

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

DAVID W. DEVIN

KITSAP CASE NO. 17-2-00144-1

Vs.

Court of Appeals No. 53241-7

MTC FINANCIAL ET AL.

AMENDED OPENING BRIEF OF APPELLANT DAVID W. DEVIN

David W. Devin
So 3B Ngach 50, Ngo 1194 Duong Lang
Quan Dong Da Hanoi
Vietnam 0000

APPELLANT

William G. Fig
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ATTORNEY FOR RESPONDENT
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FILED
COURT OF APPEALS
DIVISION II
2019 MAY 28 PM 3:37
STATE OF WASHINGTON
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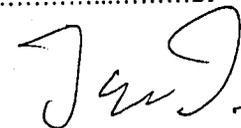


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1 A. ASSIGNMENTS OF ERROR¹

2 ASSIGNMENTS OF ERROR

3 1. THE TRIAL COURT ERRED IN FAILING TO FIND THAT Bank of America
4 violated the Statute of Limitation or that they "gifted" the house to the Appellant in
5 February 2009 when they took Possession of David W. Devin's house, hired a
6 property manager who changed the locks denying the Appellant access to his house,
7 informed the tenant that the Appellant no longer owned the house --- yet then
8 subsequently tendered the house back to the Appellant without requiring him to sign
9 a new note or give them any consideration and then abandoned all Claims and
10 Interests for more than six (6) years.

12 2. THE TRIAL COURT ERRED IN FINDING THAT Bank of New York Mellon or
13 MTC financial or any other financial or mortgage institution demonstrated a Chain of
14 Title or Custody of Title - including proof of monies paid and production of the Actual
15 Note -- sufficient to confer Standing to Foreclose on real property owned by David W.
16 Devin, as their lawyer, Mr. Fig told the judge under Oath on December 14, 2018 that
17 he could produce this document within two weeks of being requested by the court to
18 produce it. Mr. Fig may have committed perjury because the BONYM does not have
19 this document. On Remand, the Appellate Court should compel Mr. Fig to immediately
20 produce this document. If he cannot, then he should face charges of perjury.

22 3. THE TRIAL COURT ERRED IN FAILING TO ALLOW explication of all salient
23 facts by ruling for Defendant on Appellant's Motion to Compel Essential Documents.

24
25 ¹ At the outset Appellant notes that no Bond has been required of him at this point. In the event that the Court should desire to entertain the Notion of one Appellant submits that a nominal bond, if any, is sufficient.

1 4. THE TRIAL COURT ERRED IN FAILING TO FIND THAT Defendants violated
2 the DTA and Washington State Consumer Protection in taping a notice of default to
3 the front and back door of Appellant's house and then organizing a Trustee sale for
4 January 7, 2017 without sending him even one legal notice of their plans for such a
5 sale?
6

7 ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- 8 1. Has the Statute of Limitations Expired on Defendant's Foreclosure Window?
9
10 2. Whether or not Bank of New York Mellon or MTC financial or any other
11 financial or mortgage institution demonstrated a Chain of Title or Custody of
12 Title -- including production of the Actual Note -- sufficient to confer Standing
13 to Foreclose on real property owned by David W. Devin.
14 3. Whether or not the Bank of America "gifted" the house to the Plaintiff in
15 February 2009 when they took Possession of David W. Devin's house, hired a
16 property manager who changed the locks denying the plaintiff access to his
17 house, informed the tenant that the Plaintiff no longer owned the house --- yet
18 then subsequently gave the house back to the plaintiff without requiring him
19 to sign a new note or give them any consideration and then walked away and
20 abandoned all Claims and Interests for more than 8 years and 4 months.
21 4. Did the Bank of America and the BONYM collude on a fraudulent assignment of
22 the note and deed of trust on October 17, 2011 to hide the fact that the BONYM
23 actually paid nothing for David W. Devin's note and deed of trust but in fact
24 they were paid by BoA to take David W. Devin's note off the books of the BoA.
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The appellate Court needs to ask both the BoA and the BONYM for the actual proof of what monies were paid by whom to whom for David W. Devin's Note.

5. Does the BONYM actually have possession of the original signed note? Their lawyer, Mr. Fig told the judge under Oath on December 14, 2018 that he can produce this document within two weeks of being requested by the court to produce it. Mr. Fig may have committed perjury because the BONYM does not have this document. On Remand, the Appellate Court should compel Mr. Fig to immediately produce this document. If he cannot, then he should face charges of perjury.
6. Did the Court materially err by refusing to ORDER production of Plaintiff's requested Discovery as specified in his Motion to Compel.
7. Did MTC Financials and Di-Tech violate Washington State Consumer Protection in taping a notice of default to the front and back door of Appellant's house and then organizing a Trustee sale for January 7, 2017 without sending him even one legal notice of their plans for such a sale?

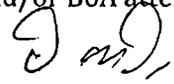


1 B. STATEMENT OF THE CASE AND RELEVANT FACTS

2 1. Appellant is not a licensed attorney nor has he attended law school or any
3 other
4 official paralegal training. He is employed as an English teacher in Vietnam
5 since September of 2009 and has no money to hire legal counsel. He has
6 however, networked with several attorneys and real estate professionals who
7 have helped him study the facts and law and present this matter to this Court
8 as an extremely compelling case that must receive due consideration by the
9 Court once the operative set of facts is established. This Appeal is kept short
10 but it contains every truly relevant fact necessary for the Court to determine
11 that the Lower Court committed grave errors that require Reversal and
12 Remand.

14 2. Appellant purchased the subject property at 1710 Wheaton Way, Bremerton
15 WA
16 98310 in the 1980's and got a loan for \$153,000 on or about 5 November,
17 2005 with a purported lender being America's Wholesale Lender (AWL)
18 and then purportedly Bank of America, NA who allegedly acquired AWL's
19 portfolio. MERS was the purported Beneficiary during the Lender period,
20 which is of course illegal in Washington State and many others as MERS
21 simply cannot have a Beneficial Interest in these mortgages. (Plaintiff's
22 Complaint CP #2 p 8).

24 3. Between 11 April 2008 and 13 February 2008 MTC and/or BoA attempted
25 two



1 (2) Trustee sales, all of which failed. BoA changed the locks and informed
2 his tenants that he no longer owned the property. At one point they posted a
3 Notice of Default directly on the Premises, knowing that Plaintiff was living
4 in Hanoi as he had provided them with email and hard mail contact
5 information. They then recorded a Notice of Trustee sale without direct
6 notification in violation of RCW 61.24 requiring First-Class or registered
7 mail, return receipt, etc. (Id.) See also para 11 of this filing for related
8 misconduct in yet another pending case.

9
10 4. Counsel for Defendant (Attorney Fig) claims that he could find no such
11 records

12 however Appellant's seventy-two (72) year-old sister went to the Kitsap
13 County Offices and retrieved them in a matter of moments. These Sales were
14 Noted for April 11, 2008 and February 13, 2009. (Plaintiff Sworn Statement,
15 CP #217). They were drafted and filed with an obligation owing directly to
16 MERS, which is completely illegal. See App A.²



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18
19 ² The Court has indicated that no attachments shall be permitted that were not filed in the Lower
20 Court. Appellant reminds the Defendants - and notifies the Court - that he clearly referenced the
21 presence of these documents in the Lower Court. As such, his Word must have been taken as True as a
22 matter of Law in the face of a Dispositive Motion. This means the Lower Court clearly erred on the
23 Statute of Limitations issue because the loan was accelerated and more than six (6) years elapsed. This
24 Court need not decide any other issues in this case knowing this. It's black-and-white. And this Court
25 has an obligation to ferret out and to punish Fraud and Falsity to the Court when it is clearly manifest.
In any event Appellant respectfully requests that the Court allow the previously-filed Appendices as
one was merely supplemental legal authority and another was the actual Discovery Requests and
another was the proof of Escalation, i.e. the two Attempted Sales.
App.R. 10.3. 8 provides: Appendix. An appendix to the brief if deemed appropriate by the party
submitting the brief. An appendix may not include materials not contained in the record on review
without permission from the appellate court, except as provided in rule 10.4(c). Appellant contends
that this overrides App. R. 9.1 as the specific governs the general and 9.1 states "generally....."

- 1 5. Appellant wrote a Complaint letter to Bank of America (henceforth, "BoA")
2 and
3 within two weeks of same, a BoA property manager contacted him and
4 returned full unfettered Possession to Appellant by giving him the new set
5 of keys without any demand for payment of any kind. He stated that BoA had
6 written off the loan as a Bad Loan. This exchange occurred in late February,
7 2009.³ (CP #215)
8
9 6. Appellant's tenant, Richard Duncan telephoned the BoA property manager to
10 Confirm Appellant's representations as to how his Possession was re-
11 established. *Id.*
12 7. Between February, 2009 to 13 April, 2016 Appellant heard not one (1) word
13 from anyone attempting to collect any payments from him. That is 7+ years
14 later after any attempt to collect on the Debt and after re-tender of the
15 Property to Appellant.⁴
16
17 8. Appellant filed a Sworn and Verified Complaint with the Lower Court on or
18 about 25 January 2017 contesting material issues. He followed same with a
19 Sworn Statement on or about 17 October, 2019 and an Amended Complaint on
20 or about 31 December 2018. (CP #81, pp194-199, CP #86, 237-243). (CP pp
21 143- 148).



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³ This allegation is in Plaintiff's Amended Complaint and must be taken as True. (CP #10, p 47).

25
⁴ BoA allegedly made a legal transfer of the Note and all interest in Plaintiff's Deed of Trust to Defendant Bank of New York Mellon. Counsel for BONYM would subsequently claim, without any evidence whatsoever, that Plaintiff received notifications from Loan Servicing Companies.

1 9. In the filed Complaints he noted that the purported lender had foreclosed on
2 him,

3 changed the locks and informed his tenants that he no longer owned the
4 property, even though that legal conclusion was completely FALSE.

5 10. Appellant also outlined a Consumer Protection Act violation.

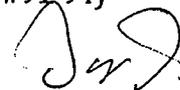
6 11. Appellant also alleged that there was no valid Assignment of Interest in the
7 Chain of Title between Bank of America and BONYM. This is a Claim at issue in
8 a pending Federal Case right now, in the Nevada Case *Mitchusson v. MTC*
9 *Financial* 2:19-CV-00585 (D Nevada 2019) that was apparently removed to
10 Federal Court on or about 5 April 2019 after Defendant acted in Bad Faith
11 once again, refusing to Modify a HAMP-type modification to the Mortgagor:
12

13 "Defendants never produced a copy of the note during the
14 foreclosure mediation proceedings." (Motion for Preliminary
15 Injunction p. 4).

16 12. Appellant obtained Injunctive Relief against the illicit Foreclosure by the
17 Lower Court that was improvidently later reversed by the Lower Court
18 without valid legal reason or authority. (CP #40, pp 87-88).

19 13. Appellant answered all of the Discovery Requests sent to him.

20 14. Defendant BONYM refused to Answer any of Appellant's Discovery Requests
21 even though they were clearly directed at core issues of the case involving the
22 purported Chain of Title and Standing to Foreclose.⁵ (CP #91-94)

23 

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⁵ Many Banks and Courts try to shade this argument as a "show me the Note" argument and attempt to dismiss it out of hand. That is not proper analysis. It is the "show me the Chain of Title" argument and Chain of Title MUST be established prior to foreclosure. It can't be any simpler than this.

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15. Appellant filed a Motion to Compel and a Motion for Reconsideration that did not receive a substantive denial from the Lower Court, simply a terse denial. (CP #40, pp 91-94, #61, pp154-155, 158-161, 235).

16. The Parties exchanged Written Arguments over Defendants' Motion to Dismiss and the Court granted same on or about January 3, 2019 (CP #92, pp 249-251). The Court noted -- in an ORDER drafted by Defendants -- that it refused to consider Plaintiff's Amended Complaint or purported Hearsay statements in his Sworn Statement.

17. However the only Hearsay contained in that Statement is the allegation that the BoA property manager said that BoA would write the loan off as "uncollectable" at p 194. That could even perhaps be a Party Admission but in any event everything else in the Statement is material to the Case and it is simply Appellant's own personal observations about conduct that he personally witnessed so it is not "Hearsay."

17. Appellant filed a Motion for Reconsideration that was denied without substantive analysis on or about January 3, 2019 (CP # 94, p 253).

18. Appellant filed his Notice of Appeal on or about January 28, 2019 (CP #96 p256).

C. LAW AND ARGUMENT

STANDARD OF REVIEW

1 The applicable Standard of Review for this Appeal is De Novo.

2 "The standard of review of an order of summary judgment is de novo,
3 and the appellate court performs the same inquiry as the trial court."
4 *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002)
5 (citing *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000)).
6 "A court may grant summary judgment if the pleadings, affidavits, and
7 depositions establish that there is no genuine issue as to any material
8 fact and the moving party is entitled to judgment as a matter of law."
9 *Lybbert*, 141 Wn.2d at 34 (citing *Ruff v. King County*, 125 Wn.2d 697,
10 703, 887 P.2d 886(1995)).

8 ARGUMENT

9 I. Abandonment of Claims & Statute of Limitations Law Clearly Supports 10 Remand.

11 The House was awarded to Appellant and any and all claims extinguished
12 when, in February 2009 when they took Possession of Appellant's house, hired a
13 property manager who changed the locks denying the Appellant access to his house,
14 informed the tenant that the Appellant no longer owned the house --- yet then
15 subsequently tendered the house back to the Appellant without requiring him to sign
16 a new note or give them any consideration and then abandoned all Claims and
17 Interests for more than six (6) years.

18 These actions render the home as gifted to Appellant or render the attempted
19 Foreclosure as Void *ab initio*. The Statute of Limitations in Washington is Six (6)
20 years, from the last payment date prior to Bankruptcy Discharge or Acceleration.
21

22 The applicable statute of limitations within which a lender can foreclose for
23 purposes of RCW 7.28.300 is six years from the date of acceleration of the debt.

24 Recently, in *Edmundson v. Bank of Am., NA*, 194 Wn.App. 920, 931 (2016)

25 (*Edmundson*), *Silvers v. U.S. Bank Nat. Ass'n*, 2015 WL 5024173 (W.D. Wash. Aug. 25,

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1 2015) (*Silvers*), and *Jarvis v. Fed. Nat'l Mortg. Ass'n*, 2017 WL 1438040 (W.D. Wash.
2 Apr. 24, 2017) (*Jarvis*), Washington's State and Federal Courts addressed the impact
3 of a bankruptcy discharge on the lenders' ability to foreclose within the purview of
4 RCW 7.28.300.

5 Obviously Appellant's purported loan was accelerated back when the two
6 2008
7 attempts at sale were made, *ipso facto*. As such this case is, and was, completely Void
8 pursuant to well-established law no ifs, ands or buts. See again Appendix B.⁶
9

10 As to Common Law abandonment, at the time, the banking and mortgage
11 industry and put itself into such a down-spiral that that Appellant's home was worth
12 43% of its Assessed Value in 2005: \$220,000.00 vs. \$95,000.00. It is entirely
13 foreseeable that his Mortgagee and/or Servicer would view the purported loan as a
14 bad loan and write it off; putting it into a different tier of collections where it was lost
15 in the shuffle as contemplated by the Statute of Limitations.

16 But that's not Appellant's fault. What we have here is abandonment of claims
17 and Bank of America stumbling over a botched foreclosure and possession after the
18 Property failed to sell. The case is crystal clear in favor of Appellant.⁷
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24 ⁶ Omitted from this Brief pursuant to Fn2, supra. See Appellant's Rule 10.3.8 Request for Leave as filed
25 contemporaneously with this Brief.

⁷ MTC's Motion to Dismiss contains a material falsity in that it claims an NOD was sent to Plaintiff April
13, 2013. It was April 13, 2016, a material difference. (CP #10, p 47).

1 II. Neither Bank of New York Mellon or MTC financial or any other financial or
2 mortgage institution demonstrated a Chain of Title or Custody of Title -
3 including proof of monies paid and production of the Actual Note -- sufficient
4 to confer Standing to Foreclose on real property owned by David W. Devin.

5 Neither the BoA or the BONYM has a copy of the original signed note which
6 they must have to foreclose against me. At the December 14th hearing the Court
7 asked Mr. Fig how long he would need to produce it and he promptly replied, "Within
8 two weeks of the courts request."⁸ I stated in my motion for reconsideration that Mr.
9 Fig was knowingly committing perjury and suggested that the judge give Mr. Fig 30
10 days to produce the original signed note. But the judge failed to do that. Again, the
11 judge denied my motion which was clearly a miscarriage of justice and should be
12 reversed upon appeal.

13 Defendant's lawyer Mr. Fig told the judge under Oath on December 14, 2018
14 that he could produce this document within two weeks of being requested by the
15 court to produce it. Why then would the Court not simply ORDER him to produce it?
16 That is a glaring and reversible oversight particularly given that Appellant asked for
17 the documents in Discovery.

18 Mr. Fig may have committed perjury because the BONYM does not have this
19 document. On Remand, the Appellate Court should compel Mr. Fig to immediately
20 produce this document. If he cannot, then he should face charges of perjury.
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24 ⁸ In trying to keep his costs down Appellant has not Ordered a Transcript of that proceeding. However
25 he hereby swears to the dialogue represented herein and seeks a Joint Stipulation as to Attorney Fig
promising he could produce the Original Note. Should Defendant or Counsel for Defendant claim
otherwise then Appellant respectfully notes that he will then order the Transcript at a substantial
expense just to impeach the credibility and professionalism of Attorney Fig.



1 It is of course worth noting that these two Principal Defendants are
2 presently under fire for the same type of misconduct in Nevada: This is a Claim at
3 issue in a pending Federal Case right now, in *Mitchusson v. MTC Financial 2:19-CV-*
4 *00585* (D Nevada 2019) that was apparently removed to Federal Court on or about 5
5 April 2019 after Defendant acted in Bad Faith once again, refusing to Modify a HAMP-
6 type modification to the Mortgagor:
7

8 "Defendants never produced a copy of the note during the foreclosure
9 mediation proceedings." (Motion for Preliminary Injunction p. 4).

10 Not only that, Appellant in this case argues in Section II that he received no Proper
11 Notice of any alleged ongoing obligation. Such conduct is indicated in *Mitchusson* as
12 well, at pp. 1-2 of their Ex Parte Application for Temporary Restraining Order
13 (Appendix B).

14 "This matter focuses on the Trustee's failure to provide requisite Danger
15 Notice - including a copy of the note - and Notice of Sale."

16 Interestingly the Court in this Case originally sided with Appellant. See the ORDER
17 Granting Plaintiff's requested TRO on or about April 14, 2017 (CP #40, pp 87-88). In
18 any event:

19 A party cannot foreclose on a mortgage without having title, giving it standing
20 to bring the action. (See *Kluge v Fugazy*, 145 AD2d 537, 538 [2d Dept 1988]
21 [holding that a "foreclosure of a mortgage may not be brought by one who has
22 no title to it and absent transfer of the debt, the assignment of the mortgage is
23 a nullity"]; *Katz v East-Ville Realty Co.*, 249 AD2d 243 [1st Dept 1998] [holding
24 that "(p)laintiff's attempt to foreclose upon a mortgage in which he had no
25 legal or equitable interest was without foundation in law or fact"].)

"To have a proper assignment of a mortgage by an authorized agent, a power
of attorney is necessary to demonstrate how the agent is vested with the
authority to assign the mortgage." ([*3] *HSBC Bank USA, N.A. v Yeasmin*, 19 Misc
3d 1127[A], 2008 NY Slip Op 50924[U], *3 [2008].) "No special form or
language is necessary to effect an assignment as long as the language shows

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1 the intention of the owner of a right to transfer it." (Id., quoting *Tawil v*
2 *Finkelstein Bruckman Wohl Most & Rothman*, 223 AD2d 52, 55 [1st Dept
3 19*Bank of N.Y. v Alderazi* 2010 NY Slip Op 20167 [28 Misc 3d
376].....1296] and citing *Suraleb, Inc. v International Trade*
4 *Club, Inc.*, 13 AD3d 612 [2d Dept 2004].)

5 However in this case we have seen none of these prerequisites and this
6 dovetails to Appellant's posture in Section III below – failure to Compel Discovery.
7 See *Bank of N.Y. v Alderazi* 2010 NY Slip Op 20167 [28 Misc 3d 376] April 19, 2010
8 Saitta, J. Supreme Court, Kings County Published by New York State Law Reporting
9 Bureau pursuant to Judiciary Law § 431.

10 Plaintiff submitted no other documents which purport to authorize MERS to
11 assign or otherwise convey the right of the mortgagee to assign the
12 mortgage to another party.

13 A party who claims to be the agent of another bears the burden of proving
14 the agency relationship by a preponderance{**28 Misc 3d at 380} of the
15 evidence (*Lippincot v East Riv. Mill & Lbr. Co.*, 79 Misc 559 [1913]), and "[t]he
16 declarations of an alleged agent may not be shown for the purpose of
17 proving the fact of agency." (*Lexow & Jenkins v Hertz Commercial Leasing*
18 *Corp.*, 122 AD2d 25 [2d Dept 1986]; see also *Siegel v Kentucky Fried Chicken*
19 *of Long Is.*, 108 AD2d 218 [2d Dept 1985]; *Moore v Leaseway Transp. Corp.*,
20 65 AD2d 697 [1st Dept 1978].) "[T]he acts of a person assuming to be the
21 representative of another are not competent to prove the agency in the
22 absence of evidence tending to show the principal's knowledge of such acts
23 or assent to them." (*Lexow & Jenkins v Hertz Commercial Leasing Corp.*, 122
24 AD2d at 26, quoting 2 NY Jur 2d, Agency and Independent Contractors § 26.)
25 Plaintiff has submitted no evidence to demonstrate that the original lender,
the mortgagee America's Wholesale Lender, authorized MERS to assign the
secured debt to plaintiff.

20 Accord *Corrigan v. Bank of America* (2nd Dist. Ct. App No. 2D14-3208.
21 [https://law.justia.com/cases/florida/second-district-court-of-appeal/2016/2d14-
22 3208.html](https://law.justia.com/cases/florida/second-district-court-of-appeal/2016/2d14-3208.html)

23 Appellant submits that it is the same in New York as it is in Florida as it is
24 here in Washington. Defendant is out of luck, and properly so.



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D. G.

1 III. The Sought Discovery Would Have Positively Proved Plaintiff's Arguments
2 And the Court's Failure to Sustain his Motion to Compel Constitutes Reversible
3 Error.

4 Obviously the Chain of Title Issue requires substantial review as to Discovery.
5 The Court's rulings have flipped the Burdens of Proof for the respective Parties: The
6 Appellee should have been forced to prove its case in order to foreclose. It never
7 proved its case by any sort of reliable, credible evidence even though they claimed to
8 have all of the necessary documents to do so, including the Original Note.

9 Instead the Court put Appellant in the position of having to prove his case, and
10 then undeniably hamstrung him by refusing to Compel the sought materials. This
11 Honorable Court must Remand.

12 By way of example we only need delve into two of the Discovery Request to
13 prove a point:

14 First is the Issue of the Missing Original Note and Assignments. This speaks for
15 itself: The Note cannot be separated from the Deed of Trust and maintain effective
16 Chain of Title.

17 Second, Mr. Fig told the court under oath that other financial institutions
18 acting on behalf of the BoA sent me letters demanding payment during the period
19 from February of 2009 and April 13, 2016. Appellant rightfully believes that Attorney
20 Fig has committed Perjury or at least a material misrepresentation to this Court. Can
21 the court compel Mr. Fig to produce even one
22 such letter of demand from any financial institution that was legally served on
23 Appellant?
24
25

J. Fig

1 These factual and legal matters pertaining to this Section have been fully
2 addressed in Section I, *supra* but Appellant will take time to share a case on point
3 with respect to Discovery followed by an excerpt his opening in the Motion to
4 Compel. See *Kimball v. Publix*, 2nd Dist Ct. App No. 2D03-5489 (April 29 2005).

5 We also reverse the trial court's denial of Kimball's motion to amend.
6 Accordingly, we reverse the order granting final summary judgment and
7 remand for further proceedings. Further, the trial court erred in denying
8 Kimball's motion to amend her complaint to add a claim for spoliation of
evidence. Because relevant discovery was still pending, the trial court erred
in granting summary judgment.

9 Fraudulent foreclosure is an extremely challenging area of the law that cannot be
10 fairly evaluated with an exhaustive review and that is all that I ask for myself and my
family.

11 **In this case I have alleged that Defendants are engaged in unlawful**
12 **artifice to attempt an unlawful foreclosure on my home. The types of**
13 **documents that might help my case are all part of the documents that**
14 **have been sought by me and they are relevant to the disposition of this**
15 **case. I am not some big time lawyer or anything but I am a careful**
16 **reader, especially of what I can find on the internet and I have learned**
17 **that my original lender didn't even exist. America's Wholesale Lender**
was a fictitious entity and it was wrapped into the Countrywide debacle
because Countrywide was also corrupt and sold bad loans to the
government that cost Bank of America nearly a Billion dollars in fines.

18 Bank of America is involved in my case and I know in many cases Courts have
19 determined that they were involved in Bad Faith foreclosures. I found a case
20 involving the Corrigan family in Florida. They fought a bad foreclosure and
21 claimed that Bank of America did not have standing to bring suit because it
was not in possession of the original, endorsed note at the time the lawsuit
was filed.....and the Court agreed with them. *Corrigan v. Bank of America* (2nd
Dist. Ct. App No. 2D14-3208.

22 [https://law.justia.com/cases/florida/second-district-court-of-
appeal/2016/2d14-3208.html](https://law.justia.com/cases/florida/second-district-court-of-appeal/2016/2d14-3208.html)

23 Accord *Jacobsen v State of Washington* 569 P.2d 1152 (1977) for the
24 proposition that full Discovery is required when there are material issues in Dispute.
25 There are clearly material issues in dispute in this case.

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JmJ

1 IV. MTC Financials and Di-Tech violated the DTA and Washington State Consumer
2 Protection in taping a notice of default to the front and back door of
3 Appellant's house and then organizing a Trustee sale for January 7, 2017
4 without sending him even one legally-served notice of their plans for such a
5 sale.

6 As much as the Defendants attempt to ignore this fact Plaintiff has sworn to it
7 and has provided proof of it so the matter is also clearly disputed and not ripe for any
8 Dispositive Motion. It is the same with all of the other issues in this case that are
9 clearly Disputed, up to and including the originality and possession of the Note and
10 the entire Chain of Custody.

11 The relevant law reads:

12 (1) At least ninety days before the sale, or if a letter under RCW 61.24.031 is required,
13 at least one hundred twenty days before the sale, the trustee shall:

14 (c) Cause a copy of the notice of sale described in subsection (2) of this section
15 to be transmitted by both first-class and either certified or registered mail,
16 return receipt requested, to the plaintiff or the plaintiff's attorney of record, in
17 any court action to foreclose a lien or other encumbrance on all or any part of
18 the property, provided a court action is pending and a lis pendens in
19 connection therewith is recorded in the office of the auditor of any county in
20 which all or part of the property is located on the date the notice is recorded;

21 (d) Cause a copy of the notice of sale described in subsection (2) of this section
22 to be transmitted by both first-class and either certified or registered mail,
23 return receipt requested, to any person who has recorded a request for notice
24 in accordance with RCW 61.24.045, at the address specified in such person's
25 most recently recorded request for notice;

26 Unfortunately there is no Record of any such Material Compliance, and that
27 renders that process subject to substantial penalty under the Law. Defendant MTC
28 claims that there is no private right to sue for Monetary Damages for a violation of the
29 DTA when no sale occurs, but that obscures the larger point, which is that without the
30 proper notice the attempted foreclosure CANNOT OCCUR. (CP #45 pp 97-99).

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To be clear, here is what happened in this case:

They claim that they sent the notice of impending trustee sale to every known address in August of 2016. *Id.* In May of 2016 Plaintiff had expressly told them by phone and by e-mail twice that his Service Address (and personal residence) is in Hanoi.

Plaintiff told them that he would accept service to both his current mailing address and to his e-mail address. Defendants both sent e-mails and sent me a package in July of 2016 so that is proof that they knew both my current, active mailing address and my e-mail address.

But in August of 2016 they did not send their notice of impending trustee sale to *either* of these addresses.

Instead they sent them to 8 year-old addresses which they knew in fact were no longer valid. As such there is material noncompliance with the Statute.

As such, we have an unfair or deceptive practice, that occurred in trade/commerce, impacting the public interest, injury (loss) of property and causation should the sale go through. Plaintiff-Appellant has every right to have sought Injunctive and Prospective Relief and it should have been awarded but was not.



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CONCLUSION AND PRAYER FOR RELIEF

Appellant has worked with a small Universe of people from diverse banking, legal and mortgage backgrounds in order to address a grave injustice in this case. Now that he has done so it becomes clear that he has provided the Court with not one, not two, but at least three solid bases on which it can and must overturn the Decision of the Lower Court with instruction to allow full Discovery and to consider Granting Summary Judgment to Plaintiff-Appellant should Defendant-Appellee again fail to produce documentation as required to carry their burden.

Respectfully submitted,



David Devin
Appellant Pro Se

May 26, 2019

CERTIFICATE OF SERVICE

I the undersigned swear that I served a copy of the foregoing Request by email and
regular mail to:

William G. Fig
1000 SW Broadway,
Suite 1400
Portland, Oregon 97205

This 28th Day of May 2019

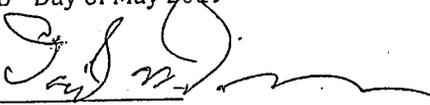


David Devin

And to:

Michael S. DeLeo
10900 NE 4th Street
Suite 1850
Bellevue, WA 98004-8341

This 28th Day of May 2019



David Devin