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No. 71137-7

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

DEBORAH McCALLUM, an individual,

Appellant,

vs.

GOLF ESCROW CORPORATION, a Washington corporation, et al.,

Respondents.

APPEAL FROM THE SUPERIOR COURT  
FOR SNOHOMISH COUNTY  
THE HONORABLE GEORGE APPEL

BRIEF OF APPELLANT

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## I. INTRODUCTION

Without ever contacting appellant Deborah McCallum, respondents Golf Escrow, its principal Pamela Lane, and Trustee Services Inc. (TSI) released McCallum's security interest in a deed of trust that secured her \$550,000 loan to a real estate developer, Craig Reimer. Respondents instead entrusted Reimer to obtain McCallum's signature on the necessary paperwork. Because respondents never contacted her, McCallum did not learn until two years later that Reimer had forged her signature on a request for reconveyance and otherwise lied about his finances. After Reimer defaulted, McCallum sued respondents for their improper release of her security interest. The trial court dismissed McCallum's claims on summary judgment based solely on respondents' argument that they did not proximately cause McCallum any damages.

The trial court erred by holding as a matter of law respondents did not cause McCallum's damages. Had the respondents contacted McCallum before releasing her security interest – as required by statute, the Deed of Trust, and their fiduciary duties – McCallum would have learned of Reimer's dishonesty and protected herself against Reimer's eventual default by obtaining further security from Reimer. Moreover, because

McCallum applied the \$320,000 payment she did receive first to the unsecured portion of her loan, \$230,000 remained secured by the Deed of Trust when respondents wrongfully released it. This court should reverse and remand for a trial on McCallum's claims against respondents.

## **II. ASSIGNMENTS OF ERROR**

McCallum assigns error to the following orders:

1. Order Granting Defendant Trustee Services, Inc.'s Motion For Summary Judgment entered on October 24, 2013. (CP 6-7)
2. Order Granting Defendant Golf Escrow Corporation's And Pamela J. Lane's Motion For Summary Judgment entered on October 24, 2013. (CP 8-10)

## **III. STATEMENT OF ISSUES**

1. Did respondents violate their duties to properly reconvey a lender's security interest by entrusting her borrower to obtain the borrower's signature authorizing the reconveyance, despite the escrow instruction's requirement that they obtain "*a written statement from the holder* of each existing encumbrance on the property, verifying its status, terms, and balance owing," and the Deed of Trust's requirement that they obtain a "written request for reconveyance *made by the Beneficiary*"?

2. Is there a genuine issue of material fact whether respondents caused a lender's damages by preventing her from learning of her borrower's dishonesty and the need to take further steps to secure her loan?

3. Did a lender properly apply a \$320,000 partial payment first to the unsecured portion of her \$550,000 loan to a borrower, leaving \$230,000 still secured by a deed of trust, when neither the borrower nor the escrow agent gave the lender any instruction how to apply the payment?

#### **IV. STATEMENT OF FACTS**

##### **A. Factual Background.**

- 1. Deborah McCallum loaned Craig Reimer \$800,000, to be secured by a deed of trust, for his real estate development business.**

Deborah McCallum is an experienced real estate agent specializing in locating and marketing properties for residential development in Edmonds. (CP 527) McCallum's neighbor, Craig Reimer, worked as a contractor and developer in the Edmonds area. (CP 119, 355) In 2004, McCallum agreed to loan Reimer money to be used in his real estate development business, Eaglewood Homes, Inc. (CP 119) McCallum and Reimer orally agreed that a) the loan was due on demand; b) Reimer would give McCallum a deed of

trust against one of Reimer's properties whenever McCallum requested it; c) the deed of trust would secure the entire loan balance; and d) interest would accrue annually at 1.75% over prime. (CP 119)

Between 2004 and 2007, McCallum loaned Reimer \$800,000. (CP 119) In the spring of 2008, McCallum demanded Reimer pay the loan balance, which was then \$550,000 plus interest. (CP 119)

**2. While refinancing a construction loan in 2008, Reimer recorded a deed of trust naming McCallum beneficiary. Golf Escrow and TSI released the security interest without ever contacting McCallum.**

In the summer of 2008, Eaglewood refinanced an existing construction loan with Sterling Savings Bank, a wholly owned subsidiary of respondent Sterling Financial Corporation. (CP 550, 619) During the refinance, Reimer, on Eaglewood's behalf, executed a Deed of Trust designating McCallum as beneficiary, and recorded it against one of his development properties on July 10, 2008. (CP 119, 477, 552-54) The Deed of Trust named Trustee Services, Inc. (TSI) trustee. (CP 119, 552)

TSI has a longstanding relationship with Golf Escrow, another wholly owned subsidiary of Sterling Financial Corporation,

and its principal Pamela Lane, who TSI regularly appoints as its agents to provide “reconveyance services.” (CP 60-61, 95, 97, 477, 556-57, 584, 619-20) TSI appointed Golf Escrow as its agent to handle the escrow functions for the refinance and for the McCallum Deed of Trust. (CP 97, 477, 556-57, 619-20) The escrow instructions stated that Golf Escrow “is instructed to request a written statement from the holder of each existing encumbrance on the property, verifying its status, terms, and balance owing.” (CP 483)

The Deed of Trust stated that it secured “payment of the sum of THREE HUNDRED TWENTY THOUSAND AND NO/100 Dollars (\$320,000.00) with interest.” (CP 552) The Deed of Trust purported to be “in accordance with the terms of a promissory note of even date herewith,” although the space for indicating the promissory note’s due date on the Deed of Trust was left blank. (CP 552) There was in fact no promissory note, because Reimer and McCallum’s loan agreement was oral. The Deed of Trust stated that the property securing the Deed of Trust could be reconveyed “upon satisfaction of the obligation secured and written request for reconveyance made by the Beneficiary.” (CP 553) The space in the Deed of Trust for indicating the beneficiary’s address was also left

blank. (CP 552) Instead, the Deed of Trust stated that after recording it should be mailed not to the beneficiary McCallum, but to the grantor Eaglewood. (CP 552)

Lane notarized Reimer's signature on the Deed of Trust on July 9, 2008. (CP 554) Golf Escrow gave Reimer a \$320,000 check to pay McCallum, which Reimer gave to McCallum towards the \$550,000 outstanding loan balance on July 31, 2008. (CP 119)

Reimer did not explain the source of the funds, but simply handed McCallum a check from "Golf Escrow Corp." (CP 119, 562) After seeing that the check was for less than the outstanding loan balance, McCallum demanded that Reimer pay the remaining \$230,000. (CP 119) Reimer refused to do so, but promised to eventually pay the remaining balance. (CP 119)

On August 12, 2008, Golf Escrow instructed TSI to reconvey McCallum's Deed of Trust. (CP 556) On September 30, 2008, TSI asked Lane for a written request for reconveyance signed by McCallum as the Deed of Trust beneficiary. (CP 557, 566) Just as they had never told her of the Deed of Trust, or of the "payoff" to secure its release, neither Lane nor anyone else at Golf Escrow or TSI contacted McCallum to obtain her signature on the request for reconveyance, the original promissory note referenced in the Deed

of Trust, the original deed of trust, or a calculation of the full payoff amount. (CP 56-58, 115-16, 119-20, 123, 478, 566)

Instead, Lane sent a blank request for reconveyance to Reimer, and asked that he obtain McCallum's signature. (CP 61, 120, 123, 478, 566) The request for reconveyance stated that the Deed of Trust secured a "promissory note in the original sum of \$320,000." (CP 567) After receiving the "signed" request for reconveyance from Reimer, Lane noticed that the date was blank, and dated it herself. (CP 61, 99) On October 28, 2008, Lane sent the request for reconveyance to TSI, purportedly bearing McCallum's signature. (CP 61, 100, 120, 478, 557, 567) On October 31, 2008, based on the fraudulent request for reconveyance TSI executed a "Full Reconveyance" of McCallum's Deed of Trust, for which it received a fee. (CP 61, 557, 563) The Full Reconveyance states that TSI "received from the beneficiary under said Deed of Trust a written request to reconvey." (CP 563) In fact, Reimer had forged McCallum's signature. (CP 120, 125-74)

Golf Escrow subsequently prepared a statutory warranty deed in favor of Phillip and Debbie Hingston, who purchased the property from Reimer in May 2010. (CP 207, 261, 308; *see also* CP 258-307)

3. **After suing Reimer for the outstanding loan balance, McCallum learned for the first time of the Deed of Trust, and that TSI and Golf Escrow had released her security interest without her consent or even contacting her.**

On May 10, 2010, McCallum filed suit against Reimer and Eaglewood seeking to recover the \$230,000 outstanding loan balance. (CP 343-46) During the course of discovery in that suit, McCallum learned for the first time that Reimer had executed the Deed of Trust while refinancing Eaglewood's loan with Sterling Savings Bank. (CP 119) McCallum also learned that Golf Escrow and TSI had reconveyed the Deed of Trust without contacting her, and had instead relied on Reimer to obtain her signature on the request for reconveyance. (CP 56-58, 61, 115-16, 120, 123, 478, 566)

On September 28, 2010, McCallum obtained a \$238,742.62 judgment against Eaglewood for the unpaid balance of the loan, plus interest. (CP 120, 407-09) Reimer filed for bankruptcy on April 28, 2011. (CP 120-21, 411-76) To date, McCallum has received no payment on her judgment. (CP 120)

**B. Procedural History.**

- 1. The trial court dismissed McCallum's claims for negligence, breach of fiduciary duty, and violations of the Consumer Protection Act on the grounds McCallum had not been damaged.**

On October 26, 2012, McCallum sued TSI, Golf Escrow, Lane, and Sterling Financial Corporation for negligence, breach of fiduciary duties, and for violation of the Consumer Protection Act, RCW ch. 19.86.<sup>1</sup> (CP 583-94, 648-59, 665-75) TSI, Golf Escrow, and Lane answered and moved for summary judgment dismissal of McCallum's claims solely on the ground that they did not proximately cause McCallum any damages because the Deed of Trust secured \$320,000 and she had been paid that amount. (CP 312-31, 491-98, 568-82) Sterling Financial joined in the motions for summary judgment, but did not file a separate response. (CP 676-83)

Snohomish County Superior Court Judge George Appel granted the motions for summary judgment dismissing with

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<sup>1</sup> McCallum also sued the Hingstons, and parties involved in Reimer's refinancing loan (Hyperion Capital Group LLC, Bank of America, N.A., Mortgage Electronic Registration Systems, Inc., and Federal Home Loan Mortgage Corporation). McCallum did not seek review of the dismissal of her claims against the Hingstons and has since stipulated to the dismissal with prejudice of Hyperion Capital Group LLC, Bank of America, N.A., Mortgage Electronic Registration Systems, Inc., and Federal Home Loan Mortgage Corporation.

prejudice McCallum's claims against TSI, Golf Escrow, Lane, and Sterling Financial Corporation. (CP 6-10) McCallum timely appealed. (CP 1-5)

## V. ARGUMENT

### A. **This court reviews the trial court's summary judgment order de novo and views the facts in the light most favorable to McCallum.**

This court reviews a summary judgment order de novo and “engage[s] in the same inquiry as the trial court.” *Bishop v. Jefferson Title Co., Inc.*, 107 Wn. App. 833, 841, 28 P.3d 802 (2001), *rev. denied*, 145 Wn.2d 1025 (2002). “On a motion for summary judgment, the trial court must view all evidence and draw all reasonable inferences in favor of the nonmoving party; then it must deny the motion if the evidence and inferences create any question of material fact.” *Bishop*, 107 Wn. App. at 840-41. Whether a defendant's actions caused a plaintiff's damages is generally a question of fact inappropriate for resolution on summary judgment. *Wojcik v. Chrysler Corp.*, 50 Wn. App. 849, 854, 751 P.2d 854 (1988) (“proximate cause generally [is] not susceptible to summary judgment”; reversing summary judgment because “an issue of fact exists as to whether [defendant's actions] proximately caused [plaintiff]’s injuries”); *Bishop*, 107 Wn. App. at

847 (reversing summary judgment because plaintiff “raised significant issues of material fact” regarding whether escrow agent’s malpractice was the proximate cause of his damages); *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 795, ¶ 45, 295 P.3d 1179 (2013) (whether trustee’s false notarization of notice of sale caused plaintiff’s damages was “a question for the jury”). Because McCallum was the non-moving party, this court must view the facts and all reasonable inferences in the light most favorable to her.

**B. McCallum would have obtained full security from Reimer if respondents had not breached numerous statutory, contractual, and fiduciary duties, including the duty to obtain a request for reconveyance directly from McCallum.**

Respondents breached numerous statutory, contractual, and fiduciary duties they owed to McCallum. By breaching their duties, respondents denied McCallum the opportunity to obtain full security for her loan or to take other steps to protect against Reimer’s default. Contrary to the trial court’s summary judgment ruling, depriving a party of the opportunity to obtain security is cognizable damages under Washington law. This court should reverse the trial court’s summary judgment order and remand for a trial on McCallum’s claims against respondents.

- 1. Respondents violated numerous statutory, contractual, and fiduciary duties by failing to contact McCallum and instead relying on the grantor of a deed of trust to obtain the beneficiary's signature.**

Respondents failure to conduct even the most basic due diligence breached their statutory, contractual, and fiduciary duties. Indeed, respondents did not dispute below that they breached their duties to McCallum. These breaches establish the foundation on which McCallum can recover damages, contrary to the trial court's summary judgment ruling. (*See, infra*, § V. B.2)

Washington law imposes important duties on escrow agents. "An escrow agent owes a fiduciary duty to the parties to the escrow to conduct the transaction with scrupulous honesty, skill and diligence, and must comply strictly with the provisions of the escrow agreement." *Styrk v. Cornerstone Investments, Inc.*, 61 Wn. App. 463, 472, 810 P.2d 1366, *rev. denied*, 117 Wn.2d 1020 (1991); *Reeves v. McClain*, 56 Wn. App. 301, 306-07, 783 P.2d 606 (1989) ("An escrow agent owes a fiduciary duty to all parties to the escrow. . . . The obligations of an escrow agent are defined by the escrow instructions."). RCW 18.44.301 prohibits "any escrow agent" from "engag[ing] in any unfair or deceptive practice." An escrow agent must keep "adequate records." RCW 18.44.400(1).

Washington law likewise imposes on the trustee of a deed of trust “a duty of good faith to the borrower, beneficiary, and grantor.” RCW 61.24.010(4). The version of the statute in effect in 2008 required a trustee to “act impartially between the borrower, grantor, and beneficiary.” Former RCW 61.24.010(4) (2008). Accordingly, a trustee is required “to exercise a fiduciary duty to act impartially” and “to fairly respect the interests of both the lender and the debtor.” *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 790, ¶ 37, 295 P.3d 1179 (2013).

Here, respondents breached their fiduciary, statutory, and contractual duties. It is undisputed that Golf Escrow and Lane, TSI’s appointed escrow agents, never contacted McCallum to obtain, as required by the escrow instructions, “*a written statement from the holder* of each existing encumbrance on the property, verifying its status, terms, and balance owing.” (CP 483 (emphasis added)) Instead respondents blindly accepted Reimer’s representation that the outstanding balance he owed McCallum was \$320,000, when in fact it was \$550,000. (CP 57-58, 120) Had any of the respondents contacted McCallum directly to verify the terms of McCallum and Reimer’s loan agreement, they would have

learned that Reimer was required to execute a deed of trust for the full amount of the loan. (CP 119)

Likewise, respondents ignored the Deed of Trust's requirement that they obtain a "written request for reconveyance *made by the Beneficiary.*" (CP 553 (emphasis added)) Rather than contact McCallum to obtain such a written request, Golf Escrow and Lane instead entrusted the *borrower*, Reimer, to obtain McCallum's signature on the request for reconveyance. (CP 61, 120, 123, 566) TSI then falsely stated in the Full Reconveyance that it had "received *from the beneficiary* under said Deed of Trust a written request to reconvey." (CP 563 (emphasis added)) In fact, TSI had not received a written request from McCallum, but had received a request from Reimer in which he forged McCallum's signature – a signature that respondents took no efforts to verify. (CP 120, 125-74)

Respondents ignored numerous red flags that should have alerted them of the need to directly contact McCallum. Neither Golf Escrow nor TSI questioned why Reimer's Deed of Trust did not include an address for the beneficiary or a payoff date for the referenced "promissory note of even date herewith," why they had never in fact seen such a promissory note, or why the Deed of Trust

stated that it should be returned to the grantor, when standard practice is to return a completed deed of trust to the beneficiary. (CP 56-58, 115-16, 552) When Reimer failed to date the request for reconveyance after forging McCallum's signature, Lane did not contact McCallum to have her accurately date the document, but instead dated it herself. (CP 61, 99) Even without any of these red flags, standard practice required respondents to directly contact McCallum to confirm that she had been fully paid and to obtain her signature on the request for reconveyance, as well as the original promissory note and deed of trust. (CP 57-58, 115-16)

The respondents breached numerous duties they owed to McCallum as the beneficiary of the Deed of Trust and party to the escrow. As explained below, respondents' breaches of their duties damaged McCallum by depriving her of the opportunity to obtain full security for her loan or to take other steps to protect against Reimer's default.

**2. The trial court erred by granting respondents summary judgment because a genuine issue of material fact existed on whether McCallum had been "damaged" by their breach of their fiduciary, statutory, and contractual duties.**

Had the respondents not breached their duties, McCallum would have protected herself against Reimer's eventual default by

immediately exercising her right to obtain full security from Reimer. The trial court erred by accepting respondents' sole argument that the breach of their duties did not cause McCallum's damages.

An injured party may recover damages caused by an escrow agent's or trustee's breach of its statutory, fiduciary, or contractual duties. *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 593, 675 P.2d 193 (1983); *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 795, ¶ 45, 295 P.3d 1179 (2013) (affirming verdict in favor of grantor of deed of trust for damages caused by trustee's "failure to fulfill its fiduciary duty"); *Styrk v. Cornerstone Investments, Inc.*, 61 Wn. App. 463, 472, 810 P.2d 1366 (1991) ("An escrow agent can be held liable to his principals for damage proximately caused from his breach of the escrow instructions."); affirming judgment against escrow agents for negligence, breach of fiduciary duty, and CPA violation); *Bishop v. Jefferson Title Co., Inc.*, 107 Wn. App. 833, 854, 28 P.3d 802 (2001) (remanding for trial "on the issues of liability and damages" on plaintiff's malpractice and CPA claims against escrow agent).

In *Bowers*, for example, the sellers of real estate sued an escrow agent after the agent prepared an unsecured promissory

note based on the buyer's representation that the sale was unsecured and without advising the sellers of the need to obtain independent legal advice. The trial court entered judgment for the sellers, concluding that the escrow agent breached her duties by not informing the sellers of the advisability of obtaining independent counsel who "could only have advised plaintiffs of the folly of transacting an unsecured sale of realty." *Bowers*, 100 Wn.2d at 590. The Supreme Court affirmed the trial court's award to the sellers damages "based . . . on the value of the hypothetical security interest plaintiffs would have received had they sold the property subject to a deed of trust." 100 Wn.2d at 593.

*Bowers* is consistent with the general rule that a defendant is liable for the lost value of a security interest when its wrongful actions deprive a plaintiff of that interest. For instance, in *Pacific Nat. Bank of Washington v. Hall*, 12 Wn. App. 336, 529 P.2d 855 (1974), *rev. denied*, 85 Wn.2d 1006 (1975), a national bank signed a "participation agreement" with a state bank to loan \$250,000 to a logging company. Without informing the national bank, the state bank secured a separate \$75,000 loan to the logging company and its principal stockholder with \$71,000 in company assets. After the logging company went bankrupt, the national bank brought suit

against the state bank to recover the outstanding balance on the note.

The trial court in *Hall* entered judgment for the national bank on the grounds that the state bank breached the participation agreement by obtaining security for its own loan without informing the national bank of the need to obtain security for its loan. The state bank appealed, and Division Three affirmed because “the trial court found and the evidence supports the conclusion that [the state bank], by failure to inform [the national bank] that it thought it necessary to collateralize itself, deprived [the national bank] of the opportunity to protect itself against the eventual default of” the logging company. *Hall*, 12 Wn. App. at 343.

Here, as in *Bowers* and *Hall*, respondents deprived McCallum of the opportunity to protect herself against Reimer’s default. McCallum loaned money to Reimer based on their agreement that Reimer would execute a deed of trust *fully* securing her loan when McCallum so requested. (CP 119) Had any of the respondents fulfilled their duties to McCallum – which at a minimum required them to contact her before releasing her security interest – McCallum would have learned that Reimer had forged her signature, that Reimer had lied to Sterling Savings Bank about

the amount he owed McCallum, and that Reimer had violated their loan agreement by executing a deed of trust for less than the full amount of the loan balance.

Further, presented with Reimer's dishonesty, McCallum would not have relied on his promise to pay the remaining balance, but would have immediately demanded that Reimer execute a Deed of Trust securing the remaining loan balance as required by their agreement. (CP 119-20) McCallum could have also availed herself of other remedies, including immediately filing suit against Reimer and filing *lis pendens* against the development properties that Reimer had agreed would serve as security for McCallum's loan upon her demand. Contrary to the trial court's summary judgment ruling, any uncertainty in McCallum's damages must be held against respondents, not McCallum. *Spradlin Rock Products, Inc. v. Public Utility District No. 1 of Grays Harbor County*, 164 Wn. App. 641, 664, ¶ 45, 266 P.3d 229 (2011) ("Washington courts abide by the principle that the wrongdoer shall bear the risk of the uncertainty which its own wrong has created") (internal quotation omitted).

But McCallum never had the opportunity to protect herself because respondents failed to fulfill their most basic duties.

Instead, as in *Bowers*, respondents relied solely on the borrower's representation regarding the terms of the loan agreement, and thus deprived McCallum "of the hypothetical security interest" she would have obtained from Reimer had they complied with their duties. *Bowers*, 100 Wn.2d at 593. This evidence establishes at the very minimum a genuine issue of fact regarding whether McCallum would have further protected herself against Reimer's default had respondents not breached their duties to McCallum.

This court should reverse the trial court's summary judgment orders based on its erroneous conclusion that respondents' breaches of their numerous duties did not damage McCallum.

**C. The \$320,000 payment from Golf Escrow applied first to the unsecured portion of McCallum's loan to Reimer, leaving \$230,000 still secured by the Deed of Trust when respondents wrongfully reconveyed it.**

The respondents' "no damages" argument fails for a second reason – the \$320,000 partial payment applied first to the unsecured portion of McCallum's \$550,000 loan to Reimer, leaving \$230,000 still secured by the Deed of Trust when the respondents released McCallum's security interest without conducting any due

diligence. This court should reverse the trial court's grant of summary judgment for this second and independent reason.

Washington law has long recognized that in the absence of specific instructions, a creditor may apply partial payments in the manner most beneficial to the creditor. *U.S. Fid. & Guar. Co. v. Feenaughty Mach. Co.*, 197 Wash. 569, 579, 85 P.2d 1085 (1939) (stating "general rule" that "[w]hen a debtor fails to direct how a payment is to be applied the creditor may make the application as he may see fit"); *Oakes Logging, Inc. v. Green Crow, Inc.*, 66 Wn. App. 598, 601, 832 P.2d 894 (1992) ("The general rule is that unless the creditor has specific instructions from the debtor as to how payments are to be applied, the creditor may apply payments to any part of the debt, as he sees fit."). Where neither the creditor nor debtor provides any indication of how a payment should be applied, a court will apply the payment "according to its own notion of the intrinsic equity and justice of the case." *Oakes Logging*, 66 Wn. App. at 602 (quotation omitted). See also *Whitney-Fidalgo Seafoods, Inc. v. Miss Tammy*, 542 F.Supp. 1302, 1304 (1982) ("in the absence of proof of contrary intention, part payments are appropriated as the court presumes the creditor would have done in

the first instance; that is, in a manner providing the creditor the greatest security on the remaining account balance”).

Here, neither Golf Escrow nor Reimer provided McCallum any instructions on how the check should be applied to the \$550,000 outstanding balance that Reimer owed McCallum. (CP 119-20) Rather, Golf Escrow gave Reimer a check to deliver to McCallum, which he simply handed to McCallum without any instructions or explanation of its source. (CP 119) Without any instruction from Golf Escrow or Reimer, McCallum was entitled to, and did, apply the partial payment to the unsecured portion of her loan to Reimer. (CP 120) The damages flowing from respondents’ wrongful release of McCallum’s security interest are thus easily calculable as the remaining amount of Reimer’s loan that was still secured by the Deed of Trust – \$230,000.

Even absent McCallum’s decision on how to apply the payment, the \$320,000 must still be applied to the unsecured portion of her loan. It would be patently unjust to apply the funds in the manner least beneficial to McCallum when respondents breached their duties by failing to conduct even the most basic due diligence before releasing McCallum’s security interest. Respondents should not benefit from the breach of their duties by

having a court apply the payment in the manner most beneficial to them. This court should reverse the trial court's summary judgment order premised on the erroneous conclusion that respondents did not cause McCallum damages by releasing her security interest that still secured \$230,000.

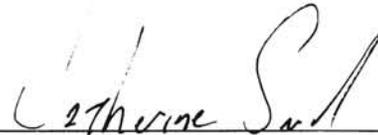
### VI. CONCLUSION

This court should reverse the trial court's summary judgment orders and remand for a trial on McCallum's claims against respondents.

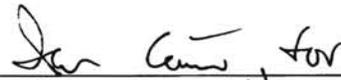
Dated this 3rd day of February, 2014.

SMITH GOODFRIEND, P.S.

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### DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on February 3, 2014, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

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**DATED** at Seattle, Washington this 3rd day of February,

2014.

  
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 Victoria K. Vigoren