMENT FUND, LLC; MARINERS INVESTMENT FUND II REO, LLC; SECOND MARINERS RES FUND II, LLC; AMERICAN DEFAULT MANAGEMENT; PENSCO TRUST COMPANY CUSTODIAN FBO, JEFFERY D. HERMANN, IRA ACCOUNT NUMBER 20005343; APRIL SMITH in her individual and official capacity; JEFFERY D. HERMAN in his individual and official capacity, JENNIFER TAIT in her individual and official capacity; and STEVE OLSON in his individual and official capacity, Respondents.	No. 73016-9-I DIVISION ONE ORDER DENYING APPELLANT'S MOTION FOR RECONSIDERATION

Appellant Del Fierro filed a motion for reconsideration of the opinion filed in the above matter on November 16, 2015.
A majority of the panel has determined the motion should be denied.

Now therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

DATED this 9th day of December 2015.

FOR THE COURT:

Spearman, C.J.

Presiding Judge