

FILED  
Court of Appeals  
Division II  
State of Washington  
6/18/2018 8:00 AM  
Case No. 51297-1-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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BRIAN WINTERS, et. al.,

Plaintiffs

vs.

WELLS FARGO BANK N.A., et. al.

Defendants

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APPELLANT'S REPLY BRIEF

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## I. REPLY

### A. Response Brief Unpersuasive.

The Winters' response brief makes the same wrong legal and factual arguments that were rejected by the Commissioner who found obvious error and accepted review. Namely, the Winters continue to incorrectly argue that the Deed of Trust beneficiary, Wells Fargo, could not act through its servicing agent (it can, and did through an express and written power of attorney), and that Quality did not have resident officer when it was foreclosing the Winters' home (it did).

The Winters offer nothing new in the response brief to rebut Quality's arguments and the Commissioner's finding of obvious error.

### B. Trustee Allowed to Rely On a Beneficiary Declaration.

Under the Deed of Trust Act ("DTA"), the trustee is allowed to rely on a beneficiary declaration in confirming the note holder. RCW 61.24.030(b); *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 544 (2015)

In this case, Quality had a conforming beneficiary declaration, made under penalty of perjury, confirming Wells Fargo held the note. Thus, Quality complied with its DTA obligation in confirming the identity of the beneficiary.

Quality was not required, as the Winters argue, to present additional evidence to the Superior Court as to the note holder, including the note's physical location. Quality's beneficiary declaration alone establishes trustee compliance with the DTA.

Furthermore, the Winters produced no evidence in opposition to summary judgment demonstrating that the beneficiary declaration was wrong and could not be relied upon by Quality in good faith. The Winters' speculation that the declaration may have been wrong is insufficient to survive summary judgment.

**C. Quality Should Have Been Promptly Dismissed by the Superior Court; Reversal is Appropriate.**

Non-judicial foreclosures are supposed to be an efficient and inexpensive alternative to judicial action. *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 94 (2012).

This was a by-the-book foreclosure by Quality that complied with the DTA in all respects. Meritless “wrongful foreclosure” actions against trustees such as this one by the Winters must be promptly dismissed for the system to remain efficient and function. If borrowers can sue trustees, who have limited recourses, and force lengthy and expensive trials over clean foreclosures (of which there are hundreds if not thousands a year), the system will cease to function. Trustees who advance clean, lawful foreclosures are entitled to prompt dismissal in meritless “wrongful foreclosure” actions, and this Court should reverse and dismiss.

**II. CONCLUSION**

The Superior Court erred in not dismissing Quality on summary judgment where the un-rebutted record demonstrated full DTA compliance. Reversal of the Superior Court and dismissal of Quality is appropriate.

DATED June 16, 2018

/s/ Joseph Ward McIntosh

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Reply

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M&H: WA-15-696690-CV

**MCCARTHY & HOLTHUS, LLP**

**June 16, 2018 - 12:47 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51297-1  
**Appellate Court Case Title:** Brian J. Winters and Rebecca L. Winters v. Wells Fargo Bank, et al  
**Superior Court Case Number:** 16-2-00628-7

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