

**FILED
Court of Appeals
Division II
State of Washington
3/13/2020 3:17 PM**

Court of Appeals No. 53772-9-II
Trial Court No. 17-2-00504-7

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

US BANK NATIONAL ASSOCIATION AS LEGAL TITLE
TRUSTEE FOR TRUMAN 2016 SC6 TITLE TRUST,
its successors in interest and/or assigns,

Plaintiff-Respondent,

v.

TARMO PAUL ROOSILD; SAMANTHA CASTRONOVO;
OCCUPANTS OF THE PREMISES,

Defendants-Appellants.

BRIEF OF RESPONDENT IN OPPOSITION

MICHAEL J. FARRELL, WSBA No. 18897
DAVID W. CRAMER, WSBA No. 49566
MB LAW GROUP LLP
Attorneys for Plaintiff-Respondent
117 SW Taylor Street, Suite 200
Portland, OR 97204
Telephone: 503-914-2015

TABLE OF CONTENTS

I. INTRODUCTION1

II. ASSIGNMENT OF ERROR2

III. STATEMENT OF THE CASE.....2

IV. ISSUES4

 The trial court did not err in granting summary judgment to
 Plaintiff.4

V. SUMMARY OF ARGUMENT4

VI. ARGUMENT5

 A. Standard of Review5

 B. Pre-Acceleration Notice, Even Though Not Required, Was
 Properly Provided6

 C. The Terms of the Deed of Trust and Note Are Not Conditions
 Precedent to a Judicial Foreclosure.....10

 D. US Bank is Entitled to Reasonable Attorneys’ Fees and Costs
 and Defendants’ Request For Fees and Costs Should be
 Denied.....16

VI. CONCLUSION.....17

TABLE OF AUTHORITIES

CASES

<i>Barkley v. Greenpoint Mortgage Funding, Inc.</i> , 190 Wn. App. 58, 358 P.3d 1204 (2015)	7
<i>Blair v. Northwest Trustee Services, Inc.</i> , 193 Wn. App. 18, 372 P.2d 127 (2016)	7
<i>Brown v. Washington State Dept. of Commerce</i> , 184 Wn.2d 509, 359 P.3d 771 (2015)	7
<i>Deutsche Bank National Trust Company v. Slotke</i> , 192 Wn. App. 166, 367 P.3d 600 (2016)	7
<i>Edmundson v. Bank of America</i> , 194 Wn. App. 920, 378 P.3d 272 (2016)	17
<i>Glassmaker v. Ricard</i> , 23 Wn. App. 35, 593 P.2d 179 (1979)	9, 14
<i>Grimwood v. Univ. of Puget Sound</i> , 110 Wn.2d 355, 753 P.2d 517 (1988)	6
<i>Guillen v. Contreras</i> , 169 Wn.2d 769, 238 P.3d 1168 (2010)	16
<i>Hudson v. Hapner</i> , 170 Wn.2d 22, 239 P.3d 579 (2010)	16
<i>LaMon v. Butler</i> , 112 Wn.2d 193, 770 P.2d 1027, <i>cert. denied</i> , 493 U.S. 814, 110 S.Ct. 61, 107 L.Ed.2d 29 (1989)	5
<i>Mut. Sec. Fin. v. Unite</i> , 68 Wn. App. 636, 847 P.2d 4 (1993)	7
<i>Parker Estates Homeowners Ass'n v. Pattison</i> , 198 Wn. App. 16, 391 P.3d 481 (2016)	17
<i>Schaaf v. Highfield</i> , 127 Wn.2d 17, 896 P.2d 665 (1995)	8

<i>Seven Gables Corp. v. MGM/UA Entm't Co.</i> , 106 Wn.2d 1, 721 P.2d 1 (1986).....	5, 6
<i>Thompson v. Everett Clinic</i> , 71 Wn. App. 548, 860 P.2d 1054 (1993).....	9
<i>Viking Bank v. Firgrove Commons 3, LLC</i> , 183 Wn. App. 706, 334 P.3d 116 (2014).....	13
<i>Weinberg v. Naher</i> , 51 Wash. 591, 99 P. 736 (1909).....	14, 15
<i>Weyerhaeuser Co. v. Commercial Union Ins. Co.</i> , 142 Wn.2d 654, 15 P.3d 115 (2000).....	13
<i>Young v. Key Pharm.</i> , 112 Wn.2d 216, 770 P.2d 182 (1989).....	8

STATUTES

RCW 61.12	13
RCW 62A.3–205(b).....	7

RULES

CR 3	14
RAP 10.3(b)	2
RAP 14.2.....	16, 17
RAP 18.1.....	17

I. INTRODUCTION

Plaintiff-Respondent US Bank National Association as Legal Title Trustee for Truman 2016 SC6 Title Trust (“US Bank”) respectfully asks this Court to affirm the trial court’s order granting US Bank’s motion for summary judgment. This case relates to the judicial foreclosure of Defendants-Appellants’ Tarmo Paul Roosild and Samantha Castronovo’s (“Defendants”) interest in certain real property. US Bank is the holder of the note and the deed of trust. Defendants defaulted on their loan obligations, and US Bank commenced a judicial foreclosure action in Kitsap County. Defendants admit that they are in default on their obligations under the Note, and admit that they received a notice of intent to accelerate prior to the commencement of the judicial foreclosure action. Defendants, however, erroneously contend that the notice of intent was not given to them by the proper party as required under the Deed of Trust.

The trial court granted US Bank’s Motion for Summary Judgment. The trial court found that there was no genuine issue of material fact precluding summary judgment, and that the pre-acceleration language in the Deed of Trust was inapplicable in a judicial foreclosure.

II. ASSIGNMENT OF ERROR

US Bank does not assign error to the trial court. RAP 10.3(b). The trial court did not err in granting US Bank's Motion for Summary Judgment and Decree of Foreclosure.

III. STATEMENT OF THE CASE

Defendants purchased the real property at 20250 Bond Road, Poulsbo, Washington (the "Property") in 1993. Clerk's Papers ("CP") 117. In 2006, Defendants signed and delivered a promissory note ("Note") to Bank of America N.A. ("BANA") for the amount of \$227,000. CP 53-54. The Note was secured by a Deed of Trust ("Deed of Trust") on the Property. CP 54. The Deed of Trust was executed at the same time as the Note, and that the Deed of Trust was recorded on October 17, 2006. CP 54. Defendants originally purchased and resided in the home as their primary residence. CP 106. The Property is currently used as a rental property and is occupied by tenants of the Defendants. CP 108, 119.

BANA was the original lender and beneficiary of the Deed of Trust. CP 16-17. On December 28, 2006, BANA determined that the Note had been inadvertently lost or destroyed. CP 12. Prior to May 7, 2015, BANA transferred its interest in the Note to Christiana Trust, a Division of Wilmington Savings Fund Society, FSB, not in its individual capacity but as Trustee of ARLP Trust 5 ("Christiana Trust"). CP 94, 125. On June 10,

2016, a written assignment of the Deed of Trust from BANA to Christiana Trust was recorded in Kitsap County. CP 86-88. On November 17, 2016, a written assignment of the Deed of Trust from Christiana Trust to US Bank was recorded. CP 89-91. US Bank is the current note holder. Appellants' Opening Brief at Page 4 and CP 5-6.

Defendants defaulted on their loan obligations under the Note by failing to make their February 1, 2012, payment and all subsequent payments. CP 44, 54-55, 94, 107, and 118. On May 7, 2015, after Defendants were over three years delinquent on their payments, BSI Financial Services, Inc. ("BSI"), as the mortgage loan servicer for Christiana Trust, sent Defendants a Notice of Default and Intent to Accelerate (the "Notice"). CP 94. Defendants admit that they received the Notice. CP 107, 118. The Notice explained that acceleration and foreclosure may occur if the default was not cured by June 11, 2015. CP 107. Defendants did not cure the default by the required date. CP 54-55.

On March 23, 2017, US Bank filed a Summons and Complaint for Foreclosure. CP 1-36. US Bank alleged that no payments have been received since January 1, 2012 and the total debt was \$304,627.69. CP 7. Defendants answered the complaint on October 29, 2018. CP 37-41. On April 25, 2019, US Bank filed a Motion for Summary Judgment with a supporting declaration and exhibits. CP 42-51, 52-104. After oral argument,

the trial court granted US Bank's motion and issued an order, judgment, and in US Bank's favor. CP 136-140. The court found that no issues of material fact precluded summary judgment and that US Bank was entitled to judgment as a matter of law. *Id.* The court also found that Section 22 of the Deed of Trust did not require a notice of intent to accelerate be provided prior to filing a foreclosure action. *Id.*

IV. ISSUES

The trial court did not err in granting summary judgment to Plaintiff.

V. SUMMARY OF ARGUMENT

The trial court correctly granted summary judgment to US Bank on August 14, 2019, and this Court should affirm.

Defendants' argument is premised on a fundamental misunderstanding of Washington law. Underlying the entirety of Defendants' argument is their erroneous contention that the beneficial interest in a Deed of Trust in Washington is not transferred as a matter of law until the recording of an assignment of the Deed of Trust. Every argument Defendants make flows from this flawed interpretation of Washington law.

Based on that misunderstanding, Defendants argue that the "Lender" under the Deed of Trust failed to comply with the pre-foreclosure notice requirement in Section 22 of the Deed of Trust, which Defendants

wrongly contend is a condition precedent to a judicial foreclosure of the Deed of Trust. Defendants incorrectly argue that, although the entirety of the language in the Deed of Trust Section 22 specifically relates to non-judicial foreclosures, the notice requirements in Section 22 of the Deed of Trust are conditions precedent to commencing a judicial foreclosure action.

The trial court did not err in finding that there was no issue of material fact precluding summary judgment, nor did the trial court err in finding that the notice requirements in Section 22 of the Deed of Trust do not apply in a non-judicial foreclosure.

VI. ARGUMENT

A. Standard of Review

US Bank supplements the standard of review set forth by Defendants as follows. This court may affirm a superior court's ruling on any grounds the record adequately supports. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027, *cert. denied*, 493 U.S. 814, 110 S.Ct. 61, 107 L.Ed.2d 29 (1989). The party opposing a motion for summary judgment may not rely on speculation, on argumentative assertions that unresolved factual issues remain. *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). The nonmoving party must set forth specific facts that sufficiently rebut the moving party's contentions and disclose that a genuine issue as to a material fact exists. *Seven Gables*, 106

Wn.2d at 13, 721 P.2d 1. Ultimate facts or conclusions of fact are insufficient; conclusory statements of fact will not suffice. *Grimwood v. Univ. of Puget Sound*, 110 Wn.2d 355, 359–360, 753 P.2d 517 (1988).

B. Pre-Acceleration Notice, Even Though Not Required, Was Properly Provided

The entirety of Defendants’ arguments before this Court turns on whether the Notice that Defendants received was sent by the Lender under the Deed of Trust. Defendants admit that they received the Notice more than 30 days prior to the commencement of the foreclosure action. CP 118. Defendants did not dispute in the trial court that Plaintiff had standing to foreclose, that Defendants were in default on their obligation under the Note and Deed of Trust, or that US Bank’s complaint, under Washington law, properly accelerated Defendants’ obligations under the Note and Deed of Trust. *See* CP 105-116. Defendants also do not dispute that the Notice contained the requisite information from Section 22 of the Deed of Trust. *Id.* The sole issue raised by Defendants was whether Christiana Trust was the beneficiary of the Deed of Trust on May 7, 2015, when the Notice was sent to Defendants. *Id.* at 109.¹

¹ The following encapsulates Defendant’s argument: “Plaintiff did not provide the Borrowers with a Notice of Default. Instead, it relies on a defective Notice of Default sent to the Borrowers by a lender that did not own the loan at the time.” CP 109 (emphasis supplied).

Washington law has consistently held that the holder of a promissory note secured by a deed of trust has the authority to elect to commence a judicial foreclosure. *Deutsche Bank National Trust Company v. Slotke*, 192 Wn. App. 166, 168, 367 P.3d 600 (2016). When a note is indorsed in blank, it is “payable to bearer and may be negotiated by transfer of possession alone.” *Brown v. Washington State Dept. of Commerce*, 184 Wn.2d 509, 523, 359 P.3d 771 (2015), quoting RCW 62A.3–205(b). The holder of a note indorsed in blank is the person entitled to enforce it. *See, Blair v. Northwest Trustee Services, Inc.*, 193 Wn. App. 18, 32, 372 P.2d 127 (2016); *Barkley v. Greenpoint Mortgage Funding, Inc.*, 190 Wn. App. 58, 69, 358 P.3d 1204 (2015). Washington courts have long recognized that the security instrument (the Deed of Trust) follows the note that it secures. *Mut. Sec. Fin. v. Unite*, 68 Wn. App. 636, 639, 847 P.2d 4 (1993) (assignment of promissory note secured by deed of trust carried with it the deed of trust).

Consistent with Washington law, the Deed of Trust defines the “Lender” as “the beneficiary under this Security Instrument.” CP 17. Deed of Trust Section 22, which is set forth in full in Section VI.C. below, provides in relevant part that “Lender shall give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement in this Security Instrument” CP 28.

Defendants' entire argument that the Notice was defective is based on the single, erroneous contention that Christiana Trust could not, as a matter of law, have been the Lender under the Deed of Trust until after the Assignment of the Deed of Trust to Christiana Trust was recorded in June of 2016. From that flawed analysis, Defendants erroneously leap to the conclusion that Christiana Trust was not the Lender under the Deed of Trust on May 7, 2015, when the Notice was sent and, therefore, the Notice was defective because it was not given by the Lender. Defendants' position is contrary to Washington law, and the date of the recorded assignment is insufficient to raise a genuine issue of material fact as to whether the Notice was properly given by Christiana Trust as the Lender.

The Notice that Defendants admittedly received from BSI identified Christiana Trust as the Lender. CP 94. BSI's subsequent letter on September 4, 2015, confirmed that Christiana Trust was the Lender. CP 125. When the party moving for summary judgment demonstrates the absence of any genuine issues of material fact, the burden shifts to the nonmoving party to set forth specific facts that would raise a genuine issue of material fact for trial. *Schaaf v. Highfield*, 127 Wn.2d 17, 21, 896 P.2d 665 (1995); *see also, Young v. Key Pharm.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989). To meet this burden, the Defendants were required to submit "competent testimony setting forth specific facts, as opposed to general

conclusions to demonstrate a genuine issue of material fact.” *Thompson v. Everett Clinic*, 71 Wn. App. 548, 555, 860 P.2d 1054 (1993).

Defendants presented no evidence regarding the date that the Note was transferred to Christiana Trust; rather, Defendants only presented and relied on evidence of the date of the recorded assignment of the Deed of Trust to Christiana Trust. Such evidence is irrelevant to when Christiana Trust became the Lender. Stated another way, that evidence does not relate to when Christiana Trust acquired the beneficial rights under the Note. Defendants have not raised a genuine issue of fact regarding whether Christiana Trust held the Note when it sent Defendants the Notice on May 7, 2015. The only evidence in the record on that issue shows that Christiana Trust held the Note on or before the date that the Notice was sent. CP 94, 125. Furthermore, because the holder of the Note is the beneficiary of the Deed of Trust, when Christiana Trust assigned its rights in the Note to US Bank, Christiana Trust’s right to accelerate the debt pursuant to the Notice also transferred to US Bank. Defendants appropriately acknowledge that under *Glassmaker v. Ricard*, 23 Wn. App. 35, 37-39, 593 P.2d 179 (1979), US Bank’s filing and service of the complaint properly accelerated the debt. CP 1-36.

Defendants presented no evidence sufficient to raise an issue of material fact that Christiana Trust did not hold the Note at the time

Christiana Trust sent the Notice to Defendants. The trial court did not err in finding no genuine issue of material fact.

C. The Terms of the Deed of Trust and Note Are Not Conditions Precedent to a Judicial Foreclosure.

US Bank's argument in Section IV.B. above renders the remainder of Defendants' arguments moot. This court should affirm the trial court's grant of summary judgment. Notwithstanding, the trial court's grant of summary judgment should also be affirmed because trial court correctly interpreted Section 22 of the Deed of Trust and Washington law in holding that notice of acceleration is not required in order to commence a judicial foreclosure in Washington.

US Bank does not disagree with Defendants that judicial foreclosures differ from non-judicial foreclosures in Washington, nor does US Bank disagree that there are differing statutory schemes governing both. But Defendants' conclusion from those facts is puzzling and does not follow. Defendants appear to argue that Section 22 of the Deed of Trust, which discusses the procedures involved in a non-judicial foreclosure, does not actually apply to non-judicial foreclosures because Washington has a statutory scheme governing the notice requirements applicable in a non-judicial foreclosure. In other words, Defendants argue that a provision in

the Deed of Trust specifically dealing with non-judicial foreclosures loses applicability simply because a complementary statutory scheme exists.

Defendants, instead, argue that under Section 22 of the Deed of Trust, a judicial foreclosure action cannot be initiated without first providing a pre-foreclosure notice of intent to accelerate. Defendants' understanding about the interpretation of the Deed of Trust and Note are misplaced.

Deed of Trust Section 22 states:

22. Acceleration; Remedies. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under Section 18 unless Applicable Law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default; (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument and sale of the Property at public auction at a date not less than 120 days in the future. The notice shall further inform Borrower of the right to reinstate after acceleration, the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale, and any other matters required to be included in the notice by Applicable Law. If the default is not cured on or before the date specified in the notice, Lender at is option, may require immediate payment in full of all sums secured by this Security Instrument without further demand and may

invoke the power of sale and/or any other remedies permitted by Applicable Law. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this Section 22, including but not limited to, reasonable attorneys' fees and costs of title evidence.

If Lender invokes the power of sale Lender shall give written notice to Trustee of the occurrence of an event of default and of Lender's election to cause the Property to be sold. Trustee and Lender shall take such action regarding notice of sale and shall give such notices to Borrower and to other persons as Applicable Law may require. After the time required by Applicable Law and after publication of the notice of sale, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in any order Trustee determines. Trustee may postpone sale of the Property for a period of periods permitted by Applicable Law by public announcement at the time and place fixed in the notice of sale. Lender or its designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees; (b) to all sums secured by this Security Instrument; and (c) any excess to the person or persons legally entitled to it or to the clerk of the superior court of the county in which the sale took place.

CP, p. 28.

Under Washington law, contracts are viewed “as a whole, interpreting particular language in the context of other contract provisions.” *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 713, 334 P.3d 116 (2014) citing *Weyerhaeuser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 669-70, 15 P.3d 115 (2000). The trial court correctly applied the foregoing principle by looking at Section 22 of the Deed of Trust in context. The first sentence states that notice shall be given to the borrower prior to acceleration, but the remainder of the section provides the entire context for when that notice is required, and the entirety of the section pertains to a non-judicial foreclosure.

Nothing about Section 22 of the Deed of Trust makes sense when applied to a judicial foreclosure, which contains its own protections for borrowers under RCW 61.12. The references in Section 22 to the Trustee, the Trustee’s Deed, the right to invoke the power of sale, the publication of the notice of sale, and the borrower’s right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and public sale only apply, and only make sense, in the context of a non-judicial foreclosure.

Even if Defendants had not received a valid Notice under Section 22 from Christiana Trust in May of 2015, which they did, Defendants take an overly narrow view of the holding in *Glassmaker*, 23 Wn. App. at 37-39.

Defendants contend that *Glassmaker* requires something more than filing of a complaint to accelerate the debt. That is an incomplete view of *Glassmaker*. The *Glassmaker* court had no problem with finding that the filing of the complaint, provided it was served on the defendant, was sufficient to qualify as notice of the intent to accelerate under the law. *Id.* at 38. The issue that *Glassmaker* turned on was that the foreclosing plaintiffs contended that the filing of the action, without actual service on defendants, was all that was required to provide notice of the acceleration. *Glassmaker* was decided in 1979. Since the adoption of CR 3 in 1967, a case is commenced by either service *or* by filing the summons and complaint. Prior to 1967, however, “an action was not deemed commenced until the summons and complaint had been served and filed.” *Glassmaker*, 23 Wn. App. at 38. Thus, prior to 1967, commencement of an action did provide actual notice of the intent to accelerate. The commencement of the action in *Glassmaker* by just filing but not service of the action did not provide notice of acceleration to the defendants. In the case before this Court, however, Defendants do not contend they were not provided with notice of acceleration through service of the summons and complaint on them.

Defendants also misstate the applicability of *Weinberg v. Naher*, 51 Wash. 591, 594, 99 P. 736 (1909), wherein the Washington Supreme Court described the issues as:

Whether a lawful tender of the interest in default by the appellants to the respondent prior to the time the respondent elected to declare the whole sum of principal and interest due and payable would cut off the right of the respondent to declare the entire debt due and payable; and whether there was in fact such a tender.

51 Wash. at 594. The issue in *Weinberg* was not whether a deed of trust contained a pre-acceleration notice requirement. Again, the issue before the *Weinberg* court was what must be done to accelerate, and the *Weinberg* court required “some affirmative action . . . by which the holder of the note makes known to the payors that he intends to declare the whole debt due.” (*Id.*) The *Weinberg* court further noted that the acceleration may be exercised “by the commencement of an action to recover the debt.” (*Id.*) That is precisely what happened in the case before this Court by both the filing and service of the complaint upon Defendants.

The trial court in this case before this Court correctly found that the pre-acceleration notice provision of Section 22 does not apply to a judicial foreclosure because the defaulting party receives proper notice of acceleration through the service of the summons and complaint on the defaulting party.

D. US Bank is Entitled to Reasonable Attorneys' Fees and Costs and Defendants' Request For Fees And Costs Should be Denied.

Defendants are not entitled to attorneys' fees and costs because they are not the prevailing party. Notice of intent to accelerate was properly provided by Christiana Trust and received by Defendants, even though such pre-acceleration notice is not required for a judicial foreclosure in Washington. Furthermore, even if this case is remanded to the trial court for further proof that Christiana Trust held the Note when it sent the May 2015 Notice to Defendants (which remand should not be ordered because Defendants have failed to meet their burden on summary judgment to present evidence that Christiana Trust did not hold the Note at that time), Defendants will not be entitled to their fees in this case. First, they will not yet be a prevailing party, because they will not have received, nor will they ultimately receive, some judgment in their favor. *See Guillen v. Contreras*, 169 Wn.2d 769, 238 P.3d 1168 (2010) (a prevailing party is one "that receives some judgment in its favor").

Second, Defendants are not legally entitled to "costs for the entire case at the appellate level under RAP 14.2. "Attorney fees under RAP 14.2 are statutory attorney fees and costs are limited to costs on review." *Hudson v. Hapner*, 170 Wn.2d 22, 35, 239 P.3d 579 (2010).

US Bank, however, is entitled to its fees and costs. Appellate courts may award attorneys' fees if authorized by contract, statute or recognized ground in equity. *Parker Estates Homeowners Ass'n v. Pattison*, 198 Wn. App 16, 391 P.3d 481 (2016). A contractual provision in a deed of trust will support an award of attorney's fees under RAP 18.1. *Edmundson v. Bank of America*, 194 Wn. App 920, 932 – 933, 378 P.3d 272 (2016). Defendants agree that the Deed of Trust and Promissory Note allow for an award of fees and costs.

Pursuant to RAP 18.1, the Deed of Trust, and the Promissory Note, US Bank is entitled to its fees and costs as the prevailing party. US Bank requests it be awarded its fees and costs incurred in defending against this appeal. Pursuant to RAP 14.2, “[a] commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review.” US Bank respectfully requests an award of its reasonable fees and costs incurred herein.

VI. CONCLUSION

Defendants have not made a payment on their loan since 2012, even though they have been operating the Property as a rental property. Defendants received Notice of Default and Intent to Accelerate under Section 22 of the Deed of Trust from their Lender, who was the holder of

their Note. Defendants failed to cure their default, and they received notice of acceleration of the entire balance due by the filing of service of this action on them. Moreover, the provision of the Deed of Trust upon which Defendants rely does not require that they be provided with a pre-acceleration notice of intent to accelerate prior to the commencement of a foreclosure action, even though such pre-acceleration notice was provided.

Respectfully submitted,

Dated: March 13, 2020.

MB LAW GROUP, LLP

By: /s/ Michael J. Farrell

Michael J. Farrell, WSBA No. 18897

David W. Cramer, WSBA No. 49566

117 SW Taylor St., Suite 200

Portland, OR 97204

Telephone: 503-914-2015

Email: mfarrell@mblglaw.com

dcramer@mblglaw.com

CERTIFICATE OF FILING

I certify that on March 13, 2020, I filed the foregoing BRIEF OF RESPONDENT IN OPPOSITION with the Appellate Court Clerk using the appellate court’s electronic filing system.

CERTIFICATE OF SERVICE

I certify that on March 13, 2020, a service copy of the foregoing BRIEF OF RESPONDENT IN OPPOSITION will be accomplished on the following participants in this case, who are registered users of the appellate courts’ eFiling system, by the appellate courts’ eFiling system at the participant’s email address as recorded this date in the appellate eFiling system. I also certify that on this date I mailed a copy of the foregoing brief by U.S. Mail from Portland, Oregon to the following counsel:

Ronald D. Richmond
Richmond & Richmond Ltd.
1521 Piperberry Way SE, Suite 135
Port Orchard, WA 98366

Attorneys for Defendants-Appellants

DATED: March 13, 2020.

MB LAW GROUP, LLP

By: /s/ Michael J. Farrell
Michael J. Farrell, WSBA No. 18897
David W. Cramer, WSBA No. 49566
117 SW Taylor St., Suite 200
Portland, OR 97204
Telephone: 503-914-2015
Email: mfarrell@mblglaw.com
dcramer@mblglaw.com

MB LAW GROUP LLP

March 13, 2020 - 3:17 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 53772-9
Appellate Court Case Title: US BANK NATIONAL ASSOCIATION, Respondent v Tarmo Roosild, Samantha Castronovo, Appellants
Superior Court Case Number: 17-2-00504-7

The following documents have been uploaded:

- 537729_Briefs_20200313151142D2477174_0628.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Respondents Brief.pdf

A copy of the uploaded files will be sent to:

- dcramer@mblglaw.com
- john@gsjoneslaw.com
- karen@rrlaw.pro
- ron@rrlaw.pro
- skuehn@mblglaw.com

Comments:

Sender Name: Sonya Kuehn - Email: skuehn@mblglaw.com

Filing on Behalf of: Michael John Farrell - Email: mfarrell@mblglaw.com (Alternate Email:)

Address:
117 SW Taylor St.
Suite 200
Portland, OR, 97204
Phone: (503) 382-4207

Note: The Filing Id is 20200313151142D2477174