

FILED  
Court of Appeals  
Division II  
State of Washington  
6/1/2018 11:36 AM

**IN THE COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON**

---

**LINDA AMES, AN INDIVIDUAL**

**APPELLANT**

**v.**

**HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE  
FOR WELLS FARGO ASSET SECURITIES CORPORATION,  
MORTGAGE PASS-THROUGH  
CERTIFICATES SERIES 2006-AR16**

**RESPONDENT**

---

**OPENING BRIEF OF APPELLANT**

**LINDA AMES  
APPELLANT  
11920 NW 35TH AVENUE  
VANCOUVER WA 98685  
TEL: (360) 931-1797  
E-mail: lindalouames@comcast.net  
Appellant Pro Se**

**TABLE OF CONTENTS**

**I. INTRODUCTION ..... 10**

**II. ASSIGNMENTS OF ERROR AND ISSUES ..... 17**

**1. THE COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT AS IT WAS PREMATURE AS THE DEFENDANT / APPELLEE HAS FAILED AND REFUSED TO RESPOND TO THE DISCOVERY PROPOUNDED FOR MORE THAN A YEAR AND IMPROPERLY DENIED THE MOTION TO CONTINUE THE SUMMARY JUDGMENT.....17, 28**

**2. THE MOTION IS PREMATURE AS THE DEFENDANT HAS FAILED AND REFUSED TO RESPOND TO THE DISCOVERY PROPOUNDED FOR MORE THAN A YEAR AND IS BASED ON INADMISSABLE HEARSAY AFFIDAVITS..... 17, 30**

**3. THE COURT ERRED IN GRANTING THE SUMMARY JUDGMENT AS THERE ARE GENUINE ISSUES OF MATERIAL FACT ..... 17, 36**

**A. WELLS FARGO BREACHED THE LOAN MODIFICATION AGREEMENT, AND THEN INSTRUCTED HER TO STOP MAKING PAYMENTS ON THE REINSTATED HIGHER LOAN PAYMENT AMOUNT..... 17, 36**

**B. THE DEFENDANTS PREDECESSOR HSBC WAS NOT LICENSED TO DO BUSINESS IN THIS STATE, AND RECORDED AN ASSIGNMENT AFTER THE TRUST WAS NOT LICENSED TO DO BUSINESS HERE..... 18, 38**

**C. ASSIGNMENT OF DEED OF TRUST FROM SIERRA TO HSBC FOR WELLS WAS NOT EXECUTED BY SIERRA, BUT BY AN EMPLOYEE OF WELLS WHO HAD NO AUTHORITY TO DO SO AND DISCOVERY WAS STILL ONGOING WHEN SUMMARY JUDGMENT WAS PREMATURELY GRANTED..... 18, 39**

**D. WELLS ASSIGNED THE INTEREST TO ITSELF WITHOUT AUTHORITY TO DO SO AND USED A FORGED NOTE TO FORECLOSE..... 18, 40**

- E. THE APPOINTMENT OF THE TRUSTEE BY WELLS FARGO WAS VOID BECAUSE WELLS FARGO HAD ALREADY ASSIGNED ALL THEIR RIGHT TITLE AND INTEREST IN THE NOTE AND MORTGAGE AT THE TIME THEY APPOINTED A SUCCESSOR TRUSTEE.....18, 41
- F. WITHOUT LAWFUL AUTHORITY, AND AFTER PUBLISHING A NOTICE OF DISCONTINUANCE OF TRUSTEE SALE, THE DEFENDANT PROCEEDED WITH A TRANSFER OF TITLE WHERE THERE WAS NO SALE..... 19, 43
- G. THE PLAINTIFF WAS DEFRAUDED BECAUSE THE DEFENDANT BREACHED THE LOAN MODIFICATION AGREEMENT..... 19, 45
- H. THE MORTGAGE WAS INVALID AND UNENFORCEABLE AS MORE THAN SEVEN YEARS SINCE PAYMENT WAS MADE TO THE TRUE HOLDER AND OWNER OF THE NOTE AND MORTGAGE, CALLED THE LENDER, AND THEREFORE THE DEFENDANT VIOLATED THE STATUTE OF LIMITATIONS IN ENFORCING THE MORTGAGE AND FRAUDULENTLY PRETENDING TO SELL THE PLAINTIFF’S HOMESTEAD HOME..... 19, 46
- I. DISCOVERY IS OUTSTANDING REGARDING LEISA JEFFERSON AND UNTIL THE PLAINTIFF FULLY RESPONDS, THE SUMMARY JUDGMENT SHOULD HAVE BEEN STAYED..... 19, 48
- J. THE SALE THAT NEVER ACTUALLY HAPPENED ON THE COURTHOUSE STEPS IS VOID AND PLAINTIFF IS ENTITLED TO COMPENSATORY DAMAGES FOR THE HOME THEY STOLE.

TABLE OF AUTHORITIES ..... 5

STATEMENT OF THE CASE ..... 20

III. RIGHT TO APPEAL ..... 22

IV. STANDARD OF REVIEW ..... 22

V. SUMMARY OF FACTS ..... 25

VI. ARGUMENT ..... 28

VII. CONCLUSION ..... 51

CERTIFICATE OF PAGE LENGTH ..... 55

**CERTIFICATE OF SERVICE ..... 56**

## TABLE OF AUTHORITIES

### WASHINGTON STATE CASES

<i>Bain v. Metropolitan Mortg. Group, Inc.</i> , 285 P. 3d 34 - Wash: Supreme Court 2012 .....	35, 40
<i>Bergman Clay Mfg. Co. v. Bergman</i> , 73 Wash. 144, 131 P. 485 (1913) .....	19
<i>Cantrill v. American Mail Line, Ltd.</i> , 42 Wash.2d 590, 257 P.2d 179 (1953) .....	30
<i>Caruso v. Local Union No. 690</i> , 100 Wash.2d 343, 670 P.2d 240 (1983) .....	21
<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)	26
<i>Cox v. Helenius</i> , 103 Wash.2d 383, 389, 693 P.2d 683 (1985) .....	34
<i>Demelash v. Ross Stores, Inc.</i> , 20 P. 3d 447 - Wash: Court of Appeals, 1st Div. 2001 .....	25
<i>Doyle v. Planned Parenthood</i> , 639 P. 2d 240 - Wash: Court of Appeals, 1st Div. (1982) .....	20
<i>Faulks v. Wells Fargo &amp; Co.</i> Case No. 13-cv-02871-MEJ).....	32
<i>Guile v. Ballard Cmty. Hosp.</i> , 70 Wash.App. 18, 24, 851 P.2d 689 (1993).....	26
<i>Herron</i> , 108 Wash.2d at 165, 736 P.2d 249.....	21
<i>Hisle v. Todd Pac. Shipyards Corp.</i> , 151 Wn.2d 853, 860, 93 P.3d 108 (2004).....	20
<i>Lincoln v. Transamerica Inv. Corp.</i> , 89 Wash.2d 571, 577, 573 P.2d 1316 (1978).....	21
<i>Queen City Sav. &amp; Loan Ass'n v. Mannhalt</i> , 111 Wash.2d 503, 514, (1988).....	34
<i>Sprague v. Sumitomo Forestry Co.</i> , 104 Wash.2d 751, 709 P.2d 1200 (1985).....	21
<i>State v. Ben-Neth</i> , 34 Wash.App. 600, 603, 663 P.2d 156 (1983).....	29
<i>State ex ref. Panos v. Court for King County</i> . 188 Wash. 3 82, 3 86, 62 P.2d 1098 (1936) .....	19
<i>Udall v. T.D. Escrow Servs., Inc.</i> ,	

159 Wash.2d 903, 915-16, 154 P.3d 882 (2007) .....	34
<i>Walker v. Quality Loan Serv. Corp.</i> ,	
176 Wn. App. 294, 306, 308 P.3d 716 (2013) .....	35, 40
<i>Young v. Key Pharms. Inc.</i> ,	
112 Wn.2d 216, 225, 770 P.2d 182 (1989) .....	19, 20

**STATUTES**

RCW 5.35.020.....	12
RCW 5.45.020.....	29
RCW 5.44.040 .....	30
RCW 23.95.500 .....	12
RCW 23.95.505 .....	11
RCW 40.16.030 .....	38, 47
RCW 61.24 .....	44
RCW 61.24.010(4) .....	34
RCW 61.24.030(7)(a) .....	35, 45
RCW 7.28.050.....	43

**COURT RULES**

CR 15(a) .....	20
CR 26(g).....	26
CR 37 .....	25
CR 56(f) .....	56

**OTHER AUTHORITIES**

GEORGE E. OSBORNE, GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW § 7.21 (1979) ...	34
--	----

## **I. INTRODUCTION**

In this appeal, Linda Ames, Plaintiff / Appellant pro-se, seeks reversal of the Superior Court from a series of orders, denying multiple motions to compel discovery after granting one; appealing the order granting summary judgment in favor of HSBC acting as Trustee for Wells Fargo and appealing the Court's order denying Plaintiff's motion to amend the complaint to include Wells Fargo.

Victimized like so many other home owners by HSBC and Wells Fargo Bank, Linda Ames, after timely paying for a year on her loan modification, was told by Wells Fargo as servicer for their Trust that the year of payments she had been timely making on her loan modification was "just temporary" (as her monthly statement went from the modification price to a higher loan payment amount, and that to qualify for a new loan modification she was to stop making payments altogether. CP – 2326. After following Wells' instructions, they dragged the process out, and then ultimately denied her a loan modification altogether.

The Defendants refused to fully cooperate in the discovery process. The interrogatories and admissions were never fully responded to without objection. After Plaintiff made multiple demands

the court found that the initial responses were wholly evasive and incomplete; the Court ordered the Defendant to respond to the Request for Admissions, Request number 7, 17, 18, 19, 20, 22, 23, 24, 25, 27, 29 and 30 without objection; and the Court overruled the objections; Defendant was ordered to forthwith produce all documents in their possession, custody or control in response to Defendant's Requests 1-48, inclusive without objection; the Defendant was ordered to respond fully to the interrogatories with all knowledge and information in their possession, custody or control in response to Defendant's Requests 1-43, inclusive without objection; and the Defendant was ordered to produce a true and correct copy of the original authentic note that bears the initials on each page of the Plaintiff and her authentic, original signature, on the back page. The court imposed a deadline of February 28th, 2017 giving the Defendants 30 days to respond.

Defendant only produced limited records, one of which included a call log, where Wells admitted to not only instructing her to stop making payments, but the little information that was produced revealed that the real motive behind telling Ames to stop making her payments was because the investor never agreed to the terms of the loan modification offered to Ames in the first instance. CP – 2326.

The Defendants knew, or reasonably should have known, of the investors requirements when they offered her a loan modification. When she accepted it and started making her payments, the terms were not acceptable to the investor. The clear motive in telling her to stop making her payments was to cause her to breach because the loan modification she had and was making payments on was never accepted by the investor, and the only way to appease Wells Fargo was to induce her to breach the loan modification she had, and then refuse to give her a new modification. CP – 2326

After doing all she could to save her home, Wells purported to hold a non-judicial foreclosure sale and took extraordinary steps to insure she was not there at the time of the supposed auction. The Defendants, acting as Plaintiffs in an eviction matter, scheduled a hearing at the same time and date as the scheduled sale. Ames and her father went to the auction, was told that the auction was cancelled, and then went to the court appearance, which they were also told it was cancelled. Declaration of Linda Ames, Paragraph 85. CP 2238

Ames learned a few days later that her home was purportedly sold at that cancelled auction. The documents, however, show that the sale occurred in California, not on the courthouse steps. CP 2237

There were also other serious defects in the sales process. For example, the public records prove that the Trustee was not lawfully appointed by Wells Fargo, because Wells Fargo had already assigned away their right title and interest at the time they claim they appointed the Trustee. Defendant Appellee admitted that Leisa Jefferson was actually an employee of Wells and therefore she falsely held herself out to be the authorized signator of the assignor. The assignor was a defunct entity at the time, not licensed to do business in the state, and therefore had no capacity to sign an assignment, nor any capacity to give Wells authority to execute an assignment on their behalf. Any authority died with the company. CP 2220.

The scheduled sale was cancelled and the sale did not transpire on the Courthouse steps. CP – 2237. In fact, the Trustee was not even licensed to do business in the State at the time of the purported sale to the Defendant. The Trustee signed the conveyance in California. CP Because the Defendant / Appellee, trust is not a registered trust and not licensed to do business in this state, it (CP – 2) had no standing to foreclose on the Plaintiff or seek any affirmative relief. It is barred

from collecting any money from the Plaintiff / Appellant. RCW 23.95.505<sup>1</sup>.

---

<sup>1</sup> RCW 23.95.505

Registration to do business in this state. (Effective January 1, 2016.)

(1) A foreign entity may not do business in this state until it registers with the secretary of state under this chapter.

(2) A foreign entity doing business in this state may not maintain an action or proceeding in this state unless it is registered to do business in this state and has paid to this state all fees and penalties for the years, or parts thereof, during which it did business in this state without having registered.

(3) The successor to a foreign entity that transacted business in this state without a certificate of registration and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this state until the foreign entity, or its successor, obtains a certificate of registration.

(4) A court may stay a proceeding commenced by a foreign entity, its successor, or assignee until it determines whether the foreign entity, or its successor, requires a certificate of registration. If it so determines, the court may further stay the proceeding until the foreign entity, or its successor, obtains the certificate of registration.

(5) A foreign entity that transacts business in this state without a certificate of registration is liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of registration, in an amount equal to all fees which would have been imposed by this chapter upon the entity had it applied for and received a certificate of registration to transact business in this state and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay such fees.

(6) The failure of a foreign entity to register to do business in this state does not: (a) Impair the validity of a contract or act of the foreign entity; (b) impair the right of any other party to the contract to maintain

Furthermore, the Defendant Trust was not licensed to do business in this State and the trust was closed at the time it claims to have acquired the interest in the Plaintiff's home. The identity of the Lender has and was at all relevant times concealed from the Plaintiff

---

any action, suit, or proceeding on the contract; or (c) preclude the foreign entity from defending an action or proceeding in this state.

(7) A limitation on the liability of an interest holder or governor of a foreign entity is not waived solely because the foreign entity does business in this state without registering.

(8) RCW [23.95.500](#) (1) and (2) applies even if a foreign entity fails to register under this Article 5.

All businesses operating in the State of Washington must obtain a Washington State Master Business License. The Master Business License registers the business for State tax purposes and registers the trade name. You need to file a Master Business Application when you first start your business, or when you change or update your business. The Master Business Application can be found on the Washington State Department of Revenue website, [Business.wa.gov/BLS](http://Business.wa.gov/BLS).

5.35.020 Business license required.

Unless exempted in this chapter pursuant to MVMC [5.35.030](#), no person shall locate or engage in any business located physically within the City without first having obtained from the City a valid and current business license to carry on that business. This license shall be in addition to any other licenses or permits required by any other section of this code or by State or federal law. Business licenses are nontransferable and a separate business license shall be obtained for each location at which a business operates within the City. Licenses shall be prominently displayed at each business location so as to be viewable by the public. (Ord. O-12-503 § 1).

until the foreclosure. Wells even appointed the trustee after it assigned its interest and no longer had any power to appoint a new trustee.

Plaintiff has filed an action for declaratory, monetary relief and other relief. Plaintiff filed SIX motions to compel after the Defendant refused to answer the Request for Admissions without objection; refused to respond to the Interrogatories without objection and have them signed under oath; and refused to identify which documents it did produce applied to which request.

More than a year and half passed since the discovery was propounded, and more eight months beyond the deadline imposed by the last order of the court granting the requests before the Defendant filed their motion for summary judgment to avoid having to respond to the discovery. The evasive or incomplete answers were a "failure to answer and must be deemed a willful act.

The summary judgment motion introduced stacked hearsay evidence by affiants who had no personal knowledge and the documents themselves were unauthentic, redacted and not even certified. Furthermore, the evidence produced was self-serving and the Defendant cherry picked the redacted evidence to paint only a single

picture and refused to provide any documentation that Plaintiff requested.

**II. ASSIGNMENTS OF ERROR AND ISSUES**

1. THE COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT AS IT WAS PREMATURE AS THE DEFENDANT / APPELLEE HAS FAILED AND REFUSED TO RESPOND TO THE DISCOVERY PROPOUNDED FOR MORE THAN A YEAR AND IMPROPERLY DENIED THE MOTION TO CONTINUE THE SUMMARY JUDGMENT

2. THE MOTION IS PREMATURE AS THE DEFENDANT HAS FAILED AND REFUSED TO RESPOND TO THE DISCOVERY PROPOUNDED FOR MORE THAN A YEAR AND IS BASED ON INADMISSABLE HEARSAY AFFIDAVITS

3. THE COURT ERRED IN GRANTING THE SUMMARY JUDGMENT AS THERE ARE GENUINE ISSUES OF MATERIAL FACT

A. WELLS FARGO BREACHED THE LOAN MODIFICATION AGREEMENT, AND THEN

- INSTRUCTED HER TO STOP MAKING PAYMENTS ON THE REINSTATED HIGHER LOAN PAYMENT AMOUNT
- B. THE DEFENDANTS PREDECESSOR HSBC WAS NOT LICENSED TO DO BUSINESS IN THIS STATE, AND RECORDED AN ASSIGNMENT AFTER THE TRUST WAS NOT LICENSED TO DO BUSINESS HERE.
- C. ASSIGNMENT OF DEED OF TRUST FROM SIERRA TO HSBC FOR WELLS WAS NOT EXECUTED BY SIERRA, BUT BY AN EMPLOYEE OF WELLS WHO HAD NO AUTHORITY TO DO SO AND DISCOVERY WAS STILL ONGOING WHEN SUMMARY JUDGMENT WAS PREMATURELY GRANTED.
- D. WELLS ASSIGNED THE INTEREST TO ITSELF WITHOUT AUTHORITY TO DO SO AND USED A FORGED NOTE TO FORECLOSE
- E. THE APPOINTMENT OF THE TRUSTEE BY WELLS FARGO WAS VOID BECAUSE WELLS FARGO HAD ALREADY ASSIGNED ALL THEIR RIGHT TITLE AND INTEREST IN THE NOTE AND MORTGAGE AT THE TIME THEY APPOINTED A SUCCESSOR TRUSTEE.

- F. WITHOUT LAWFUL AUTHORITY, AND AFTER PUBLISHING A NOTICE OF DISCONTINUANCE OF TRUSTEE SALE, THE DEFENDANT PROCEEDED WITH A TRANSFER OF TITLE WHERE THERE WAS NO SALE.
- G. THE PLAINTIFF WAS DEFRAUDED BECAUSE THE DEFENDANT BREACHED THE LOAN MODIFICATION AGREEMENT.
- H. THE MORTGAGE WAS INVALID AND UNENFORCEABLE AS MORE THAN SEVEN YEARS SINCE PAYMENT WAS MADE TO THE TRUE HOLDER AND OWNER OF THE NOTE AND MORTGAGE, CALLED THE LENDER, AND THEREFORE THE DEFENDANT VIOLATED THE STATUTE OF LIMITATIONS IN ENFORCING THE MORTGAGE AND FRAUDULENTLY PRETENDING TO SELL THE PLAINTIFF'S HOMESTEAD HOME.
- I. DISCOVERY IS OUTSTANDING REGARDING LEISA JEFFERSON AND UNTIL THE PLAINTIFF FULLY RESPONDS, THE SUMMARY JUDGMENT SHOULD HAVE BEEN STAYED.

J. THE SALE THAT NEVER ACTUALLY HAPPENED ON THE COURTHOUSE STEPS IS VOID AND PLAINTIFF IS ENTITLED TO COMPENSATORY DAMAGES FOR THE HOME THEY STOLE.

### **III. STATEMENT OF THE CASE**

LINDA AMES sued the Defendants, HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16. After receiving limited discovery responses from that defendant, and before the Court granted the Motion for Summary Judgment in favor of the Defendant, and after learning that the call logs proved Wells Fargo instructed Ames to stop making her payments, (CP – 2326) and further the logs show that Wells never approved of the terms of the loan modification that was granted to Ames and whose trial payments were timely paid by Ames for a year; (CP 2322) the Plaintiff filed a motion for an order permitting her to amend the complaint to include WELLS FARGO BANK, NA as a separate defendant. That motion was denied. CP 2253 – 2259.

The Plaintiff filed seven motions to compel after the Defendant refused to answer the Request for Admissions without objection; refused to respond to the Interrogatories without objection and have them signed under oath; and refused to identify which documents it did produce applied to which request. The court already found that the initial responses were wholly evasive and incomplete, the Court ordered the Defendant to respond to the Request for Admissions, Request number 7, 17, 18, 19, 20, 22, 23, 24, 25, 27, 29 and 30 without objection, and the Court overruled the objections; the court ordered the Defendant to forthwith produce all documents in their possession, custody or control in response to Defendant's Requests 1-48, inclusive without objection; the Defendant was ordered to respond fully to the interrogatories with all knowledge and information in their possession, custody or control in response to Defendant's Requests 1-43, inclusive without objection; and the Defendant was ordered to produce a true and correct copy of the original authentic note that bears the initials on each page of the Plaintiff and her authentic, original signature, on the back page. Defendants even sought and obtained a protective order, and then never produced a single document covered by those protective terms, leading the Plaintiff to believe there is more

information that has never been disclosed. CP 286 – 474; CP 527 – 708; CP 1060 – 1249; CP 1307 – 1328),

The summary judgment motion seeks to introduce hearsay evidence that is redacted and not certified. Furthermore, the evidence is self-serving and the Defendant cherry picked the redacted evidence to paint only a single picture and refused to provide any documentation that Plaintiff requested. CP 711- 727; CP 2171 – 2177;

### **RIGHT TO APPEAL**

The order dismissing the case is an appealable order under RAP 2.2(a)(1) inasmuch as its represents a final judgment in a civil case where the Defendant in the Complaint sought and obtained a dismissal of the complaint. See *Bergman Clay Mfg. Co. v. Bergman*, 73 Wash. 144, 131 P. 485 (1913); *State ex ref. Panos v. Court for King County*. 188 Wash. 3 82, 3 86, 62 P.2d 1098 (1936).

## **IV. STANDARD OF REVIEW**

### **STANDARD ON SUMMARY JUDGMENT**

A defendant who moves for summary judgment bears the initial burden of showing the absence of a genuine issue of material fact. *Young v. Key Pharms. Inc.*, [112 Wn.2d 216, 225, 770 P.2d 182](#) (1989). Once that burden is met, the burden shifts to the party with the burden

of proof at trial to "make a showing sufficient to establish the existence of an element essential to that party's case." [Young, 112 Wn.2d at 225](#) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986)). In demonstrating the existence of material facts, the nonmoving party may not rely on "mere allegations . . . , but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party." CR 56(e). We draw all reasonable inferences from the facts in the light most favorable to the nonmoving party. *Hisle v. Todd Pac. Shipyards Corp.*, [151 Wn.2d 853, 860, 93 P.3d 108](#) (2004).

### **LEAVE TO AMEND SHOULD BE FREELY GRANTED**

Leave to amend a complaint is to be freely given when justice requires. CR 15(a). *Doyle v. Planned Parenthood*, 639 P. 2d 240 - Wash: Court of Appeals, 1st Div. 1982 Rule 15(a) specifically provides that leave to amend "shall be freely given when justice so requires." CR 15(a). These rules serve to facilitate proper decisions on the merits, to provide parties with adequate notice of the basis for claims and defenses asserted against them, and to allow amendment of

the pleadings except where amendment would result in prejudice to the opposing party. *Caruso v. Local Union No. 690*, 100 Wash.2d 343, 349, 670 P.2d 240 (1983); *Herron*, 108 Wash.2d at 165, 736 P.2d 249. The decision to grant leave to amend the pleadings is within the discretion of the trial court. *Sprague v. Sumitomo Forestry Co.*, 104 Wash.2d 751, 763, 709 P.2d 1200 (1985); *Lincoln v. Transamerica Inv. Corp.*, 89 Wash.2d 571, 577, 573 P.2d 1316 (1978).

The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party. *Caruso*, 100 Wash.2d at 350, 670 P.2d 240. Factors which may be considered in determining whether permitting amendment would cause prejudice include undue delay, unfair surprise, and jury confusion. *Herron*, 108 Wash.2d at 165-66, 736 P.2d 249. *Wilson v. Horsley*, 974 P. 2d 316 - Wash: Supreme Court 1999. Here, Wells Fargo is actually the beneficiary and named in the trust. The addition of Wells Fargo as a necessary party comes from the disclosure about their wrongdoings made during discovery. They are really the party on whose behalf the trust was operating in concert and are included in the name of the trust. There would have been no undue delay nor any prejudice to hold the responsible party liable rather than just the trust.

If anything, the Defendant would have benefited from the apportionment of fault.

## **V. SUMMARY OF FACTS**

The Plaintiff lost her home after Wells told her to stop making her modification payments she timely made for a year. The discovery that was obtained before the summary judgment was granted proved that Leisa Jefferson did not work for the assignor, but assigned the interests to her own employer, Wells. She did not have the authority to act because at the time of the assignment, the assignor was no longer in business; there was no power of attorney, and even if discovery had revealed there was one, it would have died with the company. The other problem with the discovery was that it was in an “unorganized fashion. They’re not identified in response to a particular interrogatory.” Counsel admitted the same. See RT-98, ll 2-12, and even though counsel promised to line “up all the numbers with the numbers”, they never did it. RT-95, ll 2-12. Counsel bragged about the 3000 pages produced by HSBC and the 1000 pages from Quality Loan Servicing, yet Defendant never organized them or identified which document was in response to which request. RT-95, ll 2-12. The documents were nothing more than duplicates of the same thing, 25

copies of the original application when Ames refinanced the home, seven copies of the appraisals. That is nothing more than an evasive and non-responsive abuse of the discovery process while pretending to be forthcoming. During discovery they produced a forged note, and the court said that was for trial or another way, then granted the summary judgment ignoring that. RT 115- ll 1-25.

Ames did learn that the investors never agreed to the terms of the loan modification which Ames was timely paying on for a year. (CP-2322) In order to get her to break that agreement, they first billed her with the higher loan payment amount, and then when she called about the wrong amount on her invoice, Wells enticed her with the ability to get a better modification and instructed her to stop making her payments. (CP – 2322) When they did, they dragged out the process, and ultimately denied a more favorable (or any) loan modification. Ames put over \$300,000 of improvements and Wells knew that. They drove by, took pictures, wrote reports saying above average, above-average. RT-95, ll 2-12. Wells knew the equity in the well improved home was worth stealing and Wells was sued for 25 billion for telling people to miss a payment before they could even qualify for a loan mod. RT-95, ll 13-19.

The discovery that Ames did receive also revealed that the servicer knew the terms that the investor would accept all along, and did not inform Ames of those terms, instead offering her and her making payment on, a loan modification that they knew was not acceptable to the Investors. (CP – 2322) The subterfuge of getting her to stop making payments was necessary to prevent Ames from benefitting under the favorable loan modification she already had that was not approved by the investor Wells. They sent her a letter cancelling her loan modification, claiming it was only temporary, and enticed her to stop making her payments and told her that a more favorable loan modification was available. CP 752.

The Trustee who noticed the sale was not licensed to do business in Washington and was improperly appointed unlawfully by Wells Fargo AFTER Wells Fargo had already assigned away their interest in the subject property. The void auction never took place. Ames attended at the time and place scheduled with her father, who were told that the auction was cancelled. RT 100, ll 21-25. They proceeded to the scheduled eviction hearing, and found that also to be cancelled. RT 100-101, ll 21 -25, and ll 1-5. A few days later, Ames was provided with notice that the property was sold in California and not on the court

house steps in Washington. The harm did not stop there. Ames had her father present at the sale because he was going to bid at the auction to protect Ames equity in the property and the hundreds of thousands she put into improvements in the home. RT 100-101, ll 21 -25, and ll 1-5. CP 742.

## **VI. ARGUMENT**

### **POINT ONE**

**THE COURT ERRED IN GRANTING THE MOTION FOR SUMMARY JUDGMENT AS IT WAS PREMATURE AS THE DEFENDANT / APPELLEE HAS FAILED AND REFUSED TO RESPOND TO THE DISCOVERY PROPOUNDED FOR MORE THAN A YEAR AND IMPROPERLY DENIED THE MOTION TO CONTINUE THE SUMMARY JUDGMENT.**

In the Case, *Demelash v. Ross Stores, Inc.*, 20 P. 3d 447 - Wash: Court of Appeals, 1st Div. 2001 the Court reversed a summary judgment order and found that “the trial court erred in refusing to allow discovery of evidence. The court said, “Finally, we hold that the trial court may properly impose sanctions under CR 37 and CR

26(g) for Ross Stores' unjustified resistance to discovery.” Civil Rule (CR) 56(f) allows a trial court to order a continuance when "it appear[s] from the affidavits of a party opposing [a summary judgment] motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition." See also *Guile v. Ballard Cmty. Hosp.*, 70 Wash.App. 18, 24, 851 P.2d 689 (1993) (if nonmoving party needs more time to respond to summary judgment motion, the party should request a continuance under CR 56(f) (citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 326, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986))).

Here, the Plaintiff's timely request to continue the Summary Judgment was improperly denied. The Court had already granted a motion to compel, giving the Defendant until February 28<sup>th</sup>, 2017 to answer, and Defendant failed to respond any further. In fact, the Defendant filed a motion for an order compelling the Plaintiff to keep confidential any marked documents, yet even after obtaining that order, the Defendant didn't produce any qualifying documents. It was a delay tactic at best. Further discovery would have revealed the depth of the subterfuge and resulted in finding the person or persons who were involved in the transfer without an auction. The Discovery

also sought and never obtained the “privileged” documents which were covered by the protective order that was never even utilized by the Defendant. The Discovery sought further evidence related to Leisa Jefferson and her claimed authority to execute documents on behalf of a defunct entity. Counsel claimed she no longer worked for Wells and no information could be produced, but clearly, if there were employment records, job descriptions, job duties, memos, notes or instructions to her, all of that would still be in existence and in the care, custody and control of the Defendant.

**POINT TWO**

**THE MOTION IS PREMATURE AS THE  
DEFENDANT HAS FAILED AND REFUSED TO  
RESPOND TO THE DISCOVERY PROPOUNDED  
FOR MORE THAN A YEAR AND IS BASED ON  
INADMISSABLE HEARSAY AFFIDAVITS.**

The documents submitted by the Defendant are all stacked hearsay, inadmissible and redacted. They are not authentic and neither are they admissible as they are not business records and the affiant was not even in charge of overseeing their entry into the official

records. The Plaintiff has submitted objections to each of the declarations and the court erred in failing to sustain them.

GWENDOLYN WALL (CP 1849): She is nothing more than the paralegal for the Defendants' lawyer. She has no business records upon which she can testify as all her documents are solely gathered for the self-serving purpose of litigation. The documents are also stacked hearsay. She actually is testifying that she reviewed the documents they produced, but they refused to respond fully to the discovery that was propounded. She does not say that she supervises the input of any of the data upon which the affidavit is based. She cannot nor did she testify that the records are made in the ordinary course of business by people who have a business duty to make such records, does not say that she oversees any of their duties nor can she testify from personal knowledge that the information was accurately entered, because she was not there to see it. She does not oversee those operations, does not oversee the record maintenance, and only said she is testifying from those records. Her statements are stacked hearsay and inadmissible. The records are not certified, and the Plaintiff has demanded on multiple occasions (no less than six) that the Defendant provide a certification of the accuracy of the records,

identify which records apply to which request for production; and furthermore, respond to interrogatories about the information contained in the affidavit. Defendant has refused on all counts to provide testimony which they now provide in the form of a self-serving statement which is non-responsive to the discovery requests, but made for the purpose of a summary judgment motion.

This Business Records exception is codified in RCW 5.45.020, which provides:

Business records as evidence. A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission.

If the statutory requisites are met, computerized records are treated the same as any other business records. *State v. Ben-Neth*, 34 Wash.App. 600, 603, 663 P.2d 156 (1983).

Here, the Defendant's affiant failed to lay an adequate foundation (or really any foundation) because no custodian of records testified

about the accuracy and reliability of the computer-generated evidence, and because the records were prepared in anticipation of litigation and not in the regular course of business.

“Testimony by one who has custody of the record as a regular part of his work or has supervision of its creation (‘other qualified witness’ under the statute) will suffice.” *Id.* (citing *Cantrill v. American Mail Line, Ltd.*, 42 Wash.2d 590, 257 P.2d 179 (1953)).

Here, the Affiant cannot state with any certainty that the records were accurate or reliable. She has no personal knowledge, and what’s more, is that the records are NOT CERTIFIED COPIES and are clearly NOT AUTHENTIC. ER 902 (d) “The rule requiring the submission of certified copies is unwavering. ““Copies of all records... when duly certified ... shall be admitted in evidence in the courts of this state.” RCW 5.44.040.” None of the documents submitted were certified copies. In fact, they have redaction marks on them and are not certified copies.

AARON CROW DECLARATION (CP 1555): Similarly, the affiant, Aaron J. Crowe states he is the Risk Manager. He does not say that he supervises the input of any of the data upon which the affidavit is based. He testified that the records are made in the

ordinary course of business by people who have a business duty to make such records, but does not say that he oversees any of their duties nor can he testify from personal knowledge that the information was accurately entered, because he was not there to see it. He does not oversee those operations, does not oversee the record maintenance, and only said he is testifying from those records. His statements are stacked hearsay and inadmissible. The records are not certified, and the Plaintiff has demanded on multiple occasions (no less than six) that the Defendant provide a certification of the accuracy of the records, identify which records apply to which request for production; and furthermore, respond to interrogatories about the information contained in the affidavit. Defendant has refused on all counts to provide testimony which they now provide in the form of a self-serving statement which is non-responsive to the discovery requests, but made for the purpose of a summary judgment motion.

BRANDON MCNEAL (CP 1580): BRANDON MCNEAL states he is a Vice President of Loan Documentation for Wells Fargo. He does not describe his job duties, or what his job entails. A review of the public records online shows that he does little more than fabricate affidavits solely for the purpose of providing testimony for trials. (See

eg. *Faulks v. Wells Fargo & Co.* Case No. 13-cv-02871-MEJ). He does not say that he supervises the input of any of the data upon which the affidavit is based. He testified that the records are made in the ordinary course of business by people who have a business duty to make such records, but does not say that he oversees any of their duties nor can he testify from personal knowledge that the information was accurately entered, because he was not there to see it. He does not oversee those operations, does not oversee the record maintenance, and only said he is testifying from those records. His statements are stacked hearsay and inadmissible. The records are not certified, and the Plaintiff has demanded on multiple occasions (no less than six) that the Defendant provide a certification of the accuracy of the records, identify which records apply to which request for production; and furthermore, respond to interrogatories about the information contained in the affidavit. Defendant has refused on all counts to provide testimony which they now provide in the form of a self-serving statement which is non-responsive to the discovery requests, but made for the purpose of a summary judgment motion.

### **POINT THREE**

**THE COURT ERRED IN GRANTING THE SUMMARY JUDGMENT AS THERE ARE GENUINE ISSUES OF MATERIAL FACT.**

**1. WELLS FARGO BREACHED THE LOAN MODIFICATION AGREEMENT, AND THEN INSTRUCTED HER TO STOP MAKING PAYMENTS ON THE REINSTATED HIGHER LOAN PAYMENT AMOUNT.**

The Plaintiff complains about the fact that at all times during the mortgage, she was entitled to know the identity of the Lender. Wells Fargo as loan servicer for the hidden lender concealed the identity of the lender, and what's worse, INSTRUCTED HER TO DEFAULT IN HER PAYMENTS so she could qualify for a loan modification, and then FORECLOSED because she was in arrears. See Declaration of Linda Ames Paragraphs 2-3. This raises serious questions as to the standing to foreclose. Both the former and current versions of RCW 61.24.030(7)(a) require a trustee or successor trustee to have proof that the beneficiary has authority to enforce a note "secured by the deed of trust" before recording a notice of a trustee's sale. "the [deed of trust] Act 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 nonjudicial foreclosure sales." *Udall v. T.D. Escrow Servs., Inc.*, 159 Wash.2d 903, 915-16, 154 P.3d 882 (2007) (citing *Queen City Sav. & Loan Ass'n v. Mannhalt*, 111 Wash.2d 503, 514, 760 P.2d 350 (1988) (Dore, J., dissenting)). Critically under our statutory system, a trustee is not merely an agent for the lender or the lender's successors. Trustees have obligations to all of the parties to the deed, including the homeowner. RCW 61.24.010(4) ("The trustee or successor trustee has a duty of good faith to the borrower, beneficiary, and grantor."); *Cox v. Helenius*, 103 Wash.2d 383, 389, 693 P.2d 683 (1985) (citing GEORGE E. OSBORNE, GRANT S. NELSON & DALE A. WHITMAN, REAL ESTATE FINANCE LAW § 7.21 (1979) ("[A] trustee of a deed of trust is a fiduciary for both the mortgagee and mortgagor and must act impartially between them.")).[4] Among other things, "the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust" and shall provide the homeowner with "the name and address of the owner of any promissory notes or other obligations secured by the deed of trust" before foreclosing on an owner-occupied home.

RCW 61.24.030(7)(a), (8)(l). *Bain v. Metropolitan Mortg. Group, Inc.*, 285 P. 3d 34 - Wash: Supreme Court 2012. Similarly, a loan "servicer" is not necessarily the owner, but the servicer must be a holder of the Note in order to enforce the Note. *Brown*, 184 Wn.2d at 523. "Only a lawful beneficiary has the power to appoint a successor trustee, and only a lawfully appointed successor trustee has the authority to issue a notice of trustee's sale." *Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294, 306, 308 P.3d 716 (2013) (footnotes omitted).

**2. THE DEFENDANTS PREDECESSOR HSBC WAS NOT LICENSED TO DO BUSINESS IN THIS STATE, AND RECORDED AN ASSIGNMENT AFTER THE TRUST WAS NOT LICENSED TO DO BUSINESS HERE.**

Defendant, and now defunct lender, SIERRA PACIFICA MORTGAGE CO. INC., recorded a mortgage (Exhibit "2") on the property Document 4148891, recorded on April 6<sup>th</sup>, 2006, in the official records of this County. See Exhibit 2 attached to the Complaint. On December 8<sup>th</sup>, 2011, after Defendant HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE

PASS-THROUGH CERTIFICATES SERIES 2006-AR16 was no longer licensed to do business in this state, nevertheless recorded an assignment of deed of trust from Wells Fargo Home Mortgage to HSBC Bank USA, NA; and the true holder and owner of the note and mortgage is not HSBC BANK USA, NA but claimed to be a trust for which HSBC Bank USA, NA is a Trustee. Neither HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 nor HSBC are registered to do business in this state, not licensed to do business in this state, and did business here unlawfully.

**3. ASSIGNMENT OF DEED OF TRUST FROM SIERRA TO HSBC FOR WELLS WAS NOT EXECUTED BY SIERRA, BUT BY AN EMPLOYEE OF WELLS WHO HAD NO AUTHORITY TO DO SO AND DISCOVERY WAS STILL ONGOING WHEN SUMMARY JUDGMENT WAS PREMATURELY GRANTED.**

On December 8<sup>th</sup>, 2011, there was an ASSIGNMENT OF DEED OF TRUST RECORDED BY WELLS FARGO HOME MORTGAGE, listing SIERRA PACIFIC MORTGAGE CO INC as

the Grantor and HSBC BANK USA NA, as the Trustee, Document 4813726, Exhibit 3. Said Corporate assignment was executed by Leisa Jefferson, purporting to be authorized by MERS to sign for Sierra Pacific Mortgage Company. That information is FALSE. Proof of this was demanded in the Requests for Production of Documents, 22, 23, 24, 25, 29, 30, 31, 32, 39, 41, 42, 43, 45, and 46; Request for Admissions, 8, 13, 21, 16, 17, 18, and 19; and Interrogatories, 2, 3, 5, 13, 22, 25, 34, 35, 36, and 37; and Plaintiff requested that until the discovery was completed, the motion for summary judgment be stayed. Plaintiff did learn that Leisa Jefferson was hired as a Loan Servicing Specialist at Wells Fargo Home Mortgage in Saint Paul, Minnesota.

**4. WELLS ASSIGNED THE INTEREST TO ITSELF WITHOUT AUTHORITY TO DO SO AND USED A FORGED NOTE TO FORECLOSE.**

That Wells Fargo assigned the interest to itself, without authority to do so, and without being a bona fide purchaser for value. The note was not even authentic and was a forgery. The Plaintiff demanded proof of possession of an original note, and proof that Wells was a bona fide purchaser for value. Defendant failed to provide proof

of the same in the discovery. See Demand for Production of Documents, Requests 27, 34, and 36; Interrogatories, 9, 11, 12, 18, 27, 34, and 36. The assignment was fraudulent, and the recording of the assignment constitutes a fraudulent recording of a document in the official records of the County, a felony. RCW 40.16.030 Offering false instrument for filing or record. Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [ 2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.] The Court itself pointed out the forged note was appropriately raised at the time of trial, not during discovery. RT 115- 11 1-25. The court erred in granting a summary judgment where the authenticity of the note and mortgage that was used to foreclose was a forgery.

**5. THE APPOINTMENT OF THE TRUSTEE BY WELLS FARGO WAS VOID BECAUSE WELLS FARGO HAD ALREADY ASSIGNED ALL THEIR RIGHT TITLE AND**

**INTEREST IN THE NOTE AND MORTGAGE AT THE  
TIME THEY APPOINTED A SUCCESSOR TRUSTEE.**

On March 26, 2012, **AFTER WELLS FARGO had already recorded the assignment of Deed of Trust, as set forth above, they then recorded an appointment of Trustee to Quality Loan Service Corp. of Washington, Document 4841188; and as a result of the fact that WELLS FARGO no longer had any right to do so, the appointment of Trustee was void and unlawful.** If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. RCW 61.24.010: Trustee, qualifications— Successor trustee. The Successor Trustee could not be appointed because Wells was not the beneficiary, and had **ALREADY ASSIGNED** their rights away. The appointment of the successor was therefore **VOID**. Nothing provided by the Defendant in its motion for summary judgment or the discovery responses contradicts this fact. However, "only the actual holder of the promissory note or other instrument evidencing the obligation may be a beneficiary with the power to appoint a *trustee* to proceed with a nonjudicial foreclosure on

real property." *Bain v. Metro. Mortg. Grp, Inc.*, [175 Wn.2d 83, 89, 285 P.3d 34](#) (2012). Similarly, a loan "servicer" is not necessarily the owner, **but the servicer must be a holder of the Note in order to enforce the Note.** *Brown*, 184 Wn.2d at 523. "Only a lawful beneficiary has the power to appoint a *successor trustee*, and only a lawfully appointed *successor trustee* has the authority to issue a notice of trustee's sale." *Walker v. Quality Loan Serv. Corp.*, [176 Wn. App. 294, 306, 308 P.3d 716](#) (2013) (footnotes omitted). Wells did not have the original note (it was a forgery) and had already assigned its rights at the time of the appointment. On December 5<sup>th</sup>, 2012, after having no lawful right to do so, QUALITY LOAN SERVICE CORP OF WASHINGTON recorded a NOTICE OF TRUSTEE SALE, Document 4959410; said document being a slander on the title of the Plaintiff, and further constitutes the filing of a false document in the official records of the County, a felony in this State.

**6. WITHOUT LAWFUL AUTHORITY, AND AFTER PUBLISHING A NOTICE OF DISCONTINUANCE OF TRUSTEE SALE, THE DEFENDANT PROCEEDED WITH A TRANSFER OF TITLE WHERE THERE WAS NO SALE.**

Thereafter, on April 9<sup>th</sup>, 2013, a NOTICE OF DISCONTINUANCE OF TRUSTEE SALE in the name of QUALITY LOAN SERVICE CORP OF WASHINGTON, was recorded in the official records of the County, Document ID number 4959583, cancelling the sale. Nonetheless, Defendant claimed to have proceeded with the sale, and recorded in the official records a sale to the Defendant in violation of the law, in direct contradiction to the notice of discontinuance of the sale, and thus any transfer was void, recording a void and fraudulently obtained TRUSTEE'S DEED UPON SALE, DOCUMENT ID 5035077 D, recorded on December 3, 2013, resulting from a cancelled sale. Plaintiff seeks a declaratory order finding that the note and mortgage were void for having been originated by a defunct entity who was closed by the State for doing business unlawfully, and said unlawful conduct actually and proximately caused the Plaintiff to suffer damages from the fraudulent origination of the loan; that the sale was void, and striking from the public records the TRUSTEE'S DEED UPON SALE, DOCUMENT ID 5035077 D, recorded on December 3, 2013.

**7. THE PLAINTIFF WAS DEFRAUDED BECAUSE THE  
DEFENDANT BREACHED THE LOAN  
MODIFICATION AGREEMENT.**

Plaintiff negotiated and received a loan modification, paid the timely payments for the loan modification, but after one year of timely payments, the Defendants purported predecessor in interest no longer honored the loan modification. See Declaration of Linda Ames Paragraph 20. After the year, they simply changed the invoice amount billing her for the higher amount. When she inquired, Wells as servicer instructed the Defendant to stop making her payments so she would be in arrears and qualify for a loan modification. Wells as servicer and on behalf of the trust, refused to grant a new modification on the basis that Plaintiff was in arrears in her payments. Declaration of Linda Ames Paragraph 21. Wells Fargo conspired with Defendant to commit a fraudulent sale after providing the Plaintiff with notice of cancellation of the same, depriving her of her rights under the loan agreement, and her rights of due process and equal protection; and by commission of a felony in recording false documents in the public records, as prohibited by Washington Statutes. Declaration of Linda Ames Paragraph 22. Wells already agreed in their Consent decree to

cease and desist from this conduct. Plaintiff further seeks an order declaring that the sale to the Defendant was void ab initio and done in direct violation of state law and as a result, constitutes theft of Plaintiff's property and further multiple felonies, including theft, conversion and recording false documents in the official records. Declaration of Linda Ames Paragraph 25.

**8. THE MORTGAGE WAS INVALID AND UNENFORCEABLE AS MORE THAN SEVEN YEARS SINCE PAYMENT WAS MADE TO THE TRUE HOLDER AND OWNER OF THE NOTE AND MORTGAGE, CALLED THE LENDER, AND THEREFORE THE DEFENDANT VIOLATED THE STATUTE OF LIMITATIONS IN ENFORCING THE MORTGAGE AND FRAUDULENTLY PRETENDING TO SELL THE PLAINTIFF'S HOMESTEAD HOME.**

The Mortgage is invalid and unenforceable in that it more than seven years have passed since the last demand and payment by the Plaintiff to the real holder an owner of the note was ever made, and thus statute of limitation for the enforcement thereof has expired pursuant to Washington Statute section 7.28.050, which applies a

seven year statute of limitations on the filing of any action to recover real property when the same is adversely possessed by one who has "a connected title in law or equity deducible of record from this state or the United States". Declaration of Linda Ames Paragraph 26. That the conduct of HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE FOR WELLS FARGO ASSET SECURITIES CORPORATION, MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-AR16 committed fraud in that Washington state law requires the beneficiary listed on the deed of trust and its assignments to be the owner of the promissory note. Neither of the Defendants are the notes owners. Declaration of Linda Ames Paragraph 27. Defendants claim of "beneficiary" in the corporation of the deeds of trust as shown in CLARK County files 4813726 and 4148891 are without substance, and are void as they do not conform to the true requirement of "beneficiary" according to Washington State code as shown in RCW 61.24. Declaration of Linda Ames Paragraph 28. Plaintiff is also aware that in order to claim title and perform a trustee sale the "beneficiary" must show proof that the beneficiary is the owner of the promissory note, according to

Washington State code as shown in RCW 61.24.030(7)(a) and the note they used is a forgery. Declaration of Linda Ames Paragraph 29.

**9. DISCOVERY IS OUTSTANDING REGARDING LEISA JEFFERSON AND UNTIL THE PLAINTIFF FULLY RESPONDS, THE SUMMARY JUDGMENT SHOULD HAVE BEEN STAYED.**

Said Corporate assignment was executed by Leisa Jefferson, purporting to be authorized by MERS to sign for Sierra Pacific Mortgage Company. That information is FALSE. Plaintiff, in fact, demanded information about Leisa Jefferson and the Defendant has failed and refused to respond to those requests. Until such time as the Defendant responds to all discovery, the Defendant should be barred from seeking any affirmative relief, including summary judgment and their answer and motion should be stricken. See Requests for Production of Documents, 22, 23, 24, 25, 29, 30, 31, 32, 39, 41, 42, 43, 45, and 46; Request for Admissions, 8, 13, 21, 16, 17, 18, and 19; and Interrogatories, 2, 3, 5, 13, 22, 25, 34, 35, 36, and 37. Declaration of Linda Ames Paragraph 31. In fact, Leisa Jefferson was hired as a Loan Servicing Specialist at Wells Fargo Home Mortgage in Saint Paul, Minnesota. Until such time as the Defendant responds to all

discovery, the Defendant should be barred from seeking any affirmative relief, including summary judgment and their answer and motion should be stricken. See Requests for Production of Documents, 22, 23, 24, 25, 29, 30, 31, 32, 39, 41, 42, 43, 45, and 46; Request for Admissions, 8, 13, 21, 16, 17, 18, and 19; and Interrogatories, 2, 3, 5, 13, 22, 25, 34, 35, 36, and 37. Declaration of Linda Ames Paragraph 32. That she has NO AUTHORITY, ACTUAL OR IMPLIED and NO EXPRESS AUTHORITY is found in the recorded in the official records, to execute documents on behalf of MERS. Until such time as the Defendant responds to all discovery, the Defendant should be barred from seeking any affirmative relief, including summary judgment and their answer and motion should be stricken. See Requests for Production of Documents, 22, 23, 24, 25, 29, 30, 31, 32, 39, 41, 42, 43, 45, and 46; Request for Admissions, 8, 13, 21, 16, 17, 18, and 19; and Interrogatories, 2, 3, 5, 13, 22, 25, 34, 35, 36, and 37. Declaration of Linda Ames Paragraph 33. That Wells Fargo assigned the interest to itself, without authority to do so, and without being a bona fide purchaser for value and they refused to provide proof that they were bona fide purchasers for value. Recording of a document in the official records of the County, a felony. RCW

40.16.030 Offering false instrument for filing or record. Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [ 2003 c 53 § 216; 1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.] Declaration of Linda Ames Paragraph 34.

**10. THE SALE THAT NEVER ACTUALLY HAPPENED ON THE COURTHOUSE STEPS IS VOID AND PLAINTIFF IS ENTITLED TO COMPENSATORY DAMAGES FOR THE HOME THEY STOLE.**

The auction never happened. The transfer of title occurred in California. There were irregularities in the execution of the documents; the sale was cancelled prior to the time it proceeded; and the buyer was the trust who is not registered to do business here, and is doing business here unlawfully; and if that were not enough, the trustee was also not licensed to do business here, and is doing business here unlawfully. Declaration of Linda Ames Paragraph 41. That as an actual and

proximate cause of said conduct, the Plaintiff suffered actual damages in the sum of \$770,000, the fair market value of the property; harm to her credit; severe emotional distress; severe physical distress; anger and upset, all in an amount according to proof, but in the event of default, treble the actual damages, in the sum of \$2,310,000 plus \$770,000 or a total of \$3,080,000. Declaration of Linda Ames Paragraph 42.

### **CONCLUSION**

Plaintiff is a victim of a wrongful foreclosure which started with Wells Fargo taking away the Plaintiff's loan modification that she was timely paying on for a year. All along, the servicer knew that the terms they gave her were unacceptable, so they simply billed her the higher amount. Knowing what would and would not be acceptable to the "investor", Defendant continued to ask for loan modification paperwork, repeating the same requests where the information was already provided and delayed the modification process, ultimately denying her modification they knew would not be honored by the investor from the outset. The summary judgment was premature because Plaintiff sought and obtained an order giving the Defendants until February 28<sup>th</sup>, 2017 to provide full responses to

the propounded discovery. They did not respond. The documents they sent were duplicates and they did not ever identify which documents applied to which request.

Presently, there still exists genuine disputed issues of material fact that cannot be resolved by means of summary judgment. For example, the Plaintiff has found in the public records that the Trustee was not lawfully appointed by Wells Fargo, because Wells Fargo had already assigned their right title and interest at the time they claim they appointed the Trustee. Leisa Jefferson was not authorized to execute the documents in favor of Wells because she was an employee of Wells and falsely held herself out to be the authorized signator of the assignor, but the assignor Sierra was a defunct entity at the time and not licensed to do business in the state. The sale was cancelled and the sale did not transpire on the Courthouse steps. In fact, the Trustee was not even licensed to do business in the State at the time of the purported sale to the Defendant. Furthermore, the Defendant was not licensed to do business in this State and the trust was closed at the time it claims it acquired the interest in the Plaintiff's home. The identity of the

Lender has and was at all relevant times concealed from the Plaintiff until the foreclosure.

Nothing that transpired was legal, and Defendant, knowing that, has failed and refused to respond to the propounded discovery, all with the hopes of preventing the Court from seeing the depth of their deception they filed and won a premature motion for summary judgment. Plaintiff has brought Six Motions to Compel because the discovery sought directly relates to the issues listed herein, and the Plaintiff has not received any responses. In fact, the Plaintiff obtained an order granting her request requiring them to respond by February 28th, 2017 and Plaintiff is still waiting. There are already six motions to compel seeking this information. Defendant has been evasive, non-responsive and protecting felons who executed and recorded false documents in the official records. That as an actual and proximate cause of said conduct, the Plaintiff suffered actual damages in the sum of \$770,000, the fair market value of the property; harm to her credit; severe emotional distress; severe physical distress; anger and upset, all in an amount according to proof, but in the event of default, treble the actual damages, in the sum of \$2,310,000 plus \$770,000 or a total of \$3,080,000.

**Respectfully Submitted**

***ISI LINDA AMES***

**LINDA AMES**

**APPELLANT**

**11920 NW 35TH AVENUE**

**VANCOUVER WA 98685**

**TEL: (360) 931-1797**

**E-mail: [lindalouames@comcast.net](mailto:lindalouames@comcast.net)**

**Appellant Pro Se**

**CERTIFICATE OF PAGE LENGTH**

**LINDA AMES, APPELLANT, hereby certifies that the attached brief does not exceed 50 pages, excluding the cover, index, and table of contents.**

**Dated: June 1<sup>st</sup>, 2018**

***LSI LONDA AMES***

**LINDA AMES**

**APPELLANT**

**11920 NW 35TH AVENUE**

**VANCOUVER WA 98685**

**TEL: (360) 931-1797**

**E-mail: [lindalouames@comcast.net](mailto:lindalouames@comcast.net)**

**Appellant Pro Se**

## CERTIFICATE OF SERVICE

A true and correct copy of the Appellant's Opening Brief was served by means of US Mail on April 12<sup>th</sup>, 2017, postage prepaid first class, on:

HSBC BANK USA, NATIONAL ASSOCIATION AS TRUSTEE  
FOR WELLS FARGO ASSET SECURITIES CORPORATION,  
MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2006-  
AR16, AND ALL OTHER INTERESTED PARTIES  
LANE POWELL, PC  
1420 FIFTH AVENUE  
SUITE 4200  
PO BOX 91302  
SEATTLE, WA 98111-9402

**Dated: June 1<sup>st</sup>, 2018**

*ISI LINDA AMES*

**LINDA AMES**

**APPELLANT**

**11920 NW 35TH AVENUE**

**VANCOUVER WA 98685**

**TEL: (360) 931-1797**

**E-mail: [lindalouames@comcast.net](mailto:lindalouames@comcast.net)**

**Appellant Pro Se**

**LINDA AMES - FILING PRO SE**

**June 01, 2018 - 11:36 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 51941-1  
**Appellate Court Case Title:** Linda Ames, Appellant v. HSBC Bank, et al, Respondents  
**Superior Court Case Number:** 15-2-03226-1

**The following documents have been uploaded:**

- 519411\_Briefs\_20180601113552D2328174\_6833.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Brief.pdf*

**A copy of the uploaded files will be sent to:**

- amarshall@afrc.com
- jjastrzebski@afrc.com
- kblevins@afrc.com
- tburt@afrc.com

**Comments:**

---

Sender Name: Linda Ames - Email: lindalouames@comcast.net  
Address:  
11920 NW 35th Ave  
Vancouver, WA, 98685  
Phone: (360) 931-1797

**Note: The Filing Id is 20180601113552D2328174**