

74616-2

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THE COURT OF APPEALS
OF THE
STATES OF WASHINGTON

Deutsche Bank National Trust Co.,

Plaintiff,

vs.

Toussaint Daix and Marthe Daix

Defendants

APPEAL CASE #: 74616-2-1
SUPERIOR. CT CASE #: 142-2-
30882-5KNT
DEFENDANT APPELLANT'S
BRIEF

Appeal From a Summary Judgment Order Of The
Superior Court In Kent, County of King Hon. Richard
McDermott, Judge.

APPELLANT'S OPENING BRIEF

Toussaint Daix, Pro se Appellant

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WA 98023
(253 377-4122)

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COURT OF APPEALS
STATE OF WASHINGTON


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A. Washington statutes

BAIN v. MERS (2012). The Washington supreme court held that only the lawful note holder can foreclose August 2012.

Pelzel v. Nationstar Mortgage, LLC et. Al March 2015.

RCW 61.24.040 - Washington State sapps.leg.wa.gov Legal note holder can foreclose.

OTHER AUTHORITIES

B. Statutory Requirements For Establishing The Right To Enforce An Instrument

1. Prove status of **holder** of the instrument. (UCC § 3-301(i)); or
2. Prove status of **non-holder in possession of the instrument** who has the **rights of a holder**. (UCC § 3-301(ii)); or
3. Prove status of being **entitled to enforce the instrument as a person not in possession of the instrument pursuant to UCC § 3-309** or UCC § 3-418(d). (NOTE is lost, stolen, destroyed).

Massachusetts Supreme Judicial Court Clarifies Foreclosure Requirements: Eaton v. Federal National Mortgage Association

STATUTES

RCW 61.24.040 (iV), (V) Who has the right to foreclose

RCW 60.04.171 Foreclosing parties

61.24 RCW Deeds of trust Chapter

I. ASIGNMENTS OF ERROR

Order of Summary Judgment

The trial court erred in denying the defendant's motion to reconsider by ordering a summary judgment entered on October 30, 2015.

Issues Pertaining to Assignments of Error

The trial court erred by ordering a summary judgment against Appellants, Toussaint Daix and Marthe Daix for a lack of response to the motion of summary judgment by DEUTSCHE BANK NATIONAL TRUST CO., Appellants indicated to the court that they were never not served as indicated on page 5 of the RP.

Appellants filed a motion to vacate. But it was denied by the court without any explanation. The Appellants subsequently filed a motion to reconsider. The court rejected that motion as well without providing an explanation.

The court's action against appellants may be determined to be harmful to appellants and therefore are reversible errors. Appellants believe The court unjustly denied an opportunity to present their evidence. Appellants preserved the error on the record with two timely motions to cure the error. The court had an opportunity to cure the error when Appellants filed a motion to vacate on November 25, 2015 and a motion to reconsider filed on December 4th, 2015. But they were both rejected.

II. STATEMENT OF THE CASE

On October 30th 2015 during our court appearance at the Kent Superior Court, Honorable Judge Richard McDermott ordered against defendants Toussaint Daix and Marthe Daix, a summary Judgment for a

lack of response to the motion of summary judgment order by DEUTSCHE BANK NATIONAL TRUST CO.,

Defendants indicated to the court that they were never served by plaintiff Deutsche bank. Deutsche bank's attorney indicated that his office mailed out a copy of the Motion for Summary Judgment order request to Defendants, Toussaint Daix insisted, we did not receive it.

The Court accepted the response given by Deutsche bank attorney and moved on to his next point. He asked, how long you have not made your mortgage payment? Appellants responded, 8 years, and he explained to the court that he had some incriminating documents to prove that Deutsche bank committed fraud, and Appellants requested an extension of time to bring the document to court. See RP page 8. But the court granted the motion of summary judgment to the plaintiff.

The judge responded: Okay, I'll grant the motion of summary judgment. He added, there are no real issues for me to resolve.

I, Toussaint Daix was then presented the Judge's order to sign, but he refused to sign it.

Since the trial court judge refused to reconsider his decision, we never had a chance to present to the court the report from a private mortgage investigator we had hired.

But we did file the report with other documents with the Kent Superior Court, the Appeal Court and a copy was sent to the Plaintiff's counsel.

We have evidence that our mortgage loan has been paid off. But we were never notified by Deutsche bank or Ocwen Loan Servicing, the servicer.

III. ARGUMENT

Appellants believe an error of law and fact was committed by the court. The court simply rejected the two motions appellants submitted. Motion to vacate and Motion to Reconsider, and subsequently was not interested in verifying or addressing any concerns in connection with the underlying facts of the case. For example: Under penalty of perjury, Is Deutsche bank the legal owner of the promissory Note? How did Deutsche acquire the Promissory Note? Does Deutsche bank have standing to foreclose? Do robo signatures on the assignments of Deed of Trust

validate of the Deed? Do fictitious Notary public and Assistant secretaries' signatures validate the terms of the mortgage contract? what contributed to our refusal to continue paying our mortgage to the servicer? " BAIN v. MERS (2012). The Washington supreme court held that only the lawful note holder can foreclose August 2012"

The trial court admitted improper evidence by the Plaintiff in that it considered and accepted statements made by the Plaintiff's attorney without any verified evidence. The court's action against us may be determined to be harmful to us and therefore are reversible errors. The court unjustly denied appellants an opportunity to present their evidence. Appellants preserved the error on the record with timely motions to cure the error.

We were materially injured by the court summary judgment decision. The trial court decision is harmful to our case due to the fact that we are now experiencing a tremendous level of stress. We are about to lose our home. We believe that the case law of Bain V. MERS in 2012, is a strong supporting authority in this matter. Washington supreme court clearly indicates that *the Borrower needs to know who holds the note*. This was completely ignored by the trial court.

The opinion and decision of the supreme court of Washington States was unambiguous. MERS could not foreclose because it was not and could not prove that it was the note holder.

In another case law, *Pelzel v. Nationstar Mortgage, LLC et. Al* March 2015, *The court decision was clear. Only the note holder can foreclose.*

The above court decisions are supported by the Uniform Commercial

Code (UCC) as follow : 1. Prove status of **holder** of the instrument. (UCC § 3-301(i)); or

2. Prove status of **non-holder in possession of the instrument** who has the **rights of a holder**. (UCC § 3-301(ii)); or

3. Prove status of being **entitled to enforce the instrument as a person not in possession of the instrument pursuant to UCC § 3-309** or UCC § 3-418(d). (NOTE is lost, stolen, destroyed).

Massachusetts Supreme Judicial Court Clarifies Foreclosure Requirements: *Eaton v. Federal National Mortgage Association*

And Washington statutes:

RCW 61.24.040 (iV), (V) Who has the right to foreclose

RCW 60.04.171 Foreclosing parties

61.24 RCW Deeds of trust Chapter

no evidence that Deutsche Bank has the original note for our Property. It never presented it to the court to substantiate their claim. In

fact we have evidence that Deutsche Bank is not the legal and lawful owner of our note. Attached is the complete report, which was produced by a private mortgage investigator we hired. It clearly shows that Deutsche Bank is not the legal holder our note. The report is part of paperwork we filed with the Kent superior court over 5 months ago. It shows that our house has been paid off by the mortgage insurance. Our mortgage then should have a zero balance.

Deutsche Bank filed a lawsuit against us back in 2014 and does have the burden of proof.

Our case is very similar to *BAIN V. MERS. (2012)* The court examined thoroughly the facts. Bain being behind the payment of her mortgage was not the central issue. The issue was who was the lawful owner of the promissory Note? Only that entity with the evidence has the right to foreclose. After an extensive investigation and some legitimate and lawful questions, the court drew it's conclusion. *Such an application of the law in our case was entirely disregarded by the tiral Judge.* There was No reference made to the Washington DTA (Deed of Trust Act) by the court.

Appellants also believe that this is a question of fact. The trial court abused of its discretion because there was not a credibility of evidence presented by the plaintiff upon which the court could have based its decision. The court should have accepted the Motion to Reconsider we filed and also extended time as we requested to present important additional evidence against the Plaintiff. The waiting time would not have caused any financial harm to the Plaintiff.

We are appealing to the Appeal Court to correct the preserved materially harmful judicial error in this matter.

v. CONCLUSION

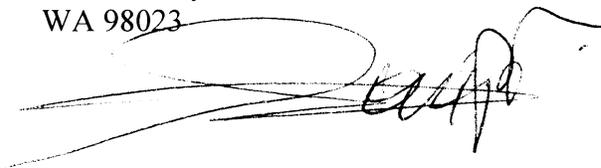
Defendants, Toussaint Daix and Marthe Daix request that the Court reverse the trial court's judgment against them and grant them a new trial.

Respectfully submitted this the August 12, 2016 2016

Pro se,

Toussaint Daix and Marthe Daix

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A handwritten signature in black ink, appearing to be 'Toussaint Daix', written over a horizontal line.