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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.

REPLY BRIEF OF PETITIONER
TO RESPONDENT MTC FINANCIAL

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

APPELLANT

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

ATTORNEY FOR RESPONDENT
BANK OF NEW YORK MELLON

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

ATTORNEY FOR RESPONDENT
MTC FINANCIAL

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I. Overview and Court Jurisdiction.

Unlike Mr. Fig who clearly feels he can win this case by non-cooperation, obfuscation of facts and outright lying to the court, Mr. Deleo has been willing to cooperate with me, has answered all of my questions and has never lied to me or the court.

My problem with Mr. Deleo is that he is new to this case since February of 2016 and therefore was not aware of the crimes committed by his predecessors.

Petitioner timely filed a Motion for Reconsideration of the Superior Court's decision, which was denied without explanation. At that time the case became ripe for Appeal and Petitioner therefore timely filed his Appeal and the Appeal clearly contemplates the substantive Denial of his case per Rule 59 and the Court is clearly authorized to consider it even as Respondent's own filing indicates:

(c) Final Judgment Not Designated in Notice. Except as provided in rule 2.4(b), the appellate court will review a final judgment not designated in the notice only if the notice designates an order deciding a timely motion based on (1) CR 50(a) (judgment as a matter of law), (2) CR 52(b) (amendment of findings), (3) CR 59 (reconsideration, new trial, and amendment of judgments), (4) CrR 7.4 (arrest of judgment), or (5) CR 7.5 (new trial).

Petitioner did in fact file a Rule 59 Motion in the first place so Respondents' artful attempts to avoid having this Court hear the case on its Merits must fail.

Next, as noted below, lack of Standing is never waived and can be raised even by the Court of Appeals *sua sponte*. See *BONYM v. Romero*, Docket No. 33,224 (New Mexico 2014) reversing Lower Court Judgment for BONYM. The Court properly noted "Lack of Standing is a potential jurisdictional defect which 'may not be waived and may be raised at any stage of the proceedings, even *sua sponte* by the appellate Court'" citing *Gunaji v. Macias*, 2001-

1 NMSC-028, 31 P.3d 1008. *Romero* at 5. Respondent's Proposed ORDER even speaks to the

2 Merits:

3 II. Argument.

4 A. Assignment of Error I¹

5 Petitioner submits that Respondent MTC was fully aware that the house was gifted to
6 Petitioner in February of 2009 and as such references the Court to Section II B of the
7 BONYM Brief.
8

9 C. Assignment of Error III.²

10 Petitioner submits that Respondent MTC is fully aware that Respondent BONYM
11 should have had to answer to Discovery requests.
12

13 D. Assignment of Error IV.

14 Respondent writes:

15 Crucially, Mr. Devin acknowledges that he had promptly learned of the
16 posting of the Notice of Default on the Property, and that he did not provide
17 MTC with his Vietnam address until *after* he had been informed of the Notice
18 of Default. (MTC Brief at 15).

19 This is true but I did not know of the existence of MTC Financials until I got
20 and read the Notice of Default which by the way, I did not get until May
21 of 2016 when I promptly contacted MTC Financials by phone and e-
22 mail and gave them both my e-mail address and my mailing address
23 and told them that I would be happy to get served at either of these
24 two addresses but not at my house because it was now vacant.

25 With respect to Mr. Deleo's brief, Petitioner submits two very serious claims. And
26 that is the lawyers who represented MTC Financials and Di-Tech in 2016-before Mr. Deleo's
27

28 ¹ Petitioner Asserts that both Respondents acted in Bad Faith Jointly and Severally in this case and with regard to this
issue Defendant MTC knew or should have known that Respondent BONYM was engaging in Fraudulent
misconduct and did not have Standing to Foreclose. Note that Petitioner's arguments for Quiet Title are clearly
maintained when there is no Chain of Title.

² To the extent that the Discovery Queries were specifically directed towards Respondent BONYM Petitioner
includes the argument here to make it clear that the Trustee is aware of the ongoing show of Bad Faith masquerading
under the appearance of lawful conduct.

3 of 10 [Handwritten signature]

1 time as their lawyer began, clearly committed at least two violations of the DTA and the
2 Washington State Consumer Protection Act. The details are spelled out in Petitioner's
3 Appeal and also mentioned clearly in Petitioner's original complaint which means the
4 Superior Court erred when the judge agreed with Attorney Fig that this case rests solely on
5 the Statute of Limitations.
6

7 In summary, in May and again in June of 2016 after getting a copy of the Notice of
8 Default which they tacked to the front and back door of the house on April 13, 2016
9 Petitioner informed both Di-Tech and MTC Financials by e-mail and by phone of his correct
10 e-mail address and his correct mailing address to reach him in Hanoi, Vietnam.
11

12 And in July of 2016 Petitioner received one package through the US and International
13 Mail and at least two e-mails from MTC Financials. That should be clear proof that MTC
14 Financials and Di-Tech had **both** his e-mail and mailing address and very well knew how to
15 officially serve him.
16

17 But when they organized their Trustee sale in September and October of 2016, they
18 intentionally *did not* use the correct e-mail and mailing addresses. Instead they deliberately
19 used 8 year-old mailing address so that Petitioner would not know their plans. And this
20 deliberate act of deception on their part is a crime for which they should be punished. It is
21 true that even in jurisdictions in which a trustee owes a fiduciary duty, that duty generally
22 amounts to no more than the duty imposed by the deed of trust and the foreclosure statutes.
23

24 Respondents worked in tandem and definitely broke the law when they organized a
25 Trustee sale for January 6, 2017 without properly serving Petitioner. They should have sent
26 out their notices that they sent out in Sept and Oct. of 2016 to the e-mail and mailing
27 address that Mr. Devin gave them twice in May and June of 2016.
28

I pray that the Appellate Court will not accept any claim as the Superior Court did

1 that MTC and Di-Tech sent their notices out to the "last known address of the Plaintiff". This
2 is clearly a false statement. The definition of "Last Known Address is just that- the last
3 address which I gave them in May and June of 2016.

4 And again they used both my e-mail address at least twice and my mailing address
5 once in July of 2016 as I did receive a package from them via the US and international mail.
6 So there is absolutely no excuse for MTC Financials and Di-Tech not to have used my correct
7 e-mail and mailing addresses when they sent out their notices of an impending Trustee sale
8 in September and October of 2016.

9
10 Given that, however, Defendants jointly and severally violated the DTA on
11 several fronts. Again:

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

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

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

22 Of course the sought Discovery against joint tortfeasor/DTA violator BoA/BONYM
23 would have proved the negative but the Lower Court wrongfully denied same.
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1 III. Conclusion and Sought Relief.³

2 I hope the Court agrees with me that the beauty of the wonderful US Court system
3 which you cannot find in Vietnam or most countries around the world is that a common
4 citizen with a grievance like I have can file a lawsuit and expect the judge to read both the
5 briefs submitted by both sides and then weigh all of the facts on the scales of Justice and
6 come up with a fair, impartial decision.
7

8 In this case I submit that the Superior Court Judge did not do that so that there was
9 not one but several blatant miscarriages of Justice.

- 10
- 11 1. The Court denied my motion to compel Mr. Fig to answer my 21 interrogatories.
 - 12 2. The Court denied my motion to amend my complaint to clearly show my case did not rest
13 solely on the statute of Limitations but upon four other stronger legal legs.
 - 14 3. The Court allowed Mr. Fig to get away with telling the court four lies.
 - 15 4. The Court ignored the fact that MTC Financials clearly broke the law in not sending me
16 any notices of the planned Trustee Sale which they planned for January 6 2017.
 - 17 5. The Court allowed BoA and the BONYM to cover up their fraudulent Assignment of my
18 note which they colluded to do on October 18, 2011.

19 Now this Court has a clear choice to make. It can continue to cover up the crimes
20 committed by the three banks, and the 4 lies told by Mr. Fig to the Superior Court Judge and
21 now the new lie he is telling you to cover up a previous lie and take my house from me. Or
22 you can do the correct thing, the morally right thing and order Mr. Fig to:

- 23
- 24 1. Produce the original signed note within 30 days or face perjury charges for saying
25 directly to the Superior Court Judge on December 14th, 2018 that his client has possession
26 of the original signed note and he, Attorney. Fig could produce it within two weeks of being
asked to do so. Produce same or face charges for Perjury because it all goes to Standing to
Foreclose that can be raised at any point in time even Sua Sponte by this Court.

27 ³ Petitioner respectfully notes that his Demands for Sought Relief are identical in both Briefs for the sake of
28 simplicity. The Court is free of course to address which relief goes to which Respondent.

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2. Provide the Appellate Court with even one letter properly served on the Plaintiff which demands that he start making payments on the note or be foreclosed against during the time period of from February of 2009 to April 13, 2016 or again face charges of Perjury.

3. Provide proof within 30 days that Mr. Fig hired a title company to search the records of the Kitsap Couty Court House for the four notices of the Trustee Sales that took place in 2008 and 2009 or again face charges of Perjury.

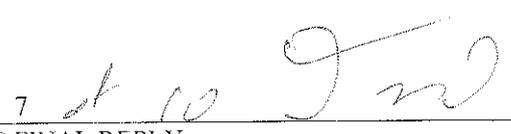
4. Explain why and how the BoA took possession of my house in February of 2009, changed the locks and informed my tenant that I no longer owned the house. And then when I sent them a letter of complaint in which I threatened to sue them if they did not give me my house back, within 2 weeks that they then within 10 days of my letter, their property manager called me to tell me to come to his office to pick up the keys that the BoA has decided to write my loan off as uncollectable. And please explain why they gave me my house back without requiring me to sign a new note or pay the BoA any money. Sounds like a gift to me. What says Mr. Fig?

5. Explain why BoA has not once since February 2009 made any attempt to contact me? Nor did any other financial institution until April 13, 2016 when MTC Financials and Di-tech Financials posted a Notice of Default to the front and back door of my house. Again, my explanation is that the BoA gave me the house in February 2009 and therefore no further attempt to contact me was the logical outcome. What says Mr. Fig?

6. Produce written proof via cash transfer documents to show the Court and me exactly how much the BONYM paid the BoA for my note. I believe the money flow actually went in the opposite direction. I believe that the BoA actually paid the BONYM quite a sum to take not only my note but many other worthless, uncollectable notes off the books of the BoA. And then the two banks colluded in a fraudulent "Assignment" of my note and many other notes to hide this fact. The people who were "in on this deal" at both Banks should be charged with fraud and brought to justice. They deserve long jail time, including Wayne Choe..

If it becomes clear that the BONYM did not pay anything for my note but in fact was paid a tidy sum by the BoA to take my worthless note and many other such notes off of the books of the BoA then I hope the court will agree that their case has no merit and the officials at both these banks who colluded in this fraudulent Assignment of my note and deed of trust should be charged with a crime.

And lastly please order Mr. Deleo to produce even one legal notice of the January 6, 2017 Trustee Sale that was properly sent to the e-mail address or mailing address that I



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provided his client via phone and e-mail twice two months prior to the day that MTC send out their notices of the impending Trustee Sale.

8 *at 10 2 22*

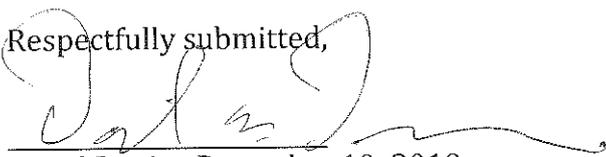
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6. I further pray the court to give me clear title to my property plus damages for lost rent in the amount of \$13,500 plus all of my legal costs from January of 2017 to the day that the Court decides in my favor. Since it was MTC Financials who tacked the Notice of Default to the front and back door of my house I suggest that they should pay for my lost rent and the BONYM should pay for my legal costs.

Now I am clearly willing to let the chips fall where they may and hope the Court will feel the same way. If after issuing the four orders to Mr. Fig and the one order to Mr. Deleo- if they can show that:

1. BONYM does have the original signed note.
2. That Mr Fig did hire a title company to search for the four notices of Trustee Sales that took place in 2008 and 2009.
3. If Mr. Fig can produce even one letter demanding payment on my loan properly served on me by the BoA or any other financial institution during the time period from February of 2009 until April 13, 2016.
4. If the wire transfers show that the BONYM did pay more than a US dollar for my note.
5. If the MTC did properly serve me with legal notices about the January 6, 2017 Trustee sale to the e-mail address or mailing address that I gave them in May and again in June of 2016 two months before they sent out their notices of the January 6, 2017 Trustee Sale, then I will give up and they can take my house and land.

But I am 100% certain that they cannot do any of this. So I am pleading for the Court to call their bluff in the name of Decency, Justice and Fair Play.

Respectfully submitted,

David Devin December 10, 2019
Appellant Pro-se

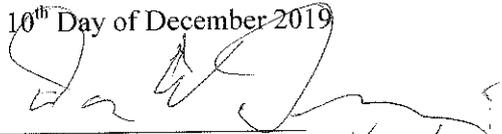
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CERTIFICATE OF SERVICE

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

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

This 10th Day of December 2019

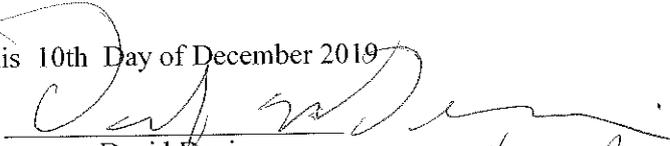


David Devin *Appellant Pro Se*

And to:

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

This 10th Day of December 2019



David Devin *Appellant Pro Se*