SC#93211-5

No. 72526-2-I

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

BLAIR LA MOTHE,

Petitioner

v.

U.S. BANK N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE THORNBURG MORTGAGE SECURITIES TRUST 2005-4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-4 ITS SUCCESSORS IN INTEREST AND/OR ASSIGNS

Respondents

PETITION FOR REVIEW

Blair La Mothe
8117 NE 110th Place
Kirkland, WA 98034

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

A. IDENTITY OF PETITIONER

Blair La Mothe (Appellant" and "Petitioner"), the current owner, resident and builder of the property at issue asks this Court to accept review of the unpublished March 7, 2016 Court of Appeals decision designated in Part B.

B. COURT OF APPEALS DECISION

The Court of Appeals, Division I, filed its unpublished decision on March 7, 2016. A copy of this decision is attached as Appendix A. La Mothe's timely motion for reconsideration was denied on April 7, 2016. A copy of the order denying the motion for reconsideration is attached as Appendix B.

C. ISSUES PRESENTED FOR REVIEW

Whether Respondent was the holder of the Note at the time of filing the complaint (therefore lacking standing to foreclose).

Whether the two David Recksiek declarations provided by Respondent met the statutory standards for business records evidence.

D. STATEMENT OF THE CASE

1. Factual History

In 1988, Appellant bought the current place in Kirkland (Juanita area) with a great view. CP 2585-1623.

Appellant then started building his home in 2000 and after approximately five years of brutal work – 16 hour days, seven days a week, with a significant amount of blood, sweat and tears – he finally completed his home from ground to complete finish.

In 2005, Appellant refinanced his personal home with Liberty Financial Group, Inc. At that time, Appellant believed Thornburg Mortgage to be his servicer due to their representations of this fact. CP 2585-1623.

On October 3, 2005, Appellant signed a document agreeing to perform obligations, including the obligation to make payments to Liberty Financial Group, Inc., ("Liberty"), the entity defined as the Lender. CP 2585-1623, Ex. 2. While Appellant did sign a Note, he cannot say for sure whether the Note presented by Select Portfolio Servicing, Inc. ("SPS") is the same Note he signed in 2005. Appellant Declaration at CP 354, ¶ 7. In the event the Note was sold, according to the terms of the Note, Appellant agreed to perform those same obligations to the "Note Holder." *Id.* That same day, Appellant signed a boilerplate MERS agreement labeled "Deed of Trust." CP 2585-2623, Ex. 3. The document labeled MERS as the beneficiary of the security agreement in bold. *Id* at 2 ¶ (E).

On October 3, 2005, Blair La Mothe signed a promissory Note agreeing to perform obligations, including the obligation to pay, to Liberty

Financial Group, Inc., ("Liberty"), who was defined as the "Lender". A purported copy of the Liberty-La Mothe Note is attached as Exhibit 2 to La Mothe declaration dated July 3, 2014 in support of his Motion for Summary Judgment. King County CP 2585-2623[1]. In the event the Liberty-La Mothe Note was sold, according to the terms of the Note, La Mothe agreed to perform these same obligations to the subsequent "Note Holder." Id., ¶ 1.

That same day, October 3, 2005, La Mothe signed a boilerplate MERS agreement labeled "Deed of Trust," but defined in the body of that document as a "security instrument." A purported copy of that document was attached as Exhibit 3 to the declaration of Blair La Mothe filed in support of his MSJ. CP 2585-2623[2].

The Deed of Trust ("DOT") was recorded against Appellant's real property on October 11, 2005 in the King County auditor's office under recording number 20051011000890 naming Transnation Title Insurance as Trustee. Liberty is identified on the Note and DOT as the "Lender" as well as the beneficiary. See CP 34.

As of September 15, 2008, Liberty still possessed and held the Note and DOT as it was the listed beneficiary on the document Appellant

[1] See Amended Designation of Clerk's Papers.
[2] See Amended Designation of Clerk's Papers.

was requested to sign titled "Request for Partial Reconveyance."[3] Declaration of Blair Appellant at CP 355, ¶ 12.

Three years later, in 2008, La Mothe was given the "Request for Partial Reconveyance" to sign. Declaration of Blair La Mothe at paragraph 11. CP 355. The Request for Partial Reconveyance identified Liberty[4] as the owner and holder of the Note as of September 15, 2008. Id. That document was recorded with the King County Auditor's office on September 19, 2008, under recording No. 20080919001529.

In June of 2009, Appellant learned that Liberty had been sold and that Thornburg was in bankruptcy. He was not sure who to pay and efforts to contact those firms did not result in any clear answer. When Appellant learned Liberty was acquired by Guild Mortgage Company and when he discovered his loan servicer at the time, Thornburg Mortgage Home ("Thornburg"), entered bankruptcy, he became concerned that his loan payments were not going to the correct entity. Declaration of Appellant at CP 355-356, ¶¶ 13-17. Despite repeatedly trying to contact Thornburg and Liberty, Appellant was unable to tell who he needed to

[3] The Request for Partial Reconveyance is hearsay, but falls under the "Statements in Documents Affecting an Interest in Property" exception to the rule against hearsay. *See* ER 803(15). In addition, Appellant requests this Court take judicial notice of this publicly recorded document that Respondents have never challenged in the 6 years since it was recorded in the county records.

[4] Liberty was acquired by Guild Mortgage Company in May 2008, CP 356, yet it is Liberty not Guild who assigns the DOT well after being acquired by Guild. Guild Mortgage Company bought Liberty in 2008, see CP 356.

pay. *Id.* at 15. Accordingly, he stopped paying in June 2009. In the fall of 2009, Appellant received a Notice of Default from Thornburg (the servicer, not the Trust). **On Nov 9, 2009** Appellant made payment to Thornburg in the amount of $8,433.66. *Id.* at ¶ 20, Exhibit 7. Thornburg took the money out of Appellant's account but failed to credit Appellant with the payment. *Id.* at ¶ 20.

On December 31, 2009, Liberty/MERS assign a DOT, which was recorded in the King County recorder's office under Auditor's file no. 20091231000386. CP 59-60. MERS, as nominee for Liberty, assigned the DOT from Liberty/MERS to TMST Home Loans, Inc.[5] three and one-half years after the Trust cutoff date of March 22, 2006 and the December 2005 closing date of the Thornburg Trust, as further discussed below, and as indicated in the Pooling and Servicing Agreement identified as CP 1903-2518.

Then on December 1, 2012, a corporate assignment of Deed of Trust is recorded, which TMST Home Loans, Inc. assigns to U.S. Bank N.A., as Trustee, on behalf of the Thornburg Trust. CP 61.

From the chronology provided above and the recorded documents to back up the factual chronology, Liberty, MERS and TMST represented themselves as being in possession of the original Note as late as 2012.

[5] Interestingly, TMST Home Loans, Inc. was in bankruptcy and it is not clear how a bankrupt entity would be obtaining custody of the Note.

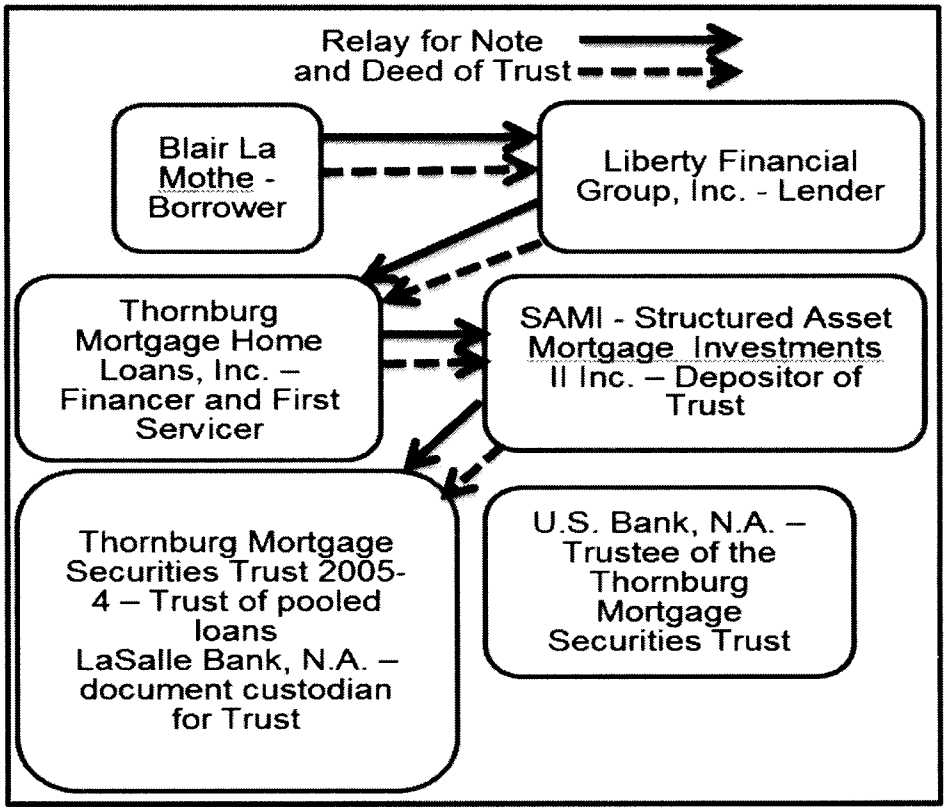
December 22, 2005 was the startup date for the Thornburg Mortgage Securities Trust 2005-4 Mortgage Pass-Through Certificates, Series 2005-4. **March 22, 2006** was the deadline under the Pooling and Servicing Agreement that created the Trust for the placement of the fixed pool assets of the Trust had to be acquired.

CP 1903-2518, Request for Judicial Notice, Ex. 2, the Pooling and Servicing Agreement ("PSA") §§ 3.02; 5.01(j)-(k); 11.01. Thus, Appellant's loan documents should have been included as part of the corpus of the Securitized Trust by Wednesday, **March 22, 2006**.

Under the PSA that created the Thornburg Trust, the fixed pool assets of the Trust had to be acquired within 90 days after **December 22, 2005**, its startup day. **March 22 2006** is the closing date, meaning that according to the terms of the PSA all loans had to be in the Trust by that time King County 1903-2518, Exhibit No. 2, Part of the Request for Judicial Notice, the Pooling and Servicing Agreement ("PSA") §§ 3.02; 5.01(j)-(k); 11.01[6]. Thus Appellant's loan documents should have been included as part of the Securitized Trust Pool by Wednesday **March 22, 2006**; and the loan documents should have been in the possession of the Trust's document custodian, La Salle Bank by the same date.

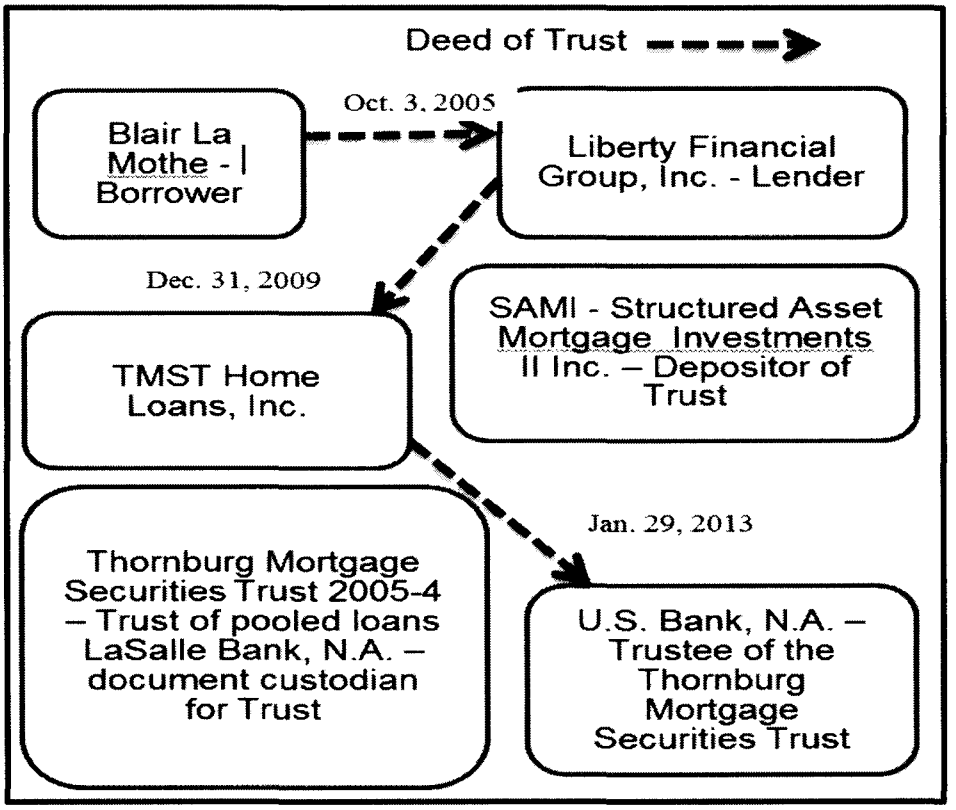
[6] See Amended Designation of Clerk's Papers.

The Thornburg Trust was comprised of numerous pooled loans (promissory notes and deeds of trust), including loans generated by Liberty Financial Group, Inc. In order for Appellant's loan to have been part of the Thornburg Trust, the Note and Deed of Trust would have needed to go through the following relay process.



(Note and Deed of Trust) to be placed into the custody or possession of the Trust's document custodian, La Salle Bank, N.A. on or before March 22, 2006.

The actual relay process involving the Note and the Deed of Trust and the entities involved can be tracked by documents recorded with the King County Auditor well after March 22, 2006:



2. Procedural History

Respondent's March 11, 2013 complaint against Appellant alleged in paragraph 10 that Respondent "executed and delivered" a promissory note in favor of Liberty Financial Group, Inc. CP 3, ¶ 10. Attached as Exhibit C to the Complaint was a document Respondent alleged to be a copy of the Note Appellant executed. CP 27-31, Ex. C ("Complaint Note").

The Complaint Note contains a MERS identifier number at the top of the page and barcodes at the bottom of the first page. Complaint Note at 1. Below the barcodes is text that states "NOTE, SIGNED CERTIFIED Copy." Id. In the bottom left corner of the Allonge to the Complaint Note, the words "Multistate Note Allonge" appear. Id.

On September 16, 2013, Appellant filed an answer wherein he specifically denied Respondent's interpretation of the Complaint Note, including that Appellant executed the Complaint Note. CP 70, ¶ 3.

One year and four months after filing its complaint, on July 11, 2014, Respondent filed a Motion for Summary Judgment and the Declaration of David Recksiek ("Recksiek Decl.") in Support of its Motion. CP 95-101; CP 103-105. Attached as Exhibit B to the Recksiek Decl. was a document which Mr. Recksiek declared to be a true and correct copy of the Note Appellant executed. CP 103-105 at ¶ 3. The Complaint Note and the document attached to the Recksiek Decl. as Exhibit B are the same document. Compare CP 1-61, Ex. C with CP 103-105, Ex. B.

The deposition of SPS Employee, David Recksiek, took place on July 16, 2014. See CP 411-469.

Subsequent to his deposition, on August 1, 2014, David Recksiek executed a second declaration.

At the hearing for Appellant's and Respondent's cross motions for Summary Judgment, Respondent's counsel brought a document ("Attorney Note") to the hearing and alleged that it was the original Note. See Decl. of Brian Fisher, Ex. A. CP 2668-2678.[7]

The result of the summary judgment hearing is the trial court granted Respondent's motion for summary judgment and issued the order granting summary judgment of foreclosure. CP 1865-1868.

On August 18, 2014, Appellant filed a Motion for Reconsideration. CP 1869-1883. It was denied on September 12, 2014. CP 1892-1893.

On June 25, 2015, Respondent's motion for Amended Judgment and Decree of Foreclosure was granted by the trial court. CP 2717-2722.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

This Petition for Review is requested under RAP 13.4(b). Specifically, one of the reasons this Court may accept review according to RAP 13.4(b)(4) is as follows: If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

[7] Neither the document nor a copy of the document Respondent's Counsel purported to be the original note was introduced as evidence. Appellant offered the Declaration of Brian Fisher not to add additional evidence on Appellant's Motion to Reconsider, but to simply make sure that the record is correct as to what the Court considered during the hearing.

In the instant matter, there are clearly matters of substantial public interest for two reasons: 1) whether a foreclosing entity, such as U.S. Bank, needs to prove it was the holder of the original Note on the date it filed and served the complaint in order to establish proper standing for foreclosure, and 2) whether the two David Recksiek declarations, and their attached exhibits, as relied upon by U.S. Bank for evidence, were adequate to justify the trial court's reliance upon them as evidence pursuant to the business records exception to the hearsay rule.

1. Respondent's lack of standing at time complaint filed

The Court of Appeals said, "La Mothe argues that even if U.S. Bank established that it was the holder of the note at the time of the summary judgment hearing, summary judgment was improper because U.S. Bank failed to show it was the holder at the time it filed the complaint. But La Mothe cites to no relevant or controlling authority in support of this proposition. The presentation of the note at the time of the summary judgment hearing is sufficient to prove U.S. Bank's status as the holder of the note." Co at 7.

The Court of Appeals seems to be saying, "well, it is ok not to have the original Note when you filed your complaint, just as long as you have it by the time you show up at the summary judgment hearing, even if almost a year and a half pass between the filing date of the complaint and

the summary judgment hearing date." Has it now become the case in Washington State that parties no longer require standing to file a lawsuit? Can anyone file a suit based on anticipated future standing? The answer is NO!

The issue the Court of Appeals misses is that Respondent was not in possession of the original Note at any relevant time. What are the relevant times? One time, obviously would be at the MSJ hearing. Another time would be when the complaint was first filed. Another time would be when Select was demanding payment from Appellant.

Even if Appellant concedes that Respondent brought the original Note and DoT to the MSJ hearing, which Appellant does not, Respondent failed to demonstrate it was the holder of the Note as of the day the complaint was filed and therefore not entitled to begin the enforcement of the Note at that time. The certified copy of the note submitted with the original filing of the lawsuit is **SUBSTANTIALLY** different from the alleged original presented in the court.

The trial court Judge raised the important standing issue question of did Respondent possess the original note and DoT on the date the complaint was filed at the MSJ hearing and failed to resolve this issue, instead choosing to steam roller over Appellant and give away his home to an impostor. "**So, if the – if U.S. Bank is going to foreclose as a**

beneficiary, then it needs to be able to show as a – a beneficiary, presumably back when this lawsuit was filed in March of 2013 and up through today, in order to be able to – to so – so foreclose. And I'm not quite clear on – on where we are on that." (**Emphasis added**.) See ROP 5:18-23. Although Respondent's counsel danced around the issue, the answer to whether Respondent had standing on August 13, 2013 is important because if Respondent did not possess the original Note when it first filed this action and served the lawsuit then it never had standing to begin enforcement of the Note and DoT. Respondent never provided the answer during the MSJ hearing nor in any of Respondent's MSJ briefs.

If Respondent was not the legal owner of the Note as of the date the complaint was filed, it had no standing[8] to initiate any kind of foreclosure proceedings against Appellant.

To maintain a cause of action, a "real party in interest" must show "that he has some real interest in the cause of action. 'His Interest must be a present, substantial interest, as distinguished from a mere expectancy, or future, contingent interest, and he must show that he will be benefited by the relief granted.'" *State ex rel. Hays v. Wilson*, 17 Wn.2d 670, 672 (1943). Respondent did not have the original Note when it filed its complaint because the copy that was attached to the complaint had the

[8] Standing was one of Appellant's affirmative defenses. See CP 72:9-11.

MERS identifier number on it and no other entity markings such as Thornburg Mortgage, SAMI or U.S. Bank N.A., and therefore, Respondent had no present and substantial interest to allow it to file and serve the complaint in 2013. Instead of paying attention to the MERS copy of the alleged Note the Court of Appeals called it "inconsequential marginalia." See Co at 7.

Under the common law, a person entitled to enforce a mortgage must also be the holder of the secured promissory note. As explained in the Restatement (Third of Property (Mortgages) § 5.4:

§5.4 Transfer of Mortgages and Obligations Secured by Mortgages

(a) A transfer of an obligation secured by a mortgage also transfers the mortgage unless the parties to the transfer agree otherwise.
(b) Except as otherwise required by the Uniform Commercial Code, a transfer of a mortgage also transfers the obligation the mortgage secures unless the parties to the transfer agree otherwise.
(c) A mortgage may be enforced only by, or in behalf of, a person who is entitled to enforce the obligation the mortgage secures.

Generally, possession of an indorsed promissory note, in compliance with the requirements of RCW Chapter 62A is essential before an entity may conduct a foreclosure. However, there is no evidence in this record that Respondent was the holder of Appellant's note when it filed its complaint. The DoT assignments attached to Respondent's complaint are wholly insufficient to establish this elemental fact. As the Supreme Court of Vermont explained in *U.S. Bank Nat. Ass'n v. Kimball*, 27 A.3d 1087

(Vt. 2011), to show standing, the foreclosing entity must show it is entitled to enforce the note and it must show it possessed the original note on the date the complaint was filed:

> **Therefore, in this case, because the note was not issued to U.S. Bank, to be a holder, U.S. Bank was required to show that at the time the complaint was filed it possessed the original note either made payable to bearer with a blank endorsement or made payable to order with an endorsement specifically to U.S. Bank**. *See Bank of N.Y. v. Raflogianis*, 418 N.J.Super. 323, 13 A.3d 435, 439-40 (2010) (reciting requirements for bank to demonstrate that it was holder of note at time complaint was filed).
>
> 15. U.S. Bank lacked standing because it has failed to demonstrate either requirement. Initially, U.S. Bank's suit was based solely on an assignment of the mortgage by MERS.

(**Emphasis added**.) *Id.* at 1092.

Perhaps some of the following is total storytelling, yet as MERS was one of the entities involved in the Note and DoT from the beginning, it may be illustrative. In the instant matter, the most likely scenario is a typical MERS scenario. MERS was involved with the Note and DoT process between Liberty and Appellant.

Liberty scanned in the original Note and DoT and sent the scanned versions to MERS and then lost the originals. MERS had a scanned copy of the Note, to which it added a MERS identifier number for tracking, such as the MIN number located at the top left of the complaint Note. The entities: MERS, Thornburg Mortgage, SAMI and Thornburg Trust never

had custody nor were they ever holders of the original Note and DoT. Except for Thornburg Trust, arguably through its counsel, may have finally obtained custody of the original Note just before Respondent filed its MSJ in July 2014.

Because of the way MERS and the securitization process works, on electronically and to save money, the scanned versions (with the MERS identifier number on them) of the Note and DoT were transferred electronically from one party to another but all along the original Note and DoT were held by and under the control of Liberty/Guild. Then just before Respondent's counsel filed the complaint, MERS provided a scanned copy of the Note and DoT to Respondent's counsel to use as exhibits to the complaint. That is why MERS was involved with the recorded assignments of the DoT before the complaint was filed. Respondent filed the complaint without having custody or holding the original Note and DoT. Then, just before Respondent's counsel filed the MSJ, Liberty/Guild provided the original Note and DoT to Respondent's counsel so the originals would be at the MSJ hearing.

The above scenario is the most likely as to why Respondent did not, and could not, show it was the holder of the note on the date it filed its complaint against Appellant. Neither of Recksiek's two declarations (see CP 103-146, CP 1834-1837) nor his deposition testimony (see CP 411-

456) show he ever saw the original Note and that he was relying upon information only depicted on a computer screen (information that was most likely provided by MERS). See CP 1655:9-15 and CP 1688, 11:4-112-24. Recksiek never physically saw the original Note. See CP 431, page 78.

Also significant is Recksiek claimed SPS had been in possession of the original Note before sending it to Respondent's counsel, yet never explained how SPS obtained custody, if ever. SPS should not have been the Thornburg Trust's document custodian. According to the Thornburg Trust's own documents; La Salle Bank was supposed to be the Thornburg Trust's document custodian[9]. (See CP 1903-2518, Request for Judicial Notice, Ex. 2.1, the Pooling & Servicing Agreement, page 12/174.) It is clear that Recksiek did not know who SPS' alleged document custodian actually was (see his deposition testimony at CP 455, 177:9-22); so it follows he would not know from where the alleged Note was sent and nothing was provided from anyone else.

Foreclosure standing was carefully analyzed by the Washington Supreme Court in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 110 (2012), wherein the Court held that Mortgage Electronic

[9] Custodian: LaSalle Bank National Association acting in its capacity as custodian of the Mortgage Loans on behalf of the Trustee under the Custodial Agreement or any successor custodian appointed pursuant to a Custodial Agreement.

Registration System ("MERS") lacked the authority to foreclose under the Washington deeds of trust act, RCW 61.24 ("DTA") when it did not hold the underlying mortgage loan. Therein, the Court held MERS is an "ineligible beneficiary within the terms of the [DTA], if it never held the promissory note or other debt instrument secured by the deed of trust." (internal quotation marks omitted). The Court explained that "[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...." *Id.* at 89 (emphasis added).

2. Recksiek's declarations insufficient to meet the evidentiary standards of CR 56 and RCW 5.45.020

Recksiek never knew where the original note was located and he did not know the identity of the prior servicer. Despite not knowing such significant relevant facts, the Court of Appeals said, "Here, Recksiek's declarations satisfy the requirements of CR 56(e) and RCW 5.45.020. Recksiek declared under penalty of perjury that (1) as a document control officer with Select he was personally familiar with Select's record-keeping practices, (2) that Select acquires and review copies of the note and deed of trust when it becomes the servicer of a loan, and (3) the attached records were true and correct copies of documents made in the ordinary course of business at or near the time of the transaction." Co at 6.

Recksiek did not know several significant and relevant details pertaining to the Note and DoT: details that the custodian, if one existed, should have known – details that were extremely important – such as who sent the alleged original Note and DoT to Respondent's counsel, when it was sent and from where. In addition, Recksiek did not know the name of the prior loan.

In support of its MSJ and in responding to Appellant's MSJ, Respondent provided two separate declarations from David Recksiek, who was an employee and document control officer for Select Portfolio Services, Inc. CP 103-146 and CP 1834-1837. He made his declaration under penalty of perjury that the Respondent was in possession of the Liberty-LaMothe Note and Deed of Trust. CP 104, ¶ 3. Neither declaration provided the testimony necessary for the Liberty-La Mothe Note and Deed of Trust to be admissible evidence. SPS was not the original servicer of the loan, Thornburg was supposed to be. SPS was the second alleged servicer of the loans contained in the Trust. Mr. Recksiek was deposed in July 2014. CP 411-469. Respondent relied heavily upon Mr. Recksiek's declaration testimony in its MSJ briefing. CP 96.

Additionally, Mr. Recksiek's two declarations fail to contain any sort of chain of custody descriptions and attendant exhibits regarding the authenticity of the Liberty-La Mothe Note and DOT nor did they contain a

description of where the Note and Deed of Trust were located. Neither did the declarations contain any statement as to the name of the prior servicer. Why did the trial court judge accept Recksiek's declarations when they failed to contain custodial declarations involving the alleged loan document chain of custody from employees of Liberty, Thornburg Mortgage Home Loans, Inc., SAMI, LaSalle Bank National Association, or SPS regarding the alleged transfers?

In fact, Mr. Recksiek's declaration failed to provide the identity of the previous servicer and the identity of the Respondent's document custodian. How could Recksiek claim he had attached true and correct copies of the Note and Deed of Trust to his declaration when physically he had never actually seen the originals, in violation of the Rules of Evidence? Recksiek also claimed that the originals had been sent to Respondent's attorney yet his declarations provided no relevant and admissible details as to who sent the originals, when specifically the originals were sent and where the originals were being sent from. See CP 103-105 and CP 1834-1836.

The copies of the documents Recksiek attached to his declaration were not admissible. A business record is admissible only if a "custodian" or other "qualified witness" testifies to its identity and mode of preparation." RCW 5.45.020. A "custodian" is: "[a] person or institution

that has charge of or custody of ... papers, or other valuables." *Black's Law Dictionary*, 441 (9th Ed. 2009). In this case, Recksieck, who only reviewed these records for purposes of litigation,[10] is not a "qualified person" because he does not have charge or custody of the records, except those which are necessary to secure a foreclosure. Indeed, in this case the evidence shows Recksiek did not have access to the agreement between the Thornburg bankruptcy trustee and SPS which sets forth the terms for servicing the Trust, which Recksiek claimed owned La Mothe's mortgage loan. Transcript at 43:16-25.

As servicers for the Thornburg Trust, neither Thornburg nor SPS had custody of the Note. Recksiek admitted in his declaration the original Note was "maintained by a custodian on behalf of the Trust and USB as trustee...," Yet he does not, cannot, identify the custodian. Basically, neither Recksiek, nor SPS had the Note as it was somewhere else (likely Liberty/Guild), which leads one to the reasonable belief that he did not know where they were located and that if Respondent did not know the location of the original Note then clearly they did not have standing. 2 at ¶ 3, CP 104. The Note, according to the Thornburg Trust documents,

[10] Cf. *State v. Jasper*, 174 Wn.2d 96, 112, 271 P.3d 876 (2012) ("[d]ocuments kept in the regular course of business may ordinarily be admitted at trial despite their hearsay status. But this is not the case if the regularly conducted business activity is the production of evidence for use at trial.").

should have been transferred several times in late 2005 and early 2006 before ultimately being placed in the care of Respondent's document custodian.

Based on the above, the Note and Deed of Trust were never in the possession of the Thornburg Trust's document custodian.

It is undisputed that the only basis for Mr. Recksiek's testimony is hearsay, which the Respondent claims falls within the "business records exception" to the hearsay rule. ER 802 provides: "Hearsay is not admissible except as provided by these rules, by other court rules, or by statute." RCW 5.45.020 provides:

> A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

The statute includes within its exception a record of "an act, condition, or event." The statute does not allow records to prove legal conclusions contained in the records, such as: 1.) the identity of the Note Holder; 2.) whether the Note owned by Liberty was secured by the security instrument owned by MERS; or 3.) the existence and identity of a beneficiary within the meaning of RCW 61.24.005(2). *Liljeblom v. Department Labor & Indus.*, 57 Wn.2d 136, 141, 356 P.2d 307 (1960).

The requirements of RCW 5.45.020 are to be strictly construed. *State v. Finkley*, 6 Wn. App. 278, 280, 492 P.2d 222 (Div. 1, 1972).

It is inconceivable, especially in light of the *Bain* decision, based on these commonly known facts documented in King County's public records, which Appellant judicially noticed, coupled with Lavalle's Dec. that the trial Court could be of the opinion that "the sources of information, method and time of preparation were such as to justify its [their] admission."

In order to allow the admission of hearsay records and the testimony based thereon this Court must be of the opinion that "the sources of information, method and time of preparation were such as to justify its admission." RCW 5.45.020. This determination should be based on the circumstances surrounding the creation of the records. Respondent's counsel would not allow Mr. Recksiek to testify regarding how SPS creates its records. Transcript at 36:24-37:10. This is troubling given SPS' history of providing false and fraudulent pleadings, affidavits, and evidence in judicial foreclosure actions. Lavalle Dec. at ¶¶ 35-39. Accordingly, because there is no information before the Court as to the sources of information, method and time of preparation of the records Mr. Recksiek purports to rely on in his declaration, this Court cannot determine that the circumstances regarding the creation of these business

records are such as to justify the records admission.

Additionally, in order to qualify for this exception the business records must be shown to have been "made in the regular course of business, at or near the time of the act, condition or event." RCW 5.45.020. Although Recksiek attempted to claim the records of Appellant's alleged default were made in the regular course of SPS' business, he could not do so because the alleged defaults occurred before SPS acquired the servicing rights from the bankrupt Thornburg servicer. The accuracy of Recksiek's testimony regarding the defaults and money owed as a result thereof is called into question by La Mothe's proof that he paid the then servicer in November, 2009. *See also* Lavalle Dec.; Stafne Dec. Ex. 4 (The Declaration of Brent Rasmussen's (declaration regarding SPS' servicing practices)).

Also, Respondent attempts to use the business records exception to prove legal conclusions. When asked how he determined that Respondent was the Note Holder, Mr. Recksiek said his conclusion was based "on [his] review of [SPS'] business records that show the name of the holder of the note." Transcript at 99:11-19. CP 436. Mr. Recksiek testified the identity of the Note Holder was entered into the record prior to Mr. Recksiek's review, *id* at 100:18-22. In other words, Mr. Recksiek simply looked up the computer records and then swore under penalty of perjury

that he had personal, hands-on knowledge of the identity of the Note Holder and owner of the DoT. This is a travesty and sanctions should be imposed upon Mr. Recksiek for this blatant act of perjury! He blindly accepted who the computer screen tells him is the Note Holder for the purposes of testifying. He says nothing in either of his declarations about ever seeing the original Note and Deed of Trust. Nor does he say anything about who had custody of the Note and Deed of Trust and when it was allegedly sent to Respondent's counsel. And nowhere to be found is any custodial declaration indicating how the Note came to be in Respondent's hands or even if the Note in Respondent's hands was the original document signed by Appellant.

Respondent's entire case is based on the declarations of Mr. Recksiek, whom the Plaintiff has identified as its only trial witness. Mr. Recksiek is not a custodian of business records within the meaning of RCW 5.45.020, but rather a clerk hired for purposes of testifying in litigation. Recksiek's testimony is hearsay as it is not based upon personal knowledge but upon what he could see from computer screens and he never declared he had physically seen the original Note or Deed of Trust and he never provided any sort of a chain of title documenting the transfers of the Note. The Court should not have based any factual findings and legal conclusions upon such inadmissible "evidence".

3. Respondent hindered the discovery process

Also significant, is Respondent's actions taken at the deposition of David Recksiek. In support of its July 14, 2014 MSJ, Respondent filed the declaration of David Recksiek. CP 103-105. Appellant's counsel conducted Mr. Recksiek's deposition, two days later, on July 16, 2014. CP 414-472.

Significantly, Mr. Recksiek only came into the case in early July 2014, a few weeks prior to the MSJ hearing, for the specific purpose of testifying in accordance with his job responsibilities as a document control officer. Declaration of Scott Stafne, Ex. 1, Deposition of David Recksiek Transcript ("Transcript") at CP 449, 151:6-12. During Mr. Recksiek's deposition, Respondent's counsel repeatedly coached the deponent through objections and instructions and improperly instructed him not to answer questions reasonably calculated to lead to discoverable evidence. *See* Appellants' Motion to Strike and accompanying declarations thereto. CP 1641-1652 and CP 1653-1718[11].

A declarant's credibility can be attacked pursuant to ER 806; except counsel for SPS would not allow it. *See e.g.* Transcript, pp. 80-81 CP 431 (instructing witness not to answer because question went to declarant's credibility). In this regard, it should be noted that documents

[11] See Second Amended Designation of Clerk's Papers for specific references.

recorded at the King County Auditor's office prove that MERS and Liberty (even though Liberty was no longer in business) owned and held the Note in question (they were the beneficiaries in 2008), which happens to be the same time frame in which Recksiek claimed the Note was held and owned by the Thornburg Trust. *See* La Mothe Declaration. CP 355, ¶ 12.

During the deposition, Respondent's counsel engaged in troubling behavior which thwarted Appellant's discovery efforts. Appellant's counsel at the time, Scott Stafne, provided a declaration outlining Respondent's counsel's troubling behavior, some of which is described as follows:

> 1. Mr. Recksiek was instructed not to answer questions regarding whether or not SPS' practices related to its purported "business records" would be the same to every person whose loan SPS services. Transcript at 36:24-37:10. Had Mr. Recksiek been allowed to testify, he would have testified that SPS does not use the same documents or processes in creating and maintaining its purported "business records" for every person whose loan is served by SPS.
> ...
>
> 7. Mr. Recksiek was instructed not to answer when asked how he goes about trying to determine whether Defendant's Deed of Trust (the security instrument) is actually attached to the Note. 111:4-112:24. Had Mr. Recksiek been allowed to testify, he would have testified that he makes no determination as to whether the security instrument is actually attached to the Note, but simply relies on the computer records that the Note is always secured by the security instrument.
> ...

> 9. Mr. Recksiek was instructed not to answer how many cases Mr. Recksiek had testified in. Transcript at 154:3-155:6. Had Mr. Recksiek been allowed to answer the question, the number of cases Mr. Recksiek had testified in would show that Mr. Recksiek is employed by SPS specifically for the purpose of being a witness at trials without any personal knowledge business records, or the facts of each lawsuit because he became involved in this lawsuit "approximately three (3) weeks ago" when "it was understood that a potential witness was needed to testify." Id. at 150:23-24 and 151:10-11.
>
> See Stafne Declaration, CP 404-614.

Respondent's counsel prevented Appellant from obtaining relevant and timely discovery information. This obstructive behavior by Respondent's counsel during a deposition was a significant violation of Appellant's discovery rights under CR 26. Appellant had a right to obtain relevant discovery, especially as Appellant was required to file its MSJ response by July 28, 2014, just 12 days after conducting Mr. Recksiek's deposition, and was prevented from doing so.

F. CONCLUSION

Petitioner respectfully requests this Court to grant review of the Court of Appeals, Division I March 7, 2016 decision. Appellant may losing his home and an examination of Respondent's failure to demonstrate proper standing when it filed its action and its failure to provide sufficient supporting declarations regarding the business records as evidence issue on their merits. Whether U.S. Bank was the proper party

to foreclose on Appellant's property is not an issue that can be waived or conceded. It is a jurisdictional issue that Respondent, not Appellant, had the burden of proving at the outset of its case. This Court should reverse the Court of Appeals March 7, 2016 opinion and the trial court's judgment and remand the case back to the trial court for further proceedings due to Respondent's failure to establish standing at the time it filed the complaint and the hearsay Recksiek declarations. These requested actions by the Court will allow Appellant to be given a fair trial and the opportunity to complete discovery in order to prove that his actions were justified and that Respondent has no right to foreclose. This Court has a very serious problem to consider – one which affects the public interest at large. When a trial court and Appeals Court in Washington State allow Plaintiffs to sue without proper standing on the day the complaint is filed and when hearsay declarations are considered, common folks lose their homes and this should not be allowed to continue.

DATED this 9 day of May, 2016

Respectfully submitted,

Blair La Mothe, Pro se
8117 NE 110th Place
Kirkland, WA 98034

DECLARATION OF SERVICE

On said day below, I hand delivered a true and accurate copy of the Appellant's Petition for Review in Court of Appeals Cause No. 72526-2-I to the following party:

John Glowney
J. Will Eidson
Stoel rives, LLP
600 University St. Ste 3600
Seattle, WA 98101-1176
jeglowney@stoel.com
jweidson@stoel.com

Original filed with:
Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101-1176
206-389-2613

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

Dated: May 9, 2016 at Seattle, Washington.

Larry C. Nelson (printed name)

APPENDIX A

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

U.S. BANK N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE THORNBURG MORTGAGE SECURITIES TRUST 2005-4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-4, its successors in interest and/or assigns, Respondent, v. BLAIR LA MOTHE, Appellant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR LIBERY FINANCIAL GROUP, INC.; U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE OF THE BANC OF AMERICA FUNDING 2007-D, its successors in interest and/or assigns; OCCUPANTS OF THE PREMISES; and any persons or parties claiming to have any right, title, estate, lien or interest in the real property described in the complaint, Defendants.	No. 72526-2-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant, Blair La Mothe, has filed a motion for reconsideration of the opinion filed on March 7, 2016, and the court has determined that said motion should be denied. Now, therefore, it is hereby

ORDERED that appellant's motion for reconsideration is denied.

DATED this 7th day of April, 2016.

FOR THE COURT:

Becker, J.

Judge

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

U.S. BANK N.A., AS TRUSTEE, ON BEHALF OF THE HOLDERS OF THE THORNBURG MORTGAGE SECURITIES TRUST 2005-4 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-4, its successors in interest and/or assigns, Respondent, v. BLAIR LA MOTHE, Appellant, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., SOLELY AS NOMINEE FOR LIBERY FINANCIAL GROUP, INC.; U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE OF THE BANC OF AMERICA FUNDING 2007-D, its successors in interest and/or assigns; OCCUPANTS OF THE PREMISES; and any persons or parties claiming to have any right, title, estate, lien or interest in the real property described in the complaint, Defendants.	No. 72526-2-I DIVISION ONE UNPUBLISHED OPINION FILED: March 7, 2016

BECKER, J. — Blair La Mothe appeals the summary judgment and decree of foreclosure entered in favor of U.S. Bank NA. Because U.S. Bank was the holder of a promissory note given by La Mothe, summary judgment was appropriate. We affirm.

On October 3, 2005, La Mothe executed a promissory note in the amount of $1,500,000 in favor of Liberty Financial Group Inc. Liberty endorsed the note in blank through an allonge. The note was secured by a deed of trust encumbering La Mothe's residential property in Kirkland. The deed of trust identified Liberty as the lender and Mortgage Electronic Registration System (commonly referred to as "MERS"), "a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns," as the beneficiary.

It is undisputed that La Mothe stopped making payments on the note sometime in 2009.

On December 18, 2009, Select Portfolio Servicing Inc. obtained the servicing rights to La Mothe's loan.

On December 31, 2009, MERS, acting as Liberty's nominee, assigned the deed of trust to TMST Home Loans Inc.

On July 30, 2010, Select sent La Mothe a notice of default.

On January 29, 2013, TMST assigned the deed of trust to U.S. Bank as trustee for the Thornburg Mortgage Securities Trust 2005-4 Mortgage Pass-Through Certificates, Series 2005-4.

On March 11, 2013, U.S. Bank filed a complaint for a money judgment against La Mothe and a decree of foreclosure on the deed of trust.

The parties filed cross motions for summary judgment. In support of its motion, U.S. Bank attached two declarations of David Recksiek, a Select document control officer, and a copy of the note and deed of trust. La Mothe moved to strike Recksiek's declarations.

At the summary judgment hearing, U.S. Bank produced the original promissory note signed by La Mothe. The trial court granted summary judgment in favor of U.S. Bank. The trial court denied La Mothe's motion for summary judgment dismissal and to strike Recksiek's declaration. The trial court subsequently denied La Mothe's motion for reconsideration, entered a decree of foreclosure, and granted U.S. Bank a deficiency judgment. La Mothe appeals.

We review an order granting summary judgment 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). A material fact is one on which the outcome of the litigation depends. Greater Harbor 2000 v. City of Seattle, 132 Wn.2d 267, 279, 937 P.2d 1082 (1997). The initial burden is on the moving party to show there is no genuine issue of any material fact. CR 56(e); Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). The burden then shifts to the nonmoving party to "set forth specific facts to rebut the moving party's contentions and show that a genuine issue as to a

material fact exists." Allard v. Bd. of Regents of Univ. of Wash., 25 Wn. App. 243, 247, 606 P.2d 280, review denied, 93 Wn.2d 1021 (1980).

EVIDENTIARY CHALLENGES

La Mothe contends the trial court erred in considering the Recksiek declaration and its supporting documents. We review de novo any evidentiary rulings made in conjunction with a summary judgment order. Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).

Recksiek's initial declaration stated, in relevant part:

> 1. I am a Document Control Officer with Select Portfolio Services, Inc. ("SPS"). I am over the age of eighteen and have personal knowledge of the facts set forth in this declaration. I make this declaration based on my personal knowledge and my review of records maintained by, or for the benefit of, SPS in the ordinary course of its business, which records, in turn, are based on information and data placed in the records by persons who have knowledge of the information and data at the time they are recorded in the records. SPS and its agents and employees rely upon these records in the ordinary course of business.
>
> . . . .
>
> 3. Attached hereto as Exhibits B and C are true and correct copies of the Note and Deed of Trust executed by Blair La Mothe in favor of Liberty Financial Group, Inc. ("Liberty"), and the Allonge to the Note executed in blank by Liberty. The originals of these documents are maintained by a custodian on behalf of the Trust and USB as trustee, and the originals have been delivered to John E. Glowney and Stoel Rives LLP, as counsel for the Trust and USB as trustee, to show the Court that the Trust and USB as trustee, possess and own the Note and Deed of Trust.
>
> 4. The outstanding principle [sic] due and owing on the note as of May 6, 2014 is $1,497,688.60. In addition, La Mothe failed to make the monthly payment due on July 1, 2009, and has made no payments on the Note and Deed of Trust since that date, or for more than almost five years. Following is a summary of the primary amounts due, owing, and unpaid by La Mothe as of May 6, 2014:

Principal:	$1,497,688.60
Accrued unpaid interest:	$ 424,589.05
Escrow advances:	$ 64,955.92
Suspense balance:	$ 6,754.38
Total due, owing and unpaid:	$1,980,479.19

Recksiek subsequently submitted a second declaration further describing Select's record-keeping procedures. Recksiek's second declaration stated that Select employees regularly review copies of the note and deed of trust as part of routine audits of its loan files to ensure the reliability of its business records, and maintained detailed records of loan payments and other transactions.

CR 56(e) provides, in relevant part:

> Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

Statements in a declaration based on a review of business records satisfy the personal knowledge requirement of CR 56(e) if the declaration satisfies the business records statute, RCW 5.45.020. Discover Bank v. Bridges, 154 Wn. App. 722, 726, 226 P.3d 191 (2010). RCW 5.45.020 provides that a business record is admissible as competent evidence if:

> the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

RCW 5.45.020. Under this statute, the "custodian" and "other qualified witness" need not be the person who created the record. State v. Ben-Neth, 34

Wn. App. 600, 603, 663 P.2d 156 (1983). "Testimony by one who has custody of the record as a regular part of his work . . . will suffice." Ben-Neth, 34 Wn. App. at 603.

Here, Recksiek's declarations satisfy the requirements of CR 56(e) and RCW 5.45.020. Recksiek declared under penalty of perjury that (1) as a document control officer with Select he was personally familiar with Select's record-keeping practices, (2) that Select acquires and reviews copies of the note and deed of trust when it becomes the servicer of a loan, and (3) the attached records were true and correct copies of documents made in the ordinary course of business at or near the time of the transaction. The trial court did not err by considering the declarations and attached records.

HOLDER OF THE NOTE

La Mothe next contends the trial court erred in granting summary judgment because U.S. Bank did not establish it held the original note. A holder is a "person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession." RCW 62A.1-201(21)(A). The holder of a note is the party entitled to enforce it. RCW 62A.3-301. Because the note was endorsed in blank and U.S. Bank had actual physical possession of the note, it was the holder of the note with the right to enforce it.

La Mothe contends that the copy of the note attached to the Recksiek declaration, which bore a barcode stamped at the bottom of the first page and the copy of the allonge, which bore the text "Multistate Note Allonge" on the

bottom left corner, appeared different than the original note and allonge presented by U.S. Bank at the summary judgment hearing, which did not contain the barcode or text. However, La Mothe's observation does not constitute a genuine issue of material fact as to the authenticity of the original note. La Mothe does not argue that the note appears to have been modified or forged in any way, and a review of the copy and original evince no differences other than this inconsequential marginalia. Nor does La Mothe dispute that his signature was on the original note produced at the hearing. See RCW 62A.3-308(a) (a signature on a promissory note is presumed authentic and authorized unless the validity of the signature is specifically denied in the pleadings).

La Mothe argues that even if U.S. Bank established that it was the holder of the note at the time of the summary judgment hearing, summary judgment was improper because U.S. Bank failed to show it was the holder at the time it filed the complaint. But La Mothe cites to no relevant or controlling authority in support of this proposition. The presentation of the note at the time of the summary judgment hearing is sufficient to prove U.S. Bank's status as the holder of the note. See Deutsche Bank Nat'l Trust Co. v. Slotke, No. 73631-1-I, slip. op. at 9 (Wash. Ct. App. Jan. 11, 2016).

La Mothe next argues that U.S. Bank did not adequately establish a chain of title to the deed of trust. But a note endorsed in blank is negotiated by physical transfer. Because U.S. Bank demonstrated that it physically possessed La Mothe's note, no chain of title was necessary.

Finally, La Mothe argues that U.S. Bank did not have authority to enforce the note because the note was assigned to the trust after the closing date specified in the trust's pooling and servicing agreement. Again, because U.S. Bank was in physical possession of the note at the time of the summary judgment hearing, it was entitled to enforce it. And to the extent La Mothe is attempting to challenge Liberty's compliance with the pooling and servicing agreement, he lacks standing to do so because he is not a party to the agreement. See In re Davies, 565 F. App'x 630, 633 (9th Cir. 2014).

BREACH OF CONTRACT

La Mothe contends that U.S. Bank was not entitled to foreclose on the deed of trust because it breached several of its terms. First, La Mothe contends that U.S. Bank did not give him notice prior to initiating foreclosure proceedings, as required by deed of trust. This claim lacks merit because the record shows that La Mothe received a notice of default nearly three years prior to U.S. Bank filing suit. Next, La Mothe argues that U.S. Bank failed to notify him when Select became the loan servicer. However, the notice of default clearly indicated that Select was the entity to which La Mothe's payments were due.

Finally, La Mothe contends that U.S. Bank was not entitled to initiate foreclosure proceedings without applying the amount held in a suspense account to the outstanding principal. The record shows that at the time Select issued the notice of default, a balance of $6,754.38 remained in a suspense account pending payment in full. But La Mothe presents no evidence to show he was not

credited with that amount against the principal or accrued interest prior to the judgment.

DUE PROCESS

La Mothe contends that he was denied due process at the summary judgment hearing because the trial court did not read the pleadings he submitted. The record does not support this claim. The trial court noted at the hearing that U.S. Bank's responsive briefing did not appear to address one of La Mothe's arguments but that he could possibly have overlooked it given that the pleadings and exhibits comprised over 2,500 pages. There was no due process violation.

MOTION TO STRIKE

La Mothe assigns error to the order denying his motion to strike Recksiek's declaration.[1] But La Mothe did not designate this order in either his original or amended notice of appeal, as required by the Rules of Appellate Procedure. See RAP 5.3(a)(3) (a notice of appeal must designate the decisions for which review is sought). In any event, La Mothe's challenge lacks merit. La Mothe contends that he was entitled to have Recksiek's declaration stricken pursuant to CR 56(f) because Recksiek was uncooperative during his deposition. But CR 56(f) provides that if a party "cannot present by affidavit facts essential to justify the party's opposition" to a summary judgment motion, "the court may

[1] We note that materials submitted to the trial court in connection with a motion for summary judgment cannot actually be stricken from consideration but remain in the record to be considered on appeal, so it is misleading to denominate as a motion to strike what is actually an objection to the admissibility of evidence. See Cameron v. Murray, 151 Wn. App. 646, 658, 214 P.3d 150 (2009), review denied, 168 Wn.2d 1018 (2010).

refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." If, as La Mothe alleges, he was unable to obtain the information he sought during discovery, the remedy provided by CR 56(f) is a continuance, not the striking of evidence.

RECONSIDERATION

Finally, La Mothe contends that the trial court erred in denying his motion for reconsideration. We review the trial court's denial of a motion for reconsideration for abuse of discretion. Brinnon Grp. v. Jefferson County, 159 Wn. App. 446, 485, 245 P.3d 789 (2011). Because La Mothe failed to establish any of the grounds under CR 59(a) justifying a reconsideration of the summary judgment order, the trial court did not abuse its discretion.

Affirmed.

Becker, J.

WE CONCUR:

Leach, J.

Jan, J.