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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY AP
DEPUTY

Cause No. 490781-I-II

Clark County

Cause No. 15-2-00924-2

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FEDERAL HOME LOAN MORTGAGE CORPORATION,

Respondent.

v.

PAMELA S. OWEN, ET AL.

Appellant,

APPELLANT'S REPLY BRIEF

PAMELA S. OWEN
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Appellant, *Pro Se*

P/M: 11/9/16

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I. ARGUMENT.

A. The Superior Court Was Not Permitted To Quiet Title In Respondent Under the Guise of Exercising Its Unlawful Detainer Subject Matter Jurisdiction Found In Wash. Const. Art. IV, § 6 and Chapter 59.12 RCW.

This case concerns Wash. Const. Art. IV, § 6 and Chapter 59.12 RCW, which sets forth the requirements for commencing and maintaining an action for unlawful detainer. Compliance with Chapter 59.12 RCW is jurisdictional. *Teitzel v. Teitzel*, 71 Wn.2d 715, 718; 430 P.2d 594 (1967).

The Superior Court's unlawful detainer subject matter jurisdiction flows from the constitutional mandate provided in Wash. Const. art. IV, § 6. *Tacoma Rescue Mission v. Stewart*, 155 Wn. App. 250, 254 n.9, 228 P.3d 1289 (Div. Two, 2010). This judicial power is inherent, even in the absence of a statute, and may not be abrogated or restricted by the Legislature. *State v. Werner*, 129 Wash.2d 485, 494, 918 P.2d 916 (1996).

Prior to our Supreme Court's ruling in *In re Marriage of Buecking*, 179 Wn.2d 438, 443, 316 P.3d 999 (2013), confusion existed in regard to subject matter jurisdiction, leading some courts to conclude that jurisdiction had three components: (1) Jurisdiction over the subject matter; (2) jurisdiction over the parties; and (3) power to render the particular judgment. See, *State v. Werner*, 129 Wash.2d at 493.

Buecking "clarified that jurisdiction is comprised of only two components: jurisdiction over the person and subject matter jurisdiction." *In re Marriage of Buecking*, 179 Wn.2d at 447.

Likewise, recent cases by the United States Supreme Court also sought to bring some discipline to the use of the terms jurisdiction and jurisdictional. See, *Henderson v. Shinseki*, 562 U.S. 428, 435 (2011); *Scarborough v. Principi*, 541 U.S. 401, 413 (2004); and *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 511 (2006):

“On the subject-matter jurisdiction/ingredient-of-claim-for-relief dichotomy, this Court and others have been less than meticulous. ‘Subject matter jurisdiction in federal-question cases is sometimes erroneously conflated with a plaintiff’s need and ability to prove the defendant bound by the federal law asserted as the predicate for relief—a merits-related determination....’ We have described such unrefined dispositions as “drive-by jurisdictional rulings” that should be accorded no precedential effect” on the question whether the federal court had authority to adjudicate the claim in suit.”

An unlawful detainer action is a “special limited proceeding” which relates only to real estate “where the legislature gives the court jurisdiction for a limited purpose.” As such, there must be substantial compliance with the requirements set forth in Chapter 59.12 RCW. *Teitzel v. Teitzel*, 71 Wn.2d at 781, citing *Sowers v. Lewis*, 49 Wn.2d 891, 894, 307 P.2d 1064 (1957); *Albice v. Premier Mortgage Services of Washington, Inc.*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012) (Lenders must strictly comply with the statutes.); *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 93; 285 P.3d 34 (2012) (The deeds of trust act (ch. 61.24 RCW) must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers’ interests and the lack of judicial oversight in conducting nonjudicial foreclosure sales.)

Prior to July 2009, every unlawful detainer action based on nonjudicial foreclosure of residential real property was limited to proving a claim for “possession.”

The Legislature amended the unlawful detainer statute by adding RCW 59.12.032, which provides that:

“An unlawful detainer action, commenced as a result of a trustee’s sale under chapter 61.24 RCW, must comply with the requirements of RCW 61.24.040 and 61.24.060.”

See, *Fed. Nat'l Mortg. Ass'n v. Steinmann*, 181 Wn.2d 753; 336 P.3d 614 (2014) (“Fannie Mae filed a complaint for unlawful detainer. See RCW 59.12.032; RCW 61.24.040, .060.... The unlawful detainer action was authorized under the deeds of trust act, see RCW 61.24.040, .060.”)

The Supreme Court further held in *Buecking* that notwithstanding Wash. Const. art. IV, § 6, “the legislature may prescribe reasonable regulations that do not divest the court of its jurisdiction.” *Buecking*, 179 Wn.2d at 449. RCW § 59.12.032 does just that by setting forth reasonable statutory prerequisites that must be fulfilled in order to commence an action for unlawful detainer, which is a special statutory proceeding.

Respondent’s complaint was materially deficient on its face when filed on April 2, 2015. In order to give the Superior Court the appearance that the Court could exercise unlawful detainer subject matter, Respondent alleged in paragraph 1 of its complaint, CP at 3, that jurisdiction and venue was proper “[p]ursuant to RCW 59.12.050;” and in paragraph 2, that: “[t]he foreclosure sale was conducted pursuant to the sale authority provided under the Deed of Trust and the laws of the State of Washington,” to wit:

- 18 | 1. Jurisdiction and Venue: Pursuant to RCW 59.12.050 the Superior Court of
19 | the County in which the property or some part of it is situated shall have jurisdiction of
20 | proceedings. The property is located in Clark County and therefore the Superior Court of
21 | Clark County has jurisdiction to hear these proceedings.
- 22 | 2. Ownership Status of Plaintiff: Plaintiff is the owner of the real property
23 | described below (subject property) by virtue of its successful bid at a Trustee’s foreclosure
24 | sale held on January 16, 2015. The foreclosure sale was conducted pursuant to the sale
25 | authority provided under the Deed of Trust and the laws of the State of Washington.

Respondent provided the Superior Court no evidence to support these allegations. In fact, not only did Respondent fail to attach a copy of

the Deed of Trust to its complaint, Respondent also failed to attach a copy of the Trustee's Deed Upon Sale recorded in its favor.

Further, Respondent does not allege anywhere in its Complaint that compliance with RCW 59.12.032 was met by itself or anyone else.

The allegation of relevant facts, supported by evidence, was intentionally withheld by Respondent from the Superior Court so that the Court might blindly come to the conclusion that it could exercise unlawful detainer subject matter jurisdiction and grant Respondent's claim for relief.

Following the enactment of RCW § 59.12.032 in 2009, the Superior Court could not rely on such bare allegations and avoid facts and evidence necessary to determine its subject matter jurisdiction.

Chapter 61.24 RCW is comprehensive in its scope. RCW § 61.24.040 sets forth detail procedures for commencing a nonjudicial foreclosure and sale. However, the Legislature enumerated in RCW § 61.24.030 several mandatory "requisites" to the conduct of a "trustee's sale" "before" the sale is conducted pursuant to RCW § 61.24.040. Relevant here on appeal is RCW § 61.24.030(7)(a), (b) and (9), respectively:

(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.

(b) Unless the trustee has violated his or her duty under RCW 61.24.010(4), the trustee is entitled to rely on the beneficiary's declaration as evidence of proof required under this subsection.

(9) That, for owner-occupied residential real property, before the notice of the trustee's sale is recorded, transmitted, or served, the beneficiary has complied with RCW 61.24.031 and, if applicable, RCW 61.24.163."

Under RCW § 61.24.040, the trustee is tasked with conducting the nonjudicial foreclosure. However, "a trustee is not merely an agent for the lender or the lender's successors." *Lyons v. U.S. Bank Nat'l Ass'n*, 181 Wn.2d 775, 787, 336 P.3d 1142 (2014) (quoting *Bain*, 175 Wn.2d at 93). A foreclosure trustee must also adequately inform itself regarding the purported beneficiary's right to foreclose, including, at a minimum, a cursory investigation to adhere to its duty of good faith. *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 831-832, 355 P.3d 1100 (2015) (quoting *Lyons*, 181 Wn.2d at 787).

The trustee is entitled to rely on the beneficiary's declaration unless it has violated its duty of good faith under RCW 61.24.030(7)(b). *Lyons*, 181 Wn.2d at 790 ("if there is an indication that the beneficiary declaration might be ineffective, a trustee should verify its veracity before initiating a trustee's sale to comply with its statutory duty.)

The word "before," used in RCW § 61.24.030(7)(a) and (9), can be used as a preposition, conjunction and an adverb. The *Trujillo* court, in discussing the first sentence of RCW 61.24.030(7)(a), reiterated that a trustee must "have proof that the beneficiary actually owns the note on which the trustee is foreclosing." *Trujillo*, 183 Wn.2d at 832, 834, n.10 ("A trustee must have the requisite proof of the beneficiary's ownership of the note before recording, transmitting, or serving the notice of trustee's sale.")

In the Superior Court, Respondent feigned compliance with RCW §§ 59.12.032 and 61.24.005(2), .010, .030, .031, .040 and .060 by omitting facts and evidence. It was a simple task.

Here, on appeal, Respondent continues its mockery of the judicial system through four arguments and a motion for judicial notice. Respondent begins by arguing that CR 60(b), together with collateral estoppel, bars IRS Form 1099-A as newly discovered evidence because this Federal tax document is “not material” to the Superior Court’s proceedings, but, nevertheless, is material on appeal to suggest an “Owner-Servicer” relationship between Respondent and Bank of America National Association (“BANA”).

Rule 60 governs relief from judgments, orders and proceedings. Subdivision (b) enumerates several grounds for which relief may be available. Subdivision (c) provides that: “This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.”

Notwithstanding CR 60’s favorable terms, it has long been settled by precedents that a timely appeal is the proper and exclusive procedure to attack an alleged defective judgment. *State ex rel. Wash. Dredging & Improvement Co. v. Moore*, 21 Wash. 629, 59 P. 505 (1899); *Fox v. Nachtsheim*, 3 Wash. 684, 29 P. 140 (1892); *Flueck v. Pedigo*, 55 Wash. 646, 104 Pac. 1119 (). See also, *Fortier v. Fortier*, 23 Wn.2d 748, 749-750, 162 P.2d 438 (1945) (Where Superior Court lacks jurisdiction of the subject matter, the court of appeals will lack also jurisdiction of the subject matter and would be constrained to reverse the Superior Court and dismiss the case.)

On April 22, 2016, Freddie Mac, through its attorneys, moved the Superior Court for an order reissuing the Writ of Restitution. CP at 7.

On May 12, 2016, Owen properly brought the alleged error—the question of subject matter jurisdiction—to the attention of the judge alleged to have committed it. CP at 21.

On May 20, 2016, the Superior Court entered its order granting Respondent's motion to reissue the writ of restitution. CP at 68, 69 and 71.

On June 13, 2016, Owen timely exercised her right to appeal the Order denying her motion to vacate its judgment, which is now pending before this Court.

Thus, Respondent's argument that CR-60(b) "time-barred" Owen's "motion to vacate based on the 1099" is not well-taken.

Respondent next argues in Argument C that IRS Form 1099-A is barred by the well-settled doctrine of "collateral estoppel" because "[t]he Federal Court's February 9, 2016 ruling for Freddie Mac disposed of Appellant's 1099 claim," Respondent's Br. at 5-6, citing CP 60-67.

This argument is also not well-taken and further mischaracterizes the sequence of events. On January 31, 2016, Owen filed a motion in the Federal Court for judicial notice of IRS Form 1099-A. CP at 62-67. Respondent did not file an objection to this motion, which, on February 9, 2016, was converted by the Court to a motion for reconsideration and denied. CP at 62, lines 6-7.

That IRS Form 1099-A was not "litigated" is apparent further on the face of Owen's motion for judicial notice which does not even mention the term "conspiracy." See CP at 62-64. Moreover, Congress required, that an entity "who shall make a return" in compliance with 26 U.S.C. § 6050J(a), be both the original lender or its successor "and who—(1) in full or partial satisfaction of any indebtedness, acquires an interest in any property which is security for such indebtedness, or (2) has reason to know that the property in which such person has a security interest has been abandoned...." Appellant's Amended Br. at 10-11.

The Federal court dismissed the complaint against all defendants, except Clark County Sheriff Chuck E. Atkins, who had filed his Answer back in June 2015. In granting Sheriff Atkins' cross-motion for summary judgment, the Federal District Court justified its avoidance of the constitutional question by ruling that:

“In this case, Owen fails to show that any conduct deprived her of a right secured by federal law. While due process generally requires notice before deprivation of property, Owen was not deprived of her property rights based on the ex parte unlawful detainer action because Freddie Mac cancelled the forceful eviction. Therefore, Owen has not only failed to establish that she is entitled to summary judgment but also has failed to show that questions of material fact exist to overcome Atkins's motion for summary judgment.” CP at 19, line 16.

This Order gives the appearance that Owen was entitled to remain in possession of her home. Notwithstanding the aforementioned Federal ruling, rather than move the Superior Court for voluntary dismissal of the unlawful detainer action, Respondent instead moved the Superior Court to re-issue the same writ of restitution which Respondent had voluntarily cancelled, CP at 7, which was granted, CP at 69-72. Respondent again voluntarily cancelled this second writ of restitution. The Federal Court's actions directly undercut Respondent's collateral estoppel arguments.

Res judicata, or claim preclusion, bars the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action. *Loveridge v. Fred Meyer, Inc.*, 125 Wash. 2d 759, 763, 887 P.2d 898 (1995).

Collateral estoppel, or issue preclusion, prevents relitigation of an issue after the party estopped has already had a full and fair opportunity to present its case. *Hanson v. City of Snohomish*, 121 Wash. 2d 552, 561, 852 P.2d 295 (1993). To collaterally estop a party from litigating an issue, the party asserting the doctrine must prove four elements: (1) the issue

decided in the prior adjudication is identical to that presented in the action in question; (2) there is a final judgment on the merits; (3) the party against whom the plea of collateral estoppel is asserted was a party or privy in the prior litigation; and (4) the application of the doctrine does not work an injustice against the party to whom the doctrine is to be applied. *McDaniels v. Carlson*, 108 Wn.2d 299, 303, 738 P.2d 254 (1987).

In *Bordeaux v. Ingersoll Rand Co.*, 71 Wash. 2d 392, 395, 429 P.2d 207 (1967), the Supreme Court noted that: “Res judicata [claim preclusion] and collateral estoppel [issue preclusion] [are] kindred doctrines designed to prevent relitigation of already determined causes and curtail multiplicity of actions and harassment in the courts, [and] are at times indistinguishable and frequently interchangeable.”

In Argument D, Respondent argues that: Appellant attempts to attack subject matter jurisdiction with an attack on Freddie Mac’s title, inverting longstanding Washington law that bars title litigation in unlawful detainer.” Respondent’s Br. at 6.

Respondent overlooks the fact that the Legislature, when enacting RCW 59.12.032 in 2009, directly caused Respondent’s title to hang by its threads if mandatory compliance with RCW 59.12.032 had not been met. The face of RCW 59.12.032 is unambiguous, and when juxtaposed with the requirements of 26 U.S.C. § 6050J(a), a lender, who also anticipates bidding at a nonjudicial foreclosure sale for whatever reason, would undoubtedly be required to ensure the mandatory requirements of RCW § 59.12.032 were met ***before*** becoming the highest bidder when faced with an owner-occupied residential property in possession of superior title conveyed by a statutory warranty deed.

And while Respondent feels its title is under assault, this is so for at least two compelling reasons. First, commencing in July 2009, RCW § 59.12.032 imposed a duty on Respondent and all persons bidding at a

nonjudicial foreclosure sale to ensure this law has been complied with in order for the Superior Court to exercise its statutory unlawful detainer subject matter jurisdiction. Second, the Supreme Court’s decision in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83; 285 P.3d 34 (2012) placed Respondent on notice that its practice of requiring the original lender to name MERS, Inc. as the statutory “beneficiary” when MERS, Inc. did not own or hold the promissory note, was “unlawful.” “Simply put, if MERS does not hold the note, it is not a lawful beneficiary.” *Bain*, 175 Wn.2d at 89. “MERS is not a ‘holder’ under the plain language of the statute.” *Bain*, 175 Wn.2d at 104. “But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey.” *Bain*, 175 Wn.2d at 111.

Respondent, and those acting in concert with Respondent, knew naming MERS, Inc. as the statutory beneficiary was unlawful and that the highest court of this State required “strict compliance” with Chapters 59.12 and 61.24 RCW.

In an apparent attempt to distract and deceive this Court, Respondent requested that judicial notice be taken of the Notice of Trustee Sale, Clark County Auditor Instrument No. 5080743, dated June 18, 2014, because the “document was referenced below by Appellant, Clerk’s Papers at 22 and 25, but was not itself included in the present record.” Respondent’s Request for Judicial Notice at 2.

On October 13, 2016, the Court took judicial notice of the Notice of Trustee’s Sale, as requested by Respondent. However, Respondent did not request judicial notice of the following four instruments, listed in Appellant’s Request for Judicial Notice filed in support of this Brief:

EXHIBIT	DESCRIPTION	PAGE NO.
1	DEED OF TRUST County Auditor Instrument No. 4082317 Dated November 15, 2005	1

2	ASSIGNMENT OF DEED OF TRUST County Auditor Instrument No. 4799971 Dated October 17, 2011	17
3	APPOINTMENT OF SUCCESSOR TRUSTEE County Auditor Instrument No. 5059964 Dated March 25, 2014	019
4	TRUSTEE'S DEED UPON SALE County Auditor Instrument No. 5129307 Dated January 22, 2015	020

The Notice of Trustee's Sale and Exhibits 2-4, listed above, each made reference to the Deed of Trust, Exhibit 1, filed on November 15, 2005, which unlawfully named "MERS, Inc." as "**the beneficiary under this Security Instrument**" in Definition (E).

However, Exhibits 3 and 4 each revised the wording naming MERS, Inc. as the "beneficiary" in an apparent attempt to make lawful that which was declared unlawful by our Supreme Court in *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012): "Simply put, if MERS does not hold the note, it is not a lawful beneficiary." *Bain*, 175 Wn.2d at 89. "But if MERS is not the beneficiary as contemplated by Washington law, it is unclear what rights, if any, it has to convey." *Bain*, 175 Wn.2d at 111. The aforementioned Instruments are set forth here for comparison:

(1) Deed of Trust:

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lender's successors and assigns. MERS is the beneficiary under this Security Instrument. MERS is organized and existing under the laws of Delaware, and has an address and telephone number of P.O. Box 2026, Flint, MI 48501-2026, tel. (888) 679-MERS.
(F) "Note" means the promissory note signed by Borrower and dated _____.

///
///
///
///

(2) Assignment of Deed of Trust:

ASSIGNMENT OF DEED OF TRUST

For Value Received, the undersigned holder of a Deed of Trust (herein "Assignor") whose address is 3300 S.W. 34TH AVENUE, SUITE 101 OCALA, FL 34474 does hereby grant, sell, assign, transfer and convey unto **BANK OF AMERICA, N.A., SUCCESSOR BY MERGER TO BAC HOME LOANS SERVICING, LP FKA COUNTRYWIDE HOME LOANS SERVICING, LP** whose address is 400 NATIONAL WAY, SIMI VALLEY, CA 93065 all beneficial interest under that certain Deed of Trust described below together with the note(s) and obligations therein described and the money due and to become due thereon with interest and all rights accrued or to accrue under said Deed of Trust.

Original Lender: **LANDMARK MORTGAGE COMPANY**
Made By: **PAMELA S. OWEN A MARRIED WOMAN AS HER SEPARATE ESTATE**
Original Trustee: **FIDELITY NATIONAL TITLE INSURANCE**
Date of Deed of Trust: **11/4/2005**
Original Loan Amount: **\$208,250.00**

Recorded in Clark County, WA on: 11/15/2005, book N/A, page N/A and instrument number 4082317

Property Legal Description:
LOT 6, ANDERSON SUBDIVISION-2, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME G OF PLATS, PAGE 467, RECORDS OF CLARK COUNTY, WASHINGTON. A.P.N. #: 105669-012

(3) Appointment of Successor Trustee:

APPOINTMENT OF SUCCESSOR TRUSTEE

NOTICE IS HEREBY GIVEN that **MTC Financial Inc. dba Trustee Corps.** whose address is 1700 Seventh Avenue Suite 2100, Seattle, WA 98101, is appointed Successor Trustee under that certain Deed of Trust in which **PAMELA S. OWEN A MARRIED WOMAN AS HER SEPARATE ESTATE** was the Grantor and **FIDELITY NATIONAL TITLE INSURANCE** was the original Trustee and **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.** as nominee for **LANDMARK MORTGAGE COMPANY** was the original Beneficiary, which Deed of Trust was dated November 4, 2005 and recorded on November 15, 2005 as Instrument No. 4082317 of official records in the Office of the Recorder of Clark County, Washington, it to have all the powers of said original Trustee, effective forthwith.

IN WITNESS WHEREOF, the undersigned Beneficiary has hereunto set his hand; if the undersigned is a corporation, it has caused its corporate name to be signed and affixed hereunto by its duly authorized officer(s).

Dated: March 17, 2014 **BANK OF AMERICA, N.A.**

(4) Notice of Trustee's Sale:

which is subject to that certain Deed of Trust dated as of November 4, 2005, executed by **PAMELA S. OWEN A MARRIED WOMAN AS HER SEPARATE ESTATE** as Trustor(s), to secure obligations in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS")**, as designated nominee for **LANDMARK MORTGAGE COMPANY**, Beneficiary of the security instrument, its successors and assigns, recorded November 15, 2005 as Instrument No. 4082317 and the beneficial interest was assigned to **Bank of America, N.A., Successor by Merger to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing, LP** and recorded October 17, 2011 as Instrument Number 4799971 of official records in the Office of the Recorder of Clark County, Washington.

(5) Trustee's Deed Upon Sale:

RECITALS:

1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon said Trustee by that certain Deed of Trust dated November 4, 2005, executed by **PAMELA S. OWEN A MARRIED WOMAN AS HER SEPARATE ESTATE**, as Grantor, to **FIDELITY NATIONAL TITLE INSURANCE**, as Trustee, in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. ("MERS")**, as designated nominee for **LANDMARK MORTGAGE COMPANY**, Beneficiary of the security instrument, its successors and assigns, recorded on November 15, 2005, as Instrument No. 4082317, of official records in the Office of the County Auditor of Clark County, Washington.

In a last ditch effort to confer statutory unlawful detainer subject matter jurisdiction on the Superior Court, Respondent, in Argument E, relies on *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015) to provide the facts and evidence necessary to prove Respondent

and Bank of America National Association (“BANA”) enjoyed an “Owner-Servicer” relationship.

Brown clearly does not prove Respondent had a relationship with BANA. Nor does the 1099-A federal tax form prove an owner-servicer relationship existed. Moreover, both BANA and the successor Trustee, MTC Financial, Inc., relied exclusively upon the assignment of the note and deed of trust by MERS, Inc., who was acting as an “unlawful beneficiary.” Indeed, *Brown* held that: “*Bain* thus recognized that holding the note is essential to beneficiary status.” *Brown*, 184 Wn.2d at 539, 359 P.3d 771 (2015).

Respondent’s issuance of IRS Form 1099-A in January 2016 brought to light the inescapable fact and conclusion that the Superior Court was intentionally misled by Respondent and its attorneys as to material facts and evidence so that the Superior Court might exercise unlawful detainer subject matter jurisdiction and grant Respondent’s claim which never accrued.

Dated: November 7, 2016

Respectfully submitted,



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FILED
COURT OF APPEALS
DIVISION II

2016 NOV 14 AM 9: 50

STATE OF WASHINGTON

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON


DEPUTY

_____) Court of Appeals No. 490781-I-II
FEDERAL HOME LOAN MORTGAGE)
CORPORATION,) Clark County No. 15-2-00924-2
Respondent,))
vs.) PROOF OF SERVICE
PAMELA S. OWEN, et al.,)
Appellant.))
_____)

EMANUEL MCCRAY DECLARES AS FOLLOWS:

1. I am over the age of 18, am not a party to the within action, and make this declaration based upon personal knowledge and belief.

2. On November 9, 2016, I served copies of **APPELLANT'S REPLY BRIEF** and **APPELLANT'S REQUEST FOR JUDICIAL NOTICE** by placing the same in the U.S. Mail in a sealed envelope with postage fully prepaid, for delivery to:

Joseph H. Marshall
RCO Legal, P.S.
13555 SE 36th Street, Suite 200
Bellevue, WA 98006

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 9th day of November, 2016 at Vancouver,
Washington.


Emanuel McCray