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Case No. 50909-1-II

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

MARK LISSON and CATHERINE LISSON,

Appellant,

v.

WELLS FARGO BANK, N.A.; HSBC BANK USA, N.A. as Trustee for Deutsche Bank Alt-A Securities Mortgage Loan Trust, Series 2006-AR6, Mortgage Pass-Through Certificates; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; NORTHWEST TRUSTEE SERVICES, INC. and Doe Defendants 1 through 20, inclusive,

Respondents.

APPELLANTS' OPENING BRIEF

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INTRODUCTION

In spite of numerous Washington Supreme Court and appellate cases making clear that mortgage loan servicers and loan owners cannot avoid the clear requirements of the Deed of Trust Act, RCW 61.24, *et seq.* ("DTA") without facing liability, that is precisely what happened in this case, contrary to the requirements of the DTA and to the detriment of Washington property owners.

The Lissons defaulted on their mortgage loan because of financial problems and they spent years trying to get a loan modification. They were never properly reviewed for a loan modification and were actively obstructed by Defendant Wells Fargo. They were subject to attempted non-judicial foreclosure attempts which were done in contravention of the requirements of the DTA. RCW 61.24, *et seq.*

The record in this case is replete with the Defendants/Appellees' violations of the DTA requirements in furtherance of their attempted nonjudicial foreclosure of the Lissons' home. These violations include intentional misrepresentations about the identity of the noteholder, from which derives the authority of the purported trustee to act as a foreclosing trustee. Most significantly, no competent evidence, executed in compliance with the requirements of the DTA, was presented to the trial court which demonstrated conformity with the statute, including

identification of and action by the "noteholder" during the foreclosure sale process. ("Beneficiary" is defined under the DTA as "noteholder". RCW 61.24.005(2)). In spite of genuine issues of material fact which permeated the evidence, the trial court ignored the contradictory information provided by the Defendants, in contravention of binding Washington law. Contrary to the determination made by the trial court, Defendants' deceptive and misleading conduct constituted a Consumer Protection Act violation and support a misrepresentation claim.[1]

STANDARD ON REVIEW

An appellate court should independently determine whether the findings of fact support the conclusions of law. *Crystal China and Gold Ltd. v. Factoria Center Investments, Inc.*, 93 Wn.App. 606, 610, 969 P.2d 1093 (1999); *American Nursery Products, Inc. v. Indian Wells Orchards*, 115 Wn.2d 217, 222, 797 P.2d 477 (1990); *Martin v. Seattle*, 111 Wn.2d 727, 733, 765 P.2d 257 (1988); and *Persing, Dyckman & Toynbee, Inc. v. George Schofield Co., Inc.*, 25 Wn.App. 580, 582, 612 P.2d 2 (1980). Here, the trial court's factual findings are disconnected from the evidence provided by the Defendants and the standard articulated by the binding authority on the requirements of a non-judicial foreclosure and liability

[1] Defendant NWTS and its parent corporation filed for a receivership on March 27, 2018 under King County Superior Court Case No. 18-2-08146-7. The Lissons are therefore precluded from pursuing their claims against that entity at this time.

flowing from failure and/or refusal to adhere to DTA requirements.

The Supreme Court has routinely held that courts must consider DTA provisions in the homeowner's favor because it eliminates many protections enjoyed by borrowers in judicial foreclosures. *Bain v. Metropolitan Mortg. Grp., Inc.*, 175 Wn.2d 83, 93, 285 P.3d 34 (2012) (citing *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007)); *see also Schroeder v. Excelsior Management Group, LLC*, 177 Wn.2d 94, 105, 297 P.3d 677 (2013); *Albice v. Premier Mortg. Svcs. of Wash., Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012). The DTA "must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers' interests and the lack of judicial oversight in conducting non-judicial foreclosure sales." *Bain*, 175 Wn.2d. at 93. When determining whether an issue of material fact exists on summary judgment, a court must construe all facts and inferences in favor of the nonmoving party. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008); *McNabb v. Dep't of Corrs.*, 163 Wn.2d 393, 397, 180 P.3d 1257 (2008). A "material fact" for summary judgment purposes is one upon which all or part of the outcome of the litigation depends. *Hill v. Cox*, 110 Wn.App. 394, 41 P.3d 495 (Div. III 2002), *review denied* 147 Wn.2d 1024, 60 P.3d 92. Summary judgment is proper if reasonable minds could reach only one conclusion from the evidence

presented. *Cano-Garcia v. King County*, 168 Wn.App. 223, 277 P.3d 34 (Div. II 2012), *review denied* 175 Wn.2d 1010, 287 P.3d 594.

Conclusions of law are reviewed *de novo*, as are the application of the facts to the law. *Id.; see also, Skamania County v. Columbia River Gorge Commission,* 144 Wn.2d 30, 42, 26 P.3d 241 (2001).

STATEMENT OF ISSUES

(1) The Defendants have made numerous false representations about the noteholder and owner of the loan in an attempt to expedite the foreclosure process. These Defendants have repeatedly asserted and created documents falsely asserting that the holder of the Note is Wells Fargo, when it is not the holder of the Note nor the owner. If the Note is held by a custodian for the benefit of Defendant HSBC, HSBC is the "beneficiary" (noteholder – RCW 61.24.005(2)) and was required under the law to be the entity that initiated the foreclosure and executed the documents in connection therewith.

(2) If Defendant NWTS was never properly appointed as the foreclosing trustee by the holder of the Note, then how could it initiate a non-judicial foreclosure on behalf of an entity that did not have the legal authority under the requirements of the DTA to so act?

(3) Since Lissons have not been properly evaluated for a loan modification by the loan servicer, Wells Fargo, and it has made false representations regarding its authority to modify or not modify the Lissons' loan, can it properly avoid liability under the FFA mediation statute?

(4) Since the Lissons have been prevented from an opportunity to avoid foreclosure by the misrepresentations of the Defendants, can these Defendants escape liability therefrom?

STATEMENT OF THE CASE

The Lissons have owned their home (the "Property") since July 2005 and they had regularly made mortgage payments on it for many years. Mr. Lisson is the primary breadwinner for the household. He

works independently as a screenwriter and movie producer. He also has investments and partnerships which provide income for the household, but that income is sporadic. In fact, all of Mr. Lisson's income is sporadic. It depends upon whether he can sell a script or get financing for a movie, and whether the investments will succeed. CP 43-44.

In 2009, the Lissons were induced to invest all of their savings with a Beverly Hills financier, who eventually stole all of their money in a Ponzi scheme. This significantly impacted their ability to continue to meet their financial obligations. The Lissons and other victims of the scammer hired a law firm to try to recover some of the stolen money from the scammer's brokerage house, but that did not result in a return of the monies, as the Lissons had hoped. Mr. Lisson has been trying to get other deals done in the last several years so that they can get back on their feet financially, but have only met with sporadic success in getting projects financed. They have been living off of pension funds that Mr. Lisson's receives from the Writer's Guild, some residuals from various projects and occasional infusions of cash resulting from some of their investments. However, it has not been enough to keep up with the mortgages on his Residence. Thus, the Lissons have been behind on their mortgage payments for several years now. CP 44.

When the Lissons moved to Washington and purchased the

Residence, they obtained a mortgage loan from Ohio Savings Bank in the amount of $650,000.00. In connection therewith, the Lissons signed an Adjustable Rate Promissory Note with an initial interest rate for the first year of 5.875%. The interest rate was scheduled to change every year, after the seventh year, by adding 2.5% to the LIBOR index, with a maximum interest rate of 11.875%. The Lissons also signed a Deed of Trust which listed Ohio Savings Bank as the "Lender", but also listed Defendant Mortgage Electronic Registration Systems, Inc. ("MERS") as the "Beneficiary". The Lissons maintain that Defendant MERS was never the "beneficiary" as defined under Washington law and therefore never had any legitimate role in their Deed of Trust and the corresponding Promissory Note, which evidences the debt. CP 44, CP 111-115, CP 117-134.

Unbeknownst to the Lissons, on or about March 19, 2012, an employee of Defendant Wells Fargo, Stephanie Therese Tautges, signed an Assignment of Deed of Trust in Minneapolis, MN as an "Assistant Secretary" of Defendant MERS as "Nominee for Ohio Savings Bank, its successors and assigns", which was recorded in Kitsap County on that same date by Defendant Wells Fargo. The Lissons do not know if the document was recorded electronically, but if it was not recorded electronically, then the date of the purported signing has been altered since

it would not be signed in Minnesota and recorded in Washington on the same day. The Assignment purported to transfer the beneficial interest in the Lissons' Deed of Trust to Defendant HSBC. The Lissons maintain that Defendant MERS did not have any interest it could assign, either on behalf of Ohio Savings Bank or "its successors and assigns", whoever they might be. CP 7, 56.

According to publicly available information, Ohio Savings Bank ceased to exist in April 2007 when it was renamed AmTrust Bank, but AmTrust Bank failed in 2009 and the FDIC shut it down. Its assets were transferred to New York Community Bank, but the records in this case make clear that their loan was not a part of the assets of AmTrust Bank. Thus, when the Wells Fargo employee was signing documents on behalf of Ohio Savings Bank, through its purported "nominee" Defendant MERS in March, 2012, it was not doing so on behalf of a non-existent entity. The information contained on the Assignment about the legal authority of the signer to assign an interest in the Lissons' Deed of Trust and the validity of the purported transfer under Washington law were false, and Defendant Wells Fargo knew them to be false when it caused its employee to execute the document. The Assignment purported to transfer the interest in the Lissons' Deed of Trust to Defendant HSBC Trust, a trust that was created in 2006. CP 7-8.

Records from Defendant NWTS produced in discovery indicate instructions for foreclosure came from Wells Fargo who instructed it to foreclose in its name, but instructed that "vesting" of the title would be in the name of Defendant HSBC. It also instructs NWTS to prepare or cause to be prepared an Assignment indicating that the beneficial interest in the Lissons' Deed of Trust is transferred to Wells Fargo. These two instructions are contradictory, but it was apparently irrelevant to Defendant NWTS. CP 605, 631-633. The amounts provided to NWTS as being due and owing on November 9, 2012 are not consistent with a letter sent by the Wells Fargo entity, ASC, on August 17, 2012. CP 635-640. Further, NWTS provided Wells Fargo with an Appointment of Successor Trustee document that called for a signature by the actual "beneficiary" (noteholder – RCW 61.24.005(2)), but it was later altered to include a signature block for Wells Fargo as "servicing agent" for Defendant HSBC. It was not signed as required under the DTA (RCW 61.24.005(2); 61.24.010(2)) by the "beneficiary" or even under a purported Power of Attorney or as an "attorney-in'fact". The Appointment was defective and Defendant NWTS knew it was not compliant with the requirements of the DTA. *Id.* CP 642-643.

Long before it was purportedly appointed as a successor trustee, Defendant NWTS created and issued a Notice of Default ("NOD") and

caused it to be served upon the Lissons at the Residence. The NOD, issued on or about December 7, 2012, indicated that it was being signed by Defendant NWTS, as "duly authorized agent" for Defendant HSBC Huelsman TRO Dec. There are no documents in the discovery produced by Defendant NWTS which indicate that it ever communicated with Defendant HSBC. Thus, it could never have been appointed by HSBC as its "duly authorized agent". Instead, someone at Wells Fargo, acting as the loan servicer, instructed NWTS to issue the NOD. CP 49-51, 605-606.

The NOD indicated that the Lissons were delinquent with payments from January 1, 2012 and demanded that they pay the balance due within thirty (30) days or face the next step in the foreclosure process. Included in the amounts demanded were charges for posting the NOD in the amount of $70.00, which is an inflated amount as the company that provided the "posting" services is owned and controlled by the same lawyers that own and control Defendant NWTS. The charges were greater than those charged by other companies in 2012 in Washington. Similarly, the Trustee's Sale Guarantee was also done by an affiliated company to Defendant NWTS, thereby resulting in inflated charges for a title guarantee. CP 9. The NOD listed HSBC as the loan owner and Wells Fargo as the loan servicer at the same address for both in contravention of the requirements of the Deed of Trust Act. RCW 61.24, *et seq. Id.*

The NOD was served upon the Lissons at their Residence by posting and by mail and certified mail on or about December 7, 2012. They were very concerned by this Notice and tried to reach their loan servicer, Wells Fargo, to discuss options to avoid a foreclosure. They were instructed to submit financial information in support of the reasons that they were seeking a loan modification. They started put together a loan modification package, including a hardship letter explaining their financial situation. CP 44-45.

The Lissons decided to seek legal advice regarding their options in light of the pending foreclosure and on December 31, 2012, they were referred to a foreclosure mediation under the FFA by their attorney. This put a stop to the foreclosure process. The Lissons then began working on submitting a loan modification packet through their attorney in the FFA mediation process. CP 45.

The Lissons submitted their loan modification packet to the attorneys appointed to represent the alleged "beneficiary", Wells Fargo and to the mediator. The first mediation session took place on May 2, 2013. The parties agreed to a second mediation session because Wells Fargo, who was participating in the mediation as though it were the "beneficiary" wanted more information and documentation from the Lissons. The Lissons provided that information and documentation but

there were additional requests for more, so the second session was continued to September 11, 2013. CP 45.

During this process, the Lissons received letters from Wells Fargo's subsidiary, ASC, advising them that they had been denied a loan modification. The letter indicated that they had been denied a modification under HAMP because they did not turn in the required information on time. This statement was completely false, as the Lissons had provided the required documentation through the mediation process to the attorneys for Wells Fargo. *Id.*

Following the second session on September 11, 2013, Defendant Wells Fargo, acting through ASC, sent the Lissons a letter stating that they had "mutually agreed" that the Lissons could not be offered a loan modification because no affordable payment options were available to them. This assertion is absolutely untrue. The Lissons most certainly did not "mutually agree" that they should be denied a loan modification and in fact, maintain that they qualified for a loan modification and were improperly denied by the loan servicer, Wells Fargo. *Id.* Further, Wells Fargo submitted to the mediator a "net present value" ("NPV") calculation that was not in conformity with the requirements of the FFA. The form included the following false information:

1) That there was one month to the foreclosure sale. The sale

date had not yet even been set during the mediation process.

2) That there were six months until an REO sale would occur. Given that the foreclosure sale process took more than six months, this number was obviously incorrect.

3) Foreclosure and REO disposition costs were listed as $7,226.00. This is blatantly untrue, as the costs of selling the property alone, if the foreclosure sale occurred, would be approximately 10% of the sale price. The valuation of the Residence by Wells Fargo's agent was $485,000.00. Thus, the costs of the sale alone would have been at least $48,000.00.

4) Future interest and advanced escrow was listed at $5,864.00. This is a gross underestimation as the monthly interest accruing on the loan was $3,182.29 at the time the NOV was done, as evidenced by the amount of the monthly interest only payment used on the form.

5) The Lissons' gross monthly income was reported at $6,345.00. The Lissons believe that this number was incorrect, but even if it were correct, this would mean that they needed to have a monthly payment that was $2,093.85 or 31% of their gross income. In the NPV inputs, Wells Fargo listed the necessary modified payment as $1,567.83, and contended that the Lissons should be denied because it could not create a workable payment at that dollar amount.

6) The NPV indicates that the modified payment that could have been offered, with the loan being fully amortized, would have been $2,378.71 and that this payment was not affordable for the Lissons. That assertion is also untrue. Again, even if the Wells Fargo was correct and the Lissons' income was $6,345.00 per month, a payment of $2,378.71 would have only constituted 37% of their gross monthly income – a payment that would have been affordable.

7) The "redefault rate" was set at 70%, which is a complete fiction. Using the "redefault rates" reported by the Office of the Comptroller of the Currency, the regulator both Defendants HSBC and Wells Fargo, from a report in July 2013 (the most recent report), the highest redefault rates were **27%** on average. The report indicates that older HAMP modifications done in 2009, 2010 and some in 2011, had higher redefault rates, but that more recently modified loans were not defaulting at the same rates. Therefore, when this NPV calculation was submitted, there was absolutely no basis whatsoever for using a "redefault" rate of 70%, nor the "months to default" number of 3.

CP 11-12.

Originally when the "beneficiary" documents were submitted during the mediation, Wells Fargo, acting for HSBC, asserted that it was not required to provide proof of the ownership of the Lissons' Promissory Note nor the authority for Wells Fargo to act on behalf of HSBC, in contravention of the requirements of the FFA mediation process. RCW 61.24.163(10). Later during the mediation process, counsel for Wells Fargo submitted a "Beneficiary Declaration" that was supposed to be used by the foreclosing trustee to verify that it was receiving instructions to foreclose from the loan owner and noteholder. RCW 61.24.030(7). The "Beneficiary Declaration" apparently relied upon by all of the Defendants submitted in this case did not comport with DTA requirements. Instead of being signed by the "beneficiary" (HSBC), it was signed by Yvetta Glen of Wells Fargo, purported "VP of Loan Documentation" on behalf of HSBC as its "attorney in fact". The Lissons maintained that Defendant HSBC did not appoint Wells Fargo as its "attorney in fact", but Wells Fargo has produced a Power of Attorney as Exhibit "I" to Mr. Chhan's Declaration. However, it has not provided any testimony whatsoever from any person actually signing documents that any Wells Fargo employees knew of its existence and/or relied upon it to execute documents. The only testimony provided by Wells Fargo is from people reciting the contents of computer screens and providing copies of documents. The Lissons

maintain that Wells Fargo never had the requisite authority under the DTA to instruct Defendant NWTS to foreclosure nonjudicially. CP 62-63, 588-590.

The Beneficiary Declaration asserted that Defendant HSBC was the "actual owner" of the Lissons' Promissory Note and that it is the "actual holder" of the Promissory Note. In this document, an employee of Wells Fargo is asserting, under penalty of perjury, that HSBC Trust is the noteholder and loan owner, but did anyone at Wells Fargo have information about the location of the Note? Mr. Chhan asserts that Wells Fargo held the Note, but the Servicing Agreements and Custodial Agreements (portions of which are attached to his Declaration) make clear that the custodian holds the Note for the benefit of the Trustee (HSBC). CP 383, 456-458.

This assertion is contradicted by other documents signed by Wells Fargo's employees, and there is nothing in the documents provided by Wells Fargo in discovery which confirm that Ms. Glen or anyone else at Wells Fargo had any knowledge regarding the physical location of the Note and the identity of the "holder". Further, in opposition to the Motion for TRO, Wells Fargo submitted the Andrea Kruse Declaration where she described it as nothing more than the "servicing agent" and the "custodian of the Note and Deed of Trust". CP 107, 111-115, 117-134. No mention

was made of the existence of the Power of Attorney and/or knowledge about its existence. This Declaration confirms the Lissons' position – Wells Fargo was not the "noteholder" and could not act as the beneficiary. *Id.*

In spite of the glaring violations of the requirements of the FFA, the mediators issued a certificate and allowed the mediation to close out. In connection with the second round of denials, another NPV calculation was utilized and submitted along with the Mediator's Certificate. That NPV calculation also included other numbers that were incorrect:

> 1) The Lissons' monthly income was listed as $7,312.00 and the monthly escrow was listed as $872.00. These amounts were incorrect.
> 2) The months to foreclosure sale was listed as five (5), which is inaccurate, and the months to REO sale are listed as six (6) months, which is ridiculous. Once the FFA mediation was complete, a new Notice of Trustee's Sale had to be prepared and served and it would have required 120 days' notice. That means the entire process would only be completed within five months if everything was done as quickly as possible. Further, the Lissons would not even be required to move out until twenty (20) days after the foreclosure auction occurred. But certainly, the Residence could not have been foreclosed and then sold to a third party within six months because of this timeline.
> 3) The foreclosure and REO disposition costs were listed as $5,000.00. As noted above, this is a laughable estimation, given that the normal costs associated with the sale of real property are at least 10%.
> 4) The redefault rate was listed as 40%. As noted above, that amount is significantly inflated and unrealistic. Similarly, the months to redefault listed as six months is also not accurate.

CP 14.

On or about November 20, 2013, another employee of Wells Fargo

helped to manufacture another document that was recorded in Kitsap County. April Emily Jones, another purported "Vice President of Loan Documentation" of Wells Fargo signed another Assignment of Deed of Trust wherein she purports to be signing on behalf of HSBC Trust by Wells Fargo as its "attorney in fact" and the document purports to transfer the beneficial interest in the Lissons' Deed of Trust from Defendant HSBC Trust to Defendant HSBC Trust (not a typo). CP 67.

On or about January 3, 2014, another "Vice President of Loan Documentation" for Defendant Wells Fargo signed an Appointment of Successor Trustee on behalf of Wells Fargo as "servicing agent" for Defendant HSBC. This act does not comply with the requirements of the DTA, which only allows the actual "noteholder" to appoint a successor trustee. The Appointment document asserts that Wells Fargo is the "present holder" of the Note, even though the Trust documents now available make clear that it only did so as a custodian acting at all times for HSBC. The Trust documents (CP 346-500) make clear that Wells Fargo was not the "noteholder" because it was acting for another. Therefore, Wells Fargo was certainly not the "noteholder" as required by the DTA to appoint a successor trustee. RCW 61.24.010(2); RCW 61.24.005(2). Further, this assertion contradicts the assertions made in the Beneficiary Declaration, wherein the Wells Fargo employee asserts that

HSBC Trust is the "actual holder" of the Note. *Id.*

The Appointment of Successor Trustee was recorded in Kitsap County on January 13, 2014. In apparent reliance upon the Appointment, an employee of NWTS executed a Notice of Trustee's Sale ("NOTS") on March 14, 2014 and caused it to be served upon the Lissons. The signature line on the document has a notation that indicates it is "Effective: 3/10/14" – four days before the document was even signed. The NOTS was recorded in Kitsap County, thereafter. The foreclosure sale was scheduled to take place on July 18, 2014 but it was enjoined by the Lissons, who have been making the required payments to the Court Registry. CP 16, 136-138, 296-300.

The Lissons filed this case to prevent the loss of their home to a foreclosure sale. All they have ever wanted was a loan modification that would allow them to keep their home. They were able to sell an inherited property in California in 2014 once property values had risen. They made some money on the sale of the house, but Mr. Lisson needed to use most of the proceeds of that sale to fund his future projects that will allow them to continue to have income again in the future. If he used the money from the sale of the California property to pay off the entire amount of the arrears on the Residence and leave in place the adjustable rate loan for years to come, they knew that they would just fall quickly back into

default because Mr. Lisson will not be able to fund the new projects that he is working on, with the goal of having more income in the future to continue to make modified mortgage payments on the Residence. CP 16.

The Lissons were injured by the wrongful initiation of a nonjudicial foreclosure by the loan servicer, rather than the loan owner and noteholder, because it is not being done in conformity with the requirements of the DTA. Similarly, the loan servicer, Defendant Wells Fargo, did not properly review the Lissons for a loan modification consistent with its obligations to the loan owner and them because a loan modification would have been more financially beneficial to the Lissons and to the loan owner. In fact, Defendant Wells Fargo denied the Lissons a loan modification by falsely contending that the loan owner (HSBC) did not permit loan modifications. Further, Wells Fargo refused to provide a copy of the documentation of Defendant HSBC that allegedly prohibited loan modifications, in spite of the fact that it was required to do so under the FFA during the mediation process. The mediator similarly ignored the violation of the requirements of the FFA. CP 46.

As a result of the actions of the Defendants herein, the Lissons have had to pay an attorney to investigate their claims at a cost of $350.00. They have had to travel to Seattle to meet with an attorney in connection with that investigation and their work in connection with participating in

the FFA mediation. Those travel costs, including ferry and parking charges, total approximately $200.00. They also had to pay an attorney to prepare, file and attend hearings on the motions for temporary restraining order and for preliminary injunction in the amount of $4,000.00, plus the costs associated therewith, including a filing fee of $240.00. CP 46.

ARGUMENT

A. Standard on Motion for Summary Judgment

A motion for summary judgment is to be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *Jackowski v. Borchelt*, 174 Wn.2d 720, 729, 278 P.3d 1100 (2012). When determining whether an issue of material fact exists on summary judgment, a court must construe all facts and inferences in favor of the nonmoving party. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008); *McNabb v. Dep't of Corrs.*, 163 Wn.2d 393, 397, 180 P.3d 1257 (2008). A "material fact" for summary judgment purposes is one upon which all or part of the outcome of the litigation depends. *Hill v. Cox*, 110 Wn.App. 394, 41 P.3d 495 (Div. III 2002), *review denied* 147 Wn.2d 1024, 60 P.3d 92. Summary judgment is proper if reasonable minds could reach only one conclusion from the

evidence presented. *Cano-Garcia v. King County*, 168 Wn.App. 223, 277 P.3d 34 (Div. II 2012), *review denied* 175 Wn.2d 1010, 287 P.3d 594. Washington courts are "reluctant to grant summary judgment when 'material facts are particularly within the knowledge of the moving party.'" *Arnold v. Saberhagen Holdings, Inc.*, 157 Wn.App. 649, 661-62, 240 P.3d 162 (Div. II 2010).

B. Defendants Violated Multiple Provisions of the Deed of Trust Act and are therefore Liable to the Lissons.

1. <u>Deed of Trust Act Requirements</u>.

The Washington DTA has three objectives: (1) that the nonjudicial foreclosure process remains efficient and inexpensive; (2) that the process provides an adequate opportunity for interested parties to prevent wrongful foreclosure; and (3) that the process promotes the stability of land titles. RCW 61.24, *et seq.*; *Cox v. Helenius*, 103 Wn.2d 383, 387-88, 693 P.2d 683 (1985). S*ee also* RCW 61.24.030(6). "Because the deed of trust foreclosure process is conducted without review or confirmation by a court, the fiduciary duty imposed on the trustee is exceedingly high." *Id.* at 388-89. In *Cox*, the Supreme Court noted that even if the plaintiffs had not properly acted to restrain the sale, it would have nevertheless been voided because of the trustee's action. *Id*. Here, the analysis should be the same even though this case is not exclusively focused on the actions of the

purported trustee. Defendants did not adhere to DTA requirements.

Where parties purporting to conduct a nonjudicial foreclosure sale of residential real property fail to conform to the requirements of the DTA, their actions are without legal effect and the sale is invalid. *See Albice v. Premier Mrtg.*, 174 Wn.2d 560, 568, 276 P.3d 1277 (2012) ("*Without statutory authority, any action taken is invalid.*"); *Rucker v. Novastar, Inc.*, 177 Wn.App. 1, 16-17 (2013) ("the vacation of a foreclosure sale *is required* where a trustee has conducted the sale without statutory authority"); *id*. ("[i]f the failure of a properly-appointed trustee to follow statutory procedures can result in the vacation of a sale, *this remedy is equally appropriate where an entity conducts a trustee sale in the complete absence of authority*"). (Emphasis added). Since the requisites to a trustee's sale were never met in this case, Supreme Court case law makes clear that even a completed a sale can be found invalid when it does not meet the requirements. *See, Albice, supra,* (sale not in compliance with the statute is invalid); *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 106-07, 297 P.3d 677 (2013) (claims arising from violation of requisites to a trustee's sale in RCW 61.24.030 not barred by waiver; requisites set forth in statutory list "*are not, properly speaking, rights held by the debtor*; instead, they are limits on the trustee's power to foreclose without judicial supervision") (emphasis added). *See also, Walker v.*

Quality Loan Serv. Corp of Wash., 176 Wn.App. 294, 309-10, 308 P.3d 716 (2013) ("[W]hen an unlawful beneficiary appoints a successor trustee, the putative trustee lacks the legal authority to record and serve a notice of trustee's sale."); "Such actions by the improperly appointed trustee, we have explained, constitute 'material violations of the DTA.'" *Rucker,* 177 Wn.App. 1, 15-17, (citing to *Walker*); *Barrus v. ReconTrust Co.,* No. 11-1578-KAO, Dkt. No. 114, *13-15 (Bkrtcy. W.D. Wash., May 6, 2013).

2. <u>Applying the Consumer Protection Act to DTA Requirements.</u>

When analyzing Consumer Protection Act ("CPA") claims, a plaintiff must prove five elements: "(1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) public interest impact; (4) injury to plaintiff in his or their business or property; (5) causation." *Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 780, (1986). Beginning with *Bain v. Metropolitan Mortg. Grp., Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012), the Washington Supreme Court has been clear that a homeowner may pursue a CPA claim for violations of the DTA. *Bain,* at 98-110, noting that "characterizing MERS as the beneficiary has the capacity to deceive" and that there is certainly a presumption that the public interest element is met because MERS is involved in "an enormous number of mortgages in the country". *Id.* The

same analysis applies here. Consistent with long standing case law, there are genuine issues of material fact that prevent summary judgment here. *Sato v. Century 21,* 101 Wn.2d 599, 681 P.2d 242 (1984); *St. Paul Ins. Co. v. Updegrave,* 33 Wn.App. 653, 656 P.2d 1130 (1983); *Talmadge v. Aurora Chrysler Plymouth, Inc.,* 25 Wn. App. 90, 605 P.2d 1275 (1979). Under the CPA, specific monetary damages are not necessary, but a court is nevertheless required to award a prevailing plaintiff attorneys' fees. *Mason v. Mortgage America,* 114 Wn.2d 842, 792 P.2d 142 (1990). The Lissons testified as to their out of pocket damages relating to participation in an FFA mediation that was not conducted in conformity with the DTA, investigation of their claims and fees paid to obtain injunctive relief, as well as the injury they have suffered in relation to the demand for unearned amounts even though they were not paid. *Frias v. Asset Foreclosure Services, Inc*., 181 Wn.2d 412, 334 P.3d 529 (2014). CP 45-46.

a. Unfair and deceptive practices.

The Supreme Court noted in *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 295 P.3d 1179 (2013) that CPA claims can be brought against defendants for acts that are "unfair **or** deceptive", including in the context of a non-judicial foreclosure sale. *Klem* at 11. *Klem* went on to cite extensively and discuss its decision in *Panag v. Farmers Ins. Co. of WA,*

166 Wn.2d 27, 48, 204 P.3d 885 (2009) to expressly clarify that a violation of the CPA may be brought because of a ". . . an act or practice that has the capacity to deceive the substantial portions of the public, or an unfair or deceptive practice not regulated by statute but in violation of public interest." *Klem* at 16. In describing the "unfair or deceptive" standard, the Supreme Court quoted from this portion of *Panag*:

> It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known practices were specifically defined and prohibited, it would be at once necessary to begin over again. If Congress were to adopt the method of definition, it would have undertaken an endless task. It is also practically impossible to define unfair practices so that the definition will fit business of every sort in every part of the country.

Klem, at 16, citing to *Panag,* 166 Wn.2d at 48 (quoting *State v. Schwab,* 103 Wn.2d 542, 558, 693 P.2d 108 (1985) (Dore, J. dissenting) (quoting H.R. Conf. Rep. No. 1142, 63d Cong., 2d Sess. 19 (1914)). The Court further noted that "an act or practice can be unfair without being deceptive" and that the statute clearly allows claims for "unfair acts **or** deceptive acts or practices." *Klem,* at 16-17. Citing to *Panag,* the *Walker* Court also noted that the plaintiff had valid claims even without a completed foreclosure because he had suffered harm:

> In Panag v. Farmers Insurance Co. of Washington, our Supreme Court held, "[T]he injury requirement is met upon proof the plaintiff's 'property interest or money is diminished because of the unlawful conduct even if the expenses caused

> by the statutory violation are minimal.'" Investigative expenses, taking time off from work, travel expenses, and attorney fees are sufficient to establish injury under the CPA.
> ….
> Because Walker pleads facts that, if proved, could satisfy all five elements, we conclude that the trial court erred by dismissing his CPA claim.

Walker v. Quality Loan Serv. Corp of Wash., 176 Wn.App. 294, 309-10, 308 P.3d 716 (2013), citing to *Panag*, 166 Wn.2d at 53; *see also, Rucker v. Novastar, Inc.*, 177 Wn.App. 1 (2013) ("[W]hen an unlawful beneficiary appoints a successor trustee, **the putative trustee lacks the legal authority to record and serve a notice of trustee's sale**;" "such actions by the improperly appointed trustee, we have explained, constitute 'material violations of the DTA.'"). The Defendants have repeatedly ignored the requirements of the DTA. Just as in *Rucker*, none of the purported trustees were appointed by the "beneficiary", but by the loan servicer since SLS employees signed everything. There is no evidence of any "agency" relationship as the outlined in *Bain*, because in their discovery responses, the testimony was that none of the RMS entities communicated in any way with the servicer. There cannot be an "agency" relationship when there is no principal exercising control over the alleged "agent". *Bain*, 175 Wn.2d at 106

The Defendants have repeatedly ignored the requirements of the DTA. Just as in *Rucker*, NWTS, the purported foreclosing trustee, was **not**

appointed by the "beneficiary", but by the loan servicer since Wells Fargo employees signed everything. CP 600. The Defendants' Declarations are contradictory and the assertions about the purported reliance upon the Power of Attorney are vague and incomplete. Further, no such assertions of authority were ever made during the FFA mediation, when the statute required the provision of such information. RCW 61.24.163(7)(b)(ii).

The Lissons maintain that there can be no testimony about reliance upon the POA because no one at Wells Fargo did so. There is no reference in any of the foreclosure documents signed allegedly in reliance upon the POA to the POA. CP 588-590.

> A "Holder" of a negotiable instrument is defined in Washington as:
>
> RCW 62A.1-201…
>
> (21) "Holder" with respect to a negotiable instrument, means:
>
> (A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

RCW 62A.1-201(21)(A). *See also,* RCW 61.24.005(2). Since the Defendants maintain that HSBC was the "beneficiary", it was required to execute the Appointment of Successor Trustee (RCW 61.24.010(2)); Beneficiary Declaration (RCW 61.24.030(7)); and it was supposed to be the entity that gave direction to the properly appointed trustee to foreclose (RCW 61.24.030; .031; .040). There is recent Washington case law which

allows a "beneficiary" to use an "agent" to sign these documents, even though there is no such authority in those statutory provisions, but there is no evidence that that is what occurred here. But even if Wells Fargo intended to have its employees rely upon the POA, then there would be documentation that it did so and/or communicated with those employees about the POA. None was provided in response to the Lissons' written discovery requests, presumably since none exists. CP 588-590 Neither is there evidence of communications with anyone at Defendant MERS or that involved MERS. Consistent with the Supreme Court's decision in *Bain*, parties who utilize the DTA cannot alter its requirements by contract.

The trial court accepted the Defendants' position that Wells Fargo could take those actions through the use of a POA, even though Washington case law makes clear that there must be evidence of an actual principal/agent relationship in order to support this argument. *See, Bain* at 97-98. If this position is accepted by this Court, it would mean that it is finding the *Bain* case stands for the proposition that Washington law allows the use of agents in spite of plain language in the statute that does not provide for such actions. RCW 61.24.010(2) ("[t]he trustee may … be replaced by the ***beneficiary***") (emphasis added). RCW 61.24.030(7),

(7)(a) That, for residential real property, before the notice

> of trustee's sale is recorded, transmitted, or served, **the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.**

RCW 61.24.030(7) (emphasis added).

Comparing the Defendants' argument, accepted by the trial court, to the actual language of *Bain*, 175 Wn.2d at 107 ("[w]e have repeatedly held that a prerequisite of an agency is *control* of the agent by the principal") (quotation marks and citation omitted) (emphasis in original). Here, there is no evidence at all of "control" of HSBC's alleged agent, Wells Fargo, provided to the trial court and none was provided to the Lissons in discovery responses. As *Bain* acknowledges, there are portions of the DTA which allows the use of "authorized agents" to perform certain specific acts (RCW 61.24.030; .031(1)(a), (b); .050(2); .143; and .163(8)(a)). The actions complained of herein do **not** include those sections of the DTA. The remainder of the DTA ***does not empower an agent to act in the beneficiary's stead***. *See In re Swanson*, 115 Wn.2d 21, 27, 804 P.2d 1 (1990) ("Where the legislature uses certain statutory language in one instance, and different language in another, there is different legislative intent."). When Legislature intends to allow the use of

"authorized agents" to perform certain actions under the DTA, it says so very clearly.

The Defendants distort the law in its attempt to bootstrap those specific provisions of the DTA allowing authorized agents to take certain actions into a generalized conclusion that the DTA, and *Bain*, freely allows beneficiaries to delegate their responsibilities to unsupervised "agents." But, even supposing that an agent *could* lawfully take an action like appointing a successor trustee on behalf of the beneficiary, material questions of fact prevent them from obtaining summary judgment as the Defendants have not provided any evidence which demonstrates the existence of a principal-agent relationship. In fact, all of the evidence presented to the Court makes clear that Wells Fargo performed all functions and never communicated with HSBC at all, nor that anyone at Wells Fargo actually knew the location of the Note and/or about the existence of the POA. Nor is there any evidence that the HSBC Trust exercised control as a "principal" over Wells Fargo as an alleged "agent", especially since the Servicing Agreement disavows such relationship. CP 414-423 *Bain,* 175 Wn.2d at 106, requires that "'an agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, ***with a correlative manifestation of consent by the other party to act on his behalf and***

subject to his control'" (citing *Moss v. Vadman*, 77 Wn.2d 396, 402-03, 463 P.2d 159 (1970)) (emphasis added).

The Lissons maintains that because of the insufficiency of the documentation used in connection with the nonjudicial foreclosure at issue in this case, these Defendants have engaged in "unfair **and** deceptive" practices. Further, these actions were intentional because the documentation used in support of the foreclosure was defective on its face. The "Appointment of Successor Trustee" was not signed by the "Beneficiary" but rather by an alleged "attorney in fact" who asserts that she has personal knowledge of information in the possession of the alleged "beneficiary". NWTS provided no testimony or documentation which indicates that it ever asked for or received a copy of the POA or any other documentation that even purported to confirm that Wells Fargo had such authority. The same is true as regards the Beneficiary Declaration. It was defective on its face because a Wells Fargo employee signing as an "attorney in fact" could not personally attest under penalty of perjury that a third party – HSBC Trust – had physical possession of the Note. CP 600. Because the foreclosure was wrongfully initiated, any demand for fees related to that foreclosure was also unfair and deceptive. For these reasons, the Lissons maintain that they proved the unfair and deceptive portion of the CPA. *See, Frias,* 181 Wn.2d 412.

b. Occurring in trade or commerce.

All of the Defendants' actions were done in the course of performing their business of owning and/or servicing a mortgage loan secured by real property located in Washington and receiving payments from and/or title to real property related thereto and causing it to be foreclosed by having its employees executing documents which were recorded in the records of King County, Washington and which were used in support of the completed foreclosure. The actions of NWTS were done in conjunction with its business of conducting nonjudicial foreclosures in Washington and the actions of Wells Fargo and HSBC were done in their usual course of business of attempting for foreclose on real property which secured a mortgage debt. Thus, the complained of acts occurred in the course of trade or commerce.

c. Public Interest Element.

Proof of the public interest element may be proven through evidence of actual injury to others or a finding that it "had the capacity to injure other persons" or "has the capacity to injure other persons". RCW 19.86.093. Proof that the Defendants' business practices will and has injured others is evident in its assertions that they did comply with Washington law and their request that the trial court affirm its actions,

which are in direct contravention of DTA requirements. The Supreme Court found in *Bain,* 175 Wn.2d 83, *Frias v. Asset Foreclosure Services, Inc*., 181 Wn.2d 412, and *Lyons v. U.S. Bank National Ass 'n,* 181 Wn.2d 775, 336 P.3d 1142 (2014) that provision of and reliance upon the same sort of false information and noncompliant documentation is “”unfair” and “deceptive” under the CPA, as did the Court of Appeals in *Walker* and *Rucker.* Numerous other DTA cases decided by the Supreme Court require that language in the DTA be construed strictly in the homeowner’s favor because it eliminates many protections enjoyed by borrowers in judicial foreclosures. *Bain,* 175 Wn.2d. at 93 (citing *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007)); *see also Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94, 297 P.3d 677 (2013); *Albice v. Premier Mortg. Svcs. of Wash., Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012). DTA “must be construed in favor of borrowers because of the relative ease with which lenders can forfeit borrowers’ interests and the lack of judicial oversight in conducting non-judicial foreclosure sales.” *Bain,* 175 Wn.2d. at 93.

The Defendants herein have contended that their actions were done in conformity with the requirements of the DTA and therefore have proven through their responses to the Lissons’ allegations that they have already and will engage in the same actions in the future. This means that

the Defendants' standard business practices have and are necessarily harming others, and have the potential to harm others, by subjecting them to wrongfully initiated non-judicial foreclosures. RCW 19.86.093.

d. The Lissons were damaged and injured by the actions of the Defendants.

The Lissons testified through Mr. Lisson's Declaration about their injuries and damages, including their out of pocket damages relating to participation in an FFA mediation that was not conducted in conformity with the DTA, investigation of their claims and fees paid to their attorney to obtain injunctive relief. CP 45-46. Their evidence on their damages and injury were unrefuted by the Defendants.

"**Even when there is no completed foreclosure sale and no allegation that plaintiff has paid foreclosure fees, it is possible for a plaintiff to suffer injury to business or property caused by alleged DTA violations that could be compensable under the CPA**." *Frias v. Asset Foreclosure Services, Inc*., 181 Wn.2d 412, 430, citing to *Panag v. State Farm Ins. Co. of WA*, 166 Wn.2d 27, 57 (2009); *Lyons*, 336 P.3d at 1142 (emphasis added). The Lissons have been trying to save their home and have been injured and damaged through that process by the Defendants.

5. Causation

The Lissons demonstrated that the injury and damages were caused by all of the Defendants' actions. First, Defendants Wells Fargo and HSBC did not properly participate in the FFA mediation because they refused to properly review them for a loan modification and made false assertions about the process. CP 45. It was notable that during the mediation, Wells Fargo refused to provide documentation to support its assertion that it had authority to act on behalf of HSBC, in spite of it being a statutory requirement. It eventually provided the defective Beneficiary Declaration that is the subject of this litigation. Wells Fargo never produced the POA. CP 588-590. Irrespective of whether the mediation was certified as in compliance by the mediator, this Court has held that the process may still be challenged by a borrower. *See, Cabage v. Northwest Trustee*, 2015 WL 7909545 (Dec. 1, 2015) (unpublished).

The trial court appears to have relied upon *Blair v. Northwest Tr. Servs., Inc.,* 193 Wn.App. 18, 37 (Wash. Ct. App. 2016) in granting summary judgment, adopting the Defendants' assertion that it stands for the proposition that the trustee is entitled to rely upon the Beneficiary Declaration irrespective of whether it adhered to the requirements of the statute.

That assertion is in direct contravention of Supreme Court holdings in *Bain, Frias, Lyons* and *Trujillo v. NW Trustee Servs., Inc.,* 183 Wn.2d

820, 355 P.3d 1100 (2015). The briefing below contained misrepresentations about the holding, as once the case was decided on appeal, the *Blair* Court was focused exclusively on the actions of the foreclosing trustee. This Court held that Mr. Blair could not prove his injury **only as against the purported trustee** was caused by all its violations of the DTA, in spite of the Supreme Court holding in *Trujillo* that the actions of defendants in a wrongful foreclosure are measured at the time that they took the action, not based upon what might be learned later by the foreclosure trustee. *Trujillo,* 183 Wn.2d at 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. *See* Br. of Amicus Curiae of Att'y Gen. of State of Wash. at 10; RCW 61.24.030(7)(a) *("[B]efore* 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." (emphasis added)). **A court must assess the propriety of the trustee's conduct based upon the trustee's evidence and investigation at that time.**

Trujillo, 183 Wn.2d at 834, n. 10 (emphasis added). The same would be true when measuring the actions of the "beneficiary" and/or its purported agent. But the *Blair* Court held:

> To satisfy the causation element, a "plaintiff must establish that, but for the defendant's unfair or deceptive practice, the plaintiff would not have suffered an injury." *Indoor Billboard/Wash., Inc. v. lntegra Telecom of Wash., Inc.,* 162 Wn.2d 59, 84, 170 P.3d 10 (2007). This requires "a causal link between the misrepresentation and the

> plaintiffs' injury." *Id.* at 83. The existence of a causal link is usually a factual question. *Id.*

Id. The Court held that Mr. Blair could not prove the causal connection because he did not testify about the impact of the defective beneficiary declaration upon him. *Id.* This conclusion is disconnected from the facts of nonjudicial foreclosures and misconstrues what is properly identified as the "unfair or deceptive act". RCW 19.86.020.[2] The initiation of the nonjudicial foreclosure predicated upon improper documents was what caused the "injury" and "damages", a position which comports with holdings in other Supreme Court decisions. Further, the use of the defective Beneficiary Declaration in the mediation caused the mediator to make a finding that Wells Fargo and HSBC complied with the statute, even though they refused to do so and to review the Lissons for a modification. CP 45. Here, none of the foreclosure activity could have been initiated nor would the mediation have occurred if the Defendants had not provided false and noncompliant documentation in support of the foreclosure.[3]

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[2] The beneficiary declaration is not a document that is provided to a homeowner. RCW 61.24.030(7) requires that the document be provided to the **trustee**.

[3] The Lissons have never argued that they were entitled to a loan modification. Rather, they maintain that they were entitled to an FFA compliant mediation, which included the participants having the authority to act, providing compliant documentation, and reviewing them for foreclosure prevention programs. RCW 61.24.163(9). "The participants in mediation **must** address the issues of foreclosure that may enable the borrower and the beneficiary to reach a resolution, including but not limited to

Defendants also cited to *Brown v. Dept. of Commerce,* 184 Wn.2d 509, 539, 359 P.3d 771 (2015) in support of their position, even though that case was particularly focused on the issues relating to loan ownership vs the "noteholder" (RCW 61.24.005(2) in the particular context of loans owned by Fannie Mae and Freddie Mac.[4] The documents in this case (a private trust with a pooling and servicing agreement "PSA") do not mirror the GSE agreements and in fact, contains language that makes clear that all actions taken by the mortgage loan servicer and anyone else acting thereunder does so for the benefit of HSBC, but that does not make its actions in conformity with the requirements of the DTA. CP 378-407.

Just as the Supreme Court found in *Lyons,* there was no authority to foreclose based upon the documents relied upon and for that reason alone, Ms. Lyons could proceed with her CPA claims. The *Lyons* Court never indicated in its opinion that Ms. Lyons needed to testify that she relied upon the beneficiary declarations nor could she since it is not a document that a borrower usually sees. But for the use of the defective documents, the attempted non-judicial foreclosures and the completed

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reinstatement, modification of the loan, restructuring of the debt, or some other workout plan. . . ." RCW 61.24.163(9) (emphasis added).

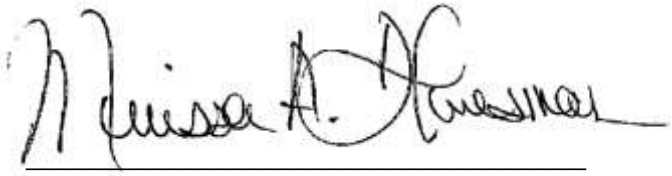
[4] The GSEs and servicers enter into agreements that allow servicers to be treated as the noteholder in bankruptcy and foreclosure cases. The Supreme Court emphasized its interest when interpreting the DTA on the identity of the "noteholder" since the DTA repeatedly requires actions by the "beneficiary". RCW 61.24.005(2).

foreclosure that is the subject of this litigation would not have occurred. Thus, the Lissons has made the causal connection for their CPA claim. As Division I emphasized in *Walker,* "No Washington case law relieves from liability a party causing damage by purporting to act under the DTA without lawful authority to act or failing to comply with the DTA's requirements." *Walker, supra.*

CONCLUSION

Genuine issues of material fact remained unresolved at the time that the Order was entered as described more particularly above. For these reasons, the Lissons maintain that summary judgment should have been denied and this matter must be remanded to the trial court.

Respectfully submitted this May 24, 2018.



Melissa A. Huelsman, WSBA # 30935
Attorney for Appellants Mark and Catherine Lisson

CERTIFICATE OF SERVICE

I, Tony Dondero, declare under penalty of perjury as follows:

1. I am over the age of eighteen years, a citizen of the United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on Thursday, May 24, 2018, I caused the foregoing document attached to this Certificate of Service plus any supporting documents, declarations and exhibits to be served upon the following individuals via the methods outlined below:

ANGLIN FLEWELLING RASMUSSEN CAMPBELL & TRYTTEN LLP Ann Marshall, WSBA #23533 701 Pike St., Suite 1560 Seattle, WA 98101 Phone: (206) 492-2300 Email:amarshall@afrct.com Attorney for Wells Fargo, HSBC Bank USA, N.A. and MERS	□ Legal Messenger ☒ Electronic Mail □ Federal Express

I certify under penalty of perjury under the laws of the State of Washington that the foregoing statement is both true and correct.

Dated this Thursday, May 24, 2018, at Seattle, Washington.

Tony Dondero, Paralegal

LAW OFFICES OF MELISSA HUELSMAN

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