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COURT OF APPEALS
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STATE OF WASHINGTON

BY _____
DEPUTY

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

ANNA TSYBULSKAYA, LEONARD KUCHEROV

DEFENDANT / APPELLANTS

v.

OWB REO, LLC

APPELLEE

APPELLANT'S AMENDED OPENING BRIEF

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I. INTRODUCTION

In this appeal, Leonid Kucherov and Anna Tsybulskaya (husband and wife - pro-se), seek reversal of the Order of the Superior Court from finding in favor of the Respondent and against the Defendant Appellant issuing the writ of possession and sale of the Defendant's home. CP 797 - 799

The APPELLEE purported to purchase the Defendant's home at auction by means of bidding the amount claimed was due on the construction loan. Appellees admitted after the foreclosure to the CFPB that the construction loan, was paid in full. Therefore it could not be used as the basis of the foreclosure. Throughout the process, the Appellants contended that the construction loan was satisfied, and replaced with a permanent loan which had a lower interest rate and lower payments. The payments made by the Appellants were escrowed because they were not as equivalent to the higher construction loan amount. The Appellee, therefore, wrongfully foreclosed by asserting the higher interest rate and payment amounts of the construction loan instead of the lower permanent loan amounts which were being paid.

The Appellant actually appeared at the auction with a person who was financially capable of purchasing the Defendants home. The APPELLEE did not appear at the auction and the house was never placed up for sale at the auction. A few days later, the APPELLANTS received notice that APPELLEE purchased the home. The APPELLEE

was not registered or licensed to do business and was doing business in this state unlawfully. Furthermore, the sale never occurred.

The Defendant has pending in Federal Court a complaint for wrongful foreclosure, IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION, LEONID KUCHEROV v. MTC FINANCIAL, INC., DBA TRUSTEE CORPS, CIT BANK, NA, FKA ONEWEST BANK, NA, FKA ONEST BANK, FSB, OWB REO, LLC. CASE NO. 3:17-cv-5050 BHS seeking damages for breach of contract, wrongful foreclosure, slander of title, violation of the consumer protection act, infliction of emotional distress, fraud, misrepresentation, civil conspiracy, declaratory relief to vacate the sale, and violation of the Fair Debt Collection Practices Act, 15 USC §1692(f)(6). (See Emergency Motion For Stay of Writ) and (Copy of Complaint, Exhibit 1).

Defendants filed an emergency motion for stay based on the fact that after the writ was issued, the Defendants received a notification from the Consumer Financial Protection Bureau (after the writ was issued - DECEMBER 13TH, 2016) that in response to the Defendants claim, an admission that the construction loan was satisfied on APPELLEE, on, told the CFPB that the construction loan was paid in full on January 16, 2007. (See Emergency Motion for Reconsideration, Page 1 and exhibits thereto)

Defendants filed a motion for Enlargement of Time to continue the hearing on the issuance of the writ of possession on the grounds that Defendants propounded discovery on the APPELLEE to prove that no taxes were paid. See Defendant's Emergency Motion for Stay of Writ, and Exhibit 2 & 3 thereto. The Court never ruled on the motion for enlargement of time, and held the hearing before the APPELLEE ever responded to the propounded discovery. In fact, in order to conceal the fact that they made gross sales of more than 128 million dollars, the APPELLEE filed a motion for a protective order seeking protection from the court avoiding their obligation to produce the requested information. There was also no ruling on the motion for a protective order. The Plaintiff also NEVER responded to the discovery that was propounded.

Defendants, in preparation for the hearing, then filed a Witness List (Exhibit 3) and Notice to Appear and Produce Documents, timely served on the Plaintiff (Exhibit 4). Plaintiff did NOT bring any of the documents requested and DID NOT PRODUCE the person most knowledgeable on any of the matters requested. In fact, their witness repeatedly stated he had no knowledge of the facts requested. The requests were directed at proving that the Plaintiff not only NEVER paid B&O taxes, but had substantial revenue from flipping homes in the state. As this Court is aware, it is unlawful to flip a home in Washington. Flipping was defined by the Department of Revenue as

spending more than \$500 on the property prior to sale, and the purchase and sale occurred within six months. As such, they are in direct violation of the statute requiring a contractor's license. RCW 18.27.010 and RCW 18.27.020. Because they have been flipping these homes they are guilty of a gross misdemeanor AND significantly, that makes the purchase of the APPELLANT's home illegal, unenforceable and void ab initio. See Exhibit 5.

The lower Court further had NO JURISDICTION to enter the order because OWB REO, LLC, IS BARRED FROM OBTAINING ANY JUDICIAL RELIEF FOR FAILING TO pay taxes. The Department of Revenue is wholly unaware of the actual amount that is due, even though the Plaintiff has profited because it sold more than 128 million dollars in property. Plaintiff NEVER filed any returns and registered as a non-revenue entity, so the State taxing agents are unaware of the presence of OWB REO LLC, and certainly unaware that they profited from the purchase and sale of more than 128 million dollars of property here. Exhibit 6. Had Appellant been permitted time to complete discovery or the Appellee been compelled to honor the notice to appear and production of documents at the hearing, then Appellant could have proven the actual amount of outstanding taxes owed by the Appellee.

APPELLANTs filed their motion for an extension of time and a motion for an order holding the officers of OWB REO LLC in contempt for misleading the Court because they testified that they do not owe any

taxes, when clearly OWB REO LLC has been EVADING TAXES by filing false documents with the Secretary of State. In fact, the Officers filed a statement of non-revenue entity, claiming they did not have any revenue in the state. CP 674 - 687

Plaintiff OWB REO LLC is engaging in business according to RCW 82.04.150 which is defined as follows:

"Engaging in business." CP 674 - 687

"Engaging in business" means commencing, conducting, or continuing in business and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business. Clearly the purchase of Plaintiff's home satisfies the statute and requires that they register to do business in this state. OWB REO LLC meets the conditions set forth on the Department of Revenue website and they are required to register with the Department of Revenue. "You must register with the Department of Revenue if you meet any of the following conditions: Your gross income is \$12,000 per year or more. CP 674 - 687

According to the records of Clark County, OWB REO, LLC has at least 10 transactions. CP 674 - 687

Docum ent	Title (type)	Parcel (s)	Exci se	Date Recorded	Grantor(Grantee s) (s)
<u>5288482</u>	D	831440 04	746603	May 2016	31, MTC FINANC RED IAL INC, LLC,

<u>5084666</u>	D	136856 000	711566	Jul 01, 2014	OWB REO LLC,	COBUR N JEREM Y, COBUR N KEIRA,
<u>5084665</u>	D	136856 000	711565	Jul 01, 2014	REGION AL TRUSTE E SERVIC ES CORP,	OWB REO LLC,
<u>4857660</u>	D	136856 000	678360	May 2012	24, OWB REO LLC,	COBUR N JEREM Y, COBUR N KEIRA,
<u>4856865</u>	R	136856 000		May 2012	22, CLARK COUNT Y,	OWB REO LLC,
<u>4800752</u>	D	110086 032	670608	Oct 19, 2011	OWB REO LLC,	HOOKE R THOM AS O, HOOKE R DOROT HY A,
<u>4788781</u>	ADT			Aug 2011	29, ONEWE ST BANK FSB,	OWB REO LLC,
<u>4788782</u>	D	136856 000	668661	Aug 2011	29, REGION AL TRUSTE	OWB REO LLC,

					E SERVIC ES CORP,	
<u>4785554</u>	D	148024 000	668175	Aug 2011	15, OWB REO LLC,	HAND AM HASAN , HAND AM BREND A,
<u>4775646</u>	ADT			Jul 05, 2011	ONEWE ST BANK FSB,	OWB REO LLC,
<u>4775647</u>	D	110086 032	666631	Jul 05, 2011	REGION AL TRUSTE E SERVIC ES CORP,	OWB REO LLC,
<u>4753299</u>	ADT			Mar 2011	28, ONEWE ST BAK,	OWB REO.LL C,
<u>4753300</u>	D	148024 000	662858	Mar 2011	28, REGION AL TRUSTE E SERVIC ES CORP,	OWB REO.LL C,

Appellee has committed tax fraud because not only did they not register with the Department of Revenue where their gross income exceeds \$12000 per year, but they registered as a non-revenue entity.

According to the Department of Revenue Website, the Plaintiff had the opportunity to go back and register under the Voluntary Disclosure Program. According to the Department of Revenue Website:

If "Non-revenue" appears after Tax Registration Number, the account is not registered with the Department of Revenue. However, it may be registered with other agencies in the state.

Washington State Department of Revenue State Business Records Database Detail	
TAX REGISTRATION NO :NON-REVENUE	ACCOUNT OPENED:8/11/2016
UBI: 604025191	ACCOUNT CLOSED: OPEN
ENTITY NAME :	
BUSINESS NAME :	
ENTITY TYPE: LIMITED LIABILITY	RESELLER PERMIT NO: N/A
NAICS CODE : 999990	PERMIT EFFECTIVE: N/A
NAICS DEFINITION N/A	PERMIT EXPIRES: N/A
FOR NON-COMMERCIAL USE ONLY	
10/20/2016 5:39 AM	

NOTE THAT THE APPELLEE REGISTERED AS A NON-REVENUE ENTITY EVEN THOUGH ACCORDING TO THE FOLLOWING, THEY WERE OBLIGATED AND ARE OBLIGATED TO REGISTER:

Appellee has registered to do business in the state, but has not registered with the Department of Revenue.

Registration requirements

You must register with the Department of Revenue if you meet any of the following conditions:

Your business is required to collect sales tax.

- Your gross income is \$12,000 per year or more.
- Your business is required to pay taxes or fees to the Department of Revenue.
- You are a buyer or processor of specialty wood products.

Business License Application

To register your business with the Department of Revenue and other state agencies, use My DOR, the new online business licensing system.

New business information

Once registered, you will receive a business license and Unified Business Identifier (UBI) number from the Business Licensing Service. You will also receive a letter from the Department of Revenue with your UBI/tax registration number and filing frequency. Check out our [New business tax basics booklet](#) for an overview of Washington's business taxes and reporting requirements.

Register and pay back taxes

If you have been doing business in Washington and are not registered with the Department of Revenue, you can come forward voluntarily under the [Voluntary Disclosure Program](#).

Buying a business

If you are buying a business or the assets of a business, you may owe tax on capital assets and consumable supplies.

Look up a registered business (BRD)

Use this application to lookup a business. Here you will find UBI numbers, addresses, open and close dates, etc. for all businesses registered in Washington State. CP 674 - 687

OWB REO LLC was further given the opportunity to Voluntarily Register under the [Voluntary Disclosure Program](#), (see Exhibit 1) but also have chosen not to do so. Until such time as they register under the Voluntary Disclosure Program and pay the back taxes, or, in the alternative pay the penalties and assessments as well as all back taxes. Appellee is or should be also be considered to be a house flipper which makes their purchase illegal, as more than \$500 was invested into the homes without the Appellee being a licensed contractor, and therefore the contract for purchase is ILLEGAL AND VOID AB INITIO. CP 674 - 687

Because the APPELLANTS have discovered from the State of Washington, that the purchase of a home, spending more than \$500 in

improvements, and subsequent sale of that home in less than one year constitutes the act of being an unlicensed contractor in violation of the Washington state anti-flipping law (SHB 1843), and because that act is illegal, then, in addition to tax evasion, the Appellee is further guilty of violating SHB 1843. CP 682

Before this Court can provide the Appellee any affirmative relief, the Appellee must prove to the satisfaction of the court that it paid all back taxes, including, the following penalties that applies to the underreported amounts. For delinquent taxes paid on or after August 1, 2015, new penalty rates apply (29%). See Special Notice - Late Payment Penalties Increase for additional information:

- a. Late payment return penalties up to 29 percent if you originally filed no business or zero returns, were on active non-reporting status, or your original returns were filed late.
- b. 5 percent assessment penalty for substantially underpaid tax if the underreported tax is underpaid by at least 20 percent. (WAC 458-20-228). CP 682- 683

In order to be obligated to register, the Appellee must have a physical presence or nexus in this state. Again, according to the Department of Revenue Website, a physical presence exists when:

“Physical Presence - Retail Sales

A person is deemed to have a substantial nexus with this state if the person has a physical presence in this state, **which need only be demonstrably more than a slightest presence**. For nexus purposes, **a person is physically present in this state if the person has property or employees in this state**. A person is also physically present in this state if the person, either directly or through an agent or other representative, engages in activities in this state that are significantly associated with the person's ability to establish or maintain a market for its products in this state. See RCW 82.04.067(6).

A few examples of nexus-creating activities include, but are not limited to:

- **Soliciting sales in this state through employees or other representatives**
- **Renting or leasing tangible personal property**
- **Providing services**
- **Constructing, installing, repairing, maintaining real property or tangible personal property in this state**

Until September 1, 2015, this physical presence nexus standard also applies to out-of-state businesses making wholesales sales into Washington. Effective September 1, 2015, nexus for most out-of-state wholesalers (as defined in RCW 82.04.257(1) CP 685

If that were not enough, the State also imposes EXCISE TAXES on construction and installation activities. According to THE DEPARTMENT OF REVENUE WEBSITE,

Taxability of construction and installation activities

Contractors who perform construction activities within this state are subject to Washington's excise taxes, even if they don't have a place of business here. Our Construction Guide can help you determine which construction and installation activities are taxable.

- a. **Business and Occupation Tax:** Washington's business and occupation (B&O) tax is levied on the gross receipts of business operations. This means there are no deductions for labor, materials, taxes or other costs of doing business. This is different from an income tax which is applied to the net income of business operations. The nature of the business activity determines appropriate B&O tax reporting. There are different B&O tax classifications for extracting, manufacturing, wholesaling, government contracting, public road construction, service and other activities, retailing and others. Each classification has its own tax rate. Businesses performing more than one activity may be subject to tax under one or more B&O tax classifications. Each business owes the B&O tax on its gross income. For example: where a prime contractor has a \$100,000 construction contract and hires a subcontractor to perform a portion of the construction for \$20,000, the prime contractor is taxable on \$100,000 and the subcontractor is taxable on \$20,000
- b. Construction Activities

In general terms, construction activities include, but are not limited to:

- installing, repairing, cleaning, improving, constructing and decorating real property;
- constructing and improving new or existing buildings and structures;
- cleaning, fumigating, razing or moving structures;
- cleaning and repairing furnaces and septic tanks;
- clearing land and moving earth;
- drilling oil or water wells;
- building or improving streets, roads, etc.;
- hazardous waste site cleanup;
- radioactive waste cleanup; and
- services in respect to the performance of any of the above jobs.

In more specific terms, construction activities also include the performance of general contracting, construction management, construction cleanup / debris removal, landscaping, painting, plumbing, electrical wiring, heat/ventilation/air conditioning, roofing, flooring/carpeting, windows, masonry, concrete, drywall, lighting, windows, framing, carpentry, trim work, etc.

CP 684 – 685

As a result of the foregoing, the Defendants requested that the court find:

OWB REO LLC claimed they were the bona fide purchasers of the Defendants property. CP 189 The Defendant demanded that the Appellee bring to court witnesses who had personal knowledge of those facts. CP 533 – 549. The Appellee refused, and the only witness they produced claimed he had no personal knowledge of any of the relevant facts and clearly was NOT the person most knowledgeable. He did not bring with him proof that OWB REO LLC was the purchaser; and claimed that “Under the Loan Contract the last payment that was received on this loan was in October of 2011 which is over five years

ago.” The loan contract referred to during testimony was A FIXED ADJUSTIBLE RATE NOTE, DEED OF TRUST AND TRUSTEE’S DEED UPON SALE. See Trial Exhibits 1 -3, CP 10 – 11,

The witness BOOMER BEAN testified he had no knowledge about the prior purchases and sales of homes by the Appellee in this State. The note and deed of trust were both the construction loans, not the permanent loan. RP 16 (TRANSCRIPT OF PROCEEDING OCTOBER 28TH, 2016, PAGE 16). Not only was the purchase NOT proven, but the bid process was wholly avoided as there was NO PURCHASE AT AUCTION. The Defendant was present at the auction and the property was never put up for sale. The sale was defective and void. *Kucherov v. MTC Financial, et al*, NO. 3:17-cv-5050 BHS. This is the pending suit in Federal Court seeking to set aside and vacate the sale on the basis that:

1. There was no purchase at auction because there was no auction.
2. The sale was to an entity that was not licensed to do business in this state as a licensed contractor; the property was purchased for the purpose of “flipping” it and that violates the anti-flipping laws, and makes the purchase illegal; and
3. There was no consideration paid for the subject property as the Appellee could not produce any evidence of the transfer of consideration.

4. The purchase was based on the wrong amounts, as the Appellee enforced the construction loan at the higher interest rate, even though the actual applicable loan was the lower fixed interest permanent loan, as the construction was completed and the loan was supposed to be converted to a permanent financing. The Trustee purportedly sold the house enforcing the wrong loan. *Ibid.*

OWB REO LLC was not licensed to do business in this State and is doing business here unlawfully, for the purpose of avoiding taxes, avoiding registering to do business because Onewest Bank has been barred from doing business, and while unlawfully simultaneously seeking affirmative relief from this and the lower Court. CP 209 – 270. Appellees have had ample opportunity to comply with the law, and could have avoided the look back period if they simply undertook the voluntary disclosure program. Instead, the Appellees have continued to evade the payment of taxes and deny owing B&O taxes, even though they have purchased and sold more than the listed homes here without registering to do business, and evaded the payment of excise and B&O taxes. Discovery has been propounded to determine the precise amount, and the Defendants will deliver that discovery to the Department of Revenue for proper assessments of penalties since the Appellee has chosen not to do so. The Lower Court should have done two things: First – require the Appellee to respond to the pending discovery and Second – at a minimum, held the Appellee to the notice to appear and

produce documents and require the Appellee to bring with them the proof as to how many houses they bought, and sold; how much they paid for each house; prove how much they sold each house; and proof they filed tax returns and did not pay any taxes. Instead, they never paid a tax return, and they concealed from the State their revenue so the State would be unaware of the unimaginably large amount of money they made in this State without payment of ANY B&O taxes and NOT TELLING THE STATE they were making a profit on each property. In fact, they concealed the information from the state by reporting that they were a non-revenue entity. CP 674 - 684.

Before the lower Court or even this Court can provide the Appellee any affirmative relief, the Appellee must prove to the satisfaction of the court that it **paid all back taxes, (Excise taxes for construction activities and B&O taxes for the gross revenue earned in the purchase and sale of more the listed homes) including, the following penalties that applies to the underreported amounts. For delinquent taxes paid on or after August 1, 2015, new penalty rates apply (29%). See Special Notice - Late Payment Penalties Increase for additional information:**

- **Late payment return penalties up to 29 percent if you originally filed no business or zero returns, were on active non-reporting status, or your original returns were filed late.**

- **5 percent assessment penalty for substantially underpaid tax if the underreported tax is underpaid by at least 20 percent. (WAC 458-20-228).**

On the NIC website OWB REO LLC PASADENA, CA, UNITED STATES 91101 Institution Type: Domestic Entity Other RSSD ID: 4294937. The definition of a Domestic Entity Other. “Domestic institutions that engage in banking activities usually in connection with the business of banking in the United States.” It is NOT a registered bank and is NOT entitled to any protection or exemptions under the federal banking laws. A national search of cases came up with the case listed that defines a Domestic Entity, Other. CP 674 - 684 (EXHIBIT 2 - *FIRST MORTG. CO., LLC v. Dina*, 11 NE 3d 343 - Ill: Appellate Court, 2nd Dist. 2014.) In almost an identical situation, the Appellee argued “On appeal, defendants assert that neither Appellee nor FMCI was a licensed mortgage lender or an exempt entity. They argue that, under the holding in *Carter-Shields v. Alton Health Institute*, 201 Ill.2d 441, 268 Ill.Dec. 25, 777 N.E.2d 948 (2002), a contract made by an entity that lacked the proper license is void. They further assert that, as an unregistered LLC, **Appellee was barred** by section 45-45 of the LLC Act (805 ILCS 180/45-45 (West 2010)) **from bringing any civil action in Illinois Court.** The Court found that “the category of “domestic entity other,” as used by the

NIC¹, does not establish that Appellee is a bank.” “For the reasons stated, we conclude that the court erred in granting summary judgment for foreclosure. We therefore must vacate the foreclosure judgment. Of course, the order confirming the sale was a direct consequence of the foreclosure judgment and must be vacated as well. We remand the matter for further proceedings.” **SEE EXHIBIT 2** CP 407 - 429

OWB REO LLC IS NOT LICENSED TO DO BUSINESS, DID NOT REGISTER TO DO BUSINESS IN THIS STATE AND THIS IS A CASE OF FIRST IMPRESSION FOR THIS STATE AND IS AN IMPORTANT PUBLIC ISSUE THAT MUST BE RESOLVED.

The entity, OWB REO LLC is not licensed to do business in this state, is not registered to do business in this state, and has not paid taxes for the business it has done in this State. A check of the public records shows it has never registered to do business here, and it is a separate legal foreign entity that is doing business here unlawfully. They have no right to obtain any judicial relief. OWB REO LLC is in the business of selling foreclosure properties after acquiring them at foreclosure sale. They do not reside in the homes and do not purchase them as residences. They acquire them to sell at a profit. CP 674 - 684

RCW 23.95.505

¹ According to the NIC's website:

"The National Information Center (NIC) provides comprehensive information on banks and other institutions for which the Federal Reserve has a supervisory, regulatory, or research interest including both domestic and foreign banking organizations operating in the U.S. The NIC Public Web Site is an interface to the NIC data <http://www.ffiec.gov/nicpubweb/Content/HELP/HelpAboutNIC.htm> (last visited Jan. 16, 2014).

Registration to do business in this state. (Effective January 1, 2016.)

(1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.

(2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.

(3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.

(4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.

(5) A foreign entity that transacts business in this state without a certificate of registration is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of registration, in an amount equal to all fees which would have been imposed by this chapter upon the entity had it applied for and received a certificate of registration to transact business in this state and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.

(6) The failure of a foreign entity to register to do business in this state does not: (a) Impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.

(7) A limitation on the liability of an interest holder or governor of a foreign entity is not waived solely because the foreign entity does business in this state without registering.

(8) RCW 23.95.500 (1) and (2) applies even if a foreign entity fails to register under this Article 5.

ASSIGNMENTS OF ERROR AND ISSUES

1. THE COURT ERRED IN FINDING IN FAVOR OF THE DEFENDANT / RESPONDENT BECAUSE THE RESPONDENT ADMITTED TO THE CFPB THAT THE CONSTRUCTION LOAN WAS PAID IN FULL ON JANUARY 16TH, 2007, BUT THE TRUSTEE HELD THE FORECLOSURE BASED ON THAT NOTE, AND NOT THE AMOUNTS THAT WERE SUPPOSED TO

BE IN THE PERMANENT LOAN. APPELLANT DID MAKE THEIR PAYMENTS, HOWEVER, THOSE PAYMENTS WERE ESCROWED BECAUSE THE APPELLEE MISAPPLIED THE PAYMENTS TO A CONSTRUCTION LOAN THAT THEY NOW ADMIT WAS PAID IN FULL ON JANUARY 16TH, 2007.

2. THE HONORABLE JUDGE LEWIS, ERRED IN REFUSING TO DISQUALIFY HIMSELF AS HE WAS BIASED AND PREJUDICED AGAINST THE APPELLANT AND THERE WAS ALREADY ONE SUCCESSFUL APPEAL BROUGHT BY THE APPELLANT BASED ON THE INCORRECT RULINGS FROM THE FIRST APPEAL.

3. THE COURT ERRED IN PERMITTING THE TESTIMONY OF THE APPELLEES WITNESS AS THE APPELLANT SERVED THE PLAINTIFF PRIOR TO THE HEARING WITH A DEMAND TO PRODUCE A PERSON OR PERSONS MOST KNOWLEGEABLE ABOUT TAXES, PAYMENTS RECEIVED, THE NOTE THAT WAS ENFORCED, THE SALE, ETC., AND THEY DID NOT PRODUCE THE WITNESSES DEMANDED.

4. THE COURT ERRED IN FINDING IN FAVOR OF THE RESPONDENT BECAUSE THE RESPONDENT WAS NOT A REGISTERED ENTITY, AND WAS BARRED FROM DOING BUSINESS IN THIS STATE.

5. THE COURT ERRED IN FINDING IN FAVOR OF THE RESPONDENT BECAUSE THE SALE DID NOT TAKE PLACE ON THE COURTHOUSE STEPS AS REQUIRED BY STATUTE.

6. THE COURT ERRED IN PERMITTING THE TESTIMONY OF THE APPELLEE WITNESS AS THE APPELLANT SERVED THE PLAINTIFF PRIOR TO THE HEARING WITH A DEMAND TO PRODUCE A PERSON OR PERSONS MOST KNOWLEGEABLE ABOUT TAXES, PAYMENTS RECEIVED, THE NOTE THAT WAS ENFORCED, THE SALE, ETC., AND THEY DID NOT PRODUCE THE WITNESSES DEMANDED.

7. THE COURT ERRED IN FINDING IN FAVOR OF THE RESPONDENT BECAUSE THE RESPONDENT WAS NOT A REGISTERED ENTITY, AND WAS BARRED FROM DOING BUSINESS IN THIS STATE.

8. THE COURT ERRED IN FINDING IN FAVOR OF THE RESPONDENT BECAUSE THE SALE DID NOT TAKE PLACE ON THE COURTHOUSE STEPS AS REQUIRED BY STATUTE.

II. STATEMENT OF THE CASE

APPELLANTS seek an order setting aside and vacating the order granting the imposition of the writ of possession, the order granting sanctions pursuant to CR11, the sale, and the order denying the Appellants motion for stay of the issuance of the writ because when the Defendants responded to the Consumer Financial Protection Bureau they admitted that the APPELLEE had no standing to foreclose on the construction loan, because the APPELLEE, on DECEMBER 13TH, 2016, told the CFPB that the construction loan was paid in full on January 16, 2007. CP 674 - 676

The wrongful foreclosure and sale of the APPELLANTs property was based on the Trustee enforcing the note and selling the APPELLANT's home to satisfy a note that the APPELLEE told the CFPB was paid in full on January 16th, 2007. See Exhibit 1, Page 7 of Appellant's Motion For Reconsideration of Imposition of Sanctions. December 13th, 2016 letter to CFPB and Exhibit 2, Page 8 of Appellant's Motion for Reconsideration of Imposition of Sanctions.

In all the disputes brought by the APPELLANT, there has NEVER YET BEEN A JUDICIAL DETERMINATION that the foreclosure sale was properly held in the county on the courthouse steps, and certainly not held to enforce the permanent loan, but held to enforce a construction

loan which was on terms significantly less favorable, and NOW by Plaintiff's own admission, it was paid in full on January 16th, 2007. APPELLANT DID make their payments, however, those payments were escrowed because the APPELLEE misapplied the payments to a construction loan that they NOW ADMIT was paid in full on January 16th, 2007. This new evidence brings the perpetration of fraud by the APPELLEE to light and voids the sale. CP 674 – 684.

That there is a pending LAWSUIT IN FEDERAL COURT² seeking to set aside and vacate the sale of the home; that the writ of restitution was issued by the Superior Court after the Court found that the Plaintiff, who only registered to do business in this state a month ago, has been doing business in this state for more than five years, and has amassed gross revenue in this state in an amount estimated to exceed 128 million dollars, and never filed any tax returns in this State, and who admits to NEVER HAVING PAID ANY B&O TAXES. That the Plaintiff admitted to the CFPB that they foreclosed based on the construction loan which was actually satisfied. The permanent loan was a lower interest rate over a longer period of time, and the Defendant paid that amount. Even the sale was fraudulent, as the Defendants had a buyer at the auction and the sale never occurred on the courthouse steps.

RIGHT TO APPEAL

² IN THE UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF WASHINGTON, TACOMA DIVISION, *LEONID KUCHEROV v. MTC FINANCIAL, INC., DBA TRUSTEE CORPS, CIT BANK, NA, FKA ONEWEST BANK, NA, FKA ONEST BANK, FSB, OWB REO, LLC*. CASE NO. 3:17-cv-5050 BHS

The order granting the issuance of the writ and denial of the motions to stay the issuance are final appealable orders under RAP 2.2(a)(1) inasmuch as it represents a final judgment for possession in a civil case. See *Bergman Clay Mfg. Co. v. Bergman*, 73 Wash. 144, 131 P. 485 (1913); *State ex ref. Panos v. Court for King County*, 188 Wash. 382, 386, 62 P.2d 1098 (1936).

Defendants made multiple valiant efforts to stay the sale, and even was successful on their last appeal. The sale never transpired as the Defendant was present at the time with a willing buyer and there was no sale.

III. STANDARD OF REVIEW

In an unlawful detainer action under RCW 61.24.060, which authorizes a purchaser at a trustee's sale to obtain possession of the purchased property using the summary proceedings for unlawful detainer in chapter 59.12 RCW. Chapter 59.12 RCW provides for a limited summary proceeding "to preserve the peace by providing an expedited method for resolving the right to possession of property." *Heaverlo v. Keico Indus., Inc.*, 80 Wn. App. 724, 728, 911 P.2d 406 (1996). To protect the summary nature of such proceedings, the action is a narrow one and is limited to the question of possession and ancillary issues such as damages and rent due. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985); *Puget Sound Inv. Grp., Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998); *Heaverlo*, 80 Wn. App. at 728. The Court

lacked jurisdiction to enter any orders on the grounds that the burden was on the Plaintiff to prove first that it was doing business here lawfully, paid all of its taxes, fines, penalties and interest; and clearly has not met that burden; and secondly, that it was the actual purchaser of the Defendant's homestead home.

Here, the APPELLANTS seek to defend against the unlawful detainer action by questioning the foreclosure sale's validity for several reasons on the grounds that first, the Plaintiff is barred from doing business in this state and not entitled to any affirmative relief until they register and pay their taxes; and secondly, the underlying foreclosure was based on a sale of their property on a satisfied obligation and THERE WAS NO SALE, that Defendant Appellant had a qualified purchaser on the courthouse steps at the time of the purported sale, and no auction actually transpired or their buyer would have bid on the property.

Pursuant to the "Deeds of Trust Act", chapter 61.24 RCW (Act), the Appellant is seeking a reversal of the sale and a ruling that the sale was obtained by fraud and was not in accordance with the act because there was no auction on the courthouse steps. *Cox v. Helenius*, 103 Wn.2d 383, 388, 693 P.2d 683 (1985). The Act allows a grantor or borrower to seek to enjoin or restrain a sale "on any proper legal or equitable ground." RCW 61.24.130; *Plein v. Lackey*, 149 Wn.2d 214, 225, 67 P.3d 1061 (2003).

It is indisputable that the Defendants have pursued their presale remedies provided for in RCW 61.24.130.

The standard of review is de novo and summary judgment is appropriate only if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). We construe all facts and reasonable inferences from them in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). We review all questions of law de novo. *Berger v. Sonneland*, 144 Wn.2d 91, 103, 26 P.3d 257 (2001).

SUMMARY OF FACTS

APPELLANTS pray that this Court set aside and vacate the sale, stay or cancel the writ, and also STRIKE any and all pleadings filed by the APPELLEE in this and the Lower Court; find that the Court lacked jurisdiction to enter any orders on the grounds that the burden was on the Plaintiff to prove first that it was doing business here lawfully, paid all of its taxes, fines, penalties and interest; and clearly has not met that burden; and secondly, that it was the actual purchaser of the Defendant's homestead home. OWB REO LLC was not registered to do business in this state until after the first appeal was filed, and is barred from any judicial relief because the filings are facially fraudulent where they claim

that they are a non-revenue entity that does not owe any B&O taxes, even though the public records of the various counties that have the information available for free online clearly shows sales in excess of \$128 million dollars. December 13th, 2016 letter to CFPB and Exhibit 2, Page 8 of Appellant's Motion for Reconsideration of Imposition of Sanctions. RP 559 - 562

ARGUMENT

1. THE COURT ERRED IN FINDING IN FAVOR OF THE DEFENDANT / RESPONDENT BECAUSE THE RESPONDENT ADMITTED TO THE CFPB THAT THE CONSTRUCTION LOAN WAS PAID IN FULL ON JANUARY 16TH, 2007, BUT THE TRUSTEE HELD THE FORECLOSURE BASED ON THAT NOTE, AND NOT THE AMOUNTS THAT WERE SUPPOSED TO BE IN THE PERMANENT LOAN. APPELLANT DID MAKE THEIR PAYMENTS, HOWEVER, THOSE PAYMENTS WERE ESCROWED BECAUSE THE APPELLEE MISAPPLIED THE PAYMENTS TO A CONSTRUCTION LOAN THAT THEY NOW ADMIT WAS PAID IN FULL ON JANUARY 16TH, 2007. ISSUE PERTAINING TO ASSIGNMENT OF ERROR: Because the sale was based on a satisfied note it is invalid and the fraudulent nature of the sale was not revealed and admitted until the bank responded to the Appellants' CFPB complaint making the sale void.

After the sale was finalized, the Appellee responded to the Appellant's complaint he filed with the CFPB regarding the transaction. In response to the complaint, the Appellee admitted that the note was satisfied on January 16th, 2007³. That means that the Appellant was correct in asserting that the construction loan could no longer be enforced after that date, and that the construction loan was replaced with the

³ December 13th, 2016 letter to CFPB, Page 7, and Exhibit 2, Page 8 of Appellant's Motion for Reconsideration of Imposition of Sanctions.

permanent loan, but the Appellee billed and foreclosed on the Appellant based on the construction loan and wrongfully escrowed the Appellants payments. The Appellees collected money that was not due or owed and foreclosed on the wrong note. December 13th, 2016 letter to CFPB and Exhibit 2, Page 8 of Appellant's Motion for Reconsideration of Imposition of Sanctions. RP 209 – 228.

2. THE HONORABLE JUDGE LEWIS, ERRED IN REFUSING TO DISQUALIFY HIMSELF AS HE WAS BIASED AND PREJUDICED AGAINST THE APPELLANT AND THERE WAS ALREADY ONE SUCCESSFUL APPEAL BROUGHT BY THE APPELLANT BASED ON THE INCORRECT RULINGS FROM THE FIRST APPEAL.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR:

The judge, who already was overturned on appeal the first time, again rushed to judgment depriving the Appellant of her right to a fair hearing with all discovery, the judge was biased and should have recused himself.

Defendants are pro se and requested after the APPELLEE stipulated with this Court of Appeals to vacate the first writ on the grounds that the Defendants were correct, that the Honorable Judge Lewis of the Court recuse itself on the grounds that during the hearing, the Judge made unequivocal statements showing his prejudice toward pro se parties. The Court denied the motion, saying “your request to disqualify me is denied. I have no actual bias against you and there is no reason to think that I cannot judge this case fairly, so... So go on out and get yourself a hearing date and we'll go from there”. See the Transcript of the Hearing occurring on September 30th, 2016 before the Honorable Judge Robert Lewis, Page 7, lines 11-18. 1 CT 11-18. The Court then

granted the issuance of the writ without compelling the APPELLEE to produce any witnesses or produce any of the documents that were timely noticed to bring with them at the time of the hearing. The Court did nothing to help the Defendant enforce either the discovery that was propounded, nor did it do anything at the time of the hearing to compel the APPELLEE to respond to the notices the Defendant served on the APPELLEE to produce evidence and knowledgeable witnesses. And, to the contrary, the Court ignored the Defendants plethora of evidence showing the APPELLEE had millions of dollars in purchases and sales of commercial property before it every even registered to do business here, and NEVER PAID ANY B&O taxes. The Court said, "All Right, Well I deny the request for a continuance. I understand the issues in this case. This is an unlawful detainer proceeding. Unlawful detainer proceedings are limited to a determination by the court of whether or not the APPELLEE has the right to possession of the premises and has the right to evict the defendants because they don't have the right to possession of the premises." See Transcript of proceedings, October 28th, 2016, Page 7, lines 17 -25. 1 CT 7

Clearly the judge was biased and prejudiced because the right to even bring the action is jurisdictional. CP – 270 -291 They did so many millions of dollars in business before they registered and the court did not even make them prove they satisfied the statute. The Court deprived the Appellant of the right to complete discovery. The Judge claimed to

understand the statute, but the issue presented was the precise issue raised in the first appeal, and the rights of the Appellant were so abused, that even the Appellee in the first appeal STIPULATED TO REMAND because the Appellee KNEW that they were not licensed to do business, and KNEW THEY DID NOT PAY THEIR TAXES. Defendants propounded discovery on the Plaintiff to prove the fact that they did not satisfy the statute when flipped hundreds of homes and never paid any B&O taxes and did not satisfy the other licensing requirements. They flipped homes without being a licensed contractor. Before any of this could be resolved by the Court of Appeal in the first appeal, the APPELLEE ADMITTED the case should be remanded. Clearly the honorable Judge Lewis did not understand the issues and APPELLEE knew it would receive beneficial and favorable treatment from the same judge who was clearly biased and prejudiced against the Defendant and knew it would have better luck if the case was remanded, so they asked it be sent right back to the same judge. In the motion to recuse, after already being reversed on appeal, the Defendants argued, "If a party moves to recuse a judge after rulings have been made, he must demonstrate prejudice on the part of the judge. *State v. Cameron*, 737 P. 2d 688 - Wash: Court of Appeals, 1st Div. 1987. Defendants believe that they will not receive a fair hearing from Honorable Judge Robert Lewis, and he has demonstrated as much in ignoring a State Statute requiring the registration and good standing of a APPELLEE before permitting

them any affirmative relief. Even the APPELLEE in this case stipulated at the court of appeals level that the judge overstepped and stipulated to remand the case for a new hearing. APPELLEE knew that they were not in good standing (had not paid their taxes and had not registered to do business in this state) and knew they would not be successful on appeal. Defendants believe that if this matter is re-heard by Judge Lewis, he will again make rulings prejudicial to the Defendants without due consideration of their position.” See Motion to Disqualify Honorable Judge Robert Lewis, pages 1-2. That is precisely what occurred. The APPELLEE was not even ordered to provide a witness who had personal knowledge about the business affairs of the company before it registered to do business and their one witness testified he had no knowledge about any of the things covered in the requests and could not answer any of the questions about payments, which note was foreclosed upon, payment of B&O taxes, or any of the Defendants cross examination questions.

1. THE COURT ERRED IN PERMITTING THE TESTIMONY OF THE APPELLEES WITNESS AS THE APPELLANT SERVED THE APPELLEE PRIOR TO THE HEARING WITH A DEMAND TO PRODUCE A PERSON OR PERSONS MOST KNOWLEGEABLE ABOUT TAXES, PAYMENTS RECEIVED, THE NOTE THAT WAS ENFORCED, THE SALE, ETC., AND THEY DID NOT PRODUCE THE WITNESSES DEMANDED.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR:

The court deprived the Appellant of his right to a fair trial, deprived him of the discovery, deprived him of compelling the witnesses to bring evidence which would have barred the Appellee from any affirmative relief because it did not pay taxes, and Appellant was deprived of the right to prove the same.

The Defendants, at the hearing, and prior to the hearing, demanded discovery regarding the APPELLEE's payment of taxes and requested an extension of time prior to the hearing to obtain the propounded discovery. The APPELLEE did not produce any of the documents that were demanded at the hearing nor did they respond to the written discovery that was propounded. See Transcript of Hearing, October 28th, 2017, page 7, lines 1-18. 1 CT 7 See also demand for production of documents, Interrogatories, and Request for Admissions, all propounded by the Defendant on the APPELLEE. CP – 533 – 549. There were NO responses given.

2. THE COURT ERRED IN FINDING IN FAVOR OF THE RESPONDENT BECAUSE THE RESPONDENT WAS NOT A REGISTERED ENTITY, AND WAS BARRED FROM DOING BUSINESS IN THIS STATE.

ISSUE PERTAINING TO ASSIGNMENT OF ERROR:

The Appellee was not entitled to conduct a judicial sale because it was not a registered entity and prohibited from doing business in this state.

A case of first impression here, a national search of cases came up with the case prohibits a non-registered entity and not entitled to any affirmative relief by this Court. *FIRST MORTG. CO., LLC v. Dina*, 11 NE 3d 343 - Ill: Appellate Court, 2nd Dist. 2014. In almost an identical situation, the Plaintiff argued "On appeal, defendants assert that neither plaintiff nor FMCI was a licensed mortgage lender or an exempt entity. They argue that, under the holding in *Carter-Shields v. Alton Health Institute*, 201 Ill.2d 441, 268 Ill.Dec. 25, 777 N.E.2d 948 (2002), a

contract made by an entity that lacked the proper license is void. They further assert that, as an unregistered LLC, plaintiff was barred by section 45-45 of the LLC Act (805 ILCS 180/45-45 (West 2010)) from bringing any civil action in Illinois Court. The Court found that “the category of “domestic entity other,” as used by the NIC, does not establish that plaintiff is a bank.” “For the reasons stated, we conclude that the court erred in granting summary judgment for foreclosure. We therefore must vacate the foreclosure judgment. Of course, the order confirming the sale was a direct consequence of the foreclosure judgment and must be vacated as well. We remand the matter for further proceedings.”

Additionally, because they failed to qualify, the Court erred in failing to STRIKE THEIR MOTION AND FURTHER PERMIT THE APPELLEE TO PROCEED WITH A DEFAULT JUDGMENT.

Consequences of not foreign qualifying: Since there are additional costs—including initial and ongoing fees from both your state of incorporation and state of qualification, BUT state laws require foreign corporations and LLCs doing business within their borders to foreign qualify, and the consequences of not doing so outweigh the costs:

The Defendant is barred from defending the suit and must pay back taxes for the time in which this LLC did business within a state without being foreign qualified here. <http://www.bizfilings.com/foreign-qualification-faqs.aspx> CP - 307 - 429.

The entity, OWB REO LLC is not licensed to do business in this state, is not registered to do business in this state, and has not paid taxes for the business it has done in this State. A check of the public records shows it has never registered to do business here, and it is a separate legal foreign entity that is doing business here unlawfully. They have no right to obtain any judicial relief. OWB REO LLC is in the business of selling foreclosure properties after acquiring them at foreclosure sale. They do not reside in the homes and do not purchase them as residences. They acquire them to sell at a profit. CP – 209 - 270

See RCW 23.95.505.

Registration to do business in this state. (Effective January 1, 2016.)

(1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.

(2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.

(3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.

(4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.

(5) A foreign entity that transacts business in this state without a certificate of registration is liable to this state, for the years or parts thereof during which it transacted business in this state without a

certificate of registration, in an amount equal to all fees which would have been imposed by this chapter upon the entity had it applied for and received a certificate of registration to transact business in this state and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.

(6) The failure of a foreign entity to register to do business in this state does not: (a) Impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.

(7) A limitation on the liability of an interest holder or governor of a foreign entity is not waived solely because the foreign entity does business in this state without registering.

(8) RCW 23.95.500 (1) and (2) applies even if a foreign entity fails to register under this Article 5.

Clearly, the Lower Court erred in IGNORING THE STATUTE altogether and granting relief when the court had NO JURISDICTION to enter any orders or grant any relief to an unregistered unlicensed entity that did not pay its taxes. The lower court erred because it did not, at a minimum, stay the Appellee's motion pending their registration and payment of all B&O taxes, and if not timely, strike their pleadings and not permit the Appellee to proceed with a judgment. CP – 209 - 270

3. THE COURT ERRED IN FINDING IN FAVOR OF THE RESPONDENT BECAUSE THE SALE DID NOT TAKE PLACE ON THE COURTHOUSE STEPS AS REQUIRED BY STATUTE. ISSUE PERTAINING TO ASSIGNMENT OF ERROR: The Appellee was not entitled to conduct a judicial sale somewhere other than the courthouse steps, and because the sale occurred elsewhere, it was void.

“While chapter 59.12 is designed to provide expeditious, summary proceedings, *Mink*, 49 Wash.App. at 208, 741 P.2d 1043 it is in derogation of the common law and must be strictly construed in favor

of the tenant. *Hous. Auth. of Everett v. Terry*, 114 Wash.2d 558, 563, 789 P.2d 745 (1990). To take advantage of these summary proceedings, the purchaser must comply with all statutory requirements. *Terry*, 114 Wash.2d at 564, 789 P.2d 745. If the purchaser fails to do so, the court lacks subject matter jurisdiction to proceed under chapter 59.12 RCW. *Terry*, 114 Wash.2d at 564-65, 789 P.2d 745. Defendants are pro se and requested after the APPELLEE stipulated with this Court of Appeals to vacate the first writ on the grounds that the Defendants were correct, that the Honorable Judge Lewis of the Court recuse itself on the grounds that during the hearing, the Judge made unequivocal statements showing his prejudice toward pro se parties. The Court denied the motion. The Court then granted the issuance of the writ without compelling the APPELLEE to produce any witnesses or produce any of the documents that were timely noticed to bring with them at the time of the hearing. *Laffranchi v. Lim*, 190 P. 3d 97 - Wash: Court of Appeals, 1st Div. 2008.

According to *Morton v. Resolution Trust Corp.*, 918 F. Supp. 985 (S.D. Miss. 1995) as affirmed in *ALPHA IMPERIAL BUILDING, LLC v. SCHNITZER FAMILY INVESTMENT, LLC*, II, Wash: Court of App, the sale must occur at the designated courthouse steps. The Defendants and their qualified buyer were present to bid on the property AND THERE WAS NO AUCTION. The sale did not transpire there, but the Trustee instead transferred title to the APPELLEE.

Significantly enough, Defendant demanded in its discovery that the APPELLEE produce evidence of a valid sale, and none was produced. See Demand for Production of Documents, Requests 2, 3, 4, 5, 6, 7, 13, 14, 15, 16, 17, 18, 19, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, and 56. See Request for Admissions, 8, 10, 11, 12, 13, 14, 15, 16, 17, 22, and 26. See Interrogatories, 2, 3, 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, and 34. CP – 209 – 270, CP 533 -549.

There was no public auction. There was no sale. The Trustee simply transferred title to the Defendant. CP – 209 – 270, CP 533 -549.

According to RCW 23.95.505

Registration to do business in this state. (Effective January 1, 2016.)

- (1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.
- (2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.
- (3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.
- (4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.
- (5) A foreign entity that transacts business in this state without a certificate of registration is liable to this state, for the years or parts

thereof during which it transacted business in this state without a certificate of registration, in an amount equal to all fees which would have been imposed by this chapter upon the entity had it applied for and received a certificate of registration to transact business in this state and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.

(6) The failure of a foreign entity to register to do business in this state does not: (a) Impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain any action, suit, or proceeding on the contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.

(7) A limitation on the liability of an interest holder or governor of a foreign entity is not waived solely because the foreign entity does business in this state without registering.

(8) RCW 23.95.500 (1) and (2) applies even if a foreign entity fails to register under this Article 5.

IV. CONCLUSION

The APPELLEE took too many shortcuts in stealing the Defendants homestead home. They started by coming to this State surreptitiously, without registering to do business, without a contractor's license, and started flipping homes, stealing them from homeowners like the Defendants. The Defendants built their home, and the loan was supposed to be converted from their construction loan to a much more favorable permanent loan. When the house was completed, the construction loan was satisfied, and the permanent loan substituted in its stead. However, the servicer NEVER changed the terms on their servicing invoices and continued to bill the higher interest and demanded the higher payments. After things came to a head, the Trustee was substituted and ordered to sell the Defendants home based on the construction loan amounts. Defendant filed a complaint with the CFPB. In response, the APPELLEE ADMITTED that the construction loan was satisfied. The

Trustee sold the home based on a satisfied note. What's worse, however, is there was NO sale or auction held on the courthouse steps. The Trustee simply transferred title to the APPELLEE. Defendant propounded discovery on the APPELLEE and requested an extension of time before the hearing to make sure the APPELLEE responded, seeking information as to all these elements. The Court, already having been overturned by mutual stipulation of the parties the first time around, denied all the requests of the Defendant. Did not permit them to do any discovery, did not require the APPELLEE to produce any of the documents Defendant demanded they bring to the trial, and did not even require the APPELLEE to respond to the issue of whether it paid taxes on the thousands of homes it sold in this state.

This Court cannot permit an unlicensed contractor who flipped homes, to retain ownership of the Defendant's home where there was NO auction, the Defendant was denied all discovery, and the judge was absolutely biased and prejudiced against the Defendant, ignoring multiple statutes in the process.

Respectfully submitted on this 06 day of June, 2017.



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CERTIFICATE OF PAGE LENGTH

APPELLANTS hereby certify that the attached brief does not exceed 50 pages, excluding the cover and index and these pages.



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