

**RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
CLERK'S OFFICE**

Dec 01, 2016, 8:13 am

**RECEIVED ELECTRONICALLY**

Supreme Court No. 93777-0-

Appeal Cause No. 73336-2-1

---

SUPREME COURT OF THE STATE OF WASHINGTON

---

Byron Barton and Jean Barton

Appellants

V.

JP MORGAN CHASE BANK, N.A., FIRST AMERICAN TITLE,

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON,

AND TRIANGLE PROPERTY DEVELOPMENT, INC., A Washington Corporation

Respondents

---

Appeal from the Court of Appeals Division 1

The Honorable Becker, J.

---

Supplemental Motion 9.5 Objection

---

Byron and Jean Barton  
3119 S.E. 18ST  
Renton, WA. 98058  
(206) 355-8300  
byronandjean@comcast.net  
Pro Se

 ORIGINAL

### Supplement Motion RAP 9.5 Objections

As provided by RAP 9.5 Objection (c) Objections to Report of Proceedings. A party may serve and file Objections to, and propose amendments to, a narrative report of proceedings or verbatim report of proceedings within 10 days after receipt of the report of proceedings or receipt of the notice of filing of the report of proceedings with the appellate court. If objections or amendments to the report of proceedings are served and filed, any objections or proposed amendments must be heard by the trial court judge before whom the proceedings were held for settlement and approval, except objections to the form of a report of proceedings, which shall be heard by motion in the appellate court. The court may direct court reporters or authorized transcriptionists to pay for the expense of any modifications of the proposed report of proceedings. The motion procedure of the court deciding any objections shall be used in settling the report of proceedings.

Objection to Chase Bank's attorney page one "the Bartons now claim the Appeal court did not follow Albice v. Premier Mortgage Servs of Washington Inc. 174 Wn 2d 560,

560-563, 276 P3 1277, 1279 (2013)."

Jill Smith, my pervious attorney, mention Albice v. Premier Mortgage Servs of Washington Inc. 174 Wn 2d 560, 560-563, 276 P3 1277, 1279 (2013) was in the title page of Appeal brief by Jill Smith, and on pages 13, 15 of her brief on Appeal.

Objection to Chase attorney that "the Bartons waived review of both their 120 day theory and the amendment denial because they did not raise it below." I respectfully disagree. The over 120 day is a fact raise in the complaint and our Supplemental Motion RAP 18.8 and it is non waiveable statue as explain below.

The claim was made the foreclosure was *over* 120 days was before the trial court for review. On page three under facts line 21 of the complaint the 120 day claim was made before the trial court which the Appeals Court ruled upon. The Appeals Court Division One reviewed the record of the trial court.

Courts have repeatedly held that a borrower cannot waive the protection of the Deed Of Trust Act (DTA). This court should accept review and determine that the rule applies to guarantors. See, Schroeder, 177 Wn 2d at 106-07, Albice

v, Premier Mortgage Services of Washington, Inc., 157 Wn. App. 912,927-28 & n. 10, 239 P.3d 1148 (2010) holding foreclosure sale void upon; Stretch v. Murphy, 112 P2d 1018. 1021 (Or 1941) "(holding that waivers of protection in the foreclosure statute could not be waived because).""(t)he statute involved is not creating a merely personal privilege which may be waived.)"; accord Dennis v. Moses, 18 Wash. 537, 577-79, 52 P. 333 (1898) "(holding that a borrower cannot prospectively waive his right of redemption)". Conran v. White & Bollard, 24 Wn. 2d 619,629, 167 P. 133 (1946) (finding that agreements that chill or suppress one's right to bid at a foreclosure sale "have long been held invalid against public policy.") There is no question that the conduct by Chase Bank and QLS (trustee) occurred, and the conduct was alleged in the complaint.

Objection to Chase attorney "the appellate opinion is compatible with res judicata" the two previous complains of the Barton's lacked a competed sale of 436 days from the original date of foreclosure sale.

I Objection to Chase Bank's attorney statement of the "Purchase and Assumption Agreement "which was rebuttal earlier with sites in the Supplemental Motion RAP 18.8 to

the WA St Supreme Court.

The RAP 9.6 exhibits (2) provides, Chase Bank give up their trust of record "American Title" therefore Chase Bank lacks standing in this foreclosure and their arguments should fall on deaf ears because Chase Bank lacks proof of ownership.

Plaintiff urges the Court to adopt the DTA claim principles as articulated in *Walker v. Quality Loan Service Corp et al* 176 Wn. App. At 313 (2013) below:

"No Washington case law relieves from liability a party causing damage by purporting to act under the DTA without lawful authority to act or failing to comply with the DTA requirements....[A] borrower has an actionable claim against a trustee who, by acting without lawful authority or in material violation of the DTA, injures the borrower."

In addition any violation of the DTA that renders or would render the trustee's sale unauthorized is material RCW 61.24.030 and RCW 61.24.040; for example, specify non-waivable, strict statutory requirements for a lawful non-judicial foreclosure. Failure to lawfully appoint the successor trustee without the authority to act, and

therefore materially prejudices the homeowner.

Objection to Triangle Property LLC attorney "the Bartons have challenged the legal validity and effect of the foreclosure sale. In so doing the Bartons challenge and interfere with the validity of Triangle's title."

It would be Triangle lack of due diligent that has cause the problem with buying a trustee deed with a clouded title. See, Appendicitis & RAP 9.6 exhibit (3) that is a public warning recorded in the King County Records on 11/29/2011.

Objection on P.4 Triangle answer to petition for review "Triangle attempted to secure a loan to fund remodeling and repair efforts." They are blaming the Bartons for unable to secure title insurance. It was Triangle action of buying a void trustee mortgage with a clouded title of 11/29/2011 that caused Triangle problems of any title insurance that would grant title insurance to Triangle or any prospective buyer. See, RAP 9.6 exhibits ;(3)The recorded warning in the King County Records and to the public on 11/29/2011.

Objection on P.5 reason Triangle successfully intervened in this action, joining Chase and QLS in requesting that

the court dismiss the Bartons claims. Triangle inter these proceeding on fraudulent grounds when it was Triangle lack of due diligent that was the real reason Triangle problems of title insurance and unable to sell the property because of the clouded title of 11/29/2011 in public records.

The Barton's had their title clouded for protection of wrongful foreclosure by the Banks. However, Chase chose to illegal foreclosed on a disable homeowner thinking all long they don't need to show the note to foreclose on WAMU mortgages and would be easy money.

Objection to: Triangle bona fide purchase, claiming good title that the sale was within 120 days without reissuing a new default notice. In the present case the Trustee's deed did not contain a recitation of the facts as they pertain to this foreclosure was conducted within 120 days of the first set for sale, or the Trustee was qualified to act as a trustee in Washington.

Objection P.5 lines one "Triangle could not get a title company to insure around the Barton's claims in this lawsuit, Triangle's application for loan financing was declined." It was because of the clouded title in King County Records on 11/29/2011. See, RAP 9.6 exhibits (3)The

trial court and appeals court in division one erred in determining that Triangle was a bona fide purchase for value where the trustee's deed only contain only conclusory statements about compliance with the foreclosure.

Objection on P.6 line two where Triangle claims res judicata does apply. The Defendants argue this court should not even consider the current facts, and should simply rule for the Defendants' based on the dismissal of a different case, with different facts and issue previously litigated," with different fact and issues, brought over two years ago by the Barton's. Despite twice arguing and losing before other courts the Defendants' and Appeals Court misunderstood the application of res judicata.

Claim preclusion "does not bar claims which arise apart from the issue previously litigated," *Schoeman v. N.Y. Ins*, 106 Wn 3d 855, 860, 726 P.21 (1986). Consequently, application of res judicata requires that the two previous facts or issue rise from the same nucleus facts that have identical issue of fact. *Knuth v. Beneficial Wash, Inc.*, 107 Wn. App. 727, 731, 31 P.3d 694 (2001).



## DEFINING FRAUD IN WASHINGTON STATE

"To sustain also has almost identical elements of action for fraud. As the court in *Pedersen v. Bibioff* 9 64 App. 710 828 P2d 1113 (1992) at page 723

To sustain a finding of common law fraud, the WA St Supreme Court must make findings of fact as to each of the nine elements of fraud, *Howell v. Kraft*, 10 Wash. App. 266, 517 P.2d 203 (1973).

- (1) A representation of an existing fact,
- (2) it is materially,
- (3) it is falsity,
- (4) the speaker's knowledge of its falsity of its truth,
- (5) has intent that it should it should be acted be act by the person to whom it is made.
- (6) Ignorance of its falsity on the part of the person to whom it is made,
- (7) The latter's reliance of the truth of the representation,
- (8) his right to rely upon it, and
- (9) his consequent damage. See, *Tuner v. Enders*, 15 Wash App. 875, 878, 552 P.2d 694 (1976)."

Damage caused by the representation See, *Musgrave v. Lucas*, 193 Or 401, 410, 238 P. 2d 780 (1951); *Webb v. Clark*, 274 Or 387, 391, 546 P2d 1078 (1976); *Derry v. PEEK*, (1989) L.R. 14 App Cas. 337 (House of Lords); *Sledge & Norfleet Co v. Mann*, 193 Ark, 884, 103 S.W.2d 630 (1937),

For J.P. Morgan/Chase Bank has committed fraud upon the court. Consequently, the Barton's ask we be awarded attorney fees to bring this fraud before this honorable court. We have spent thousands of dollars in attorney fees to bring this to WA St Supreme Court. Plus damages, as the WA St Legislator have provided 3x the loses that accrue for wrongful foreclosure. The loses of cost of the loans at 18 percent interest from 2007 40 months and 1<sup>st</sup> unearned payments along with sec unearned payments plus interest and damages for the Defendant's having dirty hands and they must not profit from criminal acts at the expense of the consumer. The defendant's didn't act with diligence, was previously decided in *Christine Provost v. Emiel Alird et al'* No.09-2-25191-6 Sea.

RECOVERY FOR MISPRESENTATION CAUSING PERCUNIARY HARM

"One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transaction is subject to liability for pecuniary loss cause to them by their justifiable reliance upon the information, if he fails to exercise reasonable care of competence in obtaining or competence in obtaining or communicating the

information."

If Chase or Triangle attorneys' continue in this fraudulent transaction after undisputable proof of the recorded fraud, they do so knowing they are breaking *their oath of office as stated below:*

*"Oath of Attorneys"*

"\_\_\_\_\_, swear that I will truly and honestly, justify and uprightly conduct myself as a member of this learned profession and in accordance with the Washington State rules of professional Conduct as attorney an counselor and that I will support and defend the Constitution of the United States and the Constitution of the State of Washington so help me God."

\_\_\_\_/s/ Byron Barton

Byron Barton Pro Se

# Appendicitis

Chase (OH4-7302)  
3415 Vision Drive  
Columbus, OH 43219-6009



**ORIGINAL**

September 30, 2011

02960-01 F1A 273-000000000000  
Jean Barton  
6548 41st Ave SW  
Seattle, WA 98136-1814



Re: Account Number: \*\*\*\*\*0077  
Jean Barton

**Authorization Revoked**

Dear Jean Barton:

We are writing in response to the inquiry Chase received about the Power of Attorney for this account.

We have updated our records to show First American no longer has Power of Attorney for this account.

We appreciate your business. If you have questions, please call us at the telephone number below.

Sincerely,

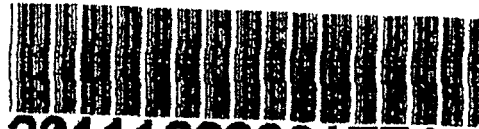
Chase  
(800) 848-9136  
(800) 582-0542 TDD / Text Telephone  
[www.chase.com](http://www.chase.com)

CC650

Prepared by: Jean Marie Barton

After recording return to:

Jean Marie Barton  
6548 41<sup>st</sup> Ave SW  
Seattle, WA 98136  
206 935 9384



20111229001774

CASH/BARTON N 76.00  
PAGE-001 OF 015  
12/29/2011 12:23  
KING COUNTY, WA

ORIGINAL

—Above This Line Reserved For Official Use Only—

**Affidavit & Public Notice Reference**  
**Fraudulent Activity Related To This Property**

I, Jean Marie Barton, of 6548 41<sup>st</sup> Ave SW, city of Seattle, county of King, state of Washington, the undersign Affidavit having been duly sworn, depose and states truthfully, for the record regarding the below property, the following information.

The legal description of this property to the best of my knowledge based on public records is:

Abbreviated Legal; Lt. 3-4 BLK.3 GATEWOOD-GARDENS V.25 P. 15

Tax Parcel Number: 2719100105

Also known as 6548 41<sup>st</sup> Ave SW Seattle, WA 98136

Regarding the following recording information on King County Public Records

**Mortgage Allegedly Signed:**

On August 06, 2007 and record on August 14, 2007 DEED OF TRUST loan # 3014060077-068 (security Instrument) recorded in the King County of Records # 20070814001628 and loan # 0772783908 recorded in the King County 20070814001629 between BYRON L. BARTON AND JEAN BARTON, HUSBAND AND WIFE dated August 06, 2007 given to, and empowering First American, a California corporation, located at 1567 Meridian Ave #800 Seattle, WA 98121 to act as "Trustee" is hereby replace for "default of proof of claim and fraudulent signatures of Jean M Barton, upon the recorded Mortgage, Deed of Trust or Security Instrument are forgery(s) by unknown Washington Mutual agent(s). J.P. Morgan; Chase Bank the unrecorded Beneficiary and Successors or assigns allegedly claims the mortgage has not been fully paid off, satisfied, nor discharged, but instead continues to exist in attempts to collected on a VIOD or NULLY contract even though Chase knowingly knew that a Breach of Contract and/or fraudulent signatures are present in the recorded mortgage or Deed of Trust in violation of law.

1. The Forensic Document Examiner Report of Brain Forrest, is undisputed by WAMU, J.P. Morgan and Chase Bank. WAMU, J.P Morgan and Chase Bank "Failure Proof of Claim" is undisputed and have exhausted all administrative remedy. That the Respondent(s) removed their Trustee of record by written notice dated September 30, 2011 ref. 02960-

ORIGINAL

01 IF 1A 273-000000000000.

- 2. That, according to the Proof of Claim and Forensic Document Examiner Report, the Respondents are now in DEFAULT and WITHOUT RECOURSE and no evidence has been presented to the contrary. (See Exhibit C Forensic Document Examiner Report of Brain Forrest).
- 3. If the Bank or the Bank's continue to attempt to collected on a NULLY and VOID contract or attempt to foreclose on this property after this declaration, then they do so knowing they have no standing or right of enforcement. Therefore, doing so will make them guilty of extortion, theft and fraud. All Federal felonies punishable with prison time.
- 4. Should the Bank's take any form action of Public recording such as Affidavit of Correction, Affidavit of Erroneous Recording, Affidavit of Erroneous Release and/ or legal action upon the NULLY and VIOD contract and/ or proceed with foreclosure action, they do so at their full commercial liability and shall be named a co-defendant against them in a wrongful civil action 3 x damages.

Jean M Barton is knowledgeable makes this affidavit for the purpose of giving notice to correct the above-described instrument, mortgage and/ or Deed of Trust by Striking the Bank's mortgage contract 3014060077; 0772783908 in entirety for payment(s) is NULL and VIOD for Breach of Contract and fraudulent actions of the Banker's that impaired the mortgage.

Dated: December 27, 2011.

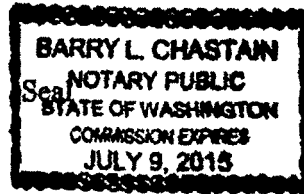
*Jean Marie Barton*  
 Principal Jean Marie Barton  
 State of Washington  
 County of King

NOTARY

IN WITNESS WHEREOF, I, a notary Public of the State of Washington, duly commissioned and sworn, have hereunto set my hand and affixed my official seal in the King County at Seattle on this date of December 29, 2011

*Barry L. Chastain*  
 Barry L Chastain

Notary  
My commission expires: 7 / 9 / 2015



Declaration of Service

I, Byron L. Barton, Pro Se. certify under penalty of perjury under the laws of the State of Washington, that on the date of Nov. 30, 2016 I signed this declaration of service. I signed this declaration of service. To the following and mail via first class, postage prepaid, to the following counsel listed below:

David James Lawyer  
Inslee Best Doezie & Ryder PS  
PO Box 90016  
Bellevue, WA 98009-9016

Joseph Ward McIntosh  
McCarthy & Holthus LLP  
108 1<sup>st</sup> Ave S Ste 300  
Seattle, WA 98104-2104

Zana Zahra Bugaighis  
Davis Wright Tremaine LLP  
1201 3<sup>rd</sup> Ave Ste 2200  
Seattle, WA 98101-3045

Fred B Burnside  
Davis Wright Tremaine LLP  
1201 3<sup>rd</sup> Ave Ste 2200  
Seattle, WA 98101-3045

Byron Barton  
Byron Barton

11/30/2016  
Date

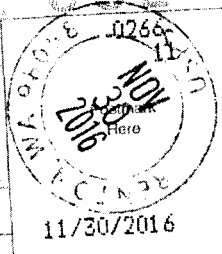


965 5998  
7026 1370 0001 7903 9702

# U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®  
SEATTLE, WA 98104

Certified Mail Fee	\$3.30
Extra Services & Fees (check box, add fee)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.36
Total Postage and Fees	\$4.66



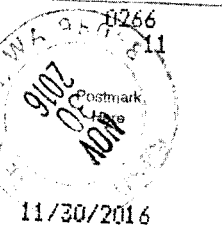
Sent To: Joseph Ward McIntosh  
 Street and Apt. No., or PO Box No.: 105 1st Ave Ste 300  
 City, State, ZIP+4: Seattle WA 98104-2104  
 PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

965 5998  
7026 1370 0001 7903 9702

# U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®  
SEATTLE, WA 98101

Certified Mail Fee	\$3.30
Extra Services & Fees (check box, add fee)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.36
Total Postage and Fees	\$4.66



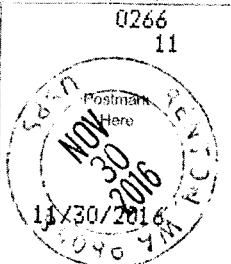
Sent To: Fred B. Burnoxie  
 Street and Apt. No., or PO Box No.: 1201 3rd Ave Ste 2200  
 City, State, ZIP+4: Seattle WA 98101-3046  
 PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

965 5998  
7026 1370 0001 7903 9702

# U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®  
BELLEVUE, WA 98009

Certified Mail Fee	\$3.30
Extra Services & Fees (check box, add fee)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.36
Total Postage and Fees	\$4.66



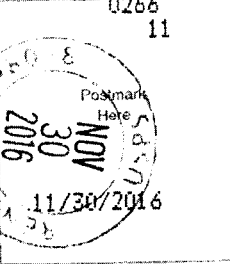
Sent To: David James Lawyer  
 Street and Apt. No., or PO Box No.: P.O. Box 90016  
 City, State, ZIP+4: Bellevue WA 98009-9016  
 PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

965 5998  
7026 1370 0001 7903 9702

# U.S. Postal Service™ CERTIFIED MAIL® RECEIPT Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®  
SEATTLE, WA 98101

Certified Mail Fee	\$3.30
Extra Services & Fees (check box, add fee)	\$0.00
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00
<input type="checkbox"/> Return Receipt (electronic)	\$0.00
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00
<input type="checkbox"/> Adult Signature Required	\$0.00
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00
Postage	\$1.36
Total Postage and Fees	\$4.66



Sent To: Zana Zahra Bugathis  
 Street and Apt. No., or PO Box No.: 1201 3rd Ave Ste 2200  
 City, State, ZIP+4: Seattle WA 98101-3045  
 PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions