

67770-5

67770-5

NO. 67770-5-I

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

MARION RUCKER AND APRIL MILLER,

Appellants,

v.

NOVASTAR MORTGAGE, INC.

Respondent.

8

RESPONDENT, NOVASTAR MORTGAGE, INC.'S BRIEF

APPEAL FROM KING COUNTY SUPERIOR COURT

The Honorable Suzanne Barnett

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I. RESTATEMENT OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. The trial court did not err when it granted summary judgment in favor of NovaStar Mortgage, Inc. on September 22, 2011 and amended on October 4, 2011, ordering that (1) NovaStar Mortgage, Inc.'s Motion for Summary Judgment is granted and dismissed Appellants' claims against defendant NovaStar Mortgage, Inc. with prejudice; and further, ordered that (2) the injunction is dissolved and defendant NovaStar Mortgage, Inc. is entitled to disbursement of the funds from the bond deposited into the Court's registry by Plaintiffs, in the amount of \$15,000.00 to compensate NovaStar Mortgage, Inc. costs and damages which NovaStar Mortgage, Inc. has sustained due to the Writ of Restitution being wrongfully stayed; and (3) NovaStar Mortgage, Inc is entitled to immediate possession of the property commonly known as 14647 124th Place NE, Woodinville, WA 98072 and to the issuance of a Writ of Restitution.

2. The trial court did not err when it denied Appellants' Motion for Summary Judgment on September 22, 2011.

II. RESTATEMENT OF THE CASE

Appellant, April Miller, filed the underlying action for Quiet Title on October 9, 2008, requesting the Trial Court grant her equitable relief of quieting title to that residential real property commonly known as at 14647

124th Place NE, Woodinville, Washington 98072 (“Property”). CP 1-8. However, in bringing this action, April Miller’s actions have been anything but equitable. For example, (1) April Miller misrepresented to NovaStar that she was not related to Marion Rucker at the time the subject loan was originated, when in fact he is her father; (2) Appellants misrepresented in their Complaint that April Miller and her husband, Carl Miller, occupied the property with Marion Rucker, but he testified to having never lived there; (3) April Miller improperly delayed the litigation proceedings by retaining then terminating the services of seven different attorneys;¹ and (4) April Miller acted willfully and deliberately to improperly delay these proceedings by failing to comply with the Civil Rules resulting in the Trial Court issuing an Order of Contempt and two Orders to Compel against her. CP 2153-2154; 2339-2341; 2466-2468; 2490. Apart from April Miller’s conduct, Appellants’ only defense to NovaStar’s foreclosure is a standing argument based on her inaccurate recitation of Washington’s Deed of Trust Act.

Since the Trustee’s Sale held on June 29, 2007, well over five years ago, April Miller has continued to occupy the Property without

¹ Attorneys who have appeared to date for Appellants: (1) Clausen Law Firm: (Robert Monjay, Mark Clausen); (2) Brandt Law Group (Michael D. Brandt); (3) Joseph Rockne; (4) W. Dan Nelson (Oklahoma); (5) Diane B. Templin; (6) Betts Patterson Mines (James D. Nelson); (7) Marja Starczewski for Marion Rucker; and (9) currently Jason Anderson for Appellants.

payment of rent or any other amounts, living there free of cost. CP 2482. It is time for this action to end.

Unable to purchase a home on their own, April Miller, and her husband at the time, Carl Miller, sought the assistance of her father, Marion Rucker, after learning that her father's credit score was over 800. CP 1511; 2483. April Miller asked Marion Rucker to assist her with the purchase of the Property located at 14647 124th Place NE, Woodinville, Washington 98072 and he agreed to do so. *Id.* At the time, April Miller was employed with mortgage broker, Clarion Mortgage Capital, Inc., the entity that brokered the loans with NovaStar to finance the purchase of the Property. CP 1325; 1449; 1451; 1458; 2483.

On February 20, 2006, Carl Miller, signed a Purchase and Sale Agreement to purchase the Property from Casey R. Barber. CP 2105-2129; 2483. As her father resided in California at the time, April Miller asked her sister, Micaela Rucker, if she would sign the loan documents on her father's behalf because he was unable to travel to Washington, and April Miller wanted to close the loans as quickly as possible. CP 1512-1513; 2483. Micaela Rucker agreed. CP 1324; 2483. April Miller then arranged for Marion Rucker to sign a Durable Power of Attorney, granting Micaela Rucker specific powers to purchase, buy, acquire and do all acts

necessary to complete the purchase and sale transaction of the Woodinville property. CP 1325; 1330-1332; 2483-2484.

On March 23, 2006, in connection with the purchase of the Property, Micaela Rucker met with escrow agent Colleen Penick and, with April Miller present, signed the loan origination documents for two loans with NovaStar Mortgage, Inc. CP 1325-1326; 2484. In her Affidavit, Micaela Rucker testified that she signed an Addendum to the Purchase and Sale Agreement which assigned the contract from Carl Miller to her father Marion Rucker. CP 1327; 2484. She also testified that she signed a First Position Note and Deed of Trust with NovaStar Mortgage, Inc. ("NovaStar") memorializing a loan in the amount of \$374,400.00. CP 1326; 2484. The Note was secured by a Deed of Trust that encumbered the Property, and was recorded on March 24, 2006, under King County Auditor's File No. 20060324002748. CP 1334-1360; 2484. Micaela Rucker also testified that she signed a Second Position Note and Deed of Trust with NovaStar for a loan in the amount of \$93,600.00. CP 1326; 2484. The Note was secured by a Deed of Trust that also encumbered the Property, and was recorded on March 24, 2006, under King County Auditor's File No. 20060324002749. CP 1362-1377; 2484. Micaela Rucker also testified that she signed Occupancy and Financial Affidavits, Borrower's Certifications, and a HUD Settlement Statement. CP 1326;

2484-2485. In addition to Micaela Rucker's execution of documents, Marion Rucker's wife, Annette Rucker, executed a Quit Claim Deed, relinquishing any interest she had in the Property. CP 1521; 2484-2485.

At the time the loans originated, April Miller informed NovaStar that she was **not** related to the borrower, Marion Rucker, who is her father. CP 1402; 2272-2273; 2485. Thus, the application was thought by NovaStar to be an arms-length transaction. CP 1402; 2272; 2485. Relying on this information, NovaStar funded both loans on March 23, 2006. CP 1403; 2272; 2485.

Shortly after the loans closed, Carl and April Miller moved into the Woodinville Property. CP 1327; 2485. Micaela Rucker also moved in and lived there for a few months. *Id.* Micaela Rucker testified it was her understanding that April Miller had an agreement with their father, Marion Rucker, to pay the monthly loan payments to NovaStar; however, she did not, and Marion Rucker ended up making approximately six payments on the loans. CP 1327; 1403; 1515; 2485. When Marion Rucker could no longer afford to make the payments, the Woodinville property was foreclosed. CP 1327; 1403; 1515; 1784; 1786-1787; 2485.

On or about June 15, 2006, the Rucker loans were securitized into NovaStar Mortgage Funding Trust, Series 2006-2, NFI 2006-2 Group II, with NovaStar retaining the servicing rights. CP 1403; 2485. The duties of

NovaStar's servicing duties are set forth in Article III of the Pooling and Servicing Agreement, dated June 1, 2006 ("PSA"). CP 616-1274; 1403; 1503; 2485. Under the PSA, NovaStar, had the right and obligation, as the Servicer, to effect the foreclosure of the Rucker loan and it had the right to do so in its name, and certainly in accordance with its normal servicing practices:

Section 3.01 Servicer to Assure Servicing.

(a) The Servicer shall supervise, or take such actions as are necessary to ensure, the servicing and administration of the Mortgage Loans and any REO Property in accordance with all applicable requirements of the Servicing Criteria, with this Agreement and with its normal servicing practices, which generally shall conform to the standards of an institution prudently servicing mortgage loans for its own account and shall have full authority to do anything it reasonably deems appropriate or desirable in connection with such servicing and administration. The Servicer may perform its responsibilities relating to servicing through other agents or independent contractors, but shall not thereby be released from any of its responsibilities as hereinafter set forth. Subject to Section 3.06(b), the authority of the Servicer, in its capacity as Servicer, and any Subservicer acting on its behalf, shall include, without limitation, the power to (i) consult with and advise any Subservicer regarding administration of a related Mortgage Loan, (ii) approve any recommendation by a Subservicer to foreclose on a related Mortgage Loan, (iii) supervise the filing and collection of insurance claims and take or cause to be taken such actions on behalf of the insured Person thereunder as shall be reasonably necessary to prevent the denial of coverage thereunder, and (iv) effectuate foreclosure or other conversion of the ownership of the Mortgaged Property securing a related Mortgage Loan, including the employment of attorneys, the institution of legal proceedings, the collection of deficiency judgments, the acceptance of compromise proposals and any other matter pertaining to a delinquent Mortgage Loan. The authority of the Servicer shall include, in addition, the power on behalf of the Certificateholders, the Trustee, or any of them to (i) execute and

deliver customary consents or waivers and other instruments and documents, (ii) consent to transfer of any related Mortgaged Property and assumptions of the related Mortgage Notes and Mortgages (in the manner provided in this Agreement) and (iii) collect any Insurance Proceeds and Liquidation Proceeds. Without limiting the generality of the foregoing, the Servicer and any Subservicer acting on its behalf may, and is hereby authorized, and empowered by the Trustee when the Servicer believes it is reasonably necessary in its best judgment in order to comply with its servicing duties hereunder, to execute and deliver, on behalf of itself, the Certificateholders, the Trustee, or any of them, any instruments of satisfaction, cancellation, partial or full release, discharge and all other comparable instruments, with respect to the related Mortgage Loans, the insurance policies and the accounts related thereto, and the Mortgaged Properties. The Servicer may exercise this power in its own name or in the name of a Subservicer.

Section 3.13 Realization Upon Defaulted Mortgage Loans.

(a) The Servicer shall, or shall direct the related Subservicer to, foreclose upon or otherwise comparably convert the ownership of properties securing any Mortgage Loans that come into and continue in default and as to which no satisfactory arrangements can be made for collection of delinquent payments pursuant to Section 3.06, . . . In the event that title to any Mortgaged Property is acquired in foreclosure or by deed in lieu of foreclosure, the deed or certificate of sale shall be issued to the Trustee and held by the Custodian....CP 631-637; 643.

On or about September 2006, Marion Rucker defaulted in his monthly payments and a nonjudicial foreclosure was commenced on the second position Note and Deed of Trust. CP 1403; 1788-1792; 2487.

On December 6, 2006, NovaStar Mortgage, Inc. executed an Appointment of Successor Trustee under which Quality Loan Service Corporation of Washington (“QLS”) was appointed Trustee by instrument

recorded on December 20, 2006, under King County Auditor's File No. 20061220001288. CP 429-430; 1783-1784; 2487.

On December 7, 2006, QLS, as Agent for NovaStar Mortgage, Inc. issued a Notice of Default via first class and certified mail, and had it posted on the Property on December 8, 2006. CP 1788-1792; 2487.

On March 16, 2007, Mortgage Electronic Registration Systems, Inc. ("MERS") executed an Assignment of Deed of Trust dated March 24, 2007, and recorded on March 28, 2007, under King County Auditor's File No. 20070328001722, under which the beneficial interest was transferred to NovaStar Mortgage, Inc. CP 431; 2487.

On March 23, 2007, a Notice of Trustee's Sale was issued by QLS as Trustee and recorded under King County Recording No. 20070329001279. CP 1793-1797; 2487-2488. The Notice of Trustee's Sale was mailed via first class and certified to and posted on the Property, and the was published on May 29, 2007 and June 19, 2007. CP 1811-1815; 2488. This Notice of Trustee's Sale informed Marion Rucker that he was in arrears on his mortgage payments and unless he cured the default, his home would be sold at a nonjudicial foreclosure Trustee's Sale on June 29, 2007. CP 1793-1797; 2488.

After the default, Carl and April Miller unsuccessfully attempted to purchase the Property. CP 2149-2150; 2488. When Marion Rucker did

not cure the default, a Trustee's Sale was held on NovaStar's second position loan on June 29, 2007 and NovaStar as the successful bidder. CP 1786-1787; 1816-1826; 2488. NovaStar was entitled possession of the Property on the 20th day following the Trustee's Sale. CP 1795; 2488. A Trustee's Deed was issued in favor of NovaStar Mortgage, Inc., and was recorded on July 09, 2007, under King County Recording No. 20070709001375. CP 1786-1787; 2488.

On November 1, 2007, Saxon Mortgage acquired the servicing rights for the Rucker loan. CP 1773.

Because the occupants refused to vacate the property, NovaStar was forced to file an Unlawful Detainer action on June 25, 2008, under cause number 08-2-17126-4 SEA ("U.D. Action"). In response, on October 9, 2008, April Miller retained Counsel and caused the underlying Complaint to Quiet Title, to be filed, requesting that the Trial Court Quash the Trustee's Deed and Restrain Execution of Writ of Restitution, under King County Superior Court cause number 08-2-34769-9 SEA ("Quiet Title Action"). CP 1-8; 2488.

On October 23, 2008, the initial hearing for Appellants' Motion for Preliminary Injunction was heard before the Honorable Judge Erlick. CP 2660-2661; RP 1-25.² After reviewing the parties' briefing and hearing

² Respondent's Verbatim Report of Proceedings dated October 23, 2008.

argument from both parties, Judge Erlick continued the hearing to November 5, 2008, to allow the parties additional time to submit supplemental briefing. CP 2660-2661. On November 5, 2008, Judge Erlick recused himself. Thus, the hearing was continued to November 18, 2008 and the case was re-assigned to the Honorable Judge Barnett. CP 67. On November 18, 2008, following review of the parties' briefing and hearing argument from both parties, Judge Barnett granted Appellants' Motion for Preliminary Injunction. CP 2488. Pursuant to this Order, Appellants posted \$5,000.00 into the Court registry to stay enforcement of the Writ of Restitution. CP 2489.

On April 7, 2010, after several hearings, extensive briefing and motion practice, the Trial Court granted NovaStar's Motion for Summary Judgment and dismissed Appellants' claims against it with prejudice entitling NovaStar to (1) immediate possession of the Property; and (2) to the issuance of a Writ of Restitution. CP 2336-2338; 2489.

On April 21, 2010, the Trial Court denied Appellants' Motion for Stay Pending Reconsideration of the Order Granting NovaStar's Motion for Summary Judgment. CP 348-349; 2489. The very same day and after being denied a Stay, Marion Rucker filed Chapter 13 Bankruptcy in the Southern District of California under Case No. 10-06580-LT13. CP 289-291; 2489. Marion Rucker testified in his deposition that he let the

Bankruptcy Case No. 10-06580-LT13, be dismissed on June 8, 2010, when his daughter, April Miller did not pay his Bankruptcy fees as agreed as he did not have the money to pay them. CP 1508-1509; 2489.

On July 16, 2010, the Trustee's Deed was amended and re-recorded to reflect the vesting to The Bank of New York Mellon, as Successor Trustee under NovaStar Mortgage Funding Trust, Series 2006-2. CP 574-577.

To further delay NovaStar's execution on the Writ, Marion Rucker filed another Chapter 13 Bankruptcy in the Southern District of California under Case No. 10-11599-LT13, on June 30, 2010. CP 2489. Then on December 6, 2010, an Order Granting Relief from Stay was entered in Bankruptcy Case No. 10-11599-LT13. CP 511-513.

On January 7, 2011, Appellants' Motion to Vacate the April 7, 2011 Summary Judgment in favor of NovaStar was granted. CP 508-509; 2489. However, Appellants were required to post additional security in the amount of \$10,000.00 in order to further stay the Writ of Restitution, which they did on February 3, 2011. *Id.*

On March 21, 2011, Appellants and QLS entered into a Stipulation and Agreed Order that provides QLS does not have to participate in the Quiet Title Action, but shall nevertheless be bound by any Order or

Judgment issued in this action regarding the Property. CP 2432-2436; 2490.

Due to continued non-compliance with the discovery process, on April 7, 2011, the Trial Court granted Novastar's Motion and Order to Compel the Deposition of April Miller with monetary sanctions. CP 2153-2154; 2339-2341; 2466-2468; 2490.

On April 18, 2011, the Trial Court denied Appellants' Motion for Reconsideration granting Defendant NovaStar's Motion to Compel the Deposition of April Miller. CP 2512.

On April 20, 2011, Marion Rucker filed a Motion to Substitute Parties and Declaration in Support, requesting dismissal from this action as he has no interest in the Property, however, for reasons unknown, he struck his Motion later the same day. CP 2473-2480; 2491.

On September 22, 2011, based upon on the record before the Trial Court, an Order was entered granting NovaStar's Second Motion for Summary Judgment, and denying Appellants' Motion for Summary Judgment. CP 1754-1756. On October 4, 2011, the Trial Court entered an amended Summary Judgment correcting the penultimate paragraph of the September 22, 2011 Order on Summary Judgment. CP 1748.

On December 1, 2011, the Trial Court denied Appellants' Motion for Reconsideration. CP 1781-1782.

On October 5, 2011, Appellants filed their Notice of Appeal. CP 1751-1753.

On December 22, 2011, Appellants filed a Motion to Post Cash Bond in the amount of \$5,000.00 to stay enforcement of the Writ of Restitution pending Appeal. CP 2521-2522.

On December 23, 2011, Appellants filed a Notice of Posting Supersedeas Bond in the amount of \$4,000.00 into the Court Registry to stay enforcement of the Writ of Restitution pending Appeal. CP 2523-2524.

On January 5, 2012, NovaStar filed a Motion to Increase Supersedeas Bond Amount to Stay Enforcement of Writ of Restitution pending Appeal. CP 2525-2535.

On January 13, 2012, an Order to Post Cash Bond was entered with the Trial Court. The Order required Appellants post a Supersedeas Bond in the amount of \$50,000.00 into the Court Registry to stay enforcement of the Writ of Restitution pending Appeal. CP 2536-2537.

On January 27, 2012, NovaStar's Motion to Increase Supersedeas Bond Amount to Stay Enforcement of Writ of Restitution was granted. Pursuant to this Order, Appellants were required to post a Supersedeas Bond in the amount of \$89,397.60 by February 10, 2012, to further stay enforcement of the Writ of Restitution pending Appeal. CP 2604-2605.

On February 6, 2012, Appellants filed a Motion for Reconsideration of the Order Granting NovaStar's Motion to Increase Supersedeas Bond. CP 2610-2611.

On February 23, 2012, the Trial Court denied Appellants' Motion for Reconsideration of the Order Granting NovaStar's Motion to Increase Supersedeas Bond. CP 2612-2614.

Appellants failed to comply with the Court's Order and did not post a Supersedeas Bond in the amount of \$89,397.60 by February 10, 2012. Several bankruptcy filings have ensued since then to delay the eviction proceedings. As of the date of filing this Responsive Brief, the property is still occupied.

III. SUMMARY OF ARGUMENT

The record in this case consists of the pleadings filed by each party, excerpts of the testimony at a deposition of the Appellants Marion Rucker and April Miller, John Holtmann, and Verbatim Report of Proceedings.

Appellant, Marion Rucker, defaulted on his loan with NovaStar. Following this default, NovaStar commenced a nonjudicial foreclosure on the second position Note and Deed of Trust.

The Trial Court's Order granting Summary Judgment should be affirmed because the Appellants claims are barred by the doctrines of

ratification, waiver and estoppel, and further on the merits, as argued below, there is no factual basis to support the Appellants' Loan Origination and Wrongful Foreclosure claims.

IV. ARGUMENT

A. STANDARD OF REVIEW

This court should review the trial court's entry of the September 22, 2011, Order on Summary Judgment and October 2, 2011, Amended Summary Judgment *de novo*, engaging in the same inquiry as the Trial Court. *Hartley v. State*, 103 Wn.2d 768, 774, 698 P.2d 77 (1985); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Because the appellate court is in as good a position as the trial court to judge the evidence, the appellate court may substitute its judgment for that of the trial court about the facts as well the application to the law. *Unisys Corp. v. Senn*, 99 Wn. App. 391, 394, 994 P.2d 244 (2000).

Summary judgment will be granted when, after viewing the pleadings, depositions, admissions and affidavits, and all reasonable inferences that may be drawn therefrom, in the light most favorable to the nonmoving party, it can be stated as a matter of law that (1) there is no genuine issue as to any material fact, (2) all reasonable persons could reach only one conclusion, and (3) the moving party is entitled to

judgment. *Olympic Fish Products v. Lloyd*, 93 Wn.2d 596, 602, 611 P.2d 737 (1980).

A trial court's decision will also be affirmed on appeal if it is sustainable on any theory within the pleadings and proof. *Wendle v. Farrow*, 102 Wn.2d 380, 382, 686 P.2d 480 (1984); *Gross v. City of Lynnwood*, 90 Wn.2d 395, 401, 583 P.2d 1197 (1978).

B. APPELLANTS' CLAIMS ARE WAIVED BECAUSE THEY FAILED TO RESTRAIN THE TRUSTEE'S SALE

Appellants assert a number of errors in the loan documents, which they became aware of after the loans closed. CP 1-8. Appellants decided to wait over a year until after the Trustee's Sale, to assert their claimed defenses, despite having received notice of the Trustee's Sale, which informed them of their right to enjoin the sale and informed them that they were in arrears on their mortgage payments and unless they cured the default by June 18, 2007, their home would be sold at a nonjudicial foreclosure Trustee's Sale on June 29, 2007. CP 1793-1797; 1811-1815; RCW 61.24 et seq.

Where a borrower fails to restrain a trustee's sale and such sale takes place, most state law claims related to that trustee's sale are waived by operation of law. *Brown v. Household Realty Corp.*, 146 Wn. App. 157, 163, 189 P.3d 233 (2008), *review denied*, 165 Wn.2d 1023, 202 P.3d

308 (2009).³ When a borrower has reason to challenge the foreclosure of his property, RCW 61.24.130 governs the procedure that the borrower must follow to enjoin the sale. *See Brown v. Household Realty Corp.*, 146 Wn. App. at 163 (2008), *review denied*, 165 Wn.2d 1023 (2009). “This statutory procedure is ‘the only means by which a grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure.’ ” *Id.* (quoting *Cox v. Helenius*, 103 Wn.2d 383, 388, 693 P.2d 683 (1985)). If a borrower fails to enjoin the sale, the borrower waives any claims related to the underlying obligation and the sale itself. *Plein v. Lackey*, 149 Wn.2d 214, 227-28, 67 P.3d 1061 (2003) (finding waiver even though the plaintiff filed a lawsuit seeking to enjoin the sale prior to the sale because plaintiff failed to meet all of the DTA's requirements). “A party waives the right to post-sale remedies where the party (1) received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a Court order enjoining the sale.” *Brown*, 146 Wn.App at 163.

³ The Washington legislature responded to the Court of Appeals' holding in *Brown* by enacting RCW 61.24.127. RCW 61.24.127(1)(a)-(c) preserves post-sale claims for fraud, violations of the consumer protection act, and failure by the trustee to materially comply with the DTA in cases of owner-occupied property. However, RCW 61.24.127 preserved the core holding of *Brown*: nearly all state law claims are waived where a borrower fails to restrain a trustee's sale.

In an attempt to challenge the foreclosure, Appellants have presented conflicting testimony to support their claims. For example, in their verified Complaint, Appellants alleged:

“[W]ere told, by a man who identified himself as the auctioneer, that the sale had been postponed.” CP 5.

On September 29, 2008, in another attempt to challenge the foreclosure, April Miller states:

“I was told that the Property was not being auctioned. I did not see or hear anyone auctioning the Property. To the best of my ability to ascertain, the Property was not auctioned on June 29, 2008. Subsequent to the supposed Trustee’s Sale, I spoke with representatives of Quality Loan Service Corporation, who informed that no sale had occurred.” CP 2504.

At Appellants’ initial Motion for Preliminary Injunction hearing held on October 23, 2008, before the Honorable Judge Erlick, April Miller had no independent recollection of where she was at the Trustee’s Sale:

The Court: All right. Now when you said courthouse, where are you referring to?

Ms. Miller: The --the address that was on the notice to go.

The Court: But where did you go? Just tell me where you went.

Ms. Miller: I just might have amnesia, but I just -- wherever -- the place that was (inaudible)

The Court: Where was the building? Was it this building?

Ms. Miller: It -- it's in my -- I went to the building in -- I walked to -- not to the back of the building. I walked to the front. I went to the sheriff's office and asked them where they have the (inaudible) sales. It was me and my husband.

The Court: Okay. And --

Ms. Miller: And --

The Court: And where did the sheriff tell you to go?

Ms. Miller: He told us to go -- I don't remember. I have it in my notes and I didn't bring them. RP 15-17.⁴

Following this hearing, in yet another attempt to challenge the foreclosure, April Miller states:

“My husband and I went to the Administration Building, 500 4th Ave., Seattle. This was the place listed on the Notice of Trustee's Sale. The sale was scheduled for 10:00 AM. We arrived an hour or so before that time. While we were there, we asked several people about the sale. No one we spoke with had any information about the Property or the sale. We stayed in the sale area for some time after 10:00 AM. We heard many properties being called. No one called my father's Property.” CP 179-180; 2504.

⁴ Respondent's Verbatim Report of Proceeding dated October 23, 2008.

However, April Miller testified in her deposition that she does not recall whether she received any documentation from QLS showing that the Trustee's Sale was cancelled. CP 1524; 2504.

April Miller further testified that she does not recall where she was located around the Administration Building on the date of the sale, that she does know who she spoke to, that she does not recall whether or not other foreclosure sales were being called, that she does not recall whether she was in or outside or whether it was raining, and that she does not recall what side of the building she was on. CP 1525; 2505.

She also testified that she had two casts on for a torn clavicle and was on medication, so her husband walked around but she could not recall specific details of that day, contrary to her previously filed Declaration. *Id.*

In addition, although Carl Miller executed a Declaration in an attempt to challenge the foreclosure, he merely parrots the same facts that are presented in his wife, April Miller's, above-referenced Declaration and has been absent from this litigation ever since. Likewise, Marion Rucker has no personal knowledge of the facts surrounding the Trustee's Sale – he only has the information that his daughter has provided to him. CP 1517; 2505.

Appellants did not provide the Trial Court any evidence to show whom they specifically spoke with or when or where these alleged conversations occurred. To the contrary, the auctioneer of the Trustee's Sale, Jake Patterson's Affidavit states:

“I conducted the Sale on June 29, 2007, at 10 AM at the main entrance to the Administration Building, 500 4th Avenue, Seattle, WA. I did not call a postponement of the Sale; and the Property was sold back to the beneficiary for the amount of the opening bid, \$106,852.95.” CP 1819; 1823; 2505.

April Miller has been the driving force behind this lawsuit and her representations are the sole source of the facts upon which this action is based. Although Appellants do not dispute having received notice of Trustee's Sale, the Trustee's Sale was not restrained. As provided in the Affidavit of Sierra West, Assistant Trustee Sales Officer with QLS, the Trustee's Sale was conducted according to statute. CP 1783-1785. This is further substantiated by the Trustee's certification attached to Jake Patterson's Affidavit, that the Trustee's Sale was held as evidenced from the auctioneer's certificate of sale that shows that the nonjudicial Trustee's Sale occurred on June 29, 2007. CP 1816; 1825; 2506. Accordingly, the Property was sold to NovaStar as the successful bidder, entitling NovaStar possession of the Property on the 20th day following the Trustee's Sale. CP 1784; 1786-1787. A Trustee's Deed was issued in

favor of NovaStar Mortgage, Inc. and was recorded on July 09, 2007, under King County Recording No. 20070709001375. CP 1786-1787.

Appellants cite *Albice* for the proposition that the courts should only apply waiver where it is equitable under the circumstances and where it serves the goals of the act. Appellants Brief at 32. *See Albice v. Premier Mortgage Services of Washington, Inc.*, 157 Wn. App. 912, 239 P.3d 1148 (2010); *aff'd* 174 Wn.2d 560, 276 P.3d 1277 (2012). Appellants' review of *Albice* is too limited. As mentioned, waiver has been applied in many Washington cases over the years to post sale challenges. For example, *See Cox v. Helenius*, 103 Wn.2d 383, 388 (1985); *Plein v. Lackey*, 149 Wn.2d 214, 227-28 (2003); *Brown v. Household Realty Corp.*, 146 Wn. App. at 163 (2008), *review denied*, 165 Wn.2d 1023 (2009). *Albice* does nothing to revise these prior decisions. Waiver is an inherent equitable remedy and unless the three elements are not met, it will be applied. Here, Appellants assert a number of errors in the loan documents, which they became aware of after the loans closed. Appellants received the Notice of Default and the Notice of Trustee's Sale, and do not dispute that those Notices advised them of their right to seek to enjoin the sale. CP 1783-1815. Appellants did not invoke any pre-sale remedy afforded to them with respect to their causes of action seeking to set aside the sale of the foreclosed property, thus these claims

may be deemed waived. *Brown* 146 Wn.App at 163; RCW 61.24.127; RCW 61.24.130. In light of the foregoing, it would be inequitable NOT to apply waiver in this case.

C. NOVASTAR WAS AUTHORIZED TO FORECLOSE UPON THE SUBJECT PROPERTY

Under the Washington State Deed of Trust Act, a loan beneficiary may initiate a foreclosure. The Washington State Deed of Trust Act defines “Beneficiary” as “*the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.*” *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 99, 104, 285 P.3d 34 (2012) (citing RCW 61.24.005 (2)). A “holder” with respect to a negotiable instrument is defined as the person in possession if the instrument is payable to bearer or, in the case of an instrument payable to an identified person, if the identified person is in possession. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83 (2012); *Reinke v. Northwest Trustee Services, Inc., et al*, 2011 WL 5079561 (Bkrcty. W.D. Wash).

The *Bain* court also recognized that lenders and their assigns are entitled to name and work through agents. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d at 106-107 (nothing in this opinion should be construed to suggest an agent cannot represent the holder of a note).

Washington law, and the Deed of Trust Act approve of the use of agents. *Id.*, (see e.g., RCW 61.24.031(1)(a) (2011) (“A trustee, beneficiary, *or authorized agent* may not issue a notice of default ... until” (emphasis added))).

In this case, NovaStar was expressly authorized to commence foreclosure of the Marion Rucker Note in its name. CP 632. The plain language of the Note provides “I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note will be called the “Note Holder.” CP 1326; 1375-1377. The loan was then securitized into the NovaStar Mortgage Funding Trust, Series 2006-2, with NovaStar retaining rights as servicer. CP 631-637; 1403. The duties of NovaStar as a servicer, are set forth in Article III of the Pooling and Servicing Agreement dated June 1, 2006, with sections 3.01; 3.06 and 3.13 more specifically addressing NovaStar’s duties and obligations to realize upon defaulted mortgage loans. *Id.* Part of NovaStar’s authority as a servicer was to commence foreclosure proceedings, if necessary in its name. *Id.*

Section 3.01 of the Pooling and Servicing Agreement provides that the servicer shall supervise, or take such actions as are necessary to ensure, the servicing and administration of the Mortgage Loans and any REO Property in accordance with all applicable requirements of the

Servicing Criteria, with the Pooling and Servicing Agreement and with its normal servicing practices and shall have full authority to do anything it reasonably deems appropriate or desirable in connection with such servicing and administration, including commencing foreclosure in its name. CP 632.

Section 3.01 Servicer to Assure Servicing.

(a) The Servicer shall supervise, or take such actions as are necessary to ensure, the servicing and administration of the Mortgage Loans and any REO Property in accordance with all applicable requirements of the Servicing Criteria, with this Agreement and with its normal servicing practices, which generally shall conform to the standards of an institution prudently servicing mortgage loans for its own account and shall have full authority to do anything it reasonably deems appropriate or desirable in connection with such servicing and administration. The Servicer may perform its responsibilities relating to servicing through other agents or independent contractors, but shall not thereby be released from any of its responsibilities as hereinafter set forth. Subject to Section 3.06(b), the authority of the Servicer, in its capacity as Servicer, and any Subservicer acting on its behalf, shall include, without limitation, the power to (i) consult with and advise any Subservicer regarding administration of a related Mortgage Loan, (ii) approve any recommendation by a Subservicer to foreclose on a related Mortgage Loan, (iii) supervise the filing and collection of insurance claims and take or cause to be taken such actions on behalf of the insured Person thereunder as shall be reasonably necessary to prevent the denial of coverage thereunder, and (iv) effectuate foreclosure or other conversion of the ownership of the Mortgaged Property securing a related Mortgage Loan, including the employment of attorneys, the institution of legal proceedings, the collection of deficiency judgments, the acceptance of compromise proposals and any other matter pertaining to a delinquent Mortgage Loan. The authority of the Servicer shall include, in addition, the power on behalf of the Certificateholders, the Trustee, or any of them to (i) execute and deliver customary consents or waivers and other instruments and documents, (ii) consent to transfer of any related Mortgaged

Property and assumptions of the related Mortgage Notes and Mortgages (in the manner provided in this Agreement) and (iii) collect any Insurance Proceeds and Liquidation Proceeds. Without limiting the generality of the foregoing, the Servicer and any Subservicer acting on its behalf may, and is hereby authorized, and empowered by the Trustee when the Servicer believes it is reasonably necessary in its best judgment in order to comply with its servicing duties hereunder, to execute and deliver, on behalf of itself, the Certificateholders, the Trustee, or any of them, any instruments of satisfaction, cancellation, partial or full release, discharge and all other comparable instruments, with respect to the related Mortgage Loans, the insurance policies and the accounts related thereto, and the Mortgaged Properties. The Servicer may exercise this power in its own name or in the name of a Subservicer. CP 632.

By its authority under the Pooling and Servicing Agreement, NovaStar appointed QLS as the successor trustee. Additionally, the Deed of Trust Act expressly allows an authorized agent to issue the Notice of Default. RCW 61.24.031. In this case, the Appointment of Successor Trustee was signed, notarized, and recorded. CP 429-430. By statute, then, an agent of the beneficiary may issue the Notice of Default. As trustee, QLS had authority to commence foreclosure proceeding on the property. RCW 61.24.030-040.

Appellants have failed to allege that because QLS issued a Notice of Default on December 7, 2006 after the Appointment of Successor Trustee was signed on December 6, 2006, but prior to its recordation on December 20, 2006, this error caused them prejudice or harm and have not explained how this error affected the nonjudicial foreclosure proceedings.”

See Vawter v. Quality Loan Service Corporation of Washington, et al., 2010 WL 5394893 (W.D. Wash). Accordingly, NovaStar's Summary Judgment should be affirmed.

1. NovaStar's Note And Deed of Trust Are Valid Even If Signed One Day After It Was Dated

Contrary to Appellants' contention, NovaStar's Note and Deed of Trust are valid even if signed one day after the Deed of Trust was dated. As the Washington Supreme Court held, a defect in "the date of the acknowledgment is not a material defect" *Barouh v. Israel et al*, 46 Wn.2d 327, 330; 281 P.2d 238 (1955) (citing 1 C.J.S. §85 *Acknowledgments*, p. 843). Even a falsely acknowledged deed is not invalid. *Ockfen v. Ockfen*, 35 Wn.2d 439, 440-41, 213 P.2d 614 (1950). Moreover, Washington cases have held that even more serious defects, such as the absence of the acknowledgement of an essential party's signature did not invalidate the mortgage being foreclosed upon. *Bremner v. Shafer*, 181 Wash. 376; 384, 43 P.2d 27 (1935) (citing *Fidelity & Casualty Co. v. Nichols*, 124 Wash. 403, 214 P. 820 (1923)). In entering a decree of foreclosure on the unacknowledged instrument, the *Bremner* Court emphasized that "[w]e have repeatedly held that an unacknowledged deed or mortgage was good as between the parties." 181 Wash. at 384 (citing *Matson v. Johnson*, 48 Wash. 256, 93 P. 324, 125 Am. St. Rep. 924 (1908); *Lynch v. Cade*, 41 Wash. 216, 83 P. 118 (1905); *Bloomingtondale v. Weil*, 29 Wash. 611, 70 P.

94 (1902); *Carson v. Thompson*, 10 Wash. 295, 38 P. 1116 (1984). Washington Courts have found no reason to alter the law laid out almost a century ago. Appellate Courts have continued to hold that “documents which are not properly executed and acknowledged ‘impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force.’” *In the Matter of the Trustee’s Sale of the Real Property of Smith*, 93 Wn. App. 282, 288; 968 P.2d 904 (1998) (quoting RCW 65.08.030; accord *Eggert v. Ford*, 21 Wn. 2d 152, 160, 150 P.2d 719 (1944)). In referring to a defective acknowledgement, the Washington Supreme Court stated, “It is a well known rule of construction that a thing which is within the spirit of the law, although not strictly within its letter, is yet within the law.” *Carson*, 10 Wash. at 301.

2. NovaStar’s Note And Deed of Trust Are Valid Even If The Notary’s License Was Expired At The Time Of Signing

In yet another attempt to invalidate the Note and Deed of Trust, Appellants claim that the Deed of Trust was not properly notarized, as the notary’s powers had expired and that her notary was fraudulent. Appellants’ Brief at 4. The fact that Colleen Penick may not have been a licensed notary or the fact that she may not have been a properly licensed

escrow agent has no relevance as to whether the Deed of Trust is valid or whether the Trustee's Sale occurred. Such a claim of negligence would be against Colleen Penick, who is not a party to this action.

Because the purpose of an acknowledgement is to authenticate who signed the document, the statement that the signatory is personally known, or otherwise suitably identified to the notary, the signature of an authorized notary and the notary's seal are generally essential.

Washington cases have held that even serious defects, such as the absence of the acknowledgement of an essential party's signature did not invalidate the mortgage being foreclose upon. *Bremner v. Shafer*, 181 Wash. at 384 (1935) (citing *Fidelity & Casualty Co. v. Nichols*, 124 Wash. 403 (1923)). In entering a decree of foreclosure on the unacknowledged instrument, the *Bremner* Court emphasized that "[w]e have repeatedly held that an unacknowledged deed or mortgage was good as between the parties." 181 Wash. at 384 (citing *Matson v. Johnson*, 48 Wash. 256 (1908); *Lynch v. Cade*, 41 Wash. 216 (1905); *Bloomingtondale v. Weil*, 29 Wash. 611 (1902); *Carson v. Thompson*, 10 Wash. 295 (1894)). In referring to a defective acknowledgement, the Washington Supreme Court stated "It is a well known rule of construction that a thing which is within the spirit of the law, although not strictly within its letter, is yet within the law" *Carson*, 10 Wash. at 301 (1894).

Significantly, the Washington Supreme Court has also held that a deed in question was valid as between the parties, notwithstanding the absence of the notarial seal in the acknowledgment. *In the Matter of the Estate of James Deaver*, 151 Wash. 454; 456; 276 P. 296 (1929). As the *Deaver* Court explained:

[T]he fact that the instrument of conveyance did not bear the impression of the notarial seal of the notary public who took the acknowledgment of the deed [does not invalidate the deed as a conveyance]. The deed was valid as between the parties, and valid as to all persons claiming under the grantor, except, perhaps, a purchaser of the property for a valuable consideration who took without actual notice of the outstanding deed.

151 Wash. at 456 (citing *Mann v. Young*, 1 Wash. Terr. 454, 1874 WL 3290 (1874); *Edson v. Knox*, 8 Wash. 642, 36 P. 698 (1894); *Carson v. Thompson*, 10 Wash. 295 (1894); *Bloomingdale v. Weil*, 29 Wash. 611 (1902); *Matson v. Johnson*, 48 Wash. 256 (1908); *Fidelity & Casualty Co. v. Nichols*, 124 Wash. 403 (1923).

Washington Courts have found no reason to alter the law laid out almost a century ago; appellate courts have continued to hold that “documents which are not properly executed and acknowledged ‘impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance

with the laws regulating the execution, acknowledgment, and recording of the instrument then in force.”” *In the Matter of the Trustee’s Sale of the Real Property of Smith*, 93 Wn. App. 282, 288; 968 P.2d 904 (1998) (quoting RCW 65.08.030; *accord Eggert v. Ford*, 21 Wash. 2d 152, 160, 150 P.2d 719 (1944)).

Thus, as in this case, the fact that the individual who notarized the Deed of Trust with an expired notary license or the fact that she may not have been an escrow agent is immaterial as to whether the Deed of Trust is valid or whether the Trustee’s Sale occurred.

3. NovaStar’s Note And Deed Of Trust Are Valid Even If The Durable Power of Attorney Became Effective The Day After Signing

The Appellants’ actions of signing the loan documents and accepting the benefits of the loan, and then making mortgage payments for approximately six months, are clear and manifest indications of their intent of accepting and agreeing to the terms of their loan. They cannot now claim that the Note and Deed of Trust are invalid to which they signed and accepted. Appellants’ Brief at 25-26.

April Miller asked her sister Micaela Rucker to sign documents on behalf of her father for the purchase and sale of the property. CP 1325; 1512-1513; 2483. Now well over six years after the Note and Deed of Trust were signed, Appellants claim that because Marion Rucker granted

his daughter, Micaela Rucker, a Durable Power of Attorney on March 24, 2006, the day after she signed the Deed of Trust on March 23, 2006, this should invalidate the Deed of Trust. However, notwithstanding the date discrepancies, Marion Rucker testified he granted his daughter Power of Attorney for the purchase and sale of the property. CP 1330-1332; 1516-1517; 1520. This minor delay in effectuating the Power of Attorney does not affect whether the Deed of Trust is valid because Rucker ratified the action. The Court in *Horton v. Lothschutz*, 43 Wn.2d 132, 260 P.2d 777 (1953), held that where a deed was initially void, wherein a party could not comprehend the nature of the deed at the time it was executed due to incapacity, the subsequent acquiescence of the parties in interest estopped them from asserting its invalidity in the future. In that case, the Washington Supreme Court reversed the Trial Court, and found, as a matter of law, that even though a deed may be defective or even void at the time of execution, the arrangement and intention of the parties will not be disturbed. *Horton*, 43 Wn.2d at 139.

Marion Rucker intended to grant his daughter, Micaela Rucker, a Durable Power of Attorney, with Specific Powers, with respect to the subject Property, as evidenced in the plain language of the Durable Power of Attorney. It would be inequitable for Marion Rucker to now claim that the Deed of Trust or similar document executed by an attorney in fact is

void given that the Power of Attorney authorized the attorney in fact to enter into the transaction. It is simply inconceivable that the Appellants are attempting to avoid their contractual obligation under their loan, when NovaStar relied on information provided by April Miller to fund the loan, as evidenced by the NovaLinq Screen Prints that were provided to Appellants during discovery. CP 1402-1403; 2272-2273; 2485.

Moreover, Marion Rucker's intention to ratify his daughter's actions were further substantiated by the fact that payments were made for approximately six months. CP 1403; 1515; 2485. Additionally, Marion Rucker contacted NovaStar on several occasions regarding the status of his loans. CP 1478-1492. NovaStar's call notes reflect conversations where Rucker mentioned to NovaStar that his daughter April Miller lives in the house and she was authorized to make payments on his behalf. CP 1481; 1490. On other calls to NovaStar, Marion Rucker mentioned that the loans were fraud and that his daughter was trying to destroy him and his credit. CP 1481; 1488; 1490. Even so, a mortgagor's fraud in obtaining title does not bar foreclosure by the lender, even though the lender later discovered the fraud. *Glaser v. Holdorf*, 56 Wn.2d 204, 352 P.2d 212 (1960). Here, there is no question that Marion Rucker intended to grant a Durable Power of Attorney, with Specific Powers to Micaela Rucker. CP 1330-1331; 1516-1517; 1520. Appellants' reliance on the

harmless one day error in dating the documents is misguided, and plainly not supported by the law.

Consequently, although the Power of Attorney was signed one day after the Deed of Trust, again, as evident from the plain language of the Power of Attorney, it was Marion Rucker's intention to authorize his daughter, Micaela Rucker, to enter into a transaction and execute any and all documents pertaining to the subject Property regarding refinancing, financing, purchasing, etc., and he ratified those actions of his daughter.

Again, Marion Rucker testified that he ratified Micaela Rucker's actions to enter into a transaction and to execute any and all documents pertaining to the subject Property regarding, refinancing, financing, purchasing, which included the right to encumber the Property. CP 1516-1517; 1520.

Accordingly, the Appellants' claims relating to the origination of the loan is barred, and the Trial Court did not err when it concluded that NovaStar was entitled to Summary Judgment.

4. Appellants Cannot Avoid Their Contractual Obligations Merely Because Their Loans Were Securitized

Appellants assert the "evils" of securitization, in an attempt to avoid their contractual obligations. Essentially, Appellants claim that the sale and/or securitization of their Note somehow alleviates their obligation

to repay their loan, and discharges NovaStar's interest. Courts throughout the country have uniformly rejected the same claims, or variations thereof, that securitization or sale of a mortgage loan provides the mortgagor a cause of action. Securitization merely creates a separate contract, distinct from the borrower's debt obligations under the Note, and does not change the relationship of the parties in any way. *See Commonwealth Property Advocates v. Mortgage Electronic Registration Systems, Inc.*, 263 P.3d 397, 686 Utah Adv. Rep. 11, 2011 UT App 232, P10-P11 (Utah Ct. App. 2011) (rejecting the argument that securitization affects the right of the lender and its assignees to foreclose); *In re McCoy*, 446 B.R. 453 (Bkrctcy. D. Or. 2011) (granting motion to dismiss where debt was alleged to be paid "by one or more of the following: income from the trust, credit default swaps, TARP money, or federal bailout funds," but not alleging additional facts); *Rodenhurst v. Bank of America*, 773 F.Supp. 2d 886, 2011 WL 768674 (D. Hawaii 2011) (stating that "the overwhelming authority does not support a cause of action based upon improper securitization" and compiling similar holdings); *Joyner v. Bank of Am. Home Loans*, 2010 WL 2953969, at *2 (D. Nev. July 26, 2010) (rejecting breach of contract claim based on securitization of loan); *Haskins v. Moynihan*, 2010 WL 2691562, at *2 (D. Ariz. July 6, 2010) (rejecting claims based on securitization because plaintiffs could point to no law

indicating that securitization of a mortgage is unlawful, and “[p]laintiffs fail to set forth facts suggesting that Defendants ever indicated that they would not bundle or sell the note in conjunction with the sale of mortgage-backed securities”); *Lariviere v. Bank of N.Y. as Tr.*, 2010 WL 2399583, at *4 (D. Me. May 7, 2010) (“Many people in this country are dissatisfied and upset by [the securitization] process, but it does not mean that the [plaintiffs] have stated legally cognizable claims against these defendants in their amended complaint.”); *Upperman v. Deutsche Bank Nat’l Trust Co.*, 2010 WL 1610414, at *3 (E.D. Va. April 16, 2010) (rejecting claims because they are based on an “erroneous legal theory that the securitization of a mortgage loan renders a note and corresponding security interest unenforceable and unsecured”); *Silvas v. GMAC Mortg., LLC*, 2009 WL 4573234, at *5 (D. Ariz. Dec. 1, 2009) (rejecting a claim that a lending institution breached a loan agreement by securitizing and cross-collateralizing a borrower’s loan).

Appellants also attempt to avoid their contractual obligation under the note by asserting that MERS was required to “note” the transfer of the Rucker loan to the 2006-2 Trust. Appellants’ Brief at 9-10. However, MERS is not a party to the underlying action and Appellants have failed to allege how the lack of noting this transfer in MERS’ system prejudiced them in anyway.

Appellants' attempt to rescind their loan and avoid repaying their debt merely because their mortgage loan was securitized cannot and does not provide a basis for any cause of action against NovaStar. As courts throughout the country have made clear, plaintiffs cannot evade their contractual obligations based solely on the securitization of their loan. Consequently, the Trial Court's order of summary judgment should be affirmed.

V. CONCLUSION

For the reasons set forth above, the Respondent respectfully requests that the Court of Appeals affirm the Trial Court's Order entered on September 22, 2011 and Amended on October 4, 2011, Granting Respondent's Motion for Summary Judgment, and denying Appellants' Motion for Summary Judgment.

RESPECTFULLY SUBMITTED this 19th day of October, 2012.

BISHOP, WHITE, MARSHALL &
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IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MARION RUCKER and APRIL
MILLER and CARL MILLER,

Appellants,

v.

NOVASTAR MORTGAGE, INC.,
AND QUALITY LOAN SERVICING
OF WASHINGTON,

Respondents.

Case No. 67770-5-I

AFFIDAVIT OF
SERVICE

COUNTY OF KING)
STATE OF WASHINGTON) ss

The undersigned being first duly sworn upon oath, deposes and
says:

That on the 19th day of October, 2012, she caused to be delivered
copies of the following document: NovaStar Mortgage, Inc.'s Response
Brief, to the following parties in the manner indicated:

Via U. S. Mail
Jason E. Anderson
8015 - 15 Avenue NW, Suite 5
Seattle, WA 98117-3601

2012 OCT 22 PM 5:34
STATE OF WASHINGTON
COURT OF APPEALS

Dated this 19th day of October, 2012.



Annette Cook, WSBA# 31450
Attorneys for Respondent
720 Olive Way, Suite 1201
Seattle, Washington 98101
(206) 622-5306, Ext. 5917

SIGNED AND SWORN TO (or affirmed) before me on the 19th day of October, 2012.



ANA I. TODAKONZIE
Notary Public in and for the
State of Washington.
Residing in Seattle, Washington.
My appointment expires: 2/28/2015.