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No. 66527-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

DONALD AND BETH COLLINGS

Plaintiffs-Defendants In Intervention-Appellees,

CITY FIRST MORTGAGE SERVICES, LLC

Defendant-Appellant,

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE
FOR THE GREENPOINT MORTGAGE FUNDING TRUST
MORTGAGE PASS-THROUGH CERTIFICATES,
SERIES 2007-AR1,

Plaintiff In Intervention-Appellant.

OPENING BRIEF OF APPELLANT U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR THE GREENPOINT MORTGAGE FUNDING TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR1

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

INTRODUCTION

Don and Beth Collings' arising from their lease arrangement with Paul Loveless led to U.S. Bank as Trustee's intervention in the Collings' action to obtain declaratory relief. In 2006, the Collings sold their residence for its appraised value to Loveless, who financed his acquisition with a mortgage loan originated by City First Mortgage Services, LLC (City First). The Collings' two mortgage loans were paid off and they received all of the net proceeds.

Loveless and the Collings arranged for the Collings to lease the property with a purchase option and, thus, the Collings did not want Loveless to further encumber the property. There was no executed lease agreement introduced into evidence at trial.

Six months later, Loveless refinanced his purchase loan with City First, replacing it with a conventional refinance loan (Note and Deed of Trust, together Loveless Loan) and a home equity line of credit (HELOC). Loveless received no money from the refinance. About two months after origination, the Loveless Loan, but not the HELOC, was transferred to U.S. Bank as Trustee.

Nearly two years after the Collings sold the property to Loveless, Loveless defaulted on his payments on the Loveless Loan due to loss of income, and the property went into foreclosure.

The Collings sued City First, Loveless, the trustee First American Title Insurance Company (First American), the nominal beneficiary of the Deed of Trust Mortgage Electronic Registration Systems, Inc. (MERS) and others for statutory violations, to reacquire title to the property and to void the Loan's Deed of Trust. The Collings did not sue the owner of the HELOC. MERS as nominal beneficiary for U.S. Bank as Trustee assigned the Deed of Trust to U.S. Bank as Trustee, so it could intervene in the action to obtain declaratory or, alternatively, equitable relief.

In the course of the proceedings, the Collings reacquired title to the property from Loveless by means of a partial default judgment against him. First American and MERS were dismissed, and the Collings' action proceeded to trial by jury. U.S. Bank as Trustee's action proceeded to a bench trial with the Collings' jury in an advisory capacity.

Although U.S. Bank as Trustee contested the Collings' standing to challenge the validity and enforceability of the Loveless

Loan, the trial court voided the Deed of Trust on a theory that MERS had assigned all the beneficial interest in the Deed of Trust to itself, thereby separating the Note from the Deed of Trust. There was no such assignment introduced into evidence.

The trial court also voided the Deed of Trust on a theory of illegality - that Loveless materially breached the Collings' HELOC prohibition - after finding U.S. Bank as Trustee failed to discover the nonexistent lease in the Loveless Loan origination file. There was no evidence of any lease, signed or unsigned, in the Loveless Loan origination file. Nonetheless, the trial court concluded that U.S. Bank as Trustee was not a bona fide purchaser because it was on inquiry notice of the HELOC prohibition in the nonexistent lease.

The evidence, the findings and the law fail to support any ground to void the Deed of Trust, and the Court should reverse and remand with instructions to issue an order declaring the validity and enforceability of the Loveless Loan by U.S. Bank as Trustee and dissolving the permanent injunction.

ASSIGNMENTS OF ERROR

1. The trial court erred in entering its Judgment and Decree Quieting Title (CP 2141-49) (App. A), its Findings of Fact and Conclusions of Law on Equitable Claims (CP 2150-57) (App. B), and in particular those findings and conclusions (FF) and conclusions of law (CL) below.

2. FF 2, CP 2151.

3. FF 3, CP 2151-52, a portion of which is an erroneous legal conclusion.

4. FF 8, CP 2152.

5. FF 12, CP 2153.

6. FF 13, CP 2153.

7. FF 14, CP 2153-54, portions of which are erroneous legal conclusions.

8. FF 15, CP 2154, a portion of which is an erroneous legal conclusion.

9. FF 16, CP 2154, a portion of which is an erroneous legal conclusion.

10. FF 17, CP 2154.

11. FF 18, CP 2154, an erroneous legal conclusion.

12. FF 19, CP 2155.

13. FF 20, CP 2155, an erroneous legal conclusion.

14. CL 22, CP 2155, erroneously applying the holder in due course doctrine and then concluding U.S. Bank as Trustee did not prove it is the holder in due course of the Loveless Loan.

15. CL 23, CP 2155, that U.S. Bank as Trustee failed to establish the chain of title for the Loveless Loan.

16. CL 24, CP 2155, that U.S. Bank is not a bona fide purchaser for value of the Loveless Loan; and that "Loveless held the property in constructive trust for the Collings that is superior to the lien interest claimed by U.S. Bank."

17. CL 25, CP 2155, permanently enjoining U.S. Bank as Trustee from foreclosing the Deed of Trust against the property.

18. CL 29, CP 2156, that the property is permanently quieted in the Collings against U.S. Bank as Trustee.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Collings have standing to challenge the validity and enforceability of the Loveless Loan by U.S. Bank as Trustee where the Collings were not parties to the Note and Deed of Trust?

2. Is Bank as Trustee the holder of the Loveless Loan where possession of the original Note and Deed of Trust was transferred to U.S. Bank as Trustee by February 28, 2007, and the Note was indorsed in blank by the party to which the Note had been specially endorsed?

3. Was U.S. Bank as Trustee required to prove it was a holder in due course to establish the validity and enforceability of the Loveless Loan?

4. Did a foreclosure notice signed by the foreclosure trustee stating that the nominal beneficiary of the Deed of Trust had assigned all the beneficial interest to itself, legally operate to separate the Note from, and void, the Deed of Trust, in the absence of any such assignment?

5. Was Loveless's partial refinance of the purchase loan with a HELOC an illegality rendering the Loveless Deed of Trust voidable?

6. Is U.S. Bank as Trustee a bona fide purchaser where it issued certificates for sale to certificate holders in exchange for the Loveless Loan in February 2007, in good faith, and without actual or constructive notice the Collings may have had a claim against Loveless, where the Collings did not suspect one until July 2008?

7. In the absence of evidence of a signed or unsigned lease in the Loveless Loan origination file, was U.S. Bank as Trustee on inquiry notice as early as February 2007 that the Collings may have had a claim against Loveless?

STATEMENT OF THE CASE

A. The Collings Agreed To Sell Their Property To Loveless, Receiving All The Net Proceeds From The Fair Market Value Sale.

On or about May 31, 2006, the Collings sold their residential real property to Loveless for its appraised value of $510,000. 9/14 RP 30, Ex. 8. Loveless put ten percent down and financed the rest. 9/14 RP 30. The Collings' two mortgage loans totaling $377,656.83 were paid off and at the close of escrow, and the Collings received net proceeds of $115,644.71. 9/14 RP 19, Ex. 8.

B. Loveless And The Collings Arranged For The Collings To Lease The Property With A Purchase Option.

Loveless and the Collings arranged for the Collings to lease the property with a purchase option and, thus, the Collings did not want Loveless to further encumber the property. 9/14 RP 122. Two unsigned drafts of a lease were introduced into evidence: the first was attached to an e-mail sent to the Collings May 2, 2006, from

Andrew Mullen (Ex. 3) and the second was attached to an e-mail sent to the Collings May 31, 2006, at 9:03 p.m. from Loveless (Ex. 5). Loveless's e-mail refers to the Collings having signed all of the paperwork. Ex. 5. Thus, there was no executed lease agreement at the close of escrow. More to the point, there was no executed lease introduced into evidence at trial.

The Collings paid Loveless $78,540 for a purchase option. 9/14 RP 69. The Collings used the balance of the $115,645 as a "pot of money" to make lease payments. 9/14 RP 33.

C. Six Months Later, Loveless Partially Refinanced The Purchase Loan With The Loveless Loan, Receiving No Money From The Refinance.

Six months later, Loveless refinanced his purchase loan with City First, replacing it with the Loveless Loan in the amount of $420,000 and the HELOC for $52,500. Ex. 151, 152 and153. Loveless received no money from the refinance. Ex. 153. The Collings did not learn of the refinance until after the summer of 2008. 9/14 RP 121.

The Loveless Loan was originated December 6, 2006. Ex. 151, 152 and 153. Before receiving a single payment, City First

transferred the loan to the underwriter GreenPoint Mortgage Funding (GreenPoint). 9/15 RP 79, 80 and 171, Ex. 151.

D. February 1, 2007, The Loveless Loan Was Transferred to U.S. Bank As Trustee.

February 1, 2007, GreenPoint sold the Loveless Loan to Lehman Capital, which securitized the mortgage loan. Ex. 154, 155, 156, 157, 158, 159, 160 and 164. The Loveless Loan was transferred to U.S. Bank National Association as Trustee for the GreenPoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR1 (GreenPoint Mortgage Funding Trust). 9/16 RP 64, Ex. 155 and 157. U.S. Bank as Trustee is the trustee of the GreenPoint Mortgage Funding Trust pursuant to a Trust Agreement. 9/16 RP 61, Ex. 156. David Duclos, U.S. Bank as Trustee's trial witness, executed the Trust Agreement and other securitization documents on behalf of U.S. Bank as Trustee. 9/16 RP 63 and 68.

In exchange for transfer of the Loveless Loan to the GreenPoint Mortgage Funding Trust, U.S. Bank as Trustee issued $420,000 of certificates for sale to investors, which was the principal amount of the Loveless Loan. 9/16 RP 65-66.

U.S. Bank is also the custodian for the GreenPoint Mortgage Funding Trust. 9/16 RP 61, Ex. 164 and 157. By February 28, 2007, U.S. Bank had received all of the mortgage loans, including the Loveless Loan. 9/16 RP 67, Ex. 161 and 162. U.S. Bank as custodian reviewed the mortgage loans for deficiencies and produced an Initial Certification of the loans in the GreenPoint Mortgage Trust (Ex. 161), a Certification of Custodian listing all of the loans transferred to the trust (Ex. 162), including the Loveless Loan, and an Exception Report, which lists loans found to have deficiencies such as an absence of indorsement (Ex. 163). 9/16 RP 69-74. The Loveless Loan was not listed in the Exception Report as having any deficiencies such as an absence of indorsement. 9/16 RP 74.

E. Nearly Two Years Into The Loan, Loveless Defaulted Due to Loss of Income.

Nearly two years after the Collings sold the property to Loveless, Loveless defaulted on his payments on the Loveless Loan due to loss of income, and the property went into foreclosure. Loveless made his payments to GMAC Mortgage, LLC (GMAC), the servicer of the Loveless Loan. Ex. 160. Loveless made timely payments on the loan from March 2007 to April 1, 2008, when he

became delinquent. 9/16 RP 40. In May 2008, Loveless reported to GMAC he wanted to file for bankruptcy; he had zero income that year; and he could not afford the property and wanted to sell it to the tenants. 9/16 RP 44. GMAC listed unemployment as the reason for Loveless's default. Id.

In July 2008, the Collings learned the property was in foreclosure and they ceased making any more lease payments. 9/14 RP 37, 97. In September 2008, Loveless told Mr. Collings he and Andrew Mullen had a big falling out, things weren't working for him and he had done all he could and couldn't do any more. 9/14 RP 41.

Loveless had remained in contact with GMAC. In November 2008, GMAC offered Loveless a loan modification, but Loveless reported he did not have any funds to make the down payment. 9/16 RP 46. That same month, Loveless asked Mr. Collings to make payments of $1,500 to stave off the foreclosure, but he was unwilling to do so. 9/14 RP 47.

In March 2009, the Collings commenced this action. CP 3-17. In September 2010, the Collings' action on their Complaint proceeded to trial by jury and U.S. Bank as Trustee's action on its Complaint in

Intervention proceeded to a bench trial with the Collings' jury in an advisory capacity.

F. The Advisory Jury's Findings Supported A Judgment That The Loveless Loan Was Valid And Enforceable By U.S. Bank As Trustee.

The advisory jury made the following relevant, factual findings in favor of U.S. Bank as Trustee by their answers to Question Nos. (Q) 3, 4, 5, 6, 8, 11, 12, 13 and 14 out of 14, all of which were prepared by the Collings and given to the jury over written objections filed by U.S. Bank as Trustee. CP 891-96, App C. The jury found:

- U.S. Bank as Trustee gave value for the Loveless Loan (CP 986, Q 14),
- GreenPoint actually endorsed in blank the Note (CP 894, Q 8),
- U.S. Bank as Trustee took physical possession of the Note 2/27/07 (CP 895, Q 11, 12),
- U.S. Bank as Trustee knew Loveless did not occupy the Property (CP 893, Q 6),
- U.S. Bank as Trustee did not have knowledge or information sufficient to cause an ordinary prudent person to investigate the Mortgage Loan (CL 893, Q 4),

- Yet, U.S. Bank did conduct an inquiry into the Mortgage Loan (CP 893, Q 5), and
- U.S. Bank as Trustee did not know about any claims by the Collings when it took physical possession of the Note evidencing the Mortgage Loan (CP 896, Q 13), and
- Ownership of the Note and Deed of Trust has not been intentionally split between two or more owners at any time (CP 892, Q 3).

Id.

G. The Trial Court Disregarded The Advisory Jury's Finding The Note And Deed Of Trust Had Not At Any Time Been Split And Voided The Deed of Trust Based On A Nonexistent Assignment Of The Deed Of Trust.

The trial court upheld the jury verdict against City First and others and entered judgment against City First. CP 897-901, 1135-38, 1353-56, 2171-75. Inconsistently, however, the sum and substance of the same jury's findings in favor of U.S. Bank as Trustee, albeit in an advisory capacity, were disregarded by the trial court.

Although U.S. Bank as Trustee contested the Collings' standing to challenge the validity and enforceability of the Loveless Loan, the trial court voided the Deed of Trust on a theory that MERS as the nominal beneficiary for U.S. Bank as Trustee had assigned all the beneficial interest in the Deed of Trust to itself, thereby separating the Note from the Deed of Trust. CP 2152, FF 8, Ex. 17; CP 2155, FF 19. There was no such assignment introduced into evidence.

H. The Trial Court Also Disregarded The Advisory Jury Finding U.S. Bank As Trustee Conducted An Inquiry Into The Loveless Loan Despite Not Being On Inquiry Notice And Voided The Deed Of Trust Based On A Nonexistent Lease.

The trial court also voided the Deed of Trust on a theory of illegality that Loveless materially breached the Collings' HELOC prohibition. CP 2151-52, FF 3. The trial court voided the Deed of Trust after finding U.S. Bank as Trustee failed to discover a nonexistent lease in the Loveless Loan origination file. CP 2144, FF 13, 14, and 15. There was no evidence of a signed or unsigned lease in the Loveless Loan origination file. GMAC had copies of the loan origination file for the Loveless Loan. 9/16 RP 31. Yet, at trial, the Collings did not inquire if there was any copy, signed or unsigned, of a lease in the Loveless Loan's origination file.

The trial court made a related finding the HELOC prohibition in the unsigned drafts of a lease would have stopped the Loveless Loan from being an "arms length transaction." CP 2153, FF 13, App. A. The phrase "arms length transaction" arose from the testimony of Sherri Russett (City First). However, Ms. Russett was not testifying about the Loveless Loan, which was a refinance, but rather the purchase loan originated in the spring of 2006 and underwritten by a different lender. 9/16 RP 12, 13. There was never an issue whether or not the **Loveless Loan** was an arms-length transaction because Loveless already owned the property and was refinancing his own loan.

The trial court concluded that U.S. Bank as Trustee was not a bona fide purchaser because it was on inquiry notice Loveless defied the Collings' HELOC prohibition based on a nonexistent lease in the Loveless Loan origination file. CP 2155, CL 24.

SUMMARY OF ARGUMENT

For three principle reasons, the trial court erred in voiding the Deed of Trust: 1) the Collings lacked standing to challenge the validity and enforceability of the Loveless Loan because they were not parties to the loan, 2) the Note and Deed of Trust were not separated because there is no assignment from MERS as nominal beneficiary to itself and 3) Loveless's defiance of the Collings' HELOC prohibition was not an illegality that rendered the Loveless Loan's Deed of Trust voidable, and even if it were, U.S. Bank as Trustee established the Loveless Loan was transferred to it for value and without notice of any claims of the Collings. Thus, U.S. Bank as Trustee established itself as a bona fide purchaser. For these reasons, this Court should reverse and remand with instructions to issue an order declaring the validity and enforceability of the Loveless Loan by U.S. Bank as Trustee and dissolving the permanent injunction.

ARGUMENT

A. Standards Of Review.

Rulings interpreting statutes are reviewed *de novo*. See e.g., Udall v. T.D. Escrow Services, Inc., 159 Wn.2d 903, 908, 154 P.3d 882 (2007). Conclusions of law are also reviewed *de novo*. M H 2

Co. v. Hwang, 104 Wn. App. 680, 683, 16 P.3d 1272 (2001). Further, conclusions incorrectly designated as findings receive *de novo* review. See. e.g., Willener v. Sweeting, 107 Wn.2d 388, 394, 730 P.2d 45 (1986). Additionally, whether a duty exists is a question of law, reviewed *de novo*. Webstad v. Stortini, 83 Wn. App. 857, 865, 924 P.2d 940 (1996) (citation omitted).

B. The Collings Lack Standing To Challenge The Validity And Enforceability Of The Loveless Loan, Where The Collings Are Not Parties To The Note And Deed Of Trust.

The trial court erred in allowing the Collings to challenge the validity and enforceability of the Loveless Loan to which they were not parties. The original Note indorsed in blank was present at trial, and exhibit 151 is a true and correct copy. 9/16 RP 34-35, 38, 77, Ex. 151. "The possession by the bearer of a note indorsed in blank imports prima facie that he acquired the note in good faith for value and in the course of business, before maturity and without notice of any circumstances impeaching its validity. The production of the note establishes his case prima facie against the **makers** and he may rest there." SKW Real Estate Limited Partnership v. Gallicchio, 49 Conn. App. 563, 572, 716 A.2d 903 (1998) (citations to pre-Uniform Commercial Code case omitted) (emphasis added). A maker is a

"person who signs or is identified in a note as a person undertaking to pay." RCW 62A.3-103. The Collings were not makers of the Loveless Loan.

Because the Collings were not parties to the Loveless Loan, they failed to have standing to challenge the validity of the Note and Deed of Trust. The constitutional minimum of Article III standing requires a party seeking relief to establish injury in fact, causation, and redressability. Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S.Ct. 2130 (1992). The Supreme Court recognizes other "prudential limitations" on the question of standing. Among these limitations, a party "generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." Warth v. Seldin, 422 U.S. 490, 498-99, 95 U.S. 2197 (1975). The Collings failed to meet the standard here.

The Collings challenged the validity and enforceability of the Note and Deed of Trust, but they were not parties to the Loveless Loan, nor were they parties to its transfer. The Collings sought to prevent enforcement of the Loveless Loan despite the fact that the parties to the transfers did not challenge their validity. Although the

Collings had in interest in avoiding foreclosure, the validity of the transfers affect only to whom **Loveless** was obligated.[1]

Courts throughout the country have routinely found that a debtor lacks standing to challenge an assignment between an assignor and assignee, let alone persons who were not parties to the underlying loan documents such as the Collings. See e.g., Ifert v. Miller, 138 B.R. 159 (Bankr. E.D. Pa. 1992) (applying Texas law). As the Pennsylvania bankruptcy court explained in Ifert:

> [The underlying contract] is between [Obligor] and [Assignor]. [Assignor's] assignment contract is between [Assignor] and [Assignee]. The two contracts are completely separate from one another. As a result of the assignment contract, [Obligor's] rights and duties under the [underlying] contract remain the same: the only change is to *whom* those duties are owed . . . [Obligor] was not a party to [the assignment], nor has a cognizable interest in it. Therefore, [Obligor] has no right to step into [Assignor's] shoes to raise [its] contract rights against [Assignee]. [Obligor] has no more right than a complete stranger to raise [Assignor's] rights under the assignment contract.

Id. at 166 n. 13.

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[1] Loveless filed for bankruptcy. "Judgment has not been entered against Loveless and cannot be at this time due to the Order of the U.S. Bankruptcy Court." CP 1861.

The Sixth Circuit reached a similar conclusion in Rogan v. Bank One N.A., 457 F.3d 561 (6th Cir. 2006), when a trustee for a bankruptcy estate challenged the assignment of the original creditor's interest in the mortgage to another bank. The Sixth Circuit agreed with the bankruptcy court that found the assignment to be immaterial "because neither the debtors nor the Trustee [were] parties to the [assignment] . . . . They lack standing to enforce it; they cannot claim to have relied on it." Id. at 567. See also Liu v. T & H Machine, Inc., 191 F.3d 790, 797 (7th Cir. 1999) (stating that party to underlying contract lacks standing to "attack any problems with the reassignment" of that contract); Blackford v. Westchester Fire Ins. Co., 101 F. 90, 91 (8th Cir. 1900) ("As long as no creditor of the assignor questions the validity of the assignment, a debtor of the assignor cannot do so.").

The same analysis applies here. After the transfers of the Loveless Loan, Loveless's rights and duties under the Note and Deed of Trust remained the same, the only change being to whom **Loveless** owed those duties. The Collings lacked standing to step into the shoes of an transferor to assert contract rights. This Court should reverse.

C. U.S. Bank As Trustee Established It Is The Holder Of The Loveless Loan Where Possession Of The Original Note And Deed Of Trust Was Transferred To U.S. Bank As Trustee By February 28, 2007 And The Note Had Been Indorsed In Blank By GreenPoint, To Whom City First Had Specially Indorsed The Note.

U.S. Bank as Trustee became the owner of the Loveless Loan February 1, 2007. 9/16 RP 100. "Holder" with respect to a negotiable instrument means the person in possession if the instrument is payable to the bearer. RCW 62A.1-201(20). "Bearer" means the person in possession of an instrument payable to the bearer or endorsed in blank. RCW 62A.1-201(5). The real party in interest entitled to enforce the obligation is the holder or another authorized to act for whomever holds the note. In re Jacobson, 402 B.R. 359, 366 (Bankr. W.D. Wash. 2009). "Of course, setting forth that the holder may act through agents, or may later assign or transfer the interest, e.g., '[Lender], and its agents, successors, and assigns,' is appropriate." Id.

Applying Revised Code of Washington Title 62A, Chapter 3 Negotiable Instruments, U.S. Bank as Trustee's established it is the holder of the Note secured by the Deed of Trust. U.S. Bank as Trustee's satisfied the relevant statutory provisions by demonstrating

it is the holder in possession of the Note which is payable to the bearer. Further, that U.S. Bank as Trustee is the holder of the Note is consistent with the February 1, 2007, securitization agreements, particularly the Trust Agreement, which provided for the transfer of the Mortgage Loan to U.S. Bank as Trustee. Ex. 155, 157.

Prior to February 28, 2007, the Loveless Loan was transferred to U.S. Bank National Association as Trustee. 9/16 RP 64, Ex. 155, 157. By February 28, 2007, U.S. Bank as custodian had received all of the mortgage loans, including the Loveless Loan. 9/16 RP 67, Ex. 157, 161, 162, 164. U.S. Bank as custodian reviewed the mortgage loans for deficiencies and produced an Initial Certification of the loans in the GreenPoint Mortgage Trust (Ex. 161), a Certification of Custodian listing all of the loans transferred to the trust (Ex. 162), including the Loveless Loan, and an Exception Report, which lists loans found to have deficiencies such as an absence of indorsement (Ex. 163). 9/16 RP 69-74. The Loveless Loan was not listed in the Exception Report as having any deficiencies such as an absence of indorsement. 9/16 RP 74.

1. U.S. Bank As Trustee Was Not Required By Revised Code Of Washington Title 62A, Chapter 3 To Prove The Authenticity Of The Indorsement In Blank To Establish It Is The Holder Of The Loveless Loan.

The trial court found that U.S. Bank failed to establish that the indorsement in blank was placed on the allonge with the authority and knowledge of GreenPoint, to whom the Note was specially indorsed. FF 8, CP 2152. This is actually a conclusion of law, and it is incorrect.

U.S. Bank as Trustee was not required to prove the authenticity of GreenPoint's endorsement in blank for three principle reasons: 1) as discussed above, the Collings lacked standing to even challenge the authenticity of GreenPoint's indorsement, 2) under the relevant statutory provisions, GreenPoint's signature was effective in favor of U.S. Bank as Trustee, where U.S. Bank as Trustee took the instrument for value, and value includes acquisition of a security interest in the instrument and 3) GreenPoint signed certain of the securitization documents which establish the Loveless Loan was transferred to U.S. Bank as Trustee for the GreenPoint Mortgage Funding Trust (Ex. 157, 158 and 159).

Pursuant to RCW 62A.3-204(a):

> "Indorsement" means a signature, other than that of a signer as maker . . .

And pursuant to RCW 62A.3-401(b):

> A signature may be made (i) manually or by means of a device or machine, . . .

And pursuant to RCW 62A.3-403(a):

> [A]n unauthorized signature is ineffective except as the signature of the unauthorized signer in favor of a person who . . . takes it for value. An unauthorized signature may be ratified for all purposes of this Article.

Lastly, pursuant to RCW 62A.3-303(a):

> An instrument is issued of transferred for value if:
>
> * * *
>
> (2) The transferee acquires a security interest or other lien in the instrument . . .

Since U.S. Bank as Trustee took possession of the Loveless Loan for value, having acquired a security interest in the Note, GreenPoint's indorsement in blank is effective in favor of U.S. Bank as Trustee.

Additionally, U.S. Bank as Trustee established by the securitization documents that the Loveless Loan was transferred to the GreenPoint Mortgage Funding Trust. Ex. 154, 155, 156, 157, 158, 159, 160 and 164. In In re Samuels, 415 B.R. 8 (Bankr. D. Mass. 2009), the Massachusetts bankruptcy court found:

> The PSA [Pooling and Servicing Agreement] itself, in conjunction with the schedule of mortgages deposited through it into the pool trust, served as a written assignment of the designated mortgage loans, including the mortgages themselves.

Id. at 18.

Here, the Trust Agreement includes provides for the assignment of the mortgage loans into the trust. Section 2.01(a) of the Trust Agreement provides, in relevant part, that "Concurrently with the execution and delivery of this Agreement, the Depositor does hereby transfer, assign, set over, deposit with and otherwise convey to the Trustee, without recourse . . . in trust, all the right, title and interest of the Depositor in and to the Mortgage Loans." Ex. 156, 157. The Mortgage Loan Schedule, Exhibit 157, identifies the Loveless Loan as being transferred to the trust.

The trial court erred in imposing a burden of proof on U.S. Bank as Trustee to prove the authenticity of GreenPoint's indorsement in blank simply because the Collings, without any standing to do so and without any controverting evidence, challenged it. In any event, U.S. Bank as Trustee proved both the effectiveness of the indorsement in blank under the statute and under the

securitization documents providing for transfer of the Loveless Loan to the trust, certain of which were signed by GreenPoint.

2. U.S. Bank As Trustee Was Not Required To Prove It Was A Holder In Due Court To Establish The Validity And Enforceability Of The Loveless Loan, As The Doctrine Was Inapplicable.

The trial court erroneously applied the holder in due course doctrine asserted by the Collings as an affirmative defense, and then erroneously concluded U.S. Bank as Trustee was not a holder in due course. CL 22, CP 2155.

The holder in due course doctrine did not apply to the Collings claims. The holder in due course doctrine is a commercial law that insulates the final buyer of an obligation from challenges by either **party of the original transaction** due to non-performance by the other party. RCW 62A.3-302. "As a general rule, one who is a holder in due course takes a negotiable instrument free from '**all claims to it** on the part of any person' and from 'all **defenses of any party to the instrument** with whom the holder has not dealt'." Wesche v. Martin, 64 Wn. App. 1, 8, 822 P.2d 812 (1992) (citing RCW 62A.3-305(1 & 2); see also, RCW 62A.3-306) (emphasis added). As the Collings were not parties to the Loveless Loan, their dispute with

Loveless could not have prevented U.S. Bank as Trustee from establishing it was a holder in due course.

Even if the holder in due course doctrine did apply as a defense to the Collings' quiet title claim, U.S. Bank as Trustee established every element.

RCW 62A.3-302(a) defines a holder in due course as:

> (1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alternation or is not otherwise so irregular or incomplete as to call into question its authenticity; and
>
> (2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in RCW 62A.3-306, and (vi) without notice that any **party** has a defense or claim in recoupment described in RCW 62A.3-305(a). (Emphasis added.)

RCW 62A.3-305(a) pertains to defenses of the "obligor". Further, pursuant to RCW 62A.1-201(29), "'Party', as distinct from 'third party', means a person who has engaged in a transaction or made an agreement within this Title."

Mr. Duclos established U.S. Bank as Trustee's status as a holder in due course by satisfying standards set forth in RCW 62A.3-302(a)(1) and (2), that 1) as a result of U.S. Bank's inventory of the mortgage loans, there was no reason to question the authenticity of the Loveless Loan (9/16 RP 74), 2) U.S. Bank as Trustee gave value for the Loveless Loan by issuing $420,000 of certificates for sale to investors (Id. at 65-66), in good faith (Id. at 75) and the loan was not in default (Id. at 40), 3) without notice of any unauthorized signature or alteration (Id. at 75), 4) without notice of any claim to the instrument (Id. at 76) and 5) Loveless raised no claim or defense to it. In sum, Mr. Duclos opined based on his fourteen years of experience in his capacity as U.S. Bank as trustee for designated mortgage loan trust's, U.S. Bank's acquisition of the Loveless Loan complied with reasonable standards for banking institutions. Id. at 76.

Thus, the Collings' dispute with Loveless was not a defense or claim which triggered application of the holder in due course doctrine. Even if the doctrine applied, U.S. Bank as Trustee established it was a holder in due course and the Collings' did not offer a scintilla of controverting evidence. To the extent the trial court voided the Deed of Trust based upon its application of the holder in due course

doctrine and conclusion U.S. Bank as Trustee was not a holder in due course, this Court should reverse.

D. A Foreclosure Notice Issued By First American Stating MERS As Nominee Had Assigned All The Beneficial Interest To Itself Did Not Legally Operate To Separate The Note From, And Void, The Deed Of Trust, As Such Assignment Was Nonexistent.

Although U.S. Bank as Trustee contested the Collings' standing to challenge the validity and enforceability of the Loveless Loan, the trial court erroneously voided the Deed of Trust on a theory that MERS as the nominal beneficiary for U.S. Bank as Trustee had assigned all the beneficial interest in the Deed of Trust to itself, thereby separating the Note from the Deed of Trust. CP 2152, FF 8, Ex. 17, and FF 19, CP 2155. There was no such assignment introduced into evidence. Rather, the erroneous finding was based upon an erroneous foreclosure notice issued by First American. Ex. 17.

In the origination of the Loveless Loan, Loveless agreed that MERS would serve as the beneficiary solely as nominee for the lender, its successors and assigns. Ex. 152. In 2004, the Collings similarly executed a deed of trust agreeing that MERS would serve as the nominal beneficiary for the lender. Ex. 167. This is perfectly legal

in Washington. Washington and other courts in the Ninth Circuit have recognized that MERS, acting as nominee for a lender, may serve as a beneficiary. As the Court in Daddabbo v. Countrywide Home Loans, Inc., 2010 WL 2102485 (W.D. Wash. May 20, 2010), observed:

> The deed of trust, of which the court takes judicial notice, explicitly names MERS as a beneficiary. . . . The deed of trust grants MERS not only legal title to the interests created in the trust, but the authorization of the lender and any of its successors to take any action to protect those interest [sic], including the "right to foreclose and sell the Property."

Id. at * 5; see also Vawter v. Quality Loan Service Corp. of Washington, 707 F.Supp.2d 1115 (W.D. Wash. 2010).

When a lender transfers its beneficial interest in the promissory note, MERS retains its fiduciary obligations to the lender, its successors and assigns. MERS continues to act as the beneficiary for the new note holder because the security instrument follows the note. The promissory note is enforceable against the property because of the deed of trust, but the deed of trust itself is not independently enforceable as a debt. This principle is not changed when MERS is the beneficiary because there is an agency relationship between MERS and the lender. The MERS Deed of

Trust authorizes MERS to act on behalf of the lender as the legal title holder and exercise any of the lender's rights under the MERS Deed of Trust.

When U.S. Bank as Trustee acquired the Loveless Loan, MERS became the nominee for U.S. Bank as Trustee because it was and remains a MERS member. 9/16 RP 80-82. In July 2009, U.S. Bank as Trustee authorized MERS as nominee to assign the Deed of Trust so U.S. Bank as Trustee could intervene in this action to defend the rights of the certificate holders in the trust. 9/16 RP 83, Ex. 154. If U.S. Bank as Trustee wished to reassign the Deed of Trust back to MERS as nominee, it could do so because U.S. Bank as Trustee is a MERS member. 9/16 RP 83.

The California bankruptcy court in In re Vargas, 396 B.R. 511 (C.D. Cal. 2008) discussed the note-splitting theory of defense as applied to a note sold into the market for securitization:

> A secured promissory note traded on the secondary mortgage market remains secured because the mortgage follows the note. Cal. Civ. Code § 2936 ("The assignment of a debt secured by mortgage carries with it the security."). California codified this principle in 1872. Similarly, this has long been the law throughout the United States: when a note secured by a mortgage is transferred, "transfer of the note carries with it the security, without any formal assignment or delivery, or

> even mention of the latter." Carpenter v. Longan, 83 U.S. 271, 275 . . . (1872). Clearly the objective of this principle is "to keep the obligation and the mortgage in the same hands unless the parties wish to separate them." Restatement (Third) of Property (Mortgages) § 5.4 (1997). The principle is justified, in turn, by reasoning that the "the debt is the principal thing and the mortgage an accessory." Id. . . . For this reason, "an assignment of the note carries the mortgage with it, while an assignment of the latter alone is a nullity." Id. at 274 . . . While the note is "essential," the mortgage is only "an incident" to the note. Id.

Vargas, 396 B.R. at 516-17.

The bankruptcy court in In re Jacobson, 402 B.R. 359 (Bankr. W.D. Wash. 2009) concurred:

> Having an assignment of the deed of trust is not sufficient, . . ., because the security follows the obligation secured, rather than the other way around. This principle is neither new nor unique to Washington: [T]ransfer of the note carries with it the security, without any formal assignment or delivery, or even mention of the latter. Carpenter v. Longan, 83 U.S. 271, 275 . . . (1872).

Id. at 367.

A number of findings illustrate the trial court's misunderstanding of the relationship between MERS and U.S. Bank as Trustee which resulted in its erroneous finding the Deed of Trust had been separated from the Note. CP 2155, FF 19. The trial court found MERS as the nominal beneficiary assigned both the Note and

Deed of Trust to U.S. Bank as Trustee. CP 2153, FF 12, Ex 154. However, the trial court accurately found MERS was never the owner of the Note. CP 2155, FF 19. Thus, the trial court seemed to understand MERS' agency role as a nominal beneficiary of the Deed of Trust.

In Washington, only the holder of the obligation secured by the deed of trust is entitled to enforce it. In re Jacobson, 402 B.R. at 367 citing RCW 61.24.005(2) (defining "beneficiary" under a deed of trust as the holder of the instrument evidencing the obligations secured by the deed of trust). U.S. Bank as Trustee is the holder of the Note. Thus, in July 2009, U.S. Bank as Trustee authorized MERS as nominee to assign the Deed of Trust to intervene in this action as the real party in interest. 9/16 RP 83, Ex. 154. The trial court's finding there was no evidence that the Deed of Trust was transferred from MERS to U.S. Bank as Trustee for any value (CP 2154, FF 16) indicates the trial court's misunderstanding, or lack of acceptance, of the agency relationship between MERS as nominal beneficiary of the Deed of Trust and U.S. Bank as Trustee as holder of the Note.

The recent case of Mortgage Electronic Registration Systems, Inc. v. Bellistri, 2010 WL 2720802 (E.D. Mo. July 1, 2010) illustrates

the role of MERS as nominal beneficiary of a deed of trust. In a prior case, MERS had assigned a deed of trust to Ocwen, thus, the court found it did not have a legally cognizable interest in the property to defend Bellistri's to obtain a collector's deed and void the deed of trust. In a subsequent action, MERS sued Bellistri and obtained an order declaring Bellistri's collector's deed void. The court determined that MERS **remained** the nominee of the original lender and that it had bare legal title to the note and deed of trust. Accordingly, the earlier assignment of the deed of trust to Ocwen did **not** result in a severance of the note and deed of trust, rather, it was a nullity.

The case of In re Gemini v. Mortgage Electronic Registration Systems, Inc., 350 B.R. 74 (Bankr. S.D. Ohio 2006) further illustrates. There, Key Bank originated a loan in March 2003. In July 2003, Key Bank endorsed the note to Del Norte. In November 2003, Key Bank executed an Assignment of Mortgage to MERS. The debtor claimed that the mortgage assignment from Key Bank was to MERS and not Del Norte and that the assignment failed to state MERS was the agent for Del Norte. The debtor argued that as a result, he could step into the shoes of a hypothetical bona fide purchaser and avoid Del

Norte's claim of a senior lien on the property. The Ohio bankruptcy court held Del Norte's lien could not be avoided, finding:

> As noted, an unbroken line of cases for nearly two centuries holds the beneficial interest in the mortgage was transferred from Key Bank to Del Norte at the time Key Bank endorsed the note to Del Norte. . . . Again, the undisputed evidence establishes that MERS was only acting as an agent of Del Norte for purposes of holding legal title to the mortgage.

Id. at 82.

In sum, comments concerning the practical effect of splitting the deed of trust from the note stand for:

> [T]he proposition that one possessing the deed of trust cannot foreclose on a mortgage without (1) also possessing some interest in the promissory note, or (2) *obtaining permission to act as agent of the noteholder.* (Emphasis added.)

Chilton v. Federal National Mortgage Association, 2009 WL 5197869, * 2 (E.D. Cal. Dec. 23. 2009).

At all relevant times here, MERS has had authority to act as the nominee for U.S. Bank as Trustee relative to the Deed of Trust, and there was no assignment by MERS as nominee to MERS supporting the Collings' contention the Note and Deed of Trust were separated. To the extent the trial court voided the Deed of Trust

based upon a nonexistent assignment of the Deed of Trust by MERS as nominee to MERS itself, this court should reverse.

E. Loveless's Partial Refinance Of The Purchase Loan With A HELOC Was Not An Illegality Rendering The Unconnected Loveless Loan Voidable.

The trial court also voided the Deed of Trust on a theory of illegality finding Loveless materially breached the Collings' HELOC prohibition. CP 2151-52, FF 3. This finding flows from the trial court's erroneous finding of a "lease". CP 2151, FF 2 ([The lease] contained an express restriction prohibiting Loveless from further encumbering the home with debt or obtaining a home equity line of credit (a HELOC).), CP 2151-52, FF 3 (In December of 2006, Loveless violated the prohibition against further encumbering the Property . . . [and] constituted a material breach of the lease.) and CP 2153, FF 13 (Such a review [of the Loveless Loan origination file] would have disclosed the HELOC prohibition which City First (Ms. Russett) testified would have stopped the loan as not being an "arms length transaction."). There was no executed lease introduced into evidence.

Nor was the Loveless Loan a non-arms length transaction. The trial court erroneously found the HELOC prohibition in the

unsigned drafts of a lease would have stopped the Loveless Loan from being an "arms length transaction." CP 2153, FF 13, App. A. The finding arose from the testimony of Ms. Russett; however, Ms. Russett was testifying about the Loveless Loan, which was a refinance, but rather the purchase loan originated in the spring of 2006 and underwritten by a different lender. 9/16 RP 12, 13. There was never an issue whether or not the **Loveless Loan** was an arms-length transaction; rather, it was a one party transaction - Loveless refinancing his loan on his property.

As to the findings regarding a lease, the trial court failed to identify which of the exhibits it found to be the "lease". Two unsigned drafts of a lease were introduced into evidence: the first was attached to an e-mail sent to the Collings May 2, 2006, from Mullen (Ex. 3) and the second was attached to an e-mail sent to the Collings May 31, 2006, from Loveless after closing of the escrow (Ex. 5). Mr. Collings agreed Exhibit 3 was a proposed agreement. 9/14 RP 78. The trial court seemingly regarding Exhibit 3 as the "lease". It examined Ms. Russett concerning whether or not Exhibit 3, had been filed in the loan origination file for the purchase loan, Ms. Russett responding only an unrelated lease (Ex. 34) had been filed in the loan origination

file for the purchase loan. 9/16 RP 10. Accordingly, there was no executed lease at the close of escrow, no signed or unsigned lease between Loveless and the Collings in the loan origination file for the purchase loan, no executed lease introduced into evidence at trial and no testimony concerning execution of a lease, yet, the trial court apparently found a "material breach of the lease" by Loveless and voided the Deed of Trust voidable. CP 2151-52, FF 3.

The controlling legal principle in Washington is as follows:

> Where a contract grows immediately out of and is connected with a prior illegal contract, the illegality of such prior contract will enter into the new contract and render it illegal * * * But if the new contract is not connected with the illegal contract or transaction, but is founded on a new consideration, it is not affected by such prior illegal contract or transaction, though the latter may have indirectly given rise to it.

Tomkins v. Seattle Construction & Dry Dock Co., 96 Wash. 511, 513-14, 165 P. 384. (1917) (citations omitted).

Loveless's lease arrangement with the Collings was not an illegal transaction, and the Loveless Loan was not tainted as a non-arms length transaction. While Loveless partially refinanced the purchase loan with a HELOC, he received no money from the refinance. Further, the Loveless Loan was founded on new

consideration and unconnected with the collateral, lease arrangement.

The Loveless Loan was originated six months after the purchase loan and refinanced $420,000 of Loveless's $459,000 purchase loan. Ex. 151, 152, 153 and 177. Under the controlling legal standard, the $420,000 Loveless Loan was founded on new consideration, the partial payoff of $459,000 purchase loan. Ex. 153. Even if Loveless's defiance of the Collings' HELOC prohibition constituted an illegality, the event was not connected with the Loveless Loan so as to render it voidable.

1. U.S. Bank as Trustee Was A Bona Fide Purchaser Where It Issued Certificates Sold To Investors In Exchange For The Loveless Loan In February 2007, In Good Faith And Without Notice The Collings May Have Had A Claim Against Loveless, Where The Collings Did Not Suspect One Until July 2008.

The trial court concluded that U.S. Bank as Trustee was not a bona fide purchaser because it was on inquiry notice Loveless defied the Collings' HELOC prohibition based on a nonexistent lease in the Loveless Loan origination file. CP 2155, CL 24. Accordingly, the trial court voided the Deed of Trust after finding U.S. Bank as Trustee failed to discover the nonexistent lease. CP 2144.

The bona fide purchaser doctrine provides that a good faith purchaser for value, who is without actual or construct notice of another's interest in real property purchased, has a superior interest in the property. Tomlinson v. Clarke, 118 Wn.2d 498, 500, 825 P.2d 706 (1992) (citing Glaser v. Holdorf, 56 Wn.2d 204, 208-9, 352 P.2d 212 (1960).)

Value means something of actual value, capable, in estimation of the law, of pecuniary measurement - not a gift, devise, inheritance, or otherwise. McDonald v. Johns, 62 Wn. 521, 523, 114 P. 175 (1911). In exchange for transfer of the Loveless Loan to the GreenPoint Mortgage Funding Trust, U.S. Bank as Trustee issued $420,000 of certificates which were sold to investors, which was the principal amount of the Loveless Loan. 9/16 RP 65-66. Accordingly, the Loveless Loan is a $420,000 trust asset and the certificate holders are the beneficiaries for whom U.S. Bank as Trustee services as trustee.

In July 2008, the Collings learned the property was in foreclosure. 9/14 RP 37, 97. There was no evidence the Collings suspected they may have a claim against Loveless when U.S. Bank as Trustee acquired the Loveless Loan in February 2007. In

Scandinavian American Bank v. Johnson, 63 Wash. 187, 115 P. 102 (1911) a fraudulently procured note was pledged as collateral for a loan; at the time the lender had no knowledge of any misrepresentations made to the maker of the note, and the maker himself did not then know he had been defrauded, thus, bank was a bona fide holder for value. Id. at 190.

Here, the trial court found U.S. Bank failed to engage in a reasonable inquiry into the Loveless Loan and that a review of the origination file would have disclosed the HELOC prohibition. CP 2153-54, FF 13 and 14. However, there was no evidence of a signed or unsigned lease in the Loveless Loan origination file, nor would there have been any reason for a copy of a lease to be included in the Loveless Loan origination file, as it was a refinance of Loveless's own loan.

Ms. Russett testified only the unrelated lease (Ex. 34) had been filed in the loan origination file for the purchase loan. 9/16 RP 10. Further, Mr. DiCicco testified GMAC had copies of the loan origination file for the Loveless Loan. 9/16 RP 31. Yet, at trial, the Collings did not even inquire if there was any copy, signed or unsigned, of a lease in the Loveless Loan's origination file.

The trial court also made a broad finding U.S. Bank as Trustee relied exclusively on representations and warranties under the securitization documents. CP 2154, FF 15. This erroneous finding overlooks the testimony of Mr. Duclos that U.S. Bank as custodian reviewed the mortgage loans for deficiencies and produced an Initial Certification of the loans in the GreenPoint Mortgage Trust (Ex. 161), a Certification of Custodian listing all of the loans transferred to the trust (Ex. 162), including the Loveless Loan, and an Exception Report, which lists loans found to have deficiencies (Ex. 163). 9/16 RP 69-74.

The trial court's finding that U.S. Bank as Trustee failed to engage in a reasonable inquiry into the Loveless Loan and that a review would have disclosed the HELOC prohibition is supported. CP 2153-54, FF 13, 14. To the extent the trial court voided the Deed of Trust based upon the unconnected HELOC and its erroneous finding U.S. Bank as Trustee was not a bona fide purchaser because of inquiry notice of the nonexistent lease, this Court should reverse.

G. CONCLUSION.

The evidence, the findings and the law fail to support any ground to void the Deed of Trust. For three principle reasons, the trial court erred in voiding the Deed of Trust: 1) the Collings lacked

standing to challenge the validity and enforceability of the Loveless Loan because they were not parties to the loan, 2) the Note and Deed of Trust were not separated because there is no assignment from MERS as nominal beneficiary to itself and 3) Loveless's defiance of the Collings' HELOC prohibition was not an illegality that rendered the Loveless Loan's Deed of Trust voidable, and even if it were, U.S. Bank as Trustee established the Loveless Loan was transferred to it for value and without notice of any claims of the Collings. Thus, U.S. Bank as Trustee established itself as a bona fide purchaser. For these reasons, this Court should reverse and remand with instructions to issue an order declaring the validity and enforceability of the Loveless Loan by U.S. Bank as Trustee and dissolving the permanent injunction.

RESPECTFULLY SUBMITTED this 22 day of July, 2011.

PITE DUNCAN, LLP

Rochelle L. Stanford

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Attorneys for Appellant
U.S. Bank National Association as Trustee

APPENDIX A

CERTIFIED COPY

HONORABLE RICHARD EADIE

FILED
KING COUNTY, WASHINGTON
FEB 25 2011
SUPERIOR COURT CLERK
BY ANDREW T. RAVIS
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DONALD COLLINGS and BETH COLLINGS, husband and wife,

Plaintiffs,

vs.

CITY FIRST MORTGAGE SERVICES, LLC, a Utah limited liability company f/k/a CITY FIRST MORTGAGE SERVICES, L.C.; HOME FRONT HOLDINGS, LLC, a Utah limited liability company; ROBERT P. LOVELESS and REBECCA LOVELESS, husband and wife; ANDREW J. MULLEN AND "JANE DOE" MULLEN, husband and wife; GAVIN SPENCER and MARGARET ELIZABETH SPENCER, husband and wife; FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation, Trustee; "MERS" MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation; and JOHN DOES 1 - 12, unnamed co-conspirators,

Defendants.

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR THE GREENPOINT MORTGAGE FUNDING TRUST MORTGAGE PASS-THOUGH CERTIFICATES, SERIES 2007-AR1,

Plaintiff in Intervention,

vs.

NO. 09-2-13062-1 (SEA)

JUDGMENT AND DECREE QUIETING TITLE

(Clerk's Action Required)

ORIGINAL

LAW OFFICES
SMYTH & MASON, PLLC
7100 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 621-7100

DONALD COLLINGS and BETH COLLINGS, husband and wife; ROBERT P. LOVELESS and REBECCA LOVELESS, husband and wife; ALL PERSONS UNKNOWN CLAIMING ANY LEGAL OR EQUITABLE RIGHT, TITLE OR INTEREST

Defendants in Intervention.

CITY FIRST MORTGAGE SERVICES, LLC, a foreign company,

Third-Party Plaintiff,

vs.

EXECUTIVE TRUSTEE SERVICES, LLC, a foreign company,

Third-Party Defendant.

JUDGMENT SUMMARY

Judgment Creditor ..... Donald and Beth Collings
18810 NE 109th St.
Redmond, WA 98052

Attorney for Judgment Creditor ..... Smyth & Mason, PLLC
701 Fifth Avenue, Suite 7100
Seattle, WA 98104

Judgment Debtor: ..... U.S. Bank National Association as Trustee for the Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR1

Attorney for Judgment Debtor ..... PITE DUNCAN, LLP
14510 NE 20th St., Suite 203
Bellevue, WA 98007

Principal Monetary Judgment $0.00

Plus Cost Bill to be filed in accordance with the Civil Rules ..... $_____

Interest on Judgment 12% per annum ..... $_____

LAW OFFICES
SMYTH & MASON, PLLC
7100 COLUMBIA CENTER
701 FIFTH AVENUE
SEATTLE, WASHINGTON 98104
(206) 621-7100

JUDGMENT AND DECREE

THIS MATTER having come on regularly for trial before the court, and the court having heretofore entered its Findings of Fact and Conclusions of Law and being fully advised in the premises, and it also appearing to the court that there is no just reason for delay of entry of final judgment, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

1. JUDGMENT is hereby issued in favor of DONALD R. COLLINGS AND BETH ANN COLLINGS, HUSBAND AND WIFE, as to the claims asserted by Plaintiff in Intervention U.S. Bank National Association as Trustee's Complaint in Intervention for Declaratory Relief, and those claims are dismissed with prejudice and with costs assessed.

2. Judgment is further issued in favor of DONALD R. COLLINGS AND BETH ANN COLLINGS, HUSBAND AND WIFE, as to their counterclaim for quiet title.

3. Title to the real property, commonly known as 18110 N.E. 109th Street, Redmond, Washington 98052, tax parcel number 219332016001, and legally described as Lot 16, East Valley Heights No. 3, according to the plat thereof, recorded in Vol. 117 of Plats, pages 85 and 86, situate in King County, State of Washington, and described in full in **Exhibit A** hereto (the "Subject Property") is hereby quieted in the plaintiffs, Donald R. Collings and Beth Ann Collings, husband and wife, in fee simple, free and clear of all right claim or interest of any nature from any claims of record as of this date including, but not limited to, those related to that certain Deed of Trust in the amount of $420,000, recorded on December 12, 2006, in the official records of King County as Instrument No. 20061212000972 and those claims on the part of U.S. Bank National Association as Trustee

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for the Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR1, and its predecessors, successors and assigns.

4. The Deed of Trust in the amount of $420,000, recorded on December 12, 2006, in the official records of King County as Instrument No. 20061212000972 is hereby declared void and unenforceable.

5. Intervenor Plaintiff U.S. Bank National Association as Trustee for the Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR1 is hereby permanently enjoined from seeking or conducting a trustee's sale or judicial foreclosure of the Subject Property.

DATED this 25 day of February, 2011.

Richard D Eadie

Honorable Richard Eadie

Presented by:

SMYTH & MASON, PLLC

By: _____

Jeff Smyth, WSBA#6291
Shaunta Knibb, WSBA#27688
Attorneys for Plaintiffs and Defendants in Intervention

Copy Received:

PITE DUNCAN, LLP

By: _____

Rochelle L. Stanford, WSBA #38690
Jesse A.P. Baker, WSBA #36077
Attorney for Intervenor U.S. Bank National Association As Trustee for the Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR1

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STOEL RIVES, LLP

By_____
David R. Goodnight, WSBA #20286
Leonard J. Feldman, WSBA #20961
Aric H. Jarrett, WSBA #39556
Attorneys for Defendant City First Mortgage Services, LLC

Copy Received:

By_____
Andrew Mullen, *Pro Se* Defendant

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(206) 621-7100

EXHIBIT A

EXHIBIT A

TAX ACCOUNT NUMBER: 219332016001

LOT 16, EAST VALLEY HEIGHTS NO. 3, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 117 OF PLATS, PAGES 85 AND 86, IN KING COUNTY, WASHINGTON.

EASEMENT AS DELINEATED AND/OR DEDICATED ON THE FACE OF THE PLAT.

PURPOSE:	DRAINAGE
AREA AFFECTED:	NORTHERLY 10 FEET OF SAID PREMISES

EASEMENT AS DELINEATED AND/OR DEDICATED ON THE FACE OF THE PLAT.

PURPOSE:	UTILITIES AND DRAINAGE
AREA AFFECTED:	OVER, UNDER AND ACROSS A STRIP OF LAND 2.5 FEET WIDE ALONG ALL SIDE LOT LINES TOGETHER WITH A STRIP OF LAND 7 FEET WIDE ALONG ALL FRONT AND REAR LOT LINES.

EASEMENT PROVISIONS CONTAINED IN SAID PLAT AS FOLLOWS:

AN EASEMENT IS HEREBY RESERVED FOR AND GRANTED TO PUGET SOUND POWER & LIGHT COMPANY, CABLE TV, GENERAL TELEPHONE COMPANY OF THE NORTHWEST, INC., AND THE CITY OF REDMOND AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS UNDER AND UPON THE EXTERIOR 7 FEET PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF ALL LOTS IN WHICH TO INSTALL, LAY, CONSTRUCT, RENEW, OPERATE AND MAINTAIN UNDERGROUND CONDUITS, CABLES AND WIRES WITH NECESSARY FACILITIES AND OTHER EQUIPMENT FOR THE PURPOSE OF SERVING THIS SUBDIVISION AND OTHER PROPERTY WITH ELECTRIC AND TELEPHONE SERVICE, TOGETHER WITH THE RIGHT TO ENTER UPON THE LOTS AT ALL TIMES FOR THE PURPOSES HEREIN STATED. ALSO, EACH LOT SHALL BE SUBJECT TO AN EASEMENT 2.5 FEET IN WIDTH, PARALLEL WITH AND ADJACENT TO ALL INTERIOR LOT LINES FOR THE PURPOSES OF UTILITIES AND DRAINAGE. ALL PERMANENT UTILITY SERVICES TO BE UNDERGROUND.

NO LINES OR WIRES FOR THE TRANSMISSION OF ELECTRIC CURRENT OR FOR TELEPHONE USE, CATV, FIRE OR POLICE SIGNALS, OR FOR OTHER PURPOSES SHALL BE PLACED OR PERMITTED TO BE PLACED UPON ANY LOT OUTSIDE THE BUILDINGS THEREON UNLESS THE SAME SHALL BE UNDERGROUND OR IN CONDUIT ATTACHED TO THE BUILDING.

EASEMENT PROVISIONS CONTAINED IN SAID PLAT AS FOLLOWS:

WITHIN THE AREA PRESERVED AS A PERMANENT GREENBELT THERE WILL BE NO CLEARING, GRADING OR ALTERING OF THE NATURAL CONDITION OF THE SOILS, SLOPE OR VEGETATION SHALL BE PERMITTED, PROVIDED HOWEVER, THAT NOTHING SHALL PREVENT THE SELECTIVE REMOVAL OF TREES OR VEGETATION THAT MAY BE HAZARDOUS IN ACCORDANCE WITH THE CITY OF REDMOND CLEARING AND GRADING REGULATIONS, PROVIDED FURTHER, HOWEVER, THAT NOTHING SHALL PREVENT THE DEVELOPER, THE CITY OF REDMOND OR ANY UTILITY FROM INSTALLING, AND MAINTAINING APPROVED STORM DRAINAGE, WATER, SEWER, TRAIL, STREET, NATURAL GAS, ELECTRICAL AND COMMUNICATION LINES, STRUCTURES AND OTHER FACILITIES AS PROVIDED BY RECORDED EASEMENTS.

NOTE: THIS SUBDIVISION IS SUBJECT TO THE RECOMMENDATIONS AS SET FORTH IN THE REPORT FROM REDMOND PLANNING COMMISSION DATED NOVEMBER 11, 1979, APPROVED BY THE REDMOND CITY COUNCIL ON FEBRUARY 05, 1980 AND CONTAINED IN FILE NO. PP-79-02.

UNDERGROUND UTILITY EASEMENT AND THE TERMS AND CONDITIONS THEREOF:

GRANTEE:	PUGET SOUND POWER & LIGHT COMPANY, A WASHINGTON CORPORATION
PURPOSE:	UNDERGROUND ELECTRIC TRANSMISSION AND/OR DISTRIBUTION SYSTEM
AREA AFFECTED:	THE EXTERIOR 7 FEET, PARALLEL WITH AND ADJOINING THE STREET FRONTAGE OF ALL LOTS AND TRACTS, SAID LOTS AND TRACTS AS DELINEATED ON THE FINAL APPROVED PLAT OF EAST VALLEY HEIGHTS DIVISION 3. A 2.5 FOOT STRIP OF LAND, PARALLEL WITH AND ADJACENT TO ALL INTERIOR LOT LINES, SAID LOT LINES AS DELINEATED ON THE FINAL APPROVED PLAT OF EAST VALLEY HEIGHTS DIVISION 3

RECORDED: MARCH 26, 1984
RECORDING NUMBER: 8403260615

CONTAINS COVENANT PROHIBITING STRUCTURES OVER SAID EASEMENT OR OTHER ACTIVITIES WHICH MIGHT ENDANGER THE UNDERGROUND SYSTEM.

RESTRICTIONS CONTAINED ON THE FACE OF THE PLAT AS FOLLOWS:

NO LOT OR PORTION OF A LOT IN THIS PLAT SHALL BE DIVIDED AND SOLD OR RESOLD, OR OWNERSHIP CHANGED OR TRANSFERRED WHEREBY THE OWNERSHIP OF ANY PORTION OF THIS PLAT SHALL BE LESS THAN THE AREA REQUIRED FOR THE USE DISTRICT IN WHICH IT IS LOCATED.

COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS CONTAINED IN INSTRUMENT, BUT OMITTING ANY COVENANTS OR RESTRICTIONS, IF ANY, BASED UPON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, FAMILIAL STATUS, MARITAL STATUS, DISABILITY, HANDICAP, NATIONAL ORIGIN, ANCESTRY, OR SOURCE OF INCOME, AS SET FORTH IN APPLICABLE STATE OR FEDERAL LAWS, EXCEPT TO THE EXTENT THAT SAID COVENANT OR RESTRICTION IS PERMITTED BY APPLICABLE LAW:

RECORDED: DECEMBER 23, 1983
RECORDING NUMBER: 8312230154

THE RIGHT TO CONTINUE TO DRAIN SAID ROADS AND WAYS OVER AND ACROSS ANY LOT OR LOTS, WHERE WATER MIGHT TAKE A NATURAL COURSE, IN THE ORIGINAL REASONABLE GRADING OF THE ROADS AND WAYS SHOWN HEREON.

APPENDIX B

FILED
KING COUNTY, WASHINGTON
FEB 25 2011
SUPERIOR COURT CLERK
BY ANDREW T. HARRIS
DEPUTY

HONORABLE RICHARD EADIE

Trial Date: September 13, 2010

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DONALD COLLINGS and BETH COLLINGS, husband and wife,

Plaintiffs,

vs.

CITY FIRST MORTGAGE SERVICES, LLC, a Utah limited liability company f/k/a CITY FIRST MORTGAGE SERVICES, L.C., et al.,

Defendants.

U.S. BANK NATIONAL ASSOCIATION AS TRUSTEE FOR THE GREENPOINT MORTGAGE FUNDING TRUST MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-AR1,

Plaintiff in Intervention,

vs.

DONALD COLLINGS and BETH COLLINGS, husband and wife, et al.,

Defendants in Intervention.

CITY FIRST MORTGAGE SERVICES, LLC, a foreign company,

Third-Party Plaintiff,

vs.

EXECUTIVE TRUSTEE SERVICES, LLC, a foreign company,

Third-Party Defendant

NO. 09-2-13062-1 (SEA)

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON EQUITABLE CLAIMS

ORIGINAL

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SEATTLE, WASHINGTON 98104

THIS MATTER having come on regularly for trial before this court commencing on Monday, September 13, 2010, and the court having heard testimony and argument from the parties, having reviewed the evidence introduced and the Special Interrogatories to the jury, and being fully advised in the premises, and it

APPEARING TO THE COURT that certain claims and defenses presented in this lawsuit are predominately equitable in nature, thereby requiring resolution by the court, the court therefore makes the following findings of fact and conclusion of law:

Findings of Fact

1. In May of 2006, Donald and Beth Collings sold their home in Redmond, Washington, which is the subject of these proceedings, to defendant Robert Paul Loveless, an employee of defendant City First Mortgage Services LLC ("City First"). That property is located at 18110 NE 109th Street in Redmond, Washington (the "Property") and has the following legal description:

> Lot 16, East Valley Heights No. 3, according to the plat thereof, recorded in Vol. 117 of Plats, pages 85 and 86, situate in King County, State of Washington.

2. Defendant Loveless borrowed $459,000 from defendant City First to buy the Collings' home. Defendant Loveless leased the home back to the Collings, who rebated $78,540 of the sale proceeds to Loveless **[Trial Exhibit 9]**. The lease contained Loveless' promise to sell the home back to the Collings at a stated price after three years. It also contained an express restriction prohibiting Loveless from further encumbering the home with debt or obtaining a home equity line of credit (a HELOC).

3. In December of 2006, Loveless violated the prohibition against further encumbering the Property by borrowing $472,500 from defendant City First. This included a refinance loan in the amount of $420,000 (the "Loveless Loan") and a HELOC in the amount of $52,500. The lease contract specifically prohibited the use of a HELOC such that the HELOC entered into by Loveless

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constituted a material breach of the lease. In or about April of 2008, Loveless further repudiated the lease by failing to make mortgage payments on the Loveless Loan.

4. The equitable claims in this lawsuit relate solely to the Loveless Loan.

5. This court has previously quieted title to the Property back into the Collings' name in earlier proceedings in this matter finding the existence of a constructive trust, but reserved ruling on whether a valid and subsisting mortgage interest, if any, could be proven to exist against the Property.

6. Plaintiff in Intervention U.S. Bank National Association, as Trustee for the Greenpoint Mortgage Funding Trust Mortgage Pass-Through Certificates, Series 2007-AR1 ("U.S. Bank") claims that it owns the December 2006 Loveless Loan (both the promissory note (the "Note") and the deed of trust securing it), and seeks in these equitable proceedings to preserve the deed of trust as a security interest superior to all other interests in the Property, including the Collings' constructive trust and title.

7. U.S. Bank contends that it owns the Loveless Loan by virtue of its possession of the Note indorsed in blank on an "allonge."

8. The court finds that U.S. Bank has failed to establish the date on which the alleged endorsement in blank was placed on the allonge or that the endorsement in blank was placed on the allonge with the authority and knowledge of Greenpoint Mortgage Funding Inc., to whom the Note was specially endorsed. The "assignment" from the Mortgage Electronic Registrations Systems, Inc. ("MERS") to U.S. Bank dated July 22, 2009 (recorded September 14, 2009)**[Trial Exhibit 154]**, states that it is transferring both the Note and the deed of trust. **Trial Exhibit 17** further states MERS owned both the Note and the deed of trust before 2009, because in that exhibit, a Notice of Trustee's Sale dated February 6, 2009, MERS states that it has been assigned and as of the date of the notice holds all beneficial interest in the deed of trust.

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9. In November of 2008, the Collings, through their legal counsel, gave written notice of claims by certified mail directed to City First and to MERS, making allegations of illegality of the underlying Loveless Loan transaction. This was done through a letter dated November 17, 2008 **[Trial Exhibit 15]**, which was sent by certified mail and signed for by both a representative of City First and a representative of MERS.

10. MERS rules and regulations require that it transmit any communications regarding mortgage loans to MERS members, including the trustee of the investment trust, U.S. Bank.

11. On March 20, 2009, the Collings recorded a notice of lis pendens in the records of King County, Washington, giving constructive notice to the world of the existence of litigation affecting title to the Property **[Trial Exhibit 18]**.

12. On July 22, 2009, MERS, the nominal beneficiary of the deed of trust executed by Loveless to secure the Loveless Loan, assigned both the Note and the deed of trust to U.S. Bank, as trustee for the Greenpoint Trust **[Trial Exhibit 154]**.

13. U.S. Bank was required by both the Custodial Agreement **[Trial Exhibit 164 at Bates 647-648]** and the Trust Agreement § 201(b) **[Trial Exhibit 156 at Bates 893-896]** to maintain a mortgage origination loan file for each of the mortgage loans in the Greenpoint Trust (Series 2007-1). GMAC maintains scanned copies of the loan files. U.S. Bank therefore had the opportunity to fully review the files before accepting ownership of the Loveless Loan. Such a review would have disclosed the HELOC prohibition which City First (Ms. Russett) testified would have stopped the loan as not being an "arms length transaction."

14. There is insufficient evidence in the record that U.S. Bank did in fact engage in a reasonable inquiry into the Loveless Loan to determine if there were any defects existing regarding the underwriting. U.S. Bank had a duty to inquire as early as February 2007, which would have put U.S. Bank on inquiry notice of the defects in the Loveless Loan. At the time U.S. Bank received the

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assignment of the Note and deed of trust from MERS, U.S. Bank failed to engage in a reasonable inquiry into the Loveless Loan.

15. It was unreasonable for U.S. Bank to rely exclusively on the representations and warranties about the mortgage loans given by Structured Asset Securities Corporation ("SASC") in the Trust Agreement **[Trial Exhibit 156 at § 2.03]** and the Mortgage Loan Sale and Assignment Agreement between SASC and Lehman Brothers **[Trial Exhibit 155 at § 1.04]**, given the absence of sufficient time for the warrantors to evaluate the commercial paper being deposited into the Trust. The alleged transfers of the Note and deed of trust from SASC and Lehman Brothers and then from Lehman Brothers to the Trust each occurred on the same day.

16. U.S. Bank has further failed to prove the chain of ownership of the Loveless Loan (the Note) and the MERS deed of trust sufficient to establish rights as a non-holder in possession entitled to enforce the promissory note, and the court also finds that there is no evidence that the deed of trust was transferred from MERS to U.S. Bank for any value.

17. The court finds that there exist alternative avenues of redress for the true holder of the Note to collect the Loveless Loan. The Trust Agreement **[Trial Exhibit 156]** expressly provides a remedy to U.S. Bank as trustee against Greenpoint Mortgage Funding, Inc. [*see* Section 2.03(*b*), at Bates 899-900], and the evidence shows that Greenpoint still exists in winding up. U.S. Bank has not exercised any of the contractual remedies against Greenpoint provided in the Trust Agreement.

18. U.S. Bank has also failed to establish that the mortgage debt evidenced by the Loveless Loan has not been partially or fully retired by virtue of indemnity obligations contained in the Trust Agreement **[Trial Exhibit 156]** and Servicing Agreement **[Trial Exhibit 182]**, including but not limited to the contractual obligation of the servicer to advance installment payments for Loveless after Loveless defaulted on the Loveless Loan. U.S. Bank has failed to prove that the Loveless Loan is still fully due and payable, or the extent to which the obligation has been retired.

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19. MERS represented, through the initial foreclosure process, that it was the authorized owner of the Loveless Loan (the Note and deed of trust). But when enjoined from proceeding with foreclosure, MERS assigned the Loveless Loan to U.S. Bank. MERS was never the owner of the Note, however. The deed of trust encumbering the Property was separated from the Note.

20. Based on the above findings, the court further finds that in the interests of justice and fairness, the preliminary injunction barring further foreclosure of the mortgage note against the Collings home should become a permanent injunction.

Conclusions of Law

21. Equity controls the determination of the claims and defenses alleged in this lawsuit relating to U.S. Bank's Complaint for Declaratory Relief regarding foreclosure of the Loveless note and deed of trust.

22. U.S. Bank has not proved it is the holder in due course of the Loveless Loan.

23. U.S. Bank is not a non-holder in possession of the Loveless Loan given its failure to establish the chain of title for the mortgage loan.

24. U.S. Bank is not a bona fide purchaser for value or bona fide encumbrancer of the Loveless Loan. Mr. Loveless held the Property in constructive trust for the Collings that is superior to the lien interest claimed by U.S. Bank.

25. U.S. Bank, MERS and First American should be and hereby are permanently enjoined from taking any action to foreclose the Loveless deed of trust against the Property.

26. Defendant Robert Paul Loveless and his spouse were properly sued and served in this action, and failed to appear at trial. Any claim that defendant Loveless may have had against the Collings relating to or arising from the core of operative facts in this litigation is a mandatory counterclaim. Robert Paul Loveless has waived all such claims by his failure to plead such a counterclaim or to appear at time of trial.

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27. The Collings have not been unjustly enriched and have not experienced a "wind fall."

28. The balance of the equities do not support imposition of an equitable lien in favor of U.S. Bank against the Property.

29. Title to the Property should be and is hereby permanently quieted in plaintiffs Collings against all claimants of record.

DONE IN OPEN COURT this 25th day of February, 2011.

Richard D Eadie
JUDGE RICHARD EADIE

Presented by:

SMYTH & MASON, PLLC

By: _____
Jeff Smyth, WSBA #6291
Shaunta Knibb, WSBA #27688
Attorneys for Plaintiffs/Defendants in Intervention Collings

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Attorneys for Defendants, First American Title Insurance Company, "MERS" Mortgage Electronic Registration Systems, Inc., and for Intervenor U.S. Bank National Association As Trustee for the Greenpoint MortgageFunding Trust Mortgage Pass-Through Certificates, Series 2007-AR1

Copy Received:

By: _____
Andrew Mullen, *Pro Se* Defendant

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APPENDIX C

FILED
KING COUNTY, WASHINGTON

SEP 21 2010

SUPERIOR COURT CLERK
BY ANDREW T. HAVIS
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

DONALD and BETH COLLINGS Plaintiffs, vs. CITY FIRST MORTGAGE SERVICES, et al. Defendants.	)	NO. 09-2-13062-1 SEA

SPECIAL INTERROGATORIES TO THE JURY

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ORIGINAL

WE THE JURY hereby respond to the following special questions presented to it by the court. (At least five of you must agree on each answer, but the same five need not agree on every answer):

QUESTION NO. 1: Does U.S. Bank have any alternative way to collect on the $420,000 promissory note other than through a foreclosure of the real property at 18110 N.E. 109th Street, Redmond, Washington?

[X] YES

[ ] NO

[ ] UNDECIDED

QUESTION NO. 2: Has U.S. Bank, in its capacity as trustee, proven by a preponderance of the evidence that Robert Paul Loveless cannot repay the debt represented by the $420,000 promissory note?

[X] YES

[ ] NO

[ ] UNDECIDED

QUESTION NO. 3: Has the ownership of the $420,000 promissory note signed by Robert Paul Loveless [EXHIBIT 151] and the deed of trust securing that promissory note been intentionally split between to two or more separate owners at any time?

[ ] YES

[X] NO

[ ] UNDECIDED

QUESTION NO. 4: Did U.S. Bank, in its capacity as trustee, have knowledge of or information available to it of facts sufficient to cause an ordinarily prudent person to investigate the $420,000 mortgage loan?

[ ] YES

[X] NO

[ ] UNDECIDED

QUESTION NO. 5. Did U.S. Bank, in its capacity as trustee, conduct any inquiry of or into the $420,000 mortgage loan?

[X] YES

[ ] NO

[ ] UNDECIDED

QUESTION NO. 6. Did U.S. Bank have knowledge that the property located at 18110 N.E. 109th Street, Redmond, Washington was in the possession of someone other than Robert Paul Loveless?

[X] YES

[ ] NO

[ ] UNDECIDED

QUESTION NO. 7. Has U.S. Bank, in its capacity as trustee, proven by a preponderance of the evidence that the "allonge" to the $420,000 promissory note [EXHIBIT 151] was at all times physically attached to the note?

[ ] YES

[X] NO

[ ] UNDECIDED

QUESTION NO. 8: Has U.S. Bank, in its capacity as trustee, proven by a preponderance of the evidence that the $420,000 promissory note [EXHIBIT 151] was actually endorsed in blank by Greenpoint Mortgage Funding Inc.?

[X] YES

[ ] NO

[ ] UNDECIDED

QUESTION NO. 9. *If you answered Question No. 8 "Yes", has U.S. Bank, in its* capacity as trustee, proven by a preponderance of the evidence the date on which Greenpoint Mortgage Funding, Inc. endorsed the $420,000 promissory note [EXHIBIT 151]?

[ ] YES

[X] NO

[ ] UNDECIDED

QUESTION NO 10. If you answered Question No. 8 "Yes", what was the date on which Greenpoint Mortgage Funding Inc. endorsed the $420,000 promissory note [EXHIBIT 151]?

[ ] DATE: _____

[ ] UNDECIDED

QUESTION NO 11. Has U.S. Bank, in its capacity as trustee, proven by a *preponderance of the evidence, the date upon which it took physical possession of the* $420,000 promissory note [EXHIBIT 151]?

[X] YES

[ ] NO

[ ] UNDECIDED

QUESTION NO 12. If you answered Question No. 11 "Yes", what was the date on which U.S. Bank, as trustee, took physical possession of the promissory note [EXHIBIT 151]?

[X] DATE: 2/27/07

[ ] UNDECIDED

QUESTION NO. 13: Did U.S. Bank, in its capacity as trustee, prove by a preponderance of the evidence that it knew nothing about the Collings' claims when it took physical possession of the promissory note evidencing the $420,000 mortgage loan?

[X] YES

[ ] NO

[ ] UNDECIDED

QUESTION NO. 14: Did U.S. Bank, in its capacity as trustee, give value for the $420,000 mortgage loan?

[X] YES

[ ] NO

[ ] UNDECIDED

SIGNED: PRESIDING JUROR

DATED: 9/21/10