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Case No. 66721-1

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

JACK GRANT,

Plaintiff-Appellant,

vs.

**FIRST HORIZON HOME LOANS, aka FIRST HORIZON
CORPORATION dba "First Horizon Home Loans", et al.,**

Defendants-Respondents.

Appeal from an Order of the Whatcom County Superior Court
Case No. 10-2-02676-9
Hon. Steven J. Mura Presiding

**BRIEF OF RESPONDENT QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON, INC.**

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INTRODUCTION

Despite his admitted default on his home loan, Appellant Jack Grant filed a Complaint in Whatcom County Superior Court seeking to vacate the pending nonjudicial foreclosure proceedings. As Grant himself recognizes, the crux of the case is an allegation that when the loan was originated on December 1, 2004, the lender and escrow agent improperly forced him to sign a quitclaim deed adding his wife onto title. (RP 6:24-25, 7:1-12.) Despite ample opportunity to raise his claims arising from this transaction, Grant waited until after foreclosure was initiated in 2010 to bring his Complaint. The trial court did not err in dismissing Grant's loan origination claims as untimely. Furthermore, Grant has never demonstrated that Respondent Quality Loan Service Corporation was involved in any way in the loan transaction in 2004, and accordingly, Grant's claims are not properly directed against this defendant.

In a further attempt to challenge the foreclosure proceedings, Grant also asserts statutory violations of the Deed of Trust Act and the Consumer Protection Act, and related common law claims for negligence and quiet title. Nevertheless, Grant has not identified any way in which Quality breached its duties as Trustee. The facts alleged in Grant's Complaint and adduced in the record below demonstrate that following Grant's default, Quality properly issued a Notice of Default, acting as the agent for the beneficiary of the Deed of Trust. Following its appointment as Trustee, Quality issued a Notice of Trustee's Sale. Grant has not identified any way in which these notices were improper or failed to

comply with the Deed of Trust Act, which is the comprehensive statutory framework governing nonjudicial foreclosure in Washington. Therefore, and for the reasons explained in greater detail below, this Court should affirm the ruling of the trial court dismissing all claims against Quality Loan Service without leave to amend.

STATEMENT OF THE CASE

Jack Grant and his wife Lisa Grant entered into a loan refinance with First Horizon Corporation dba First Horizon Home Loans (“First Horizon”) on December 1, 2004. (CP 227 ¶ 4.3.) As part of the transaction, Grant – a practicing Washington attorney – and his wife signed a promissory note (“Note”) agreeing to repay the sum of \$800,000.00, and a deed of trust to real property (“Deed of Trust”) as security for the Note. (CP 225 ¶ 3.2, 655-6.) The beneficiary of the Deed of Trust was Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for the lender First Horizon, and the lender’s successors and assigns. (CP 232 ¶ 4.25, 659, 660; RP 7:16-17.)

Following a divorce from his wife, Grant defaulted on his loan payments. (RP 21:24, 24:25-25:1.) As a result, foreclosure was initiated pursuant to the terms of the Deed of Trust. Quality Loan Service Corporation of Washington (“Quality”), acting as agent for the beneficiary, issued a Notice of Default on July 15, 2010, pursuant to RCW § 61.24.031. (CP 234 ¶ 4.33, 293.)

Shortly thereafter, MERS executed an Assignment of Deed of Trust, evidencing the transfer of beneficial interest under the Deed of

Trust to Bank of New York Mellon f/k/a The Bank of New York, as Trustee for the holders of the Certificated, First Horizon Mortgage Pass-Through Certificates Series FH0501 (“Bank of New York”). (CP 234 ¶ 4.35, 300.) The Assignment was recorded in the Whatcom County Recorder’s Office on July 22, 2010. (*Id.*) First Horizon remained the servicer of the loan. (RP 3:19-25.)

Thereafter, Bank of New York appointed Quality as the successor Trustee of the Deed of Trust, by an Appointment of Successor Trustee recorded on September 10, 2010. (CP 236-237 ¶ 4.48, 302.) In its capacity as Trustee, Quality issued a Notice of Trustee’s Sale on September 28, 2010, setting a sale of the property for January 7, 2011. (CP 238 ¶ 4.55, 304-306.)

In an attempt to avoid the consequences of his default, Grant filed a Complaint in Whatcom County Superior Court on October 25, 2010 and sought a temporary restraining order (“TRO”) to enjoin the trustee’s sale. The Complaint complained primarily about the alleged conduct of First Horizon and Stewart Title Company during the closing of his loan in 2004. Grant contended – for the first time since his loan closed six years earlier – that his wife should not have been added to the loan, and that he signed the loan documents under duress. (CP 228-229 ¶¶ 4.6-4.10.) Grant complained that as a result of his wife being made a co-owner of the property, he was unable to sell the house for a profit before the real estate market collapsed. (CP 229 ¶ 4.11.) Grant’s Complaint further alleged that Quality was not properly appointed as successor Trustee, and that neither

Bank of New York nor First Horizon had standing to foreclose. Based on these contentions, Grant asserted causes of action against all defendants for: (1) Breach of Contract, (2) Bad Faith Breach of Duties; (3) Intentional Infliction of Emotional Distress, (4) Interference with Contractual Relations, (5) Negligence, and (6) Statutory Violations.

On November 5, 2010, the trial court granted Grant's request for a TRO enjoining the trustee's sale. (CP 188-189.) First Horizon, Stewart Title, and Quality each filed Motions to Dismiss pursuant to CR 12(b)(6) for failure to state a cause of action. Quality's Motion was also brought as a Motion for Judgment on the Pleadings under CR 12(c), as Quality had previously-filed an Answer to the Complaint. The court held a hearing on the Motions on January 14, 2011. After hearing arguments from all parties, the court granted each of the defendants' motions to dismiss and directed the parties to submit a proposed order conforming to the court's ruling. (RP 31:6-18.)

A second hearing was held on February 4, 2011, during which the parties discussed the propriety of leave to amend, and the language to be included in the court's order. During the hearing, Grant asked the Court to rule on a Motion for Reconsideration he had filed a week earlier, but the Court found the Motion was premature because its order on the Motions to Dismiss had not been entered yet. (RP 32:5-7.) After considering the points raised by counsel for all parties, the court signed an Order Granting Defendants' Motions to Dismiss, which dismissed the Complaint in its

entirety with prejudice and ordered the TRO to be dissolved thirty days after entry of the order. (RP 40:2-11, 41:11-14; CP 32-33.)

Grant filed his Notice of Appeal on February 22, 2011. On March 25, 2011, the court held a hearing on the issue of whether a supersedeas bond should be required. After reviewing and weighing the evidence submitted to show the property's value, the court set the supersedeas bond at \$81,823.00, which could be posted with the court in full or at the rate of \$4,732.00 per month. (RP 46:1-16, 49:8-15, 50:1-4.) Grant asked this Court to review the bond amount, and on April 12, 2011 the Court found, based on a new appraisal that had been obtained by First Horizon showing a higher property value, that the equity in the property was sufficient security for an order staying the foreclosure pending appeal.

ARGUMENT

I. STANDARD OF REVIEW

A trial court's order granting a motion to dismiss for failure to state a cause of action under CR 12(b)(6)¹ is reviewed de novo. *Tenore v. AT&T Wireless Servs.*, 136 Wn.2d 322, 329-30 (1998). Dismissal is appropriate where "it appears beyond doubt that the plaintiff cannot prove any set of facts which would justify recovery." *Id.* (citing *Hoffer v. State*, 110 Wn.2d 415, 420 (1988); *Bravo v. Dolsen Cos.*, 125 Wn.2d 745, 750 (1995)). The Court presumes the well-pled facts in the complaint are true, but it is not required to accept as true any legal conclusions. *Haberman v.*

¹ The Washington State Superior Court Rules are referenced by the abbreviation "CR."

Wash. Pub. Power Supply Sys., 109 Wn.2d 107, 120 (1987); *N. Coast Enters. Inc. v. Factoria P'Ship*, 94 Wn. App. 855, 861 (1999). “[W]here it is clear from the complaint that the allegations set forth do not support a claim, dismissal is proper.” *Berge v. Gorton*, 88 Wn.2d 756, 763 (1977).

An order granting judgment on the pleadings under CR 12(c) is also reviewed de novo. *N. Coast Enters. Inc.*, 94 Wn. App. at 858 (citations omitted). “In reviewing an order entering judgment on the pleadings, [the Court] examine[s] the pleadings to determine whether the claimant can prove any set of facts, consistent with the complaint, which would entitle the claimant to relief.” *Id.* at 859 (citing *City of Moses Lake v. Grant County*, 39 Wn. App. 256, 258 (1984)).

“Although generally raised at different times during the pretrial period, a motion to dismiss for failure to state a claim and a motion for judgment on the pleadings generally raise identical issues.” *Suleiman v. Lasher*, 48 Wn. App. 373, 376 (1987).

II. THE COURT PROPERLY DISMISSED ALL CLAIMS AGAINST QUALITY LOAN SERVICE CORPORATION.

Grant’s Complaint asserted six causes of action against the defendants: (1) Breach of Contract, (2) Bad Faith / Breach of Duties, (3) Intentional Infliction of Emotional Distress, (4) Interference with Contractual Relations, (5) Negligence, and (6) Violation of Statutory Requirements. The lower court dismissed each cause of action for failure to state a cause of action upon which relief may be granted.

Grant devotes the majority of his Opening Brief to discussing alleged violations of the Deed of Trust Act, and also asserts new causes of action that were not previously pled in the Complaint for violation of the Truth in Lending Act and to Quiet Title. None of these causes of action are sufficient to state a cause of action against Quality, which was involved in this case only based on its issuance of a Notice of Default and Notice of Trustee's Sale. Because no facts are pled that would demonstrate Quality breached its duties, no cause of action can be stated against this defendant, and the Court should affirm the lower court's dismissal.

A. Grant Failed to Establish Any Violation of the Deed of Trust Act.

The process of nonjudicial foreclosure in Washington is governed by the Deed of Trust Act, located at RCW § 61.24.005 et seq. These statutes contain the complete statutory framework governing nonjudicial foreclosures. The Deed of Trust Act was enacted to further three goals: “(1) that the nonjudicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles.” *Plein v. Lackey*, 149 Wn.2d 214, 225 (2003). As long as the trustee complies with the Act's procedural requirements, the beneficiary of a trust deed may foreclose on the property without the need for judicial action. The burden is on the borrower challenging the foreclosure to seek judicial relief.

Grant's Complaint sought to vacate the pending foreclosure, claiming Respondents violated the Deed of Trust Act by failing to comply with their statutory duties in advancing the foreclosure. However, the lower court properly found that Grant had not pleaded facts that would be sufficient to state any cause of action for statutory violations. Grant's Opening Brief discusses these purported violations in great length, but he has still failed to allege facts that would show Quality took any unauthorized actions or breached its duties in any way. Accordingly, this Court should affirm the lower court's dismissal.

1. Grant Defaulted on the Loan.

First, Appellant contends that foreclosure was improper because there was no default under the Note and Deed of Trust. (Opening Br. 18.) As support, he cites to the Declaration of Edward Hyne filed by First Horizon on March 21, 2011, in which Hyne stated that under its servicing agreement with Bank of New York, First Horizon was required to advance monthly payments to Bank of New York, and then First Horizon was reimbursed for each month's advance by the payment the borrower was required to make to First Horizon. (CP 6 ¶ 3.) Under this arrangement, First Horizon had advanced \$56,787.72 to Bank of New York, but because Grant did not make his required monthly payments, First Horizon did not receive any reimbursement for those advances. (*Id.*) These facts established that as of the date of Hyne's Declaration, Grant was at least \$56,787.72 in default on his payments on the loan. Additionally, the Hyne

Declaration established that Grant further defaulted by failing to make payments that had become due for taxes and insurance. (*Id.* ¶ 4.) Thus, contrary to Grant’s contentions, the loan was *not* current, and instead significant amounts were due and owing, which justified the Respondents’ initiating foreclosure. *See* RCW § 61.24.030(3). Grant admitted several times to the trial court that he defaulted on the loan. (RP 21:21-24, 24:24-25 to 25:1.) His contention that First Horizon somehow cured his default on the payments by advancing sums to Bank of New York is unavailing, as the amounts owing to First Horizon remain unpaid.

2. Grant Has Not Shown Any Deficiency in the Foreclosure Process.

Appellant next argues the foreclosure was “void ab initio” because Quality did not have the authority to initiate foreclosure on behalf of the beneficiary. (Opening Br. 18.) Nevertheless, Grant does not identify any specific way in which the foreclosure was improperly advanced, or any reason for the Court to believe Quality lacked the ability to issue the Notice of Default and Notice of Trustee’s Sale.

First, Grant argues the Notice of Default was deficient because it was issued by Quality, which was not the beneficiary of the trust deed. (Opening Br. 18-19.) Grant fails to recognize that the Deed of Trust Act specifically permits a notice of default to be issued by an “authorized agent” of the beneficiary. *See* RCW § 61.24.031. Quality issued the Notice of Default in its capacity as the agent for the beneficiary. (CP

297.) While Grant appears to question this agency relationship, nothing in the Deed of Trust Act would require Quality to produce evidence that it was authorized to act on behalf of the beneficiary in order to establish the Notice of Default was valid. In enacting the Deed of Trust Act, the Legislature established a comprehensive scheme for the nonjudicial foreclosure process, which clearly establishes each prerequisite to a trustee's sale. *Vawter v. Quality Loan Serv. Corp.*, 707 F. Supp. 2d 1115, 1121 (W.D. Wash. 2010); *see* RCW § 61.24.030. The Deed of Trust Act contains no requirement that evidence of an agency relationship be produced before a notice of default can be issued. Accordingly, Grant cannot show any deficiency in the Notice issued in the present case. *See Hewitt v. Wells Fargo Bank*, 2011 U.S. Dist. LEXIS 58312, at *8-9 (W.D. Wash. May 31, 2011).

Grant also contends the foreclosure was deficient because the Assignment of Deed of Trust, which evidenced the transfer of beneficial interest to Bank of New York, was recorded after the Notice of Default was issued. (Opening Br. 19-20.) This contention is not sufficient to state a cause of action because there is no requirement under Washington Law for an assignment of a deed of trust to be recorded before foreclosure can be initiated. "An assignment of a deed of trust and note is valid between the parties whether or not the assignment is ever recorded. Recording of the assignments is for the benefit of third parties; it has no bearing on the rights as between assignor and assignee." *In re United Home Loans, Inc.*, 71 B.R. 885, 891 (W.D. Wash. 1987) (internal citation omitted).

Assignments are recorded in order to protect the assignee beneficiary from any potential claims by other parties claiming to hold the beneficial interest, not to give borrowers notice of a transfer of the deed of trust or the note. *See Price v. N. Bond & Mortg. Co.*, 161 Wash. 690, 698 (1931); *Fidelity & Dep. Co. v. Ticor Title Ins.*, 88 Wn. App. 64, 66-67 (1997) (explaining that if the owner of a mortgage assigns it to two different assignees, the first to record its interest prevails).

The “beneficiary” is the party entitled to foreclose under the deed of trust. A “beneficiary” is defined as the “holder of the instrument or document evidencing the obligations secured by the deed of trust,” i.e., the holder of the promissory note. RCW § 61.24.005(2). The recording of an assignment of a deed of trust is not necessary or sufficient to confer standing to foreclose because the security follows the note, rather than the other way around. *Fidelity*, 88 Wn. App. at 68; *see also Carpenter v. Longan*, 83 U.S. 271, 275 (1872). Consequently, assignments have no particular bearing on who is entitled to foreclose, and instead the focus is on actual transfer of the note. As such, there exists today no specific requirement that an assignment of the beneficial interest under a deed of trust be recorded.

Further, RCW § 65.08.070 bears directly on real property conveyances and recordation, and it provides only that “a conveyance of real property, when acknowledged by the person executing the same . . . *may* be recorded in the office of the recording officer of the county where the property is situated.” RCW § 65.08.070 (emphasis added). Although

an assignment *may* be recorded, there is no statutory requirement that it *must* be recorded. See *Salmon v. Bank of Am. Corp.*, 2011 U.S. Dist. LEXIS 55706, at *21-22 (E.D. Wash. May 25, 2011) (rejecting borrowers' argument that an assignment of deed of trust must be recorded before foreclosure is initiated). Hence, Grant's argument that Bank of New York lacked the ability to initiate foreclosure or to direct Quality to issue a Notice of Default before the Assignment of Deed of Trust was recorded on July 22, 2010 is completely misplaced.

Grant does not cite any Washington law in support of his contention that the Assignment of Deed of Trust was improper. Instead, he relies solely on *U.S. Bank Nat'l Ass'n v. Ibanez*, 458 Mass. 637 (2011), an opinion from a Massachusetts court applying that state's foreclosure laws. (See Opening Br. 19-20.) In *Ibanez*, the court found U.S. Bank was not entitled to a judicial declaration that its foreclosure was valid because it had not shown it was the assignee of the original beneficiary at the time it initiated foreclosure. *Ibanez*, 458 Mass. at 653. But *Ibanez* does not support Grant's case here, as it applies Massachusetts law, not Washington law. The *Ibanez* court found that under Massachusetts law, an assignment of the note without an accompanying written assignment of the mortgage was ineffective. *Id.* at 652. The same is not true of Washington law.

As discussed above, the Deed of Trust Act contains no requirement that an assignment be recorded before nonjudicial foreclosure may be initiated. Rather, Washington statutory law suggests that an assignment need not be recorded for a trustee to initiate foreclosure. RCW §

61.24.030 states that a trustee must only “have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust,” and a declaration “under penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof” to meet this requirement. RCW § 61.24.030(7)(a). Therefore, so long as the trustee is provided with the requisite declaration, it may rely on said declaration in initiating foreclosure, and a recorded assignment is not required. Without any requirement under Washington law to record an assignment prior to the issuance of a notice of default, Grant has failed to demonstrate any error in the foreclosure.

3. No Party Is Required to Produce the Original Note.

As an additional basis for challenging the standing of the parties to the foreclosure, Grant complains that Respondents have not offered to produce the original promissory note. (Opening Br. 20, 21-22.) But there is no requirement in the Deed of Trust Act, or anywhere else in Washington law, for a foreclosing beneficiary to produce the original note to the borrower to prove its standing to foreclose. Hence, courts have overwhelmingly and repeatedly rejected the “show me the note” argument advanced by borrowers such as Grant. *See, e.g., Salmon*, 2011 U.S. Dist. LEXIS 55706, at *16; *Freeston v. Bishop, White & Marshall, P.S.*, 2010 U.S. Dist. LEXIS 28081, at *14 (W.D. Wash. Mar. 24, 2010) (citing *Diessner v. Mortg. Elec. Reg. Sys.*, 618 F. Supp. 2d 1184, 1187 (D. Ariz.

2009)); *Wallis v. IndyMac Fed. Bank*, 717 F. Supp. 2d 1195, 1200 (W.D. Wash. 2010). Indeed, during the hearing on Respondents' Motions to Dismiss, Grant conceded that there is no requirement for production of the original note, and instead stated that "it would be nice" to be able to review the Note and its endorsements because there is a "national problem" regarding standing to foreclose. (RP 17:25-18:3, 19:18-19.) Nevertheless, Grant's desire to review the original Note is not sufficient for the Court to create a requirement that does not exist under Washington law. Because there is no currently-existing duty for any party to produce the original note, Grant's argument on this point must be rejected.

4. Quality Had Standing to Advance the Foreclosure.

Grant next contends that Quality did not have standing to file a Motion to Dismiss under CR 12(b)(6) or a Motion for Judgment on the Pleadings under CR 12(c). (Opening Br. 24.) He appears to believe that Quality's standing to file a motion to dismiss in this action is dependent on Quality proving it had standing to foreclose under the Deed of Trust. However, Quality had standing to bring a motion to dismiss the complaint, because it was named as defendant in the action. As a named party to the litigation, Quality has standing to bring motions before the court. *See* Wash. R. Civ. P. 12. This ability exists independent of Quality's standing to pursue foreclosure.

To the extent that Grant is attempting to argue Quality lacked standing to foreclose, this argument is equally unavailing. RCW §

61.24.010(2) allows a beneficiary to appoint a successor trustee, which replaces the trustee originally named in the deed of trust, by recording the substitution in the county where the deed is recorded. Upon recording, “the successor trustee shall be vested with all powers of the original trustee.” *Id.* In this case, Bank of New York executed an Appointment of Successor Trustee, and the document was recorded in the Whatcom County Recorder’s Office on September 10, 2010. (CP 302.) From the time the Appointment was recorded, Quality had the power to conduct the foreclosure. Grant’s Complaint alleged the Appointment was ineffective because the original trustee, Stewart Title, did not resign before Quality was appointed. (Opening Br. 12; CP 237 ¶¶ 4.50-4.52.) However, this argument ignores the plain language of RCW § 61.24.010(2), which permits the substitution of a successor trustee either by the original trustee’s resignation *or* by the beneficiary’s appointment of a new trustee. Because Grant has failed to establish that Quality lacked standing to take any actions in respect to the foreclosure of the Property, he cannot state any cause of action on this basis.

5. Washington Does Not Recognize a Cause of Action for Damages for Wrongful Foreclosure.

The Deed of Trust Act does not authorize a borrower to bring a cause of action for damages for the wrongful institution of non-judicial foreclosure proceedings where no trustee’s sale occurs. *Vawter v. Quality Loan Serv. Corp.*, 707 F. Supp. 2d 1115, 1123 (W.D. Wash. 2010); *Pfau v.*

Wash. Mutual, Inc., 2009 U.S. Dist. LEXIS 14233, at *22-23 (E.D. Wash. Feb 24, 2009). As one court has explained:

[T]here is no case law supporting a claim for damages for the *initiation* of an allegedly wrongful foreclosure sale. Moreover, there is no statutory basis supporting a claim for damages for wrongful *institution* of foreclosure proceedings. On the contrary, courts promote the [DTA's] objectives, declining to invalidate completed sales even where trustees have not complied with the statute's technical requirements.

Vawter, 707 F. Supp. 2d at 1123 (quoting *Krienke v. Chase Home Fin., LLC*, 140 Wn. App. 1032, 2007 WL 2713737, at *5 (Wash. Ct. App. 2007)) (alteration and emphasis in original).

In enacting the Deed of Trust Act, the Washington Legislature established a comprehensive scheme for the non-judicial foreclosure process, including specific remedies for borrowers facing the potential loss of their homes. The Washington Supreme Court has recognized that under the Act, a borrower's only means to contest the foreclosure is by seeking an injunction to restrain the sale. *Cox v. Helenius*, 103 Wn.2d 383, 388 (1985). The Act does not provide any mechanism for seeking monetary damages for wrongful initiation of foreclosure. *See* RCW § 61.24.030(1), § 61.24.040(1)(f)(IX).

In determining whether a particular remedy is available for a statutory violation, the Court must "interpret the statute as enacted by the Legislature, after the Legislature's determination of what remedy best serves the public interest of this state," without rewriting the statute. *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d

542, 567 (1998); *see also Enter. Leasing v. City of Tacoma*, 139 Wn.2d 546, 552 (1999) (stating that court must interpret the plain language of a statute, giving effect to the legislature's intent). "It is an 'elemental canon' of statutory interpretation that where a statute expressly provides a remedy, courts must be especially reluctant to provide additional remedies." *Karahalios v. National Fed'n of Federal Employees*, 489 U.S. 527, 533 (1989). The Deed of Trust Act is clear that a borrower's *only* remedy for a wrongful foreclosure is an injunction restraining the sale. Accordingly, the Court must reject Grant's attempts to create a new cause of action for damages for wrongful initiation of foreclosure.

Further, interjecting a cause of action for damages for wrongful institution of foreclosure would potentially upset the careful balance struck by the legislature. *Cf. Udall v. T.D. Escrow Servs., Inc.*, 132 Wn. App. 290, 130 P.3d 908, 913-14 (2006) (finding the common law of contracts inapplicable to nonjudicial foreclosure because applying the common law would interfere with the Deed of Trust Act's "detailed set of procedures for nonjudicial foreclosure sales."). Grant does not contest his default under the terms of the Note, but nevertheless he seeks to pursue a damage claim, without offering to bring his loan payments current. This approach would undermine the Legislature's desire to promote the efficient and inexpensive resolution of nonjudicial foreclosure, and instead would spawn large amounts of litigation by borrowers seeking damages for minor and technical procedural irregularities in trustee's sales. The Court should not read a private right of action for damages into the

statutory foreclosure procedure, where such a remedy was omitted by the Legislature.

Finally, even assuming a cause of action for damages for wrongful institution of nonjudicial foreclosure proceedings were to exist, it could not be maintained without a showing of prejudice. *Amresco Independence Funding, Inc. v. SPS Props., LLC*, 129 Wn.App. 532, 537 (2005) (“Despite the strict compliance requirement, a plaintiff must show prejudice before a court will set aside a trustee sale.”); *Koegel v. Prudential Mutual Sav. Bank*, 51 Wn.App. 108, 752 P.2d 385, 387-89 (1998) (declining to set aside trustee’s sale despite trustee’s failure to comply with the statutory notice requirements because plaintiff had not shown prejudice). Grant’s Complaint did not allege any facts that would demonstrate he suffered prejudice as a result of any of Quality’s actions. He attempts to argue that he was harmed because the property appeared on a “foreclosure list,” which caused the property’s value to drop. (Opening Br. 29-30, 33.) He does not identify the creator of this purported list, but does not appear to attribute it to Quality. Regardless, this allegation is not sufficient to support any cause of action for wrongful foreclosure, as Grant does not assert any prejudice caused by a violation of the statutory procedures, or any other conduct by Quality. Instead, he complains only that the property of his value dropped once foreclosure was initiated. But because Grant does not dispute that he defaulted on his loan payments, he cannot attribute the initiation of foreclosure to any wrongful conduct by Respondents.

Grant cannot plead any cause of action for damages for wrongful initiation of foreclosure, as no such cause of action is permitted under Washington law, and even if such a claim were recognized, no facts have been pleaded to state a plausible claim. Therefore, the lower court properly dismissed Grant's wrongful foreclosure claim.

6. Grant Has Not Shown Quality Breached Any Duties.

Grant recognizes that the only duty Quality owed to him was the duty of good faith, which a trustee owes to both the foreclosing beneficiary and the borrower. (Opening Br. 35-36, 52); RCW § 61.24.010(4). Grant claims that Quality breached its duty of good faith because it did not obtain an appraisal of the property. (Opening Br. 36.) He contends that in doing so, Quality failed to "take reasonable and appropriate steps to avoid sacrifice of the debtor's property and his interests." (*Id.* (quoting *Cox*, 103 Wn.2d at 389).)

Appellant's argument appears to be that without obtaining an appraisal, Quality could accept a bid at the trustee's sale that would be grossly inadequate in comparison to Grant's equity in the property. As an initial matter, no such claim can be stated under the facts of this case because the trustee's sale has not been held, so the parties can only guess about what the purchase price will be when the sale is actually conducted. And second, accepting a purchase price that is less than the market value of the property does not constitute a breach of duty. In *Albice v. Premier Mortg. Servs. of Washington*, the Court of Appeal noted that a sale price at

a trustee's sale that is significantly less than the market price "is not an irregularity" in the foreclosure, but instead it merely constitutes one factor the court can look to in determining whether the purchaser qualifies as a bona fide purchaser, who takes title to the property free of any defects. *Albice v. Premier Mortg. Servs. of Washington*, 157 Wn. App. 912, 931 (2010), *review granted*, 170 Wn. 2d 1029 (2011). The court further noted that "[i]nadequacy of price alone" is not a basis for setting aside a foreclosure, absent other unfair procedures that provide a basis for setting aside a sale in equity. *Id.* at 933 (citing *Udall v. T.D. Escrow Servs.*, 159 Wn. 2d 903, 914 (2007)). Grant has not alleged any facts that would demonstrate a breach of duty under this standard.

It is also important to note that both *Albice* and *Cox v. Helenius*, the two cases relied upon by Grant, interpreted the prior version of RCW § 61.24.010, which imposed a much heavier duty on a trustee to ensure fairness of the sale. The prior version of the statute imposed a *fiduciary* duty on a trustee to act for both the beneficiary and the trustor. *See Cox*, 103 Wn.2d at 388-89. However, the Legislature amended the statute in 2008 to remove this requirement and replace it with the much lower good faith standard. RCW § 61.24.010(3), (4); *Klinger v. Wells Fargo Bank, NA*, 2010 U.S. Dist. LEXIS 111683, at *10-11 (W.D. Wash. Oct. 20, 2010). Grant has not alleged any facts showing Quality breached any duties imposed by the applicable version of the RCW § 61.24.010, and accordingly, the lower court properly dismissed this portion of Grant's wrongful foreclosure claim.

B. Grant Did Not Sufficiently Plead a Claim Against Quality Loan Service Under the Consumer Protection Act.

In a further attempt to challenge the validity of the pending foreclosure, Grant contends that Quality violated Washington's Consumer Protection Act ("CPA") by issuing a "false" Notice of Default. (Opening Br. 37-38; CP 246 ¶ 12.5.) Grant contends the Notice of Default was "deceptive" under the CPA because it was issued by Quality before Quality was substituted as trustee of the Deed of Trust, and because it was issued at a time that the loan was current. (Opening Br. 38.) Both of these contentions lack any factual basis. Because Grant has not alleged facts that would establish the required elements of a CPA cause of action, the trial court correctly dismissed this claim against Quality.

The elements of a CPA claim are: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that impacts the public interest; (4) causes injury to the plaintiff's business or property; and (5) that injury is causally linked to the unfair or deceptive act. *Hangman Ridge Training Stables, Inc v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780 (1986). Here, Grant has not alleged any (a) unfair or deceptive act or practice, (b) impacting public interest, (c) or injury.

1. No Deceptive Act Has Been Alleged.

A plaintiff can meet the first CPA element in only two ways, either by showing "that an act or practice "[i]'has a capacity to deceive a substantial portion of the public' or [ii] that 'the alleged act constitutes a

per se unfair trade practice.” *Saunders v. Lloyd’s of London*, 113 Wn.2d 330, 344 (1989) (quoting *Hangman Ridge*, 105 Wn.2d at 785-86). To show a “per se unfair trade practice,” the plaintiff must demonstrate the defendant took an action in violation of a statute which includes a “specific legislative declaration of public interest impact.” *Hangman Ridge*, 105 Wn.2d at 791. Grant does not contend that Quality violated the CPA by means of a “per se unfair trade practice, and accordingly, he can state a CPA claim only by alleging facts showing that the Notice of Default issued by Quality “has a capacity to deceive a substantial portion of the public.” *See id.* at 785. Grant has not done so.

To be “deceptive,” the act or practice must be one that “misleads or misrepresents something of material importance.” *Nguyen v. Doak Homes, Inc.*, 140 Wn.App. 726, 167 P.3d 1162, 1166 (2007). Grant has not shown any deceptive practices because he has failed to identify a single fact (let alone a material one) that Quality misled him about. Instead, he attempts to argue that Quality did not have authority to issue the Notice of Default. (Opening Br. 38.) As discussed above, this contention is baseless. Quality properly issued the Notice of Default, acting as the agent for the beneficiary. *See* RCW § 61.24.031; (CP 293-297.) Thereafter, Quality was appointed the successor trustee by the current beneficiary. RCW § 61.24.010(2); (CP 302-303.) Grant has not shown any way in which this scenario was “deceptive.” Further, Grant contends that Quality did not have the power to issue a Notice of Default because his loan was current, but this contention is directly contradicted

by the record, as Grant admitted that he defaulted on the loan payments. (See Opening Br. 38; RP 21:24, 24:21-25, 25:1.)

Likewise, even if Grant did allege facts showing Quality took deceptive actions toward him, he cannot state a cause of action under the CPA unless he also alleges facts showing Quality's conduct has the capacity to deceive a substantial portion of the public. See *Saunders*, 113 Wn.2d at 344. He has not done so. Grant complains only about a single document – the Notice of Default issued by Quality on July 15, 2010. Grant has not alleged any way in which the Notice of Default had the capacity to deceive any other members of the public, let alone a substantial portion of the public. Accordingly, he cannot state a claim under the CPA.

2. The Facts Do Not Show Any Public Impact.

Additionally, a plaintiff asserting a CPA claim must show that the act complained of impacts the public interest. *Hangman Ridge*, 105 Wn.2d at 788. The Court must consider this element in light of the context in which the alleged act was committed. *Id.* at 780. Because Grant complains of a consumer transaction, the following factors are relevant:

- (1) Were the alleged acts committed in the course of the defendant's business?
- (2) Are the acts part of a pattern or generalized course of conduct?
- (3) Were repeated acts committed prior to the act involving plaintiff?
- (4) Is there a real and substantial potential for repetition of defendant's conduct after the act involving plaintiff?
- (5) If the act

complained of involved a single transaction, were many consumers affected or likely to be affected by it?

Id. at 790. In an attempt to show public impact, Grant contends that “Attorneys General in all 50 states are investigating circumstances similar to the conduct complained about here” (Opening Br. 38.) However, this general statement does not show public impact because it is not linked in any way to either Quality or the Notice of Default at issue in this case. Quality is not under investigation by any state Attorney General, nor is there any pending administrative action involving the foreclosure of the Subject Property involved in this case. Grant’s allegations against Quality in the Complaint concern the limited issue of whether the Notice of Default was issued by and on behalf of parties with authority to foreclose. He has not shown any way in which this issue impacts the public interest. Further, the he has not shown any likelihood of repetition of the complained-of conduct, aside from asserting in general terms that Quality has been a party to many court cases in the State of Washington. (Opening Br. 39.) This falls short of demonstrating a pattern or practice of Quality that is likely to be repeated in the future. Accordingly, Grant has failed to meet the public interest element of a CPA claim.

3. Grant Has Not Shown Injury and Causation.

To state a CPA cause of action, Grant must also must plead and prove a causal link between the alleged deceptive practice and his purported injury. *Indoor Billboard/Washington, Inc. v. Integra Telecom*

of Washington, Inc., 162 Wn.2d 59, 81-82 (2007). To survive a motion to dismiss, Grant must allege facts showing that but for Quality's allegedly unfair or deceptive practice, he would not have been harmed. *Id.* Here, no such facts are alleged. Grant contends generally that he incurred fees and costs and the property value was diminished, but he completely fails to tie those alleged injuries to the purportedly deceptive conduct, i.e. the issuance of a Notice of Default by Quality before it was appointed as trustee. Without any facts to show his alleged injuries are directly attributable to deceptive actions by Quality, Grant's claim for violation of the CPA fails.

4. Grant Cannot Base Any Claim on Subsequently-Enacted Legislation.

Finally, Grant attempts to state a cause of action under the CPA by contending that Quality did not comply with the Foreclosure Fairness Act, which was signed into law by the Washington Legislature on April 14, 2011. (Opening Br. 39-40.) The Foreclosure Fairness Act amends the Deed of Trust Act by creating a foreclosure mediation program to give borrowers and lenders a mechanism to mediate before nonjudicial foreclosure is conducted. H.B. 1362, 62nd Leg., Reg. Sess., § 7 (Wash. 2011). The Act also provides that a lender's failure to comply with the mediation program in good faith is a per se unfair or deceptive act under the CPA. *Id.* § 14(2). However, the Foreclosure Fairness Act was enacted *after* the facts complained of in Grant's Complaint, and it does not go into

effect until July 22, 2011. Thus, the new law has absolutely no bearing on the facts of the present case.

Although Grant asserts that the Foreclosure Fairness Act should apply retroactively, that is not the case. Statutes are presumed to operate prospectively only and cannot be construed to operate retroactively unless the Legislature clearly indicates it intends retroactive application. *Earle v. Froedtert Grain & Malting Co.*, 197 Wash. 341, 344 (1938). The Foreclosure Fairness Act does not state any intent to apply retroactively. Further, retroactive application is not possible because the Act creates new substantive rights to participate in foreclosure mediation. *See Johnston v. Benefit Mgmt. Corp.*, 85 Wn.2d 637, 641-42 (1975) (finding statute did not apply retroactively where it created a new substantive right of action). Therefore, because the newly-enacted Foreclosure Fairness Act was not applicable at the time the Notice of Default and Notice of Trustee's Sale were issued in the present case, it is completely irrelevant to this case.

C. Grant's Complaint Did Not Assert a Claim Under the Truth In Lending Act, and Regardless, Any Such Claim Is Time-Barred.

Grant's Opening Brief asserts – for the first time in this litigation – that he is bringing a cause of action under the Truth in Lending Act (“TILA”), 15 U.S.C. § 1635(b), for rescission of the loan. (Opening Br. 41, 53.) This claim was not raised in Grant's Complaint, nor was it addressed in Respondents' Motions to Dismiss or the Order that is the

subject of this appeal. Accordingly, this claim should be disregarded, as it cannot be raised for the first time on appeal.

Nevertheless, to the extent that Grant attempts to state a claim for rescission under TILA, his claim is time-barred. A borrower's right of rescission under TILA "shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first," even if a violation of TILA's disclosure requirements actually occurred. 15 U.S.C. § 1635(f). A borrower's right to rescind absolutely terminates after the expiration of the three-year period. *Beach v. Ocwen Fed. Bank*, 523 U.S. 410, 413 (1998). Grant's loan transaction closed on December 1, 2004, over six years before he asserted any desire to rescind under TILA. Because his claim for rescission was made outside of the three-year period, it is absolutely barred.

Grant attempts to assert that the three-year statutory timeframe for rescission should be equitably tolled. However, the three-year rescission period is not subject to tolling. TILA's rescission period is a statute of repose, rather than a statute of limitations, and as such it cannot be equitably tolled. *Miguel v. Country Funding Corp.*, 309 F.3d 1161, 1164 (9th Cir. 2002); *In re Cmty. Bank of N. Va.*, 467 F. Supp. 2d 466, 482 (W.D. Pa. 2006). A court lacks subject matter jurisdiction to hear a claim for rescission after the three-year statute expires. *Miguel*, 309 F.3d at 1164.

D. Grant Cannot Prevail on Any of His “Defenses” to the Foreclosure Without Tendering Repayment.

Grant further contends that the lower court improperly dismissed his Complaint because he will be prevented from asserting his “defenses” to the foreclosure. (Opening Br. 42-43.) Specifically, Grant contends he signed the Note and Deed of Trust under duress and as a result of fraud. (*Id.* at 43; CP 241 ¶ 6.2.) However, even if this contention were true, the remedy would be rescission of the contract. *See Whitcomb v. Sager*, 82 Wash. 572, 579 (1914); (CP 241 ¶ 6.3 (seeking a declaration that loan is void).) In order to rescind, Grant must return everything that he received under the contract, i.e. the \$800,000.00 loan proceeds. *See Queen City Farms v. Cent. Nat’l Ins. Co.*, 126 Wn.2d 50, 111 (1995) (stating party seeking remedy of rescission must tender back payments he received under contract). The Complaint did not contain any facts demonstrating Grant was able to return the loan proceeds to First Horizon. Accordingly, no claim for rescission due to fraud or duress can be stated.

E. Grant Has Not Stated a Claim for Quiet Title.

An action to quiet title is governed by RCW § 7.28.010. A quiet title claim is equitable in nature and will properly lie only where the plaintiff demonstrates he is equitably entitled to remove a cloud on title. *Robinson v. Khan*, 89 Wn. App. 418, 422 (1998). “The plaintiff in an action to quiet title must succeed on the strength of his own title and not on the weakness of his adversary.” *Desimone v. Spence*, 51 Wn.2d 412, 415 (1957) (citations omitted); *see also Wash. State Grange v. Brandt*, 136

Wn. App. 138, 153 (2006). Grant has failed to state a cause of action for quiet title because he has not alleged any facts demonstrating he holds title to the Property that is superior to the beneficiary of the Deed of Trust. He has repeatedly admitted that he obtained the \$800,000.00 loan from First Horizon and executed the Deed of Trust as security for the loan. (CP 225 ¶ 3.2.) He further admits that he has not repaid the debt, nor does he have the ability to pay what is owed. (RP 26:21-23.) Accordingly, Grant cannot state a superior claim to title to the Property, and his request to quiet title in his name alone must fail.

F. All Claims Arising Out of the Loan Refinance in 2004 Are Time-Barred and Cannot Be Stated Against Quality Loan Service Corporation.

The majority of Grant's Complaint and the present appeal concern his allegations that First Horizon and Stewart Title Company improperly forced him to execute a quitclaim deed to convey part of his interest in the property to his wife. (CP 227-228; RP 6:24-25, 7:1-12, 20:12-25, 21:1-23.) The quitclaim deed was signed along with the rest of the closing documents on or about December 1, 2004. Grant specifically alleges that the operative events occurred on December 1, 2004, and he was aware of the facts supporting his claims on or before that date. (CP 228, 243-246.) Thus, the time to bring all claims regarding the loan documents began to run on December 1, 2004.

Claims for negligence, intentional infliction of emotional distress, and intentional interference with contractual relations are governed by

three-year statutes of limitations. *Sabey v. Howard Johnson & Co.*, 101 Wn.App. 575, 592 (2000) (negligence); *Cox v. Oasis Physical Therapy, PLLC*, 153 Wn.App. 176, 192 (2009) (intentional infliction of emotional distress); *City of Seattle v. Blume*, 134 Wn.2d 243, 251 (1997) (interference with contractual relations). Claims under the CPA are subject to a four-year statute of limitations. RCW § 19.86.120. There is no dispute that Grant's loan-closing claims accrued no later than December 1, 2004. Because Grant did not bring suit until October 25, 2010, more than five years after his claims accrued, all claims arising out of the loan origination are time-barred.

Furthermore, even if these claims are not barred, they cannot be stated against Quality, which was not a party to the loan closing. The facts pleaded by Grant show that Quality's first involvement with his loan occurred on or about July 15, 2010, when Quality issued the Notice of Default. (CP 293-297.) Thus, any claims concerning alleged conduct of the other defendants during the loan's closing in 2004 cannot be asserted against Quality, which is not alleged to have taken part in the closing in any way.

G. Grant's Complaint Did Not Attempt to State a Claim for Breach of Contract or Intentional Infliction of Emotional Distress Against Quality Loan Service Corporation.

Grant's Complaint does not clearly identify which causes of action are asserted against each of the Defendants, making it impossible for Quality to know what allegations it was called upon to answer. The First

Cause of Action for Breach of Contract contains no reference to Quality, (CP 242 ¶¶ 7.1-7.7), and Grant's Opening Brief appears to concede that this claim is not being directed against this defendant, (Opening Br. 13-14). Likewise, the Third Cause of Action for Intentional Infliction of Emotional Distress does not make any reference to Quality. (CP 243 ¶ 9.1-9.2; Opening Br. 51.) Because no facts are pleaded against Quality in the Complaint that would demonstrate either breach of contract or infliction of emotional distress, the Court should affirm the lower court's dismissal of these causes of action with prejudice as to Quality.

H. Grant Cannot State a Claim for Intentional Interference With Contract.

A plaintiff claiming tortious interference with contract must allege facts to establish the following five elements: "(1) the existence of a valid contractual relationship or business expectancy; (2) that defendants had knowledge of that relationship; (3) an intentional interference inducing or causing a breach or termination of that relationship or expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage." *Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 157 (1997). Grant's Complaint did not plead facts that would establish any of these elements, and accordingly, no cause of action can be stated.

As to Quality, the Complaint alleges only that, "By their actions, Quality Loan has interfered with Plaintiff's right to his Property and his legitimate business expectancies." (CP 244 ¶ 10.4.) This generalized

statement falls far short of stating a viable cause of action. Grant does not identify any contract between himself and a third party, nor does he plead facts showing that Quality had knowledge of any such contract. Without demonstrating these basic elements, Grant has failed to state any claim for relief, and dismissal under CR 12(b)(6) was appropriate.

I. Grant Cannot State a Cause of Action for Negligence.

A cause of action for negligence requires facts demonstrating the existence of four elements: (1) a duty owed to the plaintiff; (2) a breach of that duty by the defendant; (3) resulting injury; and (4) proximate cause. *Folsom v. Burger King*, 135 Wn.2d 658, 671 (1998) (citing *Hansen v. Friend*, 118 Wn.2d 476, 479, 824 P.2d 483 (1992)). “Since a negligence action will not lie if a defendant owed a plaintiff no duty of care, the primary question is whether a duty of care existed.” *Id.* (citing *Hansen*, 118 Wn.2d at 479). The existence of a duty of care is a question of law. *Pedroza v. Bryant*, 101 Wn.2d 226, 228 (1984).

Grant’s cause of action for negligence asserts that Quality and the other defendants “obfuscated their documentation as to make it extremely difficult if not impossible to know who the appropriate parties are.” (CP 245 ¶ 11.4.) He further contends that Quality failed to take reasonable steps to avoid sacrificing Grant’s interests. (*Id.* ¶ 11.5.) However, Grant has failed to identify any special duty that Quality owes to him, and accordingly, he has not stated a negligence claim.

The Washington State Legislature, in enacting the Deed of Trust Act, established a comprehensive statutory scheme to govern nonjudicial foreclosures and trustee's sales. *See Vawter*, 707 F. Supp. 2d at 1121. The Deed of Trust Act expressly enumerates the duties of a trustee in conducting nonjudicial foreclosure, and provides the sole remedy for any breach of those duties. Because Quality does not owe Grant any duties arising outside of the Deed of Trust Act, no cause of action for negligence can be stated. *Cf. Udall v. T.D. Escrow Servs., Inc.*, 132 Wn. App. 290, 295 (2006), *rev'd on other grounds*, 159 Wn.2d 903 (2007) (finding Deed of Trust Act solely controlled conduct of foreclosure, so common law contract claims could not be stated). Thus, it would be inconsistent with the Deed of Trust Act to find that Quality owed Grant any duties outside of the Act. Without any duty owed to Grant, no negligence cause of action can be stated. Hence, the lower court did not err in dismissing Grant's cause of action against Quality for negligence.

III. QUALITY'S MOTION WAS TIMELY FILED AND SERVED.

Whatcom County's Superior Court Rules ("WCCR") provide that any motion other than a motion for summary judgment under CR 56 must be filed and served no later than nine court days prior to the hearing. WCCR 77.2(d)(1). Summary judgment motions must be filed and served twenty-eight calendar days prior to the hearing. CR 56(c). Grant contends that Quality's Motion to Dismiss under CR 12(b)(6) and 12(c) should be treated like a motion for summary judgment (solely for purposes of

calculating the notice period), and if it is treated like a motion for summary judgment, it was not timely served. (Opening Br. 54.) Grant does not provide any authority or explanation to support this contention. The Motion to Dismiss was served on December 27 and filed on December 28, 2010, well over the required nine court days before the January 14, 2011 hearing date. This Court should disregard Grant's attempt to re-cast the Motion as one for summary judgment in order to create an argument that it was untimely.

IV. THE COURT PROPERLY DENIED LEAVE TO AMEND BECAUSE AMENDMENT OF THE COMPLAINT AS TO QUALITY LOAN SERVICE WOULD BE FUTILE.

Grant challenges the trial court's purported denial of his motion for leave to amend brought pursuant to CR 15. (Opening Br. 55.) A court has broad discretion to grant or deny leave to amend, and accordingly, a lower court's order denying leave to amend is reviewed only for abuse of discretion. *Nw. Animal Rights Network v. State*, 158 Wn. App. 237, 247-48 (2010). "The denial of a motion for leave to amend does not constitute an abuse of discretion if the proposed amendment was futile." *Id.* at 247 (citing *Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 729 (2008)).

The lower court properly denied leave to amend because Grant did not demonstrate any way in which the Complaint could be amended to cure the deficiencies in its allegations against Quality. A review of Grant's [Proposed] Amended Complaint, which was submitted as an exhibit to his Motion to Amend, shows that no new or different facts are

alleged against Quality that would be sufficient to state a cause of action under any of the asserted legal theories. Instead, the proposed amendment merely restates the meritless arguments previously raised that Quality has not produced the original promissory note, (CP 64 ¶ 4.59), that it was required to protect Grant's equity in the property, (CP 64 ¶ 4.60, 75 ¶ 12.7), that it violated the Truth in Lending Act, (CP 68 ¶ 6.3, 75 ¶ 12.5). None of these proposed amendments would cure the deficiencies in the Complaint, as discussed above. Because Grant has not identified any way that the Complaint can be amended to state a viable cause of action against Quality, the Court should affirm the lower court's ruling denying leave to amend.

CONCLUSION

For the foregoing reasons, the Court should affirm the ruling of the lower court dismissing all causes of action in Grant's Complaint asserted against Quality Loan Service Corporation, and denying leave to amend. No cause of action can be stated against Quality based on the facts alleged by Grant.

Dated: June 24, 2011

Respectfully Submitted,
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