

FILED
SUPREME COURT
STATE OF WASHINGTON
4/3/2018 1:48 PM
BY SUSAN L. CARLSON
CLERK

SUPREME COURT NO. 95537-9

SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN CHOQUER, Petitioner

v.

GUY WAY AND ZENAIDA WAY, Respondent

RESPONSE TO PETITIONER'S PETITION FOR DISCRETIONARY
REVIEW

Quinn H. Posner, WSBA #31463

Attorneys for Respondents

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I. IDENTITY OF RESPONDENTS.

Guy Way and Zenaida Way, husband and wife and Respondents, respectfully requests this court deny Petitioner John Choquer's Motion for Discretionary Review.

II. ISSUES PRESENTED FOR REVIEW

1. Did the Washington State Court of Appeals Division II's decision in this matter conflict with a decision of the Supreme Court when it ruled the Doctrine of Res Judicata bars Petitioner from bringing this appeal when the present argument could have been litigated previously?
2. Should this Court consider Petitioner's remaining arguments, were the requisites to the trustee sale required by RCW 61.24.030 satisfied for the June 5, 2015 trustee sale to be valid when the deed of trust being non-judicially foreclosed stated the Property is not used principally for agricultural or farming purposes?
 - B. Should this Court consider Petitioner's remaining arguments, did the Superior Court abuse its discretion when it ruled absence of presence of primary agricultural use of the subject property when there was no evidence the Subject Property was being use for agricultural purposes?

III. STATEMENT OF THE CASE

The real property which is the subject of the Superior Court unlawful detainer action and this appeal is located in Clark County and is described with reasonable certainty as follows: 9213 NE Mason Creek

Road, Battle Ground, WA 98604 (hereinafter “Subject Property”).

On or about July 20, 2015, a trust deed was recorded in Respondents’ favor following Respondents’ purchase of the premises at foreclosure sale that was executed against Petitioner as the previous owners of the premises. Following the foreclosure sale and recording of the Trustee’s Deed, Petitioner remained in possession of the premises for a period in excess of twenty (20) days in derogation of RCW 61.24.060. Therefore, Respondents initiated an unlawful detainer proceeding against Petitioner upon which Respondents ultimately prevailed and the Superior Court granted Respondents an Order for Writ of Restitution. Subsequently, Petitioner filed a Notice of Appeal with the Superior Court and the first appeal in this case was accepted by the Court of Appeals - Division II under No. 48191-0-II, *Guy Way and Zenaida Way v. John Choquer*. In that appeal, Petitioner argued service was not made upon his wife who was a non-occupant at the time and as a result, the underlying unlawful detainer necessarily failed. The above facts have been made part of the record in the above referenced cause number and in Division II Court of Appeals No. 49844-8-II detailed below and Respondent references the same.

Following a lengthy period of time, this Court of Appeals affirmed

the Superior Court in its December 28, 2016 unpublished opinion, *Guy Way and Zenaida Way v. John Choquer, et al*, No. 48191-0-II. As a result, Respondent cited the matter back before Judge Vanderwood of the Clark County Superior Court on January 9, 2017 for an Order for Writ of Restitution and Release of Appellate Bond in compliance with Division II's opinion. RP 1:8. It was at that hearing that Petitioner, for the first time, brought up its argument in the form of a Motion to Reverse Trial Court's Decision, Rescind Trustee's Sale, and Restore Ownership to Defendant. RP 3:3; CP 12. After careful consideration of the arguments of the parties and the evidence provided by Petitioner, Judge Vanderwood of the Clark County Superior Court denied Petitioner's motion. CP 24.

Subsequently, on January 12, 2017, Petitioner filed a Notice of Appeal with the Washington State Court of Appeals Division II under cause No. 49844-8-II. In that appeal, Petitioner made the same argument offered here and offered documents and argument not part of the Superior Court record. Therefore, the Court of Appeals refused to consider Petitioner's arguments and agreed with Respondents that Res Judicata barred Petitioner's claim. The above facts are all part of the record contained within No. 49844-8-II.

///

III. ARGUMENT

A. Res Judicata is the only issue for review and bars Petitioner from raising any further claims.

While at the Court of Appeals, Petitioner attempted to argue his new claims as he does here. Since the Court of Appeals only ruled Petitioner's arguments were barred by res judicata and refused to consider Petitioner's other arguments, that is the only issue before this court. Petitioner's remaining arguments should be disregarded.

Generally speaking, res judicata bars the relitigation of claims and issues that were litigated or could have been litigated in a prior action. *Loveridge v. Fred Meyer, Inc.*, 125 Wn.2d 759, 763, 887 P.2d 898 (1995); see *In re Marriage of Aldrich*, 72 Wn. App. 132, 138, 864 P.2d 388 (1993) (res judicata operates to preclude collateral attack on a final decision).

"When res judicata is used to mean claim preclusion, it encompasses the idea that when the parties to two successive proceedings are the same, and the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, **if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding.**" *Kelly-Hansen v. Kelly-Hansen*, 87 Wn. App. 320, 328-29, 941 P.2d 1108 (1997)(emphasis added). It has been held that a matter should have been raised and decided earlier if it is merely an

alternate theory of recovery, or an alternate remedy." *Id.*, 87 Wn. App. at 331 (compiling Washington Supreme Court cases); see also *Sound Built Homes, Inc. v. Windermere Real Estate/South, Inc.*, 118 Wn. App. 617, 631-32, 72 P.3d 788 (2003) (summarizing the application of res judicata by Washington courts and rejecting the position "that a party can bring as many actions as he or she has substantive legal theories, even if all theories involve the same facts, the same evidence, and the same transaction").

In Washington, these principles have been reduced to a four-part test. Res judicata applies "where a prior final judgment is identical to the challenged action in (1) subject matter, (2) cause of action, (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made." *Lynn v. Dep't of Labor & Indus.*, 130 Wn. App. 829, 836, 125 P.3d 202 (2005) (quoting *Loveridge*, 125 Wn.2d at 763).

First, the subject matter is identical to the earlier litigation. It involves the proper possession of the property resulting from Respondent's purchase of the Subject Premises and commencement of an unlawful detainer claim against Petitioner. In that litigation, Petitioner could easily have argued the validity of the sale during its case in chief or during the *first* appeal, but it failed to do so. It must not now be allowed an additional bite at the apple. In the appeal that is subject to the petition for

discretionary review, Petitioner stated he had only recently become aware of the potential defense, but Petitioner elected to remain pro se and not hire legal representation. Petitioner did so at his peril and potential lack of understanding of the law.

Second, the cause of action is identical as this stems from the original unlawful detainer. That has not changed.

Third, the persons and parties are identical. No parties have changed since the original filing of the Complaint for Unlawful Detainer.

Fourth, the quality of the person remains unchanged.

The elements of res judicata are met. The Washington State Court of Appeals Division II agreed the elements were met. The Court of Appeals did render an opinion on conflict with any Supreme Court decision, nor does Petitioner provide any citation to the contrary.

B. Should this Court consider Petitioner's remaining arguments, the requirements of RCW 61.24.030 have been satisfied.

RCW 61.24 provides the method for non-judicial foreclosure of a deed of trust. The chapter was designed by the Legislature to avoid costly, time-consuming judicial foreclosure proceedings, *Peoples Nat'l Bank v. Ostrander*, 6 Wn. App. 28, 491 P.2d 1058 (1971), and also to "provide an adequate opportunity [or notice] for interested parties to prevent wrongful

foreclosure." *Savings Bank of Puget Sound v. Mink*, 49 Wn. App. 204, 207, 741 P.2d 1043 (1987) (citing *Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985)).

In its opening brief, Appellant assigns error to the Superior Court by claiming the June 5, 2015 trustee sale violated RCW 61.24.030(2). In support of its argument, Appellant claims, through his own Declaration only, that the land has merely been primarily used for agricultural purposes. However, this analysis is flawed.

RCW 61.24.030(2) provides:

“It shall be requisite to a trustee's sale:

...(2) That the deed of trust **contains a statement** that the real property conveyed **is not used principally for agricultural purposes;**”

RCW 61.24.030(2) (emphasis added)

RCW 61.24.030(2) is clear on its face that the appropriate analysis requires examination of the Deed of Trust to determine if it contains language stating the Subject Property is not used principally for agricultural purposes. Attached as Exhibit 1 to the Appendix A is a certified copy of the original Washington Line of Credit Trust Deed that is the subject of this dispute. Paragraph 21 clearly states the following:

“21. Use of Property. You covenant that the Property is *not used principally for agricultural or farming purposes.*”

Ex. 1, pg 7. (emphasis added)

The Trust Deed is clear that Appellant agreed that the Subject Property would not be used for agricultural purposes. He can not now argue the opposite in an effort to void the 2015 trustee sale. Further, RCW 61.24.030(2) merely requires the Trust Deed to contain a statement that the Subject Property is not used principally for agricultural purposes. Such a statement is contained within the Trust Deed. The requirements of RCW 61.24 are satisfied.

C. Should this Court consider Petitioner’s remaining arguments, the Superior Court did not abuse its discretion when it ruled absence of presence of primary agricultural use of the subject property.

In a footnote to its Order Denying Defendant’s Motion Reverse Trial Court’s Decision and Rescind Trustee’s Sale, the Superior Court held the following:

Even if Mr. Choquer was not precluded from raising the issue as a defense at this time, it appears based on the information contained in the Defendants’ Declarations that while Mr. Choquer may have intended to develop a vineyard on the subject property, the necessary irrigation system was never completed and wine production never occurred. Based on the uncontested applicability of RCW 59.12, the presence of a primary residence on the subject

property that has allegedly even been improved by Mr. Choquer, and the absence of a primary agricultural use of the subject property, the property would not meet the RCW 61.24 definition of being primarily used for agricultural purposes.

CP 25.

Simply, Appellant failed to offer any concrete evidence aside from his own self-serving testimony to support his notion that the land was primarily agricultural in nature. Further examination of Appellants Declaration in Support of Motion to Reverse Trial Court Ruling demonstrates Appellant knew for “the past few months” that agricultural land may not be foreclosed upon non-judicially, yet he still failed to produce any evidence aside from self-serving testimony. CP 10:21.

The Superior Court did not abuse its discretion in finding the property would not meet the definition of being primarily used for agricultural purposes.

IV. REQUEST FOR ATTORNEY FEES AND COSTS.

Respondent requests this Court grant attorney fees and costs pursuant to RAP 18.1 and RCW 4.84.185. RCW 4.84.185 states, in pertinent part:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of

attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense... The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause...

RCW 4.84.185

Here, it is clear that Petitioner has advanced a frivolous appeal without reasonable cause. From bringing the motion before the Superior Court in the manner in which he did, to the current record lacking any substantial support to Petitioner's claims, Petitioner's tactics have forced Respondent to incur fees and costs. Further, simple review of the Trust Deed would have demonstrated the fatal nature of the appeal to Petitioner. Petitioner failed to take that basic care and has demonstrated this entire appeal to be frivolous. Therefore, Respondent requests its attorney fees and costs pursuant to RAP 18.1.

V. CONCLUSION

The doctrine of res judicata bars Petitioner's argument. Second, RCW 61.24.030(2) requires the Trust Deed to contain a statement that the Subject Property is not used principally for agricultural purposes. The Trust Deed in question complied with that requirement. Further, there was no evidence of record supporting Petitioner's claim that the Subject Property was agricultural land as defined by law. Therefore, Respondent

respectfully requests this court affirm the opinion of the Division II Court of Appeals and grant Respondents' request for attorney fees and costs.

DATED this 3 day of April 2018.

RESPECTFULLY SUBMITTED:



Quinn H. Posner, WSBA #31463
Attorney for Respondents Guy and Zenaida
Way

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

GUY WAY and ZENAIDA WAY,
husband and wife,

Respondents

vs.

JOHN CHOQUER, and all other persons
occupying 9213 NE Mason Creek Road,
Battle Ground, WA 98604,

Appellant

NO. 49844-8-II

**APPENDIX A - DECLARATION
OF QUINN POSNER**

I, Quinn Posner, hereby make the following declaration:

1. I am the attorney of records for Plaintiff;
2. This Declaration is made as a result of Petitioner's argument that the RCW 61.24.030 effectively nullifies the 2015 trustee sale in question. Due to Appellant's failure to properly present this argument at the Superior Court level, Respondents' were unable to research and make the proper responsive documentation part of the Superior Court and Court of Appeals record. Petitioner has again offered argument and documents not part of any record. Therefore, should this Court accept Peitioner's improper argument and submission of documents, Respondents' request this Court accept the attached Exhibits pursuant to RAP 9.11;

APPENDIX A - DECLARATION OF QUINN POSNER

1 3. Attached as Exhibit 1 to this Declaration is the Trustee Deed which conveyed the
2 Subject Property to Respondents. This Trustee Deed was recorded on or about July
3 20, 2015 and was Exhibit 1 to Respondents' original Complaint for Unlawful
4 Detainer filed on September 2, 2015. It was further made part of the appellate record
5 in Cause No. 48191-0-II. Inspection of this Trustee Deed clearly demonstrates the
6 following:
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10 "This conveyance is made pursuant to the powers, including the power of
11 sale, conferred upon the Grantee by that certain Deed of Trust between John
12 Choquer and Marian Choquer, husband and wife, as Grantor, to **First
13 American Title Insurance Company, as Trustee, and Chase Manhattan
14 Bank USA N.A., Beneficiary, dated 06/03/04, recorded 06/16/04 under
15 Auditor's/Recorder's No. 3841925**, records of Clark County, Washington...

16 Exhibit A, Recital 1, pg 1 (emphasis added)

17 4. Attached as Exhibit 2 is a certified copy of the Washington Line of Credit Trust Deed
18 that is the Trust Deed referenced in Exhibit A and was the basis for foreclosure upon
19 the Subject Property. Examination of this document reveals it names **First American
20 Title Insurance Company, as Trustee, and Chase Manhattan Bank USA N.A.,
21 Beneficiary, dated 06/03/04, was recorded 06/16/04 under Auditor's/Recorder's
22 No. 3841925**, records of Clark County, Washington. Exhibit B, pg 1.
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29 APPENDIX A - DECLARATION OF QUINN POSNER
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5. Therefore, Exhibit B to this Declaration is the true and correct Trust Deed which serves as the basis of Respondents' response and complies with the requirements of RCW 61.24.030(2).

DATED this 3 day of April, 2018 at Camas, WA



Quinn Posner
Attorney for Respondents

5194294 D 07/20/2015 09:37 AM
Total Pages: 2 Rec Fee: \$73.00
VERISTONE CAPITAL
SIMPLIFILE LC E-RECORDING
eRecorded in Clark County, WA

After Recording Return To:
Guy A. Way and Zensida E. Way and Veristone Fund 1, LLC for security purposes only
6725 116th Ave NE, STE 210
Kirkland, WA 98033

File No.: 7233.26224/Choquer, John

Trustee's Deed

The GRANTOR, Northwest Trustee Services, Inc., as present Trustee under that Deed of Trust (defined below), in consideration of the premises and payment recited below, hereby grants and conveys, without representation or warranty, expressed or implied, to Guy A. Way and Zensida E. Way and Veristone Fund 1, LLC for security purposes only, as GRANTEE, all real property (the Property), situated in the County of Clark, State of Washington, described as follows:

Tax Parcel No.: 222975-000

That portion of the Southwest quarter of the Northwest quarter of Section 9, Township 4 North, Range 2 East of the Willamette Meridian, Clark County, Washington, described as follows: BEGINNING at the Southwest corner of the Southwest quarter of the Northwest quarter of said Section 9; thence East 490 feet; thence North parallel with the West line of Section 9, 1040 feet, more or less, to the South line of County Road No. 3; thence Westerly along the Southerly line of said County Road No. 3 to the West line of said Section 9; thence South along the West line of said Section 9 to the point of beginning. EXCEPT County Roads.

RECITALS:

1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon the Grantee by that certain Deed of Trust between John Choquer and Marian Choquer, husband and wife, as Grantor, to First American Title Insurance Company, as Trustee, and Chase Manhattan Bank USA N.A., Beneficiary, dated 06/03/04, recorded 06/16/04, under Auditor's/Recorder's No. 3841925, records of Clark County, Washington and subsequently assigned to JPMorgan Chase Bank, N.A. under Clark County Auditor's/Recorder's No. 5082964.
2. The Deed of Trust was executed to secure, together with other undertakings, the payment of one or more promissory note(s) ("Note") in the sum of \$104,000.00 with interest thereon, according to the terms thereof, in favor of Chase Manhattan Bank USA N.A. and to secure any other sums of money which might become due and payable under the terms of said Deed of Trust.
3. The Deed of Trust provided that the Property is not used principally for agricultural or farming purposes and the Grantor has no actual knowledge that the Property is used principally for agricultural or farming purposes.
4. Default having occurred in the obligations secured and/or covenants of the Deed of Trust grantor, as set forth in Notice of Trustee's Sale described below, which by the terms of the Deed of Trust makes operative the power to sell, the thirty-day advance Notice of Default was transmitted to the Deed of Trust grantor, or his successor in interest, and a copy of said Notice was posted or served in accordance with law.
5. JPMorgan Chase Bank, N.A., being then the holder of the indebtedness secured by the Deed of Trust, delivered to said Grantor a written request directing Grantor to sell the Property in accordance with law and the terms of the Deed of Trust.
6. The defaults specified in the "Notice of Default" not having been cured, the Grantor, in compliance with the terms of the Deed of Trust, executed and on 01/27/15, recorded in the office of the Auditor of Clark County, Washington, a "Notice of Trustee's Sale" of the Property under Auditor's File No. 5140858.

Exhibit 1

Pg 1 of 2

7. The Grantor, in the "Notice of Trustee's Sale", fixed the place of sale as at the gazebo in front of the Clark County Public Service Center near the corner of Franklin and 13th Street, City of Vancouver, State of Washington a public place, at 10:00 o'clock a.m., and in accordance with the law caused copies of the statutory "Notice of Trustee's Sale" to be transmitted by mail to all persons entitled thereto and either posted or served in compliance with the requirements of RCW 61.24.031 and RCW 61.24.040; further, the Grantor caused a copy of said "Notice of Trustee's Sale" to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the date of sale, and once between the fourteenth and the seventh day before the date of sale; and further, included with the Notice, which was transmitted to or served upon the Deed of Trust grantor or his successor in interest, a "Notice of Foreclosure" in substantially the statutory form, to which copies of the Note and Deed of Trust were attached.

8. During foreclosure, no action by the Beneficiary, his successors or assigns was pending on an obligation secured by the Deed of Trust.

9. All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in chapter 61.24 RCW.

10. The defaults specified in the "Notice of Trustee's Sale" not having been cured ten days prior to the date of Trustee's Sale and said obligation secured by said Deed of Trust remaining unpaid, on June 5, 2015, the date of sale, which was not less than 190 days from the date of default in the obligation secured, the Grantor then and there sold the Property at public auction to said Grantee, the highest bidder therefore, for the sum of \$25,470.00 cash.

This conveyance is made without representations or warranties of any kind, expressed or implied. By recording this Trustee's Deed, Grantee understands, acknowledges and agrees that the Property was purchased in the context of a foreclosure, that the trustee made no representations to Grantee concerning the Property and that the trustee owed no duty to make disclosures to Grantee concerning the Property, Grantee relying solely upon his/her/their/its own due diligence investigation before electing to bid for the Property.

DATED: July 16, 2015

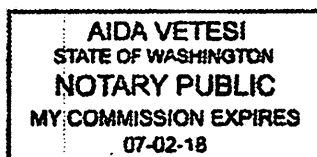
NORTHWEST TRUSTEE SERVICES, INC.

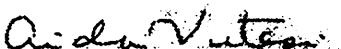
BY: 
DEIRDRE PIGGOTT, Assistant Vice President

State of Washington)
County of King)

I Aida Vetesi, Notary certify that I know or have satisfactory evidence that DEIRDRE PIGGOTT is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged (he/she) as the Assistant Vice President of Northwest Trustee Services, Inc. to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: July 16, 2015




NOTARY PUBLIC in and for the State of
Washington, residing at King County.
My commission expires: 07-02-18



Prepared By:

CHRISTIAN NUNEZ

Record and Return Address:

Chase Manhattan Bank USA, N.A.
c/o Chase Manhattan Mortgage Corporation
1500 N. 19th St.
Monroe, LA 71201
Attn: Document Control 6th FL. - HE
126549.SS
Assessor's Parcel or Account Number:
222975-000

Reference # **041131228375**
Servicing # **9895902758**

Abbreviated Legal Description:

Section 9, Township 04 North, Range 02 East

Full legal description located on Exhibit A.

WASHINGTON
LINE OF CREDIT TRUST DEED
(Securing Future Advances)

THIS DEED OF TRUST is made on June 3, 2004. The grantor is
JOHN CHOQUER AND MARIAN CHOQUER, HUSBAND AND WIFE

The trustee is First American Title Insurance Company ("Trustee") whose address is
2101 Fourth Avenue, Suite 800, Seattle, WA 98121. The beneficiary is
Chase Manhattan Bank USA, N.A., a national banking association whose address is
200 White Clay Center Drive Route 273, Newark, DE 19711

or its successors or assignees. Any communication to the Lender should be sent to
c/o Chase Manhattan Mortgage Corporation, 250 West Huron Road, P. O. Box 93764, Cleveland, OH 44113

In this Deed of Trust, the terms "you," "your" and "yours" refer to the grantor(s). The terms "we,"
"us" and "our" refer to the beneficiary.



Pursuant to a Home Equity Line of Credit Agreement dated the same date as this Deed of Trust ("Agreement"), you may incur maximum unpaid loan indebtedness (exclusive of interest thereon) in amounts fluctuating from time to time up to the maximum principal sum outstanding at any time of

One Hundred Four Thousand and 00/100 Dollars (\$ 104,000.00). The Agreement provides for a final scheduled installment due and payable not later than on June 15, 2034 . You agree that this Deed of Trust shall continue to secure all sums now or hereafter advanced under the terms of the Agreement including, without limitation, such sums that are advanced by us whether or not at the time the sums are advanced there is any principal sum outstanding under the Agreement. The parties hereto intend that this Deed of Trust shall secure unpaid balances, and all other amounts due to us hereunder and under the Agreement.

This Deed of Trust secures to us: (a) the repayment of the debt evidenced by the Agreement, with interest, and all refinancings, renewals, extensions and modifications of the Agreement; (b) the payment of all other sums, with interest, advanced under this Deed of Trust to protect the security of this Deed of Trust; and (c) the performance of your covenants and agreements under this Deed of Trust and the Agreement. For this purpose and in consideration of the debt, you irrevocably grant and convey to the Trustee and Trustee's successors and assigns, in trust, with power of sale, the property located in

CLARK County, Washington, and more fully described in EXHIBIT A, which is attached hereto and made a part hereof, which property is more commonly known as 9213 NE MASON CREEK ROAD, BATTLE GROUND, WA 98604-7616 ("Property Address");

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Deed of Trust. All of the foregoing is referred to in this Deed of Trust as the "Property."

YOU COVENANT that you are lawfully seized of the estate hereby conveyed and have the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. You warrant and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

YOU AND WE covenant and agree as follows:

1. **Payment of Principal, Interest and Other Charges.** You shall pay when due the principal of and interest owing under the Agreement and all other charges due hereunder and under the Agreement.
2. **Application of Payments.** Unless applicable law provides otherwise, all payments received by us under the Agreement and Section 1 shall be applied by us as provided in the Agreement.
3. **Prior Deed of Trusts; Charges; Liens.** You shall perform all of your obligations under any mortgage, deed of trust or other security instruments with a lien which has priority over this Deed of Trust, including your covenants to make payments when due. You shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority

Exhibit 2
Pg 2 of 9



3841925

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06/16/2004 11:07A

STEWART TITLE

DT

28.00 Clark County, WA

over this Deed of Trust or any advance under this Deed of Trust, and leasehold payments or ground rents, if any. Upon our request, you shall promptly furnish to us all notices of amounts to be paid under this paragraph and receipts evidencing any such payments you make directly. You shall promptly discharge any lien (other than a lien disclosed to us in your application or in any title report we obtained) which has priority over this Deed of Trust or any advance under this Deed of Trust.

4. Hazard Insurance. You shall keep the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which we require insurance. This insurance shall be maintained in the amounts and for the periods that we require. You may choose any insurer reasonably acceptable to us. Insurance policies and renewals shall be acceptable to us and shall include a standard mortgagee clause. If we require, you shall promptly give us all receipts of paid premiums and renewal notices. If you fail to maintain coverage as required in this section, you authorize us to obtain such coverage as we in our sole discretion determine appropriate to protect our interest in the Property in accordance with the provisions in Section 6. You understand and agree that any coverage we purchase may cover only our interest in the Property and may not cover your interest in the Property or any personal property therein. You also understand and agree that the premium for any such insurance may be higher than the premium you would pay for such insurance. You shall promptly notify the insurer and us of any loss. We may make proof of loss if you do not promptly do so.

Insurance proceeds shall be applied to restore or repair the Property damaged, if restoration or repair is economically feasible and our security would not be lessened. Otherwise, insurance proceeds shall be applied to sums secured by this Deed of Trust, whether or not then due, with any excess paid to you. If you abandon the Property, or do not answer within 30 days our notice to you that the insurer has offered to settle a claim, then we may collect and use the proceeds to repair or restore the Property or to pay sums secured by this Deed of Trust, whether or not then due. The 30-day period will begin when notice is given. Any application of proceeds to principal shall not require us to extend or postpone the due date of monthly payments or change the amount of monthly payments. If we acquire the Property at a forced sale following your default, your right to any insurance proceeds resulting from damage to the Property prior to the acquisition shall pass to us to the extent of the sums secured by this Deed of Trust immediately prior to the acquisition.

You shall not permit any condition to exist on the Property which would, in any way, invalidate the insurance coverage on the Property.

5. Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds. You shall not destroy, damage or substantially change the Property, allow the Property to deteriorate, or commit waste. You shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in our good faith judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Deed of Trust or our security interest. You may cure such a default, as provided in Section 17, by causing the action or proceeding to be dismissed with a ruling that, in our good faith determination, precludes forfeiture of your interest in the Property or other material impairment of the lien created by this Deed of Trust or our security interest. You shall also be in default if you, during the loan application process, gave materially false or inaccurate information or statements to us (or failed to provide us with any material information) in connection with the loan evidenced by the Agreement, including, but not limited to, representations concerning your occupancy of the Property as a principal residence. If this Deed of Trust is on a leasehold, you shall comply with the lease. If you acquire fee title to the Property, the leasehold and fee title shall not merge unless we agree to the merger in writing.

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6. Protection of Our Rights in the Property; Mortgage Insurance. If you fail to perform the covenants and agreements contained in this Deed of Trust, or there is a legal proceeding that may significantly affect our rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then we may do, and pay for, anything necessary to protect the Property's value and our rights in the Property. Our actions may include paying any sums secured by a lien which has priority over this Deed of Trust or any advance under the Agreement or this Deed of Trust, appearing in court, paying reasonable attorney's fees, paying any sums which you are required to pay under this Deed of Trust and entering on the Property to make repairs. We do not have to take any action we are permitted to take under this paragraph. Any amounts we pay under this paragraph shall become additional debts you owe us and shall be secured by this Deed of Trust. These amounts shall bear interest from the disbursement date at the rate established under the Agreement and shall be payable, with interest, upon our request. If we required mortgage insurance as a condition of making the loan secured by this Deed of Trust, you shall pay the premiums for such insurance until such time as the requirement for the insurance terminates.

7. Inspection. We may enter and inspect the Property at any reasonable time and upon reasonable notice.

8. Condemnation. The proceeds of any award for damages, direct or consequential, in connection with any condemnation or other taking of any part of the Property, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to us. If the Property is abandoned, or if, after notice by us to you that the condemnor offers to make an award or settle a claim for damages, you fail to respond to us within 30 days after the date the notice is given, we are authorized to collect and apply the proceeds, at our option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust, whether or not then due. Unless we and you otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments payable under the Agreement and Section 1 or change the amount of such payments.

9. You Are Not Released; Forbearance by Us Not a Waiver. Extension of time for payment or modification of amortization of the sums secured by this Deed of Trust granted by us to any of your successors in interest shall not operate to release your liability or the liability of your successors in interest. We shall not be required to commence proceedings against any successor in interest, refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by you or your successors in interest. Our forbearance in exercising any right or remedy shall not waive or preclude the exercise of any right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements of this Deed of Trust shall bind and benefit your successors and permitted assigns. Your covenants and agreements shall be joint and several. Anyone who co-signs this Deed of Trust but does not execute the Agreement: (a) is co-signing this Deed of Trust only to mortgage, grant and convey such person's interest in the Property; (b) is not personally obligated to pay the Agreement, but is obligated to pay all other sums secured by this Deed of Trust; and (c) agrees that we and anyone else who signs this Deed of Trust may agree to extend, modify, forbear or make any accommodations regarding the terms of this Deed of Trust or the Agreement without such person's consent.

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28.00 Clark County, WA

11. Loan Charges. If the loan secured by this Deed of Trust is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from you which exceed permitted limits will be refunded to you. We may choose to make this refund by reducing the principal owed under the Agreement or by making a direct payment to you. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Agreement.

12. Notices. Unless otherwise required by law, any notice to you provided for in this Deed of Trust shall be delivered or mailed by first class mail to the Property Address or any other address you designate by notice to us. Unless otherwise required by law, any notice to us shall be given by first class mail to our address stated above or any other address we designate by notice to you. Any notice provided for in this Deed of Trust shall be deemed to have been given to you or us when given as provided in this paragraph.

13. Governing Law; Severability. The extension of credit secured by this Deed of Trust is governed by federal law, which for the purposes of 12 USC § 85 incorporates Delaware law. However, the interpretation and enforcement of this Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located, except as preempted by federal law. In the event that any provision or clause of this Deed of Trust or the Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Agreement which can be given effect without the conflicting provision. To this end the provisions of this Deed of Trust and the Agreement are declared to be severable.

14. Transfer of the Property. If all or any part of the Property or any interest in it is sold or transferred without our prior written consent, we may, at our option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by us if exercise is prohibited by federal law as of the date of this Deed of Trust.

15. Sale of Agreement; Change of Loan Servicer. The Agreement or a partial interest in the Agreement (together with this Deed of Trust) may be sold one or more times without prior notice to you. A sale may result in a change in the entity (known as the "Loan Servicer") that collects monthly payments due under the Agreement and this Deed of Trust. There also may be one or more changes of the Loan Servicer unrelated to the sale of the Agreement. If there is a change of the Loan Servicer, you will be given written notice of the change as required by applicable law. The notice will state the name and address of the new Loan Servicer and the address to which payments should be made. The notice will also contain any information required by applicable law.

16. Hazardous Substances. You shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances on or in the Property. You shall not do, nor allow anyone else to do, anything affecting the Property that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Property of Hazardous Substances in quantities that are generally recognized to be appropriate to normal residential uses and to maintenance of the Property. You shall promptly give us written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Property and any Hazardous Substance or Environmental Law of which you have actual knowledge. If you learn or are notified by any government or

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regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Property is necessary, you shall promptly take all necessary remedial actions in accordance with Environmental Law. As used in this Deed of Trust, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde, and radioactive materials. As used in this Deed of Trust, "Environmental Law" means federal laws and laws of the jurisdiction where the Property is located that relate to health, safety or environmental protection.

17. Acceleration; Remedies. You will be in default if (1) any payment required by the Agreement or this Deed of Trust is not made when it is due; (2) we discover that you have committed fraud or made a material misrepresentation in connection with the Agreement; or (3) you take any action or fail to take any action that adversely affects our security for the Agreement or any right we have in the Property. If a default occurs (other than under Section 14, unless applicable law provides otherwise), we will give you notice specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to you, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform you of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or any other defense you may have to acceleration and sale. If the default is not cured on or before the date specified in the notice, we, at our option, may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may foreclose this Deed of Trust by judicial proceeding. We shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable attorneys' fees as permitted by applicable law, but not to exceed 20% of the amount you owe for principal and interest, and costs of title evidence.

If we invoke the power of sale, we shall give written notice to Trustee of the occurrence of an event of default and of our election to cause the Property to be sold. We and the Trustee shall take such action regarding notice of sale and shall give such notices to you and to the other persons as applicable law may require. After the time required by applicable law and after publication of the notice of sale, Trustee, without demand on you, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period or periods permitted by applicable law by public announcement at the time and place fixed in the notice of sale. Either we or our designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees, as set forth above; (b) to all sums secured by this Deed of Trust; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.



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19. **Reconveyance.** Upon your request and payment of all sums secured by this Deed of Trust, we shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing debt secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled to it. Such person or persons shall pay any recordation costs.

20. **Substitute Trustee.** We may, at our option, from time to time appoint a successor trustee to any Trustee appointed hereunder who has ceased to act. Without conveyance of the Property, the successor trustee shall succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law.

21. **Use of Property.** You covenant that the Property is not used principally for agricultural or farming purposes.

21. **Discontinuance of Enforcement.** Notwithstanding our acceleration of the sums secured by this Deed of Trust under the provisions of Section 17, we may, in our sole discretion and upon such conditions as we in our sole discretion determine, discontinue any proceedings begun to enforce the terms of this Deed of Trust.

22. **Waiver.** No waiver by us at any time of any term, provision or covenant contained in this Deed of Trust or in the Agreement secured hereby shall be deemed to be or construed as a waiver of any other term, provision or covenant or of the same term, provision or covenant at any other time.

23. **Additional Charges.** You agree to pay reasonable charges as allowed by law in connection with the servicing of this loan including, without limitation, the costs of obtaining tax searches and subordinations. Provided, however, that nothing contained in this section is intended to create and shall not be construed to create any duty or obligation by us to perform any such act, or to execute or consent to any such transaction or matter, except a release of the Deed of Trust upon full repayment of all sums secured thereby.

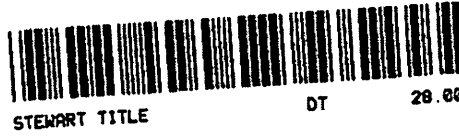
24. **Riders to this Deed of Trust.** If one or more riders are executed by you and recorded together with this Deed of Trust, the covenants and agreements of each such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider(s) were a part of this Deed of Trust. [Check applicable box(es)]

Condominium Rider

1-4 Family Rider

Planned Unit Development Rider

Other(s) _____



BY SIGNING BELOW, You accept and agree to the terms and covenants contained in this Deed of Trust and in any rider(s) executed by you and recorded with it.

Signed, sealed and delivered in the presence of:

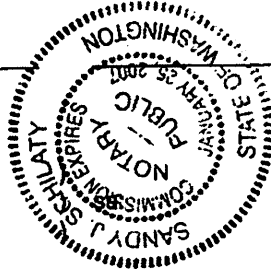
Witness: JOHN CHOQUER (Seal)

MARIAN CHOQUER (Seal)

(Seal)

(Seal)

STATE OF WASHINGTON
CITY/COUNTY OF CLARK



The foregoing instrument was acknowledged before me this 8 day of JUNE, 2004, by JOHN CHOQUER & MARIAN CHOQUER, to me known to be the person(s) aforesaid, who acknowledged that they executed this instrument as their free and voluntary act and deed and for the uses and purposes therein mentioned.

Notary Public

My Commission expires: 1-25-07



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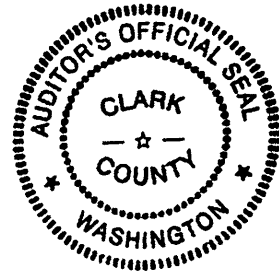
EXHIBIT "A"

That portion of the Southwest quarter of the Northwest quarter of Section 9, Township 4 North, Range 2 East of the Willamette Meridian, Clark County, Washington, described as follows:

BEGINNING at the Southwest corner of the Southwest quarter of the Northwest quarter of said Section 9; thence East 490 feet; thence North parallel with the West line of Section 9, 1040 feet, more or less, to the South line of County Road No. 3; thence Westerly along the Southerly line of said County Road No. 3 to the West line of said Section 9; thence South along the West line of said Section 9 to the point of beginning.

EXCEPT County Roads.

X *JLG*
X *MC*



I, GREG A. KIMSEY, Auditor of Clark County, State of Washington, do hereby certify that the foregoing is a true and correct copy of a:

Quit & Plat
File No. 3841925 of record in this office.

WITNESS my hand and official seal.

This 15th day of May, 2017 A.D.

GREG A. KIMSEY, Auditor, Clark County

By *[Signature]* Deputy

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CERTIFICATE OF SERVICE

On the date below, I served the following document(s) on the attorney(s) or person(s) identified below:


Documents

1. Response to Petitioner's Petition for Discretionary Review.

<u>Person and Address</u>	<u>Method of Service</u>
John Choquer 4404 NE 399 th St La Canter, WA 98629	<input type="checkbox"/> Fax <input type="checkbox"/> Hand Delivered <input checked="" type="checkbox"/> First-Class Mail

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

Date: 04/03/2018



Place: Camas, WA

POSNER LAW OFFICE PC

April 03, 2018 - 1:48 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 95537-9
Appellate Court Case Title: Guy Way and Zenaida Way v. John Choquer, et al.
Superior Court Case Number: 15-2-02454-3

The following documents have been uploaded:

- 955379_Answer_Reply_20180403134627SC475300_9579.pdf
This File Contains:
Answer/Reply - Answer to Motion for Discretionary Review
The Original File Name was Answer to PDR.pdf

A copy of the uploaded files will be sent to:

- jcwineguy@yahoo.com
- john@choquer.net

Comments:

Sender Name: Quinn Posner - Email: quinn@posnerlawoffice.com

Address:

532 NE 3RD AVE #105

CAMAS, WA, 98607-2171

Phone: 360-524-4767

Note: The Filing Id is 20180403134627SC475300