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SUPREME COURT  
STATE OF WASHINGTON  
7/14/2017 8:00 am  
BY SUSAN L. CARLSON  
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No. 94089.4

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SUPREME COURT OF THE STATE OF WASHINGTON

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No. 16-2-01481-1

KITSAP COUNTY SUPERIOR COURT

DUKE PARTNERS, LLC,

Plaintiff,

v.

MARIE-LOUISE PAUSON

Defendant,

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PETITIONER'S OPENING BRIEF

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Marie-Louise Pauson, Pro SE

4811 Taylor AV NE  
Bainbridge Island, WA 98110  
maliposa@gmail.com

**ORIGINAL**

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TABLE OF CONTENTS

I. Introduction.....

II. ASSIGNMENTS OF ERROR.....  
    Assignment of Error  
        No. 1.....  
        No. 2.....  
    Issues pertaining to Assignments of Error  
        No. 1.....  
        No. 2.....

III. Statement of the Case.....

IV. Argument.....

V. Conclusion.....

VI. Appendix.....

TABLE OF AUTHORITIES

Washington Cases for GENERAL REFERENCE

Walker v Quality Loan Service Corp of Wa ,176Wn.App.294  
(2013).....

Cox v Helenius, 103,Wn.2d 383 693 P. 2d 683  
(1985).....

Tomlinson v. Clark, 118 Wn. 2d 498 825 P.2d 706  
(1992).....

Trujillo v. NWTS, 181 Wn. App. 484,326 P.3d 768  
(2014).....

Supreme Court Cases

Jesinoski v Countrywide Home Loans 135 S. Ct. 790, 792  
(2015).....4,8

Statutes

RCW 59.12.032. ....4

RCW 61.24.040.....4

RCW 19.86.920.....

## INTRODUCTION

A lawful foreclosure is a pre-requisite to a lawful Writ of Restitution, RCW 59.12.032. For a Writ of Restitution to Comply with RCW 61.24.040, a legally valid Deed of Trust must in fact, exist. Defendant's mortgage loan was rescinded and extinguished by Operation of Law in September of 2008. Because no Deed of Trust legally existed after September 5, 2008, any attempt to claim or collect on a non-existent loan was void.

Erroneous lower courts have misinterpreted the plain language of the Truth In Lending Statute (1635) and have ignored its authority. Kitsap County Superior Court has ignored the legal direction of a unanimous United States Supreme Court decision authored by Justice Scalia in *Jesinoski v Countrywide*, 2015 when they Granted Plaintiff's Judgment of Unlawful Detainer.

An Unlawful Detainer lawsuit litigates the issue of Possession in cases where presumably a valid foreclosure

has taken place. The foreclosure in this case was void and of no effect.

### ASSIGNMENTS OF ERROR

1) The trial court erred in granting Plaintiff's Unlawful Detainer (Show Cause Hearing) and Writ of Restitution on September 16, 2016.

Issues pertaining to Assignment of Error 1.) When a Notice of Rescission was legitimately mailed to a claimed creditor who ignored the notice, do these circumstances represent a defect in the foreclosure process itself which allows defenses to be raised that the sale was void?

Second Issue pertaining to Assignment of Error 1)  
Does a trustee have a duty to restrain a foreclosure sale when the trustee knows the foreclosure is disputed, one or more lawsuits have been filed and Lis Pendens recorded and there is a question of standing of the claimed creditor who ignored the Notice of Rescission?

2) The trial court erred in denying Defendant's Motion to

Vacate Judgment and Stay the Writ of Restitution on December 19, 2016

Issue pertaining to Assignment of Error 2) Is it reasonable to assume that the Right of Possession depends on the validity of the foreclosure sale? What is the legal basis for initiating a non-judicial foreclosure on a property when a borrower gave proper notice of rescission and recorded the notice?

#### STATEMENT OF THE CASE

Defendant Marie-Louise Pauson answered and filed Affirmative Defenses to Plaintiff's Motion to Show Cause on September 6, 2016. CP 1-3. An Ex Parte Hearing was set on September 8, 2016 for September 16, 2016 to show cause why a writ of restitution should not issue. A Writ of Restitution was issued in spite of Defendant's Affirmative Defenses on September 16, 2016. CP 4. The Defendant filed for Bankruptcy on September 16, 2016 CP 5.

The Kitsap County Sheriff came to Defendant's

residence on September 20, 2016 and attempted to serve the Defendant with a Writ of Restitution. The Defendant handed the Sheriff a Bankruptcy notice which stayed any legal process against the Debtor. (This automatic stay was confirmed by Judge Alston in his Findings of Fact and Conclusions of Law in a recent Bankruptcy Court hearing.) The Defendant was not lawfully served but the Sheriff was determined to leave his papers because he was paid to leave them whether or not they were void. On December 9, 2016, it snowed on Bainbridge, school was cancelled and it was impossible for the Defendant to travel to a Relief From Stay hearing scheduled in Seattle. The hearing took place but no one notified the Defendant of the outcome. On December 16, 2016 the Sheriff parked behind the Defendant who was sitting in her car in the right of way in front of her house. He got out of his car to announce he was going to enter the Defendant's residence. The Defendant had still not received any notice of the December 9, 2017 hearing on Friday, December 16, 2016. The Defendant filed a Motion to

Show Cause to Vacate the Unlawful Detainer Judgment and Stay the Writ of Restitution notifying Plaintiff's Counsel beforehand so he could be present at the Ex Parte hearing on December 19, 2016. Once again the Defendant's arguments and defenses were completely ignored. CP 6-24. The Defendant was unlawfully evicted from her home of 23 years on December 20, 2016, 5 days before Christmas. Defendant mailed a Notice of Appeal on January 13, 2017 which was filed with the Kitsap County Superior Court on January 18, 2016. CP 25-27.

#### ARGUMENT

The Truth in Lending Statute referred to in this Appeal, 15 U.S. 1635 offers Consumer Protection to individuals who have no other recourse against deceptive practices in a non-judicial state. The Trustee should not have ignored Defendant's recorded notice of rescission and violated his duty of good faith to all parties. Mortgages, notes and deeds become void by OPERATION OF LAW when a notice of rescission is mailed.

The trustee has a duty to recognize this fact of law which precludes any legal basis for initiating a foreclosure. A notice of Rescission and several Lis Pendens are still recorded on the property deed at 4811 Taylor Av Ne, Bainbridge Island, WA

Duke Partners in their haste to turn over the property in question ended up evicting the Defendant (me) unlawfully. There was no notice given as there was a Bankruptcy stay and all of the eviction documentation is false. The Plaintiff had me arrested illegally, cut down trees, destroyed landscaping, changed utility accounts and much more all without obtaining lawful possession of the property. They called the Police and had me arrested falsely and the Sheriff filed several false documents to justify his illegal action.

The main allegation in most of the case law is that the parties DEFAULTED. There was no Default in Defendant's case and she has evidence, she ended up paying for a non-existent mortgage for several years.

CONCLUSION

I am requesting the Unlawful Detainer and Writ of Restitution  
be Vacated since the Judgment was void.

Respectfully submitted,

DATED JULY 13, 2017

s/Marie-Louise Pauson

4811 Taylor Av NE

Bainbridge Island, WA 98110

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I herby certify under penalty of perjury of the laws of the State of Washington that I, Marie-Louise Pauson filed a true and correct copy of THE PETITIONER'S OPENING BRIEF No. 94089-4 to the Clerk of the Supreme Court (supreme@courts.wa.gov) and to Counsel Elizabeth Powell (powelllaw@comcast.net ) representing Plaintiff, Duke Partners, LLC.

JULY 13, 2017

s/Marie-Louise Pauson  
Marie-Louise Pauson, Pro SE  
4811 Taylor Av NE  
Bainbridge Island, WA 98110

**MARIE=LOUISE PAUSON - FILING PRO SE**

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