No. 319440

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

MAUREEN M. ERICKSON

Appellant,

vs.

ONEWEST BANK, FSB

Respondent

OPENING BRIEF OF RESPONDENT ONEWEST BANK, FSB

Submitted By:
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I. STATEMENT OF THE CASE

A. Factual History.

On August 27, 2007, Shelley Bruna ("Bruna") was duly appointed as Conservator for Bill E. McKee ("McKee"), by the District Court of the First Judicial District of the State of Idaho in the County of Shoshone. CP 15. On September 18, 2007, the Letters of Conservatorship were recorded under Spokane County Auditor's File No. 5588750. *Id.*

On October 25, 2007, Bruna executed a promissory note (the "Note") on McKee's behalf, and payable to Financial Freedom Senior Funding Corporation ("Financial Freedom"), a subsidiary of IndyMac Bank, FSB. CP 29. A Deed of Trust recorded on October 30, 2007 secured repayment of the Note, in the maximum principal sum of $398,587.65, and encumbered certain real property located in Spokane County (the "Property"). CP 30, 33.

On January 28, 2008, the Spokane County Superior Court entered a Judgment awarding all right, title, and interest in the Property to Appellant Maureen Erickson ("Erickson"). CP Sub 1 at 12. The Judgment was entered *nunc pro tunc*, retroactive to August 22, 2007, but it was not recorded with the Spokane County Auditor until February 22, 2008. CP Sub 1 at 15.

On October 2, 2009, for notice purposes, an Assignment of Deed of Trust in favor of Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for Financial Freedom Acquisition LLC and its successors and assigns was recorded with the Spokane County Auditor. CP Sub 1 at 39.

On March 12, 2011, McKee passed away and, under the terms of the Note and Deed of Trust, the loan thereby became due. CP 158; *See* also CP Sub 1 at 24-26, CP

Sub 1 at 27-36. On December 8, 2011, a Quit Claim Deed transferring McKee's interest in the Property to Erickson was recorded with the Spokane County Auditor. CP Sub 1 at 11.

On February 3, 2012, for notice purposes, an Assignment of Deed of Trust in favor of OneWest Bank, FSB ("OneWest") was recorded with the Spokane County Auditor. CP Sub 1 at 40.

B. Procedural History.

On March 8, 2012, Respondent OneWest Bank, FSB ("OneWest") filed an action for Deed of Trust Foreclosure in the Spokane County Superior Court. CP Sub 1 at 1. On or about July 29, 2012, Erickson was served with the Summons and Complaint. *Id.* at 4. On January 11, 2013, Erickson answered the Complaint. CP Sub 33 at 1.

On May 22, 2013, OneWest moved for summary judgment. CP 1-13. Erickson's response "memorandum" to OneWest's motion suggested that she should receive summary judgment instead. CP 63. On August 16, 2013, Superior Court Judge Tari Eitzen denied Erickson's motions to strike certain pleadings and granted OneWest's motion for summary judgment. CP 188-189. This appeal followed.

II. RESPONSE TO ASSIGNMENTS OF ERROR

1. The trial court did not err in granting summary judgment to OneWest as a bona fide mortgagee entitled to enforce a valid Deed of Trust.

2. As a consequence of the trial court's proper ruling, Erickson's ostensible request for summary judgment was rendered moot, but should have been denied in any event.

III. RESPONSE ARGUMENT

A. Standard of Review.

An order granting summary judgment is reviewed *de novo*, with the Court of Appeals engaging "in the same inquiry as the trial court." *Beaupre v. Pierce County,* 161 Wn.2d 568, 571, 166 P.3d 712 (2007). However, this Court may affirm the ruling below on any ground supported in the record, "even if the trial court did not consider the argument." *King County v. Seawest Inv. Associates, LLC*, 141 Wn.App. 304, 310, 170 P.3d 53, 56 (2007), *citing LaMon v. Butler,* 112 Wn.2d 193, 770 P.2d 1027 (1989). Summary judgment is proper if the pleadings, depositions, answers to interrogatories, and admissions, together with affidavits, show no genuine issue of material fact and thus, the moving party is entitled to judgment as a matter of law. *See* CR 56(c); *see also Knox v. Microsoft Corp.*, 92 Wn.App. 204, 962 P.2d 839 (1998), *rev. denied*, 137 Wn.2d 1022, 980 P.2d 1280 (1999); *Vacova Co. v. Farrell*, 62 Wn.App. 386, 814 P.2d 255 (1991). With the motion, the Court can consider "supporting affidavits and other admissible evidence based on personal knowledge." *Id.*

If the moving party demonstrates that an issue of material fact is absent, the nonmoving party must then articulate specific facts establishing a genuine issue for trial. *See Young v. Key Pharm., Inc.,* 112 Wn.2d 216, 770 P.2d 182 (1989); *see also* CR 56(e) ("an adverse party may not rest upon the mere allegations or denials of his pleading, but… must set forth specific facts showing that there is a genuine issue for trial."). A genuine issue of material fact does not exist where insufficient evidence exists for a reasonable fact-finder to find for the non-moving party. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505 (1986).

Unsupported conclusory allegations, or argumentative assertions, are insufficient to defeat summary judgment. *See Vacova Co. v. Farrell, supra., citing Blakely v. Housing Auth. of King Cy.,* 8 Wn.App. 204, 505 P.2d 151, *review denied,* 82 Wn.2d 1003 (1973), *Stringfellow v. Stringfellow,* 53 Wn.2d 639, 335 P.2d 825 (1959); *see also Trimble v. Wash. State Univ.*, 140 Wn.2d 88, 93, 993 P.2d 259 (2000). "Ultimate facts, conclusions of fact, or conclusory statements of fact are insufficient to raise a question of fact." *Id., citing Grimwood v. University of Puget Sound, Inc.,* 110 Wn.2d 355, 753 P.2d 517 (1988); *see also Baldwin v. Sisters of Providence in Wash., Inc.,* 112 Wn.2d 127, 769 P.2d 298 (1989). Summary judgment is appropriate if, after considering the evidence, reasonable persons could reach only one conclusion. *See Hansen v. Friend,* 118 Wn.2d 476, 824 P.2d 483 (1992), *Wilson v. Steinbach,* 98 Wn.2d 434, 656 P.2d 1030 (1982).

Here, Erickson failed to advance a genuine issue of material fact precluding OneWest from receiving summary judgment. As such, the trial court's order should be affirmed for the reasons set forth below.

B. OneWest's Evidence in Support of Summary Judgment was Admissible.

Erickson initially challenges the admissibility of an Order attached to the Third Declaration of Counsel in support of summary judgment, and the documents attached to the July 5, 2013 Affidavit of Rudy Lara in support of summary judgment (filed on August 2, 2013). Brief of Appellant at 14; *cf.* CP 105-112, 150-168.

As a threshold matter, Erickson's argument with respect to the Third Declaration of Counsel was procedurally improper. Erickson included a "Motion to Strike" in her Reply Brief, although CR 56 does not contain a provision permitting a party to object to

an affidavit unless it is made in bad faith. CP 177-182; *see also* CR 56(g). Rather, the controlling Court Rule governing motions to strike is CR 12(f), which provides:

> [u]pon motion made by a party *before responding to a pleading or, if no responsive pleading is permitted* by these rules, upon motion made by a party *within 20 days after the service of the pleading* upon him or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. (Emphasis added.)

Erickson did not object to the Third Declaration of Counsel "filed by OneWest on June 20, 2013" until her reply brief dated August 6, 2013. *Compare* CP 105-112, CP 177-187. Thus, she procedurally failed to raise a proper challenge to the Idaho Order at issue. CP 108-112.

Second, an attorney's sworn declaration in support of summary judgment should be "entitled to the same consideration as that of any other affidavit based upon testimonial knowledge." *Meadows v. Grant's Auto Brokers*, 71 Wn.2d 874, 880, 431 P.2d 216 (1967). Washington courts can "take judicial notice of the record in the cause presently before it *or* in *proceedings engrafted, ancillary, or supplementary to it*." *Swak v. Dep't of Labor & Indus.*, 40 Wn.2d 51, 53, 240 P.2d 560 (1952) (emphasis added); *accord* CR 44(c) (alternative means of authenticating public records allowed). OneWest's counsel supplied a copy of the Idaho District Court's Order in an ancillary case involving borrower McKee, signed by Erickson herself, and directing the facilitation of a reverse mortgage on the very same Property that became subject to OneWest's foreclosure proceeding. CP 108-112; *see also* CP Sub 1 at 35 (Deed of Trust signed pursuant to the Order).

Third, as to the July 25, 2013 Lara Declaration, "[a]ffidavits and declarations supporting and opposing a motion for summary judgment 'must be made on personal

knowledge, set forth facts that would be admissible in evidence, and show that the affiant is competent to testify on the matter." *Nat'l Union Ins. Co. v. Puget Power*, 94 Wn.App. 163, 178, 972 P.2d 481 (1999); *see also Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355, 359, 753 P.2d 517 (1988); CR 56(e). "[T]he requirement of personal knowledge imposes only a 'minimal' burden on a witness; if reasonable persons could differ as to whether the witness had an adequate opportunity to observe, the witness's testimony is admissible'." *Schultz v. Wells Fargo Bank, NA*, 2013 WL 4782157 (D. Or. Sept. 5, 2013), *citing Strong v. Valdez Fine Foods*, 2013 WL 3746097, * 1 (9th Cir. July 18, 2013), *quoting* 1 *McCormick on Evidence* § 10 (Kenneth S. Broun, 7th ed. 2013); *see also Nader v. Blair*, 549 F.3d 953, 963 (4th Cir. 2008) (custodian of records can speak from personal knowledge as to whether certain documents are admissible business records for purposes of summary judgment, even when not involved in their creation).

Here, OneWest Assistant Secretary Lara states that he "personally examined the business records relating to the subject 'reverse mortgage' loan," and then goes on to describe a number of records in OneWest's possession. CP 150-168. The July 25, 2013 Lara Declaration meets the requirements of CR 56(e) and was properly admitted.

Fourth, as to documents originally in the possession of Financial Freedom, Erickson concedes that Financial Freedom was a subsidiary of IndyMac Bank, F.S.B. CP 55 at ¶ 9, CP 183 (Financial Freedom was "OneWest's predecessor"). On July 11, 2008, the Office of Thrift Supervision closed IndyMac Bank, F.S.B., and created a new conservatorship bank, IndyMac Federal Bank, FSB. *Areebuddin v. OneWest Bank,* 2010 WL 1229233, *1 (E.D. Va. Mar. 24, 2010) (discussing when and how OneWest acquired

the assets of IndyMac).[1] The Federal Deposit Insurance Corporation (FDIC) operated IndyMac Federal Bank, FSB. *Id.* OneWest acquired the assets of IndyMac Federal Bank, FSB and commenced banking operations on March 19, 2009. *Id.*

Regardless of whether the exhibits to the July 25, 2013 Lara Declaration were prepared prior to the acquisition of IndyMac's assets, they all ultimately became part of OneWest's business records, and their admission was proper.[2]

C. The Deed of Trust was Properly Executed and Legally Enforceable.

1. Erickson Lacks Standing to Contest the Notarization of the Deed of Trust.

"The doctrine of standing prohibits a litigant from asserting another's legal right." *West v. Thurston County*, 144 Wn.App. 573, 578, 183 P.3d 346 (2008), *citing Miller v. U.S. Bank of Wash., NA*, 72 Wn.App. 416, 424, 865 P.2d 536 (1994). In this case, Erickson raised a challenge to the Deed of Trust executed on her father's behalf. CP 62. Deeds of trust do not convey any ownership interest or right to possession of the property being secured as collateral. *See* RCW 7.28.230(1); *State v. Superior Court for King Cnty.*, 170 Wash. 463, 467 (1932); *see also Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 92, 285 P.3d 34 (2012); *Helbling Bros., Inc. v. Turner*, 14 Wn.App. 494, 496-97, 542 P.2d 1257 (1975); *John Davis & Co. v. Cedar Glen No. Four, Inc.*, 75 Wn.2d 214, 221-

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[1] The United States District Court for the Central District of California also has recognized the sale of assets from IndyMac Federal Bank, FSB to OneWest. *See XL Specialty Ins. Co. v. Perry*, 2012 WL 3095331 (C.D. Cal. Jun. 27, 2012). *See also Areebuddin*, at ftnte. 3 ("The sale agreement between OneWest and the FDIC is available publicly."); http://www.fdic.gov/about/freedom/IndyMacMasterPurchaseAgrmt.pdf, "Master Purchase Agreement;" http://www.fdic.gov/about/freedom/IndyMacLoanSaleAgrmt.pdf, "Loan Sale Agreement."

[2] Regardless, as the trial court noted: "in the alternative, if those exhibits should be stricken, this Court would have reached the same conclusion. They are not critical to the result." CP 189.

22, 450 P.2d 166 (1969) (deed of trust creates a lien against the property it describes).[3]

But Erickson was not a party to the Deed of Trust in question; rather, she acquired title to the Property either through a court order entered on January 28, 2008, or a quit claim deed recorded on December 8, 2011. CP Sub 1 at 11, 12. Indeed, a grantor retains title to the property until delivery of the sheriff's deed to the purchaser after a sheriff's sale. *See Kezner v. Landover* Corp., 87 Wn.App. 458, 463, 942 P.2d 1003 (1997), *review denied*, 134 Wn.2d 1020, 958 P.2d 316 (1998); RCW 61.12.060; *but see* RCW 61.24.090 (non-borrower may cure default caused by failure to pay obligation; not applicable here).

Erickson readily admits that she "was not a party to the Deed of Trust...." Brief of Appellant at 18. As such, Erickson should not be permitted to assert an argument that the Deed of Trust contained a "deficient" acknowledgment when she had no role in the security instrument's execution. *See, e.g., Barnhart v. Fidelity Nat. Title Ins. Co.*, 2013 WL 5739023, *2 (E.D. Wash. Oct. 2, 2013) (daughter of borrower had no Deed of Trust Act claim where she was not party to the loan agreement); *Brummett v. Washington's Lottery*, 171 Wn.App. 664, 288 P.3d 48 (2012) (non-party and non-third party beneficiary to contract may not assert breach); *but see GLEPCO, LLC v. Reinstra*, 175 Wn.App. 545, 558, 307 P.3d 744 (2013) (successor in interest to deed of trust itself has standing to assert reformation). Erickson's arguments concerning the Deed of Trust notarization should be precluded based on a lack of standing.

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[3] The State Supreme Court has held: "[i]n transactions involving both notes and mortgages, the notes represent the debts, the mortgages security for payment of the debts. Either may be the basis of an action." *Am. Fed. Sav. & Loan Ass'n of Tacoma v. McCaffrey,* 107 Wn.2d 181, 189, 728 P.2d 155 (1986).

2. Even if Erickson Can Challenge the Deed of Trust's Validity, There is Nothing Deficient About Its Notarization.

Erickson argues that the provisions in RCW 42.44 *et seq.* require an acknowledgment that a signor *must* have appeared before a notary public. Brief of Appellant at 17. But under Washington law, notaries "determine and certify," based upon "personal knowledge or satisfactory evidence," that the person making an acknowledgement or verification upon oath or affirmation "is the person whose true signature is on the document." RCW 42.44.080(1), RCW 42.44.080(3).

Under RCW 64.08.050, a notary's certificate:

> [s]hall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents.

A notary is determined to have such "satisfactory evidence" of identification if the person is either personally known to the notary, identified upon oath or affirmation of a credible witness personally known to the notary, or "identified on the basis of identification documents." RCW 42.44.080(8). The notary's affirmation of personal knowledge or proof of identity of the person signing the document establishes "prima facie evidence of the facts recited therein." RCW 64.08.050; *see also Whalen v. Lanier*, 29 Wn.2d 299, 308, 186 P.2d 919 (1947) ("The statutory presumption which attaches to a properly accomplished notarial or other certificate of acknowledgement can be overcome only by evidence that is clear and convincing.").

But even if Erickson was correct that the Deed of Trust contained a deficient acknowledgment, only a forged deed is unenforceable, while a falsely acknowledged

deed remains valid between the parties. *See, e.g.*, *Werner v. Werner*, 84 Wn.2d 360, 526 P.2d 370 (1974); *Meyers v. Meyers*, 81 Wn.2d 533, 503 P.2d 59 (1972); *Peoples Nat'l Bank v. Ostrander*, 6 Wn.App. 28, 33, 491 P.2d 1058 (1971); *Eggert v. Ford*, 21 Wn.2d 152, 160, 150 P.2d 719 (1944); *Fidelity & Cas. Co. v. Nichols*, 124 Wash. 403, 404, 214 P. 820 (1923) (no appearance before notary; deed remained valid); *Ehlers v. United States Fid. & Guar. Co.*, 87 Wash. 662, 152 P. 518 (1915).

Washington has a curative statute directly addressing deeds with a defective acknowledgment:

> [a]n instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force.

RCW 65.08.030. Thus, recordation of an improperly acknowledged deed still results in its validity and enforceability.

The common law supports this conclusion as well. In *Ockfen v. Ockfen*, a signor (later decedent) "did not appear before or talk to the notary who signed the acknowledgment [of a quitclaim deed], although he knew her signature." 35 Wn.2d 439, 440, 213 P.2d 614 (1950). The signor's children challenged her failure to appear and acknowledge the deed's execution. *Id.* The Supreme Court rejected their claim and held: "[w]e have frequently held an unacknowledged deed good as between the grantor and the grantee.... And such a deed is likewise good where the controversy is between the heirs of the grantor and the grantee." *Id.* at 441.

In this case, the Deed of Trust recites that the notary "*knows or has satisfactory evidence*" that "Bill E. McKee by Shelley Bruna, as his Conservator *signed* this instrument and *acknowledged* it to be *the free and voluntary act* for the uses and purposes mentioned in the instrument." CP Sub 1 at 35 (emphasis added). The notary certification is also dated. *Id.* This follows all of the requirements in RCW 64.08.050.

The absence of language regarding physical appearance does not rebut the statutory presumption favoring validity of the notarization, and Erickson failed to provide adequate evidence to rebut this presumption. Even in a light most favorable to Erickson's argument, however, the Deed of Trust was legally effective and enforceable upon its recordation. *See, e.g.*, RCW 65.08.030. In sum, the notary's acknowledgment at issue was not defective and the Property was subject to the Deed of Trust.

D. A Deed of Trust Follows the Note as a Matter of Law.

If a promissory note is payable to bearer, it is negotiated by transfer of possession alone. RCW 62A.3-201. If a note is payable to an identified person, negotiation requires transfer of possession of the instrument and its indorsement by the holder. *Id.* This may be either a special indorsement, which identifies a person to whom the note is now payable, or a blank indorsement that makes the note bearer paper. RCW 62A.3-109.[4]

The party to whom the note is payable may be changed after its issuance through the process of negotiation. "Negotiation" means a transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person

[4] Even where possession of the note is not accompanied by an indorsement, holder status can also be established "by proving the transaction by which [a party] acquired" the instrument. *See* RCW 62A.3-203(b), cmt. 2 (providing example of where transferor does not indorse the note, but nonetheless the person entitled to enforce the note can "account for possession of the unindorsed note by proving the transaction through which the transferee acquired.").

who thereby becomes its holder. RCW 62A.3-201(a).

After negotiation of a note, the holder possesses the right to enforce it, as well as the right to enforce any instrument securing the note's repayment (like a deed of trust). *See Carpenter v. Longan*, 83 U.S. 271, 275, 21 L. Ed. 313 (1872) ("The transfer of the note carries with it the security, without any formal assignment or delivery, or even mention of the latter.... All the authorities agree that the debt is the principal thing and the mortgage an accessory."). This concept is well-settled under Washington law and also described in cases from many other jurisdictions.[5]

Washington law further provides that a deed of trust pledges property as collateral for repayment of the debt owed. RCW 62A.9A-102(55).[6] After default, a secured party may exercise its rights under a deed of trust with respect to any property securing the obligation.[7] RCW 61.24.100(8) provides that a deed of trust may be foreclosed upon in the same manner as a real property mortgage – in other words, via judicial foreclosure. *See also* RCW 61.12.020, RCW 61.12.040, RCW 61.12.060.[8]

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[5] *See, e.g., Kennebec, Inc. v. Bank of the West*, 88 Wn.2d 718, 724-25, 565 P.2d 812, 816 (1977) ("the territorial legislature of 1869... provided that, 'a mortgage of real property shall not be deemed a conveyance so as to enable the owner of the mortgage to recover possession of the real property without a foreclosure and sale according to law,' and since such enactment a mortgage executed in this state, whatever its terms, has been merely a security incident to, and for the payment of, the principal debt.").

[6] Per the statute's official comment, "[u]nder Washington property law, the definition of 'mortgage'... encompasses deeds of trust and real estate contracts as well as traditional mortgages, but does not include an ownership interest." Title to the collateral is irrelevant. *See* RCW 62A.9A-202.

[7] "The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also an attachment of a security interest in the security interest, mortgage or other lien." RCW 62A.9A-203(g). "Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right." RCW 62A.9A-308(e).

[8] "Mortgage means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation." Per the statute's official comment, "[u]nder Washington property law, the definition of 'mortgage' in subsection (55) encompasses deeds of trust and real estate contracts as well as traditional mortgages, but does not include an ownership interest." Title to the collateral is irrelevant under RCW 62A.9A-202.

E. The Assignments of Deed of Trust Were Immaterial to OneWest's Authority as Note Holder to Receive a Decree of Foreclosure.

1. The Assignments Did Not Convey a Beneficial Interest in the Debt and Erickson was Not a Party to Them.

The purpose of an Assignment of Deed of Trust "is to put parties who subsequently purchase an interest in the property on notice of which entity owns a debt secured by the property." *Corales v. Flagstar Bank, FSB*, 822 F.Supp.2d 1102 (W.D. Wash. 2011), *citing* RCW 65.08.070. The purpose of an Assignment is for the benefit of the parties and to provide notice in the county records. *See Williams v. Wells Fargo Bank, N.A.*, 2012 WL 72727 (W.D. Wash. Jan. 10, 2012), *Fed. Nat. Mortg. Ass'n v. Wages*, 2011 WL 5138724 (W.D. Wash. Oct. 28, 2011), *St. John v. Nw. Tr. Servs., Inc.*, 2011 WL 4543658 (W.D. Wash. Sept. 29, 2011) ("Washington State does not require recording of such transfers and assignments.").

But even if the Assignments at issue had relevance to foreclosure, they were only agreements between Financial Freedom and MERS, or later between MERS (as nominee for Financial Freedom and Financial Freedom's successor) and OneWest. *Accord Salmon v. Bank of Am. Corp.*, 2011 WL 2174554, *8 (E.D. Wash. May 25, 2011) ("there is no basis for the Court to find that the [borrowers'] rights under the First Deed of Trust were affected by the recording of the [MERS] Corporation of Assignment of Deed.").

By contrast, Erickson was neither a party nor third-party beneficiary to either Assignment, and she lacks standing to undermine the execution of those documents. *See, e.g., Brummett v. Washington's Lottery, supra.* at 678; *Ukpoma v. U.S. Bank, N.A.*, 2013 WL 1934172, *4 (E.D. Wash. May 9, 2013) (citing cases); *Osediacz v. City of Cranston*, 414 F.3d 136, 140 (1st Cir. 2005) (there is a "general prohibition on a litigant raising

another person's legal rights.").[9] Erickson's lack of standing to contest the Assignments' validity is recognized by long-standing Washington law, which holds it is reversible error to find that a non-party to a contract has standing to challenge it. *Newport Yacht Basin Ass'n of Condo. Owners v. Supreme Nw., Inc.*, 168 Wn.App. 56, 80, 277 P.3d 18 (2012) (reversible error to hold stranger to contract had standing to challenge); *McGill v. Baker*, 147 Wash. 394, 266 P. 138 (1928) (only party to an assignment can question its validity).

In *Brodie v. Northwest Trustee Services, Inc.*, 2012 WL 6192723 (E.D. Wash. 2012), The United States District Court for the Eastern District of Washington agreed that even a *borrower* lacks standing to attack an assignment (by MERS in that case) because the borrower was not a party to it and thus could not be injured by it. *Id.* at *2-*3 (citing cases). The Court wrote: "[a]t bottom, the alleged misconduct [surrounding assignments] had no bearing whatsoever upon Plaintiff's obligation to make h[is] mortgage payments. Thus, ... these allegations fail to state a claim as a matter of law." *Id.* at *3.

Likewise, the Western District of Washington also recently recognized that "there is ample authority that borrowers, as third parties to the assignment of their mortgage... cannot mount a challenge to the chain of assignments unless a borrower has a genuine claim that they are at risk of paying the same debt twice if the assignment stands." *Borowski v BNC Mortg. Inc.*, 2013 WL 4522253, *5 (W.D. Wash. Aug. 27, 2013); *see also In re The Prussia*, 100 F. 484, 488 (C.C.N.D. Wash. 1900) (non-party may not assert invalidity of assignment).

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[9] Instead, even if the Assignments were executed without authority, they would not be void, but voidable upon the *principal's* election. *See, e.g.*, Restatement (2d) of Contracts §7 (principal is free to affirm or to disavow the unauthorized promises of its agent, and thus contracts entered into by the agent acting beyond the scope of his authority are not void but are voidable by the principal). No evidence exists here that such result was intended with respect to either Assignment.

But in Washington, a borrower is *never* at risk of paying twice based on an assignment because the "recording of an assignment of a mortgage is not in itself notice to the mortgagor, his or her heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage." RCW 65.08.120; *see also Stansbery v. Medo-Land Dairy*, 5 Wn.2d 328, 337, 105 P.2d 86 (1940) (payment to prior creditor satisfies obligation absent actual notice to debtor of assignment). In this case, Erickson is not even the borrower; rather, she is a third-party stranger to the Deed of Trust and cannot challenge notice of its assignment.

Assignments are simply not a prerequisite to a lawful foreclosure in Washington (judicial or non-judicial), and Erickson is incorrect about their effect.

2. The Role of MERS in the Assignments.

The Ninth Circuit Court of Appeals engaged in a detailed explanation of MERS in *Cervantes v. Countrywide Home Loans, Inc.*; the Court stated:

> MERS is a private electronic database, operated by MERSCORP, Inc., that tracks the transfer of the 'beneficial interest' in home loans, as well as any changes in loan servicers.... Many of the companies that participate in the mortgage industry – by originating loans, buying or investing in the beneficial interest in loans, or servicing loans – are members of MERS and pay a fee to use the tracking system.

656 F.3d 1034, 1038 (9th Cir. 2011), *citing Jackson v. Mortg. Elec. Registration Sys.*, 770 N.W.2d 487, 490 (Minn. 2009).[10] "[M]ost of the actions taken in MERS's own name

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[10] MERS has the right to assign its interest in a deed of trust as a nominee for the Note holder. *See Old Nat'l Bank v. Arneson*, 54 Wn.App. 717, 776 P.2d 145 (1989), *rev. den'd*, 113 Wn.2d 1019, 781 P.2d 1321 (1989) ("contract rights are assignable unless forbidden by statute or otherwise violative of public policy."); *see also Wilson v. Bank of Am.*, 2013 WL 275018, *8-*9 & n. 9 (W.D. Wash. Jan. 24, 2013) (rejecting fraud claim based on MERS assignment: "The [Supreme Court in *Bain v. Metro. Mortg. Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012)] did not state... that MERS is incapable of transferring its interest in a deed of trust...."); *Oriental Realty Co. v. Taylor*, 69 Wash. 115, 120, 124 P. 489 (1912) (if the assignee "at that time was a mere agent authorized to... acquire lands to be held in the name of Taylor, he was an agent with an interest in the property.... It made no difference therefore which held the legal title" to the property; the assignee's "interest in the property was clearly an assignable interest.").

are carried out by staff at the companies that sell and buy the beneficial interest in the loans." *Id.* at 1040. *See Rosa v. MERS, Inc.*, 821 F.Supp.2d 423, 429 (D. Mass. 2011) ("In order to facilitate the assignment of mortgages, MERS typically designates signing authority to employees of its member firms, pursuant to corporate resolutions."); *Bain v. Metropolitan Mortg. Grp., Inc.*, 2010 WL 891585 (W.D. Wash. Mar. 11, 2010).

MERS does not hold promissory notes; to the contrary:

> MERS simply holds the security deed as nominee for the actual owner of the promissory note and security deed. It is common these days for mortgage loans (as well as other loans) to be bought and sold several times during the life of a loan. *MERS simply acts as the record title holder of the security deed* so that transfers and assignments do not have to be filed in the appropriate superior court clerk's office each time the loan is sold or transferred from one note holder to the next. *MERS is never the lender*. Rather, it acts as the nominee of the lender to hold the security deed.

Copelan v. Elite Lending Partners, 2013 WL 2452695, n.1 (M.D. Ga. June 5, 2013) (emphasis added).[11]

As stated above, enforceability of a promissory note is based on negotiation, and a deed of trust securing the note follows incident to that debt. *See, e.g., Kennebec, Inc. v. Bank of the West, supra.* at 724-25; RCW 62A.3-201. The Western District of Washington addressed this fact in response to claims of a lack of authority to foreclose:

> Plaintiff's claims arise from a fundamental misunderstanding of the law. [The bank] is the beneficiary of the deed because it holds Plaintiff's note, not because MERS assigned it the deed.
>
> [...]

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[11] MERS does not collect mortgage payments or engage in collection activity with borrowers. *See* http://www.mersinc.org/about-us/faq, "MERS FAQ" ("Does MERS collect mortgage payments from borrowers? No. MERS, MERSCORP Holdings or the MERS® System do not service mortgages. Mortgage lenders, or other mortgage servicing companies, collect payments from borrowers and manage their loans.").

> In sum, possession of the note makes [the bank] the beneficiary; the assignment merely publicly records that fact. Because [the bank] is the proper beneficiary, it is empowered to initiate foreclosure following Plaintiff's default.

Lynott v. MERS, Inc., 2012 WL 5995053, *2 (W.D. Wash. Nov. 30, 2012). An Assignment of Deed of Trust to MERS – or any other entity – does not make one a note holder or grant one authority to initiate foreclosure (judicial or non-judicial) in Washington.

Plaintiff contends, however, that because the Assignment from Financial Freedom to MERS mentions the Note, it effectively transferred the Note and OneWest never became its holder. Brief of Appellant at 19, *citing In re United Home Loans, Inc.*, 71 B.R. 885, 889 (Bankr. W.D. Wash. 1987).[12] Even if this argument is accurate (and OneWest contends it is not), RCW 62A.3-201(a) clearly defines "negotiation" as a "transfer of possession, whether voluntary or involuntary, of an instrument by a person other than the issuer to a person who thereby becomes its holder. The holder of a note indorsed in blank "has the legal right to foreclose on the deed of trust, even if it obtained the loan illegally." *McMullen v. JPMorgan Chase Bank*, 2013 WL 6096503 (E.D. Wash. Nov. 20, 2013), *citing* RCW 62A.3-301.

Because the Note in question was indorsed in blank, the transfer of its possession to OneWest granted the right of enforcement to OneWest as well. *See* RCW 62A.3-203,

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[12] This Court has applied *In re United Home Loans* in "[i]n a dispute between two claimants...," and has required the transferee to "offer proof of acquisition." *Metro. Mortg. & Sec. Co. v. Becker*, 64 Wn.App. 626, 630, 825 P.2d 360 (1992). But Erickson was not a claimant with respect to the Note, and MERS did not possess it or seek to enforce it. The United States District Court for the District of Idaho has also referenced *In re United Home Loans*, but states that "evidence of intent to assign the note *might* be sufficient" to evidence transfer. *Armacost v. HSBC Bank USA*, 2011 WL 825151, *36 (D. Idaho Feb. 9, 2011), *citing* 59 C.J.S. Mortgages § 359 (1949)("where there is something to indicate that *such was the intention of the parties*, an assignment of a mortgage will carry the debt with it, as where the assignment purports to assign the mortgage note") (emphasis added). The record here evidences that Financial Freedom recorded a "Corporate Assignment of Deed of Trust" in favor of MERS; the mere mention of the Note therein does not reflect the parties' intent concerning transfer of that instrument, especially in light of the fact that MERS is never a note holder. *See* CP 30 at ¶ 5, CP Sub 1 at 39.

RCW 62A.3-205(b) (note payable to bearer); *see also* CP 29 at ¶ 3, 33-35.[13]

3. OneWest is the Note Holder.

As noted above, Financial Freedom was a subsidiary of IndyMac Bank, F.S.B. CP 55 at ¶ 9, CP 183 (Financial Freedom was "OneWest's predecessor"). OneWest acquired the assets of the former IndyMac Bank, F.S.B. from the FDIC.

The United States District Court for the District of Oregon addresses the history of OneWest's acquisition of IndyMac's assets, stating:

> [a]fter IndyMac failed financially, the OTS closed the bank and appointed the FDIC as conservator.... When acting as a conservator or receiver, the FDIC 'succeed[s] to all rights, titles, powers, and privileges of the insured institution.' [Citations omitted.] Additionally, *the FDIC is empowered to 'transfer any asset or liability of [these institutions] ... without ... assignment.'* 12 U.S.C. § 1821(d)(2)(G)(i)(II). Therefore, the FDIC exercised its authority when it transferred plaintiffs' Amended Note to OneWest.

Thomas v. OneWest Bank, FSB, 2011 WL 867880 (D. Or. Mar. 10, 2011) (emphasis added), *citing Esparza v. IndyMac Bank,* 2010 WL 2925391, *1 (N.D. Cal. Jul. 26, 2010) (discussing the history of IndyMac).

The Ninth Circuit Court of Appeals recently affirmed a Bankruptcy Court decision wherein the creditor established its standing to enforce a note through a declaration simply stating it was the "holder" and attaching a copy of the note itself. *Arkison v. Griffin* (*In re Griffin*), 719 F.3d 1126 (9th Cir. 2013). Similarly, in this case, the unopposed Declaration of Rudy Lara in support of OneWest's Motion for Summary Judgment states that OneWest "is the holder of the Note." CP 29 at ¶ 3. A copy of the Note, indorsed in blank, was provided with the Declaration. CP 33-35.

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[13] *See also Fidelity & Dep. Co. v. Ticor Title Ins.*, 88 Wn. App. 64, 69, 943 P.2d 710 (1997) ("The recording statute cannot make valid the invalid note [the assignee] received. Stated another way, the mere recording of an instrument cannot create legal obligations to pay where none existed before.").

Notably, *none of Erickson's declarations contradict these facts*. CP 65-75, CP 123-149. Rather, Erickson's evidence focuses solely on her acquisition of the Property, and not on OneWest's authority as Note holder. *Id.* Instead, Erickson merely contended that "OneWest may have had the Deed of Trust assigned to it, but not the Note." CP 56 at ¶ 3. This is precisely the type of unsupported conclusion that cannot defeat summary judgment in light of OneWest's evidence. *Vacova Co. v. Farrell*, 62 Wn.App. 386, 814 P.2d 255 (1991). The trial court did not err in granting summary judgment to OneWest based on this record.

F. OneWest's Enforceable Deed of Trust Encumbered the Property, and Erickson Acquired Title Subject to that Lien.

1. Financial Freedom was a Bona Fide Mortgagee, and OneWest was Entitled to the Same Protection as an Assignee of the Mortgage.

Under the bona fide purchaser doctrine, "a good faith purchaser for value who is without actual or constructive notice of another's interest in purchased real property has superior interest in that property." *S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 127, 233 P.3d 871 (2010), *citing Tomlinson v. Clarke*, 118 Wn.2d 498, 500, 825 P.2d 706 (1992).[14] Pursuant to RCW 65.08.060(2), "[t]he term 'purchaser' includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate." *See also United Savings & Loan Bank v. Pallis*, 107 Wn.App. 398, 407-408, 27 P.3d 629 (2001) ("Case law defines 'good faith purchaser for value' as one 'who is without actual or constructive notice of another's interest in the property purchased'."); *Colfax Nat'l Bank v. Jennie*

[14] A bona fide purchaser is "[o]ne who buys something for value without notice of another's claim to the property and without actual or constructive notice of any defects in or infirmities, claims, or equities against the seller's title." *Nagle v. Snohomish County*, 129 Wn.App. 703, 712, 119 P.3d 914 (2005), *quoting* Black's Law Dictionary at at 1271 (8th ed. 2004).

Corp., 49 Wn.App. 364, 370, 742 P.2d 1262 (1987).[15]

The presumption of good faith exists when a purchaser acquires its interest without "notice of any infirmity therein or defect in the title of the person negotiating the instrument....," and acquires it "before maturity and for value." *Lovering v. Pac. Fruit Package Co.*, 162 Wash. 445, 447, 298 P. 693 (1931). "To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith." *Id.* at 448, *quoting Larsen v. Betcher*, 114 Wash. 247, 195 P. 27 (1921).

In *Fed. Intermediate Credit Bank v. O/S Sablefish*, the State Supreme Court found that while "the recording act states that while a conveyance of real property is effective between the immediate parties without being recorded, it must be recorded to be effective against subsequent bona fide purchasers." 111 Wn.2d 219, 225, 758 P.2d 494 (1988).

Thus, an unrecorded conveyance is void against non-parties to the conveyance. *See Cunningham v. Norweigan Lutheran Church,* 28 Wn.2d 953, 957, 184 P.2d 834 (1947); *Choukas v. Carras,* 195 Wash. 659, 665, 81 P.2d 841 (1938); *Bremerton Creamery & Produce Co. v. Elliott*, 184 Wash. 80, 96, 50 P.2d 48 (1935); RCW 65.04.070; RCW 65.08.060(3) ("conveyance" is any written instrument affecting title to real property); RCW 65.08.070[16]; *see also Zervas Group Architects, P.S. v. Bay View*

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[15] In *Pallis*, unlike this case, there was a recorded *lis pendens* that defeated a bona fide purchaser claim. *Id.* at 409.

[16] RCW 65.08.070 states: "A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his or her heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record."

Tower LLC, 161 Wn.App. 322, 325 n.7, 254 P.3d 895 (2011) (an unrecorded interest in real property is subordinate to a recorded interest). As noted above, this rule also applies to mortgagees and their assigns.

In *Armstrong v. May*, the State Supreme Court held, "in discussing whether or not the respondent had actual knowledge of the pendency of a prior suit...,"

> [t]he plaintiff in the suit to foreclose said mortgage might have reduced its rights to a certainty, and set all such questions at rest, by filing a notice of *lis pendens* under the statute. Not having done so, we would not find in appellants' favor on the question of actual knowledge, unless there was a very clear preponderance of proof in their favor.

33 Wn.2d 112, 117, 204 P.2d 510 (1949), *quoting Pacific Mfg. Co. v. Brown*, 8 Wash. 347, 36 P. 273 (1894). The *Armstrong* Court further wrote:

> [t]he respondent... could have protected herself against subsequent purchasers or encumbrancers... by attaching the property which was the subject matter of the suit. Such action would have been notice to all the world that she claimed an interest in the property. Having failed to do so, she cannot now be heard to say that the appellant had notice of her claim.

Id. This decision is consistent with the long-standing principle that a purchaser or mortgagee:

> [m]ay rely upon a title which the record shows to be in his grantor, and that he is not required, in the absence of notice, and there is no such question in this case, to make inquiry as to the status of the title outside of that shown by the recorded conveyances and the payment of taxes.

Kroetch v. Hinnenkamp, 171 Wash. 518, 521-22, 18 P.2d 491 (1933); *see also Ellingsen v. Franklin County*, 117 Wn.2d 24, 28, 810 P.2d 910 (1991), *quoting Cunningham, supra.* at 956 ("From the beginning, we have held without deviation that a bona fide purchaser of real property may rely upon the record title."); *Diimmel v. Morse*, 36 Wn.2d 344, 347, 218 P.2d 334 (1950) ("[a]n encumbrancer, without notice of existing equities, may rely

on the record chain of title, and, in the absence of notice, is not bound to go outside the records to inquire about them.").

Therefore, if Financial Freedom had no reason to know of Erickson's interest in the Property when the Deed of Trust was executed and recorded, then Financial Freedom was a bona fide mortgagee. The Deed of Trust was recorded on October 30, 2007, but Erickson's judgment was not recorded until February 22, 2008, and her Quit Claim Deed was not recorded until December 8, 2011. *Compare* CP Sub 1 at 27, CP Sub 1 at 15, CP Sub 1 at 11 (respectively). Based on this record, OneWest is entitled to the protection of the bona fide mortgagee doctrine as Financial Freedom's assignee.

2. Erickson Could Not Carry Her Burden of Establishing That Financial Freedom was Not a Bona Fide Mortgagee.

"The burden of establishing that a purchaser had prior notice of another's claimed right or equity rests upon the one who asserts such prior notice." *Biles-Coleman Lumber Co. v. Lesamiz*, 49 Wn.2d 436, 439, 302 P.2d 198 (1956). Thus, Erickson must demonstrate that OneWest had: 1) "knowledge or information of facts which are sufficient to put an ordinarily prudent [person] upon inquiry" and (2) "the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question." *Levien v. Fiala*, 79 Wn.App. 294, 298-99, 902 P.2d 170 (1995). "A circumstance that would lead a person to inquire, however, is only notice of what reasonable inquiry would reveal." *Id.* at 299.

Erickson's position is that she "told those involved in the loan process that she owned the Property and that she *would have* also provided that information to other

lender representatives had they inquired." Brief of Appellant at 22 (emphasis added).[17] In support of her argument, Erickson cites a number of cases where the record owner was *not* an occupant of the Property, unlike the instant facts. *Id.*, *citing Glaser v. Holdorf*, 56 Wn.2d 204, 352 P.2d 212 (1960); *Chittick v. Boyle*, 3 Wn.App. 678, 479 P.2d 142 (1970); *Nichols v. DeBritz*, 178 Wash. 375, 35 P.2d 29 (1934). Conspicuously, Erickson fails to cite any case where a party was required to conduct an inquiry when the record title owner (McKee, here) enters into a transaction while being an occupant of the property. *Cf. Miebach v. Colasurdo*, 102 Wn.2d 170, 176, 685 P.2d 1074 (1984) (cannot rely on land records when *someone else* visibly has possession of property).

Here, it was *McKee* who lived at the Property when the Deed of Trust was executed, and *McKee* who entered into the secured transaction (through his conservator) while occupying the Property. CP 126-127.

Nonetheless, Erickson suggests that Financial Freedom (and consequently OneWest as the assignee) was not a bona fide mortgagee where it: (1) had no actual or constructive notice of the unrecorded transfer of ownership, and (2) acquired a Deed of Trust that was entered by the record title owner and occupant of the Property. Brief of Appellant at 22-23. But Erickson provides no reasoning or authority as to why a reasonable inquiry should extend to ensuring the record title owner's *daughter* does not hold a hidden unrecorded interest in the Property while residing there. *Id.*

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[17] Erickson's only evidence of the purported notice is a self-serving declaration, rife with hearsay, that her father intended for her to have the Property, and that she told a mortgage broker and the conservator about the existence of the quit claim deed. CP 126; CP 129-131. Erickson never indicates she tried to tell either Financial Freedom or OneWest directly about her quit claim deed, but only says no one asked her. CP 131, ¶ 23. In other words, Erickson believes the secured lender should have asked about a document about which the lender had no knowledge.

In fact, Erickson herself *agreed* to the reverse mortgage in a stipulated order bearing her signature, all the while not disclosing the hidden quit claim deed. CP 136-137, CP 152, ¶ 10. Erickson even provided funds to her father in the amount of $1,750.00 one day before the closing of the reverse mortgage on the Property. CP 152, ¶ 9, CP 165. In other words, both Erickson and her father were aware of the reverse mortgage, and Erickson even donated funds to assist with its closing. *Id.*; CP 168-169.

Between two parties, one of whom must suffer a loss, the Court should look to who could have best protected their interests; in this case, Erickson failed to record her interest in the Property or file a *lis pendens*, and OneWest was entitled to rely on record title. *See Cunningham, supra.* at 963; *Armstrong, supra.* at 117.[18]

In sum, because of Erickson's unrecorded conveyance, Erickson took her interest in the property subject to the Deed of Trust and OneWest's assigned right to enforce the same. As a result, the trial court properly granted summary judgment to OneWest, and Erickson's claimed cross-motion for summary judgment was either moot or subject to denial on the merits.

G. Erickson Cannot Collaterally Attack Bruna's Appointment as Conservator.

In Erickson's purported cross-motion for summary judgment, she asserted – for the first time – a challenge to Bruna's authority to execute the Deed of Trust. CP 59; *see*

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[18] RCW 4.28.320 states that:

> "From the time of the filing [of a lis pendens] only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action."

"The underlying purpose of a lis pendens is to give notice of pending litigation affecting the title to real property and to give notice that anyone who subsequently deals with the affected property will be bound by the outcome of the action to the same extent as if he or she were a party to the action." *Cranwell v. Mesec*, 77 Wn.App. 90, 109 n. 22, 890 P.2d 491 (1995).

also Brief of Appellant at 25.[19] But Idaho law grants a conservator appointed there power over property in other states. *See* I.C. §15-5-420(a) ("the appointment of a conservator vests in him title as trustee to all property of the protected person."); I.C. §15-5-420(c) ("A conservator has the same power over the title to property of the protected person's estate that an absolute owner would have."); I.C. §15-5-424(3)(g) (conservator can "[a]cquire or dispose of an estate asset including land in another state for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of or abandon an estate asset."). Such actions can be accomplished without further authorization of the court. I.C. §15-5-424(3).

When Bruna was appointed a conservator by the Shoshone County Court, she had the power under the Idaho statutes to encumber property in Washington, and she could do this without any further court order. Bruna's authority to execute the Deed of Trust as McKee's conservator is a verity that should not be subject to Erickson's collateral attack. *Accord Stewart v. Stewart*, 85 Wash. 202, 206, 147 P. 1157 (1915); *Conservatorship of O'Connor*, 48 Cal. App. 4th 1076, 1096, 56 Cal. Rptr. 2d 386 (Cal. App. 1st Dist. 1996); *but see Freise v. Walker*, 27 Wn. App. 549, 553, 619 P.2d 366 (1980).

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[19] Bruna's authority encompassed executing the Deed of Trust on *McKee's* behalf, not Erickson's. Indeed, Erickson conceded this fact in her "Memorandum in Opposition to Plaintiff's Motion for Summary Judgment" (which she asserts also became a cross-motion for summary judgment). CP 54, ¶ 8.

IV. CONCLUSION

The record shows that the Deed of Trust entered by McKee's conservator was a valid security instrument encumbering the Property. The Deed of Trust followed the Note, which was payable to Financial Freedom, indorsed in blank, and ultimately acquired by OneWest. Despite Erickson' theories about enforceability, Financial Freedom – and OneWest as assignee – was a bona fide mortgagee without notice of a conveyance to Erickson, and in conclusion, Erickson took title to the Property subject to the Deed of Trust. This Court should therefore affirm the ruling below.

DATED this 6th day of December, 2013.

RCO LEGAL, P.S.

By: _____
Joshua S. Schaer, WSBA #31491
Of Attorneys for Respondent OneWest Bank, FSB

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

ONEWEST BANK, FSB, its successors in interest and/or assigns, Respondent, v. MAUREEN M. ERICKSON, et al. Appellants.	No. 319440 Superior Court No. 12-2-00952-4 **DECLARATION OF SERIVCE**

The undersigned makes the following declaration:

1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.

2. That on December 6, 2013, I caused a copy of the **Opening Brief of Respondent OneWest Bank, FSB** to be served to the following in the manner noted below:

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Bellevue, WA 98006
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Brian C. Balch Layman Law Firm, PLLP 601 South Division St. Spokane, WA 99202-1335 Attorneys for Appellant Maureen M. Erickson	[X] US Mail, Postage Prepaid [ ] Hand Delivery [ ] Overnight Mail [ ] Facsimile

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

Signed this 6th day of December, 2013.

Kristine Stephan, Paralegal

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