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No. 67370-0-I

DIVISION I, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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THE BANK OF NEW YORK MELLON, FKA THE BANK OF NEW  
YORK AS SUCCESSOR IN INTEREST TO JPMORGAN CHASE  
BANK, NA AS TRUSTEE FOR STRUCTURED ASSET MORTGAGE  
INVESTMENTS II INC. BEAR STEARNS ALT-A TRUST 2005-9,  
MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-9

Appellant

v.

SCOTTY'S GENERAL CONSTRUCTION, INC., A WASHINGTON  
CORPORATION

Respondent

---

ON APPEAL FROM KING COUNTY SUPERIOR COURT  
(HON. HOLLIS HILL)

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SUPPLEMENTAL BRIEF OF APPELLANT  
ON THE IMPACT OF BAIN

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## I. INTRODUCTION

This appeal arises from the 12(b)(6) dismissal of The Bank of New York Mellon (BNY Mellon)'s complaint. The complaint sought a declaratory judgment ruling that BNY Mellon's purchase money mortgage had priority over a very junior construction lien. There is pending a second appeal brought by another secured lender challenging the priority of the same construction lien asserted by respondent Scotty's General Construction. Case No. 68177-01, WMC Mortgage Corp. v. Scotty's Gen. Constr., Inc. Appendix A is a timeline depicting the events giving rise to the two appeals.

The two appeals share a common issue: what effect does a decree foreclosing a junior construction lien have on a senior mortgage, where the owner of the senior mortgage and its agent were not named defendants or even served in the foreclosure suit? The correct answer is the decree has no effect whatsoever on the senior mortgage. Scotty's suit should have named BNY Mellon and WMC Mortgage as defendants, once Scotty's received notice of their interests from the recorded assignments of the mortgages. But naming the original lenders as defendants had no effect whatsoever on the mortgages, when the mortgage notes had been transferred years earlier. *See* Appendix B (depicting lending transaction and showing transfer of note).

This appeal by BNY Mellon also has a point of distinction from the other pending appeal. Unlike the other appeal, Mortgage Electronic Registration Systems (MERS) was the grantee on the title records for the mortgage assigned to BNY Mellon. But MERS was not named as a defendant or even served in the foreclosure suit. Instead, the suit named the original lenders as defendants. BNY Mellon contends that the suit should have named MERS as defendant or Scotty's should have given MERS notice of the suit.

Since MERS is the nominee beneficiary of the mortgage, the Court has directed the parties to file supplemental briefs addressing the impact of the Bain v. MERS decision on this appeal.<sup>1</sup> Eight months ago, BNY Mellon remarked that the certified questions in Bain should not affect the determination of this appeal.<sup>2</sup> This is because the certified questions flow from the premise that MERS never held the mortgage note. In contrast, the questions raised in this appeal flow from the original lender's transfer of the mortgage note years ago resulting in BNY Mellon's possession of the note.<sup>3</sup>

The "primary issue" in Bain was whether MERS had the power to appoint trustees to proceed with non-judicial foreclosures, where MERS was not the mortgage noteholder and where it was unclear from the record

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<sup>1</sup> Letter from Court Administrator/Clerk (Sept. 18, 2012) (referring to notation ruling by Commissioner Neel directing parties to address impact of Bain v. Metro. Mortg. Group, Inc., --- Wn.2d ---, 285 P.3d 34, 2012 WL 3517326 (Aug. 16, 2012)).

<sup>2</sup> Revised Br. of Appellant at 32; id. at 32-39.

<sup>3</sup> Id. at 33.

if MERS was acting as an agent for a specific mortgage noteholder.<sup>4</sup> Bain confirms that the person entitled to enforce the mortgage note may act through agents. Consistent with Bain's teachings, BNY Mellon is entitled to its day in court to establish that it is the mortgage noteholder and that its agent was not notified of the judicial foreclosure of the construction lien.

Bain does not alter the established principles of real property law. A mortgage does not lose its priority when transferred through delivery of the mortgage note. A foreclosure decree cannot bind a person with a recorded mortgage who was not a party to the suit. The foreclosure of a junior construction lien does not affect a senior mortgage.

## II. STATEMENT OF THE CASES

A non-judicial versus judicial foreclosure, a consumer versus commercial transaction, and the status of MERS as a defendant in one set of suits (but not in the pending appeals) are among the factual differences between the Bain and the two pending appeals.<sup>5</sup>

**A. In two appeals, the owners of senior mortgages are challenging the effect of a decree foreclosing the same junior construction lien.**

Gloria Pazooki acquired two parcels using three loans.<sup>6</sup> See App. B. The three loans have different loan numbers.<sup>7</sup> They are memorialized by

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<sup>4</sup> Bain ¶ 2; id. ¶¶ 27-32 (section entitled, Contract and Agency); id. ¶ 31 (MERS' principals remain unidentified"); id. ¶ 35 ("agency grounds not before us.").

<sup>5</sup> CP 33 ¶ 3.1 (Scotty's performed preparation work for a "commercial building.").

<sup>6</sup> Revised Br. of Appellant at 6-7 in BNY Mellon v. Scotty's.

separate notes and are secured by separately recorded mortgages. The first loan was from WMC Mortgage. The second loan was from Centralbanc Mortgage Company (later transferred to BNY Mellon). Appendix B. The third smaller junior loan was retained by Centralbanc.<sup>8</sup>

**1. WMC Mortgage has appealed an order denying a motion to vacate a default judgment in the lien foreclosure suit.**

Three years after the loans closed, Scotty's sued Pazooki for the failure to make payments on a commercial construction contract and for the foreclosure of a construction lien.<sup>9</sup> The complaint named as defendants WMC Mortgage and Centralbanc, referring to their generic interests in the property, and praying for an order declaring Scotty's interest superior to other interests.<sup>10</sup>

Scotty's never supplemented the complaint to name Deutsche Bank as a defendant with an interest in the property, resulting from the assignment of the mortgage originated by WMC Mortgage.<sup>11</sup> Weeks before a default judgment was entered, a trustee's deed to Deutsche Bank was recorded providing Scotty's with constructive notice of Deutsche's interest in the property. Although Scotty's attorney acknowledged in a letter his actual knowledge of Deutsche's interest, Scotty's failed to supplement the

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<sup>7</sup> CP 67-68 (\$332,500 WMC loan), CP 93-94 (\$352,000 loan with grantee as MERS), CP 118-19 (\$66,000 loan with grantee as Centralbanc). All recorded in 2005.

<sup>8</sup> Id.

<sup>9</sup> CP 31-37 (complaint filed Feb. 2009).

<sup>10</sup> CP 32, 36-37.

<sup>11</sup> Br. of Appellant at 18.

complaint to acknowledge these events. As a result, WMC Mortgage later moved to vacate the default judgment, but the court declined to vacate the judgment. WMC Mortgage has appealed from the denial of its motion to vacate the default judgment.<sup>12</sup>

The foreclosure complaint also did not distinguish between the two mortgage loans originated by Centralbanc. The two mortgages have different grantees. While the smaller junior mortgage's first page named Centralbanc as the grantee, the larger senior mortgage's first page named MERS as the grantee.<sup>13</sup> Despite the constructive notice of the status of MERS resulting from the recorded mortgage, Scotty's complaint did not name MERS as a defendant.<sup>14</sup> The complaint, however, did reserve a right to join additional parties as they became known.<sup>15</sup> But no additional parties were joined, even though well before the entry of judgment in favor of Scotty's, BNY Mellon recorded a notice of sale to foreclose the mortgage whose grantee of record had been MERS.<sup>16</sup>

Despite this additional constructive notice of BNY Mellon's interest in the property, Scotty's elected not to join BNY Mellon as a defendant to the foreclosure suit. Before a foreclosure decree was entered, Centralbanc

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<sup>12</sup> Case No. 68177-01, WMC Mortg. Corp. v. Scotty's Gen. Constr. Inc., Br. of Appellant.

<sup>13</sup> CP 5 (Loan Number 20201736 listed MERS as grantee), CP 118 (Loan 200201716 listed Centralbanc as grantee).

<sup>14</sup> CP 31-37 (complaint).

<sup>15</sup> CP 36 ¶ 8.4.

<sup>16</sup> CP 287 (Trustee's Deed ¶ 6 referring to the July 22, 2010 notice of sale).

disclaimed any interest in the property.<sup>17</sup> The court entered a judgment for Scotty's on its breach of contract claim and granted Scotty's foreclosure against Centralbanc's interest in the property.<sup>18</sup>

**2. BNY Mellon has appealed the dismissal of its complaint requesting a declaration that the prior suit did not bind BNY Mellon, where BNY Mellon and its agent (MERS) were not parties to the prior suit.**

Six months after the court entered the judgment in the lien foreclosure suit, BNY Mellon filed this separate suit for a declaratory judgment ruling that the mortgage recorded in 2005 was superior to Scotty's construction lien recorded in 2007.<sup>19</sup> Scotty's moved for pre-answer dismissal contending "the assignment of Centralbanc's interest was improperly obtained."<sup>20</sup> The motion emphasized "MERS is simply an agent" with "no interest in its principal's mortgage" and invoked the Kansas supreme court's decision in Landmark National Bank.<sup>21</sup> In response, BNY Mellon observed that the "Landmark court acknowledged that it was not deciding whether MERS was entitled to notice of foreclosure."<sup>22</sup> In reply, Scotty's asserted MERS "was not entitled to notice from Scotty's in the underlying foreclosure."<sup>23</sup> Scotty's argued that the recorded instrument

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<sup>17</sup> CP 345.

<sup>18</sup> CP 38-41, Aug. 2010.

<sup>19</sup> CP 1-4.

<sup>20</sup> CP 47:6-8.

<sup>21</sup> CP 53:5-57:15 (quotation mark removed); *id.* (discussing Landmark Nat'l Bank v. Kesler, 289 Kan. 528, 216 P.2d 158 (2009)).

<sup>22</sup> CP 300:4-6.

<sup>23</sup> CP 438:22-25 (Reply to Opp'n to Mot. to Dismiss).

assigning the mortgage was proof of the severing of the note from the mortgage.<sup>24</sup> While at oral argument, BNY Mellon responded: “Under the assignment of the deed of trust, the Bank of New York is the current note holder.”<sup>25</sup> Six weeks after the oral argument, the trial court granted a pre-answer dismissal order. The order provides no explanation of the grounds for the dismissal,<sup>26</sup> and BNY Mellon has appealed the dismissal.

As stated above, the two pending appeals contend Scotty’s should have joined MERS or given it notice of the suit. In contrast, the plaintiffs in Bain joined MERS as a defendant.

**B. In Bain, two homeowners sought to enjoin nonjudicial foreclosures and recover CPA damages from MERS.**

Bain and Selkowitz bought homes financed with loans from New Century Mortgage Company and IndyMac Bank FSB.<sup>27</sup> Each mortgage named MERS as the beneficiary/nominee.<sup>28</sup> MERS in its role as a deed of trust beneficiary/nominee named the successor trustees that initiated nonjudicial foreclosure proceedings.<sup>29</sup> Both homeowners sued in federal court for injunctions to stop the foreclosures, damages against MERS under the Consumer Protection Act (CPA), and for other relief.<sup>30</sup>

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<sup>24</sup> CP 440:8-17 & n.3 (citing a treatise and restatement section where the mortgage has been assigned but not the debt).

<sup>25</sup> RP 28:14-17 (Apr. 22, 2011).

<sup>26</sup> CP 442-43 (Jun. 15, 2011).

<sup>27</sup> Bain ¶ 5.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> Id. ¶ 6.

The federal district court certified three questions. In response to the first question, the state supreme court answered that MERS is not a lawful beneficiary under the Washington Deeds of Trust Act if it does not hold the note.<sup>31</sup> “[O]nly the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a trustee to proceed with a judicial foreclosure on real property.”<sup>32</sup> The supreme court declined to answer the second question about the legal effect of MERS acting as unlawful beneficiary.<sup>33</sup> The court did partially answer the third question that the homeowners might have a CPA claim but required each homeowner to establish the elements of the claim.<sup>34</sup>

### III. ARGUMENT ON THE IMPACT OF BAIN

Bain confirms BNY Mellon has a right to enforce the mortgage as the holder of the mortgage note and undercuts Scotty’s theory that the mortgage was nullified.

A. **Bain reaffirms the maxim that a mortgage is transferred with the mortgage note.**

Bain rules: “Washington’s deed of trust act contemplates the security instrument will follow the note ...”<sup>35</sup> That maxim applies in this case where BNY Mellon possesses the mortgage note. BNY Mellon has

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<sup>31</sup> Id.

<sup>32</sup> Id. ¶ 2.

<sup>33</sup> Id. ¶ 6.

<sup>34</sup> Id.

<sup>35</sup> Bain ¶ 26.

belt and suspenders: the mortgage note and the assignment of the mortgage from MERS. With either, BNY Mellon had sufficient standing to withstand a 12(b)(6) motion for dismissal of the complaint.

The first certified question in Bain assumed MERS was not a holder of a mortgage note and also assumed that MERS could not establish a particular principal on whose behalf it was acting as an agent (as a result of a concession made in oral argument).<sup>36</sup> But those adverse assumptions cannot be made in this appeal. Instead, this appeal of a pre-answer dismissal requires that the factual assumptions be made in favor of plaintiff BNY Mellon. Moreover, Scotty's made the concession that it had no idea who possessed the mortgage note,<sup>37</sup> while BNY Mellon possessed a recorded instrument assigning the mortgage and claimed to be current note holder.<sup>38</sup> Either way, it was conceivable that BNY Mellon could prove facts showing it is entitled to enforce the mortgage,<sup>39</sup> either directly or through MERS acting as its agent. These permissible assumptions satisfied the threshold for withstanding a 12(b)(6) motion. These permissible assumptions conflict with Scotty's speculations that someone else (Centralbank) held the mortgage note and the

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<sup>36</sup> Bain ¶ 31 & n.12 ("If MERS is an agent, its principals in the two cases before us remain unidentified.").

<sup>37</sup> RP 6:13-17 ("I have no idea" who holds the note).

<sup>38</sup> CP 30 (recorded assignment instrument). RP 28:15-17 (Q: So who does hold the note? A: Under the assignment of the Deed of Trust, Bank of New York is the current note holder.)

<sup>39</sup> Bain ¶ 26 (quoting former RCW 62A.1-201(20) providing who is a person entitled to enforce a note, which is now RCW 62A.1-201 (21)).

ensuing erroneous legal conclusion that a judgment against Centralbanc bound anyone holding the mortgage.

**B. The MERS clauses do not render a mortgage void.**

While Scotty's conceded it had no idea who held the mortgage note, it appears Scotty's contended the mortgage note and mortgage had been severed, rendering them unenforceable.<sup>40</sup> But the law and equity disfavor forfeitures.

Also, Bain disfavors the remedy of unenforceability. The Bain court declined to answer the second certified question of the legal effect of MERS' status.<sup>41</sup> The court "tend[ed] to agree" with MERS' statement that any violation of the deed of trust act "should not result in a void deed of trust, both legally and from a public policy standpoint."<sup>42</sup> But the court declined to make a sweeping ruling; its more limited ruling was that the "resolution of the question ... depends on what actually occurred with the loans before us and that evidence is not in the record."<sup>43</sup>

The MERS clauses do not automatically void the mortgage. Rather, the presumption is quite the opposite. The mortgage's sole purpose is to secure the repayment of the mortgage note. The mortgage note and

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<sup>40</sup> CP 440:9-20.

<sup>41</sup> Id.

<sup>42</sup> Bain ¶ 46.

<sup>43</sup> Id.

mortgage are construed together so that effect will be given to each.<sup>44</sup> The court will harmonize clauses that seem to conflict to give effect to all the contract's provisions.<sup>45</sup> With those rules in mind, the mortgage clearly distinguishes MERS from the Lender in whose shoes BNY Mellon stands. The mortgage's definition section distinguishes the "Lender" from "MERS" acting "solely as the nominee for the Lender and Lender's successors and assigns."<sup>46</sup> The definition section frames the Loan in terms of the mortgage note – the loan is "the debt evidenced by the Note ..."<sup>47</sup> The mortgage provides elsewhere: "This Security Agreement secures to the Lender: (1) the repayment of the loan ...; and (2) the performance of the Borrower's covenants and agreements under this Security Agreement and the Note."<sup>48</sup> The two instruments manifest no intent that a problem with MERS' status should render the note insecure.

Even if the mortgage had not clearly distinguished MERS' status from the Lender's status, the mortgage's severability provision comes into

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<sup>44</sup> Bell v. Engvolsen, 64 Wash. 33, 35, 116 P. 456 (1911).

<sup>45</sup> Certain Underwriters at Lloyd's London v. Travelers Prop. Cas. Co. of Am., 161 Wn. App. 265, 278, 256 P.3d 368 (2011). "When a provision is subject to two possible constructions, one of which would make the contract unreasonable and imprudent and the other of which would make it reasonable and just, we will adopt the latter interpretation." Berg v. Hudesman, 115 Wn.2d 657, 672, 801 P.2d 222 (1990) (citation omitted); see Restatement (Second) of Contracts § 203 (1979) (disfavoring interpretation leaving a part unreasonable, unlawful, or of no effect).

<sup>46</sup> CP 6.

<sup>47</sup> Id.

<sup>48</sup> CP 7.

play.<sup>49</sup> Washington courts enforce severability provisions,<sup>50</sup> and the enforcement of the provision in this case satisfies the purpose of the underlying transaction – a mortgage securing a purchase money loan.

One of the goals of the Deeds of Trust Act is to promote the stability of land titles;<sup>51</sup> preserving the BNY Mellon’s mortgage furthers that goal. Meanwhile, Scotty’s is not a borrower with a right to have ambiguities in the Act construed in its favor to ameliorate the relative ease with which lenders can forfeit borrowers’ interests and the lack of judicial oversight in conducting nonjudicial foreclosure sales.<sup>52</sup> Nor is Scotty’s a homeowner with rights under the Foreclosure Fairness Act of 2011.<sup>53</sup> Furthermore, while the borrower in Bain understood “she [was] going to have to make up the mortgage payments that have been missed” and was “not seeking to clear title without first paying off the secured obligation,”<sup>54</sup> Scotty’s wants to eliminate the secured obligation without paying it off.

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<sup>49</sup> Deed of Trust, Uniform Covenant 16, at page 12, CP 16 (“In the event that any such provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect the other provisions of this Security Agreement or Note which can be given effect without the conflict provision.”).

<sup>50</sup> Walters v. AAA Waterproofing, Inc., 151 Wn. App. 316, 211 P.3d 454 (2009) (enforcing severability clause in employment contract), review denied, 107 Wn.2d 1019, 224 P.3d 773 (2010).

<sup>51</sup> Bain ¶ 12 (referring to the three goals of the act: (1) nonjudicial foreclosure act should remain efficient, (2) the process should provide adequate opportunity for interested parties to prevent wrongful foreclosure, and (3) the process should promote the stability in land titles).

<sup>52</sup> Bain ¶ 11.

<sup>53</sup> Bain ¶ 25 (referring to the Act’s “framework for homeowners and beneficiaries to communicate with each other to reach a resolution and avoid foreclosure whenever possible” and quoting Laws of 2011, ch. 58, § 1).

<sup>54</sup> Bain ¶ 46.

**C. There was no splitting of a mortgage from the mortgage note when MERS acts as an agent.**

In Bain, one of the homeowners had argued that the mortgage note had been impermissibly split from the mortgage, rendering the mortgage unenforceable.<sup>55</sup> But the supreme court ruled that it is “likely no split would have happened,” “[i]f, for example MERS is in fact an agent for the holder of the note.”<sup>56</sup> For even more compelling reasons in this plaintiff-friendly 12(b)(6) appeal, BNY Mellon is entitled to a day in court to prove MERS was its agent. Nullifying the mortgage “is economically wasteful and confers an unwarranted windfall” on the junior lienholder in this case.<sup>57</sup> Bain observes: “Washington law, and the deed of trust act itself, approves of the use of agents.”<sup>58</sup> Further, Bain succinctly concludes: “[N]othing in this opinion should be construed to suggest an agent cannot represent the holder of a note.”<sup>59</sup> Consistent with the law approving the use of agents by mortgage noteholders, the Restatement warns that “[c]ourts should be vigorous in seeking to find such a [agency] relationship since the result is otherwise likely to be a windfall for the

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<sup>55</sup> Bain ¶¶ 42-43.

<sup>56</sup> Bain ¶ 42.

<sup>57</sup> Restatement (Third) of Property, Mortgages § 5.4 cmt. a (1997).

<sup>58</sup> Bain ¶ 30 (“See, e.g., former RCW 61.24.031(1)(a) (effective through 2011)) (“A trustee, beneficiary, or authorized agent may not issue a notice of default ... until ...”).

<sup>59</sup> Id.

mortgagor and frustration of the [mortgage note holder]’s expectation of security.”<sup>60</sup>

In this case, the dismissal motion rested on the wild speculation that: “MERS was simply Centralbanc’s agent,”<sup>61</sup> while conceding MERS was often a common agent.<sup>62</sup> BNY Mellon was entitled to establish that MERS was its agent. Below, BNY Mellon’s counsel explained: “MERS does pass on the notices it receives to the interested parties in the Deed of Trust, and in this case, that would be” BNY Mellon.<sup>63</sup>

**D. Bain does not decide the legal effect resulting from the failure to join the owner of a senior mortgage as a party to a foreclosure suit.**

MERS as a grantee of record should have received notice of the foreclosure suit. Scotty’s may invoke dicta in Bain distinguishing the Landmark case as having no bearing on the legal effect of “listing MERS as a beneficiary.”<sup>64</sup> The dicta *inaccurately* states that the Landmark case concluded MERS was not entitled to notice of suit.<sup>65</sup> Meanwhile, a federal

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<sup>60</sup> Restatement (Third) of Property, Mortgages § 5.4 cmt. d (1997).

<sup>61</sup> CP 56:17-18

<sup>62</sup> CP 56 (“MERS acts as the designated ‘common agent’”). Brandt v. Koepnick, 2 Wn. App. 671, 674, 469 P.2d 189 (1970) (“dual agency relationship, ... is permissible, when ...”).

<sup>63</sup> RP 25:8-13.

<sup>64</sup> Bain ¶ 44.

<sup>65</sup> Compare Bain ¶ 44 (“court concluded MERS had no interest in the property and thus was not entitled to notice of the foreclosure sale”) with Landmark Nat’l Bank v. Kesler, 216 P.3d 158, 168 (2008) (“Even if MERS was technically entitled to notice and service in the initial foreclosure action—an issue that we do not decide at this time”); CP 300:4-7 (stating the same).

district court has concluded MERS is entitled to notice of redemption rights under a tax foreclosure statute.<sup>66</sup>

#### IV. CONCLUSION

The homeowners in Bain named as defendants both the successor trustee of the deed of trust and MERS.<sup>67</sup> But Scotty's failed to join either of these parties in its foreclosure suit. As a result, neither BNY Mellon, its agent (MERS) nor the independent representative (the trustee) was represented in the foreclosure suit. For this reason and for the independent grounds set forth in the prior briefs, the trial court erred when it dismissed BNY Mellon's complaint for a declaration that the prior suit did not affect the mortgage.

This 12th day of October, 2012.

LANE POWELL PC

BY /s/ David C. Spellman

Ronald E. Beard, WSBA No. 24014

David C. Spellman, WSBA No. 15884

Carson R. Cooper, WSBA No. 44252

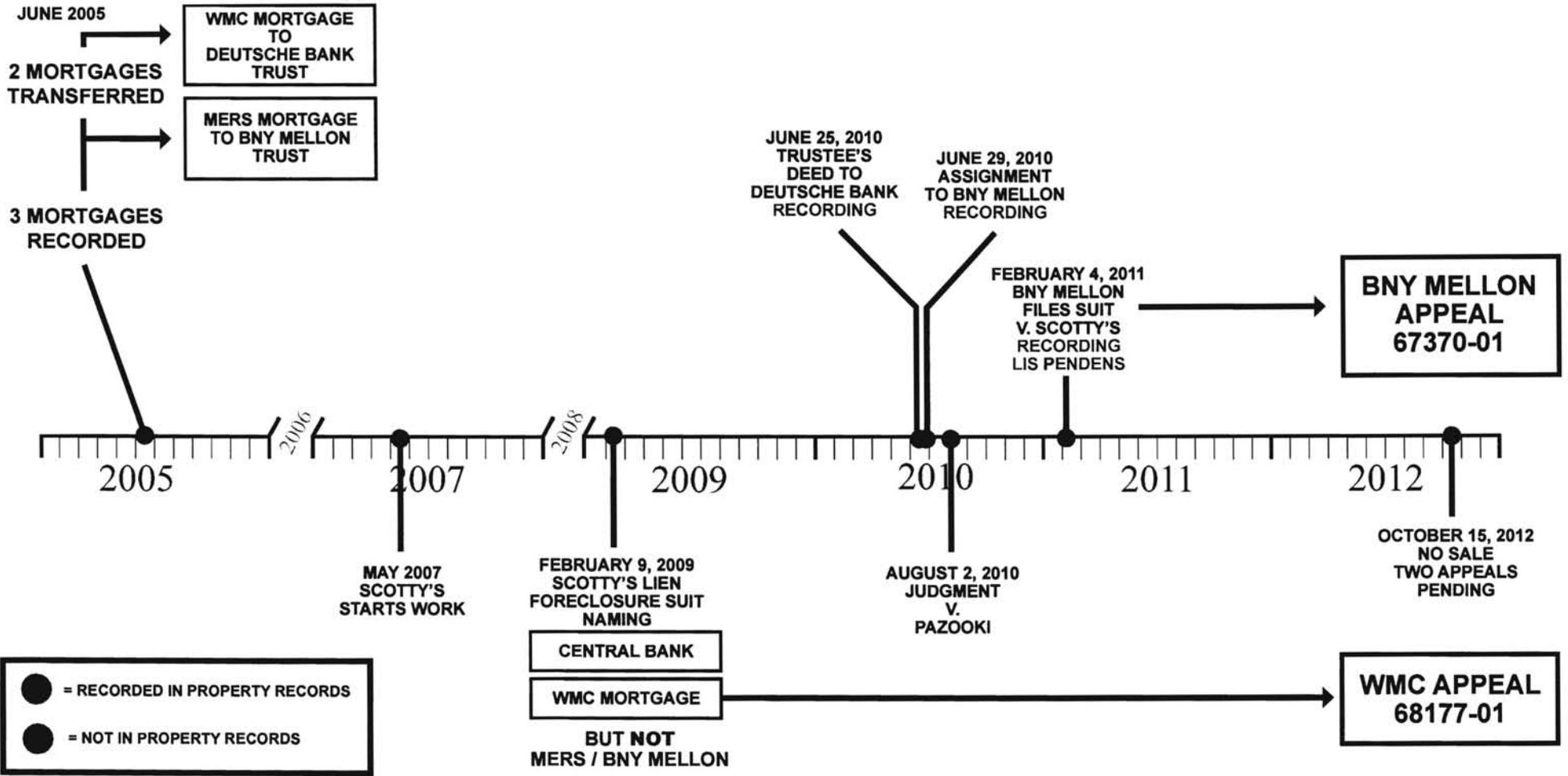
Attorneys for Appellant

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<sup>66</sup> Mortg. Elec. Registration Sys., Inc. v. Bellistri, 2010 U.S. Dist. Lexis 67753, \*32 (E.D. Mo. Jul. 1, 2010).

<sup>67</sup> Compare Bain ¶¶ 5-6 (summarizing the transactions) with id. (captions).

# **APPENDIX A**



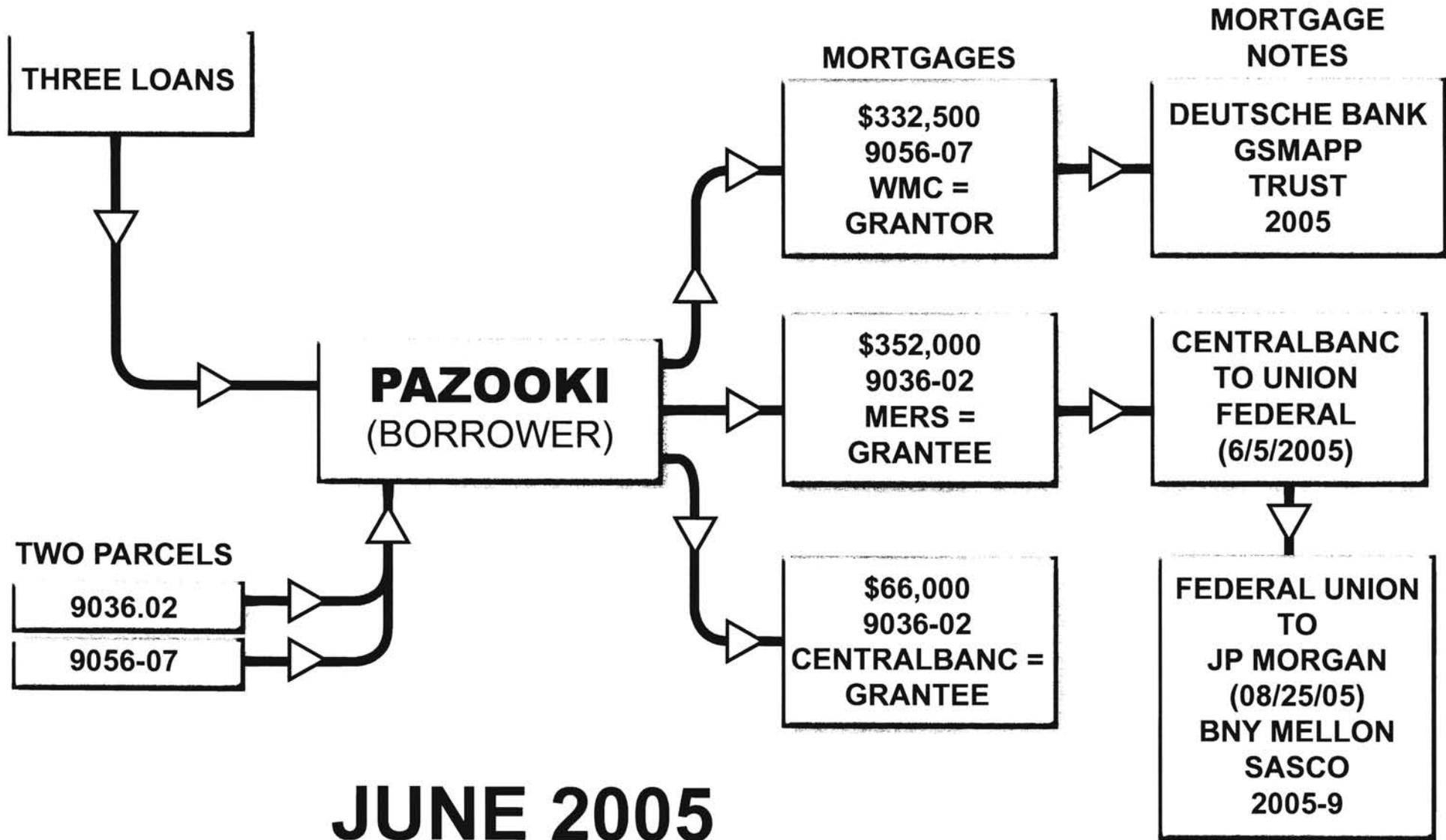
● = RECORDED IN PROPERTY RECORDS  
 ○ = NOT IN PROPERTY RECORDS

CENTRAL BANK  
 WMC MORTGAGE  
 BUT NOT  
 MERS / BNY MELLON

BNY MELLON APPEAL  
 67370-01

WMC APPEAL  
 68177-01

# **APPENDIX B**



ALLONGE

LOAN #: 200201736

Borrower(s): GLORIA PAZOOKI

Property Address: 20541 92ND AVE. S., KENT, WASHINGTON 98031

Principal Balance: \$352,000.00

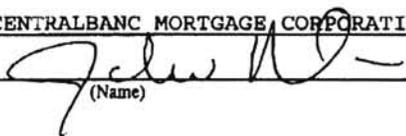
Loan Date: JUNE 6, 2005

PAY TO THE ORDER OF

UNION FEDERAL BANK OF INDIANAPOLIS

Without Recourse

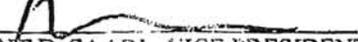
Company Name: CENTRALBANC MORTGAGE CORPORATION, A California Corporation

By:  PRESIDENT  
(Name) (Title)

Multistate Note Allonge

PAY TO THE ORDER OF:  
JPMorgan Chase Bank, N.A., as Trustee

WITHOUT RECOURSE  
UNION FEDERAL BANK OF INDIANAPOLIS

BY:   
KENT D. SAARI, VICE PRESIDENT

## CERTIFICATE OF SERVICE

I, David C. Spellman, hereby certify that on October 12, 2012, I caused the presentation of the foregoing document to the Clerk of the Court for filing

I further certify that I served a copy on the following persons by email and by First-Class Mail, postage prepaid:

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