Supreme Court №. 98110-8

Court of Appeals №. 51941-1-II

SUPREME COURT APPEAL FROM THE

COURT OF APPEALS, DIVISION TWO

OF THE STATE OF WASHINGTON

LINDA AMES, AN INDIVIDUAL

APPELLANT

v.

HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16

RESPONDENT

APPELLANT'S BRIEF TO SUPREME COURT

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I. INTRODUCTION AND STATEMENT OF THE CASE

In this appeal, Linda Ames, Plaintiff / Appellant pro-se, seeks reversal of the Order of the Superior Court from a series of orders, denying entry of default, and default judgment, denying multiple motions to compel discovery, appealing the order granting summary judgment in favor of HSBC acting as Trustee for Wells Fargo and appealing the Court's order denying Plaintiff's motion to amend the complaint to include Wells Fargo after discovering that Wells admitted in their phone logs cancelling her loan modification because the investor / lender never approved of the amount she was paying for more than a year.

Victimized like so many other home owners, Linda Ames, after paying for a year on her loan modification, had her payments increase inexplicably by Wells Fargo. They told her that the modification they promised was permanent was only temporary. They told her to apply for another modification but did not disclose that the reason for their breach was that the amount they had her paying was not acceptable to the investor / Lender. After following Wells' servicers' instructions, they ultimately denied her loan modification. After making multiple demands for production of documents, the Defendant produced only some of the records they were ordered to produce. One set that was produced included call logs where Wells admitted to not only instructing her to stop making payments, but also revealed that the real motive behind the servicer telling Ames to stop making her payments was because the investor (Lender) never agreed to the terms of the loan modification offered to and accepted by Ames in the first instance.

After doing all she could to save her home, Wells purported to hold a non-judicial foreclosure sale. Ames was present at the time and place designated for the sale, and was told that it was cancelled where she then had to rush off to attend an eviction proceeding they also scheduled at the same time as the sale, which was also cancelled.

What's worse, is that a few days later, she received notification that her home was sold at that auction, but the paperwork shows that the sale occurred in California, not on the courthouse steps. There was no sale, but a transfer, and then the property was sold for full market value to a third party buyer, so the Appellee maximized the theft of the Appellant's equity from her property.

A review of the public records further reveals new evidence that has arisen since the filing of the complaint. The Notice of Appeal was filed on March 8th, 2018. However, on August 1, 2018, a settlement was entered into between the United States, acting through the United States Department of Justice ("Department of Justice"), and Wells Fargo Bank, N.A. which included conduct related to the subject Defendant Trust.

> "The United States contends that it has certain civil claims against Wells Fargo specified in Paragraph 3 of the Terms and Conditions section below, including those under the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), 12 U.S.C. § 1833a. The United States contends that these civil claims are predicated on Wells Fargo's violations of 18 U.S.C. § 1341 (mail fraud), 18 U.S.C. § 1343 (wire fraud), 18 U.S.C. § 1014 (false statements to financial institutions), and 18 U .S .C. § 1344 (financial institutions fraud). Ibid. Pg. 2. "3. Releases by the United States. Subject to the exceptions in Paragraph 4 ("Excluded Claims") and conditioned upon Wells Fargo's full payment of the Settlement Amount, the United States fully and finally releases Wells Fargo, each of its current and former subsidiaries and affiliated entities, and each of their respective successors and assigns (collectively, the "Released Entities"), from any civil claim the United States has against the Released Entities for the Covered Conduct arising under FIRREA, 12

> U.S.C. § 1833a; the False Claims Act, 31 U.S.C. §§ 3729, et seq.; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801, et seq.; the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961, et seq.; the Injunctions Against Fraud Act, 18 U.S.C. § 1345; common law theories of negligence, gross negligence, payment by mistake, unjust enrichment, money had and received, breach of fiduciary duty, breach of contract, misrepresentation, deceit, fraud, and aiding and abetting any of the foregoing; or that the Civil Division of the Department of Justice has actual and present authority to assert and compromise pursuant to 28 C.F.R. § 0.45(d). 4. Excluded Claims. Notwithstanding the releases in Paragraph 3 of this Agreement, or any other term(s) of this Agreement, the following claims are specifically reserved and not released by this Agreement: a. Any conduct other than the Covered Conduct; b. Any criminal liability; c. Any liability of any individual; ..." *Ibid.* FN 1.

Since this settlement occurred after the complaint was filed the Appellant has new and additional grounds for her complaint. The government got the Defendant to settle on the grounds that the Defendant had committed illegal acts which are identical to those complained of by Ames. Defendant had unclean hands when it foreclosed against Ames, and since non-judicial foreclosure is an equitable action, the unclean hands was a bar to any recovery. What's worse, is that multiple civil actions were excluded in the settlement itself so that they may be permitted to proceed, whereas the Plaintiff / Appellant is being deprived of her causes of action.

Additionally, since the filing of the action, a class action lawsuit was just discovered listing this trust. *IN RE WELLS FARGO MORTGAGEBACKED CERTIFICATES LITIGATION*, Civil Action No. 09-cv-01376-SI, Amended Consolidated Class Action Complaint For Viol. Of §§ 11, 12(a)(2) and 15 Of The Securities Act of 1933. See *Ibid*, ¶ 43. That class action included relief sought by the subject investors in the subject trust. The settlement was distributed under that class action, which means that at the time the Defendant foreclosed on the Plaintiff,

they had already recovered their money for the subject mortgage, or at a minimum, some portion of it, which was never credited to the Plaintiff.

That not only did the Defendant have unclean hands, but the Lender was ALREADY PAID for some or all of the subject mortgage when it claims it sold the Plaintiff's property at an auction that never occurred. The settlement indicates that the Public Employees' Retirement System of Mississippi was the investor / "Lender" in this action and recovered their investment before taking the Plaintiff's property. At a minimum, they have been unjustly enriched at the Plaintiff's expense.

"The Settlement Fund consists of $125 million plus interest earned. Based on the total initial face dollar value of the Certificates as stated in the prospectus supplements (without subtracting the principal paydowns received on the Certificates), and assuming all purchasers of the initially offered certificates elect to participate, the estimated average distribution is $2.70 per $1,000 in initial certificate value of the Wells Fargo Certificates. Class Members may recover more or less than this amount depending on, among other factors, when their certificates were purchased or sold, the amount of principal that has been repaid, the value of the certificates on the applicable Date of First Suit as indicated in the attached Table A, the number of Class Members who timely file Claims, and the Plan of Allocation, as more fully described below in this Notice. In addition, the actual recovery of Class Members may be further reduced by the payment of fees and costs from the Settlement Fund."

This settlement occurred after the Defendant claimed to have acquired the mortgage into the closed trust thereby voiding the subject mortgage.

The Trust was **closed** on **September 22nd, 2006** and the assignment of mortgage was **December 6th, 2011** pursuant to the recorded assignment, Document 4813726, recorded in the official records of Clark County, Washington, Exhibit 3 attached to the complaint.

There were other defects in the sales process. For example, the public records prove that the Trustee was not lawfully appointed by Wells Fargo, because

Wells Fargo had **already assigned away their right title and interest at the time they claim they appointed the Trustee.** Defendant Appellee also **admitted** that Leisa Jefferson was not authorized to execute the documents in favor of Wells because she was an employee of Wells and falsely held herself out to be the authorized signator of the assignor, but it was a defunct entity at the time and not licensed to do business in the state.

The sale was cancelled and the sale did not transpire on the Courthouse steps. In fact, the Trustee was not even licensed to do business in the State at the time of the purported sale to the Defendant. Because the Defendant / Appellee, trust is not a registered trust and not licensed to do business in this state, it (CP – 2) had no standing to foreclose on the Plaintiff or seek any affirmative relief. It is barred from collecting any money from the Plaintiff / Appellant. That, in and of itself, was grounds to deny the opposition and hold them to answer. RCW 23.95.505[1].

Furthermore, the Defendant Trust was not licensed to do business in this State and the trust was closed at the time it claims to have acquired the interest in the Plaintiff's home. The identity of the Lender has and was at all relevant times concealed from the Plaintiff until the foreclosure.

The foreclosure came about in the first place because Wells instructed Plaintiff to default in her payments so she could get a loan modification. Nothing that transpired against the Plaintiff was legal, and Defendant, knowing that, failed and refused to respond to the propounded discovery, all with the hopes of

[1] RCW 23.95.505; 5.35.020 Business license required; Ord. O-12-503 § 1

preventing the Court from seeing the depth of their deception. During the lower court case, the Plaintiff / Appellant brought Six Motions to Compel because the discovery sought directly related to the issues listed herein, and the Appellant never received full responses. In fact, the Appellant obtained an order granting her request requiring them to respond by February 28th, 2017 and Appellant was still waiting by the time the motion for Summary Judgment was granted. Defendant violated the discovery order and went unpunished.

Defendant / Appellees' were evasive, non-responsive and protecting the individuals who executed and recorded false documents in the official records. Declaration of Linda Ames, Paragraph 74. The sale never happened as the Plaintiff herself and her father were present at the time and place designated, so her father could bid and buy the property, and they were told the sale was cancelled. The recorded documents thereafter show that the "sale" happened a few days later in California, where the recorded documents were actually notarized and executed. There was no auction. There was no sale, and the Trustee was not even lawfully appointed to hold a sale as Wells Fargo was already no longer the holder or owner of the note and mortgage when the substitute trustee was appointed. Declaration of Linda Ames, Paragraph 85. Plaintiff has filed an action for declaratory, monetary relief and other relief. Plaintiff has filed her SIXTH motion to compel after the Defendant still refuses to answer the Request for Admissions without objection; refuses to respond to the Interrogatories without objection and have them signed under oath; and refused to identify which documents it did produce apply to which request. The court has already found that the initial responses were wholly evasive and incomplete, the Court ordered the

Defendant to respond to the Request for Admissions, Request number 7, 17, 18, 19, 20, 22, 23, 24, 25, 27, 29 and 30 without objection, and the Court overruled the objections; Defendant was ordered to forthwith produce all documents in their possession, custody or control in response to Defendant's Requests 1-48, inclusive without objection; the Defendant was ordered to respond fully to the interrogatories with all knowledge and information in their possession, custody or control in response to Defendant's Requests 1-43, inclusive without objection; and the Defendant was ordered to produce a true and correct copy of the original authentic note that bears the initials on each page of the Plaintiff and her authentic, original signature, on the back page. The court imposed a deadline of February 28th, 2017 giving the Defendants 30 days to respond. More than a year and half passed since the discovery was propounded, and more eight months beyond the deadline imposed by the last order of the court granting the requests before the Defendant filed their motion for summary judgment to avoid having to respond to the discovery. The unexplained failure to furnish complete and meaningful answers to these material interrogatories in the face of the court's order impels a conclusion that the refusal was willful. Instead of properly imposing sanctions, *Rhinehart v. Seattle Times*, 754 P. 2d 1243 - Wash: Court of Appeals, 1st Div. 1988, the lower court granted the motion for summary judgment.

DEFENDANT's purported predecessor in interest previously committed wrongful acts, in that they previously attempted to foreclose on the Plaintiff, LINDA AMES in a non-judicial foreclosure proceeding over a Mortgage on this property at 10810 NW 13th Place, VANCOUVER WA 98685 with SIERRA PACIFICA MORTGAGE CO. INC., recorded a mortgage (Exhibit "2") on the

property Document 4148891, recorded on April 6th, 2006, in the official records of this County. (CP – 7-8). On December 8th, 2011, there was an ASSIGNMENT OF DEED OF TRUST RECORDED BY WELLS FARGO HOME MORTGAGE, listing SIERRA PACIFIC MORTGAGE CO INC as the Grantor and HSBC BANK USA NA, as the Trustee, Document 4813726, Exhibit 3. On March 26, 2012, AFTER WELLS FARGO had already recorded the assignment of Deed of Trust, as set forth above, they then recorded an appointment of Trustee to Quality Loan Service Corp. of Washington, Document 4841188; and as a result of the fact that WELLS FARGO no longer had any right to do so, the appointment of Trustee was void and unlawful.

Her motion to amend was denied, even though she had multiple motions to compel pending; discovery had not been completed, and all because the lower court believed that the complaint was barred by the Statute of Limitations, however, the facts show that all the relevant entities were barred from doing business in this state, and absent from the state, therefore any relevant statute of limitations is inapplicable due to their absence from the jurisdiction. The entire sale was replete with defects, including the fact that after Wells Fargo had already assigned the void mortgage into a closed trust, they then appointed the trustee who held the sale, meaning that the trustee was never validly appointed. The auction was cancelled and the transfer occurred in California.

Finally, the statute of limitations was tolled in the instant case. A review of the public records shows that HSBC BANK USA terminated their status in this state and became inactive in 08/10/2004. https://ccfs.sos.wa.gov/#/BusinessSearch/BusinessInformation. When HSBC was

registered here, they registered as a Foreign Entity whose jurisdiction was New York. Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16 is not a registered trust in this state at all. See https://ccfs.sos.wa.gov/#/BusinessSearch - No Value Found.) As a result of their absence, Defendants / Appellees claims of statute of limitations are improper as the statute was tolled.

ASSIGNMENTS OF ERROR AND ISSUES

POINT ONE
THE COMPLETE ABSENCE FROM THE JURISDICTION OF THIS COURT FROM THE OUTSET OF THE ASSIGNMENT IN 2011 ENTITLES THE PLAINTIFF TO CLAIM THAT THE STATUTE OF LIMITATIONS WAS TOLLED AT ALL TIMES RELEVANT TO THE RELATIONSHIP BETWEEN THE PARTIES.

POINT TWO
THE DEFENDANT WAS PAID IN FULL OR PARTIALLY PAID AS A RESULT OF THE CLASS ACTION SETTLEMENT AND OTHER SETTLEMENTS BETWEEN THE INVESTORS AND SERVICERS AND ORIGINATORS SUCH THAT THE DEFENDANT DOUBLE RECOVERED AND PROFITED FROM THE MISCONDUCT PERPETRATED BY THE DEFENDANT.

POINT THREE
THE DEFENDANT APPELLEE WAS UNJUSTLY ENRICHED

POINT FOUR
AMES DID NOT WAIVE HER QUIET TITLE, WRONGFUL FORECLOSURE, CONVERSION, AND CIVIL CONSPIRACY CAUSES OF ACTION WHEN SHE FAILED TO ENJOIN THE VOID FORECLOSURE SALE BECAUSE THERE WAS NO SALE TO ENJOIN. SHE WAS TOLD IT WAS CANCELLED AND THE APPOINTMENT OF THE TRUSTEE WAS VOID.

POINT FIVE
THE COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT AS IT WAS PREMATURE AS THE DEFENDANT / APPELLEE HAS FAILED AND REFUSED TO RESPOND TO THE DISCOVERY PROPOUNDED FOR MORE THAN A YEAR.

POINT SIX
THE APPOINTMENT OF THE TRUSTEE BY WELLS FARGO WAS VOID BECAUSE WELLS FARGO HAD ALREADY ASSIGNED ALL THEIR RIGHT TITLE AND INTEREST IN THE NOTE AND MORTGAGE AT THE TIME THEY APPOINTED A SUCCESSOR TRUSTEE.

II. DE NOVO STANDARD ON APPEAL SUMMARY JUDGMENT

De Novo review is proper on Summary Judgment and it is properly granted ONLY when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wash.2d 217, 220, 802 P.2d 1360 (1991). Leave to amend a complaint is to be freely given when justice requires. CR 15(a). *Doyle v. Planned Parenthood*, 639 P. 2d 240 - Wash: Court of Appeals, 1st Div. 1982 Civil Rule 15(a).

III. ARGUMENT

POINT ONE
THE COMPLETE ABSENCE FROM THE JURISDICTION OF THIS COURT FROM THE OUTSET OF THE ASSIGNMENT IN 2011 ENTITLES THE PLAINTIFF TO CLAIM THAT THE STATUTE OF LIMITATIONS WAS TOLLED AT ALL TIMES RELEVANT TO THE RELATIONSHIP BETWEEN THE PARTIES.

The court found that the statute of limitations was a bar, but did not consider tolling. Because Wells Fargo Asset Securities Corporation, Mortgage Pass-Through Certificates Series 2006-AR16 is not a registered trust in this state. HSBC is suspended from doing business in this state and only registered here as a foreign entity, New York, then the Defendant has, at all relevant times to this complaint, including while they claimed to be the owner and holder of the subject note and mortgage, were absent from this state. As a result, the RCW 4.16.180

applies tolling the application of any statute of limitation. The court erred in not finding that the statute of limitations was tolled pursuant to statute. The complaint alleges that the Defendant was doing business here unlawfully; (Paragraph 4 of Complaint) and none of them were registered to do business here at any relevant times.

POINT TWO

THE DEFENDANT WAS PAID IN FULL OR PARTIALLY PAID AS A RESULT OF THE CLASS ACTION SETTLEMENT AND OTHER SETTLEMENTS BETWEEN THE INVESTORS AND SERVICERS AND ORIGINATORS SUCH THAT THE DEFENDANT DOUBLE RECOVERED AND PROFITED FROM THE MISCONDUCT PERPETRATED BY THE DEFENDANT.

Foreclosure is an equitable action. "[C]ontracts tainted by mistake, duress, or even fraud are voidable at the option of the innocent party." *Oubre v. Entergy Operations, Inc.*, 522 U.S. 422, 425 (1998). Here, equity dictates that the Defendant not only profited at the expense of the Plaintiff but was unjustly enriched. The auction never happened as evidenced by the "Trustee's Deed Upon Sale", prepared and recorded by Wells Fargo Bank N.A., 1 Home Campus, Des Moines, IA and signed by Quality Loan Service Corporation of Washington on November 27th, 2013 in San Diego County, California. See Document 5035077, recorded on December 3rd, 2013 in Clark County, Washington. Exhibit 7 attached to the complaint. The Trustees Deed Upon Sale was even executed days after the purported auction and in California, not in Clark County, Washington where the auction was cancelled. There was no sale to stop, there was only an unlawful transfer in California orchestrated by the Defendant and the Trustee.

POINT THREE

THE DEFENDANT APPELLEE WAS UNJUSTLY ENRICHED

"Three elements must be established in order to sustain a claim based on unjust enrichment: a benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value." *Bailie Commc'ns*, 61 Wash.App. at 159-60, 810 P.2d 12; see also *Lynch v. Deaconess Med. Ctr.*, 113 Wash.2d 162, 165, 776 P.2d 681 (1989); *Young v. Young*, 191 P. 3d 1258 - Wash: Supreme Court 2008.

(1) The defendant receives a benefit:

The home was not sold at auction. It was taken by the bank in a closed door transfer. After the bank stole the home, it then put the house on the market and sold it at fair market value, stealing all the equity for itself. Therefore the benefits conferred on the Defendant included the years of improvements on the property made by the Plaintiff, enhancing the value and all the equity she built up into the property. Plaintiff testified she has invested more than $400,000 in improvements in the home. After the work was done, the Plaintiff testified and Defendant's billing records confirm, that they sent inspectors to the home, saw the enhanced value, and decided to take the home.

In case that was not enough, the Lender DOUBLE RECOVERED for the VOID mortgage since it also settled the class action and accepted payment thereunder, and did not credit the Plaintiff for the money received on their investment in her mortgage out of the $125 million plus interest they got from the entities who set up the CLOSED TRUST.

(2) The received benefit is at the plaintiff's expense:

In case it is not obvious, the Plaintiff suffered $400,000 in monetary losses to improve the value of the property that was then depressed by the existence of a foreclosure action; and when the foreclosure was gone, the pop in value and equity in the property returned, the Defendant then sold it to a third party, taking all the equity from Linda Ames. What's worse, is that the Defendant / Appellee double recovered by reason of the class action, and did not disclose that information to the court; to Ames; or anyone. They kept the money from the settlement and all the equity in the Plaintiff's property as well as doubling their recovery on the mortgage.

(3) The circumstances make it unjust for the defendant to retain the benefit without payment.

There was no auction. The court found that Plaintiff waived her right to recovery because she did not stop the sale. However, that ignores the simple fact that there was no sale to stop, as the Plaintiff was told it was cancelled. What is even more disturbing, is that the Defendant set an eviction proceeding at the same time as the auction, forcing the Plaintiff to decide whether to appear at the auction or at the eviction proceeding where the Defendant attempted to remove her from her home unlawfully. After being told the auction was cancelled, she raced to the eviction proceeding, which was also inexplicably and mysteriously cancelled by the Appellee. There was no open bidding process and no fair market offers obtained. All the equity was stolen by the Defendant in a back door transfer.

IT IS UNJUST TO RETAIN THE BENEFITS AS THE MORTGAGE WAS VOID.

The Trust was closed on April 28, 2006 and the assignment of mortgage was December 6th, 2011 pursuant to the recorded assignment, Document 4813726, recorded in the official records of Clark County, Washington, Exhibit 3 attached to the complaint. The Trust which purportedly held the securitized (and therefore voided) mortgage was closed at the time of the acquisition and the Defendant was entitled to nothing, and took everything. It is a violation of New York Law to acquire an asset into a closed trust, and in so doing, the transfer is void. That as a part of that transaction, the assignment is of a securitized instrument and as a result of it being securitized into a closed trust, the instrument was actually void and makes the mortgage which is the subject of this action void, See *Glaski v. Bank of America*, 218 Cal. App. 4th 1079 - Cal: Court of Appeal, 5th Appellate Dist. 2013: "Under New York Trust Law, every sale, conveyance or other act of the trustee in contravention of the trust is void. EPTL § 7-2.4. Therefore, the acceptance of the note and mortgage by the trustee after the date the trust closed, would be void." (*Wells Fargo Bank, N.A. v. Erobobo* (N.Y.Sup.Ct. 2013) 39 Misc.3d 1220(A) [2013 WL 1831799, p. *8]; see *Levitin & Twomey, Mortgage Servicing*, 28 Yale J. on Reg. at p. 14, fn. 35 [under N.Y. law, any transfer to the trust in contravention of the trust documents is void].) Relying on *Erobobo*, a bankruptcy court recently concluded "that under New York law, assignment of the Saldivars' Note after the start up day is void ab initio. As such, none of the Saldivars' claims will be dismissed for lack of standing." (*In re Saldivar* (Bankr. S.D.Tex., June 5, 2013, No. 11-10689) 2013 WL 2452699, p. *4.) The logic is simple. The Trust is closed. It could not acquire the Plaintiff's mortgage and /or note. There are no SEC filings for the Trust after 2006. It no longer exists as a legal entity. As such, the act of

claiming Defendant was holding the note and mortgage is a fraud upon the Court, the Plaintiff and this tribunal Court. The Appellee literally profited from a crime.

Wells Fargo Bank, N.A., in their SEC filings, notified the public and the SEC that they were in litigation with their investors (the Lenders). "Since June 18, 2014, a group of institutional investors [the Plaintiff's purported lender] have filed civil complaints in the Supreme Court of the State of NY, NY County, and later the U.S. Dist. Ct S. Dist. of NY against Wells Fargo Bank, N.A., in its capacity as trustee for certain residential mortgage backed securities ("RMBS") trusts. The complaints against Wells Fargo Bank alleged that the trustee caused losses to investors and asserted causes of action based upon, among other things, the trustee's alleged failure to: (i) notify and enforce repurchase obligations of mortgage loan sellers for purported breaches of representations and warranties, (ii) notify investors of alleged events of default, and (iii) abide by appropriate standards of care following alleged events of default. Relief sought included money damages in an unspecified amount, reimbursement of expenses, and equitable relief. Wells Fargo Bank has reached an agreement, in which it denies any wrongdoing, to resolve these claims on a class wide basis for the 271 RMBS trusts currently at issue. The settlement agreement is subject to court approval. Separate lawsuits against Wells Fargo Bank making similar allegations filed by certain other institutional investors concerning 57 RMBS trusts in New York federal and state court are not covered by the agreement."[2]

[2]http://archive.fast-edgar.com//20190401/A72ZU22CZZ2RD2ZA22ZD2MXST43SZZ22ZSBQ/

Wells admitted as early as 2007 it was already violating its duties. *Ibid.* Published: 2007-03-30 09:44:45, Submitted: 2007-03-30, Period Ending In: 2006-12-31. This was the last SEC filing by Defendant.

HSBC knew Wells was failing in their duties when they acquired the subject void mortgage into the closed trust, and foreclosed on Ames for the purpose of financial gain. It was wholly unjust to retain the benefits of the wrongful foreclosure.

POINT FOUR

AMES DID NOT WAIVE HER QUIET TITLE, WRONGFUL FORECLOSURE, CONVERSION, AND CIVIL CONSPIRACY CAUSES OF ACTION WHEN SHE FAILED TO ENJOIN THE VOID FORECLOSURE SALE BECAUSE THERE WAS NO SALE TO ENJOIN. SHE WAS TOLD IT WAS CANCELLED AND THE APPOINTMENT OF THE TRUSTEE WAS VOID.

The court said Ames waived her right to recover because she did not take action to stop the sale. However, FIRST, SHE WAS TOLD THE SALE WAS CANCELLED. There was nothing to stop. Second, the Lender was paid in full through the class action. Third, the Lender profited even more by stealing all her equity through a private transfer then subsequent sale for full fair market value.

In addition to the above arguments, the sale and thus the California Transfer, was void because the substitution of the trustee was void. If a substitution of trustee is fraudulent, then a nonjudicial foreclosure sale based on that substitution is void. See *Pro Value Props., Inc. v. Quality Loan Serv. Corp.*, 170 Cal. App. 4th 579, 583 (2009) (failure to comply with CAL. CIV. CODE § 2934a(a)(1) renders subsequent nonjudicial foreclosure sale void); *Miller v. Wells Fargo Bank*, No. C-12-2282 EMC, 2012 WL 1945498, at *2, 4 (N.D. Cal. May 30, 2012) (Chen, J.) (granting preliminary injunction preventing foreclosure sale

because the plaintiff was likely to prevail on claim that foreclosure was improper due to fraudulent substitution of trustee); *Glaski v. Bank of Am., Nat'l Ass'n*, 218 Cal. App. 4th 1079, 1100 (2013) (foreclosure sale is void if the foreclosing entity lacked the authority to foreclose on the property).

Defendants' lacked the authority to foreclose due to a fraudulent Substitution of Trustee document. See *Glaski*, 218 Cal. App. 4th at 1100, *Lester v. J.P. Morgan Chase Bank*, 926 F. Supp. 2d 1081, 1093 (N.D. Cal. 2013) and *Engler v. RECONTRUST COMPANY*, Dist. Court, CD California 2013.

It is important to note that the appointment of the trustee is invalid and the appointment of the trustee is fraudulent as alleged in the complaint. *Plein*, 149 Wn.2d at 227.RCW 61.24.127(1). The complaint Paragraphs 10 – 14 that alleges that the appointment by Wells was void since Wells already assigned away their interest at the time they appointed the trustee.

The evidence was supposed to be construed in the light most favorable to the moving party, not to Linda Ames, the nonmoving party. *Barrie v. Hosts of Am., Inc.*, 94 Wn.2d 640, 642, 618 P.2d 96 (1980); *Yakima Fruit & Cold Storage Co. v. Central Heating & Plumbing Co.*, 81 Wn.2d 528, 530, 503 P.2d 108 (1972); *Barber v. Bankers Life & Cas. Co.*, 81 Wn.2d 140, 142, 500 P.2d 88 (1972); *Morris v. McNicol*, 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974)." *Wilson v. Steinbach*, 656 P. 2d 1030 - Wash: Supreme Court 1982.

The court overlooked the facts that the sale was cancelled. That the Defendant has been absent from the state at all times. That the Defendant is doing business here unlawfully. That the Defendant securitized the mortgage into a closed trust, thereby voiding it. That the note was separated from the mortgage.

The Corporate Assignment of Deed of Trust, Document No. 4813726, says that the Deed of Trust is being assigned, there is no mention of the note. That deed of trust is voided when it was securitized. It was also voided when it was separated from the note by this assignment. That because the assignment only assigns the Deed of Trust, and not the note, and the note and mortgage were separated, and as a result the mortgage is VOID because the mortgage was separated from the note and pursuant to *Carpenter v. Longan*, 83 U.S. 271 (1872) and the long line of cases that followed, the mortgage becomes a nullity. Because the assignments voided the mortgage, the underlying foreclosure action was a fraud upon the court and a nullity and the appointment of the trustee after the assignment made the appointment void.

POINT FIVE
THE COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT AS IT WAS PREMATURE AS THE DEFENDANT / APPELLEE HAS FAILED AND REFUSED TO RESPOND TO THE DISCOVERY PROPOUNDED FOR MORE THAN A YEAR.

The Court had already granted a motion to compel, giving the Defendant until February 28th, 2017 to answer, and Defendant failed to respond any further. The court erred in not staying the motion until the discovery orders were complied with by the Defendant. *Demelash v. Ross Stores, Inc., 20 P. 3d 447 - Wash: Court of Appeals, 1st Div. 2001,* CR 37 and CR 26(g). Civil Rule (CR) 56(f) allows a trial court to order a continuance when "it appear[s] from the affidavits of a party opposing [a summary judgment] motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition." *Guile v. Ballard Cmty. Hosp.*, 70 Wash.App. 18, 24, 851 P.2d 689 (1993). Plaintiff

sought more time under CR 56(f). *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986))).

POINT SIX

THE APPOINTMENT OF THE TRUSTEE BY WELLS FARGO WAS VOID BECAUSE WELLS FARGO HAD ALREADY ASSIGNED ALL THEIR RIGHT TITLE AND INTEREST IN THE NOTE AND MORTGAGE AT THE TIME THEY APPOINTED A SUCCESSOR TRUSTEE.

On March 26, 2012, **AFTER WELLS FARGO had already recorded the assignment of Deed of Trust, as set forth above, they then recorded an appointment of Trustee to Quality Loan Service Corp. of Washington, Document 4841188; and as a result of the fact that WELLS FARGO no longer had any right to do so, the appointment of Trustee was void and unlawful.** RCW 61.24.010. The Successor Trustee could not be appointed because Wells had ALREADY ASSIGNED their rights away. The appointment of the successor was therefore VOID. "[O]nly the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a *trustee* to proceed with a nonjudicial foreclosure on real property." ***Bain v. Metro. Mortg. Grp, Inc.***, 175 Wn.2d 83, 89, 285 P.3d 34 (2012). Similarly, a loan "servicer" is not necessarily the owner, **but the servicer must be a holder of the Note in order to enforce the Note.** ***Brown***, 184 Wn.2d at 523. "Only a lawful beneficiary has the power to appoint a *successor trustee*, and only a lawfully appointed *successor trustee* has the authority to issue a notice of trustee's sale." ***Walker v. Quality Loan Serv. Corp.***, 176 Wn. App. 294, 306, 308 P.3d 716 (2013) (footnotes omitted). On December 5th, 2012, after having no lawful right to do so, QUALITY LOAN SERVICE CORP OF WASHINGTON

recorded a NOTICE OF TRUSTEE SALE, Document 4959410; said document being a slander on the title of the Plaintiff, and further constitutes the filing of a false document in the official records of the County, a felony in this State.

CONCLUSION AND RELIEF SOUGHT

Appellant respectfully requests that this court remand the matter back to the State Court with an order granting the motions to compel. The court should also have permitted, at a minimum, an opportunity to amend and proceed against Wells and the Defendant for an accounting, equitable relief for unjust enrichment, and for the other relief sought in the complaint. The ruling of this court finds and considers all the facts wholly in favor of the moving party, ignoring all facts which contradict those facts found by the court, and that is just inequitable and contrary to the well settled laws of this land.

Respectfully Submitted 01/27/2020

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CERTIFICATE OF PAGE LENGTH

LINDA AMES, APPELLANT, hereby certifies that the attached amended brief does not exceed 20 pages, excluding the cover and index and table of contents and extraneous pages.

Dated: January 27th, 2020

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A true and correct copy of the Appellant's Opening Brief was served by means of US Mail on January 27, 2020, postage prepaid first class, on:

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