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**COURT OF APPEALS, DIVISION II**  
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IN RE APPEAL OF ORDER GRANTING SUMMARY JUDGMENT OF:

CITIMORTGAGE INC.  
Appellee,

and

Paul Moseley  
Appellant

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Appeal from the Superior Court of Jefferson County  
Case No: 16-2-00216-1

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**AMENDED APPELLANT'S OPENING BRIEF  
OF ISSUES ON APPEAL**

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Paul Moseley  
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## **Introduction**

The matter having come on regularly before the court the 1<sup>st</sup> day of September 2017 and Judge Keith Harper having heard the arguments of both parties, having made a ruling in favor of Plaintiff/Appellee CITIMORTGAGE INC. (CMI), granting CMI's petition for summary judgment and in the Order failed to state its findings of fact and conclusions of law pursuant CR52. The Order entered failed to provide what documents and other evidence the trial court relied upon required by CR 9.12. The issues of material fact herein are contested by the Defendant/Appellant Paul Moseley. The Appellant believes the trial court has erred, causing inconsistency in the way the law is interpreted breaking the continuity of legal decisions made by the Washington Supreme Court, state statues and maxims of law. There are five issues in controversy for which summary judgement should have been denied. There are eleven assignments of error for review and potential abuses of court rules and procedure, presented herein.

Moseley takes notice that the Appellee, CMI has replaced attorney of record, Joseph McCormick III with Mr. Brad Fisher, just one day after the transcript was filed with the Appellate Court. It would seem that Moseley has hit a nerve of truth that CMI does not want to have come to

light evidenced by supplement of counsel with the more capable firm and attorneys of DAVIS WRIGHT TREMAINE, LLP. Previously in federal courts, Mr. Fisher has resorted to maligning Moseley's character rather than sticking to the relevant issues. These issues were not related to foreclosure or the issues before the Court today. In this case Moseley would hope that Mr. Fisher would take higher ground and stick to the facts and refrain from introducing red herrings, new evidence or character assassinations to distract the Court from the relevant issues.

#### **A. History**

In 2008, the appellant, Paul Moseley was married. He and his wife at the time, signed documents believing they were obtaining a loan for their residential home. Inaccuracies in billing begin to become apparent straight away and Mr. Moseley began reaching out by phone to what he believed was his lender, CMI. Time and time again Appellant, Paul Moseley would be told by the service representative on the phone that they were unable to access records but a supervisor from CMI would return the call. Because these returned calls never came, Moseley began writing letters of inquiry to CMI regarding his account. The only replies he would receive were boiler plate letters that indicated that CMI had received the mail correspondence. Moseley was stonewalled for months even years, both telephonically and by mail correspondence. The Moseley's, as a last

resort, suspended payments until such time as they could verify that they were paying the correct party and that the accounting errors would be resolved. Finally, with penalties accruing as a result of payment suspension and still having received no reply from CMI, Mr. Moseley began a series of law suits against CMI in small claims court for the damages that the uncorrected accounting errors were causing his family. Several default judgements were entered in favor of Moseley because CMI would not appear. Eventually Moseley filed a law suit in the District Court for errors found in servicing and negligence of the duties required for servicing an account under federal consumer laws. The District Court did not find Moseley's arguments convincing. Even after appeal in the 9<sup>th</sup> circuit court, there was no relief for the Moseley's other than the few small claims judgments in Moseley's favor. In 2012 after being convinced that the court would not be a place for remedy, the Moseley's attempted to satisfy their obligation in full and thus unencumber their home and the subject Real Property. CMI refused the tender and returned the instrument that was made in the full amount which also included all fees and penalties that were assessed during the time period when TILA and RESPA issues were under review of a federal court associated with this account. Another federal case ensued regarding the form of payoff that would be acceptable to CMI because they had refused the funds for full satisfaction. Moseley

believed that CMI's refusal of funds constituted lawful discharge to the same, according to clearly written federal laws. Unfortunately Moseley found no success in prosecuting the matter in federal court. The federal court ruled that the payment was "conditional" because Moseley had required the return of the original Note in exchange for the tender. Moseley did not see this full satisfaction as a conditional payment because before the time when Notes were securitized, the return of the original Note to the Mortgagor was customary. Finally CMI has brought this action seeking to judicially foreclose a Deed of Trust with an invalid assignment more than six years after alleged default of account and has been granted summary judgement by the trial court despite having no standing in the matter and while issues of material fact in controversy remain.

### **Assignments of Error**

1. The trial court erred when it dismissed Mr. Moseley's Motion to Strike Declaration of Plaintiff's Counsel on the grounds of hearsay, having no firsthand knowledge or personal knowledge of the facts of the case. The trial court should have granted the motion to strike Mr. McCormack's declaration pursuant proper application of ER602 and should have required the minimum standards for exemption required in ER802.

2. The trial court erred when it dismissed Moseley's Motion to Strike Declaration of Jennifer Ollier on the grounds of hearsay in accordance with ER602. In her declaration she admits she has no firsthand knowledge facts relating to this case. The trial court erred when it dismissed the motion to strike, practicing law from the bench making the claim for exception under a hearsay exception rule for the plaintiff without application of the burden of conformity required in ER802.

3. The trial court erred when it dismissed Moseley's Motion to Strike Declaration of Lorissa Russelburg on the grounds of hearsay in accordance with ER602. In her declaration she admits she has no firsthand knowledge facts relating to this case. The trial court erred when it dismissed the motion to strike, practicing law from the bench making the claim for exception for the plaintiff under the hearsay exception rule without application of the burden of conformity required in ER802.

4. The trial court erred when interpreting statute law miscalculating the statutes of limitations, the complaint having been filed in excess of six years on a written contract that should have been barred pursuant RCW 4.16.040.

5. The trial court erred, when it disregarded statute laws that restrict the commencement of a new remedy for the same offense after

voluntarily discontinuing the remedy of non-judicial foreclosure not once but twice, barred by RCW 62A.2A-506(2)(3).

6. The trial court erred when it relied on a false instrument, a document purportedly assigned by an invalid beneficiary. The Corporate Assignment of Deed of Trust also filed on the county record was assigned by an entity known as MERS, who cannot be a lawful beneficiary in the State of Washington as held in *Bain v. Metro. Mortgage. Group, Inc., et al.*, 175 Wn.2d 83, 285 P.3d 34. Without a valid assignment of Deed of Trust, CMI does not have standing to prosecute, summary judgement was not proper. This material fact in controversy was not resolved. The false instrument was fraud before court and should not have been used as a basis for granting summary judgment.

7. The trial court erred when it did not require perfected chain of title or proof that CMI was the holder in due course before granting summary judgement in favor of CMI. The chain of title was broken when the Note was separated from the Deed of Trust by MERS. The mere fact that CMI touted they were holding the “original Note” but the “original Deed of Trust” was not present is proof enough that the chain of title was broken and the enforcement instrument lost. CMI is claimed to be the holder of the note, even if true, CMI did not attempt to prove that it was a holder in due course. Moseley makes irrefutable argument to this end. RP

11. The trial court should not have granted summary judgement in favor of CMI while issues of material fact remained in conflict.

8. The trial court erred, when it considered as evidence a fraudulent "Note" that was a forgery presented as an original for evidence by the Appellee, CMI and relied on the phony "Note" wherein Moseley specifically denied the signature both in pleading and at hearing requiring certain validation pursuant RCW 62A.3-308(a). The issue was raised that the signatures were not authentic establishing that the Note was fraudulent. The Note was fraud before the court and should not have been accepted as evidence for granting summary judgment pursuant RCW 62A.3-302(a)(1)

9. The Trial court erred when it proclaimed that the Federal Constitution for the United States is not law and proceeded to grant CMI summary judgment while Moseley asserted protections under the same Constitution by which the trial court derives its delegated authority. Any court rule or law in conflict with the United States Constitution is unlawful, void and is of no legal effect. The trial court erred when it strayed from its Constitutional boundaries awarding summary judgment and denying the right to a trial by jury expressly reserved and therefore demanded by Moseley.

11. The trial court should not have granted summary judgement in favor of CMI while issues of material fact remained in conflict.

8. The trial court erred, when it considered as evidence a fraudulent "Note" that was a forgery presented as an original for evidence by the Appellee, CMI and relied on the phony "Note" wherein Moseley specifically denied the signature both in pleading and at hearing requiring certain validation pursuant RCW 62A.3-308(a). The issue was raised that the signatures were not authentic establishing that the Note was fraudulent. The Note was fraud before the court and should not have been accepted as evidence for granting summary judgment pursuant RCW 62A.3-302(a)(1)

9. The Trial court erred when it proclaimed that the Federal Constitution for the United States is not law and proceeded to grant CMI summary judgment while Moseley asserted protections under the same Constitution by which the trial court derives its delegated authority. Any court rule or law in conflict with the United States Constitution is unlawful, void and is of no legal effect. The trial court erred when it strayed from its Constitutional boundaries awarding summary judgment and denying the right to a trial by jury expressly reserved and therefore demanded by Moseley.

10. The trial court erred when it omitted findings of fact and conclusions of law in the Order. The Order does not indicate what documents and evidence were called to the attention of the trial court and relied upon. CP 58. The trial court erred with sham legal process when its Order failed to meet the requisites required in CR 56(d), CR 52, CR 58 and CR 9.12.

11. The trial court erred on its Judgment and Decree in direct conflict with Washington statutes. the trial court erred on Judgment and Decree of Foreclosure regarding exclusive possession rights during the redemption period when the Property is owner occupied as a homestead as defined in RCW 6.13.010. The Judgement and Decree entered by the trial court is in direct violation of RCW 6.23.110(4). CP 59.

### **Issues Pertaining to Assignments of Error**

Whether the trial court erred and should have stricken declaration of counsel, Mr. McCormick when he clearly had no firsthand knowledge of the facts of the case and when there is no way McCormick, counsel for CMI, could have personal knowledge of the case? Mr. McCormick went as far as to have offered to testify if called to do so in his declaration. An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness as held in *Trinsey v. Pagliaro D.C.Pa.1964, 229*

*F. sup. 647*. CP32. Should the trial court have stricken such a declaration on the Motion to strike? Did the trial court fail its duty to appropriately apply ER602? Did the court perpetuated its error, when it dismissed Moseley's motion to strike under a broad sweeping claims of a "hearsay exception rule," practicing law from the bench on behalf of the plaintiff, without the application of the burden of conformity of ER802?

Whether the trial court abused its discretion and should have stricken the declaration of Ollier on the grounds of hearsay in accordance with ER602? In her declaration she admits she has no firsthand knowledge facts relating to this case, but has merely received hearsay from unknown persons. Would the best rules of evidence produce declarations from those unknown persons rather than from Jennifer Ollier who relies solely upon what other people told her? Did the trial court error when it dismissed Moseley's motion to strike under a broad sweeping claim of the "hearsay exception rule" without applying the burden of conformity required in ER802? Was the trial court by these actions practicing law from the bench on behalf of the Plaintiff?

Whether the trial court abused its discretion and should have stricken the declaration of Russelburg on the grounds of hearsay, ignoring the standard of ER602? In her declaration she admits she has no firsthand knowledge facts relating to this case, but has merely received hearsay

from unknown persons. Would the best rules of evidence produce declarations from those unknown persons rather than from Lorissa Russelburg who relies solely upon what other people told her? Did the trial court error when it dismissed Moseley's motion to strike under a broad sweeping claim of the "hearsay exception rule" without application of the burden of conformity required of ER802? Was the trial court by these actions practicing law from the bench on behalf of the Plaintiff?

Whether the trial court abused its discretion when interpreting the statutes of limitations, the complaint having been filed in excess of six years on a written contract from the time when the right of the action first accrued? Should the Action for the remedy of judicial foreclosure be barred pursuant RCW 4.16.040? Is the trial court's ruling inconsistent with the nature of time limited Actions that bar a judicial remedy as consistently held by all Washington time limiting statutes, specifically triggered at the time when the right of the action first accrued, in this case the alleged default, consistent with RCW 62A.2A-506(2)?

Whether the trial court abused its discretion when it overlooked laws that restrict the commencement of a new remedy for the same offense after voluntarily discontinuing the remedy of non-judicial foreclosure? Voluntary dismissal was entered in the record for not one but two non-

judicial foreclosures. Should the judicial foreclosure be barred of a another remedy under conditional restrictions of RCW 62A.2A-506(2)(3)?

Whether the trial court abused its discretion when it relied on a false document, the Corporate Assignment of Deed of Trust? This assignment was assigned by an invalid beneficiary. The Corporate Assignment of Deed of Trust that was filed on the county record was assigned by an entity known as MERS who cannot be a beneficiary in the state of Washington as held in *Bain v. Metro. Mortgage. Group, Inc., et al.* 175 Wn.2d 83, 285 P.3d 34. If CMI lacks a valid assignment of Deed of Trust, does CMI have standing to prosecute?

Whether the trial abused its discretion when it did not require perfected chain of title or proof that CMI was in fact the holder in due course before granting summary judgement in favor of CMI? The chain of title was broken when the Note was separated from the Deed of Trust in MERS. The fact that CMI touted they were holding the “original Note” but the “original Deed of Trust” was not present is proof enough that the chain of title was broken and the enforcement instrument lost. Does CMI’s claim to be the holder of the note somehow legitimize that CMI is the holder in due course? Moseley makes irrefutable argument to this end. RP 11. Should the trial court have granted summary judgement in favor of CMI while this issue of material fact remained in conflict?

Whether the trial court abused its discretion when it considered as evidence of a fraudulent “Note” that was a forgery presented as an original for evidence by the Appellee, CMI? The court apparently relied on a phony “Note” as evidence before the court. Moseley specifically denied the signature both in pleading and at hearing requiring certain validation pursuant RCW 62A.3-308(a). The Note was fraudulent and should not have been accepted as evidence for granting summary judgment pursuant RCW 62A.3-302(a)(1). The trial court did not verify the Note as the original nor the authenticity of the signatures that had been denied. The issue was raised by Moseley as to the validity of the signatures. RP 4. Should the court have granted summary judgement with such a vital issue of material fact in controversy?

Whether the trial court overstepped its constitutional boundaries when proclaimed that the Federal Constitution for the United States is not law and proceeded to grant CMI summary judgment while Moseley asserted protections under the same Constitution by which the trial court derives its delegated authority? Any court rule or law in conflict with the United States Constitution is unlawful, void and is of no legal effect. Was the trial court within its enumerated duties when it strayed from its Constitutional boundaries awarding summary judgment and denying the right to a trial by jury that was expressly reserved, therefore demanded by Moseley? CP 16.

Whether the trial court violated procedural requirements when it omitted findings of fact and conclusions of law in the Order? The Order does not indicate what documents and evidence were called to the attention of the trial court and relied upon. CP 58. Did the trial court error when it's Order failed to meet the requisites required in CR 56, CR 52, CR 58 and CR 9.12. As such, is the Order a valid Order if not compliant with Court Rules?

Whether the trial court abused its discretion when it's Judgment and Decree is in direct conflict with Washington statutes? Moseley having no prior knowledge or opportunity to review the written Judgment and Decree before it was filed on the day of the hearing and the order having been prepared the day of the hearing. Did the trial court error in process? Did the trial court error in its Judgment and Decree of Foreclosure regarding exclusive possession rights during the redemption period contrary to statute when the Property is owner occupied as a homestead as defined in RCW 6.13.010? This statute provides:

"(1) The homestead consists of real or personal property that the owner uses as a residence. In the case of a dwelling house or mobile home, the homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of

placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract."

If in fact Moseley has a homestead protection provided in RCW 6.13.010, then did the trial court error in its Judgement and Decree entered by the trial court in direct violation of RCW 6.23.110(4)? CP 59. This statute provides :

"(4) In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation."

### **STATEMENT OF THE CASE**

On January 3, 2016, the respondent, CMI served the Appellant, Mr. Moseley with a complaint for Judicial Foreclosure of real property that CMI filed with the trial Court of Jefferson County on December 7, 2016. CP 1. In the complaint CMI alleges Moseley's default December 2, 2010. CP 34 Ex b. After a motion to dismiss to quiet title made by Moseley was denied, CMI entered a motion for summary judgment and prevailed at hearing on September 1, 2017. CP 58 and CP 59. Moseley appealed the trial court's decision granting summary judgement to CMI.

Case 50895-8-II. At hearing on the motion, Moseley raised multiple issues of material fact in controversy. RP. Moseley contended at hearing that CMI does not have standing to prosecute. RP 9 ln. 25 – RP 10 ln.4. CMI has a loan was made and money was lent to the Moseley’s despite many written requests for such evidence. CP 34 Ex C. To date no evidence has been presented that a loan of money was made to Moseley. RP 9 ln.17-24. Moseley contended at hearing that in this case the separation of the Note and Deed of Trust breaks chain of title and as a result, the Note is no longer secured by the Deed of Trust. RP 10 ln.10-15. The Deed of Trust is the enforcement instrument and the lack of a proper assignment of the Deed of Trust raised a material fact, the “Note” unenforceable whether genuine or a fake. RP 10 ln.16-20. Moseley raised the issue of material fact in controversy that the assignment of Deed of Trust lacked a valid beneficiary because Washington Courts have held that MERS cannot assign what it does not hold. RP 15 ln.13-25. CMI claimed to be the holder of the Note. RP 4 ln.17. The Note presented at the hearing was purported by CMI’s counsel, Mr. McCormick to be an original. RP 4 ln.1 and RP 8 ln.23. Moseley contended that CMI lost the Note and the Note presented by McCormick at trial was a reproduction, a forgery not bearing assignment and not bearing his signature. RP 4. If the Note had been a genuine “original Note”, the material fact that the “original Deed of Trust” was absent, was proof enough that the two were separated, therefore breaking chain of title and making the Note unenforceable. RP 11 ln. 4-7. The Action was filed more than six years after the right of the action accrued therefore Moseley asserted the action is untimely and barred by

the Statute of Limitations. RP 14 ln.10. Moseley had specifically reserved the right to a trial by jury. CP 16 p.37 ln.26. Moseley contended that a summary judgment granted by the trial court would abridge his rights guaranteed by the United States Constitution pursuant the 7<sup>th</sup> Amendment where the value in controversy exceeds twenty dollars. RP 28 ln.21. Mr. McCormick agreed inadvertently that Mr. Moseley's rights would be abridged if a summary judgement were to be granted. RP 24 ln.3. The trial court failed to recognize the United States Constitution as the law. RP 28. Rights of possession awarded on the trial court's Order are contested by Moseley and raised here on appeal because the Order post date's the hearing and appears inconsistent with state statute and definitions of homestead protections as defined by statute. CP 59.

### **LEGAL ISSUES FOR ARGUMENT**

The questions that the Appellant asks the Court to consider are:

1. Is the remedy of judicial foreclosure on a certain real property encumbered on a written contract available to CMI when exercised more than six years after the time when the right of the action first accrued?
2. Is the remedy of judicial foreclosure available to a party relying on a false assignment by which they claim standing?
3. Is judicial foreclosure possible when chain of title is broken and then the Deed of Trust improperly assigned? The Deed of Trust is the enforcement instrument and must to follow the Note, but in this

case the Note and Deed of Trust were separated by securitization and then erroneously assigned by a non-beneficiary.

4. Is the remedy of judicial foreclosure available to a party that has lost the Note and relies on a fabricated fraudulent "Note" poorly mimicking the original Note?
5. Is a judgment void when a American citizen's demanded right to a trial by jury in a civil matter exceeding twenty dollars has been abridged and is in conflict with the protections guaranteed to an American by the Federal Constitution in the Preservation Clause of the 7<sup>th</sup> amendment? Would this American citizen not also be guaranteed his inviolate right of trial by jury pursuant section 21 of the Washington State Constitution?

### **ARGUMENT**

I. The first question in controversy that the Appellant brings is the issue of a six year statute of limitations (SOL) pursuant RCW 4.16.040 and confirmed as applicable to Deeds of Trust pursuant RCW 7.28.300. All time limiting statutes in the State of Washington consistently and without exception provide that the statute begins to run from the time when the right of the action first accrued. This was argued on the record, before the trial Court on September 1, 2017. Refer to RP 13 ln.21 thru RP 14 ln.16. Mr. McCormick originally argued off point, yet emphatically, that CMI had not accelerated the account and provided case law to that end and argued specifically that "the SOL argument fails as a matter of law because the loan was not accelerated." RP 13 ln.21. Later upon the

discovery of evidence to the contrary, McCormick would argue that in fact the account had been accelerated yet he would fail to provide authority that would support his new position. As a matter of fact, all of the authority cited by McCormick were either non-judicial foreclosure cases, had not been accelerated, involved a matter of bankruptcy, or a combination there of. The point is, is that none of the authority provided by CMI was similar to the case at hand (*emphasis added*). RP 27. The only deduction that can be made by Moseley by relying on the authority presented by McCormick, is that in case of non-judicial foreclosures, there is no need for acceleration because the right of the action of foreclosure is triggered at the notice of default. RP 14 ln.10-16. This deduction is consistent with the standard practice of non-judicial foreclosures across the nation and all other Washington State time limiting statutes that affirm that the SOL starts at default, when the time of the right of the action first accrued. No judicial foreclosure authority was presented by McCormick and even the trial court judge concluded that an opinion in this matter “must await a proper case.” RP 27 ln.7. Moseley suggests that this might just be that proper case. Maybe the Court of Appeals agrees? In this case, the right of that action first accrued, judicial or non-judicial, on November 2, 2010. CP 33. The evidence is full proof and verified in the Notice of Default dated December 2, 2010. CP 34 Ex b. To the extent that this is beyond the obvious, this case was filed more than six years after the notice of default. It is also established that a remedy was available to CMI within the six year SOL because not one, but two non-judicial foreclosures were commenced then voluntarily discontinued. See both discontinuances. CP

23 Ex 9. The time period when the SOL begins to run is at the time of default or breach, consistent with RCW 62A.2A-506(2) which provides:

“A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later.”

CMI's complaint is untimely, barred by the SOL pursuant RCW 4.16.040 and all consistent with all other Washington Statute of Limitations. RP 14

In.12. Moseley argued in the Defendant's Reply in Opposition to Plaintiff's Motion, that the voluntary discontinuances themselves specifically bar exercising any other remedy for the same offense. CP 51. These voluntary discontinuances bar another remedy if governing statutes are to be applied consistently pursuant RCW 62A.2A-506(3) which provides:

“...[an] action may be commenced after the expiration of the time limited within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure to neglect to prosecute.”

The issue of material fact in controversy remains that CMI commenced non-judicial foreclosures on the subject property not once but twice and both times subsequently and voluntarily discontinued the foreclosures, forever barring CMI a new remedy for the same offence pursuant RCW 62A.2A-506(2)(3). Not with standing, CMI filed this action, electing new

remedy of judicial foreclosure barred by statute. CMI's complaint was not only barred by this statute but was untimely filed pursuant RCW 4.16.040, having passed the six year statute of limitations for written contracts in the State of Washington from the time "when the right of the action first accrued..." consistent with RCW 4.16.070, as well as RCW 4.16.130 which provides "...shall be commenced within two years after the cause of action shall have accrued." The phrasing here indicates that the action must commence within the SOL period of time when the cause of the action shall have accrued and is consistent with all other Washington time limiting statutes. RP 14 ln.12. Finally, the SOL begins to run precisely at Notice of Default as confirmed by and is consistent in the basis for triggering all non-judicial foreclosures. If it were not so every non-judicial foreclosure would have no basis for which to proceed. As demonstrated consistently in all cases of non-judicial foreclosure, the basis for the foreclosure accrues at default. The trial court erred when it ruled inconsistently; the court did not ascribe to the clear wording of all time limiting statutes and other authority provided by both parties. None of these laws specifically exempt judicial foreclosure from the time limiting statutes. Rather to the contrary, well established law provides a standard and practice continuity demonstrated in non-judicial foreclosures. Moseley does not presume that the right of collection of the debt, if valid, is barred by the statute, but rather the remedy of foreclosure is no longer available for enforcement bared by statute as held in *Walcker v. Benson and McLaughlin, PS, 904 P.2d 1176 (Wash. Ct. App. 1995.)* as noted by Nelson & Whitman 6.11 at 525 that

“expiration of the limitation period bars merely the remedy on the debt, not the right.” CP 51. The trial court erred when it granted summary judgement and dismissed this issue of material fact, when court ruled that the SOL does not bar the remedy of judicial foreclosure, even when the action was commenced more than six years from the time the cause of the action accrued. The court ruled wrong. The trial court’s interpretation in essence turns the SOL on its head, suggesting that a bank could foreclose one day short of 36 years on a 30 year mortgage. At the very minimum, the trial court should have considered that installments due prior to six years before CMI commenced the action, would most assuredly be barred from the computations of the amounts allegedly owed by Moseley. Moreover, the penalty fees assessed to the account by CMI maybe limited to an actionable commencement within as little as one year of time after the commission of the offence. CP 51. Many penalties assessed as part of the trial court’s Judgment and Decree are more than one year commissioned, some over 6 years. CP 59. As part of the material facts of the case it is questionable as to the accuracy of how much is allegedly owed on the account, first by installments that had come due more than 6 years prior to the filing of this complaint, penalty fee assessments and by CMI’s own admission to accounting errors. Moseley believes these penalties are barred pursuant RCW 4.16.115. CMI often notified Moseley of their perpetual accounting errors time after time as demonstrated in the record. Finally, only 16 days prior to the subject hearing held on September 1, 2017, CMI notified Moseley yet again admitting to accounting errors in a notice dated 8/14/17. CP 51 Ex 1. CMI was not

specific as to the accounting errors that they made and McCormick uses this as well as other notices alike to disparage Moseley in Moseley's effort to demand accounting accuracy as raised. RP 8 ln. 1-8. McCormick fails to mention that notices similar to the exhibit provided date back to well before 2010 when CMI continually stonewalled Moseley's inquiries, giving rise to the current conflict. CMI mailed written notice of default dated December 2, 2010 indicating two months delinquency with reference to intent to Accelerate. CP 34 Ex b. Washington Courts have held that notice to the borrower, with reference of Acceleration constitutes Acceleration. CP 33. In fact CMI admits to accounting errors and having provided notice of default dated December 2, 2010 subsequently having filed this action on December 7<sup>th</sup>, 2016, just days after the statute of limitations passed; this forever bars the remedy of foreclosure. Not only does it bar the remedy, it proves McCormick's testimony deceptive and inaccurate. RP 7 ln. 14-18. The trial court made a decision granting summary judgement in favor of CMI, regardless of material facts in controversy. Moseley seeks relief under CR 60(3) for misrepresentation. The amount owed is a material fact in controversy. The clear reading of the SOL and the vast number of non-judicial foreclosures confirming their cause of action having begun with the notice of default and thus also confirming the SOL begins run at the time when the right of the action first accrued. The trial court also erred, when it overlooked the laws that restrict the commencement of a new remedy for the same offense after voluntarily discontinuing the remedy of non-judicial foreclosure, clearly

barred pursuant RCW 62A.2A-506 (3). This creates an issue of material fact as a matter of law.

II. The Second issue in controversy before the Court on appeal is the fact that the Appellee, CMI relied on a false instrument, an invalid assignment, specifically the Corporate Assignment of Deed of Trust filed on the Jefferson County record. This document is a false document on its face. The assignment purports to have been executed by MERS. In the State of Washington only a beneficiary has the power to assign a Deed of Trust. The Washington Supreme Court in *Bain v. Metro. Mortgage Group, Inc., et al.*, 175 Wn.2d 83, 285 P.3d 34 (2012) the court concluded that MERS cannot be a beneficiary in the State of Washington because it would violate the Deed of Trust Act. This was argued well by Moseley both in brief. CP 16 and CP 51 (p.7 ln.12 and p.10 at section a). This issue of material fact in controversy was also raised in Moseley's reply brief. CP 33 (p.9 section F. starting at ln.23). Moseley re-asserted the same at hearing. RP 10 ln.10-23 continued briefly at RP 12 ln.1-3. The Appellant believes the trial court erred by rejecting the authority relied on in *Bain v. metro.* RP 27 ln.1-10 because in *Bain* it was settled that MERS cannot be a lawful beneficiary in the State of Washington and therefore, MERS [285 P.3d 37] does not hold the Note and cannot assign what it does not hold regardless of judicial or non-judicial foreclosure. The Corporate Assignment of Deed of Trust from MERS to CMI, relied upon by the trial court and filed on the subject real property in the Jefferson County Auditor's public record on July 5<sup>th</sup>, 2011, doc. #560876, is clearly a false document. CP 16 Ex J. If that were not enough, it was also signed by a

notorious Robo Signer and in this country; machines have not been granted personhood. CP 51 addendum. On a second request for the notarial record, the notary actually replied by way of her legal counsel, refusing unless subpoenaed. CP 16 Ex B. This document would require an authorized signature to be a valid instrument. The trial court claims it did see very little evidence of robo signing and invalid beneficiary, Moseley refers to the forgoing exhibits. RP 27-28. Without a valid assignment CMI lacks standing to foreclose. The trial court erred when it presumed that MERS was a valid beneficiary contrary to settled law RP 27 at 19. The court it erred again by granting CMI summary judgment based on a lack of evidence of the Robo Signer. CP 51 addendum. Moseley believes more evidence would have come to light by subpoena at trial through discovery. Regardless, the Corporate Assignment of Deed of Trust is a false document on its face. See the Corporate Assignment of Deed of Trust "return to" upper left hand corner of the document. CP 16 Ex J. It would appear that the document was executed by and for the same party in conflict and signed by an invalid beneficiary. Moseley seeks relief under CR 60(b)(1). These facts create a genuine issue of material fact; therefore, summary judgment was not appropriate.

III. The Third issue in controversy the Court has been asked to determine is whether judicial foreclosure is possible after the Note and Deed of Trust (DOT) are separated, breaking chain of title. Moseley raised a commonly known fact that the DOT follows the Note and without the DOT in proper order the Note is unenforceable. RP 10 ln.10. The Note is secured by the DOT. The DOT is the enforcement instrument and if

separated from the Note, it breaks chain of title. When the DOT is separated, it no longer secures the Note and renders the Note unenforceable as argued. RP 10 ln.10-15. Mr. McCormick runs distraction for the court at RP 21 ln.21-23, by misquoting Moseley's earlier statements made on RP 10 ln.11, but eventually admits that the Deed of Trust follows the Note. RP 21 ln.25 and beyond. Finally, after agreeing that the DOT follows the Note, McCormick reaffirms that this is his client, CMI's position. Even the trial court agreed at RP 26 ln.16, that the Note is secured by the DOT. If the Note and DOT are separated by securitization as was done through MERS in this case and since MERS is not a beneficiary as it would violate the Washington Deed of Trust Act, therefore MERS cannot perfect title and cannot assign what MERS does not hold. For this reason the Note (if a genuine Note exists) is not secured and is not enforceable because it lacks valid assignment. MERS, a non-beneficiary, lacks the power to assign as identified previously and provided in *Bain*. Even if MERS was a valid beneficiary which it is not, the DOT was clearly separated from the Note at the hearing. McCormick stood before the court claiming to literally be holding the "Note." RP 4 ln.17. The McCormick further claimed it was the original "Note." RP 4 ln.1 and RP 8 ln.23. If this were to be true, then by McCormick's own admission the would be notarized, DOT was separated from the Note because it was not also present in the court room accompanying the "Note" as demonstrated on the record. RP 29 ln.11-17. If the Note was in-fact genuine which it was not, would it not also require the enforcement instrument? The fact that no Deed of Trust was present along with the

purported original Note, irrefutably proves that the Deed of Trust and Note were separated at an absolute minimum. RP 29 In.11-17. Proof of chain of title is required as held in *Bank of America v. Miller, 2011-Ohio-1403 (OH Ct.App.2nd 2011)* argued by Moseley in sec.4 of Defendant's Reply in Opposition to Motion. CP 51 p.6. The absence of DOT at hearing while the original Note was purportedly present in addition to an invalid Assignment proves chain of title is broken, the Note is not perfected, nor enforceable. Therefore, CMI lacks standing to prosecute. For the Court to allow judicial foreclosure by granting summary judgement, without perfecting chain of title, would betray the public trust. Summary judgement should not have been granted as a matter of law.

VI. The fourth issue in controversy for consideration before the Court is whether it is proper for the court to rely on a falsified document, a poorly fabricated forgery of a counterfeit Note. McCormick has relied on a forged Note that he touted in the trial court as an original. The Note he produced for the trial court was a poor reproduction. Even to the untrained eye was clearly a fraud and forgery because it lacked endorsements. RP 4 In.9. The original would have had endorsements to MERS and back to CMI as evidenced in the publicly recorded Corporate Assignment of Deed of Trust. CP 16 Ex J. Moseley objected to the document, denying his signature on the falsified "Note." RP 4 In.12. McCormick's reply was simply "None is required." RP 4 In.13. Then at In.17 of the same page he declares "Plaintiff's counsel is here before the Court literally holding the Note." McCormick must have known it was a forgery at the time when he

was touting it as an original. RP 3 ln.21. In the same paragraph McCormick goes on to claim that it was offered repeatedly to the court and to Mr. Moseley but the truth is that until this hearing on the motion for summary judgement on September 1, 2017, it had not been offered for inspection to Moseley. This is verified on the record twice. CP 51 p.6 ln.22 and RP 4 ln.4. McCormick claims to hold the original once again and continues erroneously claiming that assignments are wholly irrelevant. RP 5 ln.17. At no time has Moseley signed a legal document on translucent paper or tracing paper if as a better description, nor is it the practice of an originator to provide such paper in the course of business. The court erred when it ruled granting summary judgement while issues of material fact in controversy were not vetted pursuant RCW 62A.3-308 (a), which provides specifically that “If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity.” Moseley claimed this protection in the pleadings as required by statute. CP 16 p.6 ln.15. The trial court erred when they allowed CMI to rely on a fabricated “Note.” The court at no time established or claimed the Note presented was genuine but indicated to the contrary that it was a copy. RP 26 ln.11-14. Still, the court despite this, ignored protections claimed properly by Moseley in the pleadings and at hearing RP 4 ln.12. (emphasis added). RCW 62A.3-302(a)(1) requires the holder of the Note to be a holder in due course which must not “bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity.” The best

evidence rule holds that an original document is superior evidence. Moseley seeks relief under Rule 60(b)(3). This principle also holds true for the Deed of Trust which was lost and separated from the Note, breaking chain of title. RP 11 ln.4-7 and RP 29 ln.11. Again, if the Note was in-fact genuine which it was not, would it not also require the enforcement instrument? So the questions that remain from this issue are: 1) should the Court ignore protections asserted by Moseley upon clearly stated statutes on the record? 2) Should CMI be permitted to rely on a fraudulent reproduction of a Note forgery and have the right to foreclose judicially relying on such a forgery? 3) Should the trial court have granted summary judgement when the Deed of Trust is clearly separated from the Note, breaking chain of title and barring the enforcement thereof and giving rise to an irrefutable genuine issue of material fact? The trial court ruled and the court ruled wrong.

V. The last issue in controversy the Appellant brings before the Court for consideration is that if this court does not overturn the trial court's decision to grant CMI a summary judgement, then not only the 7<sup>th</sup> amendment of the Federal Constitution be willfully violated, but the Washington State Constitution will also be violated. To grant summary judgment without opportunity for a civil jury trial is a direct abridgement of the right of an American Citizen, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved. This right is protected by the 7<sup>th</sup> amendment of the federal constitution which happens to be supreme law. It would also violate the Washington State Constitution Section 21 which guarantees the right to a jury trial

specifically stating unequivocally “The right of trial by jury shall remain inviolate...” and waived only in “civil cases where the consent of the parties interested is given thereto.” No higher law of the land exists, yet McCormick believed it a novel idea that CR56 could be unconstitutional. RP 23 ln.25. The trial court judge disregards that he swore an oath to the Constitution. This is the same Constitution that specifically delegates his authority, the same authority by which the people entrust his judgement. Despite the clear reading of the language in highest Law of the land, the judge suggests he does not recognize that authority? RP 28 ln. 15. It is a maxim of law that if any rule or law conflicts with the Federal Constitution, that rule or law is void and of no legal effect. The trial court judge claimed “that’s not the law,” referring specifically to the 7<sup>th</sup> amendment of the Federal Constitution. RP 28 ln.21. Moseley asserts that if the Constitution is not law, the judge denounces his delegated authority. McCormick agreed specifically that “should summary judgment be denied and the case proceeds...” “... The Appellants rights would not be infringed.” RP 24 ln.3. The inverse is true, summary judgment was granted and the rights of the Appellant have been abridged as a direct result. Moseley has asserted the preservation of his rights on the record, never waiving, but specifically reserving the right to a trial by jury and by so doing, has demanded a trial by jury. CP 16 p.37 ln.26. Moseley seeks relief under CR 60(b)(4).

### **Court Procedural Errors in Argument- Appealable issues**

The Appellant filed motions to strike declarations of Plaintiff's counsel Joseph McCormick, Jennifer Ollier, and Lorissa Russelburg based on hearsay and best evidence rule. For example in "Defendants' Motion to Strike Declaration of Plaintiff's Counsel" Any declaration of Mr. McCormick is hearsay. CP 32. There is no way McCormick, counsel for CMI, could have personal knowledge, yet Mr. McCormick has gone as far as to have offered to testify if called to do so in his declaration. "An attorney for the plaintiff cannot admit evidence into the court. He is either an attorney or a witness," and, "Statements of counsel in brief or in argument are not facts before the court." *Trinsey v. Pagliaro D.C.Pa.1964, 229 F. sup. 647.* RPC 3.7 also prohibits such a declaration, yet the trial court dismissed Appellant's motion under a broad sweeping claim of "hearsay exception rule and the business record exception to the rule" inconsistent with ER 802. RP 25 ln.5. The trial court erred when it did not require a basis for the hearsay and business record exception rules, then applied those exceptions without the high burden for which the exceptions must comply. Another example of the trial court's error in application of this exception is with the dismissal of Moseley's motion to strike the declaration of Jennifer Ollier. CP 47. In her declaration, Ollier specifically declares in Sec. 3 of her declaration, that she only has personal knowledge of CMI's procedures and admits she has no firsthand knowledge facts relating to this case, but has merely received hearsay from unknown persons. The best rules of evidence would produce declarations from those unspecified persons rather than from Jennifer Ollier who relies solely upon

what other people told her. This is inadmissible evidence pursuant ER602. This is classic hearsay from other unknown people. Pursuant ER802, this declaration should have been stricken by the trial court as no grounds for an exception was entered and according to Ollier's own declaration there were persons with firsthand knowledge that would have been better suited to make declarations. Finally, the trial court should have stricken the declaration of Lorissa Russelburg for the same reasons as stated previously where in section 3 of her declaration, she admits having no firsthand knowledge of any facts relating to this case. CP 48. It is the contention of Appellant Moseley, that the trial court practiced law from the bench when providing broad claims of exemptions allowing each declaration without laying out how to identify each specific exception was appropriate. The trial court erred when it did not require the best evidence but allowed hearsay rather than require declarations from the people claiming firsthand knowledge since these people were clearly available as both Ollier and Russelburg suggest in their declarations. CMI obviously did not provide the best evidence. If CMI has other people that can testify or are in the process of maintaining the records, why then were those people not required to bring testimony? These declarations happened to be the lynch pins and essentials of this case. Those with firsthand knowledge would be able to testify as to how documents were transferred, when they were transferred and the process by which they are handled. These facts are paramount to the case. Had the trial court required true declarations of persons with firsthand knowledge and production of such records and procedures it would have completely eliminated the foundation of CMI's

motion for summary judgment. The trial court judge made decisions affecting the outcome of the case that are not consistent with the rules of evidence in the law. The Appellate Court should remand the business records exception back to the trial court to be vetted for proper procedure and to layout the evidence in technical fashion. This objection is all about process and presenting best evidence. This is of exceptional importance when at this stage of the case where pursuant CR 56, a summary judgement granted in favor of CMI would prevent Moseley from having a jury hear the case or from even having his day in court. It is absolutely essential that the evidence that supposedly supports CMI's claim that there is no issue of fact, should at least be presented properly in accordance with CR 52, rather than whimsically dismissed from the bench. RP 25 ln.5. Accordingly, "decisions, findings and conclusions requirements generally in all actions tried upon the facts without a jury, the court shall find the facts and state separately its conclusions of law..." The trial court Order is void of such requirements pursuant CR 58 and CR 9.12. CP 58. The trial court erred, lacking court rule requirements in its Order. Additionally the court erred in sec.5 of the Order when it provided the purchaser, exclusive possession of the real property during right of redemption period in violation of RCW 6.23.110(4) which provides "... the judgment debtor shall have the right to retain possession thereof during the period of redemption..." CP 69.

While Moseley recognizes the local rules and that the moving party has the final word at hearing, at least in practice, a judge will often allow some leeway for the parties to make for clarification and fairness.

The trial court erred when it denied Moseley's verbal request a chance to reply to McCormick's statements regarding the constitutionality of CR 56. RP 25 In.20. The court should promote both parties being heard for full disclosure of all relevant facts pursuant RCW 34.05.449(2). For the court to systematically shut down one party over the other raises a question of perceived bias and a basis for which to raise issue on appeal.

### **CONCLUSION**

There are five issues of material fact in controversy and eleven procedural errors under appeal that Moseley asks the Court to take under consideration for overturning the summary judgment that was granted to CMI. The basis of ruling by the trial court makes for inconsistent application of not only clearly written statute law but also well-established case law. The record is vast and the conflict many years long. One of the primary reasons for the statute of limitation is to require prosecution while the matter is fresh and memories can recall without the hindrance too much time passing. In this case, the past eight years has been long and arduous. It has been stressful and damaging to the Moseley family. If the judicial branch does not stop the frauds of such institutions as CMI upon which the people have borne the burden of the big bank bailouts, then the courts will lose credibility with people. Some federal courts including the 9<sup>th</sup> Circuit Court have lost almost all credibility. Courts like these frustrate the public will. In this case CMI brings this action not in good faith and clearly lacks standing to foreclose for a variety of reasons identified herein. CMI has made no attempt to prove standing as the moving party

even though it is incumbent upon them to do so. CMI has relied on false documents and false premises to convince the trial court to grant summary judgement. For these reasons herein and the issues of material facts in controversy raised, the Court of Appeals should overturn the summary judgement of the trial court so that discovery can resume and the case be heard on the merits. Justice has not been done. Moseley implores the Court to dig into the issues presented herein and rule according to the law and not allow the twisting of the law in order to preserve consistent, fair and true justice..

Dated: March 13, 2018

By



Paul Moseley, Appellant

Expressly reserving the right to trial by jury

# Appendix A

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## RCW 4.16.040

### Actions limited to six years.

The following actions shall be commenced within six years:

(1) An action upon a contract in writing, or liability express or implied arising out of a written agreement, except as provided for in RCW 64.04.007(2).

(2) An action upon an account receivable. For purposes of this section, an account receivable is any obligation for payment incurred in the ordinary course of the claimant's business or profession, whether arising from one or more transactions and whether or not earned by performance.

(3) An action for the rents and profits or for the use and occupation of real estate.

[ 2012 c 185 § 3; 2007 c 124 § 1; 1989 c 38 § 1; 1980 c 105 § 2; 1927 c 137 § 1; Code 1881 § 27; 1854 p 363 § 3; RRS § 157.]

### NOTES:

**Application—2007 c 124:** "This act applies to all causes of action on accounts receivable, whether commenced before or after July 22, 2007." [ 2007 c 124 § 2.]

**Application—1980 c 105:** See note following RCW 4.16.020.

**RCW 4.16.070****Actions limited to five years.**

No action for the recovery of any real estate sold by an executor or administrator under the laws of this state shall be maintained by any heir or other person claiming under the deceased, unless it is commenced within five years next after the sale, and no action for any estate sold by a guardian shall be maintained by the ward, or by any person claiming under him or her, unless commenced within five years next after the termination of the guardianship, except that minors, and other persons under legal disability to sue at the time when the right of action first accrued, may commence such action at any time within three years after the removal of the disability.

[ 2011 c 336 § 82; 1890 p 81 § 1; RRS § 158. Prior: 1863 p 245 §§ 251, 252; 1860 p 205 §§ 217, 218; 1854 p 290 §§ 137, 138.]

**NOTES:**

*Age of majority: Chapter 26.28 RCW.*

**Probate**

*actions by and against executors, etc.: Chapter 11.48 RCW.*

*guardianship: Chapters 11.88, 11.92 RCW.*

*sales and mortgages of real estate: Chapter 11.56 RCW; RCW 11.60.010.*

*Sales not voided by irregularities: RCW 11.56.115.*

**RCW 4.16.115****Special provisions for action on penalty.**

An action upon a statute for a penalty given in whole or in part to the person who may prosecute for the same, shall be commenced within three years [one year] after the commission of the offense; and if the action be not commenced within one year by a private party, it may be commenced within two years after the commission of the offense in behalf of the state by the prosecuting attorney of the county, where said offense was committed.

[ 1877 p 9 § 31; 1854 p 364 § 6; RRS § 163. Formerly RCW 4.16.140. Cf. Code 1881 § 31.]

**NOTES:**

**Reviser's note:** "one year" appeared in Laws of 1854 and 1877; "three years" appears in Code of 1881.

**RCW 4.16.130**

**Action for relief not otherwise provided for.**

An action for relief not hereinbefore provided for, shall be commenced within two years after the cause of action shall have accrued.

[Code 1881 § 33; 1877 p 9 § 32; 1854 p 364 § 7; RRS § 165.]

**NOTES:**

*Limitation of action to recover taxes paid: RCW 84.68.060.*

**RCW 6.13.010****Homestead, what constitutes—"Owner," "net value" defined.**

(1) The homestead consists of real or personal property that the owner uses as a residence. In the case of a dwelling house or mobile home, the homestead consists of the dwelling house or the mobile home in which the owner resides or intends to reside, with appurtenant buildings, and the land on which the same are situated and by which the same are surrounded, or improved or unimproved land owned with the intention of placing a house or mobile home thereon and residing thereon. A mobile home may be exempted under this chapter whether or not it is permanently affixed to the underlying land and whether or not the mobile home is placed upon a lot owned by the mobile home owner. Property included in the homestead must be actually intended or used as the principal home for the owner.

(2) As used in this chapter, the term "owner" includes but is not limited to a purchaser under a deed of trust, mortgage, or real estate contract.

(3) As used in this chapter, the term "net value" means market value less all liens and encumbrances senior to the judgment being executed upon and not including the judgment being executed upon.

[ 1999 c 403 § 1; 1993 c 200 § 1; 1987 c 442 § 201; 1981 c 329 § 7; 1945 c 196 § 1; 1931 c 88 § 1; 1927 c 193 § 1; 1895 c 64 § 1; Rem. Supp. 1945 § 528. Formerly RCW 6.12.010.]

**NOTES:**

**Severability—1981 c 329:** See note following RCW 6.21.020.

## RCW 6.23.110

### Possession during period of redemption.

(1) Except as provided in this section and RCW 6.23.090, the purchaser from the day of sale until a resale or redemption, and the redemptioner from the day of redemption until another redemption, shall be entitled to the possession of the property purchased or redeemed, unless the same be in the possession of a tenant holding under an unexpired lease, and in such case shall be entitled to receive from such tenant the rents or the value of the use and occupation thereof during the period of redemption.

(2) If a mortgage contains a stipulation that in case of foreclosure the mortgagor may remain in possession of the mortgaged premises after sale and until the period of redemption has expired, the court shall make its decree to that effect and the mortgagor shall have such right.

(3) As to any land so sold which is at the time of the sale used for farming purposes, or which is a part of a farm used, at the time of sale, for farming purposes, the judgment debtor shall be entitled to retain possession thereof during the period of redemption and the purchaser or his or her successor in interest shall, if the judgment debtor does not redeem, have a lien upon the crops raised or harvested thereon during said period of redemption, for interest on the purchase price at the rate of six percent per annum during said period of redemption and for taxes becoming delinquent during the period of redemption together with interest thereon.

(4) In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation.

[ 2011 c 336 § 146; 1987 c 442 § 711; 1981 c 329 § 21; 1961 c 196 § 3; 1957 c 8 § 6; 1939 c 94 § 1; 1927 c 93 § 1; 1899 c 53 § 15; RRS § 602. Formerly RCW 6.24.210.]

### NOTES:

**Severability—1981 c 329:** See note following RCW 6.21.020.

## **RCW 7.28.300**

### **Quieting title against outlawed mortgage or deed of trust.**

The record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or deed of trust would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such a lien.

[ 1998 c 295 § 17; 1937 c 124 § 1; RRS § 785-1.]

### **NOTES:**

*Limitation of actions, generally: Chapter 4.16 RCW.*

*Real estate mortgages, foreclosure: Chapter 61.12 RCW.*

## RCW 34.05.449

### Procedure at hearing.

(1) The presiding officer shall regulate the course of the proceedings, in conformity with applicable rules and the prehearing order, if any.

(2) To the extent necessary for full disclosure of all relevant facts and issues, the presiding officer shall afford to all parties the opportunity to respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a limited grant of intervention or by the prehearing order.

(3) In the discretion of the presiding officer, and where the rights of the parties will not be prejudiced thereby, all or part of the hearing may be conducted by telephone, television, or other electronic means. Each party in the hearing must have an opportunity to participate effectively in, to hear, and, if technically and economically feasible, to see the entire proceeding while it is taking place.

(4) The presiding officer shall cause the hearing to be recorded by a method chosen by the agency. The agency is not required, at its expense, to prepare a transcript, unless required to do so by a provision of law. Any party, at the party's expense, may cause a reporter approved by the agency to prepare a transcript from the agency's record, or cause additional recordings to be made during the hearing if the making of the additional recording does not cause distraction or disruption.

(5) The hearing is open to public observation, except for the parts that the presiding officer states to be closed under a provision of law expressly authorizing closure or under a protective order entered by the presiding officer pursuant to applicable rules. A presiding officer may order the exclusion of witnesses upon a showing of good cause. To the extent that the hearing is conducted by telephone, television, or other electronic means, and is not closed, the availability of public observation is satisfied by giving members of the public an opportunity, at reasonable times, to hear or inspect the agency's record, and to inspect any transcript obtained by the agency.

[ 1989 c 175 § 18; 1988 c 288 § 414.]

### NOTES:

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## RCW 62A.2A-506

### Statute of limitations.

(1) An action for default under a lease contract, including breach of warranty or indemnity, must be commenced within four years after the cause of action accrued. By the original lease contract the parties may reduce the period of limitation to not less than one year.

(2) A cause of action for default accrues when the act or omission on which the default or breach of warranty is based is or should have been discovered by the aggrieved party, or when the default occurs, whichever is later. A cause of action for indemnity accrues when the act or omission on which the claim for indemnity is based is or should have been discovered by the indemnified party, whichever is later.

(3) If an action commenced within the time limited by subsection (1) of this section is so terminated as to leave available a remedy by another action for the same default or breach of warranty or indemnity, the other action may be commenced after the expiration of the time limited and within six months after the termination of the first action unless the termination resulted from voluntary discontinuance or from dismissal for failure or neglect to prosecute.

(4) This section does not alter the law on tolling of the statute of limitations nor does it apply to causes of action that have accrued before this Article becomes effective.

[1993 c 230 § 2A-506.]

### NOTES:

**Effective date—1993 c 230: See RCW 62A.11-110.**

## RCW 62A.3-308

### **Proof of signatures and status as holder in due course.**

(a) In an action with respect to an instrument, the authenticity of, and authority to make, each signature on the instrument is admitted unless specifically denied in the pleadings. If the validity of a signature is denied in the pleadings, the burden of establishing validity is on the person claiming validity, but the signature is presumed to be authentic and authorized unless the action is to enforce the liability of the purported signer and the signer is dead or incompetent at the time of trial of the issue of validity of the signature. If an action to enforce the instrument is brought against a person as the undisclosed principal of a person who signed the instrument as a party to the instrument, the plaintiff has the burden of establishing that the defendant is liable on the instrument as a represented person under RCW 62A.3-402(a).

(b) If the validity of signatures is admitted or proved and there is compliance with subsection (a), a plaintiff producing the instrument is entitled to payment if the plaintiff proves entitlement to enforce the instrument under RCW 62A.3-301, unless the defendant proves a defense or claim in recoupment. If a defense or claim in recoupment is proved, the right to payment of the plaintiff is subject to the defense or claim, except to the extent the plaintiff proves that the plaintiff has rights of a holder in due course which are not subject to the defense or claim.

[ 1993 c 229 § 36.]

### **NOTES:**

**Recovery of attorneys' fees—Effective date—1993 c 229:** See RCW 62A.11-111 and 62A.11-112.

## RCW 62A.3-302

### Holder in due course.

(a) Subject to subsection (c) and RCW 62A.3-106(d), "holder in due course" means the holder of an instrument if:

(1) The instrument when issued or negotiated to the holder does not bear such apparent evidence of forgery or alteration or is not otherwise so irregular or incomplete as to call into question its authenticity; and

(2) The holder took the instrument (i) for value, (ii) in good faith, (iii) without notice that the instrument is overdue or has been dishonored or that there is an uncured default with respect to payment of another instrument issued as part of the same series, (iv) without notice that the instrument contains an unauthorized signature or has been altered, (v) without notice of any claim to the instrument described in RCW 62A.3-306, and (vi) without notice that any party has a defense or claim in recoupment described in RCW 62A.3-305(a).

(b) Notice of discharge of a party, other than discharge in an insolvency proceeding, is not notice of a defense under subsection (a), but discharge is effective against a person who became a holder in due course with notice of the discharge. Public filing or recording of a document does not of itself constitute notice of a defense, claim in recoupment, or claim to the instrument.

(c) Except to the extent a transferor or predecessor in interest has rights as a holder in due course, a person does not acquire rights of a holder in due course of an instrument taken (i) by legal process or by purchase in an execution, bankruptcy, or creditor's sale or similar proceeding, (ii) by purchase as part of a bulk transaction not in ordinary course of business of the transferor, or (iii) as the successor in interest to an estate or other organization.

(d) If, under RCW 62A.3-303(a)(1), the promise of performance that is the consideration for an instrument has been partially performed, the holder may assert rights as a holder in due course of the instrument only to the fraction of the amount payable under the instrument equal to the value of the partial performance divided by the value of the promised performance.

(e) If (i) the person entitled to enforce an instrument has only a security interest in the instrument and (ii) the person obliged to pay the instrument has a defense, claim in recoupment, or claim to the instrument that may be asserted against the person who granted the security interest, the person entitled to enforce the instrument may assert rights as a holder in due course only to an amount payable under the instrument which, at the time of enforcement of the instrument, does not exceed the amount of the unpaid obligation secured.

(f) To be effective, notice must be received at a time and in a manner that gives a reasonable opportunity to act on it.

(g) This section is subject to any law limiting status as a holder in due course in particular classes of transactions.

[ 1993 c 229 § 30; 1965 ex.s. c 157 § 3-302. Cf. former RCW sections: (i) RCW 62.01.027; 1955 c 35 § 62.01.027; prior: 1899 c 149 § 27; RRS § 3418. (ii) RCW 62.01.052; 1955 c 35 § 62.01.052; prior: 1899 c 149 § 52; RRS § 3443.]

CERTIFICATE OF SERVICE

Court of Appeals Case No. 50895-8-II

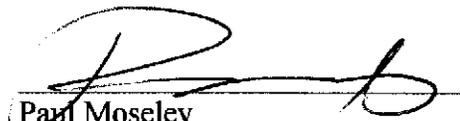
Superior Court Case No. 16-2-00216-1

The undersigned hereby certifies that a true and accurate copy of the foregoing filed with the clerk of the Washington State Court of Appeals, Division Two and was mailed to the attorney of record for the Appellee, CitiMortgage Inc. an entity that claims to have standing in a matter of complaint filed December 7<sup>th</sup> 2016, this 13<sup>th</sup>, day of March, 2018.

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Declared under penalty of perjury under the laws of the State of Washington,

This 13<sup>th</sup> day of March, 2018

  
Paul Moseley  
Served by USPS Mail

**PAUL MOSELEY - FILING PRO SE**

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