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

NO. 465205

VALERIE SLOTKE, an unmarried woman,

Appellant,

vs.

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR IXIS REAL ESTATE CAPITAL TRUST 2006-HE3 MORTGAGE PASS THROUGH CERTIFICATES, SERIES 2006-HE3,

Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF PIERCE

APPELLANT SLOTKE'S REPLY BRIEF

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I ARGUMENT

In its Reply Brief, Respondent makes the following admission:

> The ownership interest in Slotke's loan was assigned to a securitized mortgage loan trust named Ixis Real Estate Capital Trust 2006-HE3 Mortgage Pass-Through Certificates, Series 200-HE3. (cite omitted.) The Trustee of the trust is Deutsche Bank National Trust Company (cite omitted.) ***An Assignment of Deed of Trust was recorded on August 5, 2011***, under Pierce County recording number 201108050538, reflecting that ***Mortgage Electronic Registration Systems, Inc.***, as nominee for First Financial Services, LLC, DBA The Lending Center, ***assigned its interests in the Deed of Trust*** to Deutsche Bank as Trustee. (cite omitted.) Deutsche Bank as Trustee is the holder of the Note and the beneficiary of the Deed of Trust under Washington law. (cite omitted.) (emphasis added).

Respondent's Reply Brief, at 5-6.

The admission that Respondent claims its ownership interest in Appellant's promissory note ("Note") and deed of trust ("DOT") is fatal to Respondents case. Mortgage Electronic Registration Systems, Inc. ("MERS") has never owned *any* interest, of whatever kind or nature, in Appellant's Note or DOT. It therefore has never possessed any ownership interest that could be lawfully assigned.

Respondent will claim there is no need for a formal assignment because at common law the "security follows the note," and Respondent "holds" the Note.[1] As explained in greater detail below, Respondent's position on this issue betrays a profound lack of knowledge of the legal source of the "security follows the note" rule in Washington today and an

[1] Appellant wonders why Respondent so prominently informs the Court that it received its ownership interest in the Note and DOT through an assignment from MERS if Respondent does not believe the MERS assignment is the source of its ownership interest in the Note and DOT and of its consequent right to foreclose.

equally profound lack of knowledge of the factual circumstances that must exist before the rule may be properly invoked. Under the facts presented in this case, the "security follows the note" rule does not apply to Respondent. Moreover, under the facts here presented, even if the rule did apply, it would be trumped by the statutory requirement that, in Washington, all assignments of interests in real property be accomplished by deed.

A. In Washington, assignments of interests in real property must be accomplished by deed.

RCW 64.04.010 requires that any transfer of an interest in real property be accomplished by deed. RCW 64.04.020 lists the elements a lawful deed must incorporate. To lawfully assign an interest in real property a deed must be: (1) in writing; (2) signed by the person who will be bound by the deed (i.e., the person whose interest in real property will be assigned by the deed); and (3) acknowledged by the party who will be bound by the deed before some person authorized by statute to take acknowledgments of deeds. Pursuant to RCW 64.08.010, notary publics are entitled to take acknowledgements.

B. MERS assignment of the DOT did not transfer ownership of the lien interest in Appellant's property to Respondent.

On the surface, the MERS Assignment of Deed of Trust ("Assignment") meets the three requirements. It is in writing, signed by MERS (the party to be bound by the Assignment), and it was apparently acknowledged by a MERS representative before a notary republic. A

closer look at the Assignment however reveals that it does not satisfy RCW 64.04.020.

MERS has never owned or held any interest in the DOT because it has never owned any part of the Note that the DOT secures. One may assign only the interests that one possesses. The Assignment transferred all of MERS' interest in the DOT to Respondent. Since MERS had no interest in the DOT however, Respondent received no interest in the DOT through the Assignment.

Respondent has not claimed that it received an interest in the DOT through any other formal assignment. Consequently, unless the "security follows the Note" rule applies, Respondent has never received any interest in the DOT and therefore is not entitled to foreclose.

Given the facts in this case, the "security follows the Note" rule does not apply. Moreover, given the federal statute that controlled Respondent's creation and that controls its day-to-day operation -- 26 U.S.C. § 860(A)-(G) -- even if the "security follows the Note" rule did apply, Respondent still would not be authorized to foreclose because Appellant's loan would have been transferred into the Trust more than four years after the last date on which it lawfully could have been transferred into the Trust. And if a loan is transferred into a securitized trust years after the last date on which the loan may be transferred into the trust lawfully, federal law prohibits the trust from taking any action with respect to that loan. In other words, if this Court upholds the lower court

decision, in addition to misapplying the "security follows the note" rule, it will be aiding Respondent in the violation of federal law.

1. *Walker v. Quality Loan Services of Washington.*

In *Walker v. Quality Loan Services of Washington*, No. 65975-8-1 (2013), Appellant Walker claimed MERS was not a lawful beneficiary because it never held the note or deed of trust and therefore lacked authority to assign the deed of trust and note. *Walker,* No. 65975-8-1 at ¶ 11. The Court ruled that, if proved, this allegation, among others,[2] would establish a material violation of the DTA. *Id.* at ¶ 19. The Court then reversed the lower court's summary dismissal order for violations of the DTA, FDCPA and the CPA and remanded the case for further proceedings.

In the case before this Court, as in *Walker*, MERS never held any interest in Appellant's Note or DOT. Accordingly, the Assignment was legally ineffective. One cannot assign an interest that one does not possess. The second requisite of RCW 64.04.020 was not fulfilled because MERS held no transferable interest in the DOT. As a result, as in *Walker*, Respondent received no enforceable interest in the DOT when MERS assigned the DOT to Respondent on March 3, 2011.[3]

Moreover, because interests in real property must be transferred by deed, even if Respondent has actually purchased the Note and has physical

[2] In addition, because the assignment to the alleged beneficiary in Walker was ineffective, the alleged beneficiary's designation of the foreclosure trustee was also ineffective; and the foreclosure trustee therefore lacked authority to initiate a non-judicial foreclosure. The same is true in this case. NWTS is not a lawful trustee because it was appointed by the Trust, an entity to which the Note and DOT have never been lawfully transferred.

[3] Application of RCW 62A.9A-203 to the facts of this case leads to the same result.

possession of it, Respondent still does not have the right to enforce the DOT. This is because the lien interest represented by the DOT has not been transferred to Respondent by deed, as is required by RCW 64.04.010.

2. A formal assignment of the DOT is mandatory in Washington because of RCW 64.04.010 and RCW 62A.9A-203.

Respondent will assert that a formal assignment is not necessary because the "security follows the note" rule authorizes Respondent to enforce the DOT. Since Respondent is in possession of the blank-endorsed Note, the argument proclaims, Respondent is entitled to enforce the DOT that secures the Note.

Respondent is misinformed and Respondent's argument is specious.

In Washington, the legal source of the "security follows the note" rule is not the common law. The "security follows the note" rule has been codified at RCW 62A.9A-203(g), though this fact is little known or understood among judges and lawyers in Washington. *See Official Comment 9 to UCC 9-203.* Under the UCC, the steps that are required to enforce a mortgage are the province of state real property laws. *See Report of the Permanent Editiorial Board for the Uniform Commercial Code, Applications of the Uniform Commercial Code to Selected Issues Relating to Mortgage Notes,* at 12, fn. 43. Consequently, the "security follows the note" rule as codified at RCW 62A.9A-203(g) is trumped by RCW 64.04.010.

3. If RCW 64.04.010 had never been enacted, UCC Article 9 would prevent Respondent's enforcement of the DOT.

The UCC's creators correctly placed the codification of the "security follows the note" legal axiom in Article 9 – the ***Secured Transactions*** Article. Any discussion of the enforcement of a DOT is a discussion about the "secured aspect" of a "secured" promissory note transaction. Article 3 contains no rules that relate to the "secured aspect' of a secured promissory note transaction. The only rules found anywhere in the UCC that relate to the "secured aspect' of a "secured" promissory note transaction are found in Article 9. Therefore, if you want to determine who has the right to enforce a DOT, you must look to the provisions of Article 9, not the provisions of Article 3. That is why the "security follows the note" rule is codified in Article 9 (RCW 62A.9A-203(g)), not Article 3.

Specifically, Respondent's claims to the contrary notwithstanding, the determination of who has the "right to enforce a note" under RCW 62A.3-301 is irrelevant to the determination of who has the right to enforce the DOT that secures the note. This is because the "security follows the note" legal axiom is not a concept that relates to the transfer of the ***right to enforce a note***. It is a concept that relates to the transfer of "***ownership rights***" **in** a note. Accordingly, Respondent's anticipated claim that it is entitled to enforce the DOT because it holds the Note is meritless.

4. Respondent's reliance on *Trujillo v. Northwest Trustee Services, Inc.* is misplaced.

In claiming, as the "holder" of the Note, the right to enforce the DOT, Respondent relies heavily on *Trujillo v. Northwest Trustee Services, Inc.*, No. 70592-0-I (2014). The *Trujillo* Court based its decision on the common law "security follows the note" legal axiom. Simultaneously, the Court ruled that RCW 62A.9A-203 was inapplicable to the facts in *Trujillo.* The Court's decision coupled with the ruling that 62A.9a-203 does not apply graphically illustrates the *Trujillo* Court's lack of understanding of the "security follows the note" rule. By citing with approval the *Trujillo*[4] Court's ruling, Respondent demonstrates that it also does not understand the "security follows the note" rule.

Both the *Trujillo* Court and Respondent obviously are unaware that RCW 62A.9A-203(g) ***is the codification of the "security follows the note" rule***. *See Official Comment 9 to UCC 9-203.* Resultantly, the *Trujillo* panel ruling that RCW 62A.9A-203 did not apply to the facts in *Trujillo*, while simultaneously basing its holding on the "security follows the note legal axiom (the legal axiom that RCW 62A.9A-203 codifies), demonstrates a startling degree of confusion on the part of the members of the *Trujillo* panel.[5] Frankly, the *Trujillo* opinion tarnishes Division 1's

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[4] *Trujillo v. Northwest Trustee Services, Inc.*, No. 70592–0–I. (2014).

[5] Trujillo is under attack and will almost certainly soon be overturned. Ms. Trujillo filed a Petition for Review on July 2, 2014. In that petition, Ms. Trujillo specifically asks the Supreme Court to rule that proof of "ownership" of the note is required before the trustee is authorized to foreclose. On November 5, 2014, the Supreme Court ordered consideration of the Petition for Review deferred pending a final decision in *Winnie Lyons v. U.S. Bank National Association, et al.* Northwest Trustee Services, Inc., in a

hard-earned reputation for well-reasoned legal scholarship. That decision is a mess.

5. RCW 2A.9A-203 also denies Respondent the right to enforce the DOT.

Under RCW 62A.9A-203, to obtain an enforceable "security interest" (i.e., "ownership interest" (RCW 62A.1-201(b)(35)) in a deed of trust, a "secured party" (i.e., "purchaser" of a note (RCW 62A.9A-102(a)(73)(D)) must first obtain an enforceable security interest (ownership interest) in the note that the deed of trust secures. Under RCW 62A.9A-203(**a**), a security interest (ownership interest) in a note attaches to the note when the security interest becomes ***enforceable*** against the debtor and third parties. And under RCW 62A.9A-203(**b**) a security interest in a note becomes ***enforceable*** only after three requisites are met: (1) value must be given for the note; (2) the note must be transferred to the secured party by someone who has rights in the note or has the right to transfer rights in the note; and (3) the secured party must take possession.

Motion for Clarification, has asked the Lyons Court to specifically determine whether it is necessary to be the "owner" of the note to be entitled to foreclose.

The *Trujillo* Court specifically ruled that **ownership** of the note is "***irrelevant.***" *Trujillo* No. 70592-0-1 at ¶ 69. It also declined to follow the Western District of Washington Federal Court's decision in *Beaton v. J.P. Morgan Chase Bank, N.A.* because the *Beaton* court decided that "**ownership**" of the note is required before one is entitled to foreclose. In *Beaton*, the Beneficiary Declaration was worded in such a way that it would have been possible for a **non-owner** of the note to foreclose. The Beneficiary Declaration in *Trujillo* was worded exactly the same as the Beneficiary Declaration in *Beaton*.

Less than five months after the *Trujillo* Court refused to follow *Beaton*, the Washington Supreme Court, in a case that involved a Beneficiary Declaration worded exactly the same as the declarations in *Trujillo* and *Beaton*, **unanimously approved** the reasoning in *Beaton*. *Lyons v. Northwest Trustee Services, Inc.*, No. 89132-0 (October 30, 2014) at 15 – 16. The Court also ruled that proof of "ownership" is required.

In this case, the note was transferred by MERS. MERS neither had rights in the Note nor the right to transfer rights in the note. Consequently, the second of the three requisites has not been met. Accordingly, even if the Trust owns the note, it does not have an enforceable ownership interest in the Note. Since it does not have an enforceable ownership interest in the Note, it also does not have an enforceable interest in the deed of trust that secures the note. *RCW 62A.9A-203(g).* Without an enforceable interest in the DOT, Respondent has no right to foreclose.

6. 26 U.S.C. § 860(A)-(G) prohibits Respondent's right to foreclose.

In pertinent part, 26 U.S.C. §860(G)(3) defines a "qualified mortgage" as "any obligation (including any participation or certificate of beneficial ownership therein) which is principally secured by an interest in real property and which" is: (1) transferred to the REMIC ***on the startup day*** (2) ***in exchange for regular or residual interests in the REMIC***, or (3) is purchased by the REMIC ***within the 3-month period beginning on the startup day*** if, except as provided in regulations, the purchase is pursuant to a fixed-price contract that was in effect on the startup day.

The Ixis Real Estate Capital Trust 2006-HE3 Mortgage Pass-Through Certificates, Series 2006-HE3 ("Trust") started up on September 28, 2006.[6] Thus, at the latest, the loan lawfully could have gone into the Trust on December 28, 2006. By Respondent's own admission,

[6] The Pooling and Servicing Agreement ("PSA") is found at E:\Slotke 8-K Report Sept. 2006 Morgan Stanley ABS Capital I Inc_ IXIS Real Estate Capital Trust 2006-HE3 (Form 8-K, Received 10-16-2006 171417).mht. The "Startup Date" is found in the definition section of the PSA.

Appellant's loan was not transferred into the trust until, at the earliest, March 3, 2011, almost 4 1/3 years after the last date on which the loan could have been placed in the Trust lawfully.

Under 26 U.S.C. § 860(F)(a)(2)(B), the receipt of any income attributable to any asset which is neither a "qualified mortgage nor a "permitted investment" is *strictly prohibited.* If a trust violates the prohibition and receives income from the violation, then the Internal Revenue Service takes 100% of that income. *26 U.S.C. § 860(F)(a)(1).* The idea is to prevent any prohibited transactions and to punish violations as severely as possible when they occur.

Appellant has already demonstrated that her loan is not a "qualified mortgage." The loan was not received in the Trust within 90 days following the Startup Date. In addition, however, the loan was not transferred into the Trust by an entity that received regular or residual interest in exchange for the loan. There is no evidence in this record that MERS received anything for the transfer of the loan. Under 26 U.S.C. § 860(G)(a)(3)(A)(i), for the loan to be a "qualified mortgage," the transferor must receive a regular or residual interest in exchange for the loan. That did not happen in this case. At least there is no evidence in the record that it happened. Hence, Appellant's loan is not a "qualified mortgage." Appellant's loan also is not a "permitted investment" under 26 U.S.C. § 860(G)(a)(5).

If the Court permitted the Trust to foreclose under these conditions, among other things, it would be giving the Court's approval to a violation of federal law.

7. The plain language of RCW 61.24.030(7)(a) requires the trustee to have proof the beneficiary is the *"owner"* of the note.

The *Trujillo* Opinion is based on a demonstrably false assertion about the language contained in the first sentence of RCW 61.24.030(7)(a): The *Trujillo* Court claimed, "Both the former and current versions of RCW 61.24.030(7)(a) require a trustee or successor trustee to have *proof* that the *beneficiary has authority to enforce a note* 'secured by the deed of trust' before recording a notice of a trustee's sale." *Trujillo,* 326 P.3d at 773.

The plain language of the first sentence of RCW 61.24.030(7)(a) unambiguously refutes the *Trujillo* Court's assertion. That sentence *does not require* the trustee to have proof the "*beneficiary has authority to enforce a note.*" It unambiguously states the trustee must have proof the beneficiary is the ***"owner"*** of the note. And because the language is unambiguously clear, according to long-standing judicial interpretation principles, there was no need or room for the *Trujillo* Court to "interpret" the *actual* language of the sentence out of the sentence and replace that language with the Court's *"interpretation"* of the improperly removed language. *State v. Armendariz*, 160 Wn.2d 106, 110, 156 P.3d 201 (2007); *State v. J.P. 149 Wn.2d 444, 450, 69 P.3d 318 (2003); Kilian v. Atkinson,*

147 Wn.2d 16, 21, 50 P.3d 638 (2002); and *Moore v. Whitman County*, 143 Wn.2d 96, 101 (2001).

The *Trujillo* Court also asserts that the second sentence of "RCW 61.24.030(7)(a) specifies what proof of authority *to enforce such a note* 'shall be sufficient.'" *Trujillo,* 326 P.3d at 773. Like the Court's assertion about the first sentence of 61.24.030(7)(a), the Court's assertion about the second sentence of 61.24.030(7)(a) is simply untrue.

The second sentence of .030(7)(a) ***does not*** specify what proof of authority "*to enforce such a note*" shall be sufficient. There is not a single word or phrase in the second sentence that says anything about the authority "*to enforce a note.*" The *Trujillo* Court simply makes up that language.

The second sentence of .030(7)(a) furnishes a statutorily-approved method of providing proof *"as required under this subsection." RCW 61.24.030(7)(a).* Grammatically, the prepositional phrase, "as required under this subsection," is a reference to any "proof" requirement or requirements that can be found anywhere in subsection 7 of RCW 61.24.030 -- "*this subsection.*" The only proof requirement to be found anywhere in subsection 7 – whether under subpart (a), (b), *or* (c) – is proof of *"ownership of the note;"*[7] not proof of *"entitlement to enforce the note,"* or proof that the beneficiary is the *"holder"* of the note.

[7] The requirement that the trustee have proof the beneficiary is the *"owner"* of the note inescapably means that the beneficiary, the holder of the note, and the owner of the note ***must be the same person***. To be clear, I am not saying the terms "holder of the note" and "owner of the note" have the same meaning under the UCC. I am saying that even though the terms "holder of the note" and "owner of the note" have different meanings under the

Consequently, the second sentence of RCW 61.24.030(7)(a), like the first sentence of .030(7)(a), requires proof of ownership of the note. The two sentences, part of the same paragraph, obviously were drafted to complement one another. Breaking the language down grammatically makes that fact clear. Thus, the claim that the purpose of the second sentence of .030(7)(a) is concerned only with giving the trustee authority to foreclose if the trustee has proof the beneficiary is the "holder" of the note is nonsense. The purpose of the second sentence is to give the trustee a method for obtaining proof the alleged beneficiary is the "owner" of the note that is approved by the statute. The method the sentence provides is a declaration by the alleged beneficiary stating the beneficiary is the actual holder of the note.

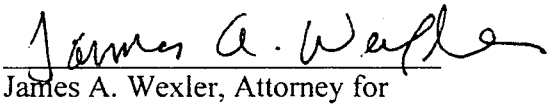
Appellant respectfully requests an award of costs and attorneys fees as the prevailing party on appeal pursuant to RCW 4.84.330, RAP 18.1, and both the Note and DOT.

UCC, under the DTA, the person entitled to foreclose the underlying mortgage debt obligation must satisfy the criteria for both terms (i.e., must be both the "holder" and the "owner" of the note). And because of the "ownership" requirement in the first sentence of .030(7)(a), the declaration authorized by the second sentence of .030(7)(a) must be provided by the *"owner"* of the note and deed of trust. Again, for fear of being misunderstood, I am saying that under the DTA the "owner of the note" and "holder of the note" must be ***the same person.*** I am ***not saying*** the terms "owner of the note" and "holder of the note" mean the same thing.

CONCLUSION

For the reasons stated herein above, Appellant requests that the court reverse entry of the trial court's Order Granting Deutsche Bank's Motion for Summary Judgment, remand this case to the trial court with instructions to provide proceedings consistent with its opinion and award Appellant attorneys fees and costs.

Respectfully submitted,



James A. Wexler, Attorney for
Defendant-Appellant, WSBA #7411

DATED: January 28, 2015.

APPENDIX

RCW 64.04.010
Conveyances and encumbrances to be by deed.

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid.

RCW 64.04.020
Requisites of a deed.

Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds.

RCW 64.08.010
Who may take acknowledgments.

Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid.

RCW 4.84.330
Actions on contract or lease which provides that attorneys' fees and costs incurred to enforce provisions be awarded to one of parties — Prevailing party entitled to attorneys' fees — Waiver prohibited.

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the

provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Attorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorneys' fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered.

RCW 61.24.030
Requisites to trustee's sale.

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.

(b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

RCW 62A.1-201
General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A of this title. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under RCW62A.2-401 , but a buyer may also acquire a "security interest" by complying with Article 9A of this title. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under RCW 62A.2-401 is limited in effect to a

reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to RCW 62A.1-203.

RCW 62A.3-301
Person entitled to enforce instrument.

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). 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.9A-102
Definitions and index of definitions.

(a) **Article 9A definitions.** In this Article:

(73) "Secured party" means:

(D) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

RCW 62A.9A-203
Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the

collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under RCW62A.7-106 , 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

DECLARATION OF SERVICE

I, James A. Wexler, certify under penalty of perjury under the laws of the State of Washington that on this 28th day of January 2015 I caused a copy of the foregoing to be served by US Postal Service, overnight first-class mail, postage prepaid, and by email upon the following counsel of record:

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DATED this 28th day of January, 2015.

James A. Wexler, Attorney for Appellant
WSBA # 7411

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I, James A. Wexler, certify under penalty of perjury under the laws of the State of Washington that on this 28th day of January 2015 I caused a copy of the foregoing to be served by US Postal Service, overnight first-class mail, postage prepaid, and by email upon the following counsel of record:

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