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

SCOTT C TOWNLEY and STEPHANIE A TASHIRO-TOWNLEY,
Defendants/Appellants

vs.

BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK, TRUSTEE FOR CERTIFICATE HOLDERS CWABS, INC. ASSET BACKED CERTIFICATES, 2005-10, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AND OCWEN LOAN SERVICING LLC
Plaintiffs/Respondents

OPENING BRIEF OF APPELLANT

Appeal from King County Superior Court Case No: 12-2-06921-2 KNT
The Honorable LeRoy McCullough

Stephanie A Tashiro-Townley
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Covington, WA 98042
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Defendant / Appellant (pro se).

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A. Assignments of Error:

1. The Trial Court erred in denial of Townley's request for a jury trial per RCW 59.12.130 (See Verbatim Transcript of 5-17-12, pg 10, ll 4-11), thus violating their constitutional right to trial namely, Washington State Constitution, Article 1, section 21. Furthermore, facts and issues have been properly preserved as Stephanie Tashiro-Townley stated on May 17, 2012:

> "This new day we're asking for the Court to grant us a jury trial per 59.12.130 that would allow us to go in with all of the facts, and allow them to also come in with their facts, and then have it decided. The sale did not – it could not be completed because it could not be perfected. The sale did not – it could not be completed because it could not be perfected and thus we are still sitting here with the facts that are undisputed by plaintiff."

(RP of 5-17-12).

2. The Trial Court erred in granting the Writ of Restitution when Commissioner Hollis Hill stated on the May 17th, 2012 verbatim report:

> "You may have filed an objection, but it wasn't appropriate, it didn't happen. The sale went through. At this point you don't own the property anymore. And basically possession of this residence is not in it for

> you. Your only opportunity is going to be damages, if you can prove damages. And that's a totally separate action.
>
> Given all the information before the Court, it is appropriate for the Court to enter the writ of restitution under these circumstances."
> (RP of 5-17-12, pg 15, ll 17 to pg 16, ll 3).

3. The Trial Court erred in dismissing the Counter and Cross Complaint given the equitable defenses filed in the Answer and then the Objection to the Unlawful Detainer. The Commissioner stated in the verbatim report of the May 17th hearing,

> "And I will at this point dismiss the counter and cross claims because they're not appropriately filed within this writ of restitution action."

(RP of 5-17-12, pg 16, ll 3-6).

4. The Trial Court erred in denying the Petition for Declaratory Judgment and Injunction (order at CP#61-62) when Judge McCullough stating that the limited nature of the Eviction (RCW 59.12) proceeding prevented him from addressing any issues found within the Petition for Declaratory Judgment per RCW 7.24.

5. The Trial Court erred in denying both the Motion for Reconsideration of the Denial of the Petition for Declaratory Judgment and Motion for Revision of Commissioners Orders.

6 The Trial Court erred in not reviewing the undisputed facts of improper commencement and irregularities by the Bank of New York Mellon, MERS and Ocwen Loan Servicing, including equitable defenses directly impacting to issue of title in the Unlawful Detainer.

B. Issues Pertaining to Assignments of Error:

1. Whether the new issue – Constitutional question pertaining to Washington State Constitution, Article 1, Section 21 – shall be considered given the jurisdiction of this Court and the recent Supreme Court rulings (Albice v. Dickinson on May 24, 2012 and Bain v. Mortgage Electronic Systems Inc. et al on August 16, 2012) (Assignments of Error 1-6)

2. If, based on the Bain and Albice decisions and facts consistent with these rulings, are grounds for vacating the writ of restitution and granting that the case be remanded?

(Assignments of Error 1, 2 and 5)

3. If, based on the Supreme Court decisions in Bain v. Mortgage Electronic Registration Systems et al, Cox v. Helenius and Albice v. Dickinson decisions and facts in this case consistent with these rulings, void the sale and transfer? (Assignments of Error 1, 4, 5, and 6)

4. If this matter be remanded for further proceedings allowing Townleys to reinstatement of the counter and cross complaint in a civil docket due to equitable defenses within pleadings focusing on possession, irregularities, and improper invocation of RCW 61.24 et seq including the CPA claims within the complaint? (Assignments of Error 3)

C. Statement of the Case.

Background

Defendants, Scott C Townley and Stephanie A Tashiro-Townley otherwise known as Townleys, are owners of a single family home in Maple Valley, Washington (Townleys' home) purchased in 1996. In 2005, Townleys refinanced with Countrywide Mortgage. Townleys paid

Countrywide until early 2008 when the servicer changed from Countrywide to Litton Loan. Townleys believed that they were paying loan payments to Countrywide Mortgage (the noteholder) until the Notice of Default.

In 2008, Townleys failed business impacting mortgage payments to the servicer, Litton Loan Servicing. Townleys attempted to get loan modification until around July 2009 when the loan modification was formally denied.

Townleys received an unsigned Notice of Default on July 8, 2009 taped on their garage with an unknown entity, Bank of New York Mellon as the mortgagor and listed as the party issuing the default (CP 65, Ex A). Northwest Trustee Services operated as the Trustee.

The Assignment of Deed of Trust assigning the Deed of Trust from Mortgage Electronic Registration Systems Inc. (MERS) to Bank of New York Mellon (Bank of New York Mellon) was not dated until after the Notice of Default had been taped to the door, on July 17, 2009 and filed until July 24, 2009 (See the Assignment of Deed of Trust at *CP 11, Affidavit of Lynn Szymoniak, Ex A*).

The Appointment of Successor Trustee from LandSafe Title to

Northwest Trustee Services was not dated until after the Notice of Default had been taped to the door, on July 20, 2009 and filed July 24, 2009 (See the Appointment of Successor Trustee at *CP 11, Affidavit of Lynn Szymoniak, Ex B*). Notice of Sale was filed on August 21, 2009 (CP 30, page 14).

Townleys filed a Chapter 13 in the United States Bankruptcy Court in Western Washington in Seattle on or about late November, 2009. Bank of New York Mellon filed a Motion for Relief of Stay on or around April, 2010 in the US Bankruptcy Court. Townleys filed a Response to the Motion for Relief of Stay. On June 8, 2010, then Chief Judge Karen Overstreet stated that the Note attached to the Motion for Relief of Stay did not prove ownership by Bank of New York Mellon. An order was documented on the docket dated 6/11/2010 for the case (#09-22120) (CP 11, Declaration, Ex A) that

> "The Bank will get a certified copy of the original note holder with a declaration and file it with the Court and send a copy to the debtors.

(CP 11, Declaration, Ex A, 6/11/2010 Minute Rulting / Order)

This order was never completed and no certified copy of the original note holder was served on the Townleys.

The affidavit filed by Litton Loan's Richard Williams (CP 11, Declaration, Ex B) clearly stated that Litton Loan nor the bank possessed the Note at that time, over a year later after the Notice of Default had been issued (CP 65, Ex A). Townleys filed an Objection to Claim on August 18, 2010 and scheduled it to be heard on October 7, 2010 at the same time they filed an Answer to the Trustees' Motion to Deny Confirmation of Plan and Dismiss the Case. The case was dismissed prior to Judge Overstreet's order was addressed. Townleys timely appealed to the Bankruptcy Appellate Panel in 2010 and then timely appealed to the Ninth Circuit of Appeals in 2011. The briefs for this appeal are currently under review by the Ninth Circuit of Appeals.

After the dismissal by the US Bankruptcy Court, Townleys received an Amended Notice of Sale dated on or about September 7, 2010. Townleys filed a Complaint on October 22, 2010 and finally docketed in November. Townleys served the Complaint as a courtesy to Northwest Trustee on October 22 by and through a service agent. The sale was placed on hold and rescheduled to December 3, 2010, 94 days after the date of the Amended Notice of Sale.

On November 8th, Litton Loan Servicing and Bank of New York

Mellon sent letters stating that the sale was on hold (CP 11, Declaration, Ex E).

On November 30, 2010, Townleys informed Bank of New York Mellon and Northwest Trustee of a Lis Pendens that the Townleys were filing at the King County Records office (CP 11, Declaration, Ex F). Townleys received a letter from the Bank of New York Mellon attorney that the sale would continue; thus, allowing them only 3 days to enjoin the sale.

On December 3, 2010, Townleys informed all investors and the auctioneer of the contesting of the sale and the active Federal District Court lawsuit. On December 3, 2010, the house reverted back to the alleged lender, Bank of New York Mellon. Trustees Deed was issued on December 10, 2010.

Townleys continued writing, serving and filing pleadings in Federal District Court until September 23, 2011, when the Motion of Reconsideration regarding the dismissal of the case was filed by Judge Coughenour. Townleys timely filed a Notice of Appeal to the Ninth Circuit in the Federal District Case.

In late November, 2011, Townleys uncovered an experienced

fraud examiner who reviewed the Assignment of Deed of Trust and Appointment of Successor Trustee for evidence of "robo-signing", illegal, improper activity performed by banks to push through paperwork without the proper safeguards for both homeowner or bank. An affidavit of fraud was written by Lynn Szymoniak (CP 11, Affidavit of Lynn Szymoniak). Townleys also contacted the Securities and Exchange Commission to obtain the Pooling and Servicing Agreement (PSA) regarding the alleged trust that Bank of New York Mellon stated that they represented in the foreclosure (CWL, Inc. Asset-Backed Certificates, Series 2005-10). Securities and Exchange Commission (SEC) found no trust by that name (CP 65, Ex B and Ex C).

Townleys filed a Motion for Relief per FRCP 60 with the new evidence of fraud and additional corroborative evidence of fraud on March 8, 2012. The motion was denied. Townleys have timely filed their brief in the Ninth Circuit Court of Appeals on September 2012.

Procedural Facts

In February 24, 2012, a Summons and Complaint for Unlawful Detainer, Bank of New York Mellon, Trustee for CWABS, Inc. Asset-

Backed Certificates, 2005-10, in King County Superior Court. CP 1 and 3.

Defendants, Scott C Townley and Stephanie A Tashiro-Townley otherwise known as Townleys, were owners of a single family home in Maple Valley, Washington (Townleys' home). (CP 1 and 3).

Townleys filed a Motion requesting a change from Limited to General Proceeding on March 7, 2012 (CP 7). A declaration was also filed with this Motion with seven exhibits. The exhibits are the same as attached to the Declaration in Support of the Petition for Declaratory Judgment (CP 11 below).

Townleys served the Objection to the Unlawful Detainer (CP 10) and the Petition for Declaratory Judgment on March 8, 2012 (CP 11). A Declaration in Support with the following exhibits was also filed on the same day (CP 11): Certified Transcript of 6/11/2010 hearing from US Bankruptcy Case #09-22120 (CP 11, Declaration, Ex A), Affidavit of Richard Williams of Litton Loan (CP 11, Declaration, Ex B), official docket for US Bankruptcy case #09-22120, #33, 36, and 37 respectively (CP 11, Declaration, Ex C), Certified Transcript of 8/26/2010 hearing from Bankruptcy Case #09-22120 (CP 11, Declaration, Ex D), Letters from Bank of New York Mellon attorney and Litton Loan dated November 8th

(CP 11, Declaration, Ex E), Letter from Bank of New York Mellon attorney on November 30th (CP 11, Declaration, Ex F), and case docket for C10-1720 (CP 11, Declaration, Ex G). The Affidavit of Lynn Szymoniak and Declaration of Expert Cheye Larson were filed with the Petition (CP 11) were also attached to the Petition for Declaratory Judgment.

In the Affidavit of Lynn Szymoniak, Ms. Szymoniak stated,

> "In thousands of Assignments I have examined, new "replacement" Assignments have been prepared and presented to Courts without any disclosure to the Court or to the Homeowner / Defendants that the original Assignments were lost. Many of these Assignments were prepared by Litton Loan Servicing. Countrywide Trusts, including the CWL Trust herein, are among the Trusts that are unable to produce the original Assignments and regularly Attempt to substitute Assignments prepared by mortgage servicing companies. The Bank of New York Mellon, the trustee herein, frequently cannot or has not produced the Assignments to the Trust supposedly obtained by the Trustee at the inception of the Trust."

(CP 11 – Affidavit of Lynn Szymoniak, pg 11, #20)

Affiant Szymoniak goes on to state in her conclusion, that

> "For all of the reasons set forth above, it is my opinion that the mortgage documents identified as Exs A (Assignment of Deed of

> Trust) and B (Appointment of Successor Trustee) are fraudulent."

(CP 11 – Affidavit of Lynn Szymoniak, pg 13, #25)

In the Declaration of Expert Cheye Larson, the

> "Given the evidence of mortgage fraud records removal in the MERS database, I declare the evidence documented above to be corroborative and supportive of the direct business fraud evidence by Expert Szymoniak. I also declare that all records from teh defendants in the above captioned case need to be subpoenaed and depositions taken to determine the level of fraud and collusion involved. Finally, I declare after my review of all relevant documentation that it is my opinion that I could find no proof of legal affiliation by Bank of New York Mellon nor the Trust."

(CP 11 – Declaration of Expert Cheye Larson, pg 4, ll 15-19)

Townleys also filed an Objection to the Unlawful Detainer (CP 8), Answer and Affirmative Defenses (CP 12) on March 13, 2012. A Motion for Findings of Fact and Conclusions of Law was filed on April 6, 2012 (CP 15) with a Notice to the Clerk regarding Missing Exhibits (CP 14).

A Counter and Cross Complaint fee was paid and the pleading filed on April 6, 2012 (CP 16). The causes of action within the complaint

were:

- VIOLATIONS OF CONSUMER PROTECTION ACT (and violations of RCW 5, 9, 9A, 10, 18, and 19)
- COMMON LAW (FRAUD) CLAIM
- MORTGAGE FRAUD CLAIM involving MERS and HSBC

The Bank of New York Mellon's Motion to Issue the Writ of Restitution was filed on May 1, 2012 (CP 29) to be heard on May 17, 2012. Bank of New York Mellon also filed several supporting documents including an Affidavit of counsel representing Bank of New York Mellon, Scott Grigsby (CP 30). Within the 40 page document, is a Notice of Sale (CP 30, pg 14) which clearly stated the following:

> "Grantors: Northwest Trustee Services, Inc. The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificateholders CWL, Inc. Asset-Backed Certificates, Series 2005-10"

And

> "which is subject to that certain Deed of Trust dated 07/26/05, recorded on 08/01/05, under Auditor's File No. 2005080102392, records of King County, Washington, from Stephanie A Tashiro-Townley, and Scott C Townley, wife and husband, as Grantor, to Landsafe Title of Washington, as Trustee to secure an obligation "Obligation" in favor of Mortgage Electronic Registration Systems, Inc., solely as nominee for Countrywide Home Loans, Inc., as Beneficiary, the beneficial interest in which was assigned by Mortgage Electronic Registration Systems,

> Inc. to The Bank of New York Mellon f/k/a The Bank of New York as Trustee for the Certificateholders CWL, Inc. Asset-Backed Certificates, Series 2005-10, under an Assignment / Successive Assignments recorded under Auditor's File No. 20090724001895."

(See Notice of Sale at CP 30, pg 14)

On May 7, 2012, Defendants re-filed Petition for Declaratory Judgment (CP 40), Motion to Change Proceedings from Limited to General (CP 41), and Motion to Strike Plaintiff's Motion to Dismiss (CP 42). On May 9, 2012, Plaintiffs filed a Response to Defendants Petition (CP 47) with a Declaration (CP 48), a Response to Defendants Motion to Change Proceedings from Limited to General (CP 49). Objection was filed on May 9, 2012 (CP 52). Townleys filed a Reply to the Objection on May 10, 2012 (CP 57). The Petition for Declaratory Judgment was heard on May 11, 2012 with the Motion to change from limited to general proceeding, motion to strike and motion to dismiss counter and cross complaint.

The Motion to Change from Limited to General Proceeding was denied (CP 61), and the Petition for Declaratory Judgment was denied (CP 62) due to lack of subject matter jurisdiction. The Motion to Strike

was denied (CP 63).

On May 15, 2012, Townleys filed a Response to Motion for Writ of Restitution (CP 65). In addition to the Response, Townleys filed the Declaration in Support of the Response to the Motion for Writ of Restitution including the following exhibits: Notice of Default (CP 65, Ex A), Email and attached letters from Securities and Exchange Commission (CP 65, Ex B), Email from Securities and Exchange Commission dated January 26, 2012 (CP 65, Ex C), docket from C10-1720 (CP 65, Ex D), and corroborating complaint filed against top five (5) banks regarding improper business practices including "robo signing" (CP 65, Ex E) and audit (CP 65, Ex F).

On May 17, 2012, Commissioner Hollis Hill signed orders to dismiss the Counter and Cross Complaints (CP 69) and for Plaintiff's Writ of Restitution (CP 70).

Townleys filed the Motion for Reconsideration (CP 73) and Motion for Stay of Writ of Restitution on May 21, 2012 (CP 74). On May 25, 2012, Bank of New York Mellon filed a Response to Motion for Stay (CP 76) and Response to Motion for Reconsideration (CP 78).

Townleys were evicted in late May with their four children and

were homeless until finding a residence on June 6, 2012. On May 30, 2012, Townleys filed a Motion for Revision of Commissioners Orders (CP 81), Motion to Extend Time (CP 83), Statement of Additional Authorities (CP 84), and the Notice of Appeal regarding only the Writ of Restitution (CP 87). Bank of New York Mellon filed a response to Motion for Revision on June 5, 2012 (CP 95).

Townleys filed a Reply to Bank of New York Mellon"s Response to the Motion for Revision on June 7, 2012 (CP 96). On July 13, 2012, the Motion for Reconsideration and Motion for Revision came before the court. Orders denying the Motion for Revision (CP 105) and Motion for Reconsideration (CP 106) were issued. The Notice of Appeal was timely filed on August 10, 2012.

D. Argument.

Raising a Constitutional prohibitive language violation for the first time is proper; also, these facts are new and were not available to Townleys at their hearing.

AS SIMILARLY SITUATED INDIVIDUALS THE COURT'S EVICTION OF HOMEOWNER TOWNLEYS THAT GRANTED BENEFITS TO MOVANT WHO IS A QUASI GOVERNMENT ENTITY(S) STANDS SUFFICIENTLY TO SUSTAIN CONSTITUTIONAL EQUAL PROTECTION OF LAW VIOLATION.

CONSTITUTIONAL QUESTION: EQUAL PROTECTION and RECENT COURT DECISIONS IN LIGHT OF BAIN DECISION

The appeal centers on parties (Bank of New York Mellon, MERS, and Ocwen Loan Servicing) from benefiting from their improper acts and improperly invoking the Deed Trust Act (RCW 61.24, et seq.) and wrongfully foreclosing on the Townleys in this case. Townleys rely on the language provided in the recent August 16, 2012 Bain v. Mortgage Electronic Registration Systems (et al) opinion which stated,

> "A plain reading of the statute leads us to conclude that only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a nonjudicial foreclosure on real property. Simply put, if MERS does not hold the note, it is not a lawful beneficiary."

Id Bain v. Mortgage Electronic Registration, Inc. et al, Spreme Court case # 86206-1, (August 16, 2012)

With MERS only on the Deed of Trust as beneficiary, any benefits oppositional parties obtained are void, e.g., the transfer of Townleys' home out of Townleys name is void and new constitutional issues recently surfaced allowing Townleys to raise the issue before this Court (Court of Appeals, Division I).

The facts show a similarly situated homeowner, one Micah Schnall, eviction was stopped until the Appeal was resolved. The only difference is Townleys direct appeal sits before Ninth Circuit Court and Mr. Schnall sits before Division One.

Of relevance, is Mr. Schnall did not appeal the Unlawful Detainer action because his eviction was stayed pending outcome of his direct appeal. Townleys are before this court because (though similarly situated individuals to Schnall) their eviction was not stopped despite filing a Motion to the Stay the Eviction pending the outcome of the Federal District Appeal in Ninth Circuit.

Forgive the writer, one cannot ignore the additional error the foreign lender works in ignoring legislative and County mandates (as seen in Bain appeal record and the verbatim of the Bain case's Supreme Court orals) by further ignoring the new legislation that was added to 61.24., et seq., mandating seeking resolutions to kept the Homeowner's in their homes.

The duty owed by foreclosing parties (this foreign entity here appeared out of the blue and acts in the majority of foreclosures in America) was directed by in the 2011 legislative additions to RCW 61.24. et seq. In addition, a duty was created when these entities received federal government bailout monies.

Nevertheless, given the facts of Schnall remaining in his Home and Townleys eviction, an equal protection violation exists. The Equal Protection clause—it's prohibitive language— is a guaranteed by the Washington State Constitution, Article I, section 12 and the United States Constitution Fourteenth Amendment. Quoted here,

> "The Equal Protection clause of the Washington State Constitution, article I, section 12, and the Fourteenth Amendment to the United States Constitution require that "persons similarly situated with respect to the legitimate purpose of the law" receive like treatment.[1] The level of scrutiny we apply in reviewing an equal protection challenge depends on whether a suspect or semi-suspect classification has been drawn or a fundamental right is implicated; if neither is involved, we review the classification to determine whether the government had a rational basis for creating it." [2]

Id KUSTURA v. LABOR & INDUS., 142 Wn. App. 655 (2008)

On October 26, 2012, in the King County Superior Court in Seattle, filed an order vacating the Writ of Restitution and staying the Unlawful Detainer Action until the completion of the appeal in favor of Schnall. (See Appendix A- 12-2-03428-1 SEA [Judge Erlick], an order

entered in the case vacating the Writ of Restitution and staying the Unlawful Detainer Action until the appeal is decided.

The beneficiary listed on the deed of trust for the above referenced case (12-2-03428-1 SEA) was Mortgage Electronic Registration Systems, Inc. (MERS), exactly like Townleys. The defendants in 12-2-03428-1 (Schnall [homeowner]) had an Unlawful Detainer action. The Unlawful Detainer action was filed against the Townleys as well. An Order of Writ of Restitution was filed against the Schnalls and the Townleys in their individual cases. Both defendants filed motions for Revision of Commissioners Orders. All facts are same as in this case except the timeframe.

The defendants in 12-2-03428-1 SEA were able to utilize and benefit from the Bain v. Mortgage Electronic Registration Systems et al decision.

The major benefit for both of these homeowners from Bain is that the Court ruled MERS is not a "lawful" beneficiary and that foreclosures involving MERS are "wrongful". Bain quoted in relevant part,

> "MERS is an ineligible '"beneficiary' within the terms of the Washington Deed of Trust Act," if it never held the promissory note or other debt instrument secured by the deed of trust.

> ...we agree that characterizing MERS as the beneficiary has the capacity to deceive and thus, for the purposes of answering the certified question, presumptively the first element [of the CPA] is met.

Accord, Bain v. Mortgage Electronic Registration Systems et al, No. 86206-1, File Date 8/16/2012

Therefore, it is proper to consider this new constitutional question within this appeal due to the direction given by the State Supreme Court.

REMAND VACATING THE WRIT OF RESTITUTION IS NECESSARY IS CONSISTENT WITH COX, BAIN AND ALBICE

Most favorable to the Plaintiffs, the trial court record contains facts and evidence of irregularities within Bank of New York Mellon application of the Deed of Trust Act. The facts in the record, stand unopposed and undisputed by the Bank of New York Mellon, MERS and Ocwen Loan Servicing. The documents utilized by Bank of New York Mellon to create an illusion of ownership to improperly obtain the property stand as the primary evidence.

In May 24, 2012, the Washington State Supreme Court issued its ruling in Albice v. Premier Mortgage Services of Washington, Inc., et al, Supreme Court case No. 85260-0 (May 24, 2012). The relevance of this decision is that the Trustee's Sale occurred beyond the statutorily prescribed time limit, a technical violation of the DTA. As seen in the

Supreme Court's decision, a technical violation of the DTA "divests the party of statutory authority" and without statutory authority, any action taken is invalid. The Court further stated,

> "As we have already mentioned and held, under this statute, strict compliance is required. (Citation omitted) Therefore, strictly applying the statute as required, we agree with the Court of Appeals and hold that under RCW 61.24.040(6), a trustee is not authorized, at least not without reissuing the statutory notices, to conduct a sale later 120 days from the original sale date, and such a sale is invalid."

Accord Albice v. Premier Mortgage Services of Washington, Inc., et al, Supreme Court case No. 85260-0 (May 24, 2012), pg 9.

Townleys have written pleading after pleading stating that RCW 61.24 et seq is a strict statutory scheme. Maintaining strict compliance with the Washington Deed of Trust Act is a must by the foreclosing party, like Bank of New York Mellon. Since this failure "divests the party of statutory authority" and without statutory authority, any action taken, or intended to be taken in the future, is invalid.

> "Because the act dispenses with many protections commonly enjoyed by borrowers under judicial foreclosures, lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor.

> Additionally, and equally important, to ensure trustees strictly comply with the requirements of the act, courts must be able to review post sale challenges...
>
> We conclude the trustee sale was invalid. We affirm the Court of Appeals and remand to the trial court to enter an order declaring the sale invalid."

(Accord Albice v. Premier Mortgage Services of Washington, Inc., et al, Supreme Court case No. 85260-0 (May 24, 2012)).

Review of the case record will show the irregularities below, any of which are significant to reverse and void the sale:

- Beneficiary Declaration required per RCW 61.24.031(9) was not filed in the cold regard of Federal District Case #C10-1720 (CP 65 - Ex. D – docket number #11)
- Notice of Default was placed on the Townleys' garage by Northwest Trustee on July 8, 2009. The Appointment of Successor Trustee from LandSafe Title to Northwest Trustee was not signed until July 20, 2009 (and filed on July 24, 2009); thus Northwest Trustee did not have any powers of the trustee per RCW 61.24.010(2) (CP 65, Ex. A and CP 73 – Motion for Reconsideration, Declaration in Support of Motion for Reconsideration, pg. 6, #30 and 31)
- Notice of Default noted Bank of New York Mellon as

alleged noteholder / creditor on July 8, 2009. However, the Assignment of Deed of Trust assigning ownership to Bank of New York Mellon was not signed until July 17, 2009 (and filed on July 24, 2009) (CP 65, Ex. A and CP 73 – Motion for Reconsideration, Declaration in Support of Motion for Reconsideration, pg. 6, #30 and 31)

- MERS "robo-signer" Denise Bailey signed the Assignment of Deed of Trust as a Vice President of MERS. Due to the Bain decision and as stated by Ms. Szymoniak, the document is fraudulent, thus rendering this document void (*CP 11, Affidavit of Lynn Szymoniak, Ex B and Ex D)*

Bank of New York Mellon have had opportunities to prove ownership and proper standing throughout the other two courts.

Firstly, Bank of New York Mellon was ordered to send to the Townleys a certified copy of the Note and United States Bankruptcy Court's Chief Judge Overstreet also requested an affidavit from the original note holder. . (CP 73, Motion for Reconsideration of Denial of Petition for Declaratory Judgment, Declaration in Support of Motion, pg 2, (certified transcript 6/11/2010, page 11, LL21 through page 12 LL7))

This order was ignored by Bank of New York Mellon and stepped over by the Bankruptcy Trustee and Judge Barreca.

Secondly, Bank of New York Mellon filed a Motion to Dismiss in the Federal District case citing an exhibit called "Beneficiary Declaration". This exhibit was not filed in the record as seen in the docket for C10-1720. (CP 11, Declaration, Ex G, docket #11) This Beneficiary Declaration is required by RCW 61.24.031(9)..

As set forth in RCW 61.24.030; "It shall be requisite to a trustee's sale: . . .

> (7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

Therefore, Bank of New York Mellon would have had to show that before the notice of trustee's sale was recorded. This document was alluded to in the Federal District Case but the exhibit was never filed in the cold record. (CP 11, Declaration, Ex G, docket #11)

Under the RCW 61.24 et seq, in order to properly assign beneficial interest in the Deed of Trust, MERS would have had to have

been the holder of the note at the time MERS signed the Assignment of Deed of Trust as "beneficiary." Per Bain, MERS is not a "lawful" beneficiary, so any document signed by MERS is therefore "not lawful" as well.

Northwest Trustee and Bank of New York Mellon had full knowledge of the lawsuit brought against Bank of New York Mellon to stay the sale as evidenced by letters from Bank of New York Mellon on November 8, 2010. The Court held in *Cox vs. Helenius,* quoted in relevant part,

> ...RCW 61.24.040(2); restrain the sale, RCW 61.24.130; **or contest the sale, RCW 61.24.040(2).**
> ..."***the suit brought by the grantor prevented the trustee's initiation of foreclosure, making the sale void.***"

Id. Cox vs. Helenius, 103 Wn 2d 383, 421, 693 P. 2d 683

The Equal Protection Clause states:

> "...nor deny to any person within its jurisdiction the equal protection of the laws" (through Federal Constitutional 14th Amendment)

The essence of the equal protection also sits sufficiently, under standard definition of similarly situated individuals.

The similarities in the Cox ruling and the Townleys' case show once again that the Townleys were not being treated as similarly situated individuals as well per United States Constitutional 14th Amendment. The

essence of the equal protection also sits sufficiently, under standard definition of similarly situated individuals. The Court' s decision has violated Townleys constitutional rights here as well.

Expert Larson, a securitization auditor, could not find any legal affiliation with the property as he stated on page 4 of his declaration and at the end of the Conclusion,

> #19 - Moreover after review of all other relevant documents, there is no evidence showing Bank of New York Mellon or CWL, Inc. 2005-10 had any legal affiliation with the first promissory note and first mortgage / deed of trust for the above referenced real property and it appears, to this auditor, that any action completed by Bank of New York Mellon was performed through creating an illusion of interests designed to support ownership in and through the use of fraudulent business practices.
>
> [In the Conclusion] Finally, I declare after my review of all relevant documentation that it is my opinion that I could find no proof of legal affiliation by Bank of New York Mellon nor the trust.

See, CP 11, Declaration of Cheye Larson, pg 4

Expert Szymoniak stated in her affidavit,

> #22 May courts have now recognized that documents produced by mortgage servicing companies are unreliable when such documents are signed en masse by robo-signers, clerical employees who sign without any actual knowledge, expertise,

> training and often without having even read the documents they sign.

And

> #25 For all of the reasons set forth above, it is my opinion that the mortgage documents identified as Exhibits A and B are fraudulent.

See CP 11, Affidavit of Lynn Szymoniak pg 11-12

Townleys have argued in the King County Superior Court that the Trustees Deed cannot be perfected per RCW 61.24.050 unless the recitals and fact of strict statutory compliance has been completed. Applied to the instant case, Plaintiff cannot record an invalid "Trustee's Deed" with the county and by that act convert it into a valid document.

Therefore, if any action is invalid, then the foreclosure sale is invalid, the eviction is invalid, then the Writ of Restitution must be vacated in the favor of the Townleys, the sale must be voided and the case must be remanded for further proceedings to determine CPA claims and damages to the Townleys and their family.

FACTS SUFFICIENT FOR JURY TRIAL PER RCW 59.12.130

The Washington State Constitution, Article I, Section 21 states:

> "The right of trial by jury shall remain inviolate, but the legislature may provide for

> a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto." Art. 1 § 21.

In the Response to the Motion for Writ of Restitution (CP 65), Defendants' placed facts properly before the court sufficient to move the Court to grant a jury trial per RCW 59.12.130. Although in error the Townleys utilized RCW 59.18 in their response, this does not minimize the facts submitted to the court—raising questions for a jury—that stand in the record.

One declaration by Cheye Larson, a securitization expert, who had performed extensive research to determine lack of affiliation of Bank of New York Mellon with the subject property and one affidavit of fraud by Lynn Szymoniak, a whistleblower in a recent mortgage case regarding False Claims Act violations of four major banks (Appendix B - 3-9-12 Press-Release from South Carolina US Attorneys office) and a 20 year fraud expert, consistent of some of the facts presented. These facts were sufficient to justify granting of a trial.

Stated in the Declaration in Support of the Response to the Motion to Issue Writ of Restitution was the affidavit of Ms. Szymoniak and this text, which states

"In Ms. Szymoniak's affidavit, she concluded the Assignment of Deed of Trust and Appointment of Successor Trustee were fraudulently procured——created; and among other relevant information in said affidavit, she states, in paragraph #19, quoted here in relevant part,

> "...present case is another example of a trust failing to produce the Assignment that should have been obtained in 2005. The Assignment Date on the July 17, 2009, Assignment is almost certainly incorrect. According to the document, a Trust that closed in 2005 acquired this non-performing loan by an Assignment dated July 17, 2009.""

(CP 65 – Response to Motion to Issue Writ of Restitution, Declaration in support of response to writ, pg 2)

In addition, Cheye Larson, securitization expert concluded in #10 of the Declaration in support of response et al, states

"Mr. Larson summarizes his opinion in the Conclusion:

> "Given the evidence of mortgage fraud records removal in the MERS database, I declare the evidence documented above to be corroborative and supportive of the direct business fraud evidence by Expert Szymoniak. I also declare that all records from the defendants in the above captioned case need to be subpeoned and depositions taken to determine the level of fraud and collusion involved. Finally, I declare after my review of all relevant documentation that it is my opinion that **I could find no proof of legal affiliation by Bank of New York Mellon nor the trust**.""

(CP 65 –*Response to Motion to Issue Writ of Restitution, Declaration in support of response to writ, pg 4; emphasis added*)

Other facts documented in the Declaration in Support of Response to the Writ corroborate the affidavit of fraud by Lynn Szymoniak (CP 65 – Ex. E and F). Letters from a Securities and Exchange Commission state that the trust "CWL, Inc. Asset Backed Certificates, Series 2005-10" represented in all foreclosure documents starting with the Notice of Default does not exist in their database and that they were unable to locate the Pooling and Servicing Agreement. See, Defendants' original inquiry (CP 65 – Ex. B and C).

In addition, the Notice of Default showing the full name of the entity "Bank of New York Mellon, f/k/a The Bank of New York, as Trustee for Certificateholders of CWL, Inc. Asset Backed Certificates, Series 2005-10" alleging ownership of the property is attached (CP 65 – Ex. A). Finally, the docket for the Federal District Court case #C10-1720 where the Townleys highlighted the absence of the Beneficiary Declaration as an Exhibit (CP 65 - Ex. D – docket number #11)

Townleys stated in the verbatim report on May 17, 2012,

> "this new day we're asking for the Court to grant us a jury trial per 59.12.130 that would allow us to go in with all the facts, and allow them to also come in with their facts, and then have it decided."
>
> (RP 5-17-2012, pg 10, ll 5-8)

Therefore, Townleys requested a jury trial having put issue of fact

specifically regarding proper commencement by an entity that does not appear to have had any affiliation with the property per the expert declaration and use of improper business practices as in "robo signing" as stated in the affidavit of Lynn Szymoniak, was enough for the Court to have granted Townleys a jury trial to review the facts submitted throughout the course of the case. For RCW 59.12.130 states,

> **RCW 59.12.130**
> **Jury — Actions given preference.**
> Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this chapter shall take precedence of all other civil actions.
> [1891 c 96 § 15; RRS § 824. Prior: 1890 p 79 § 15.]

Townleys' Constitutional due process rights were violated by the Court's orders. The facts in just one of the pleading presented substantive evidence regarding the fact that Bank of New York Mellon did not possess the legal authority to commence a foreclosure –therefore, RCW 61.24 et. seq., was never invoked and it's language is not relevant. The Court lacked jurisdiction to enter its ruling in the Unlawful Detainer. Furthermore, if the foreclosure was commenced, which is a most

favorable view to Plaintiff, the irregularities presented throughout the entire record show substantive evidence that Bank of New York Mellon did not strictly comply with the statutory scheme of RCW 61.24.

Since the Washington Supreme Court has ruled on cases where irregularities existed, the case law and thus, precedence is well founded. It is only proper to remand this case for further fact finding and jury trial.

EQUITABLE DEFENSES SUMITTED IN THIS CASE IN VIEW OF BAIN JUSTIFY RELIEF (REMAND) FOR TOWNLEYS

The Dismissing of the Counter and Cross Complaint due to lack of subject matter jurisdiction was error.

In *SKARPERUD v. LONG*, the defendant filed a counterclaim, which was stricken within the context of limited proceeding of the Unlawful Detainer RCW 59.12.; the decision documented a test for counterclaims,

> Unlawful Detainer - Counterclaims - Test. A lessee may not assert a counterclaim in an unlawful detainer action based on the nonpayment of rent unless the covenant to pay rent is conditioned on a covenant which the lessor is alleged to have breached or **the counterclaim specifically raises a recognized equitable defense.**
>
> *Id Skarperud v. Long 40 Wn. App. 548, 699 P.2d 786 (1985) (Emphasis added)*

The Court in *MOTODA v. DONOHOE,* further states, quoted in relevant part,

> An equitable defense, as defined by our court, arises when: [T]here is a substantive

> legal right, that is, a right which comes within the scope of juridical action, as distinguished from a mere moral right, and the procedure prescribed by statute for the enforcement of such right is inadequate or the ordinary and usual legal remedies are unavailing, it is the province of equity to afford proper relief, unless the statutory remedy is exclusive. Rummens v. Guaranty Trust Co., 199 Wash. 337, 347, 92 P.2d228 (1939).

Id Motoda v. Donohoe, 1 Wn. App. 174, 459 P.2d 654 (Div I)

Though held as fixed law, the Bain decision on August 16, 2012, and the Supreme Court other supportive ruling, restated Chapter RCW 61.24 is a strict compliance statutory scheme. Given the facts, Townleys supplied the fact finding court with evidence (that stands undisputed in the record and was presented by experts who's expertise stay void of any relevant challenges to their expertise) obtained by a research analyst at United States Securities and Exchange Commission, showing there were no records of a trust under the name stated on all of the conveyances in this case.

Therefore, from inception by means of the Notice of Default and forward the claims of interests in the subject property stand stands void of substance. Respondent utilized a fictitious trust name in order to give the illusion of legality, legal authority, and a valid interest in order to invoke the

Deed of Trust Act (RCW 61.24).

Besides clear evidence of irregularities and the direct evidence of fraud found in the record in this case, there were sufficient facts to warrant jury trial. The facts documented issues consistently and clearly showed issues of "statutory enforcement" as stated in MOTODA v. DONOHOE (Id.), which defines an equitable defense

> The Court found in *SKARPERUD v. LONG*, quoted in relevant part,
>
> The Skarperuds' motion to modify the commissioner's ruling is granted and the appeal is dismissed, except the counterclaim is reinstated and continued to the regular civil docket instead of being stricken. CR 42(b).

supra

In conclusion, the order dismissing the counter complaint for lack of subject matter jurisdiction was error. The facts of fraud and irregularities entered in the record of this case show a pattern of improper acts by Bank of New York Mellon. Importantly, the issue of Townleys possession of the subject property and the improper (unlawful under Bain) commencement of the foreclosure is sufficient to justify remand, consistent with reinstatement of Townleys back in their home because the illegal and improper act prejudiced Townleys and were acts contrary to law. Whether loving Mother and Father and their children—a family of six—were thrown out on the street by said

unlawful acts is relevant to the Townleys, however, the facts remain showing one intent from the moment Respondent filed their first document in the King County Records and worked a fraud upon the Court.

Respondent argued there is no impact to the public, yet, when a property is taken by a means that is contrary to law and fix statutory language the interests of the public are harmed. Selling the property given the active direct appeals in the Ninth Circuit and the instant direct appeal is improper. Given the litigation presently active regarding the property for Respondent to seeks involvement of an innocent third party by transferring title to a buyer is contrary to public interests. Most favorable to Respondent, it stands as bad faith, if not wholly improper—the title is not clear in a true sense, though a title company may not produce the pending issues in the two appeals, thus, misleading a potential buyer. This is contrary to public interests, therefore, supportive of a CPA violation(s).

Damages were sought beyond the scope of RCW 61.24, RCW 59.12 or RCW 59.18. Within the scope of RCW 61.24., as that relates to property interest, relief in the nature of placing Townleys back in their home and reinstating their claims is warranted and clearly justified given the expansive clarification of this area of law in Washington.

DECLARATORY JUDGMENTS ARE PROPERLY BEFORE ANY COURT PER RCW 7.24 and CR 57

The Petition for Declaratory Judgment was properly before the court in adherence to RCW 7.24.010 which states:

> ***RCW 7.24.010***
> **Authority of courts to render.**
> Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. An action or proceeding shall not be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

The order dismissing the petition for declaratory judgment due to lack of subject matter jurisdiction was plain error. The appellate case law is clear on this question of unlawful detainers and declaratory judgments handled together. It is allowed.

> Ghorbanian's answer raised several defenses, including the illegality of the agreement. He also filed a partition action and a declaratory judgment action to declare the lease invalid. ***The trial court consolidated the unlawful detainer and the declaratory judgment actions*, but denied Ghorbanian's request to consolidate the partition action**.

Accord, Fallahzadeh v. Ghorbanian *119 Wn. App. 596 (Division 1, 2004)* (emphasis added)

Additionally, in *Blakely vs. Housing Authority of the County of King et al*, the court held, stated in relevant part,

> Plaintiff did not take advantage of the grievance procedure described and she refused to vacate her leased unit. HACK [Housing Authority of the County of King) then ***commenced an unlawful detainer proceeding***. Subsequently, on July 12, 1972, plaintiff ***commenced the instant suit for injunctive and declaratory relief "on behalf of herself and all individuals and families living in housing projects administered and operated by defendants.***

Accord, *Blakely vs. Housing Authority of the County of King et al, 8 Wn. App. 204 (Div I, 1973)* (Emphasis added)

Furthermore, Townleys' standing to invoke the Uniform Declaratory Judgment Act (UDJA) was established in their pleading. As the court held in FIRE PROT. DIST. v. CITY OF MOSES LAKE, quoted in relevant part,

> "[1] Standing to seek a declaratory judgment is addressed by statute, the Uniform Declaratory Judgments Act (UDJA), chapter 7.24 RCW:
>
> A person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or

> franchise and obtain a declaration of rights, status or other legal relations thereunder.
>
> RCW 7.24.020. To establish harm under the UDJA, a plaintiff must present a justiciable controversy premised on allegations of harm personal to him/her that are substantial and not conjectural or speculative. Walker v. Munro, 124 Wn.2d 402, 411, 879 P.2d 920 (1994). The common law doctrine of standing clarifies the statutory right, prohibiting a litigant from raising another's rights. Id. at 419"

Id., FIRE PROT. DIST. v. CITY OF MOSES LAKE, 145 Wn.2d 701-702 (2002)

With precedence set by the cases herein and the spirit and intent of the UDJA was followed by Townleys, to wit: the Court had jurisdiction to determine and grant declaratory relief as requested based on the facts properly before the Court. Bank of New York Mellon had over two months (March 8th until May 11th) to dispute the facts placed before the Court by Townleys, yet they did not dispute the facts. The issue of facts lay in the province of the jury. The facts sufficient to warrant relief and most of the facts were supported by experts.

The facts in the Petition for Declaratory Judgment (CP 11) and Motion for Reconsideration of the Order Denying the Petition for Declaratory Judgment (CP 73) show substantial evidence of fraud and irregularities and physical damage to the Townleys (a family of six).

A trial court abuses its discretion when its decision is " based upon untenable grounds, or the decision is manifestly unreasonable or arbitrary." The adequacy of notice is a mixed question of law and fact. Miebach v. Colasurdo, 102 Wash.2d 170, 175, 685 P.2d 1074 (1984). which this court reviews de novo. Humphrey Indus. Ltd. v. Clay St. Assocs., 170 Wash.2d 495, 501-02, 242 P.3d 846 (2010). Speelman v. Bellingham/Whatcom County Housing Authorities, 273 P.3d 1035, 167 Wn.App. 624 (Wash.App. Div. 1 2012).

REMAND IS NECESSARY DUE TO LACK OF FINDINGS

Detailed findings are required for this Court to know whether the Trial Judge applied the proper standards. Without it, it is difficult for this Court to understand what material facts were reviewed by the Commissioner and how she reached the determination to issue the Order of Writ of Restitution.

> "For an adequate appellate review ... this court should have, from the trial court ... findings of fact (supplemented, if need be, by a memorandum decision or oral opinion) which show an understanding of the conflicting contentions and evidence, and a resolution of the material issues of fact that penetrates beneath the generality of ultimate conclusions, together with a knowledge of the standards applicable to the determination of those facts." Groff v. Dept. of Labor, 65 Wn.2d 35, 40, 395 P.2d 633 (1964).

Townleys also filed a Motion for Findings of Fact and Conclusions of Law with the Petition for Declaratory Judgment. When the petition was dismissed due to lack of subject matter jurisdiction, no findings of fact or conclusions of law were documented. Remand is therefore proper.

E. Conclusion, Relief Sought.

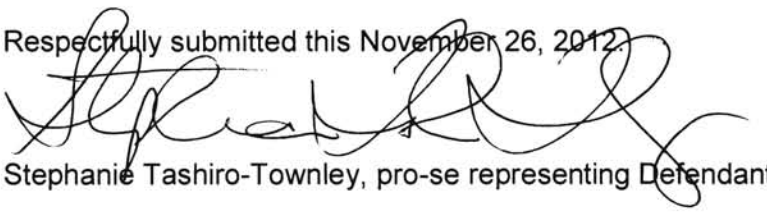
Townleys request that this Court vacate the order of Writ of Restitution and void the sale and title transfer of Townleys' property restoring it to the Townleys' possession.

Townleys also request that this Court remand this case to have the Counter and Cross Complaint reinstated and continued on a regular civil docket to address claims therein.

Townleys ask for this Court to grant leave to amend Counter and Cross Complaint to include only relevant causes of action post-eviction and correct the entities in this appeal, (Bank of New York Mellon, Mortgage Electronic Registration Systems, Inc., and Ocwen Loan Servicing LLC).

Finally, Townleys ask for legal costs of this appeal per RAP 14.2 and RAP 18.3.

Respectfully submitted this November 26, 2012.



11/26/12

Stephanie Tashiro-Townley, pro-se representing Defendants

Appendix A

CERTIFIED COPY

FILED
KING COUNTY, WASHINGTON

OCT 26 2012

SUPERIOR COURT CLERK
THERESA GRAHAM
DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON FOR KING COUNTY

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE
Plaintiff/Petitioner,

vs.

MICHA SELINAU, et al
Defendant/Respondent.

No. 12-2-03428-1 SEA

ORDER ON CIVIL MOTION

CLERK'S ACTION REQUIRED

THIS MATTER having come on duly and regularly before the undersigned Judge of the above-entitled Court upon Defendant's Motion for Revision of Commissioner's order entered on August 15, 2012, granting Plaintiff a writ of restitution.

and this Court being otherwise fully advised in the premises; NOW, THEREFORE,

IT IS HEREBY ORDERED that Defendant's Motion for Revision is granted and the order issuing writ of restitution is vacated.

IT IS FURTHER ORDERED that this unlawful detainer action is stayed until Defendant's appeal of superior court case

DATED this ____ day of _____

John P. Erlick, Judge

ORDER

Judge John P. Erlick
King County Superior Court
516 Third Avenue
Seattle, WA 98104
206-296-9345

PG 44

Case Name: DEUTSCHE BANK v. SCHMALZ

Cause Number: 12-2-03428-1 SEA

NUMBER 11-2-19807-3 SEA (DIV 1: 085110-3) is resolved. The stay on the unlawful detainer is conditioned on Defendant making monthly payments by the first of each month, and no later than the fifth of each month, into the King County Clerk Registry. Each monthly payment shall be, in the amount of $1,000.00. The failure of Defendant to make the payment on time will result in a lift of the stay on the unlawful detainer action. Should this stay be lifted, Plaintiff shall be entitled to obtain a writ of restitution, ex parte, upon providing proof to the court that Defendant failed to timely make a monthly payment. Plaintiff shall provide notice to Defendant five days prior to Plaintiff submitting its motion for writ of restitution to the ex parte department. Notice shall include the motion and cover letter indicating the date Plaintiff intends to have the motion presented, and notice shall be by first class mail to the property address as well as by email to micahlegal@gmail.com.

Date: 10/26/12

Judge

Copy Received

Attorney for Plaintiff
Bar Number: 42960

Copy Received

Micah Schmalz

Attorney for Defendant
Bar Number: pro se

PG45

Appendix B

PRESS NOTICE

BILL NETTLES
UNITED STATES ATTORNEY
DISTRICT OF SOUTH CAROLINA
*1441 Main Street, Suite 500 * Columbia, SC 29201 * (803) 929-3000*

March 9, 2012

FOR IMMEDIATE RELEASE
CONTACT PERSON: Fran Trapp
(803) 929-3000
Fran.Trapp@usdoj.gov

$95 MILLION SETTLEMENT WITH THE NATION'S FIVE LARGEST MORTGAGE SERVICERS PARTIALLY RESOLVES SOUTH CAROLINA FALSE CLAIMS ACT LAWSUIT

COLUMBIA, South Carolina ---- A $95 million settlement with the nation's four largest mortgage servicers was announced today by United States Attorney Bill Nettles. Bank of America Corporation, J.P. Morgan Chase & Co., Wells Fargo & Company, and Citigroup Inc. agreed to the settlement to address allegations that the defendants participated in a nationwide practice of failing to obtain required mortgage assignments which resulted in servicing misconduct, and using false assignments to submit Federal Housing Administration mortgage insurance claims, all in violation of the federal False Claims Act, 31 U.S.C. § 3729. This is the largest False Claims Act settlement ever obtained by the District of South Carolina. The settlement was reached as part of the $25 billion dollar global resolution between the same defendants, the United States of America, the state attorneys general, and others.

The United States and the state attorneys general filed today in the U.S. District Court in the District of Columbia proposed consent judgments with Bank of America Corporation, J.P. Morgan Chase & Co., Wells Fargo & Company, Citigroup Inc. and Ally Financial Inc., to resolve violations of state and federal law. Included in the proposed settlement agreements, is the partial settlement for four of the defendants of allegations that the United States Attorney's Office for the District of South Carolina began investigating in the Spring of 2010. In particular, the government investigated allegations that the defendants participated in a pervasive nationwide scheme involving the wholesale fabrication of mortgage assignments and other servicing abuses.

The False Claims Act allows the government to bring civil actions against entities that knowingly use or cause the use of false documents to obtain money from the government or to conceal an obligation to pay money to the government. The lawsuit in this case was initially filed by Lynn Szymoniak under the qui tam or whistleblower provision of the False Claims Act. This provision entitles a private person to bring a lawsuit on behalf of the United States, where the private person has information that the named defendant has knowingly violated the False Claims Act. Under the False Claims Act, the private person, also known as a "whistleblower," is entitled to a share of the government's recovery. In this matter, the whistleblower will receive $18 million from the proceeds of the settlement.

"Whistleblowers play an important role in protecting taxpayer funds from fraud and abuse," said U.S. Attorney Nettles. "Settlements like this one help maintain the integrity of the federal mortgage servicing process."

"By this agreement we are making an important first step to hold mortgage servicers accountable for fraudulent and abusive practices not only in South Carolina but nationwide. I am proud of the tireless work of this office to investigate this case across the country," said U.S. Attorney Nettles.

"We see this historic settlement as one of national importance as our success in this case marks a precedent setting application of the False Claims Act to complex financial fraud," said U.S. Attorney Nettles. "It also demonstrates the role that whistleblowers can play in working with the government to return dollars to the federal treasury and to expose wrongdoing."

"We are very pleased by this settlement but at the same time our investigation is ongoing as we continue to ascertain the full magnitude of wrong doing and to seek redress for the United States Government," said U.S. Attorney Nettles.

This settlement was the result of a coordinated effort by Assistant United States Attorneys Fran Trapp and Jennifer Aldrich of the U.S. Attorney's Office for the District of South Carolina along with the Commercial Litigation Branch of the Justice Department's Civil Division, the U.S. Attorney's Office for the Western District of North Carolina and the Offices of Inspector General and legal counsel departments for HUD, the Treasury and the Federal Reserve in investigating the allegations.

Lynn Szymoniak, the whistleblower, was represented by South Carolina attorney Richard Harpootlian along with the firm of Grant & Eisenhofer (G&E) including firm partner Reuben Guttman, of the Washington, DC office, who heads the G&E False Claims Litigation Group and firm partner James Sabella of the New York office, who is a senior member of the G&E Securities Fraud Litigation Group. Kenneth Suggs and

Howard Janet of Janet, Jenner, & Suggs in Maryland and South Carolina also represented Ms. Szymoniak.

The allegations contained in the complaint against the Defendants are merely accusations and do not constitute a determination of liability.

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WASHINGTON STATE COURT OF APPEALS
DIVISION 1

SCOTT C. TOWNLEY and STEPHANIE A. TASHIRO-TOWNLEY Appellants / Defendant Vs. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWABS INC. ASSET-BACKED CERTIFICATES, SERIES 2005-10, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and OCWEN LOAN SERVICING Appellees / Respondents / Plaintiff and Cross Complainants,	**APPEAL NO. 69194-5-I** **TRIAL CASE NO. 12-2-06921-2** DECLARATION OF SERVICE

THE STATE OF WASHINGTON)
COUNTY OF KING)

Thuy Friberg, declares and states that **she** is over the age of eighteen and is not a party to this action.

That on the **26th day of November, 2012**, at approximately 2:25 PM, declarant served a true copy of the APPELLANTS' OPENING BRIEF INCLUDING TWO APPENDICES upon the Plaintiff Attorney, Scott Grigsby and Lisa McMahon-Myrhan at

Robinson Tait P.S. At 710 Second Avenue, Suite 710, Seattle, WA 98104, by personally delivering and leaving the same with Scott Grigsby who received service at that address.

Signed:
Printed Name: THUY FRIBERG
Address: 19317 S.E 270th PL
Covington, WA 98042
Date: 11-26-2012

WASHINGTON STATE COURT OF APPEALS
DIVISION 1

SCOTT C. TOWNLEY and STEPHANIE A. TASHIRO-TOWNLEY Appellants / Defendant Vs. THE BANK OF NEW YORK MELLON F/K/A THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS CWABS INC. ASSET-BACKED CERTIFICATES, SERIES 2005-10, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. and OCWEN LOAN SERVICING Appellees / Respondents / Plaintiff and Cross Complainants,	**APPEAL NO. 69194-5-I** **TRIAL CASE NO. 12-2-06921-2** DECLARATION OF SERVICE

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Signed:
Printed Name: THUY FRIBERG
Address: 19317 S.E 270th PL
Covington, WA. 98042

Date: 11-26-2012