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Trial Court No. 17-2-00504-7

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

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

Plaintiff,

vs.

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

Defendants.

APPELLANTS' REPLY BRIEF

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I. INTRODUCTION

Defendant-Appellant Castronovo filed her opening brief on February 13, 2020. Castronovo argued for reversal of the summary judgment ruling by the trial court. Among other arguments, Castronovo argued that (1) Section 22 of the Deed of Trust applies to both judicial and non-judicial foreclosures; (2) Section 22 requires a pre-acceleration notice from the lender as a condition precedent to acceleration and foreclosure; and (3) the trial record shows no pre-acceleration notice being provided by a then-current lender, but rather from an entity who was not then a lender. Castronovo also argued that acceleration can only occur pursuant to contract terms, argued public policy reasons for her positions, and requests an award of attorneys' fees on appeal.

Plaintiff-Respondent USBank filed its responsive brief on March 13, 2020. USBank defended summary judgment, arguing that (1) Section 22 of the Deed of Trust applies only to non-judicial foreclosures; (2) pre-acceleration notice is not required, and is not a condition precedent to acceleration and foreclosure; and (3) despite not being required, that a pre-acceleration notice was provided by the then-current lender.

USBank conceded the arguments by Castronovo that acceleration can only occur pursuant to terms of the written contract, as well as the public policy arguments.

USBank appears to dispute the request for attorneys' fees based on Castronovo not having prevailed at the trial level. To the extent the Court or USBank believes Castronovo was arguing for a trial fee award, Castronovo withdraws that argument, as it was not intended. Castronovo requests only fees for the appellate case in the event Castronovo is the prevailing party.

Castronovo now files this Reply to address the issues under contention.

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II. ARGUMENT

Both the appellate and the trial court on review of summary judgment are charged with the duty “to review material submitted for and against a motion for summary judgment in the light most favorable to the party against whom the motion is made.”¹

The object and function of summary judgment procedure is to avoid a useless trial. A trial is not useless, but is absolutely necessary where there is a genuine issue as to any material fact.² A ‘material fact’ is a fact upon which the outcome of the litigation depends, in whole or in part.³

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¹ *Morris v. McNicol*, 83 Wash.2d 491, 495, 519 P.2d 7, 10 (1974); *Yakima Fruit & Cold Storage v. Central Heating & Plumbing Co.*, 81 Wash.2d 528, 503 P.2d 108 (1972); *Robert Wise Plumbing & Heating, Inc. v. Alpine Dev. Co.*, 72 Wash.2d 172, 432 P.2d 547 (1967).

² CR 56; *Barber v. Bankers Life & Cas. Co.*, 81 Wash.2d 140, 144, 500 P.2d 88, 90 (1972). *Balise v. Underwood*, 62 Wash.2d 195, 381 P.2d 966 (1963).

³ *Balise*, supra; *Zedrick v. Kosenski*, 62 Wash.2d 50, 380 P.2d 870 (1963).

A. Section 22 of the Deed of Trust applies in all foreclosures, both judicial and non-judicial.

USBank argues vigorously that Paragraph 22⁴ of the Deed of Trust applies only to non-judicial foreclosures.⁵ This directly contradicts the

⁴ Previously quoted in full in both the Opening and Responding Briefs, Section 22 of the Deed of Trust reads as follows (see CP 28 and 79):

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 its 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

plain language of the document and USBank's own pleadings. Although the undersigned is not generally inclined to engage in complex factual analysis in a Reply Brief, it appears necessary here.

On March 23, 2017, USBank filed their Complaint⁶ in this matter. The Complaint sought to foreclose its interest in Castronovo's property, which was secured by the Deed of Trust.⁷ The complaint states that USBank is, among other things, exercising the option granted in the Deed of Trust to accelerate the debt,⁸ and that it has actually accelerated the debt.⁹ USBank further "asserts its right per the terms of the Deed of Trust for the court to enter a decree of foreclosure if the judgment is not immediately paid."¹⁰ In its prayer for relief, USBank seeks a foreclosure against Castronovo pursuant to the Deed of Trust, a decree of sale pursuant to the Deed of Trust, and a judgment making the rights of Castronovo inferior to the lien claim of USBank pursuant to the Deed of

entitled to it or to the clerk of the superior court of the county in which the sale took place.

⁵ USBank, at p.10-11 of its responsive brief, mischaracterizes Castronovo's arguments at p.10-11. "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." *Id.* Castronovo is uncertain where this argument is alleged to occur, as she has argued consistently throughout that the acceleration portions of Section 22 apply in both judicial and non-judicial foreclosures.

⁶ CP 4-36, including exhibits.

⁷ Exhibit B to the Complaint, CP 16-33.

⁸ CP 7, para.7.

⁹ CP 7, para.8.

¹⁰ CP 8, para.3 of causes of action.

Trust.¹¹ USBank specifically sought this relief *in this judicial foreclosure* pursuant to the terms of the Deed of Trust, and did not at any point amend its Complaint.

On April 25, 2019, USBank filed its Motion for Summary Judgment¹² (hereinafter, “the Motion”). In the Motion, USBank asserts its standing as beneficiary under the Deed of Trust,¹³ and its right under the Deed of Trust to accelerate the debt if the borrower defaults in payment.¹⁴ The solitary issue identified in the Motion was whether USBank should be allowed to judicially foreclose according to the terms of the Deed of Trust.¹⁵ In its conclusion, USBank requests a finding of a valid and enforceable interest that it can foreclose upon – again pursuant to the Deed of Trust.¹⁶

Castronovo does not dispute USBank’s contractual interest or standing pursuant to the Deed of Trust. Rather, Castronovo seeks enforcement of the provisions of that same Deed of Trust under which relief has been pled by USBank.

¹¹ CP 9-10, para.3-5.

¹² CP 42-51.

¹³ CP 44, lns.11-20.

¹⁴ CP 45, lns.9-12.

¹⁵ CP 46, section IV, emphasis added.

¹⁶ CP 51.

USBank has elected to pursue judicial foreclosure under RCW 61.12¹⁷ rather than the more often-used non-judicial process under RCW 61.24. It is undisputed in all pleadings in this case that the choice of which avenue to pursue is subject to the sole discretion of the lender. The statutory scheme also supports allowing a Deed of Trust to be foreclosed judicially, by treating it as a mortgage.¹⁸ No authority has been cited by USBank to show that a Deed of Trust ceases to exist or function when a judicial foreclosure occurs. In fact, USBank's pleadings make it very clear that it is attempting to foreclose on its interest in the Deed of Trust.

USBank asserts that the trial court herein correctly applied Section 22 of the Deed of Trust by looking at its context.¹⁹ This explanation is inadequate to uphold Summary Judgment. Because the second and third paragraphs of Section 22 relate solely to a non-judicial Trustee's sale,²⁰ USBank asserts that the first paragraph also only relates to a non-Judicial

¹⁷ Notably, the mortgage foreclosure statute, RCW 61.12, does not disqualify or preclude any Deed of Trust terms from use. Rather, 61.12.020 provides that "The parties may insert in such mortgage any lawful agreement or condition."

¹⁸ RCW 61.24.100(8) provides that "This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure." It is worth noting that this does not say that this chapter (61.24) does not apply, but only that this section (61.24.100) does not apply to a judicial foreclosure.

¹⁹ Responding Brief, p.13.

²⁰ See footnote 4 for full language of Section 22.

Trustee's sale. However, a comprehensive review of the document²¹ reveals that, if Section 22 does not apply to judicial foreclosures, USBank is lacking any applicable acceleration or foreclosure remedies.²² Other than in Section 22, the Deed of Trust contains no acceleration or foreclosure provisions relevant to this case.²³

Contrary to USBank's argument on appeal, Section 22 is the contractual provision in the Deed of Trust that authorizes the judicial foreclosure. Towards the end of the first paragraph of Section 22, the Deed of Trust provides that if default isn't cured after the pre-acceleration notice, "Lender, at its option, may require immediate payment in full of all sums..."²⁴ (that is the language authorizing acceleration), and further states that the Lender "may invoke the power of sale and/or any other remedies permitted by Applicable Law."²⁵ The next paragraph of Section 22 begins with "If Lender invokes the power of sale..."²⁶ The fact that the

²¹ The full Deed of Trust document, including an attached rider, is admitted into evidence at CP 67-84.

²² As Castronovo cannot prove a negative, or provide a specific cite to show the lack of provisions, it is necessary to do a brief review of the document herein. For ease of reference, the provisions of the Deed of Trust will be outlined and briefly described in Appendix A.

²³ As outlined in Appendix A, there are acceleration and foreclosure remedies available in Section 18 for a transfer of Borrower's interest. This is not relevant to the instant case.

²⁴ CP 79.

²⁵ *Id.*

²⁶ *Id.*

remaining two paragraphs of Section 22 set forth guidelines for the power of sale does not, in itself, cause the entirety of Section 22 to only apply to non-judicial foreclosures. This is particularly true since Section 22 contains the only remedies for acceleration and foreclosure in the event of non-payment.

In reviewing, as USBank insists, the context for Section 22, a review of Section 20 is also helpful. Section 20 of the Deed of Trust provides in relevant part:

Neither Borrower nor Lender may commence, join, or be joined to any judicial action... that arises from the other party's actions pursuant to this Security Instrument or that alleges that the other party as breached any provision of, or any duty owed by reason of, this Security Instrument, until such Borrower or Lender has notified the other party... of such alleged breach and afforded the other party hereto a reasonable period after the giving of such notice to take corrective action.... The notice of acceleration and opportunity to cure given to Borrower pursuant to Section 22 and the notice of acceleration given to Borrower pursuant to Section 18 shall be deemed to satisfy the notice and opportunity to take corrective action provisions of this Section 20.²⁷

The plain language of Section 20 clearly indicates that the document – as a whole, in context – both requires a pre-acceleration notice by the Lender prior to a judicial foreclosure, and also contemplates the

²⁷ CP 78, second paragraph of Section 20.

pre-acceleration notice in Section 22 to be provided prior to a judicial foreclosure.

Considering the context of the Deed of Trust as a whole, particularly the plain language²⁸ of Section 20 and Section 22, the Trial Court erred in holding that the pre-acceleration notice provisions of Section 22 were not applicable parts of the contract during judicial foreclosure.

B. Section 22 requires a pre-acceleration notice from Lender as a condition precedent to acceleration and foreclosure.

Promissory notes and deeds of trust, while negotiable instruments subject to the Uniform Commercial Code, are also written contracts.²⁹ Where the UCC is not applicable, common law principles apply.³⁰ Contract language that is clear and unambiguous is enforced as written.³¹ There is no need for interpretation of a clear and unambiguous contract.³²

²⁸ Plain language that is clear and unambiguous does not require interpretation, but is enforced as written. See argument to open Section B of this brief, citing *Lehrer and Mayer*, *infra*, footnotes 31 and 32.

²⁹ *Terhune v. North Cascade Trustee Services, Inc.*, 9 Wash.App.2d 708, 718, 446 P.3d 683 (2019).

³⁰ *Gorge Lumber Co. v. Brazier Lumber Co.*, 6 Wash.App. 327, 334, 493 P.2d 782 (1972).

³¹ *Lehrer v. Dept. of Soc. & Health Servs.*, 101 Wash.App 509, 515-516, 5 P.3d 722 (2000).

³² See *Mayer v. Pierce County Med. Bureau, Inc.*, 80 Wash.App. 416, 423, 909 P.2d 1323 (1995).

Section 22 states, at the very beginning, “Lender *shall* give notice to Borrower prior to acceleration following Borrower’s breach of any covenant or agreement...”³³ The Section goes on to then exclude its application from acceleration under Section 18. The plain language does not provide any other exclusions. The language could have said “Lender shall give notice to Borrower prior to invoking the power of sale,” but it did not. Instead, the language plainly says notice is required prior to acceleration following any breach by Borrower except under Section 18. Therefore, it must be required in the current case, to which Section 18 does not apply.

USBank argues both at the trial court³⁴ and here³⁵ that there is no condition precedent to acceleration, because this case is a judicial foreclosure. USBank further opines³⁶ that Castronovo arrives at her position by an incorrect reading of *Glassmaker*.³⁷ It is true that these parties have very different views of the holding in *Glassmaker*, and while

³³ CP 79, emphasis added.

³⁴ CP 131.

³⁵ Responding Brief, p.13-14.

³⁶ *Id.*

³⁷ *Glassmaker v. Ricard*, 23 Wash.App. 35, 593 P.2d 179 (1979).

Castronovo does not concede her position, that case law argument remains secondary to the reading of the requirements in the Deed of Trust itself.³⁸

USBank also asserts that the filing of this action was sufficient notice of acceleration.³⁹ This runs contrary to the plain language of the Deed of Trust, specifically Section 22. Section 22 requires the notice of acceleration to contain the following information:

- (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 complaint does contain the default language,⁴⁰ of course, but it contains no clear instruction on the action to cure the default, it lacks a 30-

³⁸ See, e.g., Castronovo's Opening Brief, pp.10, 12, in which it was first argued for plain reading of the document. The *Glassmaker* analysis was provided in the alternative as a backup argument.

³⁹ CP 131; Responding Brief, p.15.

⁴⁰ CP 7.

day time period to cure the default, and it provides no notice of the possibility of sale of the property.

In addition, treating the summons and complaint as the pre-acceleration notice fails because Section 20 prohibits any judicial action from being taken without prior notice. By definition, the judicial action cannot serve as prior notice of itself. And in fact, the language of the complaint indicates that US Bank acknowledges the necessity of prior notice by reciting, in Paragraph 8 of the Complaint, “Demand for all sums secured by the Note and Deed of Trust has been made, and Borrower failed to pay. Therefore, Plaintiff has accelerated the debt.”⁴¹

It is the plain language of the Deed of Trust that requires a notice of acceleration to precede any judicial action, and such notice did not in fact occur.

C. Considered in the light most favorable to Castronovo, a factual dispute over whether notice came from the Lender rendered summary judgment inappropriate.

As recited above,⁴² on summary judgment, it is not solely evidence produced by the responding party, Castronovo, that must be considered in

⁴¹ CP 7.

⁴² Introduction to Section II herein, with supporting cases in footnote 1.

the light most favorable to them. All the evidence, by whomever produced, must be considered in the light most favorable to the non-moving party.⁴³ If a factual dispute on a material fact remains, then trial is a necessity.

In this case, the Deed of Trust mandates that notice come from the Lender, rendering it a material term in the contract and a material fact in evidence. Enforcing the provision that such entity be the current Lender is a matter of public policy.⁴⁴ The clear purpose of the notice requirement is to provide the homeowner with the opportunity to cure their default. To do so, they must know with whom they are dealing. Notice that provides inapplicable contact information to someone who lacks the authority to state a payoff amount or accept a compromise is not meaningful notice. It leaves the homeowner without the opportunity to cure that was the entire purpose of the provision of Notice—in fact, exactly what occurred in this case.

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⁴³ *Morris v. Nicol*, supra.

⁴⁴ Although this case is neither governed by the Deed of Trust act nor a consumer protection act case, analogous policy considerations are at stake as those in *Bain v. Metro. Mortgage Grp., Inc.*, 175 Wash.2d 83, 118, 285 P.3d 34, 51 (2012), where the court found it essential for homeowners to have knowledge of the actual holder of the note in a nonjudicial foreclosure in order to resolve disputes and obtain redress for any irregularities. Here, that right is founded in the terms of the contract, rather than in the statute, but it is equally essential.

The following facts are undisputed in the record: (1) that Castronovo received a Notice of Default and Intent to Accelerate from BSI Financial on behalf of Christiana Trust⁴⁵; (2) that there have been only three entities who have been beneficiary⁴⁶ under the Note and Deed of Trust, to wit, Bank of America, Christiana Trust, and USBank – in that order chronologically⁴⁷; (3) that Castronovo reached out to BSI / Christiana Trust to discuss how to address the deficiencies, and received no response other than a reiteration that Christiana Trust was asserting itself as beneficiary.⁴⁸

In its Responding Brief herein, USBank opines that Castronovo did not introduce any evidence to prove that Christiana Trust was not the beneficiary at the time the notice was sent on May 7, 2015.⁴⁹ USBank is correct in asserting that Castronovo relied upon the date of recorded assignment.⁵⁰

⁴⁵ The Notice was placed in the record as Exhibit 5 to Plaintiff's Declaration Supporting MSJ, CP 93-96. Castronovo readily admits receiving the notice in her Declaration, CP 118.

⁴⁶ The Deed of Trust generally refers to the beneficiary as the Lender. CP 67-68. This brief also generally refers to the beneficiary as Lender when discussing the Deed of Trust.

⁴⁷ CP 54, para.5-6.

⁴⁸ CP 118-119.

⁴⁹ Responding Brief, p.9.

⁵⁰ *Id.*

USBank errs, however, in stating that such evidence is irrelevant to when Christiana Trust became the Lender.⁵¹ This is a misstatement of the Trial Court record. Not only is there zero evidence to support USBank’s contention, on appeal, of the irrelevance of the recording date, but it is those exact recording dates which USBank itself introduced into the Trial Court record as proof of the transfers. USBank sets forth in its Declaration in Support of MSJ,⁵² and it is un rebutted and unmodified anywhere else in the record, that Bank of America assigned its interest to Christiana Trust “by that certain Assignment of Deed of Trust... recorded... on June 10, 2016.”⁵³ USBank then attaches a copy of that Assignment as part of Exhibit 4 to its Declaration.⁵⁴ The Assignment from Bank of America to Christiana Trust is signed June 1, 2016.⁵⁵

Thus, in USBank’s own proofs submitted to the Court, it provides uncontroverted and undisputed evidence that the means by which Christiana Trust became beneficiary (or Lender) was by the Assignment in June, 2016.

⁵¹ Statement made in USBank’s Responding Brief, *id.*

⁵² CP 54, para.6.

⁵³ *Id.*

⁵⁴ CP 86-88. Exhibit 4 also included the assignment from Christiana Trust to USBank, CP 89-91.

⁵⁵ *Id.*

Castronovo is willing to concede that the recording date may not be the only way the interest could have theoretically been transferred,⁵⁶ but USBank's own proofs show that the document by which the assignment occurred was signed June 1, 2016⁵⁷ – over a year after the pre-acceleration notice was sent to Castronovo.⁵⁸ In its Responding Brief, USBank asserts that “the only evidence in the record on that issue shows that Christiana Trust held the Note when it sent Defendants the Notice on May 7, 2015.”⁵⁹ USBank then cites to the dates on the letters sent to Castronovo⁶⁰ – but the dates on the letters are not evidence of the transfer. There is no sworn testimony contained in the letters, and the only sworn testimony is that of USBank in its declaration, where it states that the transfer to Christiana Trust was made by an assignment which was signed June 1, 2016, and recorded June 10, 2016.⁶¹

USBank cannot introduce its own evidence on an issue, and then, when Castronovo relies on that evidence as proof, argue that her proof is insufficient on that very same issue.

⁵⁶ Concession for the sake of argument, in reply to Responsive Brief, p.9.

⁵⁷ CP 86.

⁵⁸ CP 93-96. The Notice is dated May 7, 2015.

⁵⁹ Responding Brief, p.9.

⁶⁰ *Id.*, referencing CP 94, 125.

⁶¹ CP 54, para.6.

What the record shows is a factual dispute—there is a sworn statements by US Bank that Christiana Trust acquired its interest after the notice was sent, and a sworn statement by Castronovo that Christiana Trust failed to respond as required of a Lender. There are unsworn statements that Christiana Trust had acquired its interest in some other way prior to the notice. The only factual information supporting USBank’s position – the unsworn statements – directly contradict the sworn statements in the record.

Such a factual dispute, on a key element of the case, defeats summary judgment.

III. ATTORNEYS’ FEES

Castronovo reiterates her request for attorney’s fees for the appellate portion of the case upon prevailing. Attorneys’ fees for the appeal are appropriately awarded to the party who prevails on the appeal.⁶² As established in Castronovo’s initial brief, attorneys’ fees are

⁶² *Ledaura, LLC v. Gould*, 155 Wash.App. 786, 805, 237 P.3d 914 (2010). RAP 18.1

provided for in the contract for the Lender, and therefore under Washington law are available for the other party.⁶³

IV. CONCLUSION

For the reasons stated above, summary judgment was not appropriate in this case. A disputed fact remains whether pre-acceleration notice came from the Lender. The terms of the contract require notice to from the Lender be provided before judicial foreclosure was instituted, so the factual dispute is material.

Therefore, the trial court should be overruled and the matter remanded for further proceedings.

RESPECTFULLY SUBMITTED this 29th day of May, 2020.

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⁶³ RCW 4.84.330. See also Section 25 of the Deed of Trust, which awards attorneys' fees in "any action or proceeding to construe... any term" of the Deed of Trust, which this appeal certainly is.

APPENDIX A

For ease of reference, the provisions of the Deed of Trust will be outlined and briefly described here, with outline numbers matching section numbers in the document:

1. Titled “Payment of Principal, Interest, Escrow Items, Prepayment Charges, and Late Charges,” this section sets forth a variety of topics related specifically to its title. No remedies for non-payment appear other than late fees and rights concerning application of late payments. CP 69-70.

2. Titled “Application of Payments or Proceeds,” this section deals with application of regular payments, late payments, and pre-payments, but contains no remedies. CP 70.

3. Titled “Funds for Escrow Items,” this section discusses where escrow funds will be held, and provides for additional obligations of a delinquent borrower, but does not provide any foreclosure remedies. CP 70-71.

4. Titled “Charges, Liens,” this section obligates Borrower to pay all other charges to the property and to avoid any priority liens. CP 71-72.

5. Titled “Property Insurance,” this section mandates that Borrower maintain active insurance on the property, levies additional costs against Borrower should they fail to do so, and grants additional rights to Lender if insurance cancels or a loss is filed. No foreclosure remedies appear. CP 72-73.

6. Titled “Occupancy,” contains occupancy provisions. CP 73.

7. Titled “Preservation, Maintenance, and Protection of the Property; Inspections,” this section addresses exactly those matters, without remedies. CP 73.

8. Titled “Borrower’s Loan Application,” provides for a default in the event of inaccurate data being provided by Borrower during the application process. Notably, no remedies are provided for that default. CP 74.

9. Titled “Protection of Lender’s Interest in the Property and Rights Under this Security Instrument,” is essentially a “self help” provision, authorizing Lender to take action to secure the property in the event Borrower fails in their obligations; is subject of court proceedings on a bankruptcy, condemnation, or potentially superior lien; or has abandoned the property. This section authorizes Lender to add the costs of these self-help actions to Borrower’s obligation, but contains no other remedies. CP 74.

10. Titled “Mortgage Insurance,” contains provisions irrelevant to this case. CP 74-75.

11. Titled “Assignment of Miscellaneous Proceeds; Forfeiture,” deals with condemnation or other damage, and is irrelevant to this case. CP 75-76.

12. Titled “Borrower Not Released; Forbearance By Lender Not a Waiver,” this section specifies that Lender can exercise remedies in the future even if it elects not to exercise them for a particular instance. Remedies themselves, however, are not covered. CP 76.

13. Titled “Joint and Several Liability; Co-Signers; Successors and Assigns Bound,” this section serves to clarify the individual liability of each co-Borrower for the full amount. CP 76.

14. Titled “Loan Charges,” relates to what fees Lender may charge Borrower for protecting Lender’s interest. No remedies other than the addition of fees. CP 77.

15. Titled “Notices,” contains direction on where notices shall be sent. CP 77.

16. Titled “Governing Law; Severability; Rules of Construction,” address those matters solely. CP 77.

17. Titled “Borrower’s Copy,” states simply that Borrower shall get a copy of the Deed of Trust. CP 77.

18. Titled “Transfer of the Property or a Beneficial Interest in Borrower,” this section provides Lender with the power to immediately accelerate Borrower’s obligation if Borrower transfers the property (or if ownership of an entity Borrower is transferred). CP 77.

19. Titled “Borrower’s Right to Reinstate After Acceleration,” this section provides Borrower with a right to reinstate after the obligation is accelerated. Notably, this right does not apply if the acceleration occurs under Section 18. CP 78.

20. Titled “Sale of Note; Change of Loan Servicer; Notice of Grievance,” addresses a transfer of Lenders. It also provides that Lender cannot begin a judicial action without first giving notice and an opportunity to cure. This is discussed more in the main text of this Reply Brief. CP 78.

21. Titled “Hazardous Substances,” contains provisions irrelevant to this case. CP 78-79.

22. Titled “Acceleration; Remedies,” this section is quoted in full in footnote 4.

23. Titled “Reconveyance,” mandates reconveyance upon payment in full. CP 80.

24. Titled “Substitute Trustee,” this section allows Lender to appoint a successor Trustee. CP 80.

25. Titled “Use of Property,” this is the standard covenant that the property is not primarily used for agricultural purposes. CP 80.

26. Titled “Attorneys’ Fees,” this section entitles Lender to an award of attorneys’ fees in litigation. CP 80.

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