Supreme Court No. 94648-5

Court of Appeals No. 74705-3-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

JOHN R and JACQUELINE WILSON, a married couple,

Petitioner,

v.

QUALITY LOAN SERVICE CORP OF WASHINGTON, a Washington State Corporation, and MCCARTHY and HOLTHUS, LLP, a California State Limited Liability Partnership

Respondents

APPELLANT WILSONS PETITION REPLY

John R. Wilson, ProSe
19318 99th Ave SE
Snohomish, WA 98296
Phone: 206.854.6851

REPLY TABLE OF CONTENTS

I. TABLE OF AUTHORITIES

Washington State Cases

Federal and Other State Cases

Constitutional Issue

Statutes

RCW 19.86.020

RCW 19.86.093(2)

RCW 19.86.920 Legislative purpose to comport with federal CPA

RCW 61.24 Deeds of Trust Act

RCW 61.24.005(2) Beneficiary definition

RCW 61.24.010(2) Trustee power vests *after* county record; beneficiary appoints

RCW 61.24.010(4) …duty of good faith toward borrower and lender

RCW 61.24.020 …beneficiary must be in county records for authority

RCW 61.24.030 Requisites to Trustee Sale

RCW 61.24.030(6) Requisite continuous address, phone, physical presence

RCW 61.24.030(7)(a) Beneficiary proof before recording NOTS

RCW 61.24.030(7)(b) Beneficiary declaration not enough w/o good faith

RCW 61.24.040 Trustee notice of sale rules

RCW 61.24.040(1)(f)IX Trustee ID on notice of trustee sale notices

RCW 19.86.090 Civil action for damages—Treble damages authorized

Court Rules

CR 30(b)(6)

CR 56 Summary judgment court rules

CR 56(e)

CR 56(f) Court's power to order a continuance for further needed discovery

CR 56(c) SJM Timing requirements; must disprove genuine material fact

ER 103(a)

ER 103(b)

Rules of Professional Conduct

RPC 1.8 cmt 17

RPC 5.7

Other Authorities

Laws of 2008, Ch. 108, § 22

David A. Leen, *Wrongful Foreclosures in Washington*, 49:2 Gonzaga Law Review 331, 336-38, (2014)

David A. Leen, *Due Process and Deeds of Trust—Strange Bedfellows?* 48 Wash. Law Rev. 763, 766-767 (1973)

John Campbell, *Can We Trust Trustees? Proposals for Reducing Wrongful Foreclosures,* 63 Cath. U. L. Rev. 103 (2014)

Trustee; Deed of Trust; Client Conflict, 926 Op. WSBA at 3 (1987).

Wilson, SH (Ed.). *The Civil Justice System and Civil Procedure in the United States,* In: U.S. Justice System–An Encyclopedia. ABC-CLIO, Santa Barbara: pg 244, (2012).

UCC: Uneasy Intersections: The Right to Foreclose and the UCC, Elizabeth Renuart Associate Professor of Law, Albany Law School; 48 Wake Forest L. Rev. Issue 5 (2013).

I. INTRODUCTION

This is fundamentally a case about the existence of Genuine Issues of Material Fact: Yes or No and if so, the lower court erred by granting summary judgment and the Appeals Court affirmation of summary judgment *"Because Wilsons presented no genuine issue of material fact"* (as its sole reason for affirming) should be reversed and summary judgment denied as a matter of law and constitutional right to due process. Confusion is also noted concerning particular error in and misreading of Brown v Dept of Commerce (2015) which, unless corrected, will harm Washington citizens, encourage further bank and lender contract abuses and threaten land records stability. Again, both sides agree that true presence of genuine issues of material fact blocks summary judgment. Defendants feel there are no such facts. Plaintiffs disagree. This Reply focuses on Respondents' Answer of August 24, 2017.

II. ARGUMENT

A. **Substantial Public Interest.** Respondents' answer (P1, Line 16-17) that this case doesn't "involve an issue of substantial public interest" is pitiful absurdity for at least three reasons: (1) Land records stability is threatened (affecting all property owners in our state), (2) bank/lender

fairness to citizens during foreclosure (involving tens of thousands of our citizens annually), (3) casual violation of explicit legal processes prescribed by elected legislature is promoted, and (4) blocking jury trials by unlawful usurping of sacred citizen roles when courts' misuse, abuse and/or misinterpret "issues of genuine material fact" –almost appearing as an unlawful power grab that robs citizens of constitutional rights to due process and trial by fact finder peers instead of by a singular misdirected judge. Elitist courts are anathema in our democracy based in high judiciary ideals as a protective centerpiece.

B. **Respondents Dodge Facts, Rely On False Hoodwink Inferences and Manufacturer "Desirable" So-Called Facts.** Although 'Saying it doesn't make it so', respondents continue denying actual facts in their page 2 "Statement of Facts Relevant to Review." To wit:

(a) False Inference #1 (Line 13-14, Page 2)**:** the "FDIC assumed assets of WaMu as the receiver" infers that Wilsons loan was a WaMu asset in 2008—without uttering a single word about Wilsons' claim that their loan had long before been sold to others and into a securitized trust (confirmed by QLSCW itself!). Here, Respondents rely on their unspoken inference that WaMu, who once upon a time owned the Wilsons loan, somehow still owned the loan in late 2008, while hoping the court would

not notice that even the trustee itslef, QSLCW, already testified that Wilsons loan was *securitized and owned by a trust* (not Chase) and, thus, not held by FDIC in 2008 and thus certainly not sold to Chase! This is an affirmative gigantic *genuine issue of material fact generated by the respondents themselves in their own testimony!*

(b) False Inference #2 (Line 17-18, Page 2)**:** "the FDIC entered into a Purchase and Assumption Agreement which transferred all of the assets of WaMu to Chase on September 25,2008." This infers again that "all of the assets of WaMu" *magically* included the Wilsons loan when not a scintilla of evidence (such as the glaring absence of a schedule list of home loans still owned by WaMu in 2008 to which the PAA refers but such listing not produced by Respondents because Wilsons loan was no longer among WaMu assets as it had been sold into a MBS trust [mortgage-backed security trust]). Moreover, again, this *inference* that Wilsons loan was still among 2008 WaMu assets was never supported in any proceedings on record—except for merely a verbal claim in open court at the summary judgment hearing by the QLSCW attorney that the original mortgage was in the possession of Chase's counsel (but *never* produced in court or brief and never proved as a non-forgery as has been the practice by banks around the country, including Chase);

(c) False Inference #3 (Line 20-21, Page 2)**:** "Chase executed a

Declaration of Ownership (the "Beneficiary Declaration")." First there is no such thing as a "Declaration of Ownership". This term was wholly manufactured to mislead by QLSCW and its lawyer. This is a false inference term again used by a clever QLSCW attorney. The so-called "Beneficiary Declaration" (CP 495) actually admits "***NON**-ownership*" with its actual title that exactly reads in uppercase fonts:

"BENEFICIARY DECLARATION
(NOTE *HOLDER*)"

(Underline & italics added for emphasis). The original is even written in uppercase and subtitled in uppercase font "NOTE HOLDER" and explicitly avoided the term "owner" – consistent with Wilsons' claims that Chase is NOT the note and DOT owner). Still, the cleverly crafted wording by QLSCW attorneys here again demonstrates the length to which QLSCW will go to create inference-based arguments. Moreover, the document also reads, "Executed by ***Officer*** of Beneficiary" which was also false as Mr. Theener was a mere foreclosure specialist, *not* an officer of Chase as explained in briefings *and also never denied in QLSCW briefs*;

(d) False Inference #4: (Line 20-21, Page 3): "Quality received [and purportedly relied on] a Foreclosure Transmittal Package was held by Chase" while neglecting to disclose that LPS, the transmitter of the package, was a nationally discredited purveyor of falsified and forged

documents that were subject of a shameful 60 Minutes expose` about falsification of mortgage documents that led to LPS dissolution (see Scott Pelley 60 Minutes here with FDIC Chairman admitting to "pervasive industry violations": https://www.youtube.com/watch?v=aZFw8pGzdJ0).

(e) Other Misleading Statements (inferences and outright untruths) **Throughout Response** and in other lower level courts are too numerous to mention—but not necessary to review here as this case is fundamentally about the existence of issues of genuine material fact.

C. New California Case Supports Wilson Claims: California Denies 'Chase-Requested Dismissal' for Non-Proof Reasons Similar In Respects to Wilson v QLSCW et al. In northern California, in Nardolillo v. JPMorgan Chase in April, 2017 a case with eerily similar elements (claims that the FDIC PAA does NOT establish Chase purchase of a specific loan without proof) includes illegal substitutions of trustees by Chase, if they were not the beneficiary per the Purchase and Assumption Agreement (PAA). Here is an attorney's interpretation (N. Garfield):

"Nardolillo alleges wrongful foreclosure, violations of the California Homeowner's Bill of Rights, and dual-tracking violations in regards to a pending loan modification. Nardolillo is not the first to allege that JPMorgan Chase is playing an ownership shell-game…WaMu was taken under receivership by the FDIC in 2008 when it became insolvent. JPMorgan Chase then entered into a Purchase and Assumption Agreement (PAA) with the FDIC to acquire "certain" WaMu assets. Plaintiff Gary Nardolillo alleges his Note and Deed of Trust were not among the assets Chase acquired through the PAA and that they were "possibly" sold or securitized years earlier.

This is business as usual for JPMorgan Chase who typically has no note or assignment demonstrating ownership in regards to the WaMu loans it claimed to have acquired. Therefore, without resorting to manufacturing the documents or having a 'bank representative' file a sworn affidavit they have personal knowledge of the loan (when they don't), JPMorgan Chase simply relies on a substitute trustee to compensate for Chain of Assignment deficiencies.

On March 14, 2011, Chase claimed to be the beneficiary of the DOT and directed the California Reconveyance Corporation (CRC), as trustee, to record a Notice of Default against the subject property. CRC recorded a Notice of Default, stating the amount due as of March 11, 2011, was $36,304.16.

On October 20, 2014, in a recorded "Corporate Assignment of Deed of Trust," Chase purported to act as "attorney in fact" for the FDIC and transferred all beneficial interest in Nardolillo's DOT to itself. Nardolillo alleges this was a void assignment because: (1) Nardolillo's DOT was never among the assets received by the FDIC from WaMu and transferred to Chase; and (2) Chase was not authorized to serve as the attorney in fact for the FDIC at the time it executed and recorded the Corporate Assignment.

Chase then began its usual game of what Investigator Paatalo refers to "whack-a-mole" and on April 17, 2015, it recorded a Substitution of Trustee, substituting former-defendant Trustee Corps in place of CRC as trustee under the DOT. Nardolillo alleges that this substitution is also void.

Chase directed Trustee Corps to record a Notice of Trustee's Sale against the Subject Property on July 7, 2016. Around July 22, 2016, Nardolillo submitted his first loan modification

application to Chase, but the defendants have continued to notice trustee's sale dates on the Property. He claims that chase violated California Civil Code when it conducted the July 2016 Notice of Trustee's Sale recorded, as Chase had no right to foreclose because Chase never acquired rights to the DOT and Note from WaMu. Assuming these allegations are true, the Notice of Trustee's Sale would not be "accurate and complete and supported by competent and reliable evidence." Cal. City Code§ 2924.17/a). Chase argues Nardolillo's argument isn't sufficiently supported by facts, but only by insufficient bare conclusions. Nardolillo is at the mercy of Chase who likely doesn't have the necessary proof but relies on the complicity of the bank … The relevant allegations in the Complaint are:

—Plaintiff alleges on information and belief that WaMu sold Plaintiff's DOT and Note to a mortgage – backed securitized trust.
—Plaintiff's securitization audit indicated Plaintiff ' s loan was possibly sold to the WaMu Mortgage Pass-Through Certificates Series 2004-AR12 trust – a real estate mortgage investment conduit ("REMIC") registered with the Securities and Exchange Commission ("SEC").
—Plaintiff alleges on information and belief that his Note and DOT were not among the assets acquired by Chase through the PAA, having been sold and securitized to a trust pool a few years prior.

Chase relies on the PAA, that claims Chase acquired WaMu's "assets" from the FDIC in 2008, as well as the recorded "Corporate Assignment," showing that plaintiff's DOT and Note were transferred to Chase by Chase (as the attorney in fact for the FDIC as receiver for WaMu). Relying on JPMorgan Chase's word is like believing Kevin Hart is a committed family man- despite the Vegas photos.
Chase claims these judicially noticeable documents and the absence of notices recorded by any other entity with respect to the Property establish that Chase "is of record with respect to the Property." Plaintiff has correctly objected to any attempt to take judicial notice of the facts contained in these public records as true. He argues that the "truth" of whether Chase was entitled to sign the Corporate Assignment and whether

plaintiff's Note and DOT were included with the scope of the PAA are contested and cannot be established through a request for judicial notice.

Chase's arguments were not well-taken on a motion to dismiss. The PAA does not expressly cover plaintiff's Note and DOT. Chase fails to point to any portion of the PAA that demonstrates that WaMu-funded REMICs (like the one Nardolillo contends owns his Note and DOT) were "WaMu assets" transferred to Chase for servicing or for any other purpose. The court noted that although Chase has been an entity causing notices to be recorded with respect to the Property, is significant, it does not by itself establish as an incontrovertible fact that Chase is "of interest" or otherwise entitled to enforce rights to the Note and DOT."

III. CONCLUSION

The case also makes a point that court error (understandable in this complex topic) in interpretation and misapplication of Brown v Dept of Commerce are also clarified in Plaintiff petition. (See original petition that shows that UCC and RCWs and Shrewsbury support that:

only the owner of the note and DOT can be a "beneficiary" and only the owner of the note and DOT (as "beneficiary") can initiate foreclosure. Chase is neither a "beneficiary" nor note and DOT owner and thus without power to appoint successor trustee or foreclose.

Until now, courts have not harmonized the inaccurate definition (by one of two possible grammatical readings) of "beneficiary" (perhaps inartfully defined in RCW 61.24.005) despite this definition being fully harmonized

and compatible (under another grammatically correct reading) with other RCWs and UCC that agree that: a beneficiary MUST be the note and DOT owner—not merely a holder in order to initiate foreclosure and also to appoint a successor trustee.

Still, even if the court chooses to ignore the owner vs holder issue claimed by Wilsons above and in the petition, and if the court continues to buy into the inconsistent doctrine of 'holder equaling beneficiary' (see petition clear explanation), summary judgment must still be denied because of issues of genuine material fact in Superior Court.

At least one genuine material fact exists in this case which blocks summary judgment as a matter of law. Unlawful foreclosure acts were invoked by defendants that caused CPA-justified financial harm to plaintiffs—however small. The beneficiary by "full DTA reading" and consistent with UCC is the note owner and may foreclose a defaulted homeowner only if the beneficiary also holds the original note.

If defendants wish to legally foreclose on the Wilsons home, they MUST: (1) prove that Chase is the beneficiary, owner and holder of the Wilsons note, and (2) follow *all* of the detailed DTA foreclosure steps[1]

outlined in RCW 61.24. QLSCW and MH did neither and Wilsons did in fact suffer financial damages as a result.

DATED this 2ND day of October, 2017.

SIGNED

_____

John R. Wilson, ProSe for Plaintiffs
19318 99th Ave SE
Snohomish, WA 98296
T: 206.854.6851
E: john.wilson.udi@gmail.com

JOHN WILSON - FILING PRO SE

October 03, 2017 - 12:42 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	94648-5
Appellate Court Case Title:	John R. Wilson, et ux. v. Quality Loan Service Corp. of Washington, et al.
Superior Court Case Number:	13-2-05323-1

The following documents have been uploaded:

- 946485_Answer_Reply_20171003123922SC502742_1978.pdf
  This File Contains:
  Answer/Reply - Reply to Answer to Petition for Review
  The Original File Name was FINAL REPLY Petition For Review By Supreme Court 10-2-17.pdf

A copy of the uploaded files will be sent to:

- dhitti@tomasilegal.com
- edubay@tomasilegal.com
- jmcintosh@mccarthyholthus.com
- jramig@tomasilegal.com
- ksalyer@tomasilegal.com

Comments:

The appendices were not re-attached as they were in the original petition

---

Sender Name: John Wilson - Email: john.wilson.udi@gmail.com
Address:
19318 99th Avenue S.E.
Snohomish, WA, 98296
Phone: (206) 854-6851 EXT 206

Note: The Filing Id is 20171003123922SC502742