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No. 74871-8-I

In the Supreme Court of the State of Washington

Elias Haydari, et al.
Respondent

v.

Concepción Hermosillo-Azdamanesh
Petitioner

Petition for Review

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 ORIGINAL

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I. Identity of Petitioner

The petitioner is Concepcion Hermosillo Azadmanesh (Hermosillo).

II. Court of Appeals Decision for Which Review Is Requested

Petitioner Hermosillo seeks review of the unpublished Opinion of Washington Court of Appeals Division I issued on April 24, 2017 in the case of *Elias Haydari and Amir Bahandari, Respondents v. Concepcion Hermosillo Azadmanesh*, Appellant, Washington Court of Appeals Division One Case Number 74871-I, terminating review of Petitioner Hermosillo's appeal from judgment in favor of Respondents from Snohomish County Superior Court Case Number 16-2-0214-1

III. Issues Presented for Review

1. In an unlawful detainer action is Hermosillo entitled to a jury trial as mandated by RCW 59.12.130 on issues of fact set forth in Hermosillo's Answer to a Complaint for Unlawful Detainer in which the homeowner challenges the authority of the Trustee that issued a Trustee's Deed Upon Sale to purchaser Respondent to prevent issuance of a writ of restitution when the property sold is encumbered by pending litigation that Respondents had actual and constructive notice of prior to the sale and the lis pendens litigation asserts violations of the DTA RCW 61.24.130; RCW 61.24.127 (2)(c) and (e); and RCW 61.24.050(1).
2. COA I erred by rejecting the demand for a jury trial claiming the pre-sale defenses were waived even though they were timely

presented before the sale. Is it a “waiver” of defenses where they are presented but rejected even when subject to reversal on appeal.

3. COA I erred by relying solely on *Brown et al. v. Department of Commerce*. Washington Supreme Court Case No. 90652-1; 359 P.3d 771 (2016), notwithstanding that violations of the DTA can void a sale even when the Person Entitled to Enforce (“PETE”) held the note but did not own the note.

IV. Statement of the Case

A. Acceptance of Review authorized by RAP 13.4(b)(4).

1. Issue of substantial public interest.

The *Hermosillo* COA I unlawful detainer decision along with the *Brown, supra* decision affects the way every non-judicial foreclosure proceeding in Washington is conducted. RCW 59.12.130 (Unlawful Detainer (“UD”)); RCW 4.28.320 (Lis Pendens (“LP”)); RCW 61.24.050(1), RCW 61.24.127(2)(c), (e), RCW 61.24.130 (Deed of Trust Act (“DTA”)); RCW 64.04.010 and RCW 65.04.020 (Deed Conveyance Act (“DCA”)); RCW 19.86 et seq. (Consumer Protection Act (“CPA”)); and contract common law, provide a seamless legislative directive and legal guideline that can void a trustee’s sale without seeking a reversal of *Brown, infra*. Otherwise, over time, thousands of homeowners in Washington will be removed from their homes even though the foreclosing entity is foreclosing in violation of the mandatory requirements of the statutes cited herein and cases cited herein. This case is of substantial public interest affecting every non-judicial foreclosure

relying exclusively on *Brown, supra*.

2. Right to trial by jury is constitutional.

The legislature knew in adopting the DTA and linking it to the unlawful detainer statute without excluding trial by jury at a unlawful detainer forum that property should not be lost where no jury has previously determined the case.

3. Waiver is the intentional and voluntary relinquishment of a known right.

Petitioner seeks to clarify that the purchaser and subsequent purchasers of a property acquired at a Trustee's Sale and the issuance and recording of a Trustee's Deed Upon Sale are subject to being reversed and voided where a borrower prevails ultimately on appeals that the DTA was violated. Exceptions to RCW 61.24.050(1) exist, as provided in Supreme Court case, including, *inter alia*, *Albice, Schroeder, Cox, Udall, McHugh, infra. Udall, Bremner, Sargent et al Respondents v. T.D. Escrow Services, Inc. and T.D. Service Financial Corporation*, Appellants, 132 Wash. App. 290, COA 2 (2006) (Courts must strictly apply and interpret the DTA in favor of the borrower. RCW 64.24.050.); *Albice v. Premier Mortgage Services of Washington, Inc., Option One Mortgage Corporation et al*, 174 Wn. 2d 560 (2017); *Schroeder v. Excelsior Management Group LLC et al v Haberthur Trustee et al*. 177 Wash.2d 94 (2013); *Cox v. Helenius et al*, 103 Wn.2d 383 (1985), (Supreme Court held trustee has fiduciary duty to debtor and beneficiary to not accept grossly inadequate sale price); *Schroeder citing McHugh v. Church*, 583

P.2d 210 (Alaska 1978).

In *Federal National Mortgage Insurance Association (FNMA) v. Ndiaye*, Washington Court of Appeals, Division Three, Case No. 3299401-III (2015) the COA III held that defenses held to be violations of the DTA raised are “not waived” where such defenses are argued timely before the sale. Denial of the injunction to stop sale is not a waiver. Denial of a defense to Summary Judgment is not a waiver. A waiver should be deemed to exist only where no effort is made to assert such defenses known or that should be deemed to be known but not asserted. Where the effort is pursuant to and in compliance with the statutory procedures and the pre-foreclosure notices of the trustee the effort should not be label a “waiver” equivalent to actual waivers/failures to act.

V. Argument

A. Legal Background

1. Unlawful Detainer Actions

The legislature is presumed to know that the incorporation of the UD provisions in the statutes affecting a wrongful non-judicial foreclosure holdover homeowner were designed to be enforced on an expedited basis to be consistent with the expedited non-judicial expedited foreclosure process for the same reasons. This includes invoking the expedited jury demand of the UD statute. The courts give full effect to legislative intent.

As stated by the COA I, due to the summary nature of the UD proceedings the issues are limited to possession. The court

however did not recognize the possessory issues raised by Hermosillo in her Answer to the UD Complaint. The DTA provides a clear limit on the authority of what a trustee can convey by sale. That limit to be to whatever the trustee had. RCW 61.24.050(1). If it is determined the trustee had nothing to convey or no authority to convey it, then the possession of the property subject to the UD action is void and the possession reversed in favor of the homeowner. In essence the Trustee is issuing a quit claim deed where it is transferring its interests, *whatever they may be and which may be nothing*. That is the essence of the Lis Pendens statute and cases. RCW 4.28.320 and RCW 4.28.325, and cases, *infra*. They provide that the purchaser at a trustee sale and any subsequent purchasers acquire the property subject to the pending litigation which they have constructive notice of the pending litigation by the recordation of the lis pendens and/or where the purchasers have actual notice and/or by the exercise of reasonable inquiry would have actual notice. If any of the issues in that pending case are resolved in favor of the homeowner that determination will void the ownership, possession and rights of the purchase at the trustee sale or their subsequent transferees.

Contrary to the Opinion of the COA I, Appellant did present as part of the CP, transcripts were made available to the Statement of Arrangements with the various court reporters. This court should accept review or remand to have the court review the

transcripts. Facts they “found” are simply not correct. For example in the arguments which are part of the CP, the factual evidence presented by Respondents in Support of their UD Complaint and Response to Motions for Reconsideration and at the Supersedeas bond hearings were refuted in detail. For example, Respondents presented exhibits all of which were analyzed by Appellant realizing that the Respondent admitted they had conducted extensive due diligence which appellant refute. Respondent had actual notice of the pending issues with notice in their own documentary exhibits for example a title report they acquired before the sale notified them that the title was not warranted for defects or encumbrances that could be discovered by the simplest of inspections of the property, including that they make inquiry at the property address. They could easily have called or met with the trustee and simply inquired if the trustee was aware of any encumbrances are litigation. Since the trustee was a party to the suit filed before the sale, that simple inquiry would have rebutted their argument they could not discover the litigation before the sale. The Respondents both spoke with me immediately after the sale and I advised them they should get a counsel because if they did due diligence that should have included a simple inquiry to the trustee. I suggested their counsel would advise them —on the extent they were duped by the trustee who intentionally failed to advise buyers of the known risk of the

pending litigation the Deed they issued on sale also is notice to the respondent that the Respondents admit they conducted their own due diligence and that but the Deed did not recite the facts of the status of the property and risks the buyer undertook. Because the respondents took the property subject to actual and constructive notice of pending litigation they are not a Bona Fide Purchaser (BFP). The Court analysis that Respondents were BFP's and the comments raise a serious question regarding a misunderstanding of to who their comments should have been directed. The COA I specifically rejected Respondent's brief notifying both parties that the respondents (not Appellant) had referred to pleadings in another matter and tried to incorporate them by reference. \

The NOTS was flawed. However, the NOTS does confirm that at least one assignment occurred and needed to be proven notwithstanding *Brown*.

The legislature intended the statutes noted to be seamlessly applied. The expedited jury demand within the UD action assures the homeowner that their constitutional right of due process is met when they may invoke by making the demand under RCW 59.12.130. The statutory language is mandatory as the COA recited at page 4 line 3-4, "...whenever an issue of fact is presented by the pleadings it must be tried by a jury".

The DTA is strictly construed because of the expedited nature of the non-judicial proceedings which has no judicial

oversight. *Albice, Schroeder, Udall, Cox infra*. The court specifically stated that because a UD is summary in nature, the proceedings are limited to resolving questions related to possession of property and related issues like restitution of possession and rent. *Barr v. Young*, 8 Wn. App 105 (2015).

Hermosillo submits that the possessory issues include all issues where the possession arises from a DTA determination that the trustee never had any interests or the power to convey possession. The court erred by not even mentioning RCW 61.24.050(1) or the cases applying it as supporting the statutory right to jury trial on such issues affecting possession. The duality of the issue of ownership and possession in the DTA strictly construed context, must be recognized by the court where those issues are so crucial to the possession of real estate and the finality intended to result from the determination of such issues of fact.

2. The DTA and Unlawful Detainer

The court held that if the borrower breaches the obligations owed to the lender the trustee may foreclose on the property in a trustee sale. COA Ruling at p 4 line 17-18. Where the borrower challenges that it owes an obligation to the alleged lender then until that is resolved there is no right to foreclose and sell the property.

The court failed or erred in their analysis to even reference the RCW 61.24.050(1) limitations on the trustee, vis-a-vis what

possessory rights it has in the property it sells at the trustee's sale.

The COA references that the statement in the deed executed at the trustee sale is *prima, facie* evidence of compliance with the DTA to a bona fide purchaser. COA ruling at p 5 line 2-3. *Prima facie* evidence however is rebuttable. Where there is a lis pendens notice recorded or other actual or constructive notice regarding the existence of pending litigation available to the purchaser at or prior to the trustee sale, the purchaser can verify the extent of the interest being conveyed by the trustee by the sale and issues related to ultimate possession. This includes the relatively simple inquiry directly to the trustee if it is aware of any litigation challenging the trustee's authority and the nature, extent of its interests being conveyed by the sale. This is especially relevant since the Notice of Trustee Sale by RCW 61.24.050(1)(f), incorporates relevant text raising the issue of possession the nature and extent of the quality of the title and encumbrances on the property thereby putting the purchasers on notice prior to the sale and placing the duty on any bidder to make such inquiry. Section V of the Notice of Trustee Sale regarding the sale of the property specifically states "The sale will be made without warranty, express or implied **regarding title, possession, or encumbrances...**" RCW 61.24.050(1)(f). (Emphasis added).

In this case, Hermosillo recorded with the Snohomish County Recording Office and filed with the Snohomish County

Clerk of the Superior Court her lis pendens and filed it with the court clerk assuring any purchaser from a trustee sale or their subsequent purchasers were aware of such possessory issues that they took subject to. Recitation in the trustee deed of compliance in the Deed, however, is rebuttable where there is evidence available to the purchaser that such presumption is disputed coupled with the lis pendens and/or evidence readily available to a purchaser prior to the sale combine to put the purchaser and subsequent purchasers from the purchaser at the sale, on notice there is a dispute regarding possession and whether or not the DTA was strictly complied with by the trustee. The presumptive nature of the statement in the Deed by the Trustee that the foreclosure was in compliance with the DTA is rebuttable where the trustee itself is aware of litigation challenging its authority and the nature and extent of its interests it is conveying. The grantor is bound to disclose what defects exist in the property that it is aware of at or prior to the sale to avoid misleading the purchaser and it is a misrepresentation in the Deed to make a statement of compliance when it knows that there is a challenge to the compliance with the DTA.

The court analysis is flawed by not addressing the rebuttable nature of the lis pendens and the statutory intent of the legislative to link the UD, DTA, DCA, CPA and LP in affecting the possession by the borrower of the property which could be lost

without judicial oversight on an expedited basis. The COA is the Trial Court, Court of Appeals and ultimately the Supreme Court combine to be the judicial oversight intended to be available as a matter of right to determine compliance with the DTA and its effect on possession of the property. That judicial oversight, when challenged by the borrower, includes the litigation embodied by the UD action and the UD statutory right to a jury trial of issues raised in the Answer as were raised by Hermosillo that ultimately affect possession. RCW 59.12.130.

3. Remedies for DTA Violations

Hermosillo did pursue pre-sale remedies by filing the required Complaint and filing a motion for injunction. The trial court erred by finding Hermosillo had no standing to challenge whether or not the trustee was properly appointed and the beneficiary legally acquired possession of the note or owned it.

The issues raised in the Answer to the UD and in the trial court and COA pertain ultimately to possession and strict compliance with the DTA as well as compliance with the mandatory UD statutory rights to a jury trial when demanded, as Hermosillo demanded. The lis pendens notice and actual/constructive notices have the effect that the purchaser at a trustee sale take subject to the ultimate results of the pending litigation including a determination that voids the deed and rebut the argument that the Deed issued by the trustee was in compliance

with the DTA.

Further, a borrower does not waive (a voluntary or intentional act) because the trial court denied the motion for injunction. Borrower did assert by taking action which is not a waiver. In *Frizzell v Murray*, COA Division II Case No. 42265-4-II, (2012) the court held that the failure to obtain the injunction *may* waive a defense even if a borrower attempts to obtain a restraining order but does not succeed. The court in *Frizzell*, however, further agreed that waive does not apply to all potential claims. Failure to obtain a restraining order may not be deemed a waiver citing four specific types of actions for damages.

1. Failure to trustee to materially comply with the DTA. The court erred in interpreting that “non-waived” claims may not affect in any way the validity of the finality of the foreclosure or a subsequent transfer of the property and may not operate on any way to encumber or cloud the title citing RCW 61.24.127(2)(c) and (e).

The analysis ignores the plain statutory language and intent of RCW 61.24.050(1) that the trustee can only transfer the interest it has to a purchaser at the trustee sale. RCW 61.24.050 combined with *lis pendens* establish that they must be read together to understand the legislative intent that non-waived claims cannot affect the title and possession. In fact, the statutes can only be interpreted that such non-waived defenses (failure to get a preliminary injunction) can be reversed and the possession and

ownership affected.

The court erred in ignoring the interplay and intent of the interacting statutes RCW 61.24.050(10), RCW 4.28.320 and RCW 59.12.100 including strict compliance with the .050 if not found to have occurred do affect possession and ownership.

B. Asserting DTA Violations in an Unlawful Detainer Action

Hermosillo raised issues of fact in the Answer to the UD Complaint that (1) the note was not properly assigned to the Trust that the foreclosure is based upon and had no lawful authority to foreclose and (2) the appointment of a successor trustee (North West Trustee Services (“NWTS”)) was illegal and ineffective and therefore the trustee’s sale did not comply with the DTA procedures.

While the court recognizes that failure to comply with the strict DTA requirements *may* void trustee’s sales. RCW 40.16.030.

The court erred by rejecting Hermosillo’s claim to assert the non-compliance voided the sale because first, Borrower cannot raise defective title as a defense to possession citing *Ndiaye, supra*. COA I reliance on COA III is misplaced. *Ndiaye* actually was held in COA III at page 6 that “in some circumstances” pre-sale defenses *can* be asserted. COA I overlooked the distinction. Pre-sale defenses such as failure to obtain an injunction MAY, as noted above, not be deemed a waiver of such defense. In other

words, the ability to overturn the denial of the injunction can act to void a sale if it the underlying issues of fact re reversed such as strict compliance with the DTA. In this case, we reassert that the provision of RCW 61.24.050(1) combined with RCW 4.28.320 and RCW 59.12.100.

The court erred by still finding waiver for not obtaining the injunction, *Ndiaye, supra* stated some defenses may be allowed to asserted in the unlawful detainer as stated above they may include failure to obtain the injunction but the court relies on RCW 61.24.127(2)(c),(e) that thereby the legislative provide NO indication in the DTA or in the unlawful detainer statute a borrower can assert DTA violations a defense in an UD action.

As stated above, the court erred in finding no DTA indication by the legislature that the sale could be voided and possession revoked. The specific restriction on the trustee as to what it may convey set forth in RCW 61.24.050(10 is the indication by the legislature of its intent that the DTA does provide for voiding a trustee sale if the trustee is determined to have had nothing to convey being improperly appointed. An issue to be determined by jury trial when all three connected statues are read together to give full effect to their intended interaction.

C. Validity of *Brown supra* Regarding Authority to Enforce Deed of Trust.

Even if *Brown* is valid, and that the holder of the note can

enforce the deed of trust without owning the Note that is rebuttable.

UCC 1 allows the parties to a note, which is a contract, to define the terms of the contract superseding the provisions of Article 3 of the UCC which provides that a PETE can be a holder.

Here, Lopez contracted through the note that the beneficiary and subsequent legal transfers must hold AND own the note. A 150 year old established legal principle by the US Supreme Court in *Carpenter v. Longan*, 83 U.S. 271 (2872). Further transfers must be legal under Washington law which mandates compliance with the Deed Conveyance Act, RCW 64.04.010 and RCW 65.04.020, that the assignment be of all interests in the Note, for value, in writing, acknowledge and notarized. Absent such legal compliance the transfers are void. Here, the court ignores the UCC contracting right of the parties to the note that the note be held AND owned by the PETE. Brown does not supersede the contracting rights of the parties, or the standing of signers to the note including borrower to challenge transfers to have been legal transfers which in Washington requires compliance with the DCA.

The court erred by relying only on Brown as a basis for foreseeing the possession of the property would not be voided by violation of the DTA requirements the trustee be properly appointed and that the contract provisions of the note control

interpreting that the note must be held **and** owned by the PETE.

In other words, *Brown* is rebuttable.

D. Sale Prohibition under Federal Tax Law

As discussed above the identity of the Real Estate Investment Mortgage Investment Conduit, 26 U.S.C. 860(D) (“REMIC”) federal tax provisions, which when not complied with affect the investors under the tax laws is independent of the borrowers standing to challenge compliance of the PSA governing the conditions under which the Note may be owned by the Trust.

The court cannot enable illegal acts.

The Pooling and Service Agreement (“PSA”) that sets forth the terms governing the Trust purportedly owning the Note provides for the borrower to be a third party beneficiary of the PSA as the warranty is provided by the servicer to maximize the value of the trust investment and to modify the borrower's loan where possible. The other provisions of the PSA require that MERS not have been a beneficiary and that the note must have been acquired by the trust within 90 days of closing. Here, Lopez provided evidence that the trust closed five years before the note was acquired voiding the ownership interest of the Trust and voiding the authority the trustee may have since it was not properly appointed under by a valid owner.

Finally, the Court erred by basing their opinion and denying the Appellant's motion for a jury trial on issues of fact raised

misreading the CP which is replete with the assertion that the underlying case pending was only a Consumer Protection Act cause of action for civil damages. While there were serious CPA violations argued that the non-judicial foreclosure was in violation of the DTA, DCA, and that the documents created and relied on by the trustee and beneficiary were deceptive, false and void which affected the authority of the trustee to conduct the non-judicial foreclosure and the trustee's authority to issue the Deed Upon Sale to Respondents.

IV. Conclusion

The COA I erred in directing issuance of the writ of restitution and denying Lopez a jury trial demanded to resolve issues not resolved in the pending litigation that the Respondent purchased the property from the trustee was subject to and that the possession could be voided. Respectfully submitted this 26th day of May, 2017 at Issaquah, Washington.

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Appendix I (Court of Appeals Decision)

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IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

ELIAS HAYDARI and AMIR
BAHANDARI,

Respondents,

v.

CONCEPCION HERMOSILLO
AZADMANESH,

Appellant.

No. 74871-8-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: April 24, 2017

LEACH, J. — After Elias Haydari and Amir Bahandari purchased Concepcion Hermosillo's¹ home at a trustee's nonjudicial foreclosure sale, she refused to move. Haydari and Bahandari filed an unlawful detainer action, and the trial court granted a writ of restitution. Hermosillo appeals this decision. Because she fails to show an issue of fact about Haydari and Bahandari's right to possession, we affirm and remand.

FACTS

We have described the facts about the foreclosure in the companion case, Hermosillo v. Quality Loan Service Corp. of Washington, No. 75020-8-1.

After a lender foreclosed on Hermosillo's property, Haydari and Bahandari purchased the property at a trustee's sale. Three days later, they had a notice to

¹ We refer to the appellant as Hermosillo consistent with the parties' briefing.

vacate served on Hermosillo. But she continued to occupy the premises. Nearly two months later, Haydari and Bahandari filed an unlawful detainer action to evict Hermosillo.

They attached the trustee's deed to their complaint. The trustee's deed identified Fidelity National Title Co. of Washington as the original trustee and Quality Loan Service Corp. of Washington as the current trustee.

After a show cause hearing, a court commissioner ruled in favor of Haydari and Bahandari. She denied Hermosillo's request for a jury trial, entered findings of fact and conclusions of law, and ordered the court clerk to issue a writ of restitution directing the sheriff to deliver possession of the property to Haydari and Bahandari. The commissioner later denied Hermosillo's motion for reconsideration.

A King County Superior Court judge stayed the writ of restitution conditioned on Hermosillo posting a supersedeas bond in the amount of \$37,500. Hermosillo deposited the \$37,500 and then appealed the order for the writ of restitution and denying her request for a jury trial.

STANDARD OF REVIEW

The purchaser at a trustee's sale may file a statutory unlawful detainer action to resolve the right to possession of property.² This action provides a summary process for resolving a dispute about the right to possession of property

² RCW 61.24.060(1).

purchased.³ At the beginning of this action or anytime later in the proceedings, the purchaser may ask the court for a writ of restitution restoring to it possession of the property.⁴ A purchaser who wants a writ of restitution must schedule a show cause hearing.⁵ At the show cause hearing, the court decides if the purchaser has shown that no substantial issue of material fact exists about its right to possession.⁶ If so, the court grants this relief. If not, the court sets the case for trial unless the court decides the purchaser has no legal right to the relief requested and dismisses the case.⁷

On appeal, we review the record to decide whether an issue of fact exists about the purchaser's right to possession. If not, we will affirm the trial court's decision restoring possession. If the record shows a material issue of fact, we will reverse and remand for trial, unless we decide that the purchaser has no right to the legal relief requested.⁸

ANALYSIS

Hermosillo contends that Haydari and Bahandari are not entitled to possession. She also claims a right to a jury trial in this case.

³ Munden v. Hazelrigg, 105 Wn.2d 39, 45, 711 P.2d 295 (1985); RCW 59.12.030.

⁴ RCW 59.12.090.

⁵ Indigo Real Estate Servs., Inc. v. Wadsworth, 169 Wn. App. 412, 421, 280 P.3d 506 (2012).

⁶ RCW 59.18.380.

⁷ RCW 59.18.380.

⁸ RCW 59.18.380.

First, Hermosillo asserts that the trustee's deed to Haydari and Bahandari did not show compliance with the deeds of trust act (DTA).⁹ The trustee's deed identified Quality as the current trustee and stated that the deed of trust named Fidelity National as the original trustee. It did not explain how Quality became the successor trustee. Hermosillo claims that without information in the deed showing how Quality became the lawful trustee, one cannot know whether this sale was a valid sale under the DTA.

Haydari and Bahandari respond that the trustee's deed contained sufficient recitals and is prima facie evidence of compliance with the DTA. RCW 61.24.040(7) states,

[T]he trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

Haydari and Bahandari assert that a statement that Quality is the current trustee is sufficient. We agree.

Hermosillo relies on Division Two's decision in Albice v. Premier Mortgage Services of Washington.¹⁰ Albice stated, "Legal conclusions without supporting facts are insufficient to demonstrate that the sale complied with all the statutory procedural protections."¹¹ In that case, a conclusory statement that all

⁹ Ch. 61.24 RCW.

¹⁰ 157 Wn. App. 912, 239 P.3d 1148 (2010), aff'd, 174 Wn.2d 560, 276 P.3d 1277 (2012).

¹¹ Albice, 157 Wn. App. at 924.

requirements of the DTA had been complied with made it impossible to determine whether the sale in fact complied with the DTA.¹² The recitals were insufficient because they did not include any information about the six continuances that postponed the sale beyond the period allowed by the DTA.¹³ The court was “unwilling to accept a trustee’s legal conclusions contrary to the actual facts of the foreclosure process as conclusive evidence where an accurate reporting of the facts would have shown the legal conclusions to be incorrect.”¹⁴

This case is not like Albice. Here, the deed stated that Quality was the trustee. Hermosillo does not provide any evidence to contradict that recital. Nor does she cite any case supporting her claim that the deed must recite how Quality came to be trustee.

Moreover, she does not deny that Haydari and Bahandari are bona fide purchasers (BFPs). RCW 61.24.040(7) states that the recitals in the trustee’s deed provide conclusive proof of compliance in favor of BFPs.¹⁵ On appeal, the Supreme Court in Albice decided that the purchaser was not a BFP and thus could not benefit from BFP protection.¹⁶ “[I]n considering whether a person is a BFP, we ask (1) whether the surrounding events created a duty of inquiry, and, if so, (2) whether the purchaser satisfied that duty.”¹⁷ Here, the deed stated that Quality was the current trustee. This is not misleading or inconsistent with any other

¹² Albice, 157 Wn. App. at 923.

¹³ Albice, 157 Wn. App. at 922-23.

¹⁴ Albice, 157 Wn. App. at 925.

¹⁵ RCW 61.24.040(7).

¹⁶ Albice, 174 Wn.2d at 573.

¹⁷ Albice, 174 Wn.2d at 573.

recital. Thus, Haydari and Bahandari had no reason to question that recital or investigate further. The absence of facts explaining how Fidelity ceased to be the trustee and Quality became the successor trustee did not create a duty to inquire.

Next, Hermosillo challenges the commissioner's denial of her request for a jury trial. She claims RCW 59.12.130 entitles her to a jury trial on Haydari and Bahandari's right to possession claim. RCW 59.12.130 states, "Whenever an issue of fact is presented by the pleadings it must be tried by a jury." At the show cause hearing, Hermosillo had the opportunity to introduce some evidence to show the recitals in the trustee's deed were false. She did not. Because she failed to contradict the recitals, she did not create an issue of fact, and the commissioner correctly denied her request for a jury trial.

For the first time in her reply brief, Hermosillo lists, without argument, several items in the record, including pleadings submitted to the trial court, that she claims raise issues of fact. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration."¹⁸ Further, "trial court briefs cannot be incorporated into appellate briefs by reference."¹⁹ In addition, we generally do not consider arguments raised for the first time in a reply brief.²⁰ For these reasons, we decline to consider whether these documents create an issue of fact.

¹⁸ Holland v. City of Tacoma, 90 Wn. App. 533, 538, 954 P.2d 290 (1998).

¹⁹ Holland, 90 Wn. App. at 538.

²⁰ Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

Finally, Hermosillo contends that Haydari and Bahandari acquired the property subject to the outcome in the companion case. But that case involved only a civil action for damages under the Consumer Protection Act.²¹ The sole question here is right to possession.²² And while a party in an unlawful detainer action may raise a counterclaim "that will void the sale and thus destroy any right to possession in the purchaser at that sale," a Consumer Protection Act claim does not directly relate to the question of possession.²³ And we rejected Hermosillo's arguments in the companion case about the lender's authority to foreclose.²⁴

The trial court properly ordered a writ of restitution and denied Hermosillo's request for a jury trial.

Haydari and Bahandari seek damages caused by this appeal, citing RCW 59.12.100 and RAP 8.1(c) as authority for their request. They must seek this relief in the trial court on remand.

²¹ Ch. 19.86 RCW.

²² Savings Bank of Puget Sound v. Mink, 49 Wn. App. 204, 208-09, 741 P.2d 1043 (1987).

²³ See Savings Bank, 49 Wn. App. at 209.

²⁴ Hermosillo v. Quality Loan Serv. Corp., No. 75020-8-1.

CONCLUSION

Hermosillo does not create an issue of fact about the respondents' right to possession. We affirm the trial court and remand for a determination of damages.

Leach, J.

WE CONCUR:

Appelquist, J.

Speerman, J.

Appendix II (Relevant Statutes)

26 U.S.C. 860D

United States Code, 2009 Edition

Title 26 - INTERNAL REVENUE CODE

Subtitle A - Income Taxes

CHAPTER 1 - NORMAL TAXES AND SURTAXES

Subchapter M - Regulated Investment Companies and Real Estate Investment Trusts

PART IV - REAL ESTATE MORTGAGE INVESTMENT CONDUITS

Sec. 860D - REMIC defined

From the U.S. Government Printing Office, www.gpo.gov**§860D. REMIC defined****(a) General rule**

For purposes of this title, the terms “real estate mortgage investment conduit” and “REMIC” mean any entity—

- (1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,
- (2) all of the interests in which are regular interests or residual interests,
- (3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),
- (4) as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments,
- (5) which has a taxable year which is a calendar year, and
- (6) with respect to which there are reasonable arrangements designed to ensure that—
 - (A) residual interests in such entity are not held by disqualified organizations (as defined in section 860E(e)(5)), and
 - (B) information necessary for the application of section 860E(e) will be made available by the entity.

In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).

(b) Election**(1) In general**

An entity (otherwise meeting the requirements of subsection (a)) may elect to be treated as a REMIC for its 1st taxable year. Such an election shall be made on its return for such 1st taxable year. Except as provided in paragraph (2), such an election shall apply to the taxable year for which made and all subsequent taxable years.

(2) Termination**(A) In general**

If any entity ceases to be a REMIC at any time during the taxable year, such entity shall not be treated as a REMIC for such taxable year or any succeeding taxable year.

(B) Inadvertent terminations

If—

- (i) an entity ceases to be a REMIC,
- (ii) the Secretary determines that such cessation was inadvertent,
- (iii) no later than a reasonable time after the discovery of the event resulting in such cessation, steps are taken so that such entity is once more a REMIC, and
- (iv) such entity, and each person holding an interest in such entity at any time during the period specified pursuant to this subsection, agrees to make such adjustments (consistent with

the treatment of such entity as a REMIC or a C corporation) as may be required by the Secretary with respect to such period,

then, notwithstanding such terminating event, such entity shall be treated as continuing to be a REMIC (or such cessation shall be disregarded for purposes of subparagraph (A)) whichever the Secretary determines to be appropriate.

(Added Pub. L. 99-514, title VI, §671(a), Oct. 22, 1986, 100 Stat. 2311; amended Pub. L. 100-647, title I, §1006(t)(2)(A), (16)(A), (19), Nov. 10, 1988, 102 Stat. 3419, 3423, 3426; Pub. L. 101-508, title XI, §11704(a)(8), Nov. 5, 1990, 104 Stat. 1388-518.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101-508 inserted closing parenthesis before period at end.

1988—Subsec. (a). Pub. L. 100-647, §1006(t)(19), inserted at end “In the case of a qualified liquidation (as defined in section 860F(a)(4)(A)), paragraph (4) shall not apply during the liquidation period (as defined in section 860F(a)(4)(B)).”

Subsec. (a)(4). Pub. L. 100-647, §1006(t)(2)(A)(i), substituted “3rd month beginning after” for “4th month ending after”.

Pub. L. 100-647, §1006(t)(2)(A)(ii), substituted “and at all times thereafter” for “and each quarter ending thereafter”.

Subsec. (a)(6). Pub. L. 100-647, §1006(t)(16)(A), added par. (6).

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1006(t)(2)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A)(ii) [amending this section] shall take effect on January 1, 1988.”

Section 1006(t)(16)(D)(i) of Pub. L. 100-647 provided that: “The amendments made by subparagraph (A) [amending this section] shall apply in the case of any REMIC where the start-up day (as defined in section 860G(a)(9) of the 1986 Code, as in effect on the day before the date of the enactment of this Act [Nov. 10, 1988]) is after March 31, 1988; except that such amendments shall not apply in the case of a REMIC formed pursuant to a binding written contract in effect on such date.”

Amendment by section 1006(t)(2)(A)(i), (19) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

Chapter 19.86 RCW**UNFAIR BUSINESS PRACTICES—CONSUMER PROTECTION****Chapter Listing | RCW Dispositions****Sections**

- 19.86.010** Definitions.
- 19.86.020** Unfair competition, practices, declared unlawful.
- 19.86.023** Violation of RCW **15.86.030** constitutes violation of RCW **19.86.020**.
- 19.86.030** Contracts, combinations, conspiracies in restraint of trade declared unlawful.
- 19.86.040** Monopolies and attempted monopolies declared unlawful.
- 19.86.050** Transactions and agreements not to use or deal in commodities or services of competitor declared unlawful when lessens competition.
- 19.86.060** Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest.
- 19.86.070** Labor not an article of commerce—Chapter not to affect mutual, nonprofit organizations.
- 19.86.080** Attorney general may restrain prohibited acts—Costs—Restoration of property.
- 19.86.085** Establishment of investigation unit—Receipt and use of criminal history information.
- 19.86.090** Civil action for damages—Treble damages authorized—Action by governmental entities.
- 19.86.093** Civil action—Unfair or deceptive act or practice—Claim elements.
- 19.86.095** Request for injunctive relief—Appellate proceeding—Service on the attorney general.
- 19.86.100** Assurance of discontinuance of prohibited act—Approval of court—Not considered admission.
- 19.86.110** Demand to produce documentary materials for inspection, answer written interrogatories, or give oral testimony—Contents—Service—Unauthorized disclosure—Return—Modification, vacation—Use—Penalty.
- 19.86.115** Materials from a federal agency or other state's attorney general.
- 19.86.120** Limitation of actions—Tolling.
- 19.86.130** Final judgment to restrain is prima facie evidence in civil action—Exceptions.
- 19.86.140** Civil penalties.
- 19.86.145** Penalties—Animals used in biomedical research.
- 19.86.150** Dissolution, forfeiture of corporate franchise for violations.
- 19.86.160** Personal service of process outside state.
- 19.86.170** Exempted actions or transactions—Stipulated penalties and remedies are exclusive.
- 19.86.910** Short title.
- 19.86.920** Purpose—Interpretation—Liberal construction—Saving—1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216.

NOTES:

Adult family homes: Chapter 70.128 RCW.

Advertisement of children for adoption: RCW 26.33.400.

Agriculture—Declarations of "Washington state grown": RCW 15.04.410.

Auctioneers: Chapter 18.11 RCW.

Automotive repair: Chapter 46.71 RCW.

Bail bond agents—Records—Finances—Disposition of security—Application of consumer protection act: RCW 18.185.210.

Business opportunity fraud act: Chapter 19.110 RCW.

Camping resorts: RCW 19.105.405, 19.105.500.

Charitable solicitations, regulation: RCW 19.09.340.

Check cashers and sellers: Chapter 31.45 RCW.

Cigarettes—Sales below cost: RCW 19.91.300.

Collection agencies: RCW 19.16.120, 19.16.440.

Commercial telephone solicitation: Chapter 19.158 RCW.

Consumer leases: RCW 63.10.050.

Contractors: Chapter 18.27 RCW.

Credit—Fair credit reporting act: Chapter 19.182 RCW.

Credit services organization act: RCW 19.134.070.

Debt adjusting: RCW 18.28.185.

Degree-granting institutions: Chapter 28B.85 RCW.

Distressed property conveyances: Chapter 61.34 RCW.

Electronic signatures—Licensed certification authority using license in violation of chapter 19.86 RCW: RCW 19.34.100.

Email—Commercial: Chapter 19.190 RCW.

Embalmers and funeral directors: RCW 18.39.350.

Employment agencies—Enforcement: RCW 19.31.210.

Escrow agents—Advertisement, statement, or reference to existence of financial responsibility requirements prohibited—Referral fees prohibited: RCW 18.44.400, 18.44.450.

Fair credit reporting act: Chapter 19.182 RCW.

Franchise investment protection: RCW 19.100.030, 19.100.160, 19.100.190, 19.100.200.

Funeral and cemetery board—Violation—Penalty—Unfair practice—Other laws applicable: RCW 68.05.330.

Going out of business sales: Chapter 19.178 RCW.

Health studio services: Chapter 19.142 RCW.

Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.110, 18.35.120, 18.35.180.

Heating oil pollution liability protection act: RCW 70.149.100.

House-to-house sales by minors: RCW 49.12.310.

Immigration services fraud prevention act: RCW 19.154.090.

International student exchange: Chapter 19.166 RCW.

Kosher food products: Chapter 69.90 RCW.

Land development law: RCW 58.19.270.

Law against discrimination: RCW 49.60.030.

Lease-purchase agreements: Chapter 63.19 RCW.

Leases: RCW 62A.2A-104.

Life settlements act: Chapter 48.102 RCW.

Manufactured and mobile home installation service and warranty service standards: RCW 43.22.440.

Mechanics' and materialmen's liens—Acts of coercion: RCW 60.04.035.

Medicaid patient discrimination: RCW 74.42.055.

Mortgage brokers: Chapter 19.146 RCW.

Motor vehicle dealers: Chapter 46.70 RCW.

Motor vehicle subleasing or transfer: Chapter 19.116 RCW.

Motor vehicle warranties: Chapter 19.118 RCW.

Nursing homes—Discrimination against medicaid recipients: RCW 74.42.055.

Offers to alter bids at sales pursuant to deeds of trust: RCW 61.24.135.

On-site sewage additive manufacturers: RCW 70.118.080.

Operator services: RCW 80.36.360, 80.36.400, 80.36.530, 80.36.540.

Pay-per-call information delivery services: Chapter 19.162 RCW.

Private vocational schools: Chapter 28C.10 RCW.

Promotional advertising of prizes: Chapter 19.170 RCW.

Radio communications service companies not regulated by utilities and transportation commission: RCW 80.66.010.

Roofing and siding contractors and salespersons: Chapter 19.186 RCW.

Sellers of travel: Chapter 19.138 RCW.

Telephone buyers' protection act: Chapter 19.130 RCW.

Timeshare act: Chapter 64.36 RCW.

Unsolicited goods or services: Chapter 19.56 RCW.

Usurious contracts: RCW 19.52.036.

Water companies exempt from utilities and transportation commission regulation: RCW 80.04.010.

Weatherization of leased or rented residences: RCW 70.164.060.

19.86.010

Definitions.

As used in this chapter:

(1) "Person" shall include, where applicable, natural persons, corporations, trusts, unincorporated associations and partnerships.

(2) "Trade" and "commerce" shall include the sale of assets or services, and any commerce directly or indirectly affecting the people of the state of Washington.

(3) "Assets" shall include any property, tangible or intangible, real, personal, or mixed, and wherever situate, and any other thing of value.

[1961 c 216 § 1.]

19.86.020

Unfair competition, practices, declared unlawful.

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

[1961 c 216 § 2.]

NOTES:

Hearing instrument dispensing, advertising, etc.—Application: RCW 18.35.180.

19.86.023

Violation of RCW 15.86.030 constitutes violation of RCW 19.86.020.

Any violation of RCW 15.86.030 shall also constitute a violation under RCW 19.86.020.

[1985 c 247 § 7.]

19.86.030

Contracts, combinations, conspiracies in restraint of trade declared unlawful.

Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is hereby declared unlawful.

[1961 c 216 § 3.]

NOTES:

Monopolies and trusts prohibited: State Constitution Art. 12 § 22.

19.86.040

Monopolies and attempted monopolies declared unlawful.

It shall be unlawful for any person to monopolize, or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of trade or commerce.

[1961 c 216 § 4.]

19.86.050

Transactions and agreements not to use or deal in commodities or services of competitor declared unlawful when lessens competition.

It shall be unlawful for any person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement, or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for such sale or such condition, agreement, or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

[1961 c 216 § 5.]

19.86.060

Acquisition of corporate stock by another corporation to lessen competition declared unlawful—Exceptions—Judicial order to divest.

It shall be unlawful for any corporation to acquire, directly or indirectly, the whole or any part of the stock or assets of another corporation where the effect of such acquisition may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

This section shall not apply to corporations purchasing such stock solely for investment and not using the same by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nor shall anything contained in this section prevent a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions thereof, or from owning and holding all or a part of the stock of such subsidiary corporations, when the effect of such formation is not to substantially lessen competition.

In addition to any other remedy provided by this chapter, the superior court may order any corporation to divest itself of the stock or assets held contrary to this section, in the manner and within the time fixed by

said order.

[1961 c 216 § 6.]

19.86.070

Labor not an article of commerce—Chapter not to affect mutual, nonprofit organizations.

The labor of a human being is not a commodity or article of commerce. Nothing contained in this chapter shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof.

[1961 c 216 § 7.]

NOTES:

Labor regulations: Title 49 RCW.

19.86.080

Attorney general may restrain prohibited acts—Costs—Restoration of property.

(1) The attorney general may bring an action in the name of the state, or as *parens patriae* on behalf of persons residing in the state, against any person to restrain and prevent the doing of any act herein prohibited or declared to be unlawful; and the prevailing party may, in the discretion of the court, recover the costs of said action including a reasonable attorney's fee.

(2) The court may make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired by means of any act herein prohibited or declared to be unlawful.

(3) Upon a violation of RCW **19.86.030**, **19.86.040**, **19.86.050**, or **19.86.060**, the court may also make such additional orders or judgments as may be necessary to restore to any person in interest any moneys or property, real or personal, which may have been acquired, regardless of whether such person purchased or transacted for goods or services directly with the defendant or indirectly through resellers. The court shall exclude from the amount of monetary relief awarded in an action pursuant to this subsection any amount that duplicates amounts that have been awarded for the same violation. The court should consider consolidation or coordination with other related actions, to the extent practicable, to avoid duplicate recovery.

[2007 c 66 § 1; 1970 ex.s. c 26 § 1; 1961 c 216 § 8.]

NOTES:

Effective date—2007 c 66: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2007]." [2007 c 66 § 3.]

19.86.085**Establishment of investigation unit—Receipt and use of criminal history information.**

There is established a unit within the office of the attorney general for the purpose of detection, investigation, and prosecution of any act prohibited or declared to be unlawful under this chapter. The attorney general will employ supervisory, legal, and investigative personnel for the program, who must be qualified by training and experience. The attorney general is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation of any person doing any act herein prohibited or declared to be unlawful under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

[2008 c 74 § 7.]

NOTES:

Finding—2008 c 74: See note following RCW 51.04.024.

19.86.090**Civil action for damages—Treble damages authorized—Action by governmental entities.**

Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee. In addition, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed twenty-five thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed twenty-five thousand dollars. For the purpose of this section, "person" includes the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured, directly or indirectly, by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in superior court to recover the actual damages sustained by it, whether direct or indirect, and to recover the costs of the suit including a reasonable attorney's fee.

[2009 c 371 § 1; 2007 c 66 § 2; 1987 c 202 § 187; 1983 c 288 § 3; 1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

NOTES:

Application—2009 c 371: "This act applies to all causes of action that accrue on or after July 26, 2009." [2009 c 371 § 3.]

Effective date—2007 c 66: See note following RCW 19.86.080.

Intent—1987 c 202: See note following RCW 2.04.190.

Short title—Purposes—1983 c 288: "This act may be cited as the antitrust/consumer protection improvements act. Its purposes are to strengthen public and private enforcement of the unfair business practices-consumer protection act, chapter 19.86 RCW, and to repeal the unfair practices act, chapter 19.90 RCW, in order to eliminate a statute which is unnecessary in light of the provisions and remedies of chapter 19.86 RCW. In repealing chapter 19.90 RCW, it is the intent of the legislature that chapter 19.86 RCW should continue to provide appropriate remedies for predatory pricing and other pricing practices which constitute violations of federal antitrust law." [1983 c 288 § 1.]

19.86.093

Civil action—Unfair or deceptive act or practice—Claim elements.

In a private action in which an unfair or deceptive act or practice is alleged under RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public interest because it:

- (1) Violates a statute that incorporates this chapter;
- (2) Violates a statute that contains a specific legislative declaration of public interest impact; or
- (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.

[2009 c 371 § 2.]

NOTES:

Application—2009 c 371: See note following RCW 19.86.090.

19.86.095

Request for injunctive relief—Appellate proceeding—Service on the attorney general.

In any proceeding in which there is a request for injunctive relief under RCW 19.86.090, the attorney general shall be served with a copy of the initial pleading alleging a violation of this chapter. In any appellate proceeding in which an issue is presented concerning a provision of this chapter, the attorney general shall, within the time provided for filing the brief with the appellate court, be served with a copy of the brief of the party presenting such issue.

[1983 c 288 § 5.]

NOTES:

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

19.86.100**Assurance of discontinuance of prohibited act—Approval of court—Not considered admission.**

In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his or her principal place of business, or in Thurston county.

Such assurance of discontinuance shall not be considered an admission of a violation for any purpose; however, proof of failure to comply with the assurance of discontinuance shall be prima facie evidence of a violation of this chapter.

[2011 c 336 § 556; 1970 ex.s. c 26 § 3; 1961 c 216 § 10.]

19.86.110**Demand to produce documentary materials for inspection, answer written interrogatories, or give oral testimony—Contents—Service—Unauthorized disclosure—Return—Modification, vacation—Use—Penalty.**

(1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate, which he or she believes to be relevant to the subject matter of an investigation of a possible violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or federal statutes dealing with the same or similar matters that the attorney general is authorized to enforce, or (b) may have knowledge of any information which the attorney general believes relevant to the subject matter of such an investigation, he or she may, prior to the institution of a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring such person to produce such documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of such demands pertaining to such documentary material or information: PROVIDED, That this section shall not be applicable to criminal prosecutions.

(2) Each such demand shall:

(a) State the statute and section or sections thereof, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) If the demand is for the production of documentary material, describe the class or classes of documentary material to be produced thereunder with reasonable specificity so as fairly to indicate the material demanded;

(c) Prescribe a return date within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand shall:

(a) Contain any requirement which would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a request for deposition upon oral examination issued by a court of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if such person is not a natural person, to any officer or managing agent of the person to be served; or

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if said person has no place of business in this state, to his or her principal office or place of business.

(5)(a) Documentary material demanded pursuant to the provisions of this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude from the place where the examination is held all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) If, after prior court approval, a civil investigative demand specifically prohibits disclosure of the existence or content of the demand, unless otherwise ordered by a superior court for good cause shown, it shall be a misdemeanor for any person if not a bank, trust company, mutual savings bank, credit union, or savings and loan association organized under the laws of the United States or of any one of the United States to disclose to any other person the existence or content of the demand, except for disclosure to counsel for the recipient of the demand or unless otherwise required by law.

(7) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, shall, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, other than an authorized employee of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony, except as otherwise provided in this section: PROVIDED, That:

(a) Under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced such material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of such person;

(b) The attorney general may provide copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony to an official of this state, the federal government, or other state, who is charged with the enforcement of federal or state antitrust or consumer protection laws, if before the disclosure the receiving official agrees in writing that the information may not be disclosed to anyone other than that official or the official's authorized employees. The material provided under this subsection (7)(b) is subject to the confidentiality restrictions set forth in this section and may not be introduced as evidence in a criminal prosecution; and

(c) The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines

necessary in the enforcement of this chapter, including presentation before any court: PROVIDED, That any such material, answers to written interrogatories, or transcripts of oral testimony which contain trade secrets shall not be presented except with the approval of the court in which action is pending after adequate notice to the person furnishing such material, answers to written interrogatories, or oral testimony.

(8) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in such other county where the parties reside. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by the provisions of this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(9) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon him or her under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and such person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction of the county in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section, except that if such person transacts business in more than one county such petition shall be filed in the county in which such person maintains his or her principal place of business, or in such other county as may be agreed upon by the parties to such petition. Whenever any petition is filed in the trial court of general jurisdiction of any county under this section, such court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect the provisions of this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

[2011 c 336 § 557; 1993 c 125 § 1; 1990 c 199 § 1; 1987 c 152 § 1; 1982 c 137 § 1; 1970 ex.s. c 26 § 4; 1961 c 216 § 11.]

NOTES:

Rules of court: See Superior Court Civil Rules.

19.86.115

Materials from a federal agency or other state's attorney general.

Whenever the attorney general receives documents or other material from:

(1) A federal agency, pursuant to its subpoena or Hart-Scott-Rodino authority; or

(2) Another state's attorney general, pursuant to that state's presuit investigative subpoena powers,

the documents or materials are subject to the same restrictions as and may be used for all the purposes set forth in RCW 19.86.110.

[1993 c 125 § 2.]

19.86.120**Limitation of actions—Tolling.**

Any action to enforce a claim for damages under RCW 19.86.090 shall be forever barred unless commenced within four years after the cause of action accrues: PROVIDED, That whenever any action is brought by the attorney general for a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, except actions for the recovery of a civil penalty for violation of an injunction or actions under RCW 19.86.090, the running of the foregoing statute of limitations, with respect to every private right of action for damages under RCW 19.86.090 which is based in whole or part on any matter complained of in said action by the attorney general, shall be suspended during the pendency thereof.

[1970 ex.s. c 26 § 5; 1961 c 216 § 12.]

NOTES:

*Action to enforce claim for civil damages under chapter 19.86 RCW must be commenced within six years.
Unfair motor vehicles business practices act: RCW 46.70.220.*

Limitation of actions: Chapter 4.16 RCW.

19.86.130**Final judgment to restrain is prima facie evidence in civil action—Exceptions.**

A final judgment or decree rendered in any action brought under RCW 19.86.080 by the state of Washington to the effect that a defendant has violated RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060 shall be prima facie evidence against such defendant in any action brought by any party against such defendant under RCW 19.86.090 as to all matters which said judgment or decree would be an estoppel as between the parties thereto: PROVIDED, That this section shall not apply to consent judgments or decrees where the court makes no finding of illegality.

[1970 ex.s. c 26 § 6; 1961 c 216 § 13.]

19.86.140**Civil penalties.**

Every person who shall violate the terms of any injunction issued as in this chapter provided, shall forfeit and pay a civil penalty of not more than twenty-five thousand dollars.

Every person, other than a corporation, who violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than one hundred thousand dollars. Every corporation which violates RCW 19.86.030 or 19.86.040 shall pay a civil penalty of not more than five hundred thousand dollars.

Every person who violates RCW 19.86.020 shall forfeit and pay a civil penalty of not more than two thousand dollars for each violation: PROVIDED, That nothing in this paragraph shall apply to any radio or television broadcasting station which broadcasts, or to any publisher, printer or distributor of any newspaper, magazine, billboard or other advertising medium who publishes, prints or distributes, advertising in good faith without knowledge of its false, deceptive or misleading character.

For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may

petition for the recovery of civil penalties.

With respect to violations of RCW 19.86.030 and 19.86.040, the attorney general, acting in the name of the state, may seek recovery of such penalties in a civil action.

[1983 c 288 § 2; 1970 ex.s. c 26 § 7; 1961 c 216 § 14.]

NOTES:

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

19.86.145

Penalties—Animals used in biomedical research.

Any violation of RCW 9.08.070 through 9.08.078 or 16.52.220 constitutes an unfair or deceptive practice in violation of this chapter. The relief available under this chapter for violations of RCW 9.08.070 through 9.08.078 or 16.52.220 by a research institution shall be limited to only monetary penalties in an amount not to exceed two thousand five hundred dollars.

[2003 c 53 § 150; 1989 c 359 § 4.]

NOTES:

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

19.86.150

Dissolution, forfeiture of corporate franchise for violations.

Upon petition by the attorney general, the court may, in its discretion, order the dissolution, or suspension or forfeiture of franchise, of any corporation which shall violate RCW 19.86.030 or 19.86.040 or the terms of any injunction issued as in this chapter provided.

[1961 c 216 § 15.]

19.86.160

Personal service of process outside state.

Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has engaged in conduct in violation of this chapter which has had the impact in this state which this chapter reprehends. Such persons shall be deemed to have thereby submitted themselves to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185.

[1961 c 216 § 16.]

19.86.170**Exempted actions or transactions—Stipulated penalties and remedies are exclusive.**

Nothing in this chapter shall apply to actions or transactions otherwise permitted, prohibited or regulated under laws administered by the insurance commissioner of this state, the Washington utilities and transportation commission, the federal power commission or actions or transactions permitted by any other regulatory body or officer acting under statutory authority of this state or the United States: PROVIDED, HOWEVER, That actions and transactions prohibited or regulated under the laws administered by the insurance commissioner shall be subject to the provisions of RCW 19.86.020 and all sections of chapter 216, Laws of 1961 and chapter 19.86 RCW which provide for the implementation and enforcement of RCW 19.86.020 except that nothing required or permitted to be done pursuant to Title 48 RCW shall be construed to be a violation of RCW 19.86.020: PROVIDED, FURTHER, That actions or transactions specifically permitted within the statutory authority granted to any regulatory board or commission established within Title 18 RCW shall not be construed to be a violation of chapter 19.86 RCW: PROVIDED, FURTHER, That this chapter shall apply to actions and transactions in connection with the disposition of human remains.

RCW 9A.20.010(2) shall not be applicable to the terms of this chapter and no penalty or remedy shall result from a violation of this chapter except as expressly provided herein.

[1977 c 49 § 1; 1974 ex.s. c 158 § 1; 1967 c 147 § 1; 1961 c 216 § 17.]

NOTES:

Radio communications: RCW 80.04.530.

Telecommunications: RCW 80.36.360.

19.86.910**Short title.**

This act shall be known and designated as the "Consumer Protection Act."

[1961 c 216 § 19.]

19.86.920**Purpose—Interpretation—Liberal construction—Saving—1985 c 401; 1983 c 288; 1983 c 3; 1961 c 216.**

The legislature hereby declares that the purpose of this act is to complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the legislature that, in construing this act, the courts be guided by final decisions of the federal courts and final orders of the federal trade commission interpreting the various federal statutes dealing with the same or similar matters and that in deciding whether conduct restrains or monopolizes trade or commerce or may substantially lessen competition, determination of the relevant market or effective area of competition shall not be limited

by the boundaries of the state of Washington. To this end this act shall be liberally construed that its beneficial purposes may be served.

It is, however, the intent of the legislature that this act shall not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor be construed to authorize those acts or practices which unreasonably restrain trade or are unreasonable per se.

[1985 c 401 § 1; 1983 c 288 § 4; 1983 c 3 § 25; 1961 c 216 § 20.]

NOTES:

Reviser's note: "This act" originally appears in 1961 c 216.

Short title—Purposes—1983 c 288: See note following RCW 19.86.090.

RCW 4.28.320**Lis pendens in actions affecting title to real estate.**

At any time after an action affecting title to real property has been commenced, or after a writ of attachment with respect to real property has been issued in an action, or after a receiver has been appointed with respect to any real property, the plaintiff, the defendant, or such a receiver may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action, and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: PROVIDED, HOWEVER, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by the personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order.

[2004 c 165 § 33; 1999 c 233 § 1; 1893 c 127 § 17; RRS § 243.]

NOTES:

Purpose—Captions not law—2004 c 165: See notes following RCW 7.60.005.

Effective date—1999 c 233: "This act takes effect August 1, 1999." [1999 c 233 § 24.]

RCW 4.28.325**Lis pendens in actions in United States district courts affecting title to real estate.**

In an action in a United States district court for any district in the state of Washington affecting the title to real property in the state of Washington, the plaintiff, at the time of filing the complaint, or at any time afterwards, or a defendant, when he or she sets up an affirmative cause of action in his or her answer, or at any time afterward, if the same be intended to affect real property, may file with the auditor of each county in which the property is situated a notice of the pendency of the action, containing the names of the parties, the object of the action and a description of the real property in that county affected thereby. From the time of the filing only shall the pendency of the action be constructive notice to a purchaser or encumbrancer of the property affected thereby, and every person whose conveyance or encumbrance is subsequently executed or subsequently recorded shall be deemed a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the filing of such notice to the same extent as if he or she were a party to the action. For the purpose of this section an action shall be deemed to be pending from the time of filing such notice: PROVIDED, HOWEVER, That such notice shall be of no avail unless it shall be followed by the first publication of the summons, or by personal service thereof on a defendant within sixty days after such filing. And the court in which the said action was commenced may, in its discretion, at any time after the action shall be settled, discontinued, or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order.

[2011 c 336 § 103; 1999 c 233 § 4; 1963 c 137 § 1.]

NOTES:

Effective date—1999 c 233: See note following RCW 4.28.320.

RCW 40.16.030**Offering false instrument for filing or record.**

Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both.

[2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

NOTES:

Intent—Effective date—2003 c 53: See notes following RCW 2.48.180.

RCW 59.12.100**Service of writ—Bond to stay writ.**

The sheriff shall, upon receiving the writ of restitution, forthwith serve a copy thereof upon the defendant, his or her agent or attorney, or a person in possession of the premises, and shall not execute the same for three days thereafter, nor until after the defendant has been served with summons in the action as hereinabove provided, and the defendant, or person in possession of the premises within three days after the service of the writ of restitution may execute to the plaintiff a bond to be filed with and approved by the clerk of the court in such sum as may be fixed by the judge, with sufficient surety to be approved by the clerk of said court, conditioned that he or she will pay to the plaintiff such sum as the plaintiff may recover for the use and occupation of the said premises, or any rent found due, together with all damages the plaintiff may sustain by reason of the defendant occupying or keeping possession of said premises, and also all the costs of the action. The plaintiff, his or her agent or attorneys, shall have notice of the time and place where the court or judge thereof shall fix the amount of the defendant's bond, and shall have notice and a reasonable opportunity to examine into the qualification and sufficiency of the sureties upon said bond before said bond shall be approved by the clerk. The writ may be served by the sheriff, in the event he or she shall be unable to find the defendant, an agent or attorney, or a person in possession of the premises, by affixing a copy of said writ in a conspicuous place upon the premises.

[2010 c 8 § 19011; 1927 c 123 § 4; 1905 c 86 § 3; 1891 c 96 § 11; RRS § 820. Prior: 1890 p 77 § 10.]

RCW 59.12.130**Jury—Actions given preference.**

Whenever an issue of fact is presented by the pleadings it must be tried by a jury, unless such a jury be waived as in other cases. The jury shall be formed in the same manner as other trial juries in the court in which the action is pending; and in all cases actions under this chapter shall take precedence of all other civil actions.

[1891 c 96 § 15; RRS § 824. Prior: 1890 p 79 § 15.]

RCW 61.24.050

Interest conveyed by trustee's deed—Sale is final if acceptance is properly recorded—Redemption precluded after sale—Rescission of trustee's sale.

(1) Upon physical delivery of the trustee's deed to the purchaser, or a different grantee as designated by the purchaser following the trustee's sale, the trustee's deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired. Except as provided in subsection (2) of this section, if the trustee accepts a bid, then the trustee's sale is final as of the date and time of such acceptance if the trustee's deed is recorded within fifteen days thereafter. After a trustee's sale, no person shall have any right, by statute or otherwise, to redeem the property sold at the trustee's sale.

(2)(a) Up to the eleventh day following the trustee's sale, the trustee, beneficiary, or authorized agent for the beneficiary may declare the trustee's sale and trustee's deed void for the following reasons:

(i) The trustee, beneficiary, or authorized agent for the beneficiary assert that there was an error with the trustee foreclosure sale process including, but not limited to, an erroneous opening bid amount made by or on behalf of the foreclosing beneficiary at the trustee's sale;

(ii) The borrower and beneficiary, or authorized agent for the beneficiary, had agreed prior to the trustee's sale to a loan modification agreement, forbearance plan, shared appreciation mortgage, or other loss mitigation agreement to postpone or discontinue the trustee's sale; or

(iii) The beneficiary or authorized agent for the beneficiary had accepted funds that fully reinstated or satisfied the loan even if the beneficiary or authorized agent for the beneficiary had no legal duty to do so.

(b) This subsection does not impose a duty upon the trustee any different than the obligations set forth under RCW 61.24.010 (3) and (4).

(3) The trustee must refund the bid amount to the purchaser no later than the third day following the postmarked mailing of the rescission notice described under subsection (4) of this section.

(4) No later than fifteen days following the voided trustee's sale date, the trustee shall send a notice in substantially the following form by first-class mail and certified mail, return receipt requested, to all parties entitled to notice under RCW 61.24.040(l) (b) through (e):

NOTICE OF RESCISSION OF TRUSTEE'S SALE

NOTICE IS HEREBY GIVEN that the trustee's sale that occurred on (trustee's sale date) is rescinded and declared void because (insert the applicable reason(s) permitted under RCW 61.24.050(2)(a)).

The trustee's sale occurred pursuant to that certain Notice of Trustee's Sale dated . . . , . . . , recorded . . . , . . . , under Auditor's File No. . . . , records of . . . County, Washington, and that certain Deed of Trust dated . . . , . . . , recorded . . . , . . . , under Auditor's File No. . . . , records of . . . County, Washington, from . . . , as Grantor, to . . . , as . . . , as original Beneficiary, concerning the following described property, situated in the County(ies) of . . . , State of Washington, to wit:

(Legal description)

Commonly known as (common property address)

(5) If the reason for the rescission stems from subsection (2)(a)(i) or (ii) of this section, the trustee may set a new sale date not less than forty-five days following the mailing of the notice of rescission of trustee's sale. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part of the property is situated, once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

[2012 c 185 § 14; 1998 c 295 § 7; 1965 c 74 § 5.]

RCW 61.24.127**Failure to bring civil action to enjoin foreclosure—Not a waiver of claims.**

(1) The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages asserting:

- (a) Common law fraud or misrepresentation;
- (b) A violation of Title 19 RCW;
- (c) Failure of the trustee to materially comply with the provisions of this chapter; or
- (d) A violation of RCW 61.24.026.

(2) The nonwaived claims listed under subsection (1) of this section are subject to the following limitations:

(a) The claim must be asserted or brought within two years from the date of the foreclosure sale or within the applicable statute of limitations for such claim, whichever expires earlier;

(b) The claim may not seek any remedy at law or in equity other than monetary damages;

(c) The claim may not affect in any way the validity or finality of the foreclosure sale or a subsequent transfer of the property;

(d) A borrower or grantor who files such a claim is prohibited from recording a lis pendens or any other document purporting to create a similar effect, related to the real property foreclosed upon;

(e) The claim may not operate in any way to encumber or cloud the title to the property that was subject to the foreclosure sale, except to the extent that a judgment on the claim in favor of the borrower or grantor may, consistent with RCW 4.56.190, become a judgment lien on real property then owned by the judgment debtor; and

(f) The relief that may be granted for judgment upon the claim is limited to actual damages. However, if the borrower or grantor brings in the same civil action a claim for violation of chapter 19.86 RCW, arising out of the same alleged facts, relief under chapter 19.86 RCW is limited to actual damages, treble damages as provided for in RCW 19.86.090, and the costs of suit, including a reasonable attorney's fee.

(3) This section applies only to foreclosures of owner-occupied residential real property.

(4) This section does not apply to the foreclosure of a deed of trust used to secure a commercial loan.

[2011 c 364 § 2; 2009 c 292 § 6.]

RCW 61.24.130**Restraint of sale by trustee—Conditions—Notice.**

(1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper legal or equitable ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(b) In the case of default in making payment of an obligation then fully payable by its terms, such sums shall be the amount of interest accruing monthly on said obligation at the nondefault rate, paid to the clerk of the court every thirty days.

In the case of default in performance of any nonmonetary obligation secured by the deed of trust, the court shall impose such conditions as it deems just.

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, shall, at the request of the trustee, set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee's sale following termination of any injunction or stay on any date to which such

sale has been properly continued in accordance with RCW 61.24.040(6).

(6) The issuance of a restraining order or injunction shall not prohibit the trustee from continuing the sale as provided in RCW 61.24.040(6).

[2008 c 153 § 5; 1998 c 295 § 14; 1987 c 352 § 5; 1981 c 161 § 8; 1975 1st ex.s. c 129 § 6; 1965 c 74 § 13.]

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.

[1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

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.

[1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

NOTES:

***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010- 64.04.050, 64.08.010- 64.08.070, 64.12.020, and 65.08.030.

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For Supreme Court

COA – I# 74871-8-I

I certify that on May 26, 2017, I caused a true and correct copy of Appellant Hermosillo's Petition to Review and this Certificate of Service to be served on the following in the manner indicated below:

On Joshua Dabling, Attorney-at-Law, WSBA # 44792, Dabling Law Firm LLC, 23607 Highway 99, Suite 3E, Edmonds, WA. 98026, Tel: 425-210-5495, Attorney for Plaintiffs/Respondents by causing a copy of said document to be delivered by email as agreed to by email at jarabarow@hotmail.com;

AND filed with the Supreme Court by e-mail.

DATED this 26th day of May 2017 at Issaquah, Washington.

BY: JAMES A. WEXLER

s/James A. Wexler
James A. Wexler, WSBA # 7411
Attorney for Appellant Hermosillo
2700 NW Pine Cone Drive, Suite 314
Issaquah, WA. 98027
206-849-9455; wex@seanet.com

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From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, May 26, 2017 4:52 PM
To: 'Anita Wexler'
Cc: Josh Dabling
Subject: RE: e-mail 1 of 2. COA 74871-I HAYDARI V HERMOSILLO, PETITIONER : PETION FOR REVIEW and Appendix

Received 5/26/17.

Supreme Court Clerk's Office

From: Anita Wexler [mailto:wex@seanet.com]
Sent: Friday, May 26, 2017 4:43 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Josh Dabling <jarabarow@hotmail.com>
Subject: e-mail 1 of 2. COA 74871-I HAYDARI V HERMOSILLO, PETITIONER : PETION FOR REVIEW and Appendix

To the Clerk of Supreme Court:

I must send the documents in two e-mails. It is being rejected by Seanet when I send them together. Attached is the Petition for Review. The Appendix will follow in a separate e-mail. I promise to mail the \$200.00 filing fee.

Thank you,
Anita Wexler
206 384 8452

James A. Wexler
Attorney at Law
2700 NW Pine Cone Drive
Suite 314
Issaquah, WA 98027
P. 206 849 9455
F. 425 392 4403
wex@seanet.com

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Friday, May 26, 2017 4:52 PM
To: 'Anita Wexler'
Cc: Josh Dabling
Subject: RE: e-mail 2 of 2. COA 74871-I HAYDARI V HERMOSILLO, PETITIONER : PETION FOR REVIEW and Appendix

Received 5/26/17.

Supreme Court Clerk's Office

From: Anita Wexler [mailto:wex@seanet.com]
Sent: Friday, May 26, 2017 4:47 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Josh Dabling <jarabarow@hotmail.com>
Subject: Re: e-mail 2 of 2. COA 74871-I HAYDARI V HERMOSILLO, PETITIONER : PETION FOR REVIEW and Appendix

To the Clerk:

Attached is the Appendix to the Petition filed in e-mail 1 of 2.

Please confirm you have received both e-mails.

Thank you.
Anita Wexler
206 384 8452

James A. Wexler
Attorney at Law
2700 NW Pine Cone Drive
Suite 314
Issaquah, WA 98027
P. 206 849 9455
F. 425 392 4403
wex@seanet.com

On May 26, 2017, at 4:43 PM, Anita Wexler <wex@seanet.com> wrote:

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wex@seanet.com

<26 May 2017 Haydari v Hermosillo Petition for Review Brief.pdf>

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Tuesday, May 30, 2017 8:49 AM
To: 'James Wexler'
Cc: Josh Dabling
Subject: RE: Haydari v Hermosillo - Azdamanesh COA - I Case # 74871-8 - I Certificate of Service for Petition to Review

Received 5/30/17.

Supreme Court Clerk's Office

From: James Wexler [mailto:wex@seanet.com]
Sent: Friday, May 26, 2017 6:23 PM
To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: Josh Dabling <jarabarow@hotmail.com>
Subject: Haydari v Hermosillo - Azdamanesh COA - I Case # 74871-8 - I Certificate of Service for Petition to Review

RE:Haydari v Hermosillo - Azdamanesh COA - I Case # 74871-8 - I Certificate of Service for Petition to Review

To the Clerk of the Court:

Attached is the Certificate of Service for the Petition for Review that was filed today. Mr. Dabling was served by e-mail today simultaneously with the filing of the Petition with the Supreme Court.

Best Regards,
Anita Wexler
Office Admin
206 384 8452

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