

1 I. Overview and Court Jurisdiction.

2 The Bank of New York BONYM Brief is much sound and fury, signifying nothing. First
3 of all, Defendant writes:

4 Moreover, Mr. Devin's Notice of Appeal seeks to appeal the Superior Court's
5 ruling on Mr. Devin's Motion for Reconsideration of a prior Motion for
6 Reconsideration, which is not reviewable by this court. (BONYM Brief at 1).

7 False. Petitioner timely filed a Motion for Reconsideration, which was denied. At that
8 time the case became ripe for Appeal and Petitioner therefore timely filed his Appeal and
9 the Appeal clearly contemplates the substantive Denial of his case per Rule 59 and the Court
10 is clearly authorized to consider it even as Respondent's own filing indicates:

11 **(c) Final Judgment Not Designated in Notice.** Except as provided in rule
12 2.4(b), the appellate court will review a final judgment not designated in the
13 notice only if the notice designates an order deciding a timely motion based
14 on (1) CR 50(a) (judgment as a matter of law), (2) CR 52(b) (amendment of
15 findings), (3) CR 59 (reconsideration, new trial, and amendment of
16 judgments), (4) CrR 7.4 (arrest of judgment), or (5) CR 7.5 (new trial).

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

19 Next, as noted below, lack of Standing is never waived and can be raised even by the Court
20 of Appeals *suasponte*. Respondent's Proposed ORDER even speaks to the Merits:

21 **ORDER GRANTING PLAINTIFF'S MOTION TO COMPEL**

22 The Court having taken this matter under advisement it is hereby ORDERED that:

- 23 1. The Defendants must answer questions number 2,3,5,7,9,10,11, 12,13,14, 19, 15, 16, 17, and 18
24 posed to them in the Plaintiff's interrogatories that were served on them on May, 24, 2018. They
25 must be answered truthfully and completely before the Court will hear their motion for Summary
26 Judgment.
- 27 2. The Defendants must make the original signed note and deed of trust available in their Seattle or
28 Bellevue Office for inspection by the Plaintiff's sister, Sally Devin before the Court will hear their
motion for Summary Judgment. These documents must be available for 10 business days after the
Defendants notify the Plaintiff and his sister by e-mail at :devin_sally@hotmail.com that they are
available for inspection.

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This is all crucial because regardless of what Respondent states, it has not, will not and cannot produce anything close to a satisfactory Chain of Title, and that folks may be raised at any point in time, even *suasponte* by this Honorable Court. In the mortgage industry that is a great idea given the millions of homes that have been lost to illegal, fraudulent foreclosure since 2008 over the past decade or more. See Section II, *infra*.

Attorney Fig declined to answer Petitioner's questions until served with formal interrogatory requests. And then he only answered one of twenty-one (21) relevant interrogatories while Petitioner did his very best to answer as truthfully as possible all twenty-seven (27) of his interrogatories.

Petitioner filed a motion to ask the Court to compel Mr. Fig to answer the interrogatories but the Lower Court denied this without explanation even though it is all central to the core issue of this case which is ownership of the purported original Note and proof of Chain of Title. This was a complete miscarriage of justice. If BONYM/Fig had been compelled to answer the twenty-one (21) interrogatories the outcome at the Superior Court of Kitsap County would have been totally different. See Sought relief at Section III, *infra*.



1 II. Argument.

2 A. Assignment of Error 1¹

3 First of all, Respondent admits that Petitioner has proper allegations regarding ownership
4 of the purported loan.

5 "Mr. Devin's allegations fact against BONYM are limited to
6 BONYM's ownership of the loan, the date of his last payment, and that the
7 foreclosure of his property is barred by the statute of limitations."
8 (Respondent's Brief at 13).

9 Respondent, by and through Attorney Fig now claims that it did not promise to produce
10 the Note "within two weeks" but rather that he could produce the Note when he got it. First of
11 all, this is a lie meant to obfuscate another lie. If the Court will read the transcript of the
12 November 14, 2018 hearing the judge clearly asked Mr Fig if his client has the original signed
13 note and deed of trust?" To which Mr. Fig replied, "It does your honor." Then the judge asked
14 Mr. Fig, "When can your client produce this document?" To which Mr. Fig replied,"within 10
15 days of the Court so requesting it." And when Mr. Devin said, "Your honor, Mr. Fig is lying"
16 the Lower Court protected Mr. Fig by telling Petitioner "Mr. Devin I have to believe him
17 because Mr. Fig is a lawyer in good standing and therefore an officer of the Court."² Mr. Fig is
18 now telling another lie when he states that he told the judge that he can produce it when he gets
19 it." I am hereby begging the Appellate Court to compel Mr. Fig to produce the original signed
20 note and deed of trust or face perjury charges.

21 Unfortunately for Respondent that is not how the Law works. The Law works by
22 providing a Chain of Title when it is reasonably questioned because as a threshold matter without
23 a Chain of Title you have no Standing to Foreclose. From p. 17 of Respondent's Brief:

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26 _____
27 ¹ Note that Petitioner's arguments for Quiet Title are clearly maintained when there is no Chain of Title.

28 ² In an attempt to keep costs down Petitioner did not order a Trial Transcript but at this point he may order to just to
prove how unethical Attorney Fig's defense continues to be.

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Mr. Devin erroneously argues summary judgment is not proper because BONYM did not produce the original note and Deed of Trust for his inspection. BONYM's counsel agreed to produce these documents once they were in counsel's possession (See CP 122, ¶ 5; CP 306). However, the court dismissed Mr. Devin's claims before the original note and Deed of Trust were obtained by counsel.

To be clear, Petitioner argued that Summary Judgment was not proper because the Statute of Limitations was not the sole basis for his complaint. His case rested and still rests on several other legal grounds that he described in detail in his Sworn Statement filed with the court a year before Attorney Fig filed his Motion for Summary Judgment. Petitioner also submitted a motion to the Superior Court to Amend his complaint to show that the Statute of Limitations was not the sole basis for his complaint. But the Superior Court Judge denied his motion without explanation.

Furthermore, the Petitioner still has not received any opportunity to review the original note in a forensic manner as he repeatedly sought relevant Chain of Title documentation not only from the Parties in the Case at Bar as noted above, but also from the purported predecessor BoA: In point of fact Petitioner twice asked for relevant documentation pursuant to RESPA 12 U.S.C. §§ 2601 *et seq.* But alas, information was not forthcoming and so now Petitioner was compelled to draft and file suit against Countrywide/BoA and MERS in the coming week, including the following claims:

1. Tortious Interference with known contracts of house Lessors.
2. Right to Quiet Title.
3. Promissory Estoppel.
4. Violation of FDCPA for each wrongful payment received by Defendant and for any and all attempts by Defendant to collect on a false debt.
5. Intentional Infliction of Emotional Distress.
6. False Representations Concerning Title.
7. Offering False Instruments for Filing or Record
8. Violations of the Consumer Protection Act, RCW §18.86.
9. Violations of Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 *et seq./Regulation X.*

See *Devin v. BoA* RESPA/QWR lawsuit at Appendix A. There is simply no Truth to

1 benefit Respondents anywhere on the horizon of this lawsuit, period.

2 Second, with respect to the claim that the Original Note is “irrelevant” to SOL arguments
3 that may or may not be true but it’s a non sequitur because it is indeed relevant to Chain of Title,
4 an issue that is eternally ripe as noted below.

5 And remember Interestingly the Court in this Case originally sided with Appellant. See the
6 ORDER Granting Plaintiff’s requested TRO on or about April 14, 2017 (CP #40, pp 87-88). The complies
7 with *Bank of N.Y. v Alderazi* 2010 NY Slip Op 20167 [28 Misc 3d 376] April 19, 2010 and *Corrigan v.*
8 *Bank of America* (2nd Dist. Ct. App No. 2D14-3208) involving MERS yet again, as is the Case at Bar.

9 And see *BONYM v. Romero*, Docket No. 33,224 (New Mexico 2014) reversing Lower
10 Court Judgment for BONYM. The Court properly noted "Lack of Standing is a potential
11 jurisdictional defect which 'may not be waived and may be raised at any stage of the proceedings,
12 even *suasponete* by the appellate Court'" citing *Gunaji v. Macias*, 2001-NMSC-028, 31 P.3d 1008.
13 *Romero* at 5. The Court continued on to note on a substantial basis standard even, that mere
14 possession was insufficient to prove up a Chain of Title, and this was in a case in which a Note
15 was actually produced! As no purportedly original Note was produced in this case – in spite of
16 Petitioner’s repeated complaints – Petitioner is clearly in the Right and the Case must be
17 remanded with the following directives firmly in place:
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1 B. Assignment of Error II.

2 First of all, Respondent admits that Petitioner has proper allegations regarding ownership
3 of the purported loan

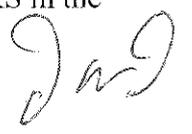
4 "Mr. Devin's allegations fact against BONYM are limited to
5 BONYM's ownership of the loan, the date of his last payment, and that the
foreclosure of his property is barred by the statute of limitations." (at 13).

6 This House was indeed gifted and Petitioner is not relying on Hearsay. He is relying on
7 the fact that he personally was given the keys to his house back without any requirement to sign
8 new note or pay any money. And secondly after giving him the keys he received absolutely no
9 correspondence from BoA or any other financial institution after the home was gifted in February
10 of 2009 until April 13, 2016 when the notice of Default was tacked to the front and back door of
11 his house. The court should note the fact that BoA and BONYM have *both* continually failed to
12 provide copies of any and all correspondence between the Parties. Between February 2009 and
13 April 16, 2016.

14 In response to the BONYM MSJ, Mr. Devin filed a three page Response Brief. CP 295-
15 297. He did not submit any admissible evidence to oppose the BONYM MSJ. Mr. Devin
16 could have submitted recorded Notices of Sale or other foreclosure- related
17 documents into the court record. He did not. More importantly, Mr. Devin failed to
18 put forth any evidence that BONYM (or anyone else) accelerated his loan. Mr. Devin
did not submit any default or demand letters from lenders or loan servicers, or any
other foreclosure notices. Indeed, Mr. Devin did not put forth *any* admissible
evidence that the balance due under the Note was accelerated, never mind the
required clear and unequivocal evidence. Not surprisingly, the appellate court record
is also devoid of this necessary evidence.

19 Here's the rub: The Notices of Sale do not explicitly deny acceleration. Further, despite
20 Respondent's promises to the Contrary Petitioner still has not received any opportunity to review
21 the original note (much less all communications from BoA/BONYM) in a forensic manner as he
22 repeatedly sought relevant Chain of Title documentation not only from the Parties in the Case at
23 Bar as noted above, but also from the purported predecessor BoA: In point of fact Petitioner
24 twice asked for relevant documentation including the complete correspondence file pursuant to
25 RESPA 12 U.S.C. §§ 2601 *et seq.* But alas, information was not forthcoming and so now
26 Petitioner was compelled to draft and file suit against Countrywide/BoA and MERS in the
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1 coming week, including the following claims:

- 2 1. Tortious Interference with known contracts of house Lessors.
- 3 2. Right to Quiet Title.
- 4 3. Promissory Estoppel.
- 5 4. Violation of FDCPA for each wrongful payment received by Defendant and for any and
- 6 all attempts by Defendant to collect on a false debt.
- 7 5. Intentional Infliction of Emotional Distress.
- 8 6. False Representations Concerning Title.
- 9 7. Offering False Instruments for Filing or Record
- 10 8. Violations of the Consumer Protection Act, RCW §18.86.
- 11 9. Violations of Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 *et*
- 12 *seq./Regulation X.*
- 13 See *Devin v. BoA* RESPA/QWR lawsuit at Appendix A. There is simply no Truth to

14 benefit Respondents anywhere on the horizon of this lawsuit, period.

15 Moving toward the alleged hearsay that was incorrectly overruled by the Lower Court, the
16 Respondent is once again issuing materially false statements. The backdrop of the 2008 Mortgage
17 Crisis is never "irrelevant" in a Foreclosure case with known robo-signers. See Petitioner's
18 Appendix B, October 2017 Sworn Statement.

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1 First of all the Court is free to take Judicial Notice of the well-known facts that BoA got
2 \$45B in Bailout money. The Associated Press is a newsworthy entity:

3 <https://www.denverpost.com/2009/12/09/bofa-repays-45b-in-government-bailout-funds/>

4 By THE ASSOCIATED PRESS

December 9, 2009 at 1:27 pm

5 **BoFA repays \$45B in government bailout funds**

6 CHARLOTTE, N.C. — Bank of America said Wednesday it has repaid the entire \$45 billion it
owed U.S. taxpayers as part of the Troubled Asset Relief Program.

7 It is also a fact that Freddie Mac and Fannie Mae suspended Foreclosures in late 2008.
8 Again, CNN is a trustworthy entity:

9 https://money.cnn.com/2008/11/20/real_estate/Fannie_suspends_foreclosures/index.htm

10 **I. FANNIE AND FREDDIE SUSPEND**
11 **FORECLOSURES**

12 **A. By halting evictions, the mortgage giants get time to
implement a recent rescue plan.**

13 By Les Christie, CNNMoney.com staff writer

Last Updated: November 20, 2008: 6:01 PM ET

14 NEW YORK (CNNMoney.com) -- Mortgage giants Fannie Mae and Freddie Mac have directed
15 their network of servicers to halt all foreclosure and eviction proceedings between Nov. 26 2008
16 and Jan. 9, 2009, meant to give a recently announced rescue plan time to work.

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18 Then as to the specific facts regarding Petitioner's home, the facts are that Petitioner was
19 actively managing his house and personally signed the purported loan agreement in November of
20 2005. He was living in the U.S. and actively managing the house during 2008 and 2009 when the
21 Bank of America attempted to sell the property in four separate, unsuccessful Trustee Sales.

22 He was physically at his house when Bank of America's Property manager came by to
23 inform him, his tenant Richard Duncan and his girlfriend that he no longer owned the house, that
24 he was then invited to leave and the Property Manger then changed the locks to prevent him from
25 entering the house again, which is a blatant violation of the DTA as noted by Attorney Ha Dao:

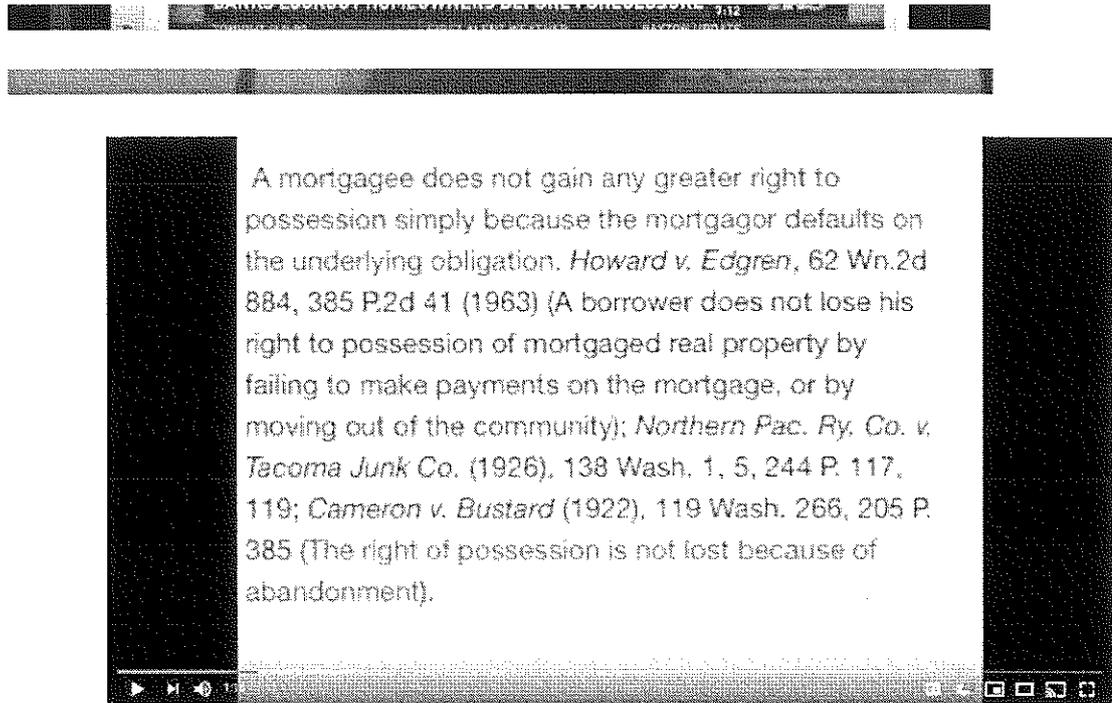
26 **"Possession prior to Foreclosure is prohibited."**
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1 Accord *Howard v. Edgren*, 62 Wn.2d 884, 385 P.2d 41 (1963).

2 <https://www.youtube.com/watch?v=vBRcNB-SjME>

3 King5 Follow Up on Unlawful Foreclosure with Attorney Ha Dao on RCW 7.28.230(1)



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15 He then went home and wrote BoA a letter in which he threatened to sue
16 them if they did not give me my house back within 15 days pursuant to RCW 7.28.230(1). Within
17 10 days of this letter the Bank of America's Property Manager called me to tell me to come to his
18 office to pick up the keys. This is not Hearsay: Petitioner was there and he personally drove over
19 to the his office and picked up the keys.

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21 When Petitioner did that the BoA property manager told him that Bank of America had
22 decided to write my loan off as a bad loan. While this is indeed Hearsay it is the type of statement
23 that is entitled to be flushed out before a Jury and not snuffed out at Summary Judgment given
24 BoA's subsequent continued waiver of payments over the next seven (7) years.
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1 Further, MTC, Di-Tech and the BoNYM violated the DTA and the Washington State
2 Consumer Protection Act in tacking a Notice Of Default to the Front and Back door of my house
3 on April 13, 2016 and then they illegally attempted to organize a Trustees Sale of my Property
4 which they scheduled with the Kitsap County Court House for January 7 of 2017 without
5 properly serving him with any notice of such a Trustee sale which is a clear violation of law.

6 *They cannot show where they complied with the law. Their statements that they sent the notices of*
7 *the impending Trustee Sale to Petitioner's last known addresses are completely false statements*
8 *as Petitioner indeed gave them his correct e-mail and mailing address two months prior and*
9 *MTC sent Petitioner both a package to his mailing address and two emails!*

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11 Lastly, Petitioner asserts that his purported loan was accelerated back when the
12 2008/2009 attempts at sale were made, *ipso facto*.

13 As to Common Law abandonment, at the time, the banking and mortgage industry
14 and put itself into such a down-spiral that that Appellant's home was worth 43% of its
15 Assessed Value in 2005: \$220,000.00 vs. \$95,000.00 in 2009. It is entirely foreseeable that
16 his Mortgagee and/or Servicer would view the purported loan as a bad loan and write it off;
17 putting it into a different tier of collections where it was lost in the shuffle as contemplated
18 by the Statute of Limitations.

19 C. Assignment of Error III.

20 As previously noted, Respondent answered one of twenty-one (21) relevant interrogatories
21 while Petitioner did his very best to answer as truthfully as possible all twenty-seven (27) of their
22 interrogatories. Significantly, Petitioner was not out on a lark on these requests, they were very
23 sensible and dispositive of the case, such as

24 * Provide the Original Wet Ink Note for forensic inspection.

25 * Who is Wayne Choe and what were his true places of employment and authorization to
26 sign for MERS?

27 * Provide a full Chain of Title (still missing despite QWR/RESPA requests hence a lawsuit)

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1 * Why Attorney Fig stated that BoA/BANA never owned the Note?

2 * Why BoA or DiTech never contacted Plaintiff between February 2009 and April 13,
3 2016?

4 * Whether or not BONYM initiated Foreclosure?

5 Note that Wayne Choe is indeed a known robo-signer implicated in RICO activity in the
6 Report on the Comprehensive Forensic Examination of the Real Property Records of Osceola
7 County FL (pp. 301-304 at Appendix C). He signed Assignment of Deed of Trust for MERS as
8 Assistant Secretary, 25 Apr 2012; He Co-signed Assignment of Mortgage with Cynthia Romo for
9 MERS as Assistant Secretary, 12 Jun 2012. He signed Assignment of Deed of Trust for MERS as
10 Assistant Secretary, 9 May 2012.

11 <https://cloudedtitlesblog.files.wordpress.com/2017/05/osceola-county-forensic-examination.pdf>

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14 **REAL PROPERTY RECORDS AND
15 THE CIRCUIT COURT RECORDS
16 OSCEOLA COUNTY, FLORIDA**

17 **PART 1 OF 2: SECTIONS 1 - 4**



22 **EXAMINATION CONDUCTED BY DK CONSULTANTS LLC
23 SAN ANTONIO, TEXAS**

24 **CFN#2013014850, electronically recorded on 01-28-2013**

25 **This appears to bring the case regarding the real property within the 5-year statute of
26 limitations for criminal prosecution of alleged violations under Florida Criminal Code
27 § 817.535 and the Florida RICO statutes for perjury.**

28 **Signor: Wayne Choe (known Bank of America employee and known robo-signer),
attempt- ing to assign the note and mortgage (which MERS could not assign the Note
the first time) to Nationstar Mortgage, LLC, to give it standing so it could foreclose on
the Martinez property in the second foreclosure case, which follows the end of this**

1 case.

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1 This document was signed under Penalty of Perjury under the laws of California. There is
2 sufficient belief that (due to the markers involved) this document was manufactured in an
3 effort to hide the real party in interest in the MERS® System) at best there is probable cause
4 for violations of Florida's RICO statute for perjury due to the apparent false and
5 misrepresentative information listed below:

6 (1) MERS cannot convey the Note as it does not have an interest in the Note;

7 (2) The servicer (Bank of America) is directing its employees to prepare and misrepresent
8 the name and address of the true "Lender" who currently owns the Note into a trust REMIC
9 that they knew or should have known had a Closing Date of March 30, 2007, over five (5)
10 years earlier;

11 (3) The employees signing this document have no apparent idea what exactly their
12 authorized capacities really are, given the nature of WITNESS F's statements under oath in a
13 deposition taken in California in November of 2014;

14 (4) The Assignor's address is really that of Metro Detective Agency in Danville, Illinois; the
15 Assignee's address is that of the Servicer (Bank of America, N.A.), who has been controlling
16 all of the loan activity while hiding behind the MERS® System; and

17 (5) There are numerous markers of robo-signing and document manufacturing (e.g.,
18 scribbled signatures, use of rubber stamps to indicate names, titles and dates).³

19 **303of4 12**

20 *****

21 Again as noted, Attorney Fig told the court under oath that other financial institutions acting on
22 behalf of the BoA sent Petitioner letters demanding payment during the period from February of 2009 and
23 April 13, 2016. Appellant rightfully believes that Attorney Fig has committed Perjury or at least a
24 material misrepresentation to this Court. The Court must now compel Mr. Fig to produce even one such
25 letter of demand from any financial institution that was legally served on Appellant between February
26 2009 and April 13, 2016?

27 ³ Once again, in case Respondent missed it, Standing is a perpetually live matter that can be addressed at any time,
28 even sua sponte from the Court of Appeals. *BONYM v. Romero*, Docket No. 33,224 (New Mexico 2014) citing
Gunaji v. Macias, 2001-NMSC-028, 31 P.3d 1008. *Romero* at 5.

1 D. Assignment of Error IV.

2 Defendants jointly and severally violated the DTA on several fronts. Again:

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

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

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

15 Of course the sought Discovery would have proved the negative but the Lower Court
16 wrongfully denied same.

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

21 Moreover, by taking possession of Petitioner's home prior to Foreclosure the Respondents
22 jointly and severally violated the DTA there too, as noted above because Petitioner was
23 physically at his house when Bank of America's Property manager came by to inform him, his
24 tenant Richard Duncan and his girlfriend that he no longer owned the house, that he was then
25 invited to leave. The Property Manger then changed the locks to prevent him from entering the
26 house again, which is a blatant violation of the DTA as noted by Attorney Ha Dao because the
27 DTA cross-references RCW 7.28.230: "**Possession prior to Foreclosure is prohibited.**"

28 Accord *Howard v. Edgren*, 62 Wn.2d 884, 385 P2nd 41 (1963)

<https://www.youtube.com/watch?v=vBRcNB-SiME>

King5 Follow Up on Unlawful Foreclosure with Attorney Ha Dao on RCW 7.28.230(1)



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2 III. Conclusion and Sought Relief.

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

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

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

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

- 24
25 1. Produce the original signed note within 30 days or face perjury charges for saying directly
26 to the Superior Court Judge on December 14th, 2018 that his client has possession of the original
27 signed note and he, Attorney. Fig could produce it within two weeks of being asked to do so.
28 2. Either Respondent Provide the Appellate Court with even one letter properly served on the

1 Plaintiff which demands that he start making payments on the note or be foreclosed against
2 during the time period of from February of 2009 to April 13, 2016 or again face charges of
3 Perjury.

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

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

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

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

28 7. Finally I request the Court's assistance to get the BoA to respond to my RESPA request
which was duly served on them this past July 3, 2018 without a response from them to date
(Appendix A).

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 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 provided his

D h 9

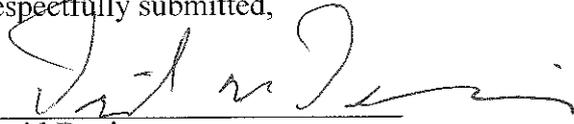
1 client via phone and e-mail twice two months prior to the day that MTC send out their notices of
2 the impending Trustee Sale.

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

- 6 1. BONYM does have the original signed note.
- 7
- 8 2. That Mr Fig did hire a title company to search for the four notices of Trustee Sales that took
9 place in 2008 and 2009.
- 10 3. If Mr. Fig can produce even one letter demanding payment on my loan properly served on me
11 by the BoA or any other financial institution during the time period from February of 2009 until
12 April 13, 2016.
- 13 4. If the wire transfers show that the BONYM did pay more than a US dollar for my note.
- 14 5. If the MTC did properly serve me with legal notices about the January 6, 2017 Trustee sale to
15 the e-mail address or mailing address that I gave them in May and again in June of 2016 two
16 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.

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

19 Respectfully submitted,

20 

21 David Devin

22 December 2, 2019

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APPENDIX A

DAVID W. DEVIN

KITSAP CASE NO. 17-2-00144-1

Vs.

Court of Appeals No. 53241-7

MTC FINANCIAL ET AL.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

DAVID W. DEVIN. An individual,) No:
)
Plaintiff,) SUMMONS
)
vs.) JUDGE _____
)
COUNTRYWIDE FINANCIALS)
DBA BANK OF AMERICA ,)
And)
MORTGAGE ELECTRONIC REGISTRATION)
SYSTEMS, INC., a corporation;)
MERSCORP HOLDINGS, INC., a corporation;
)
Defendants.)

To: Defendants, above-named:

A lawsuit has been started against you in the above entitled court by the above
-named Plaintiff acting pro-se. The Plaintiff’s claims are stated in the written
Verified Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Verified
Complaint by stating your defense in writing and serve a copy upon the Plaintiff
within **twenty (20) days** after the service of this Summons , excluding the day of
of service or a default judgment may be entered against you without further notice.

A default judgment is one where Plaintiff is entitled to what is asked for in the
Verified Complaint because you have not responded. If you service a notice of
appearance on the Plaintiff, you are entitled to notice before a default judgment may
be entered. The plaintiff agrees to accept service via the e-mail address shown below
with the condition that if the Plaintiff does not acknowledge receipt of service within
48 hours by return e-mail then the mailing address shown below must be used to
achieve service.

The plaintiff intends to file this lawsuit with the court within the next 14 days and
will serve you with the filed copy. If you wish to seek the advice of an attorney in this matter you
should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to Rule 4 of the Superior Court Rules of the State of
Washington.

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Dated this _____ day of November , 2019 by
David W. Devin, acting pro se
e-mail address for service = david_devin11676@yahoo.com
mailing address for service = David W. Devin
So 3B Ngach 50, Ngo 1194 Duong Lang
P. Lang Thuong, Hanoi, Vietnam
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP

DAVID W. DEVIN. An individual,) No:
)
Plaintiff,) SUMMONS
)
vs.) JUDGE _____
)
COUNTRYWIDE FINANCIALS)
DBA BANK OF AMERICA ,)
And) COMPLAINT
MORTGAGE ELECTRONIC REGISTRATION)
SYSTEMS, INC., a corporation;)
MERSCORP HOLDINGS, INC., a corporation;
)
Defendants.)

COMES NOW the Plaintiff, acting pro-se for cause of action against the Defendants or any of them, complains and alleges as follows:

PARTIES

1. Plaintiff, David W. Devin, is a single man with property in the County.
- 2a. Defendant, Country Wide Financials allegedly was acquired in 2008 by the Bank of America and is now doing business as the Bank of America. The Bank of America is a corporation registered to conduct substantial Business in the State of Washington and has several branch offices in Kitsap County.
- 2b. Defendant Mortgage Electronic Registration Systems, Inc. (“MERS”) is a Delaware Corporation doing business in Pierce County, Washington, and has its principal executive offices at 1818 Library Street, Suite 300 Reston, Virginia. MERS’ is identified as beneficiary in Plaintiff’s security instrument. Based on this representation, MERS purports to be a DTA beneficiary in land records of Washington for loans registered on the MERS System. MERS and its members use MERS’ status as a DTA beneficiary to affect changes in Washington’s public record and land records.

1
2 2c. Defendant MERSCORP Holdings Inc., FKA MERSCORP Inc. (MERSCORP) is a
3 Delaware Corporation doing business in Pierce County, Washington, and has its principal
4 executive offices at 1818 Library Street, Suite 300 Reston, Virginia. MERSCORP is the parent
5 company and sole shareholder for MERS and owns and operates the MERS® System.
6 MERSCORP enters into agreements with financial institutions and other, including individuals
7 and entities who are Washington citizens, to build and facilitate the operation of a membership
8 organization engaged in various commercial endeavors relating to real property in Washington.
9

10 VENUE AND JURISDICTION

11
12 3. This Court has jurisdiction over this cause and venue is proper with this Court
13 as all acts complained herein involve real property situated in Kitsap County, Washington.

14 FACTS

15 4. Plaintiff owns and has an interest in the property commonly known as 1710
16 Wheaton Way, Bremerton, Washington, (hereinafter, the “Subject Property”), the
17 legal description of which is as follows:
18

19 THE NORTH 2 AND ½ FEET OF LOT 14 AND ALL OF LOTS 15
20 AND 16 BLOCK 4, RATHER’S FIRST ADDITION TO DECATUR,
21 ACCORDING TO THE PLAT RECORDED VOLUME II OF PLATS,
22 PAGE 77 RECORDS OF KITSAP COUNTY, WASHINGTON
23 Kitsap County Tax Parcel Number : 4985-004-014-0007.

24 5. The Plaintiff allegedly executed a Promissory Note dated on or about November 4, 2005,
25 in the face value of \$153,750.00 (herein “Promissory Note”), to America’s
26 Wholesale Lender, a Corporation (herein “Lender”). The Plaintiff also allegedly executed a
27 Deed of Trust dated November 4, 2005, recorded with the Kitsap County Auditor on
28 November 9, 2005, under File no. 200511090230, regarding the Subject Property

1 wherein America's Wholesale Lender was the Lender, Mortgage Electronic Registration
2 Systems, Inc, ("MERS") was the Beneficiary and Landsafe Title was the
3 Trustee (herein "DOT").

4
5 6. Attached hereto as Exhibit A is an unofficial photo-copy of
6 the Deed of Trust. In 2012 the Washington State Supreme Court Ruled that MERS
7 cannot be the Beneficiary of a real estate loan. Furthermore, if the lender cannot
8 produce a signed original copy of the Note and Deed of Trust, the Lender cannot
9 foreclose against the borrower. The plaintiff does not believe that the defendant can
10 produce for the court to see the original signed copy of the Note and Deed of Trust as Counsel
11 for a related entity stated he would produce the Original Note in Open Court but reneged and
12 failed to do so.

13
14 7. For the record it should be noted that the loan amount mentioned above was given
15 based upon 70% of the appraised value of the house or \$220,000 in 2006.
16 In 2009 the vale of the house was no more than \$95,000 according to local realtors.

17 8. In or about 2007 the Plaintiff stopped making payments on the Note and has not
18 made a payment since then- or more than 13 years.

19 9. In 2008.the defendant foreclosed against Plaintiff. They made four attempts to
20 sell the Subject Property.

21
22 10. The first Trustee Sale was held on January 11, 2008 with no buyer showing any
23 interest.

24 11. The second Trustee Sale was held on April 11, 2008, again with no buyer
25 showing any interest.

26 12. The third Trustee Sale was held on November 1, 2008, again without a buyer
27 stepping forward.
28

1 13. The fourth Trustee Sale was held on February 13, 2009, again without a buyer.
2 14. Such dates are all verifiable in the official records of Kitsap County.
3 15. After four failed Trustee Sales the Defendant took possession of the Subject Property.
4 Defendant hired a property manager who changed the locks and informed the
5 Plaintiffs' tenant, Mr. Richard M. Duncan that the Plaintiff no longer owned the
6 house. The plaintiff immediately wrote a letter to the Defendant citing numerous
7 breaches of the law and threatening a lawsuit if the Subject Property was not
8 returned to the Plaintiff within two weeks.
9
10 16. In fact, within 10 days the property manager called the Plaintiff and told him to come to
11 his office to pick up the keys to the Subject Property. He told the Plaintiff that the Defendant
12 had decided to write off the loan as a bad debt.
13
14 17. Note that the plaintiff was given the subject property back *without the requirement to*
15 *sign a new note or pay any money.*
16
17 18 This act by the Defendant gifted the property to the plaintiff and thus
18 vitiated the loan. Supporting this argument is the fact that the Defendant then walked away
19 and has never made an attempt to contact the plaintiff again.
20
21 19. After getting the keys back – and after losing substantial rental opportunities -- the
22 Plaintiff returned to his house and informed his tenant, Mr. Richard Duncan of what had just
23 happened. Mr, Duncan then called the property manager who confirmed that the Defendant,
24 Bank of America had in fact given the Subject Property back to the Plaintiff, David W.Devin.
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20. The plaintiff continued to rent out the subject property from mid -February 2009 without getting any notices from any bank or financial institution for the next 7 years until April , 13, 2016 when without prior notice a Notice of Default was tacked to the front and back door of his house by MTC Financials and Di-Tech Financials acting under the authority of the Bank of New York Mellon.

21. After careful review of this Notice of Default, there appears to be no clear Chain of Title between the original lender and the BONYM. In fact the BoA is not mentioned.

22. Furthermore the “Assignment” of the note and deed of Trust that was allegedly made on October 18, 2011 appears to be fraudulent for several reasons:

23. First there is no letterhead.

24. Second the person who signed for MERS was at that time an employee of the Defendant and as such, he was not authorized to sign it.

25. Third, the loan as stated above had already been waived and invalidated by the Defendant so any transfer or assignment at that time was illegal.

26. Moreover, Plaintiff questions the flow of money between BoA and BONYM in this transaction. The Plaintiff has reason to believe that BONYM paid nothing for his note and in fact was paid an unknown sum by BoA to take his note and many other worthless notes off of BoA’s books. In forthcoming Discovery Demands Plaintiff will demand to see the money wire transfers between the BoA and BoNYM on October 18, 2011 so the court and the plaintiff will know who paid whom in this fraudulent transaction.

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27. Defendant is aware of the fatal defects in their Chain of Title and that's why they have now twice refused to provide answers to Qualified Written Requests (QWR's) in violation of Real Estate Settlement Procedures Act (RESPA 12 U.S.C. § 2605(e) and Regulation X at 24 C.F.R. § 3500, and The Gramm Leach Bliley Act; The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub.L. 111-203, H.R. 4173; The Home Ownership Equity Protection Act; The Fair Debt Collection & Reporting Act; The Consumer Protection Act; et al.

- a) July 2019 No Response as of October 23, 2019.
- b) September 2019 No Response as of October 23, 2019.

28. In sum: Defendant does not have, nor did it ever have the original signed Note and Deed of Trust. MERS cannot be a beneficiary of a loan in Washington State. Further, the assignment of my loan on October 18, 2011 to the BONYM was illegal and fraudulent. Lastly, Defendant surrendered the House because it was aware that it could not perfect Title.

29. Neither Bank of New York Mellon or MTC financial nor BoA or any other financial or mortgage institution demonstrated a Chain of Title or Custody of Title against Plaintiff – including proof of monies paid and production of the Actual Note -- sufficient to confer Standing to Foreclose on real property owned by David W. Devin.

30. At the December 14th hearing the Court asked Mr. Fig how long he would need to produce the Original Note and he promptly replied, "Within two weeks of the courts request."⁶ Plaintiff stated in his motion for reconsideration on another case that Mr. Fig was knowingly committing perjury and suggested that the judge give Mr. Fig 30 days to produce the original signed note. Mr. Fig got away with renegeing on this Promise made in Open Court.

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

9 "To have a proper assignment of a mortgage by an authorized agent, a power of attorney is
10 necessary to demonstrate how the agent is vested with the authority to assign the mortgage."
11 ([*3]*HSBC Bank USA, N.A. v Yeasmin*, 19 Misc 3d 1127[A], 2008 NY Slip Op 50924[U], *3
12 [2008].) "No special form or language is necessary to effect an assignment as long as the language
13 shows the intention of the owner of a right to transfer it." (Id., quoting *Tawil v Finkelstein*
14 *Bruckman Wohl Most & Rothman*, 223 AD2d 52, 55 [1st Dept 1996] and citing *Suraleb,*
15 *Inc. v International Trade Club, Inc.*, 13 AD3d 612 [2d Dept 2004].)

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

20 Plaintiff submitted no other documents which purport to authorize MERS to assign or otherwise
21 convey the right of the mortgagee to assign the mortgage to another party. A party who claims to
22 be the agent of another bears the burden of proving the agency relationship by a
23 preponderance{**28 Misc 3d at 380} of the evidence (*Lippincot v East Riv. Mill & Lbr. Co.*,
24 79 Misc 559 [1913]), and "[t]he declarations of an alleged agent may not be shown for the purpose
25 of proving the fact of agency." (*Lexow & Jenkins v Hertz Commercial Leasing Corp.*, 122
26 AD2d 25 [2d Dept 1986]; see also *Siegel v Kentucky Fried Chicken of Long Is.*, 108 AD2d 218
27 [2d Dept 1985]; *Moore v Leaseway Transp. Corp.*, 65 AD2d 697 [1st Dept 1978].) "[T]he
28 acts of a person assuming to be the representative of another are not competent to prove the
agency in the absence of evidence tending to show the principal's knowledge of such acts or assent
to them." (*Lexow & Jenkins v Hertz Commercial Leasing Corp.*, 122 AD2d at 26, quoting
2 NY Jur 2d, Agency and Independent Contractors § 26.) 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.

29 Accord *Corrigan v. Bank of America* (2nd Dist. Ct. App No. 2D14-3208.

30 <https://law.justia.com/cases/florida/second-district-court-of-appeal/2016/2d14-3208.html>

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

1 33. The practice of endorsing the Note in blank used by MERS to claim and record
2 beneficiary status for its members makes reconstruction of a chain of title impossible without
3 relying on the unauthenticated and unmonitored MERS records.¹

4 34. On information and belief, Defendants knowingly recorded or caused to be recorded the
5 DOT, which is a false instrument because it names as beneficiary MERS, which is not and cannot
6 be a beneficiary within the meaning of RCW 61.24.005(2).

7 35. As a result of Defendants' Joint and Several Misconduct Plaintiff has suffered substantial
8 mental, emotional, physical and pecuniary harm, continuing to this day and certain not to
9 terminate or reduce in the foreseeable future.

10 36. A Jury Demand shall issue shortly.

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27 ¹ See, e.g., MERSCORP and MERS Consent Order AA-EC-11-20 available at [http://www.occ.gov/news-](http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47h.pdf)
28 [issuances/news-releases/2011/nr-occ-2011-47h.pdf](http://www.occ.gov/news-issuances/news-releases/2011/nr-occ-2011-47h.pdf); MERSCORP and MERS Consent Order is jointly issued with the
Board of Governors of the Federal Reserve System, Washington, D.C.(11-051-B-SC-1 and 11-051-B-SC-2), the
Federal Deposit Insurance Corporation (FDIC-11-194b), the Office of Thrift Supervision (11-040), and the Federal
Housing Finance Agency (EAP-11-01-01). Accessed December 23, 2014.

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CAUSES OF ACTION

- 1. Tortious Interference with known contracts of house Lessors.
- 2. Right to Quiet Title.
- 3. Promissory Estoppel.
- 4. Violation of FDCPA for each wrongful payment received by Defendant and for any and all attempts by Defendant to collect on a false debt.
- 5. Intentional Infliction of Emotional Distress.
- 6. False Representations Concerning Title.

Under RCW 9.38.020, “Every person who shall maliciously or fraudulently execute or file for record any instrument, or put forward any claim, by which the right or title of another to any real or personal property is, or purports to be transferred, encumbered or clouded, shall be guilty of a gross misdemeanor.”

Based on the facts alleged above, Defendants violated RCW 9.38.020 when they maliciously and/or fraudulently executed, filed, and/or recorded the DOT, and/or other documents by which Plaintiff’s right or title to the Property was, or purported to be transferred, encumbered or clouded.

Defendants’ violation of RCW 9.38.020 has actually and proximately caused Plaintiff injuries, including, but not limited to lost time and income, distraction, investigation and litigation costs including attorney fees, damages, and special damages in such amounts as will be proved at trial, as well as additional damages, which also will be proved at trial.

7. Offering False Instruments for Filing or Record

RCW 40.16.030 provides that “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.”

Based on the facts alleged above, Defendants violated RCW 40.16.030 by knowingly recording or causing to be recorded the DOT, which is a false instrument because it names as beneficiary MERS, which is not and cannot be a beneficiary within the meaning of RCW 61.24.005(2).

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8. Violations of the Consumer Protection Act, RCW §18.86.

Based on the facts alleged above, the Defendants violated Washington’s Consumer Protection Act, Ch. 18.86, RCW (the “CPA”). The Defendants’ CPA violations include, but are not limited to, violations of Washington’s Deeds of Trust Act, Ch. 61.24, RCW (the “DTA”). The Defendants violated multiple provisions of the DTA, including but not limited to: RCW 61.24.005(2) (acting as beneficiary by an entity which does not meet the statutory requirements to be lawful DTA beneficiary), RCW 61.24.010(2) (purporting to appoint a successor trustee by an entity which is not a lawful DTA beneficiary), RCW 61.24.010(3) (the owing by a trustee of a fiduciary duty or fiduciary obligation to the grantor or other persons having an interest in the Property subject to the DOT), RCW 61.24.010(4) (breach by the trustee of the duty of good faith which it owes to the borrower, i.e. Plaintiff) and RCW 61.24.030 (failure to meet the statutory requisites prior to scheduling a Trustee’s Sales and/or recording a Notice of Trustee’s Sale). Based on the facts alleged above, the Defendants are also liable under the CPA for violations of Washington’s Consumer Loan Act and Collection Agency Act.

9. Violations of Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601 *et seq./Regulation X*.

RESPA establishes the procedures a loan servicer must follow, and certain actions it must take, upon receiving a OWR from a borrower. 12 U.S.C. § 2605(e). Section 2605(e) of the RESPA requires a loan servicer to send a written acknowledgement of the borrower's OWR within five days and a written response to the OWR within thirty days. 12 U.S.C. § 2605 (e)(1)(A). (e)(2). Failure to adequately respond to a OWR results in liability "to the borrower for each such failure in . . . an amount equal to the sum of any actual damages to the borrower as a result of the failure. . . ." 12 U.S.C. § 2605(f)(1)(A). To succeed on a claim under § 2605(e), Plaintiff "must show: (1) that Defendant is a servicer; (2) that Defendant received a OWR from the borrower; (3) that the OWR related to the servicing of the loan; (4) that Defendant failed to respond adequately; and (5) that Plaintiff [is] entitled to actual or statutory damages." *Buckentin v. SunTrust Mortg. Corp.*, [928 F.Supp.2d 1273](#), 1292 (N.D. Ala. 2013).

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PRAYER FOR RELIEF

WHEREFORE, for the reasons stated herein, Plaintiff prays for the following relief:

- A. For Judgment granting quiet title to the Plaintiff.
- B. For the damages of lost rent = to 5 months \$900 = \$13,500
- C. For \$500,000 in damages that the Plaintiff has suffered in emotional stress over the past 13 years. Please see attachment for a supporting case.
- D. For Plaintiffs reasonable attorney's fees and costs, as allowed or required by statute, contract or common law.
- E. For pre and post Judgment Interest.
- F. For Punitive Damages.
- G. For Declaratory Judgment.
- H. For Preliminary and Permanent Injunctive Relief.
- I. For any such other and further relief as this Court may deem just.

Signed this _____ day of November 2019

David W. Devin Pro Se
e-mail address for service = david_devin11676@yahoo.com
mailing address for service = David W. Devin
So 3B Ngach 50, Ngo 1194 Duong Lang
P. Lang Thuong, Hanoi, Vietnam
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CERTIFICATE OF CONSTRUCTIVE SERVICE

I the undersigned swear that I served a courtesy copy of this Complaint by email to:

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

This ____th Day of November 2019

David Devin

And to:

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

This ____th Day of November, 2019

David Devin

THERE WILL ALSO BE ACTUAL SERVICE IN COMPLIANCE WITH STATE RULE

APPENDIX B

DAVID W. DEVIN

KITSAP CASE NO. 17-2-00144-1

Vs.

Court of Appeals No. 53241-7

MTC FINANCIAL ET AL.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KITSAP

DAVID W. DEVIN) Case No. 17-2-00144-1

Plaintiff)

vs) SWORN STATEMENT

MTC FINANCIALS, INC., et al,) OF THE PLAINTIFF

Defendants

I, David W. Devin being of sound mind, do hereby swear under oath and penalty of perjury that the following statements are true to the best of my knowledge.

I obtained a loan from America's Whole Sale Lender for \$153,750 on November 5, 2005. This was 70% of the appraised value of my house at that time. In 2007 the Bank of America bought America's Wholesale Lender and in 2008 the BoA foreclosed against me. They made four attempts to sell my house. The first Trustee Sale was on Jan. 11, 2008; the second Trustee Sale was on April 22, 11, 2008; the third Trustee Sale was on November 1, 2008 and the fourth Trustee Sale on Feb. 13, 2009. Please see the attached official records of Plaintiff's Sworn Statement—page 1



1. these four attempted sales. Actually, no one bought my house. So the BoA took
2. possession of my house located at 1710 Wheaton Way, Bremerton Wash. 98310,-
3. almost immediately after the Feb. 13, 2009 Trustee Sale. They hired a property
4. manager who changed the locks and informed my tenant, Richard Duncan, that I no
5. longer owned the house. I then wrote the BoA a letter, which should be in their files,
6. in which I threatened them with a lawsuit if they did not give me my house back
7. within 2 weeks. Within 10 days of the mailing of my letter, their property manager
8. called me to ask me to come pick up the keys. He told me that the Bank of America
9. had decided to just write off my loan as a bad loan. Let me stress here that he did
10. not ask me to sign a new note or give the BoA any money as a condition for giving
11. me the keys. So to me, that was an absolute gift. And it is common law that once
12. you give someone a gift you cannot ask for it back. I immediately drove to my
13. house and informed my tenant, Richard Duncan, what had just happened. He
14. He called the BoA's Property Manager in front of me to confirm. The BoA did not
15. contact me again nor did any other bank until MTC Financial, Inc., Ditech, and
16. BONYM caused a Notice of Default to be tacked to the front and back of my house
17. on April 13, 2016, which is 8 years 3 months after the BoA gave me my house. I will
18. ask Richard Duncan to testify that my story is true. It is also strange that the BoA is
19. not listed in the Notice of Default. It is almost like they are trying to hide the fact
20. that they sold the BONYM a package of written off, worthless loans on October 18,
21. 2011. I would also like to know why it took the BONYM 5 years and 6 months to
22. contact me after they bought my loan? Now why would the BoA give me my house
23. back after taking possession of it? That is a very good question. And here is the
24. answer.



1. The facts are that in 2008 the BoA issued 3.1 million foreclosure notices and
2. repossessed 861,664 houses all across the USA. This huge number of houses
3. which needed repair work plus the payments of property taxes and insurance
4. put their entire financial structure in grave peril. So they begged for and got
5. \$25 billion in Federal Bailout funds in October of 2008. Then they realized that
6. even this huge amount of bail out funding was not enough. So in November of
7. 2008, just before the time when my bank gave me and no doubt many thousands
10 of others their houses back, they also informed the Feds that if they did not get
11 an additional \$20 Billion in January of 2009, they faced bankruptcy. And the
12 Feds promptly gave them this requested \$20 Billion in January of 2009 for a
13 total bailout loan of \$45 Billion. You can read all about this in several New York
14 Times articles which are posted on the internet. So were they desperate or
15 what? I submit that the Bank of America in February of 2009 had no choice.
16 They had to write off my loan and many thousands of other loans or go
17 bankrupt. It is also interesting to note that both Freddie Mac and Fannie May
18 suspended all foreclosures in the USA on November 26, 2008. This suspension
19 of all foreclosures in the USA remained in effect until January 31, 2009. So
20 would you be willing to agree that February of 2009 was a very unusual point
21 in our history and, perhaps, I am telling the truth when I say that the BoA in fact
22 gave me my house as a gift in February of 2009 and simply walked away from it?
23. Opposing attorney, Mr. Fig, has tried to discredit my story. He has written me
Plaintiff's Sworn Statement—page 3



1. "Banks don't normally give back houses after taking possession." To which I
2. replied, "Banks don't usually have to beg the Fed's for \$45 Billion in bailout funds
3. or go bankrupt." Mr. Fig has also written to me recently that he has personally
4. searched the Kitsap County Records Office and could not find any records of the
5. four Trustee Sales mentioned above. And he also asked a title company to
6. conduct a search and they could not find any recordings of any such Trustee
7. Sales. However, on Monday, Oct. 2, 2017, my 72-year-old sister went to the Kitsap
8. County Records Office and, in her words, "found them easily." Let me further
9. point out that when I originally obtained the loan, in November, 2005, my house
10. was appraised at \$220,000. But by 2008 the bottom fell out of the housing
11. market and suddenly my house was only worth \$95,000. So my house and most,
12. if not all, of the houses repossessed by the BoA in 2008 were seriously under
13. water and not sellable even at a Trustee Sale. So the BoA was forced to reduce its
14. inventory of bank-owned houses in any way possible, including giving them back
15. to their former owners.

16. In summary, I think it should be clear that the BoA was forced to give me my
17. house when they were facing bankruptcy in 2009 and it was a criminal act to
18. later sell my loan, and I assume many other worthless loans on Oct. 18, 2011
19. to the BONYM.

20. I respectfully ask the Court to please look at this nefarious transaction closely.
21. I would like to know how many loans did the BoA sell to the BONYM on Oct. 18,
22. 2011? How much did the BONYM pay for these loans? And how much money
23. has the BONYM been able to collect on these loans? What has been their



1 ROI? I believe that a close examination of this nefarious transaction and the lack
2 of the ability of the BONYM to collect any money on these loans will support my
3 contention that the BoA knowingly sold their inventory of bad loans to the
4 BONYM. Therefore I hope that the court will agree that the BoA has committed
5 a serious crime. And that the BONYM should go after the BoA and not me.

6

7 The Washington State Office of Financial Institutions informed me on September
8 27., 2017 that they will conduct an investigation into whether MTC Financials and
9 Di-Tech broke the law, i.e. The Consumer Protection Act in organizing a Trustee
10 Sale without going through any of the procedures required by this Act between
11 April 13, 2016 and January 6, 2017. In fact, they did not even give me a Notice
12 Of this Trustee Sale date even though I had given both MTC Financials and
13 Di-Tech my mailing address in Hanoi and my e-mail address six months prior to
14 the Trustee Sale and they had sent me both a package to my home here in
15 Hanoli and at least one e-mail to answer questions I had asked of them.

16 .The Washingto State Office of Financial Institutionss informed me in the same e-
17 mail that their investigation will take from 4-6 weeks to complete. I therefore

18 request the Court to please do not hold any further hearings on this case until
Plaintiff's Sworn Statement—page 5

A handwritten signature in blue ink, appearing to be 'J. M. J.', is located in the bottom right corner of the page.

1. their investigation is completed.
- 2.
3. I pray the Court to please do not make me make any payments on a loan which
4. the BoA wrote of as a bad loan in February 2009,- if not on paper then through
5. through their actions by giving me the keys to the house after taking possession
6. without asking me to sign a new note or asking me for any money or other
7. consideration and then simply walking away from it and never contacting me again
8. until they criminally sold my worthless loan to the BONYM on October 18, 2011.
- 9.
10. Again, I swear under oath and penalty of perjury that the above statements are
11. true and factually correct to the best of my knowledge.
- 12.
- 13.
14. Prepared and signed in Hanoi, Vietnam on the 17th day of October, 2017
15. 
16. David W. Devin
17. Skype= David.Devin7
18. e-mail= david_devin11676@yahoo.com
- 19.
- 20.
- 21.
- 22,

APPENDIX C

DAVID W. DEVIN

KITSAP CASE NO. 17-2-00144-1

Vs.

Court of Appeals No. 53241-7

MTC FINANCIAL ET AL.

Omitted per directive of the Court. At Hearing, Petitioner will request that the Court take Judicial Notice of recently-discovered evidence that was not previously discovered despite due diligence.

Said evidence being found in a Forensic Examination by an uninterested Party report for the Circuit Court of Osceola County, FL showing that Wayne Choe, an operative in the case at bar -- is a known robo-signer who was found to be without authority to transfer or to assign Notes or Mortgages.

This affects Standing to Sue and this Court is fully authorized to raise that issue at any point in time as thoroughly outlined in Petitioner's Briefings.

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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 2nd Day of December 2019

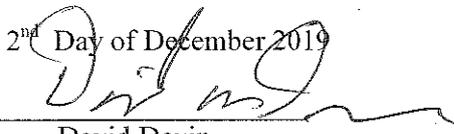


David Devin

And to:

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

This 2nd Day of December 2019



David Devin

