Case No. 43294-3

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

KEITH PELZEL,

Plaintiff-Appellant,

vs.

NATIONSTAR MORTGAGE, LLC; QUALITY LOAN SERVICE CORPORATION OF WASHINGTON; HOMECOMINGS FINANCIAL NETWORK, INC.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.

Defendants-Respondents.

Appeal from an Order of the Pierce County Superior Court
Case No. 10-2-16448-6

RESPONDENTS' BRIEF

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INTRODUCTION

This is a simple case presenting a single issue: Does Nationstar Mortgage, LLC have the power to initiate nonjudicial foreclosure of Appellant's property, when Nationstar is the actual holder of the promissory note secured by the Deed of Trust? Washington law is clear that the holder of the promissory note is the beneficiary under the Deed of Trust Act, and therefore has the power to foreclose non-judicially.

Appellant attempts to distract the Court from this central issue by pointing to an Assignment of the Deed of Trust by Mortgage Electronic Registration Systems, Inc., and by the fact that an investor "owns" – but has no power to enforce – the promissory note. These red herrings should be rejected, as they fail to demonstrate any genuine issue of material fact that would preclude the trial court from granting summary judgment for Respondents. Based on the undisputed evidence in the record before this Court, and the Supreme Court's clear pronouncements concerning standing to foreclose in *Bain v. Metropolitan Mortgage*, the Court should affirm the order granting summary judgment for Respondents.

STATEMENT OF THE CASE

Appellant Keith Pelzel, together with his wife Dena J. Pelzel, obtained a $104,000 loan from Homecomings Financial Network, Inc. on or about May 2, 2003. (CP 3, 167-169.) He executed a Promissory Note and a Deed of Trust to secure the Note against real property known as 6405 161st Street East, Puyallup, Washington. (CP 36-55, 167-169.) The

Deed of Trust identified Mortgage Electronic Registration Systems, Inc. ("MERS") as the beneficiary, as nominee for the lender and the lender's successors and assigns. (CP 37-38.) Both the Note and Deed of Trust notified Pelzel that the lender (Homecomings) may transfer the Note, and any transferee of the Note would be entitled to receive payments and to enforce the Note's provisions. (CP 47, 167.) The Note was transferred to Nationstar Mortgage LLC as of January 23, 2009. (CP 164, 167-169.) An Assignment of Deed of Trust to Nationstar was later recorded on December 7, 2009. (CP 126-127.)

Pelzel failed to repay the loan was required, so Nationstar began nonjudicial foreclosure. On November 10, 2009, Nationstar, through its agent Quality Loan Service Corporation of Washington, sent Plaintiff a Notice of Default pursuant to RCW 61.24.005(2). (CP 17-22, 164.) Nationstar subsequently appointed Quality as the successor Trustee of the Deed of Trust. (CP 164-165.) The Appointment of Successor Trustee was recorded on November 17, 2009. (CP 123-124, 164-165.) On or about January 14, 2010, Nationstar delivered a beneficiary declaration to Quality, declaring under penalty of perjury that Nationstar was in possession of the Note, and was therefore entitled to foreclose. *See* RCW 61.24.030(7); (CP 160-162, 165, 176.)

Because Pelzel did not cure the default on his loan, Quality issued a Notice of Trustee's Sale. (CP 129-131.) Mere days before the scheduled sale, Pelzel filed a Complaint in the Pierce County Superior Court and obtained a Temporary Restraining Order enjoining the trustee's

sale during the pendency of the action, conditioned on Pelzel making monthly payments into the registry of the court. The Complaint asserted causes of action for: (1) Defect in Trustee's Sale Pursuant to RCW 61.24.030, (2) Defective Initiation of Foreclosure, (3) Quiet Title, (4) Slander of Title, (5) Breach of Contract, (6) Violation of Washington's Consumer Protection Act, and (7) Unjust Enrichment. Each cause of action was based on the claim that Nationstar was not authorized to foreclose. (*See* CP 1-13.)

Defendants filed a Motion for Summary Judgment. (CP 135.) The Motion was supported by three sworn declarations: First, the Declaration of Timothy Donlon, an employee of Quality Loan Service, established that Quality received a "Declaration of Ownership" from Nationstar on or about January 14, 2010 affirming that Nationstar was the holder of the Note. (CP 160-162.) Second, the Declaration of Michelle Smith, an employee of Nationstar, affirmed that Nationstar was the holder of the Note and had been in possession of the Note since January 23, 2009. (CP 163-169.) Ms. Smith's Declaration also stated that Nationstar serviced the loan for Fannie Mae, the owner of the Note. (CP 164.) Third, the Declaration of Mary Stearns, Defendants' counsel, was accompanied by a true and correct copy of the Deed of Trust recorded with the Pierce County Auditor. (CP 177-198.)

Pelzel filed an Opposition to the Motion for Summary Judgment on February 21, 2012. (CP 200.) He argued that there was a disputed issue of fact regarding Nationstar's authority to foreclose because Fannie

Mae was the owner of the Note. (CP 201.) Pelzel submitted no declarations or other admissible evidence in support of his opposition. (*See* CP 205.)

The court held a hearing on the Motion for Summary Judgment on March 2, 2012. After hearing the arguments of counsel, the court granted the Motion, finding Plaintiff could not state a cause of action for wrongful foreclosure or his related claims, and that Plaintiff had not shown he suffered any damages. The Order Granting Defendants' Motion for Summary Judgment was entered on March 2, 2012. (CP 287.)

STANDARD OF REVIEW

This Court reviews a summary judgment order de novo, performing the same inquiry as the trial court. *Owen v. Burlington N. & Santa Fe R.R. Co.*, 153 Wn.2d 780, 787, 108 P.3d 1220 (2005). A motion for summary judgment will be granted where there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Scott v. Pac. W. Mt. Resort,* 119 Wn2d 484, 502, 834 P.2d 6 (1992). "A material fact is one that affects the outcome of the litigation." *Owen*, 153 Wn.2d at 789.

The moving party bears the initial burden of demonstrating the absence of any genuine issue of material fact. *Knox v. Microsoft Corp.*, 92 Wn.App. 204, 207, 962 P.2d 839 (1998). Once the moving party produces evidence showing the absence of disputed material facts, the burden shifts to the nonmoving party to produce admissible evidence setting forth facts

showing a genuine issue for trial. CR 56(e). The nonmoving party "may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Discover Bank v. Bridges*, 154 Wn.App. 722, 727, 226 P.3d 191 (2010) (citing *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986)).

ARGUMENT

I. THE COURT DID NOT ERR IN FINDING THERE WAS NO GENUINE ISSUE OF FACT ABOUT NATIONSTAR'S AUTHORITY TO COMMENCE FORECLOSURE.

The entirety of Appellant's Brief focuses on one issue: Whether Nationstar had standing to foreclose as the beneficiary of the Deed of Trust. The answer to this question is indisputably "yes," as all parties admit and agree that Nationstar is the holder of the promissory note, and was the holder of the note at all relevant times since January 23, 2009, several months before the foreclosure began.

A. As Holder of the Note, Nationstar Had Authority to Direct the Foreclosure.

The Supreme Court clearly and unambiguously held in *Bain* that the "beneficiary" of an instrument under the Deed of Trust Act is the actual holder of the promissory note. *Bain v. Metro. Mortg. Group, Inc.*, 175 Wn.2d 83, 102, 104 (2012). The evidence submitted in support of the Respondents' Motion for Summary Judgment established that Nationstar was the actual holder of the note. (CP 164, 167-169.) Appellant does not

dispute any of the following facts: The Note was executed by Plaintiff and Dena J. Pelzel on May 2, 2003, and was made payable to Homecomings Financial Network, Inc., and then later endorsed to GMAC Mortgage Corporation. (CP 167-169.) GMAC subsequently endorsed the Note in blank, making it payable to bearer. (CP 169; *see* Opening Br. at 9.) Nationstar took physical possession of the Note on January 23, 2009 and kept the Note continuously in its possession at all times since that date. (CP 164; *see* Opening Br. at 7-8.) Nationstar provided Quality Loan Service with a Declaration dated January 14, 2010 stating under penalty of perjury that Nationstar was the actual holder of the Note. (CP 160-162, 165, 176.)

The party who possesses a promissory note indorsed in blank is the "holder" of the note. RCW 62A.3-205 ("When indorsed in blank, an instrument becomes payable to bearer and may be negotiated by transfer of possession alone until specially indorsed."). And RCW 62A.3-301 provides that the "the holder of the instrument" is entitled to enforce its terms. Unsurprisingly then, the express language of the Note that Appellant signed defines a "Note Holder" as "anyone who takes this Note by transfer" and permits "the Note Holder [to] enforce its rights under this Note." (CP 167.) Nationstar – which has been in possession of the Note, endorsed in blank, since January 23, 2009 – has been the "person entitled to enforce the note" under RCW 62A.3-301. (CP 164.) Nationstar is therefore also the Deed of Trust beneficiary under RCW 61.24.005(2), and it had the power to foreclose upon Appellant's default. While Appellant

argues at length that the Uniform Commercial Code ("UCC"), codified at RCW 62A.3-301, is inapplicable to the Deed of Trust Act, the Supreme Court has held otherwise. (*See* Opening Br. at 14-19); *Bain*, 175 Wn.2d at 104.

B. The Recorded Assignments Do Not Undermine Nationstar's Authority to Foreclose.

Recognizing that Nationstar was the noteholder, Appellant nevertheless argues that Nationstar lacked authority to foreclose because the Assignment of Deed of Trust executed by MERS was a "nullity." (Opening Br. at 8-9.) But because Nationstar was the holder of the Note, Nationstar was also the beneficiary under the DTA and therefore had the power to foreclose, regardless of the Assignment.

There is no requirement under Washington Law for an assignment of a deed of trust to be recorded before foreclosure can be initiated. "An assignment of a deed of trust and note is valid between the parties whether or not the assignment is ever recorded. Recording of the assignments is for the benefit of third parties; it has no bearing on the rights as between assignor and assignee." *In re United Home Loans, Inc.*, 71 B.R. 885, 891 (W.D. Wash. 1987) (internal citation omitted). Assignments are recorded in order to protect the assignee beneficiary from any potential claims by other parties claiming to hold the beneficial interest, not to give borrowers notice of a transfer of the deed of trust or the note. *See Price v. N. Bond & Mortg. Co.*, 161 Wash. 690, 698 (1931); *Fidelity & Dep. Co. v. Ticor Title*

Ins., 88 Wn. App. 64, 66-67 (1997) (explaining that if the owner of a mortgage assigns it to two different assignees, the first to record its interest prevails). Although an assignment *may* be recorded, there is no statutory requirement that it *must* be recorded. RCW 65.08.070; *Salmon v. Bank of Am. Corp.*, 2011 U.S. Dist. LEXIS 55706, at *21-22 (E.D. Wash. May 25, 2011) (rejecting borrowers' argument that an assignment of deed of trust must be recorded before foreclosure is initiated).

Regardless of the presence or absence of assignments in the public record, the "beneficiary" is the party entitled to foreclose under the deed of trust. A "beneficiary" is the "holder of the instrument or document evidencing the obligations secured by the deed of trust," in other words the holder of the promissory note. RCW § 61.24.005(2). The recording of an assignment of a deed of trust is neither necessary nor sufficient to confer standing to foreclose, because the security follows the note, not than the other way around. *Fidelity*, 88 Wn. App. at 68; *see also Carpenter v. Longan*, 83 U.S. 271, 275 (1872) ("[T]ransfer of the note carries with it the security, without any formal assignment or delivery, or even mention of the latter.") As a result, courts have found that the presence of MERS on the deed of trust is not fatal. *See, e.g., Coble v. Suntrust Mortg., Inc.*, 2014 U.S. Dist. LEXIS 23921, at *11 (W.D. Wash. Feb. 18, 2014); *Johnson v. CitiMortgage, Inc.*, 2013 U.S. Dist. LEXIS 177065, at *8-9 (W.D. Wash. 2013); *Babrauskas v. Paramount Equity Mortg.*, 2013 U.S. Dist. LEXIS 152561, at *9 (W.D. Wash. 2013); *see also Bain*, 175 Wn.2d at 112, 114 (suggesting that MERS would have

power to act if it was also the note holder, or it was acting as an agent for the note-holder).

The Supreme Court counseled in *Bain* that when challenges are raised to MERS' role in the chain of title, as Appellant does here, the Court's task is to determine the identity of the note-holder, and thus the beneficiary of the Deed of Trust. *See Bain*, 175 Wn.2d at 112. The undisputed evidence presented to the lower court demonstrates that Nationstar was the actual holder of the Note, and therefore Nationstar was the beneficiary of the Deed of Trust. (CP 164, 167-169.) As beneficiary, Nationstar instructed Quality Loan Service, as its agent, to issue a Notice of Default, and also directed the appointment of Quality Loan Service as the successor trustee. (CP 164-165); *see* RCW 61.24.031(1)(a) (allowing notice of default to be issued by an agent for the beneficiary), 61.24.010(2) (allowing beneficiary to appoint a successor trustee). Once it was appointed as trustee, Quality had the authority to issue the Notice of Trustee's Sale and proceed with the nonjudicial foreclosure. RCW 61.24.010(2).

C. Nationstar Is the Beneficiary of the Deed of Trust, Despite Fannie Mae's Interest in the Note.

Again acknowledging the undisputed fact that Nationstar is the holder of the Note, Appellant also attempts to argue that Nationstar lacked authority to foreclose because Federal National Mortgage Association

(also known as "Fannie Mae") was the "owner" of the loan. (Opening Br. at 10-13.) This argument also fails.

In the context of negotiable instruments such as promissory notes, there is a distinction between the "holder" and the "owner" of an instrument. RCW 62A.3-301 acknowledges this distinction, noting that the holder of an instrument has the power to enforce it, while the owner does not. Indeed, even Appellant recognizes that Fannie Mae is not a person entitled to enforce the Note, as Fannie Mae is not the note holder. (Opening Br. at 14.) "A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument." RCW 62A.3-301. Thus, in determining whether a party is empowered to enforce the note – either through nonjudicial foreclosure under the DTA or though an action on the note itself – the issue of who *owns* the note is "largely immaterial." *Reinke v. Northwest Trs. Servs. (In re Reinke)*, 2011 U.S. Bankr. LEXIS 4142, at *32 (Bankr. W.D. Wash. Oct. 26, 2011). The focus instead is on who is the *holder* of the note, because the holder rather than the owner is the beneficiary under the DTA. *See* RCW 61.24.005(2); *Reinke*, 2011 U.S. Bankr. LEXIS 4142, at *36 (rejecting argument that Freddie Mac was the beneficiary under the DTA because it was the "owner" of the loan).

Appellant cites RCW 61.24.030(7)(a) to support his argument that Fannie Mae, rather than Nationstar, was the true beneficiary. (Opening Br. at 10-12.) But Appellant's argument fails to find support in the statute.

The DTA expressly provides that the before issuing a notice of trustee's sale:

> [T]he 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.***

RCW 61.24.030(7)(a) (emphasis added). The statutory language is clear that the Legislature intended the beneficiary to be the *holder* of the promissory note. And this is precisely the interpretation that the Supreme Court reached in *Bain*. While RCW 61.24.030(7)(a) does make reference to the beneficiary being the "owner" of the note, both the language of the DTA and court decisions interpreting it demonstrate that when the terms "owner" and "ownership" are used in the DTA, they are meant to refer to the holder of the note with the power to enforce it. *See Bain*, 175 Wn.2d at 111 ("If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions.").

The Court's duty in interpreting the Deed of Trust Act is to "discern and implement the intent of the legislature." *Boeing Emps.' Credit Union v. Burns*, 167 Wn. App. 265, 270 (2012) (citing *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003)). First, the Court looks to the express language of the statute. If is unambiguous, the language is given

its plain meaning. *Id.* (citing *State v. Bunker*, 169 Wn.2d 571, 582-83, 238 P.3d 487 (2010) (Sanders, J. dissenting)). Here, the plain language of the DTA demonstrates that the beneficiary of the Deed of Trust is the holder of the promissory note, regardless of whether some other entity may own the note. RCW 62A.1-201(5), (20), 62A.3-205(a)-(b); RCW 61.24.005(2). Only the holder is entitled to enforce the note through nonjudicial foreclosure. Because the undisputed evidence in the record here demonstrates that Nationstar is the holder of the Note, Appellant's arguments that Nationstar lacked standing to foreclose fail to create a genuine issue of material fact that would preclude the court from granting summary judgment for Defendants.

II. THE COURT PROPERLY GRANTED SUMMARY JUDGMENT ON PELZEL'S REMAINING CAUSES OF ACTION.

Appellant's Opening Brief assigns error only to the trial court's finding that Nationstar had standing to foreclose. (Opening Br. at 5.) As a result, he has waived any claims of error relating to the other causes of action that were raised in his Complaint. Indeed the Opening Brief fails to mention any of the other causes of action except for his claim under the Consumer Protection Act. But because Appellant failed to comply with the Rules of Appellate Procedure by including this claim in the assignments of error, it is waived. And even if the claim is not waived, Appellant has failed to point to any evidence in the record that would

establish a genuine issue of material fact that would preclude summary judgment from being granted to Respondents.

A. Pelzel Waived Any Claims Other than the Deed of Trust Act Violation By Failing to Raise Assignments of Error.

Washington Rule of Appellate Procedure 10.3(a)(4) requires the appellant to set forth a concise statement of each error he contends was made by the trial court. When the appellant contends the trial court erred in making findings of fact, she must include a separate assignment of error for each finding and cite to the finding by number. RAP 10.3(g). "The appellate court will only review a claimed error which is included in an assignment of error or clearly disclosed in the associated issue pertaining thereto." RAP 10.3(g).

Appellant assigned error only to the trial court's findings concerning Nationstar's standing to foreclose, which formed the basis of his First and Second Causes of Action for violations of the Deed of Trust Act. (Opening Br. at 5.) Appellant did not assign error to the trial court's order granting summary judgment to Defendants on the other claims raised in Appellant's Complaint for quiet title, slander of title, breach of contract, Consumer Protection Act, or unjust enrichment. (*See* CP 8-12.) Because Appellant has failed to raise any assignments of error arising out of the Order granting summary judgment aside from the alleged DTA violations, he has waived any right to claim such errors. *See Ortblad v. State*, 85 Wn.2d 109, 111-112, 530 P.2d 635 (1975).

B. The Trial Court Properly Granted Summary Judgment on Pelzel's Consumer Protection Act Claim.

Although not contained in the Assignments of Error or Issues Pertaining to Assignments of Error, Pelzel mentions in his Opening Brief that the alleged violations of the Deed of Trust Act also constitute deceptive acts or practices under the Consumer Protection Act ("CPA"), RCW 19.86.020. (*See* Opening Br. at 8-10, 13-14.) As stated above, Appellant waived this claim by failing to include it within his Assignments of Error. RAP 10.3(g). But even if the Court were to find this claim is not waived, Appellant has failed to demonstrate a genuine issue of material fact as to his CPA cause of action.

To prevail on a CPA claim, a plaintiff must establish five elements: (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff's business or property, and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780 (1986). A plaintiff can meet the first element in only two ways: either by identifying a statute that renders the act a per se unfair act, or by showing the act is "deceptive" and "has the capacity to deceive a substantial portion of the public." *Id.* at 785-86; *Sanders v. Lloyd's of London*, 113 Wn.2d 330, 344 (1989). Failure to satisfy even one of the elements is fatal to a CPA claim. *Hangman Ridge*, 105 Wn.2d at 793.

Appellant appears to identify three actions as being allegedly deceptive practices under the CPA. First, he contends the Assignment of

Deed of Trust by MERS was deceptive because MERS never held the promissory note. (Opening Br. at 8-9.) Second, he contends the Substitution of Trustee was deceptive because Nationstar was not the beneficiary, and thus did not have the power to appoint a trustee. (Opening Br. at 9-10.) Third, he contends the Notice of Default was deceitful in that it did not identify Fannie Mae as the owner of the note. (Opening Br. at 12-14.) Appellant has not established a genuine issue of fact supporting a CPA claim on any of these bases.

1. The Assignment of Deed of Trust Does Not Support a CPA Claim.

As noted above, a CPA cause of action requires proof of five elements: (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) public interest impact, (4) injury to plaintiff's business or property, and (5) causation. *Hangman Ridge*, 105 Wn.2d at 780. Respondents recognize that in *Bain*, the Supreme Court found the first three elements are "presumptively" met when MERS is identified as the beneficiary of a deed of trust without being the note holder. *See Bain*, 175 Wn.2d at 117. Even assuming *arguendo* that the first three elements were met in this case based on MERS' assignment of the Deed of Trust to Nationstar, Appellant failed to put forth any evidence in the trial court to establish either injury or causation, and he makes no such arguments on appeal. The mere existence of a deceptive act does not give rise to a CPA claim; rather the plaintiff must prove a causal link between the alleged

deceptive practice and purported injury. *Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 81-82 (2007). "A plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury." *Id.* at 84. Appellant failed to prove these elements.

Pelzel did not file any declarations in opposition to Respondents' summary judgment motion. (*See* CP 205.) Neither his Complaint nor his Opposition to the motion identified any injury that he suffered as a result of MERS executing an Assignment of Deed of Trust. And importantly, the Assignment merely purported to transfer the Deed of Trust to the current note holder, Nationstar Mortgage, which was already the beneficiary of the Deed of Trust by operation of RCW 61.24.005(2); (*see* CP 126-127, 164.) Because Appellant failed to put forth any evidence that he suffered any injury, or that any injury as caused by MERS's assignment of the Deed of Trust to Nationstar, his CPA cause of action fails on this basis.

2. The Substitution of Trustee Does Not Support a CPA Claim.

As discussed above, Nationstar had the power to appoint a successor trustee, because Nationstar was the holder of the Note and thus the beneficiary of the Deed of Trust. *Bain*, 175 Wn.2d at 102, 104; RCW 61.24.010(2); (CP 164-165). Thus, while Appellant argues that Nationstar's appointment of Quality Loan Service as the trustee was

deceptive, his claim fails on its face because the evidence shows that Nationstar was authorized to execute the Substitution of Trustee. All of the actions undertaken by Nationstar were done through its authority as the note-holder and beneficiary. While Appellant attempts to argue that Nationstar's actions are deceptive because they flow from MERS's Assignment of Deed of Trust, this contention does not establish any deceptive act by Nationstar, which had authority to appoint a trustee regardless of the recorded Assignment. As one court explained in rejecting a similar claim:

> [The] Bank's claim to beneficiary status for purposes of the DTA comes not from MERS' purported assignment – defective or not – but rather from its physical possession of plaintiff's original note. Absent factual allegations suggesting that [the] Bank was not the beneficiary as represented, plaintiff has failed to allege an unfair or deceptive act on its part.

Babrauskas v. Paramount Equity Mortg., 2013 U.S. Dist. LEXIS 152561, at *9-10 (W.D. Wash. Oct. 23, 2013).

Furthermore, Appellant has neither identified any injury that he suffered by the Substitution of Trustee, nor submitted any proof that he would not have suffered injury "but for" Nationstar's actions. Without any such proof, he has failed to establish a genuine issue of material fact on his CPA claim.

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3. The Notice of Default Does Not Support a CPA Claim.

Finally, Appellant contends the Notice of Default was deceptive because it identified Nationstar Mortgage as the "owner/beneficiary of the Note secured by the Deed of Trust." (Opening Br. at 12-13); (CP 170). As discussed at length above, Nationstar *is* the beneficiary of the Deed of Trust and holder of the promissory note. Moreover, as also addressed above, the term "owner" of the deed of trust within the context of the DTA has been interpreted to refer to the note-holder. *See Bain*, 175 Wn.2d at 111 ("If the original lender had sold the loan, that purchaser would need to establish ownership of that loan, either by demonstrating that it actually held the promissory note or by documenting the chain of transactions."). Thus, Appellant has not established any deceptive act. And, as is true of all of his CPA claims, Appellant put forth neither argument nor evidence to prove that he suffered any injury caused by the identification of Nationstar as the "owner/beneficiary" in the Notice of Default.

III. PELZEL FAILED TO DEMONSTRATE A GENUINE ISSUE OF MATERIAL FACT RELATING TO QUALITY LOAN SERVICE CORPORATION.

Finally, Pelzel contends that summary judgment should not have been granted to Quality Loan Service Corporation because the trustee violated its duty of good faith by accepting the allegedly defective beneficiary declaration from Nationstar. (Opening Br. 19.) The lower court properly granted summary judgment on this claim because Quality

was under no duty to independently verify the information contained in the beneficiary declaration.

The Deed of Trust Act does not impose any duties on a trustee to independently verify that the beneficiary commencing the foreclosure is authorized to do so. RCW 61.24.030(7) requires a trustee to have "proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust" before commencing foreclosure. RCW 61.24.030(7)(a). The statute further provides that, "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 by this subsection." *Id.* (emphasis added). There is no dispute that Quality was in possession of a declaration from Nationstar stating that Nationstar was the actual holder of the promissory note. (CP 160-162, 165, 176.) By the express terms of RCW 61.24.030(7), Quality was entitled to rely in good faith on the beneficiary's declaration without engaging in its own independent investigation. RCW 61.24.030(7)(b). Because Appellant has presented neither evidence nor legal authority to support his argument that Quality "should not have accepted the 'declaration'" as proof that Nationstar was the holder of the Note and beneficiary of the Deed of Trust. The lower court did not err in accepting the unrebutted evidence in the record that Nationstar was the holder of the Note, and that the trustee complied with RCW 61.24.030(7)(a) by obtaining a declaration from Nationstar attesting to that fact.

CONCLUSION

The facts in this case are undisputed and clear: Nationstar is the holder of the original Note, and therefore has the power to foreclose the subject property under the Deed of Trust Act. Accordingly, and for the reasons addressed above, the Court should affirm the lower court's order granting summary judgment to Respondents.

Dated: May 19, 2014

Respectfully Submitted,
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By: _____
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Washington, and Mortgage
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CERTIFICATE OF SERVICE

I certify that on May 19, 2014, I served a copy of the foregoing document, described as **RESPONDENTS' BRIEF**, on the following persons by U.S. First Class Mail:

Keith Pelzel
1121 Harrison Ave. # 500
Centralia, WA 98531

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this Declaration was executed in Seattle, Washington.

Dated: May 19, 2014

Lindsay Wilson
Legal Assistant
McCarthy & Holthus, LLP