SUPREME COURT NO. 940568

COURT OF APPEALS NO. 74050-4-I

COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

PAULINE LOUISE CONNER,

Plaintiff/Appellant,

v.

EVERHOME MORTGAGE COMPANY, a division of EVERBANK, REGIONAL TRUSTEE SERVICES, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a/k/a MERSCORP, FEDERAL NATIONAL MORTGAGE ASSOCIATION, LENDER PROCESSING SERVICES, DOES I-XXX, INCLUSIVE,

Defendants/Respondents.

APPELLANTS' PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES

CASES **PAGE**

OTHER AUTHORITIES **PAGE**

RULES **PAGE**

I. IDENTITY OF PETITIONER

The Petitioner is PAULINE LOUISE CONNER (hereinafter "Ms. Conner"), who was the Plaintiff in the original action under Snohomish County Superior Court Case No. 12-2-02860-3 and the Appellant in Court of Appeals, Division I, Case No. 70706-0-I.

II. COURT OF APPEALS DECISION

Ms. Conner seeks review by the Supreme Court of the unpublished decision of the Court of Appeals filed November 21, 2016 (hereinafter "subject decision"), a copy of which is attached hereto at ***Appendix "A"***.

III. ISSUES PRESENTED FOR REVIEW

A. Whether the subject decision determining the Declarations of Bradley Lee and Deborah Kaufman were (1) admissible for purposes of *CR 56(e)* and *RCW 5.45, et seq.*, and/or (2) were they sufficient to establish Respondents' right to foreclose as beneficiaries or parties entitled to enforce the subject loan obligation when the Declarations characterized documents that were prepared by third-parties, failing to attach the same, contrary to the Supreme Court's decision in *State v. Weeks,* 70 Wn.2d 951, 425 P.2d 885 (1967) (hereinafter "*Weeks*") and *State v. Fricks*, 91 Wn.2d 391, 588 P.2d 1328 (1979) (hereinafter "*Fricks*"), merits review under *RAP 13.4(b)(1)*.

B. Whether the subject decision declining to consider Appellant's claims for violation of the Washington Deed of Trust Act (*RCW 61.24, et seq.*)

(hereinafter "DTA"); violation of the Washington Consumer Protection Act (*RCW 19.86, et seq.*) (hereinafter "CPA") on the erroneous belief she did not plead violations of the DTA, merits review under *RAP 13.4(b)(1) and RAP 13.4(b)(4).*

C. Whether the subject decision ignoring the trustee's breach of its duty of good faith under *RCW 61.24.010* on the erroneous belief that Appellant failed to plead violations of the DTA, merits review under *RAP 13.4(b)(1) and RAP 13.4(b)(4).*

D. Whether the subject decision ignoring a facially ambiguous "Affidavit of Possession" that violated the provisions of *RCW 61.24.030(7)(a),* merits review under *RAP 13.4(b)(1) and RAP 13.4(b)(4).*

E. Whether the subject decision dismissing Appellant's meritorious CPA claims on the erroneous belief she did not plead violations of the DTA, merits review under *RAP 13.4(b)(1) and RAP 13.4(b)(4).*

F. Whether the subject decision affirming the trial court's refusal to permit Ms. Conner additional time to obtain the testimony of a competent representative of U.S. Bank prior to summary judgment, pursuant to *CR 56(f),* merits review under *RAP 13.4(b)(1) and RAP 13.4(b)(4).*

While each of the foregoing issues merit this Court review under *RAP 13.4(b)(1) and RAP 13.4(b)(4),* Ms. Conner will only address Assignment of Error A and F, below.

IV. STATEMENT OF THE CASE.

Ms. Conner is the owner on title of certain real property situated in Snohomish County, State of Washington, commonly known as 21604 78th Avenue S.E., Woodinville, Washington 98072 (hereinafter the "Property").

On or about May 23, 2006, Ms. Conner executed a Promissory Note (hereinafter "Note") in favor of Irwin Mortgage Corporation (hereinafter "Irwin"), as lender and the party entitled to payments according to its terms. CP 140-142. This transaction was purportedly registered with Respondent, MORTGAGE ELECTRONIC REGISTRATION SYSTMES, INC. (hereinafter "MERS") by Irwin under MIN No. 1000139-0080839558-0. At no time relevant to this cause of action was MERS a true and lawful owner and holder of this Note.

To secure repayment of the Promissory Note, Ms. Conner, as grantor, executed a Deed of Trust dated May 23, 2006, naming Pacific Northwest Title, as the trustee, and MERS as named beneficiary, solely as a nominee for Irwin Mortgage Corporation, the Lender, and Lender's successors and assigns and encumbered the subject Property. Ms. Conner's Deed of Trust was recorded with the Snohomish County Auditor under Recording No. 200606050432 (hereinafter the "Deed of Trust"). CP 148-164. At no time relevant to this cause of action did Ms. Conner owe any monetary or other obligation to MERS, nor has MERS ever been a holder and owner of the subject Promissory

Note or other evidence of debt executed contemporaneously with the Deed of Trust as the term is defined under *RCW 61.24.005(2).*

On or about June 9, 2006, the Federal National Mortgage Association (hereinafter "Fannie Mae") purportedly purchase the Note and Deed of Trust and Respondent, EVERHOME MORTGAGE COMPANY (hereinafter "Everhome Mortgage") was allegedly retained only to service the loan. CP 924.

On August 27, 2009, Ms. Conner spoke to representatives of Everhome Mortgage who advised her to make two months of payments by August 31, 2009 to "avoid foreclosure". CP 841. On August 31, 2009, Ms. Conner's daughter-in-law called Everhome Mortgage to make payment as advised, but was told the property was already in foreclosure. CP 841.

On or about September 2, 2009, Rick Wilken, as purported Assistant Vice President of MERS, as Nominee for Irwin Mortgage Corporation, executed an Assignment of the Deed of Trust, assigning the MERS' beneficial interest in the Deed of Trust together with the note or notes therein described to Everhome Mortgage, which MERS never owned or held. CP 1115-1116. Said Assignment was recorded under Snohomish County Auditor's Recording No. 200910200613 on October 20, 2009.

Also executed on September 2, 2009 by Rick Wilken, only this time in his capacity as "Vice President" rather than as "Assistant Vice President" for

MERS, as nominee for Irwin Mortgage Corporation, was an Appointment of Successor Trustee, appointing Respondent, REGIONAL TRUSTEE SERVICES CORPORATION (hereinafter "Regional Trustee") as successor trustee. CP 668-669. Said Appointment of Successor Trustee was not recorded until October 20, 2009, under Snohomish County Auditor's Recording No. 200910200614.

On September 8, 2009, Michele de Craen, as Assistant Vice President of Everhome Mortgage, executed an Affidavit of Possession of Note. CP 757. The Affidavit alleges Everhome Mortgage to be the "owner" of the Note, rather than the "holder". Her Affidavit, however, ambiguously provides that she has "either personal knowledge of the facts set forth in this Affidavit or have made appropriate inquiry of those individuals having knowledge of the facts," essentially offering hearsay to fulfill the requirements under *RCW 61.24.030(7)(a).*

On September 18, 2009, Regional Trustee, as purported "trustee and/or agent for the Beneficiary", executed and served a Notice of Default. CP 660-663.

On October 19, 2009, Regional Trustee, as successor trustee, executed, recorded and served a Notice of Trustee's Sale, setting a sale date for January 22, 2010. CP 671-674. Said Notice of Trustee's Sale was recorded under Snohomish County Auditor's Recording No. 200910200615 on October 20,

2009. Pursuant to *RCW 61.24.010(2)*, "Only upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee." The appointment of successor trustee was not recorded until October 20, 2009, in violation of *RCW 61.24.040.*

In connection with the issuance of the Notice of Trustee's Sale, Regional Trustee prepared and executed a Notice of Foreclosure pursuant to *RCW 61.24.040* indicating delinquent payments from May 1, 2009 to October 23, 2009, a period of 6 months. CP 682-684. However, the Notice of Foreclosure lists 9 delinquent payments. Moreover, there is no accounting for the 2 payments Ms. Conner made on August 31, 2009.

The Trustee's Sale set for January 22, 2010, was postponed/continued until the Property was eventually foreclosed on April 16, 2010, and the Trustee's Deed was recorded on April 29, 2010, under Snohomish County Recording No. 201004290388. CP 1127-1128.

On April 13, 2011, a Consent Order was entered into between EverBank Financial Corp., of which Everhome Mortgage is a purported subsidiary/division, and the Office of Thrift Supervision. CP 55, CP 219-239, CP 1193. Much of the conduct complained of here has apparently occurred numerous times before.

On October 20, 2011, Fannie Mae quit claimed its ownership interest in the subject property to "Everbank". Fannie Mae's Quit Claim Deed was recorded on December 13, 2011, under Snohomish County Recording No. 201112128185. CP 244-246.

On March 8, 2012, an Order Staying Proceedings was entered by the trial court, ordering Ms. Conner to make monthly payments into the Court Registry beginning April 8, 2012, and each month thereafter in the amount of $2,381.62. CP 241-242. As of July 31, 2015, the Superior Court Clerk verified that $95,286.69 has been deposited by Ms. Conner. CP 135.

On February 13, 2012, Plaintiff filed her Complaint herein alleging causes of action against the named Respondents. CP 1257-1269.

On May 14, 2012, Plaintiff filed her First Amended Complaint herein. CP 1192-1205.

Respondents filed their Motion for Summary Judgment on July 9, 2015, seeking dismissal as to all causes of action. CP 763-779.

On August 4, 2015, Ms. Conner moved for continuance of the hearing on summary judgment, pursuant to *CR 56(f),* seeking specific information, in the absence of an answer to Ms. Conner's Amended Complaint. CP 79-85.

On August 7, 2015, Respondents answered Ms. Conner's Amended Complaint. CP 54-62. However, this did not provide Ms. Conner sufficient time prior to hearing on summary judgment to conduct discovery.

On September 14, 2015, the trial court heard Respondent's Motion for Summary Judgement and Ms. Conner's Motion to Continue the Hearing. The trial court, *inter alia*, denied Ms. Conner's Motion to Continue the Hearing (*CR 56(f)*) and took the remaining issues under advisement. CP 16.

On September 22, 2015, the trial court entered its Memorandum Decision, granting Respondents' Motion for Summary Judgment, dismissing all of Ms. Conner's claims. CP 10-15. This appeal followed. CP 1-9.

On November 21, 2016, the Court of Appeals filed its unpublished Opinion affirming the trial court's Summary Judgment. See ***Appendix "A".***

V. ARGUMENT AND AUTHORITY

A. Review should be granted to determine whether the Court of Appeals' holding affirming the Trial Court's reliance of Declarations of Lee and Kaufman was erroneous.

Relying on *Barkley v. GreenPoint Mortgage*, 190 Wn.App. 58, 358 P.3d 1204 (2015), the Court of Appeals affirmed the trial court's reliance on the Declarations of Brandley Lee (CP 716-719) and Deborah Kaufman (CP 653-687). However, this reliance was misplaced.

Each declarant claims to have "personally reviewed" the business records maintained by their respective employers and has "personal knowledge" of the facts they related to the trial court. However, neither of the declarants demonstrated sufficient personal and testimonial knowledge of the

facts offered the trial court beyond conclusory statements and statements based exclusively on hearsay. *ER 801, ER 802, CR 56(e).*

Business records offered on summary judgment must be identified by an employee of the company who created the document, a records custodian or the person who supervised the documents' creation to be admissible. *State v. Meyer,* 27 Wn.2d 759, 226 P.2d 204 (1951); *Fies v. Story*, 21 Wn.App. 413, 585 P.2d 190 (1978) (overruled on different grounds *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984)); *State v. Alexander*, 64 Wn.App. 147, 822 P.2d 1250 (1992). The "business record" exception to the hearsay rule does not extend to records and information compiled and received from third parties. *State v. Weeks, supra.* See generally, Tegland, *Washington Practice: Evidence* § 803.39 (5th Ed. 2007).

Moreover, conclusory statements or "mere averment" that the affiant has personal knowledge are insufficient to support a motion for summary judgment. *CR 56(e); Blomster v. Nordstrom*, 103 Wn.App. 252, 260, 11 P.3d 883 (2000); Editorial Commentary to *CR 56* (citing *Antonio v. Barnes*, 464 F2d 584, 585 (4th Cir. 1972)). Indeed, the contents of a business record cannot be established by a witness' oral testimony, the actual document must be offered. *ER 803(a)(6) and (7); ER 1002; Fricks*, at page 397, ("In this case the State failed to produce the document or to make any showing of its unavailability.

Under these circumstances the testimony of a manager as to its contents was not an acceptable method of proof.")

With these requirements in mind, Ms. Kaufman's and Mr. Lee's specific factual allegations must be critically considered.

Ms. Kaufman and Mr. Lee each indicate they reviewed documents, but fail to identify the specific documents they reviewed, ambiguously referring to the records as "compilations" "business records", etc. of their respective firms. However, these "business records" necessarily include records and information complied by third parties (hearsay). Under Washington law, such third-party information and records must be separately authenticated by the third party who compiled the records to meet the business records exception to the hearsay rule and meet the requirement that such testimony must be based on personal knowledge from the third party's records custodian that satisfies each of the elements of *RCW 5.45.020*. *State v. Weeks*, *supra;* (affirming trial court's decision that out-of-state hospital record proffered by physician was inadmissible hearsay and business records exception to hearsay rule was not established because "[t]here was no evidence by the custodian of records of the Arkansas hospital or by any other qualified person that the document in question was a business record"); *MRC Receivables Corp. v. Zion*, 152 Wn.App. 625, 631 & n. 9, 218 P.3d 621 (2009) (reversing summary judgment entered in favor of debt collector, and identifying as one of the issues for

determination on remand whether "Sharp's affidavit [submitted by debt collector in support of summary judgment] presented only inadmissible hearsay" and met business records exception to hearsay rule, given the "lack of an explanation for how Sharp's status as a Midland employee provide[d] her with personal knowledge of her assertions regarding MRC, Zion's account with Providian, and how MRC came to own it"). Absent a proper foundation, the testimony of Ms. Kaufman (a representative of Regional Trustee) and Mr. Lee (a representative of EverBank) should have been stricken and disregarded by the trial court on summary judgment.

Specifically, Ms. Kaufman states that "Regional's involvement began . . . when it received a referral for foreclosure from Everbank," referring to an Exhibit "A". CP 654. However, the subject referral came from a company called "LPS", a third party – not EverBank. In fact, the alleged referral indicates that LPS made the referral on behalf of Everhome Mortgage – not EverBank. CP 658. There is no indication that Regional Trustee investigated or verified the information it received from LPS, as required under *RCW 61.24.010, Lyons v. U.S. Bank*, 181 Wn.2d 775, 336 P.3d 1142 (2014) (hereinafter "*Lyons*") and *Trujillo v. NWTS*, 183 Wn.2d 820, 355 P.3d 1100 (2015) (hereinafter "*Trujillo II*"). The referral (Exhibit "A") does not indicate where LPS got its information, the claim that Ms. Conner was in default or who may have made such a claim, or otherwise provide a justification or

authority for initiating a non-judicial foreclosure (hearsay). Whatever information LPS had, it would certainly not have been a "business record" of Regional Trustee. Moreover, as LPS has never been identified as an owner, holder, servicer or investor in the loan at any time relevant to this cause of action, LPS' information would necessarily have come from some other undisclosed third party (hearsay). The source of Regional Trustee's referral and the quality of the information it relied upon should have been material to the trial court on summary judgment to establish Regional Trustee's authority to initiate a non-judicial foreclosure and Regional Trustee's compliance with its duties under the DTA – without this referral, Regional Trustee would never have had colorable authority to initiate a foreclosure of Ms. Conner's home in the first instance, in violation of its duty of good faith under *RCW 61.24.010(4).*

Furthermore, Ms. Kaufman indicates that Regional Trustee relied on an Affidavit of Possession to initiate the subject foreclosure, but fails to provide a copy of the affidavit it relied upon. It is a requisite to a trustee's issuance of a notice of sale that the trustee have in its possession a "declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note." *RCW 61.24.030(7)(a); Lyons* and *Trujillo II.* Apparently this affidavit was not part of Regional Trustee's business records, as would be statutorily required, and

the information Ms. Kaufman relied upon to make her Declaration came from another unidentified source (hearsay). This information is material because without providing the trial court the Affidavit actually relied upon, the trial court could not verify compliance with *RCW 61.24.030(7)(a); Lyons* and *Trujillo II.* Although a copy of an affidavit of possession is attached to the Declaration of Brandley Lee at CP 757, there was no evidence before the trial court that the Affidavit of Possession attached to Mr. Lee's Declaration was identical to the document Ms. Kaufman referred to in her Declaration and the same document relied upon by Regional Trustee to initiate and prosecute the non-judicial foreclosure of Ms. Conner's home, pursuant to *RCW 61.24.030(7)(a).*

Turning to Mr. Lee's Declaration, he makes the statement that "[i]n June 2006, IMC" (Irwin) sold the loan to Fannie Mae and indorsed the Note in blank", but also testifies that "[e]ffective January 2007, loan servicing transferred to EverBank". CP 717. But, how does he know? His company was not involved in the purported transaction. Mr. Lee does not testify that he has ever seen the original Note, so he cannot testify that he has personal knowledge of whether EverBank actually holds and possesses the Note or whether there is an endorsement on the Note or not. Since EverBank did not come into possession of the Note until 2007, EverBank would necessarily have to rely on the business records of Irwin and Fannie Mae (hearsay) to establish

the sale of the loan and transfer, evidence that was not offered the trial court. The MERS records offered by Mr. Lee, dated March 5, 2013 (hearsay), do not confirm a sale to Fannie Mae, rather a transfer of "beneficial rights" to Fannie Mae, as an "investor" is referenced. CP 743-744. These issues are material because nowhere in his Declaration does Mr. Lee ever state that he has seen the original Note and can verify, based on that personal inspection, that EverBank or Everhome Mortgage actually holds and has possession of the original Note, with endorsement affixed, or not. Certainly, the original Note was never produced at hearing on summary judgment. Rather, Mr. Lee relies entirely on the business records of Irwin, MERS and Fannie Mae and "data compilations, electronically imaged documents, and others" (hearsay). CP 717.

Moreover, neither Ms. Kaufman nor Mr. Lee provide the Court facts that would establish (1) how the documents they refer to are maintained, whether in hard copy or electronic; (2) if the records are maintained by electronic means, whether the computer document retrieval equipment used is standard; (3) the original source of the materials maintained; (4) the identity of person who compiled the information contained in the files or computer printouts; (5) when, aside from the conclusory statements that they were made "at or near the time of the happening or event", the records or the entries were made and (6) and how the employer of each declarant relies on these records.

See *RCW 5.45.020*; *State v. Smith*, 16 Wn.App. 425, 558 P.2d 265 (1976) and *State v Kane*, 23 Wn.App. 107, 594 P.2d 1357 (1979). Without this information, there is no assurance that the information offered by these declarants is reliable absent verification by the entity that provided the information as to the means by which the information was created and maintained. See *State v. Mason*, 31 Wn.App. 680, 644 P.2d 710 (1982). There were simply no facts offered the trial court or the Court of Appeals that would justify the trial court's or Court of Appeals' reliance on the information provided by these declarants.

This sort of careless and conclusory testimony is typical of testimony offered by mortgage lenders and loan servicers in defense to challenges to their foreclosure efforts and has been roundly criticized by other trial courts in Washington. See *McDonald v. OneWest*, 929 F. Supp. 2d 1079 (2013) where Judge Robert Lasnik was offered testimony by Mr. Boyle and other representatives of loan servicers on summary judgment like that offered by Mr Lee and Ms. Kaufman here. In *McDonald,* Judge Lasnik observed:

> The testimony of Mr. Boyle and Mr. Corcoran confirmed what this Court has long suspected: defendants have not taken their obligations as litigants in federal court seriously enough. *Rather than obtain declarations from individuals with personal knowledge of the facts asserted or locate the source documents underlying its computer records, defendants chose to offer up what can only be described as a "Rule 30(b)(6) declarant" who regurgitated information provided by other sources.* Rule 30(b)(6) is a rule that applies to depositions in which an opposing party is given the opportunity to question a

> corporate entity and bind it for purposes of the litigation. *A declaration, on the other hand, is not offered as the testimony of the corporation, but rather reflects – or is supposed to reflect – the personal knowledge of the declarant.*
>
> Not surprisingly given the fact that his counsel apparently did not understand the difference between a declaration based on personal knowledge and a Rule 30(b)(6) deposition, Mr. Boyle's declarations consist of sweeping statements, a few of which may be within his ken and admissible, but most of which are assuredly hearsay. When he was asked to sign a declaration in this case, he thought he was responding on behalf of OneWest and therefore felt justified in questioning co-workers, running computer searches, and reviewing other sources before reporting their statements as his own. Nothing in his declarations would alert the reader to the fact that Mr. Boyle was simply repeating what he had heard or read from undisclosed and untested sources. When his statements turned out to be untrue, Mr. Boyle conveniently blames inaccuracies in the underlying documentation, computer input errors, or faulty reporting. Had defendants made the effort to produce admissible evidence in the first place, these errors may have been uncovered and avoided before they could taint the discovery process in this case.

McDonald, 929 F. Supp. at 1090-1091. (Emphasis added). The same criticisms can be lodged against the testimony of Mr. Lee and Ms. Kaufman in all forms offered to the trial court and Court of Appeals.

Absent a proper foundation, the testimony of Mr. Lee and Ms. Kaufman constituted rank hearsay that should not have been considered or given any weight by the trial court on summary judgment or the Court of Appeals on review. *CR 56(e), ER 803(a)(6)* and *RCW 5.45.020.* The Court of Appeals' reliance on these defective Declarations merits review under *RAP 13.4(b)(1).*

B. Review should be granted to determine whether the Court of Appeals' holding affirming the Trial Court's refusal to permit Ms. Conner time to obtain additional evidence under *CR 56(f)* was erroneous.

The Court of Appeals affirmed the trial court's denial of Ms. Conner's request for a continuance under *CR 56(f)*, arguing that there was no showing of abuse of discretion by the trial court. This finding was erroneous.

In view of Ms. Kaufman's and Mr. Lee's incompetent testimony and Respondents failure to answer her Amended Complaint in a timely fashion, Ms. Conner requested relief under *CR 56(f)*. CP 79-85.

As noted above, there were numerous material issues of fact raised by the testimony offered by Respondents on summary judgment that could not be adequately addressed without additional discovery. To address the outstanding issues, and the Court of Appeals' finding to the contrary notwithstanding, Ms. Conner, through counsel, identified and requested the opportunity to conduct discovery on a range of specific issues germane to the facts raised in Respondents Motion for Summary Judgment. CP 84-85.

The Rules of Civil Procedure are to be liberally construed in order that full discovery proceedings will be afforded in all instances where factual inquiries are in order. *Barnum v. State*, 72 Wn.2d 928, 435 P.2d 678 (1967). The scope of discovery under the Rules of Civil Procedure is broad and is subject to narrow exceptions. *Hertog v. City of Seattle*, 88 Wn.App. 41, 943

P.2d 1153 (1997). "Good cause" for discovery is present if the information sought is material to the party's trial preparation. The justification for specific discovery requests is ordinarily satisfied by a factual allegation showing that the requested information is necessary to establishment of the party's claim or that denial of the information would work a hardship or injustice on the party. *Id.* The limitations on discovery presented by recognized privileges or defined in the discovery rules remain narrow because the right to discovery under the Washington Constitution is tied to the fundamental right of access to the courts. *Lowy v. PeaceHealth*, 174 Wn.2d 769, 280 P.3d 1078 (2012).

The trial court's refusal to provide Ms. Conner additional time to conduct discovery on the areas of inquiry outlined in her Motion for Continuance (CP 79-85) pursuant to *CR 56(f),* particularly in view of Respondents failure to timely answer her Amended Complaint which would have identified the specific claims they intended to litigate until a month before the hearing on summary judgment (CP 62), constituted manifest error and prejudiced Ms. Conner's ability to respond the Respondents' Motion for Summary Judgment.

The Court of Appeals affirmed the trial court based on Ms. Conner's failure to establish a "manifest abuse of discretion." However, as frequently stated, a trial court abuses its discretion when it bases its decision on unreasonable or untenable grounds. *Clarke v. Attorney General,* 133 Wn.App.

767, 777, 138 P.3d 144 (citing *Brand v. Dep't of Labor & Indus.,* 139 Wn.2d 659, 665, 989 P.2d 1111 (1999)). Here, the trial court offered no grounds for its decision whatsoever.

Responses to the areas of inquiry set out by Ms. Conner's counsel (CP 84-85) would have revealed a number of genuine issues of disputed fact concerning Respondents right to enforce the subject Note and Deed of Trust. The Court of Appeals' affirmation of the trial court's refusal to permit additional discovery merits review under *RAP 13.4(b)(1) and RAP 13.4(b)(4).*

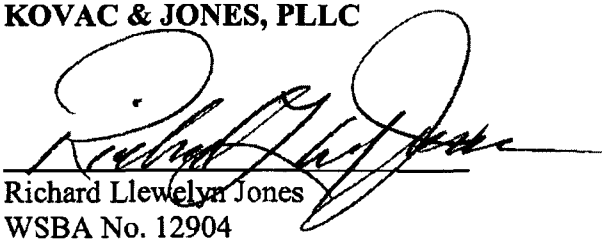
VI. CONCLUSION

The trial court's summary judgment was entered despite the existence of disputes regarding issues of fact. The trial court ignored the incompetency of Respondents' witnesses, who clearly had no personal and testimonial knowledge of the matters they were testifying to, in violation of *RCW 5.45.020* and *CR 56(e),* and contained inadmissible evidence which could have been challenged through discovery, had it been allowed under *CR 56(f).* Reversal should have been the remedy. However, notwithstanding clear error by the trial court, the Court of Appeals affirmed the trial court's misconduct. As such, the subject decision merits review by this Court under *RAP 13.4(b)(1) and RAP 13.4(b)(4).*

In addition to this Court's review and remand to the trial court for further review and trial, Ms. Conner should be awarded taxable costs and attorney's fees on appeal, pursuant to *RAP 18.1,* based on the terms of the subject Deed of Trust. CP 161.

REPECTFULLY SUBMITTED this 19th day of December, 2016.

KOVAC & JONES, PLLC



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CERTIFICATE OF MAILING

I, the undersigned, certify under penalty of perjury under the laws of the State of Washington that on December 19th, 2016, I caused to be served a true and correct copy of the foregoing Petition for Review on the following party(ies) and in the manner(s) indicated:

Wesley Werich, WSBA No. 38428	_____	Facsimile
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SIGNED this 19th day of December, 2016, at Bellevue, Washington.

/S/ Marie M. Parks
Marie M. Parks, Legal Assistant

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PAULINE LOUISE CONNER, Appellant, v. EVERHOME MORTGAGE COMPANY, a division of EVERBANK, and EVERBANK, REGIONAL TRUSTEE SERVICES, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a/k/a MERSCORP, FEDERAL NATIONAL MORTGAGE ASSOCIATION, LENDER PROCESSING SERVICES, DOES I-XXX, INCLUSIVE, Respondents.	No. 74050-4-I DIVISION ONE UNPUBLISHED OPINION FILED: November 21, 2016

LEACH, J. — Pauline Conner challenges the summary judgment dismissal of her lawsuit against Everhome Mortgage Company (now EverBank),[1] Mortgage Electronic Registration Systems Inc. (MERS), and Federal National Mortgage Association (Fannie Mae). After Conner defaulted on a loan, EverBank started nonjudicial foreclosure proceedings against her home. Conner then filed a lawsuit asserting various causes of action based on alleged violations of the

[1] In July 2011, Everhome Mortgage Company merged with EverBank with the surviving successor being EverBank. Both names are used throughout the briefing and record, but the entities are the same for purposes of this dispute. For consistency with the trial court order, we use "EverBank."

deeds of trust act (DTA)[2] and Consumer Protection Act (CPA)[3]. She claims genuine issues of material fact prevent dismissal of these claims. She also challenges certain trial court evidence rulings and the denial of her request for a continuance of the summary judgment hearing.

Because Conner does not dispute that she defaulted on her loan and did not restrain the foreclosure sale, she fails to raise an issue of fact about her waiver of most of her DTA claims. Because the respondents did not owe Conner a duty of good faith, the trial court properly dismissed Conner's good faith claim against them. And because Conner does not provide facts to support the causation element of her CPA claim, the trial court properly dismissed the claim. For these reasons, we affirm.

FACTS

In May 2006, Irwin Mortgage Corporation (IMC) loaned Pauline Conner $279,000 evidenced by a promissory note. A deed of trust (DOT) encumbering Conner's home secured the note. The DOT named MERS as its beneficiary. MERS never owned or possessed the promissory note.

IMC endorsed the note in blank and sold it to Fannie Mae. Fannie Mae delivered the note to EverBank to allow EverBank to service it for Fannie Mae. EverBank maintained continuous physical possession of the original note.

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[2] Ch. 61.24 RCW.
[3] Ch. 19.86 RCW.

Conner defaulted on the loan in May 2009. EverBank notified Conner of her default and an imminent referral to foreclosure. Conner did not cure her default. On August 31, 2009, EverBank referred the loan for foreclosure.

In September 2009, MERS executed an assignment of the DOT, purporting to assign to EverBank all beneficial interest under the DOT.

On September 18, 2009, Regional Trustee Services sent Conner a notice of default, signed as "Trustee and/or Agent for the Beneficiary." EverBank appointed Regional Trustee as successor trustee, providing it with a notarized affidavit of possession indicating that EverBank possessed the note. On October 20, 2009, Regional Trustee recorded EverBank's appointment of successor trustee appointing Regional Trustee as successor trustee. The same day Regional Trustee also recorded a notice of trustee sale and sent it and a notice of foreclosure to Conner.

The notice of foreclosure scheduled a public action of Conner's home for January 22, 2010. Regional Trustee continued the sale to April 16, 2010. Conner did not attempt to enjoin the sale. Fannie Mae purchased the property at the April 16 trustee's sale. When Conner did not move out, Fannie Mae started an eviction action, which the court stayed pending the outcome of this lawsuit.

Conner filed this lawsuit on February 13, 2012, naming EverBank, Regional Trustee, MERS, and Fannie Mae as defendants. On July 9, 2015,

respondents EverBank, MERS, and Fannie Mae moved for summary judgment seeking dismissal of all claims against them. Regional Trustee had entered receivership and was not a party to the summary judgment proceeding. On August 4, 2015, Conner moved for a continuance to allow her to conduct discovery on specific questions related to ownership and possession of her promissory note. The trial court denied Conner's CR 56(f) motion and granted respondents' motion for summary judgment, dismissing all of Conner's claims. Conner appealed.

STANDARD OF REVIEW

We review an order granting summary judgment de novo.[4] Summary judgment is appropriate when, viewing all facts and reasonable inferences in the light most favorable to the nonmoving party, no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.[5] We consider the same evidence that the trial court considered on summary judgment.[6] But we may affirm the trial court ruling on any ground supported by the record.[7]

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[4] Hayden v. Mut. of Enumclaw Ins. Co., 141 Wn.2d 55, 63-64, 1 P.3d 1167 (2000).

[5] Lybbert v. Grant County, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

[6] Lybbert, 141 Wn.2d at 34.

[7] King County v. Seawest Inv. Assocs., 141 Wn. App. 304, 310, 170 P.3d 53 (2007).

ANALYSIS

Declarations of Lee and Kaufman

Conner asserts that the trial court should not have considered declarations and related business records about Regional Trustee and EverBank's actions in connection with the foreclosure. We review a trial court's decision to admit or exclude evidence in a summary judgment proceeding de novo.[8]

First, Conner contends that the declarations of Bradley Lee and Deborah Kaufman did not show that they had sufficient personal knowledge of the facts stated in the declarations. CR 56(e) requires that "[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Declarations based on review of business records satisfy this personal knowledge requirement if the business records are admissible under RCW 5.45.020.[9] RCW 5.45.020 provides that a business record is admissible when

> the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

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[8] Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).
[9] Discover Bank v. Bridges, 154 Wn. App. 722, 726, 226 P.3d 191 (2010).

Courts interpret "custodian" and "other qualified witness" broadly.[10] The record need not be identified by the one who created it.[11] It must only be made "in the regular course of business, under circumstances which the court finds rendered it trustworthy."[12]

The declarations of Lee and Kaufman satisfy the personal knowledge requirement because they meet the requirements of CR 56(e) and RCW 5.45.020. We dealt with a similar challenge in Barkley v. GreenPoint Mortgage Funding, Inc.[13] Like the affiants in Barkley, Lee and Kaufman satisfied CR 56(e) and RCW 5.45.020 when they declared under penalty of perjury that (1) they were officers of EverBank and Regional Trustee, respectively, (2) they had personal knowledge of their companies' practices of maintaining business records, (3) their personal knowledge was based on examination of the records, and (4) the attached records were true and correct copies of records made in the regular course of business at or near the time of the transaction.[14]

Conner contends that the trial court improperly accepted these conclusory declarations of personal knowledge about the records' creation and contents. In

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[10] State v. Ben-Neth, 34 Wn. App. 600, 603, 663 P.2d 156 (1983).
[11] Cantrill v. Am. Mail Line, Ltd., 42 Wn.2d 590, 608, 257 P.2d 179 (1953).
[12] State v. Rutherford, 66 Wn.2d 851, 853, 405 P.2d 719 (1965).
[13] 190 Wn. App. 58, 66-68, 358 P.3d 1204 (2015), review denied, 184 Wn.2d 1036 (2016).
[14] See Barkley, 190 Wn. App. at 67; see also Discover Bank, 154 Wn. App. at 726.

Barkley, we concluded that the trial court could properly consider "conclusory" declarations because the moving party had failed to identify any genuine issue of material fact about the affiants' qualifications.[16] Here, the trial court admitted that the declarations "tended to assert, without much more, that the affiant had personal knowledge, was familiar with the records, and that the records were prepared in the ordinary course of business." The trial court still considered the declarations, observing, like the court in Barkley, that Conner offered nothing to contradict the declarations. Given no reason to doubt their accuracy, the trial court, in its discretion, could properly find the declarations reliable enough to be considered.

Conner objects to Kaufman's reliance on the referral to foreclosure, sent by Lender Processing Services on behalf of EverBank. She contends that Kaufman improperly considered a document that contains hearsay and is from a third party. However, Kaufman used the document to show that Regional Trustee believed that it had received a referral to foreclosure from EverBank, which is precisely what the document conveys. Kaufman's reliance on the referral to foreclosure was proper.

Conner also claims that Kaufman's declaration is defective because it referred to an affidavit of possession that was not attached to it. "Sworn or

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[16] Barkley, 190 Wn. App. at 67-68.

certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith."[16] "However, evidence may be presented in affidavits by reference to other sworn statements in the record such as depositions and other affidavits."[17] Although the affidavit of possession was not attached to the Kaufman declaration, the respondents submitted two identical separate copies with the summary judgment motion. Conner contends that the trial court could not know whether Kaufman relied on that same document, but Conner bases this argument on pure speculation. Conner provides no reason to believe that Kaufman relied on a different document than the one provided to the court. Further, Conner did not ask the trial court to strike Kaufman's declaration for this reason and first raises it in this appeal. Had Conner objected to this alleged deficiency before resolution of the summary judgment motion, respondents could have easily cured it.[18] Conner's failure to object earlier waives her right to make this complaint on appeal.[19] The trial court properly considered the declarations of Lee and Kaufman.

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[16] CR 56(e).

[17] Mostrom v. Pettibon, 25 Wn. App. 158, 162, 607 P.2d 864 (1980).

[18] See Meadows v. Grant's Auto Brokers, Inc., 71 Wn.2d 874, 881, 431 P.2d 216 (1967).

[19] See Meadows, 71 Wn.2d at 881.

DTA Claims

The trial court declined to consider Conner's DTA claims against the respondents, deciding that she had not pleaded them in her complaint.[20] The trial court was wrong. The allegations involving the DTA appear in Conner's first cause of action for "wrongful foreclosure." She based her wrongful foreclosure cause of action on claims of violations of chapter 61.24 RCW, Washington's deeds of trust act. The language of the complaint shows that alleged DTA violations provided the sole basis for Conner's wrongful foreclosure claim. For example, "Plaintiff alleges that Defendants are misrepresenting their right to enforce a debt and foreclose in violation of the statutory requirements of Washington RCW 61.24 *et seq.*" Conner also describes particular ways that DTA violations led to wrongful foreclosure. Because violations of the DTA were essential to Conner's wrongful foreclosure cause of action, the trial court erred in dismissing those claims on this basis. But we affirm dismissal of these claims because they were either waived or lack merit.

Conner waived her DTA claims against the respondents. A borrower's failure to enjoin a foreclosure before the trustee's sale may result in waiver of her claims under the statute.[21] This waiver may occur if the party "(1) received notice

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[20] "While the plaintiff appears to have argued various alleged violations of the Deed of Trust Act, she never actually pleaded the violations as a cause of action."

[21] RCW 61.24.040(1)(f)(IX).

of the right to enjoin the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale."[22] This court applies waiver "where it is equitable under the circumstances and where it serves the goals of the act."[23] Thus, to decide if waiver is proper, courts examine whether interested parties had an adequate opportunity to prevent wrongful foreclosure.[24] Also, failure to bring an action to enjoin foreclosure does not waive claims asserting "(a) [c]ommon law fraud or misrepresentation; (b) [a] violation of Title 19 RCW; (c) [f]ailure of the trustee to materially comply with the provisions of this chapter; or (d) [a] violation of RCW 61.24.026."[25]

Here, Conner makes no claim that she did not receive notice of her right to enjoin the sale or that she did not know of the foreclosure sale. Nor does she claim that she attempted to enjoin the sale. Conner had ample opportunity to challenge the sale. All allegedly wrongful actions occurred on or before October 20, 2009. She knew or should have known about them, and the sale did not take place until April 2010. Thus, waiver is equitable here. We therefore find that

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[22] Plein v. Lackey, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003).
[23] Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 570, 276 P.3d 1277 (2012).
[24] Albice, 174 Wn.2d at 571.
[25] RCW 61.24.127(1).

under RCW 61.24.127(1), Conner waived all but her CPA claims and her good faith claim against the trustee.[26]

Good Faith Claim

The trial court correctly dismissed Conner's good faith claim. Conner claims that Regional Trustee violated its duty of good faith by failing to properly investigate information it relied upon to initiate foreclosure. A trustee owes a duty to act in good faith with impartiality to both lenders and borrowers.[27] But the trial court properly dismissed this claim because the trustee, Regional Trustee, was not a party to the summary judgment motion asking for dismissal of this claim and none of the respondents owed Conner a duty of good faith.

Conner claims that EverBank is vicariously liable for Regional Trustee's actions under the doctrine of respondeat superior. The respondeat superior doctrine makes a principal liable for its agent's wrongful acts committed within the scope of the agency.[28] Generally, "'a trustee is not merely an agent for the lender or the lender's successors. Trustees have obligations to all of the parties

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[26] Conner argues that EverBank fraudulently advised her that making two months of payments would avoid foreclosure and Regional Trustee falsely indicated the number of Conner's delinquent payments. Although common law fraud is one of the exceptions to waiver under RCW 61.24.127(1), Conner offers no authority to support her fraud claims. Further, she did not raise this issue until appeal. We therefore decline to address her arguments about the fraud claim.

[27] RCW 61.24.010(4); Lyons v. U.S. Bank Nat'l Ass'n, 181 Wn.2d 775, 787, 336 P.3d 1142 (2014).

[28] BLACK'S LAW DICTIONARY 1505 (10th ed. 2014).

to the deed, including the homeowner.'"[29] However, "[w]here the beneficiary so controls the trustee so as to make the trustee a mere agent of the beneficiary, then as princip[al], the beneficiary may be liable for the actions of its agent."[30] Here, Conner asserts that Regional Trustee was a mere agent of EverBank because EverBank controlled the transaction by its authority to start and stop the foreclosure. Assuming this is true, Conner still did not present any evidence showing that EverBank exercised an improper degree of control over Regional Trustee. Because Conner does not show that EverBank improperly controlled Regional Trustee, her proposition that Regional Trustee acted as EverBank's agent fails.

Similarly, Conner's argument that Regional Trustee and EverBank should be held jointly and severally liable under theories of civil conspiracy and joint venture liability also fails. Conner cites no authority applying these theories in deed of trust cases. Further, Conner offers no evidence to justify their application in this case. To prove civil conspiracy, a plaintiff must show that each participant combined to accomplish an unlawful purpose or a lawful purpose by unlawful means.[31] To establish joint venture liability, a plaintiff must show a

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[29] Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 789, 295 P.3d 1179 (2013) (quoting Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83, 93, 285 P.3d 34 (2012)).

[30] Klem, 176 Wn.2d at 791 n.12.

[31] Newton Ins. Agency & Brokerage, Inc. v. Caledonian Ins. Grp., Inc., 114 Wn. App. 151, 160, 52 P.3d 30 (2002).

contract, a common purpose, a community of interest, and equal right to a voice and control.[32] Conner offers no evidence that EverBank had a common objective with Regional Trustee, lawful or otherwise. Because the respondents have no liability for Regional Trustee's actions, we decline to consider Conner's claims based on Regional Trustee's violation of its duty as trustee. Because the respondents have no primary or vicarious liability, we affirm dismissal of Conner's good faith claim.

CPA Claims

Next, we address Conner's CPA claims. The CPA prohibits "[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."[33] To prevail on a CPA claim, the plaintiff must show (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) a public interest impact, (4) injury to the plaintiff in his or her business or property, and (5) a causal link between the unfair or deceptive act and the injury.[34]

Conner claims deceptive practices by Regional Trustee, EverBank, and MERS caused her injury. Specifically, Conner bases her CPA claim on MERS's improper assignment of the DOT and on violations of the DTA, including

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[32] Knisely v. Burke Concrete Accessories, Inc., 2 Wn. App. 533, 537, 468 P.2d 717 (1970) (quoting Carboneau v. Peterson, 1 Wn.2d 347, 374, 95 P.2d 1043 (1939)).

[33] RCW 19.86.020.

[34] Klem, 176 Wn.2d at 782 (quoting Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986)).

EverBank's allegedly improper appointment of Regional Trustee, and various violations of the DTA by Regional Trustee. Because Regional Trustee was not involved in the summary judgment motion and is not a party to this appeal, we do not consider CPA claims based on Regional Trustee's alleged DTA violations.

As an initial matter, the respondents incorrectly assert that the statute of limitations bars Conner's MERS-based CPA claim. A litigant must commence a CPA action within four years from the date that cause of action accrues.[35] A CPA claim begins to accrue when, with the exercise of due diligence, the claimant should have discovered the basis for the cause of action.[36] The events on which Conner bases her CPA claim occurred in late 2009 in connection with foreclosure on her property. Conner sued in February 2012, well within the four-year period for bringing a CPA claim.

Because the causation element of the CPA claim is dispositive, we focus exclusively on it. Conner identified her injuries as the loss of her home and the expenses she incurred seeking legal help to determine ownership of her note.[37]

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[35] RCW 19.86.120.

[36] See Shepard v. Holmes, 185 Wn. App. 730, 739, 345 P.3d 786 (2014); Mayer v. Sto Indus., Inc., 123 Wn. App. 443, 462-63, 98 P.3d 116 (2004), rev'd in part on other grounds, 156 Wn.2d 677, 132 P.3d 115 (2006).

[37] See Panag v. Farmers Ins. Co. of Wash., 166 Wn.2d 27, 62, 204 P.3d 885 (2009) ("Consulting an attorney to dispel uncertainty regarding the nature of an alleged debt is distinct from consulting an attorney to institute a CPA claim. Although the latter is insufficient to show injury to business or property, the former is not." (citation omitted)).

But Conner fails to show that either MERS's DOT assignment or EverBank's appointment of successor trustee caused these injuries. First, Connor does not show that EverBank relied on MERS's assignment of the DOT for its authority to foreclose or appoint a successor trustee. Also, she does not dispute that she failed to meet her debt obligations and cure her default despite receiving notice of foreclosure. The record contains no evidence that the alleged deceptive acts of the respondents caused Conner's default or failure to cure. Thus, Conner cannot show that but for alleged deceptive acts, EverBank would not have foreclosed on her home.

Nor does Conner show how the alleged deceptive acts caused Conner to incur legal expenses. Neither the MERS assignment nor the appointment of successor trustee had any effect on who was the owner or holder of the note. Thus, these acts did not cause Conner to investigate ownership. Conner failed to demonstrate a genuine issue of material fact that the MERS assignment of the DOT, EverBank's appointment of trustee, or any other allegedly improper action by the respondents caused her injury. Because Conner does not raise facts to show a causal link between the alleged deceptive acts and her injury, we do not address whether she has established the other elements of her CPA claim.

Conner has failed to produce any evidence supporting an essential element of her CPA claim. We affirm dismissal of this claim.

CR 56(f) Continuance

The trial court properly denied Conner's request for a continuance under CR 56(f). Before oral argument on the respondents' summary judgment motion, Conner requested a continuance to conduct discovery on certain questions. Finding those questions were immaterial to the issues before it, the trial court denied the request. A trial court may deny a CR 56(f) continuance for a number of reasons: "(1) the requesting party does not offer a good reason for the delay in obtaining the desired evidence; (2) *the requesting party does not state what evidence would be established through the additional discovery*; or (3) the desired evidence will not raise a genuine issue of material fact."[38] An appellate court will affirm a trial court's decision to deny a CR 56(f) motion absent a showing of manifest abuse of discretion.[39]

Here, the evidence Conner sought would not have created an issue of fact. Conner asserts material issues of fact exist about EverBank's status as "actual holder" of the note with authority to foreclose. Conner moved for a CR 56(f) continuance for the purpose of conducting discovery on this question. Specifically, Conner planned to request information on the date parties acquired ownership of the note and DOT; the amount, form, and source of consideration

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[38] Baechler v. Beaunaux, 167 Wn. App. 128, 132, 272 P.3d 277 (2012) (quoting Turner v. Kohler, 54 Wn. App. 688, 693, 775 P.2d 474 (1989)).

[39] Lake Chelan Shores Homeowners Ass'n v. St. Paul Fire & Marine Ins. Co., 176 Wn. App. 168, 183, 313 P.3d 408 (2013).

paid for the note and DOT; the date consideration was paid; and the identity of the agents involved. The trial court denied the CR 56(f) motion, concluding that none of Conner's requested discovery was material to the summary judgment issues.

Conner claims that whether EverBank or Fannie Mae was the owner and holder of the note is disputed. But any evidence Conner hoped to obtain about ownership or possession would not have changed the outcome here. First, ownership is not relevant to ability to enforce and is, thus, not material.[40] Second, possession is the only salient fact for determining the "actual holder."[41] Undisputed evidence shows that EverBank was the holder of the note. Conner does not provide any reason to believe that more discovery would uncover evidence showing otherwise. And if such evidence existed, Conner does not explain why she did not have sufficient time to discover it earlier in the litigation.

Conner asserts that she needed additional time to conduct discovery because the respondents did not answer her amended complaint until a month before the hearing on summary judgment. But Conner had three years for discovery. The respondents' delay in filing their answer does not excuse Conner's failure to conduct discovery on this issue.

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[40] See Trujillo v. Nw. Tr. Servs., Inc., 181 Wn. App. 484, 500, 326 P.3d 768 (2014), rev'd on other grounds, 183 Wn.2d 820, 355 P.3d 1100 (2015).

[41] Trujillo, 181 Wn. App. at 498.

Conner did not identify any evidence that she might obtain through discovery that would raise a material issue of fact. The trial court did not abuse its discretion by denying Conner's CR 56(f) motion.

Attorney Fees

Conner requests attorney fees under both RAP 18.1 and the terms of the DOT. Because she does not prevail on any issue, we deny her request.

CONCLUSION

Because the undisputed facts show that Conner waived her DTA claims, except the good faith claim against the trustee, the trial court properly dismissed those claims. Because the respondents did not owe Conner a duty of good faith, the trial court properly dismissed Conner's good faith claim against them. And because Conner does not provide facts to support the causation element of her CPA claim, the trial court properly dismissed that claim as well. We affirm.

Leach, J.

WE CONCUR:

Cox, J.

Becker, J.