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WASHINGTON STATE
SUPREME COURT

NO. 93319-7

byh

SUPREME COURT OF THE STATE OF WASHINGTON

NYLUND HOMES, INC.,
Respondent/Plaintiff,

vs.

JERZY GRUCA,
Appellant/Defendant.

APPELLANT'S OPENING BRIEF

Jerzy Gruca
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Telephone: (360) 721-5492
Appellant/Defendant

 ORIGINAL

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I. ASSIGNMENTS OF ERROR.

A. Assignments of Error.

No. 1. The trial court erred in exercising unlawful detainer subject matter jurisdiction and granting unlawful detainer relief in favor of Respondent.

B. Issues Pertaining to Assignments of Error.

Did the trial court acquire unlawful detainer subject matter jurisdiction and personal jurisdiction when Respondent failed to strictly comply with Chapters 59.12 and 61.24 RCW? (Assignments of Error No. 1.)

Are the judgments and orders of the Superior Court void? (Assignments of Error No. 1.)

II. STATEMENT OF THE CASE.

On March 1, 1993, Gruca/Appellant, lawfully acquired an interest in real property evidenced by the recordation in his favor of a Statutory Warranty Deed filed in the Office of the Clark County Auditor on March 11, 1993 as Instrument Number 9303110321. Clerk's Papers ("CP") at 35.

On January 26, 2007, Gruca signed a promissory note memorializing a \$175,950.00 loan. "America's Wholesale Lender" was named the "Lender." CP at 42. To secure payment of the note, Gruca executed a Deed of Trust to America's Wholesale Lender, a New York Corporation, which was named the "Lender,"¹ as set forth in Definition "(C)." CP at 240.

¹ According to the database of the New York Department of State Division of Corporations, America's Wholesale Lender, Inc. initially filed the entity's name in New York on December 16, 2008, as Department of State Identification No. 3753565. It is believed that in or about June 1984, Countrywide Financial Corporation launched "America's Wholesale Lender" under "Countrywide Home Loans, Inc. d/b/a America's Wholesale Lender" as a trademark, trade name and or service mark which became associated/intertwined with the face of more than 3.5 million notes and deeds of trust nationwide. Thus, the claim on Gruca's Deed of Trust that "America's Wholesale Lender" was a New York Corporation existing on January 26, 2007 is absolutely false, fraudulent and deceptive. In fact, Gruca and more than 3.5 million borrowers have been

Definition “(E)” of the Deed of Trust, among other things, named Mortgage Electronic Registration Systems, Inc. (“MERS”) as the “beneficiary under this Security Instrument.” CP at 241.

On August 1, 2011, MERS, in its capacity as “beneficiary,” purported to convey its rights as beneficiary and holder of the deed of trust by assigning the note and deed of trust executed by Gruca to “The Bank of New York Mellon FKA The Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3.” The Assignment was recorded on August 3, 2011 as Instrument Number 4782796. CP at 255.

On October 10, 2014, Gruca filed a complaint for injunction in the Superior Court to prevent The Bank of New York Mellon from foreclosing, among other things, under case name *Gruca v. Bank of New York, et al.*, Cause No. 14-2-02945-8. CP at 176.

On June 2, 2015, “Specialized Loan Servicing, LLC as servicer and attorney-in-fact” for “The Bank of New York Mellon FKA The Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3,” appointed “Benjamin D. Petiprin, attorney at law,” as successor trustee to act for “The Bank of New York Mellon FKA The Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3,” “who is the present beneficiary of said Deed of Trust.” CP at 41.

On April 1, 2016, Gruca commenced an action to quiet title which named the Successor Trustee, Benjamin D. Petiprin and The Bank of New York, among others. CP at 30, 184. The action to quiet title was assigned cause number 16-2-00694-2. In support of the action, Gruca filed a Notice

led to believe that the “Lender” was a New York Corporation and therefore did not know whom to sue for their loan because the true name of the “Lender” was never disclosed. Stated differently, Countrywide Home Loans, Inc. has falsely and deceptively impersonated a New York Corporation when in fact its business name is not a corporation at all.

of Lis Pendens in the Superior Court on April 8, 2016, CP at 51, which was recorded on April 11, 2016 in Clark County as Instrument Number 5273261. CP at 50.

On May 20, 2016, notwithstanding Gruca's pending complaint for injunction, cause number 14-2-02945-8; Gruca's pending action to quiet title, cause number 16-2-00694-2; and Gruca's pending notice of *lis pendens* recorded on April 11, 2016, Benjamin D. Petiprin, acting on behalf of "The Bank of New York Mellon FKA The Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3," sold Gruca's home to Nylund Homes, Inc., ("Respondent"). The Trustee's Deed Upon Sale was recorded in Clark County on June 9, 2016 as Instrument Number 5291595. CP at 6.

On June 13, 2016, Respondent, notwithstanding Gruca's pending complaint for injunction, cause number 14-2-02945-8, Gruca's pending action to quiet title, cause number 16-2-00694-2 and pending notice of *lis pendens* recorded on April 11, 2016, commenced an action for unlawful detainer under case name *Nylund Homes, Inc. v. Gruca*, which was assigned cause number 16-2-01101-6. CP at 1.

On June 22, 2016, Gruca filed an Answer to Respondent's complaint for unlawful detainer, CP at 12, wherein Gruca directly challenged the Superior Court subject matter jurisdiction by informing the court that MERS, Inc., in its unlawful capacity as "beneficiary," initiated the nonjudicial foreclosure, CP at 12, and that Gruca had pending in the Superior Court a complaint for injunction, cause number 14-2-02945-8, and action to quiet title, cause number 16-2-00694-2 and had filed a notice of *lis pendens* recorded on April 11, 2016, CP at 12-13.

Gruca's Answer further informed the Superior Court in paragraph 1(f), CP at 13, that he had again notified the Trustee and others on May 13, 2016 that they were engaged in an unlawful nonjudicial foreclosure

sale, and in paragraph 1(g), that Respondent and all other bidders at the sale conducted on May 20, 2016, were informed of the two pending actions and the notice of *lis pendens* before bidding commenced. CP at 13.

The Superior Court was further informed that the type relief requested by Respondent for attorney fees had been rejected in *Fed. Nat'l Mortg. Ass'n v. Steinmann*, 181 Wn.2d 753 (2014). CP at 26-27.

At a "show cause" hearing conducted on June 24, 2016, the Superior Court, notwithstanding Gruca's pending complaint for injunction, cause number 14-2-02945-8, Gruca's pending action to quiet title, cause number 16-2-00694-2, Gruca's pending notice of *lis pendens* recorded on April 11, 2016 and Gruca's Answer to Respondent's unlawful detainer complaint filed on June 22, 2016, entered an Order directing the Clerk to issue an Immediate Writ of Restitution, CP at 75, which was issued in the name of "THE STATE OF WASHINGTON" and directed to Sheriff Chuck E. Atkins for execution. CP at 76-77.

On June 30, 2016, Gruca took this appeal. CP at 80.

On July 20, 2016, Respondent, notwithstanding Gruca's pending complaint for injunction, cause number 14-2-02945-8, Gruca's pending action to quiet title, cause number 16-2-00694-2, Gruca's pending notice of *lis pendens* recorded on April 11, 2016, Gruca's Answer to Respondent's unlawful detainer complaint filed on June 22, 2016 and this appeal filed on June 30, 2016, caused Gruca to be unlawfully evicted from his residence by the Clark County Sheriff, which resulted in Respondent being placed in unlawful possession of Gruca's home. CP at 102-104.

III. STANDARD OF REVIEW.

Jurisdiction is an issue of law reviewed de novo. *Worden v. Smith*, 178 Wn.App. 309, 328, 314 P.3d 1125 (2013); *Cole v. Harveyland, LLC*, 163 Wn.App. 199, 205, 258 P.3d 70 (2011). Whether subject matter

jurisdiction exists is a legal question reviewed de novo. *In re Marriage of Buecking*, 179 Wn.2d 438, 443, 316 P.3d 999 (2013).

A Superior Court's legal conclusions are reviewed de novo. *In re Marriage of McDermott*, 175 Wn.App. 467, 483, 307 P.3d 717, review denied, 179 Wn.2d 1004 (2013).

Questions of statutory interpretation are reviewed de novo. *In re Marriage of Buecking*, 179 Wn.2d at 443; *In re Marriage of McDermott*, 175 Wn. App. at 483. A court must first consider the statute's plain language. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). "In placing a judicial construction upon a legislative enactment, the entire sequence of all statutes relating to the same subject matter should be considered." *Connick v. Chehalis*, 53 Wn.2d 288; 333 P.2d 647 (1958), citing *State ex rel. Washington Mut. Sav. Bank v. Bellingham*, 183 Wash. 415, 48 P. (2d) 609 (1935).

A judgment or final order is void if the entering court lacked subject matter jurisdiction. *In re Marriage of Buecking*, 179 Wn.2d at 446.

IV. ARGUMENT.

The Superior Court Lacked Subject Matter Jurisdiction When Respondent Failed To Comply Strictly with Chapters 59.12 and 61.24 RCW, Notwithstanding the Superior Court's Unlawful Detainer Subject Matter Jurisdiction Found In Wash. Const. Art. IV, § 6.

A. The Superior Court Never Determined Whether Respondent Complied with RCW § 59.12.032.

"The power to sell another person's property, often the family home itself, is a tremendous power to vest in anyone's hands. Our legislature has allowed that power to be placed in the hands of a private trustee, rather than a state officer, but common law and equity requires that trustee to be evenhanded to both sides and to strictly follow the law. *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 789, 295 P.3d 1179 (2013).

And, “[w]hile the legislature has established a mechanism for nonjudicial sales, neither due process nor equity will countenance a system that permits the theft of a person’s property by a lender or its beneficiary under the guise of a statutory nonjudicial foreclosure. *Klem v. Wash. Mut. Bank*. 176 Wn.2d at 790.

This case concerns the intentional theft of title to real property; conspiracy to offer a false instrument for filing or record; perjury before a judicial officer; contempt of court permitted by the Superior Court; Wash. Const. Art. IV, § 6 and Chapter 59.12 RCW.

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).

In *In re Marriage of Buecking*. 179 Wn.2d 438, 443, 316 P.3d 999 (2013), this Court 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).

An unlawful detainer action is a “special limited proceeding” “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 must be construed in favor of borrowers.)

In July 2009, 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.”

This Court further held in *Buecking* that “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 properly constrained the superior court’s subject matter jurisdiction by setting forth reasonable statutory prerequisites that must be fulfilled in order to maintain an action for unlawful detainer.

Respondent’s complaint was materially deficient on its face when filed on June 13, 2016. In order to give the Superior Court the appearance the Court could exercise unlawful detainer subject matter jurisdiction, Respondent alleged in paragraphs 1 through 4 of its complaint, CP at 4-5, that: (1) “Plaintiff is the lawful owner;” (2) The property was sold under a “Trustee’s Deed;” (3) Defendant had twenty days from the Trustee’s sale to quit the premises pursuant to RCW 61.24.060; (4) More than 20 days has elapsed and Defendant has not surrendered possession and is unlawfully detaining the same; and (5) “This action is taken pursuant to RCW 61.24.060 and 59.12 and the laws of the State of Washington.”

The Superior Court did not require, and Respondent did not provide, any evidence to demonstrate compliance with RCW § 59.12.032, which, on its face, is unambiguous. The Legislature placed the duty of compliance with RCW § 59.12.032 on Respondent. Respondent, in a

endeavor to defraud the Superior Court, attached a copy of the Trustee's Deed Upon Sale ("Trustee's Deed") to its complaint, CP at 6, which on its face, informed the Superior Court that the laws were not followed.

Recital 1 of the Trustee's Deed recited the fact that MERS, Inc. was named the "beneficiary" of the deed of trust, a status this Court rejected 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.

In an apparent attempt to nullify this Court's holdings in *Bain*, Recital 2 of the Trustee's Deed, CP at 6, attempted to establish the fact that both MERS, Inc. and the "lender" had acquired an ownership interest in the "promissory note," to wit:

2. Said Deed of Trust was executed to secure, together with other undertakings, the payment of one promissory note in the sum of \$175,950.00 with interest thereon, according to the terms thereof, in favor of AMERICA'S WHOLESALE LENDER as Lender, Mortgage Electronic Registration Systems, Inc. and to secure any other sums of money which might become due and payable under the terms of said Deed of Trust.

On September 12, 2016, in another attempt to convince the Superior Court it lacked subject matter jurisdiction to hear Respondent's motions and grant further relief, Gruca filed a "Request for Judicial Notice In Support of Defendant's Opposition To Motion for Entry of Order Authorizing Disposition of Defendant's Personal Property," CP at 173.

Gruca urged the Superior Court to, among other things, take judicial notice of "Defendants' Bank of New York Mellon, Specialized Loan Servicing, LLC and MERS Amended Motion To Dismiss" Gruca's quiet title action, Cause No. 16-2-00694-2, which was filed on August 10, 2016. CP at 201.

In an attempt to establish legitimacy to the nonjudicial foreclosure sale, these Defendants, ("Bank of New York Defendants"), attached to their motion, among other things: (1) a redacted copy of the Deed of Trust, County Auditor Instrument Number 4282805, CP at 240 and (2) a

redacted copy of the Assignment of Deed of Trust, County Auditor Instrument Number 4782796, recorded on August 3, 2011 by MERS, in its capacity as “beneficiary,” which unlawfully assigned the note and deed of trust to “The Bank of New York Mellon FKA The Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3.” CP at 255.

In an egregious affront to the laws of this State, the Bank of New York Defendants, in their motion to dismiss the quiet title action, admitted being aware that Gruca had commenced an action to stop the foreclosure in Cause No. 14-2-02945-8, CP at 202, yet went on to argue that:

“However, the foreclosure sale occurred on May 20, 2016 and the Property has been sold to Nylund Homes, Inc. by Trustee’s Deed recorded June 9, 2016. (Declaration of Tara J. Schleicher, Exh. 3, filed herewith). Therefore, as a matter of law, Plaintiff has waived that statute of limitations claim by failing to contest the sale as required by RCW 61.24.130. *CHD, Inc. v. Boyles*, 138 Wash. App. 131, 137-38 (2007). Plaintiff’s recourse was to attempt to prohibit the foreclosure sale prior to it occurring by obtaining an injunction prohibiting that sale in accordance with RCW 61.24.130. He did not do so and the sale has occurred. Therefore, Plaintiff’s quiet title action (his only claim) in this case must be dismissed.” CP at 202.

At the time Gruca’s home was unlawfully sold by the Bank of New York and its unlawful Trustee on May 20, 2016, no final judgment had been entered in the two causes commenced by Gruca, and the Notice of Lis Pendens, to this date, has not been recalled.

Additionally, the Superior Court never required The Bank of New York Mellon, as Trustee, to provide any evidence of its authority to act on behalf of the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3.

Appellant further informed the Superior Court that the actions of The Bank of New York Mellon, as a securities Trustee, further exposed

the fact that the court lacked subject matter jurisdiction because, notwithstanding the unlawful assignment of the note and deed of trust by MERS to the Bank of New York as Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3, the Trust for which The Bank of New York Mellon was the Trustee was exclusively governed by the CWABS Asset-Backed Certificates Trust 2007-3, Asset-Backed Certificates, Series 2007-3's Pooling and Servicing Agreement ("2007 PSA"), dated as of March 1, 2007. CP at 163-165.

Under the 2007 PSA, the servicing rights to Gruca's loan was exclusively vested in a "Master Servicer." Under Section 3.01 of the 2007 PSA, only the "Master Servicer" could conduct a foreclosure of the loans pooled into the Trust, but only after obtaining approval from 25% of the Certificateholders. CP at 164.

Article VIII, Section 8.04 of the 2007 PSA strictly prohibited the Trustee, The Bank of New York Mellon FKA The Bank of New York, from owning any of the loans owned by the Trust, and was further prohibited from exercising any rights of the Master Servicer unless a default had been declared by at least 25% of the Certificateholders pursuant to Article VII, section 7.01 et seq. CP at 164-165.

By circumventing the rights of the investors, the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3, The Bank of New York Mellon exposed the Federal Home Loan Mortgage Corporation's ("Freddie Mac") practice of requiring MERS, Inc. to be named the "beneficiary" of deeds of trust associated with mortgage loans earmarked for securitization to be nothing more than a "Ponzi scheme," which was similar to other Ponzi schemes such as the Ponzi scheme used by Allen Stanford and his companies to falsely represent the certificates of deposit in Stanford International Bank, discussed by the U.S. Supreme

Court in *Chadbourne & Parke LLP v. Troice*, 571 U.S. ____ (2014), 134 S. Ct. 1058 (2014).

The Bank of New York Mellon's wrongful foreclosure unlawfully prevented the securities investors/Certificateholders from learning the true value of their securities and from exercising their rights under the 2007 PSA, which is precisely the same conduct associated with nearly every Ponzi schemer involving investments in securities.

In *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015), this Court held that: "*Bain* thus recognized that holding the note is essential to beneficiary status." *Brown*, 184 Wn.2d at 539.

The *Brown* court provided a limited glimpse of Freddie Mac's involvement in the home loan industry. Relevant here is the following:

"Freddie Mac does not lend to homebuyers. Instead, Freddie Mac purchases mortgage notes from the initial lenders. Often, Freddie Mac pools hundreds of these mortgage notes into a trust, and the trustee issues and sells securities to investors in various tranches of seniority. The securities represent the investors' claims on the stream of mortgage payments or other interests (e.g., late fees) on the mortgage notes." *Brown*, 184 Wn.2d at 521.

Notwithstanding this Court's excellent work in *Brown*, once a loan is pooled and offered to investors, it becomes a "security" subject to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act"). Section 3(a)(41) of the Exchange Act, 15 U.S.C. 78c(a)(41), defines the term "mortgage related security" to include the CWABS, Inc., Asset-Backed Certificates, Series 2007-3.

The violations of the 2007 PSA and the Exchange Act by The Bank of New York Mellon made it impossible for Respondent to prove compliance with RCW §§ 59.12.032, 61.24.040 and 61.24.060. This is so because RCW §§ 61.24.040 and 61.24.060 are controlled by RCW §§ 61.24.030(7)(a) and (b), which mandates:

(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.

Respondent did not and could not provide any truthful evidence that The Bank of New York Mellon and its Trustee, Benjamin David Petiprin, lawfully complied with RCW §§ 61.24.030(7)(a) and (b).

Moreover, a foreclosure trustee must 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 word "before," used in RCW § 61.24.030(7)(a) and (9), can be used as a preposition, conjunction or an adverb. The *Trujillo* court, in discussing the first sentence of RCW 61.24.030(7)(a), reiterated that a trustee, "before" foreclosing, 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 merely omitting facts and evidence—quite a simple task.

In an effort to continue its investor fraud involving MERS and to circumvent this Court's *Bain* ruling, Freddie Mac created a "MERS Rider," Form 3158, effective October 15, 2014, "due to recent legal developments in the States of Montana, Oregon and Washington." CP at 285-286.

Appellant urged the Superior Court to take judicial notice of the fact that the 2013 deed of trust executed by Clark County Sheriff Chuck Atkins, whose office placed Respondent in unlawful possession of Gruca's home, also unlawfully named MERS as the "beneficiary." CP at 167-168, 283. On June 30, 2016, Sheriff Atkins and his wife, Loma E. Atkins, executed a new Deed of Trust which eliminated reference to MERS as "beneficiary," CP at 283, but which attached the new MERS Rider, Form 3158, which "incorporated into and amend[ed] and supplement[ed] the Deed of Trust...of the same date given by [Sheriff Atkins and his wife]...."

This new deed was reconveyed a mere two weeks later on July 15, 2016. CP at 288. On July 20, 2016, Sheriff Atkins seized Appellant's residence, CP at 102, and unlawfully placed Respondent in possession, while being aware that MERS was an "unlawful" beneficiary and the foreclosure was wrongful.

When the new MERS Rider is juxtaposed this Court's holdings in *Bain* and *Brown*, MERS and the borrower, will, by the appearance of private contract, nullify *Bain*. Chapter 61.24's entire comprehensive scheme and the UCC, because an unidentified endorsee in blank cannot create an agency relationship between MERS and the unidentified party or any subsequent unidentified parties. Thus, in both operation and effect, nothing would prevent entities such as Respondent and The Bank of New York Mellon and their officers and lawyers from defrauding investors/Certificateholders of mortgage-backed securities, homeowners and the public using a Ponzi scheme backed with judicial impunity and financed by the U.S. Treasury.

At the time Sheriff Atkins unlawfully seized Appellant's residence, Appellant was in the process of placing his personal property in a portable storage container located in the driveway, which was visible to the Sheriff and Respondent. CP at 170-172.

In its motion to dispose of Appellant's personal property, Respondent argued before the Superior Court that it was justified in seizing control Appellant's personal property and placing it in storage pursuant to "[p]ursuant to RCW 59.12.100 and RCW 59.18.312(5)," and that Appellant was liable for all costs associated for this storage. CP at 154-156. The Superior Court agreed and granted the motion. CP at 345-346.

The aforementioned motion and order was yet another example of Respondent and the Superior Court creating new law on the fly in violation of constitutional separation of powers. Indeed, this Court directly informed the Superior Court in *Fed. Nat'l Mortg. Ass'n v. Steinmann*, 181 Wn.2d 753 (2014) that Chapter 59.18 RCW does not apply to a homeowner holding over after a nonjudicial foreclosure sale governed by Chapter 61.24 RCW.

Moreover, assuming, *arguendo*, that "RCW 59.18.312(5)" could be made applicable to the instant case, the Legislature expressly provided in RCW 59.18.312(5)(e) that:

"if the tenant or the tenant's representative objects to storage of the property, it will not be stored but will be placed on the nearest public property...."

This language is consistent with language in RCW 59.18.312(1):

"If the tenant or the tenant's representative objects to the storage of the property or the landlord elects not to store the property because the tenant has not served a written request on the landlord to do so, the property shall be deposited upon the nearest public property and may not be stored by the landlord."

The existence of a portable storage unit in Gruca's driveway made it clear to Respondent and Sheriff Atkins that Appellant opposed the storage of his personal property in any manner other the portable storage container.

Rather than allow Gruca to finish placing his personal in the portable storage container, Respondent, with the assistance of the Superior Court, has elected to unlawfully hold Gruca's personal property hostage at an undisclosed storage facility at a monthly cost of \$100.00 more than the portable storage container.

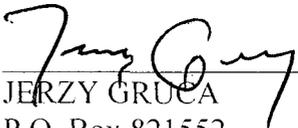
Appellant also informed the Superior Court in "DEFENDANT'S OPPOSITION TO MOTION FOR ENTRY OF ORDER AUTHORIZING DISPOSITION OF DEFENDANT'S PERSONAL PROPERTY that Respondent's President, Rod Nylund and its Representative, Gary Colemansmith and the lawyers representing Respondent and The Bank of New York had committed perjury and fraud on the court, CP at 157, 158, 159, 160, 161, with regards to the Declarations filed by these individuals, recorded at CP 78-79; 109-110; 127-128; 146-147; 163 and 165. The Superior Court responded to these allegations of perjury with silence.

V. CONCLUSION.

Appellant seeks a decision which awards its costs and finds the Superior Court lacked subject matter jurisdiction; that its judgment and orders are void; and which directs the Superior Court to dismiss the unlawful detainer action with prejudice.

Respectfully submitted,

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