

#68516-3-I

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

MICAH SCHNALL,

Appellant

vs.

DEUTSCHE BANK NATIONAL TRUST COMPANY, MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, REGIONAL TRUSTEE
SERVICES, and JOHN DOEs inclusive 1 through 20

Respondents

BRIEF OF APPELLANT

Appeal from King County Superior Court
Case No: 11-2-19807-3SEA
The Honorable Judge Barnett

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COURT OF APPEALS
STATE OF WASHINGTON
[Signature]

ORIGINAL

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A. Assignments of Error:

1. **The Trial Court erred** in dismissing this case under CR 12(b)(6).

The Order is at (CP 1275 – 1276).

2. **The Trial Court erred** in denying a stay of the nonjudicial foreclosure sale, where the Assignment of Deed of Trust was signed by MERS, in violation of Bain. The oral decision is at CP 585. See Order at CP 202. The error is specifically made as follows;

“The security interest in the real property follows the obligation. The Notice of Default provided to the Plaintiff clearly states that, as of the date of the Notice, DBT, as Trustee, was or was soon to be the holder of the beneficial interest under , Plaintiffs deed of trust,”
(Order of 11-17-11, CP 592).

3. The Trial Court erred in making findings upon disputed facts, while not allowing any discovery, or trial, on factual disputes. The following findings are in error, as they are made upon disputed facts;

Defendant, Deutsche Bank National Trust Company (DBT) is the current holder of the promissory note, endorsed in blank by the original lender, Quicken Loans.

DBT holds the note as Trustee of a trust containing numerous notes secured by real property (Trust). The Trust issued certificates, mortgage-backed securities, to investors. The owner of the Trust was IndyMac MBS, Inc. (IMMBS).

The seller of the notes secured by mortgages or deeds of trust to the owner was IndyMac F .S.B. (IMFSB). IMFSB remained the servicer of the loans transferred to the Trust. OneWest Bank, FSB is the successor in interest to IndyMac F.S.B. As the

successor in interest, OneWest Bank assumed responsibility for servicing the loans in the Trust res.

The Trust is governed by a Pooling and Service Agreement (PSA) by and between DBT, IMMBS, and IMFSB. In the complex transaction, the parties detailed acquisition of the loans, transfer of the loans, servicing of the loans, issuance of the securities (certificates), and replacement of loans that did not meet the standards of the Trust agreement. The PSA specifies how the owner is to transfer the loans to the Trust, including express language in the note endorsement.

Plaintiff contends that DBT can assert no interest in the note as the endorsement on the original notes is not in conformity with the dictates of the PSA.

Plaintiff is, however, neither a party to nor a third party beneficiary of the PSA.

Whether any party to the PSA waives any requirement in the PSA is of no concern to Plaintiff.

DBT is the holder of the original promissory note, endorsed in blank.

Plaintiff does not contest the validity or authenticity of the note.

The security interest in the real property follows the obligation. The Notice of Default provided to the Plaintiff clearly states that, as of the date of the Notice, DBT, as Trustee, was or was soon to be the holder of the beneficial interest under Plaintiff's deed of trust. Indeed, DBT demonstrated at the hearing on Plaintiff's first motion for preliminary injunction that it was the holder of the original note, which is secured by the deed of trust in question.

Plaintiff is again attempting to stop an impending foreclosure trustee's sale of the security. Plaintiff has failed to establish a clear legal or equitable right to the relief he seeks. He acknowledges the obligation and has not contested the default.

The balance of equities in this circumstance weighs in favor of the lender.

The court did not consider the declaration of Cheye Larson as it appeared insufficient under Title VII.

(All in the Order of November 15, 2011, at CP 591 – 593).

4. **The Trial Court erred** in failing to allow the Plaintiff to amend his complaint, while at the same time dismissing the case “without prejudice” which in theory allows re-filing of the allegations. The Order is at (CP 1275 – 1276).

B. Issues Pertaining to Assignments of Error:

1. Whether the case should be reversed and remanded, for the Trial Court to consider the impact of the Bain case, which had not been available at the time of the Trial Court decisions? (Assignments of Error #1, 2).

2. When the trial judge made some factual findings, in a CR 12(b)(6) dismissal, is reversal and remand necessary to allow discovery and trial upon the disputed facts?
(Assignments of Error # 1, 2, 3, 4).

C. Statement of the Case.

Background, Causes of Action

This case began as a Complaint for Damages and Injunctive Relief, filed June 3, 2011, in King County Superior court. CP 4 – 18.

The Plaintiff/Appellant, Micah Schnall, was owner of a single family home in Redmond, Washington (Schnall home). CP 5. Defendants are Deutsche Bank National Trust Company, and MERS (Mortgage Electronic Registration Systems”) as well as unknown John Does, who were to be determined during discovery (Complaint, CP 5).

The Complaint sought to enjoin a non-judicial foreclosure sale of the Schnall home. The Complaint invoked the Consumer Protection Act, RW 19.86.010 et seq, (CP 13), violations of the Truth in Lending Act, as well as violations of Washington’s Deed of Trust Act in the initiation of a nonjudicial foreclosure action. (CP 16). Finally, the Complaint alleged violations of the Real Estate Settlement Procedures Act (RESPA), CP 17.

The Complaint specifically sought a stay of the nonjudicial foreclosure sale, and a finding that the foreclosure and/or Notice of Default is void (CP 18).

Procedural Facts;

Plaintiff homeowner Micah Schnall obtained an Order to Show Cause, staying the nonjudicial foreclosure sale of his residence, upon the filing of his suit, June 3, 2011. (CP 19). The Declaration of Plaintiff’s Counsel, in support of the Order to Show Cause and stay, recites that the

Notice of Default fails to specify the beneficiary under the Deed of Trust (CP 30).

Facts showing damages suffered by Plaintiff Schnall are set forth in the motion for TRO/Injunction, at CP 21 – 28. Namely, Mr. Schnall indicates that he had originally received a Notice that his mortgage had been transferred or assigned to IndyMac Bank F.S. B., and transfer or assignment of the second mortgage servicing rights to Countrywide Home Loans Inc., (CP 22) After making payments for three years, Plaintiff sought a modification of his loan, under the Home Affordable Mortgage Program. After submitting his application and paperwork, IndyMac delayed responding for several months, then instructed Plaintiff to pay \$1,559.80. Plaintiff Schnall met the requirement to make these payments over a period of three months, completing the Trial Period (CP 23, 24).

After several months more of payments, the status of the loan modification was still unclear (CP 25).

Finally, Plaintiff filed a Chapter 13 Bankruptcy, which was dismissed when Deutsche Bank submitted a claim to the Schnall home. This was the first notice to Plaintiff that Deutsche Bank had claimed an interest in his home. (CP 25).

On June 16, 2011, a Preliminary Injunction was granted, extending the temporary injunction against a nonjudicial foreclosure sale, to July 1, 2011. (CP 36).

On June 15, 2011, Plaintiff obtained a preliminary Forensic Audit of his mortgage documentation from Cheye Larson (CP 52- 54), which summarized the following finding;

“In summary, Defendant Mortgage Electronic Registration System (MERS) and Defendant Deutsche Bank National Trust Company’s use and/or invocation of Washington’s Deed of Trust Act to obtain possession of the subject property and/or a benefit from the sale of the subject property was contrary to the factual basis required to make use of said Deed of Trust Act. Moreover, whether Defendant Mortgage Electronic Registration System (MERS) and Defendant Deutsche Bank National Trust Company ever held such factual basis is, most favorable to these parties. questionable. Nevertheless. at the time of the notice of default they did not possess a valid factual basis to invoke said Deed of Trust Act.”
(Declaration of Cheye Larson, CP 53-54).

The Auditor went on to opine that a more detailed report will show violations of federal statutes in the loan documents (CP 54).

Two further orders, extending the stay of foreclosure through July 8, 2011 and then through July 27, 2011, were entered by Judge Suzanne Barnett CP 63 – 66).

Defendants Deutsche Bank and MERS, both jointly represented by William L. Larkins, Jr., submitted their opposition to preliminary injunction on July 25, 2011 (CP 100 – 111). Regional Trustee Services

Corporation, (RTSC), presented a copy of the Appointment of Successor Trustee, signed by OneWest Bank FSP as attorney in fact to Deutsche Bank National Trust Company, appointing RTSC as successor trustee. The Appointment of Successor Trustee recites;

“that, MICAH SCHNALL, A SINGLE MAN is the Grantor, and STEWART TITLE is the Trustee, and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC, AS NOMINEE FOR OUICKEN LOANS INC. is the Beneficiary under that certain trust deed dated 10/30/2006,. . .” (Appointment of Successor Trustee, CP 118).

RTSC also presents copies of the Notice of Trustee’s Sale (CP 120), dated 11-9-2010, and an Affidavit of Holder of Note, signed by OneWest Bank, FSB as Servicer for Deutsche, dated November 4, 2010. (CPO 125).

A Vice President of OneWest Bank indicated, upon hearsay from unknown sources, that IndyMac Mortgage Services, a division of OneWest, had made efforts to contact Mr. Schnall during times of 2009 and 2010, which attempts to factually contradict assertions in Schnall’s motions for injunction. (Charles Boyle Declaration, CP 131).

The Boyle Declaration presents a copy of the Assignment of Deed of Trust, dated August 18, 2010, wherein MERS purports to assign all beneficial interest under the Deed of Trust to Deutsche as follows;

“FOR VALUE RECEIVED. the undersigned, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. AS

NOMINEE FOR QUICKEN LOANS INC., by the se presents, grants. bargains, sells, assigns. transfers and sets over unto Deutsche Bank National Trust Company, as Trustee of the IndyMac INDX Mortgage Loan Trust 2006-AR39, Mortgage Pass-Through Certificates, Series 2006-AR39 under the Pooling and Servicing Agreement dated December 1, 2006, all beneficial interest under that certain Deed of Trust dated 10/30/2006, and executed by MICAH SCHNALL,. . .” (Assignment of Deed of Trust, CP 136).

A copy of an Adjustable Rate Note is provided, with an apparent endorsement in blank, signed by “Scott Johnson Capture Manager” CP 185. However, the name “Quicken Loans, Inc.” appears to be crossed out, on the endorsement. (CP 185). No discovery has been accomplished in the litigation to find out who Scott Johnson is, or who endorsed the Note.

On July 27, 2011, Judge Suzanne Barnett denied Plaintiff Schnall’s motion for a Preliminary Injunction/Temporary Restraining Order to Enjoin Trustee Sale (Clerk’s Minutes at CP 201, Order at CP 202).

On July 27, 2011, Judge Barnett made the specific conclusion, that “. . . the assignment from MERS that with regards to the beneficial interest in the deed of trust...is effective.” (CP 523 L. 1-3 quoting 7/27 hearing). (CP 561-587 is the transcript of the July 27, 2011 hearing before Judge Barnett.)

As Judge Barnett commented on July 27, 2011;

“I spent two years of my life tracking down mortgage lenders in my prior life, because a broker had sold the same loan to two of them, you know. So it's a business

that is unregulated and needs to be regulated just like a financial institution, and maybe we're there by now, but back in those days there was no such luxury. I also think just - ~Mr. Larkins, I know that you don't - you do represent MERS, but you probably don't have a whole lot of influence on how they do their business, because of this one case maybe you really do. But they assigned this beneficial interest to Deutsche Bank,. . ." (CP 585).

Defendants filed a motion to dismiss under CR 12(b)(6) on November 10, 2011, (CP 545 - 556).

On November 17, 2011, Judge Barnett entered an order denying preliminary injunction, In that order, Judge Barnett stated;

"The security interest in the real property follows the obligation. The Notice of Default provided to the Plaintiff clearly states that, as of the date of the Notice, DBT, as Trustee, was or was soon to be the holder of the beneficial interest under , Plaintiffs deed of trust," (Order of 11-17-11, CP 592).

A timely Motion for Reconsideration was filed by Plaintiff Schnall on November 23, 2011 (CP 596). There is an Order Denying Plaintiff's Motion for Reconsideration dated 11/29/2011 in the file at CP 1231, however, the hearing on the Motion for Reconsideration was apparently not held until December 2, 2011;

"THE COURT: . . . This morning is just too confusing, too confused and too -- maybe too little too late, seeing as how it is 11:50 and the sale was scheduled for 10 o'clock.

There is no injunction that was issued. It was set for yesterday – well, a reconsideration was set for yesterday. That didn't happen, because I wasn't sure where we were with all of this.” (RP of 12-2-11, p. 12)

Plaintiff Schnall had moved to amend his complaint, at CP 771 – 772, CP 1237 – 1238, See also CP 1238, L. 12-15 adding One West Bank as one of the defendants in the proposed amended complaint, and see CP 1239 – 1259 – a new amended complaint that removes TILA / RESPA causes of action.

Judge Barnett entered an order denying the motion to amend complaint, and dismissing the case without prejudice, dated 12/20/2011 (CP 1275 – 1276).

Plaintiff Schnall timely filed a Motion for Reconsideration on December 30, 2011 (CP 1279 – 1297)

On February 23, 2012, Judge Barnett signed an order denying the motion to reconsider the order dismissing the case, denying the motion to amend complaint, and denying the motion for stay pending appeal. (CP 1308 – 1309). A timely notice of appeal was filed. (CP 1310), and then amended to clarify that the appeal was to include all orders.

D. Argument.

Summary: Bain Decision has set the Standard for MERS Documents.

The State Supreme Court's new decision in *Bain v. Metro. Mortg. Grp., Inc.*, Case # 86206-1, August 16, 2012, re-sets the entire premise for this case. Judge Barnett's statement, that MERS had successfully assigned its beneficial interest in the Deed of Trust, is no longer a viable conclusion, given the Supreme Court's decision in *Bain*.

Standard of Review

Review is De Novo.

“[Dismissal under] CR 12(b)(6) is a question of law that we review de novo. [*State ex rel. Evergreen Freedom Found. v. Washington Educ. Ass'n*, 140 Wash.2d 615, 629, 999 P.2d 602 (2000).] Under CR 12(b)(6), dismissal is appropriate only when it appears beyond doubt that the claimant can prove no set of facts, consistent with the complaint, which would justify recovery.[*Bravo v. Dolsen Cos.*, 125 Wash.2d 745, 750, 888 P.2d 147 (1995)] Such motions should be granted “sparingly and with care,” and only in the unusual case in which the plaintiff's allegations show on the face of the complaint an insuperable bar to relief.[*Tenore v. AT & T Wireless Servs.*, 136 Wash.2d 322, 330, 962 P.2d 104 (1998).”

Southwick v. Seattle Police Officer John Doe # s 1-5, 186 P.3d 1089, 145 Wn.App. 292 (Wash.App. Div. 1 2008).

In this case, the appeal stems from the overall dismissal under CR 12(b)(6).

This appeal is also from the Court's denial of a motion to amend, without findings, and denial of injunction.

This court reviews a trial court's denial of a motion to amend for abuse of discretion. *Travis v. Tacoma Pub. Sch. Dist.*, 120 Wn. App. 542, 554, 85 P.3d 959 (2004) (citing *Ino Ino, Inc. v. City of Bellevue*, 132 Wn.2d 103, 142, 937 P.2d 154, 943 P.2d 1358 (1997), cert. denied, 522 U.S. 1077)). A trial court abuses its discretion when its decisions are manifestly unreasonable or based on untenable grounds or reasons. *Id.* (citing *Boeing Co. v. Heidy*, 147 Wn.2d 78, 90, 51 P.3d 793 (2002)).

Civil Rule 15(a), which governs amendments to pleadings, states that leave to amend "shall be freely given when justice so requires."

This court reviews denials of a preliminary injunction for abuse of discretion. *Rabon v. City of Seattle*, 135 Wash.2d 278, 284, 957 P.2d 621 (1998). A trial court abuses its discretion if its decision is "based upon untenable grounds, or the decision is manifestly unreasonable or arbitrary." *Ibid* at 284. The adequacy of notice is a mixed question of law and fact, *Miebach v. Colasurdo*, 102 Wash.2d 170, 175, 685 P.2d 1074

(1984). which this court reviews de novo. *Humphrey Indus. Ltd. v. Clay St. Assocs.*, 170 Wash.2d 495, 501-02, 242 P.3d 846 (2010). *Speelman v. Bellingham/Whatcom County Housing Authorities*, 273 P.3d 1035, 167 Wn.App. 624 (Wash.App. Div. 1 2012).

A party seeking a preliminary injunction must show (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) the acts complained of have or will result in actual and substantial injury. [*Rabon v. City of Seattle*, 135 Wash.2d 278, 284, 957 P.2d 621 (1998)] " [S]ince injunctions are within the equitable powers of the court, these criteria must be examined in light of equity, including the balancing of the relative interests of the parties and the interests of the public, if appropriate." [*Ibid.*] The entitlement to an injunction should be clear; a court will not issue an injunction in a doubtful case. *Ibid.*

Remand is Necessary Under Bain.

This Court should remand for further proceedings, under the State Supreme Court's new decision in *Bain v. Metro. Mortg. Grp., Inc.*, Case # 86206-1, dated August 16, 2012.

Trial Judge Barnett had stated, "they [MERS] assigned this beneficial interest to Deutsche Bank,. . ." (CP 585).

This is no longer a viable conclusion, given the Supreme Court's decision in *Bain*.

“MERS is an ineligible “beneficiary’ within the terms of the Washington Deed of Trust Act,” if it never held the promissory note or other debt instrument secured by the deed of trust.

...

...we agree that characterizing MERS as the beneficiary has the capacity to deceive and thus, for the purposes of answering the certified question, presumptively the first element [of the CPA] is met.

Bain v. Metropolitan, No. 86206-1, File Date 8/16/2012

Under *Bain*, MERS cannot be a beneficiary of the Deed of Trust, and cannot transfer or assign a beneficial interest in the Deed of Trust.

MERS cannot assign beneficial interest to any successor, such as Deutsche Bank, or DBNTC. Furthermore, naming MERS as beneficiary has been ruled as qualifying for the first element of a CPA claim.

Deutsche Bank failed to comply with RCW 61.24.040 and/or other relevant portions of the Deed of Trust Act. RCW 61.24.040 requires the Notice of Trustee's sale to specify that the beneficial interest under the Deed of Trust was assigned, and that said assignment was duly recorded. In this case, the entity purporting to assign the beneficial interest under the Deed of Trust had no authority to do so. Thus, the recording requirement was not met.

On May 24, 2012, the Washington State Supreme Court issued its ruling in *Albice v. Premier Mortgage Services of Washington, Inc., et al*, Supreme Court case No. 85260-0 (May 24, 2012). The relevance of this decision is that the Trustee's Sale occurred beyond the statutorily prescribed time limit, a technical violation of the DTA. As seen in the Supreme Court's decision, a technical violation of the DTA "divests the party of statutory authority" and without statutory authority, any action taken is invalid. The court further stated, "As we have already mentioned and held, under this statute, strict compliance is required. (Citation omitted) Therefore, strictly applying the statute as required, we agree with the Court of Appeals and hold that under RCW 61.24.040(6), a trustee is not authorized, at least not without reissuing the statutory notices, to conduct a sale after 120 days from the original sale date, and such a sale is invalid." *Albice*, pg 9.

In this case, plaintiffs failed to maintain strict compliance with the Washington Deed of Trust Act. This failure "divests the party of statutory authority" and without statutory authority, any action taken, or intended to be taken in the future, is invalid.

"Because the act dispenses with many protections commonly enjoyed by borrowers under judicial foreclosures, lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor

...
Additionally, and equally important, to ensure trustees strictly comply with the requirements of the act, courts must be able to review postsale challenges...

...
We conclude the trustee sale was invalid. We affirm the Court of Appeals and remand to the trial court to enter an order declaring the sale invalid.”
(*Albice*).

Prerequisite of Certification of Note Holder.

Although Deutsche Bank purports to hold (or at least have possession of) the note, that does not satisfy the requirements of the Deed of Trust Act. Under the DTA, in order to properly assign beneficial interest in the Deed of Trust, MERS would have had to have been the holder of the note at the time MERS signed the Assignment of Deed of Trust as “beneficiary.”

As set forth in RCW 61.24.030; “It shall be requisite to a trustee's sale: . . .

(7)(a) That, for residential real property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the 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 as required under this subsection.

Therefore, Deutsche Bank would have had to show that *before* the notice of trustee's sale was recorded, the beneficiary signing the

Assignment of Deed of Trust was the owner (not merely possessor) of the promissory note.

Fidelity & Deposit Co. of Maryland v. Ticor Title Ins. Co., 88 Wash. App. 64 (1997),

The recording statute cannot make valid the invalid note that Home Federal/Fidelity received.

Applied to the instant case, Plaintiff cannot record an invalid “Trustee’s Deed” with the county and by that act convert it into a valid document.

Remand is Necessary Due to Lack of Findings

Detailed findings are required for this Court to know whether the Trial Judge applied the proper standards.

“For an adequate appellate review ... this court should have, from the trial court ... findings of fact (supplemented, if need be, by a memorandum decision or oral opinion) which show an understanding of the conflicting contentions and evidence, and a resolution of the material issues of fact that penetrates beneath the generality of ultimate conclusions, together with a knowledge of the standards applicable to the determination of those facts.”
Groff v. Dept. of Labor, 65 Wn.2d 35, 40, 395 P.2d 633 (1964).

In this case, there are no findings as to why the complaint was not permitted to be amended, while the dismissal of the overall case was “without prejudice”. A “without prejudice” dismissal would ordinarily allow re-filing of a similar case, while permission to amend the complaint

would likewise have a similar result. The trial judge gave no indication why she chose to dismiss “without prejudice” but yet denied the motion to amend complaint.

Bank is not BFP, under Bain and Albice Cases.

Although the Trustee’s sale allegedly took place on December 2, 2011, just two hours prior to the hearing before Judge Barnett, it is clear that Deutsche Bank, the alleged purchaser at the Trustee’s Sale, is not a Bonafide Purchaser (BFP) within the meaning of the Supreme Court opinion of *Albice v. Premier Mrtg. Servs. Of Wash., Inc.*, Docket # 825260-0, File Date 05/24/2012.

Consumer Protection Act.

The Bain decision indicates there may be a Consumer Protection Act violation, where the Deed of Trust seeks to label MERS as beneficiary. In this case, the trial court gave no findings to support dismissal of the Consumer Protection Act claim.

Breach of Contract, or HAMP Modification Refusal.

The Trial Judge made some factual findings, based upon disputed facts, which is not appropriate in a motion to dismiss under CR 12(b)(6). Mr. Schnall had alleged that IndyMac had failed to provide a HAMP

modification, or had failed to notify Mr. Schnall of a decision on HAMP Modification. A Vice President of OneWest Bank indicated, upon hearsay from unknown sources, not subject to cross-examination, that IndyMac Mortgage Services, a division of OneWest, had made efforts to contact Mr. Schnall during times of 2009 and 2010. (Charles Boyle Declaration, CP 131).

The Boyle declaration attempts to factually contradict assertions in Schnall's motions for injunction. Where there are factual disputes, CR 12(b)(6) dismissal is not appropriate, particularly where no discovery had yet been held.

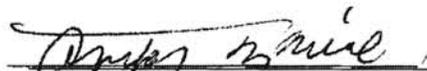
A summary judgment motion calls upon the court to determine from the pleadings and supporting documents whether any genuine issue of material fact exists requiring a trial. *Morris v. McNicol*, 83 Wash.2d 491, 519 P.2d 7 (1974). A CR 12(b)(6) motion questions only the legal sufficiency of the allegations in a pleading. But since this legal determination cannot always be made in a vacuum, it may be necessary to postulate factual situations which might form the basis for the pleading. On a 12(b)(6) motion, no matter outside the pleadings may be considered (*Stevens v. Murphy*, 69 Wash.2d 939, 421 P.2d 668 (1966)), and the court in ruling on it must proceed without examining depositions and affidavits which could show precisely what, if anything, the plaintiffs could possibly

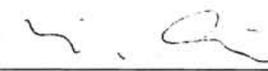
present to entitle them to the relief they seek. Any facts asserted by plaintiffs can be considered by the Court as hypotheticals, to determine whether any set of facts would entitle the plaintiff to relief. *Halvorson v. Dahl*, 89 Wash.2d 673, 674-75, 574 P.2d 1190 (1978). *Haberman v. Washington Public Power Supply System*, 744 P.2d 1032, 109 Wn.2d 107 (1987).

E. Conclusion, Relief Sought.

Appellants request that this Court reverse the Trial Court's holding as to MERS' ability to assign any beneficial interest to the Defendants, and for a Remand so that the trial court can consider the *Bain* case.

Respectfully submitted this September 7, 2012.


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Attorney for Appellant


MAKING SURE
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FOR THE URIE