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Court of Appeals
Division II
State of Washington
Case No. 54113-1
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COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION TWO

STAN DENOVA,
Appellant,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE, IN
TRUST FOR REGISTERED HOLDERS OF LONG BEACH MORTGAGE
LOAN TRUST 2005-3, ASSET-BACKED CERTIFICATES, SERIES 2005-3,
Respondent.

Appeal from Thurston County Superior Court
Case No. 19-2-02784-34, Hon. John Skinder

ANSWER BRIEF OF DEUTSCHE BANK NATIONAL TRUST COMPANY,
AS TRUSTEE, IN TRUST FOR REGISTERED HOLDERS OF LONG BEACH
MORTGAGE LOAN TRUST 2005-3, ASSET-BACKED CERTIFICATES,
SERIES 2005-3

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I. INTRODUCTION

Appellant Stan DeNova (“DeNova”) has appealed from the trial court’s Judgment Quieting Title and Restoring Possession entered on November 15, 2019 (“Judgment”).

This case concerns an effort by DeNova to retroactively reclaim property he had granted to James Everham (“Everham”). Mr. Everham purchased the property with a loan secured by a deed of trust against that property. After that loan had fallen into default, and with foreclosure proceedings pending, DeNova and Everham recorded instruments in the public record in an effort to remove portions of the encumbered property from the scope of the security interest Mr. Everham had previously conveyed to his lender. Deutsche Bank National Trust Company, as Trustee, in Trust for Registered Holders of Long Beach Mortgage Loan Trust 2005-3, Asset-Backed Certificates, Series 2005-3 (“Deutsche”) is the current owner of the loan and beneficiary of the deed of trust against the property, and is the party who sought to foreclose on that deed of trust. Deutsche never consented to the belatedly prepared documents Messrs. DeNova and Everham recorded in derogation of Deutsche’s security interest. As such, those recorded documents were properly found to be ineffective to remove any portion of the encumbered property from the scope of Deutsche’s security interest. Accordingly, Deutsche lawfully and

properly foreclosed on the entire parcel, and the trial court properly quieted title and awarded possession of the entire premises to Deutsche.

II. ASSIGNMENTS OF ERROR

- A. Whether the “Easement” and “Correction Deed” recorded after a valid deed of trust against the property has been recorded can validly change the scope of the security interest granted to the beneficiary of that deed of trust without its consent or should be considered to be void.
- B. Whether Deutsche’s interest in the subject real property was superior and paramount to DeNova’s interests at the time of the trustee’s sale.

III. STATEMENT OF THE CASE

A. Pertinent Facts.¹

This case concerns the real property legally described as

THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 1, TOWNSHIP 17 NORTH, RANGE 2 WEST OF THE W.M., LYING NORTHWESTERLY OF COUNTY ROAD KNOWN AS GLEASON ROAD AND SOUTHERLY AND WESTERLY OF A LINE DESCRIBED AS BEGINNING AT A POINT ON THE WEST LINE OF SAID EAST HALF OF THE SOUTHWEST QUARTER OF NORTHWEST QUARTER 1106 FEET NORTH OF ITS SOUTHWEST CORNER AND RUNNING THENCE

¹ Appellant failed to designate an adequate record on appeal, so Respondent is constrained by that lack of record in its ability to cite to supporting evidence other than the Report of Proceedings and the judgment attached to the Notice of Appeal.

EAST 475 FEET, SOUTH 182 FEET AND EAST TO SAID ROAD;

EXCEPTING THEREFROM THE WEST 20 FEET FOR COUNTY ROAD KNOWN AS OLD GLEASON ROAD. IN THURSTON COUNTY, WASHINGTON.

Situate in Thurston County, Washington.

Assessor's parcel no: 12701210303

The property is commonly known as 6328 Wild Flower St SE, Olympia, WA 98501² (“Property”). As part of, and as security for, a loan transaction, Mr. Everham pledged a Deed of Trust, which described the entire Property. Mr. Everham’s loan fell into default. Subsequent to this default, he and Mr. DeNova caused to be recorded a document purporting to grant an easement interest in the Property to Mr. DeNova on August 30, 2016 (“Easement”). Judgment, pp. 2-3 ¶¶3. The Easement was intended to permit Mr. DeNova to continue to use a portion of the Property to house a garage and mobile home, in which Mr. DeNova continued to reside. *Report of Proceedings*, pp. 6-7. Messrs. Everham and DeNova later recorded a document bearing the caption “Correction Deed” on July 27, 2017, which purported to reduce the scope of the security interest pledged under the Deed of Trust. Judgment, p. 3, 4; *Report of Proceedings*, p.7, ln.

² Appellant’s opening brief uses different street addresses for the garage and mobile home; however, those addresses do not reflect valid addresses or separate land parcels, but rather describe portions of the premises that Messrs. DeNova and Everham attempted to carve out through their subsequent recordings. The County Assessor does not list them as separate properties. See *Judgment*, p. 2, ¶2; p. 3, ¶6.

24-25. Neither Deutsche, nor any predecessor in interest under the Deed of Trust, joined or consented to the preparation or recording of either of these documents. Judgment, pp. 2-3, ¶¶3-4. Additionally, no conveyance formally subdivided the Property into separate parcels. Judgment. p. 2, ¶2.

On July 28, 2017, a foreclosure sale was held concerning the Property, and pursuant to the sale, Deutsche became owner of the Property. Judgment, p. 2, ¶1. Messrs. DeNova and Everham refused to vacate the Property, alleging that they retained portions of the Property that survived the foreclosure sale by operation of their Easement and Correction Deed. Judgment, p. 3, ¶8; *Report of Proceedings*, p. 14,

B. Procedural History

Deutsche commenced the underlying state court action against Mr. DeNova and Mr. Everham in the Superior Court of Thurston County, Washington on May 26, 2017, by filing a Complaint to quiet title, for declaratory relief, and for ejectment as to the Property.

Deutsche moved for summary judgment. In opposing Deutsche's motion, Messrs DeNova and Everham argued that they had always "intended" for Mr. DeNova to only grant a portion of the Property to Mr. Everham; that this "intent" was reflected in an (unrecorded) sale contract between the parties; that the originating lender on the Deed of Trust was somehow nonetheless aware of this arrangement; that it was only through

error at closing that the Easement was not recorded; and that the sale contract controlled over the express terms of the recorded deed. *See, Report of Proceedings*, generally. Notably, neither defendant offered any actual, admissible evidence of the foregoing contentions into the record, and they were therefore unable to overcome Washington's Statute of Frauds and Parol Evidence Rule. *Report of Proceedings*, pp. 17-19.

On November 15, 2019, following a hearing, the trial court granted Deutsche's motion for summary judgment and entered a judgment quieting title against Mr. DeNova and restoring possession of the Property to Deutsche. *See* Notice of Appeal, attached judgment.

The trial court entered findings that: (1) Deutsche owned the Property pursuant to a valid foreclosure sale; (2) that the Property was not formally subdivided; (3) that documents that Messrs. Everham and DeNova caused to be recorded, bearing the titles "Easement" and "Correction Deed" and purporting to carve out portions of the Property, were ineffective and void as to Deutsche; and (4) that Deutsche was entitled to immediate possession of the entirety of the Property. *Id.*

DeNova filed a Notice of Appeal of the Judgment on or about December 12, 2019. *Id.* DeNova has failed to designate the Complaint, any Answers, Deutsche's Motion for Summary Judgment or supporting

briefing, any opposition briefing, Deutsche's reply, or any evidence that the trial court considered in his designation of clerk's papers.

IV. ARGUMENT

A. Standard of Review

Washington CR 56(c) provides that a trial court shall enter summary judgment if the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show that, in the light most favorable to the nonmoving party, there is no genuine issue of material fact, and the movant is entitled to judgment as a matter of law. *Elcon Const., Inc. v. Eastern Washington University*, 174 Wash.2d 157, 164 (Wash.,2012). Courts review summary judgment rulings *de novo*. *Id.*

B. This Court Should Uphold Summary Judgment because Appellant Has Failed to Designate a Sufficient Record on Appeal.

As a threshold matter, Mr. DeNova has failed to designate a sufficient record for this Court to assign error to the trial court's findings because the record lacks Deutsche's Complaint, Mr. DeNova's Answer to the Complaint, any of the briefing concerning the summary judgment that the superior court granted, or the superior court's order setting forth what

it considered in rendering its decision. This precludes this Court from reviewing most of what the superior court considered.

Rule 9.6(b)(1) provides that the clerk's papers must include, at a minimum, the summons and complaint and any written order or ruling not attached to the notice of appeal. Failure to provide these documents precludes the Court of Appeals from considering them:

The party seeking review has the burden to perfect the record so that, as the reviewing court, we have all relevant evidence before us. *Bulzomi v. Dep't of Labor & Indus.*, 72 Wash.App. 522, 525, 864 P.2d 996 (1994). An insufficient appellate record precludes review of the alleged errors. *Bulzomi*, 72 Wash.App. at 525, 864 P.2d 996. The trial court's final memorandum opinion and order do not include the September 3 declaration in the list of reviewed documents. Thus, there is no error for us to review related to [appellant's] September 3 filing.

Stiles v. Kearney, 168 Wash.App. 250, 259 (Wash.App. Div. 2,2012).

When confronted with inadequate records, Washington courts decline to review issues not adequately covered. *In re Detention of Halgren*, 156 Wash.2d 795, 804 (Wash.,2006); *see also State v. Meas*, 118 Wash.App.297 (2003) (Wash, 2003) (“appellate courts cannot consider matters referred to in the brief by not included in the record.”)

Here, Mr. DeNova has only designated the trial court's Judgment, which included the lower court's findings; however, the Judgment did not set forth what the trial court considered, and Mr. DeNova has failed to

designate any of the pleadings; moving papers; opposition briefing; any of the evidence considered; or the order on summary judgment, which specified which papers and evidence that the trial court considered. Such an omission prevents this Court from reviewing the evidence that supported the trial court's grant of summary judgment according to *Stiles*.

This Court confronted similar circumstances in *Williams v. Department of Corrections*, 2019 WL 2794277 (Wash.App. Div. 2, 2019) (unpublished). Where the record on appeal lacked the amended complaint, the motion for summary judgment, or the order granting summary judgment, the Division Two Court of Appeals could not review the superior court's decision, and so this Court affirmed the superior court's ruling. *Id* at *1.

The procedural facts in the present case are similar to those in *Williams* because, as with that case, the appellant here has failed to provide the essential pleadings or briefing to be considered, which the Court from reviewing the evidence that the superior court considered in granting summary judgment to Deutsche. Accordingly, because this Court cannot review any of the evidence that the superior court considered, this Court should follow its reasoning in *Williams* and affirm the superior court's grant of summary judgment.

C. Deutsche was Entitled to Summary Judgment because It Had Superior Title Interest and Right to Possession of the Property.

The trial court properly entered its decree quieting title in favor of Deutsche because Deutsche showed a valid, subsisting interest in the property and superior title. The Revised Code of Washington provides at § 7.28.010:

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title ... and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law...

A litigant seeking to quiet title must establish a valid subsisting interest in property and a right to possession thereof. *Magart v. Fierce*, 35 Wash.App. 264, 266, (1983). The party with superior title must prevail. *Finch v. Matthews*, 74 Wash.2d 161, 166, (1968).

Here, by virtue of the recorded Trustee's Deed, Deutsche owns the entire Property. Mr. DeNova claimed that he held a superior interest in a portion of the Property arising out of instruments that were recorded after

foreclosure proceedings had already commenced in 2016, instruments that did not exist or were not of record at the time Mr. Everham pledged *the entire Property as security for the Deed of Trust. Appellant's Brief*, p. 1.

In fact, the instruments upon which Mr. DeNova sought to rely were executed and recorded years after the recording of the Statutory Warranty Deed from Mr. DeNova to Mr. Everham and Mr. Everham's Deed of Trust in favor of the original lender and its successors and assigns. *Id.* It is undisputed that Deutsche did not consent to, or otherwise sign off on, either of Mr. DeNova's subsequent recorded documents. *Report of Proceedings*, p. 8, ln. 8-10. The portions of the Property described in Mr. DeNova's instruments had been already pledged as part of the security for Mr. Everham's loan so, even if Mr. DeNova's subsequent recordings conveyed any *of Mr. Everham's* interest in the Property back to Mr. DeNova, that transfer would be subject to the Deed of Trust, and therefore susceptible to foreclosure in the event of an uncured default under the Deed of Trust.

Neither Mr. DeNova nor Mr. Everham presented any evidence to contradict Deutsch's evidence on summary judgment regarding the timing or scope of any of the recorded conveyances concerning the Property. *Report of Proceedings*, pp 17-18, 21-23. Accordingly, there was no genuine issue of material fact regarding whether Deutsche's claims of title

to and possession of the Property were superior to those of Messrs. DeNova and Everham. Accordingly, the trial court properly entered a decree quieting title in favor of Deutsche and awarding it possession of the Property, and that decree should be affirmed.

1. There Was no Genuine Dispute of Material Fact Concerning the Scope of the Property Conveyed by the Deed of Trust or the Existence of Any Valid Easements.

Mr. DeNova asserted in the trial court that he and Mr. Everham only *intended* a transfer of a portion of the Property by the Warranty Deed and/or that Mr. Everham *intended* to grant him a permanent easement interest to allow DeNova to continue to reside on and utilize a portion of the Property. This assertion contradicts the sole, un rebutted evidence presented at the hearing on Deutsche's Motion for Summary Judgment: specifically, the four corners of the Warranty Deed conveying Mr. DeNova's *entire* interest in the Property to Mr. Everham, and the Deed of Trust that Mr. Everham granted to the lender, encompassing the *entire* Property. As argued in the hearing, and as the trial court found, the Warranty Deed described the entire lot identified in the Deed of Trust without carving out any exception, and that entire lot was what Deutsche foreclosed upon. *See, Report of Proceedings*, pp. 11-12.

The Statute of Frauds applies to Deeds. Washington's Statute of Frauds at RCW 64.04.010 provides in pertinent part:

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed...

RCW 64.04.020 requires:

Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act to take acknowledgments of deeds.

Regarding a warranty deed of the type that Mr. DeNova granted to Mr. Everham, RCW 64.04.030 states that it:

shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he or she was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he or she warrants to the grantee, his or her heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his or her heirs and personal representatives, as fully and with like effect as if written at full length in such deed.

A Deed of Trust is subject to the Statute of Frauds. *Glepco, LLC v. Reinstra*, 175 Wash.App. 545, 554 (Wash.App. Div. 1, 2013). Likewise,

because an easement is an interest in land, it must also be conveyed by deed. *Berg v. Ting*, 125 Wash.2d 544, 551 (Wash.,1995).

The record does not reflect, nor did the trial court see, any deed or other document recorded prior to the Deed of Trust that could have established any senior interest that Mr. DeNova might have retained in the Property, nor any easement thereon. Mr. DeNova's trial court counsel attempted to argue that a purchase and sale agreement reflected the easement, but there are three major issues with this: (1) no such agreement is in the record on appeal; (2) no competent evidence of such agreement was provided to the trial court on summary judgment (*Report of Proceedings*, p 17, ln. 13-18; p. 20, ln 5-18); and (3) even if there were an *unrecorded* agreement to that effect between Mr. DeNova and Mr. Everham, the written and recorded Warranty Deed controls because it determines what was actually granted, notwithstanding the subjective intent of the grantor, and the parol evidence rule precludes other evidence that negates or materially alters the form of the conveyance. RCW 64.04.030; *Report of Proceedings*, p. 17.

Mr. DeNova argued that Deutsche was not a party to the loan origination and thus lacked personal knowledge of the transaction so as to be able to gainsay his contentions about the parties' intentions regarding the garage and mobile home; however, this argument ignores the well-

established principle that third parties, such as lenders and their subsequent assignees, are entitled to rely on the state of title as shown by the public record in making or purchasing loans secured by deeds against property. *See Levien v. Fiala*, 79 Wn. App. 294, 299-300, 902 P.2d 170 (1995):

A bona fide purchaser of an interest in real property is entitled to rely on record title; the protection afforded him by the real property recording statute, RCW 65.08.070, is unaffected by the vendor's lack of good faith or by matters of which the vendor has notice.

...

Parties who delay recording their deeds to property until after another has recorded a deed to the same property have the burden of proving actual or constructive notice of their interest in property by the other, and if they fail to do so, their prior conveyance is void as against that party by virtue of RCW 65.08.070.).

(internal citations omitted)

In this regard, Mr. DeNova would also be equitably estopped from repudiating the plain language of his own deed.³ *Report of Proceedings*, p.

18. Equitable estoppel is established where a party can show:

an act or omission by the first party; (2) an act by another party in reliance on the first party's act, and (3) an injury that would result to the relying party if the

³ It does not matter that the court below did not rely on equitable estoppel in its ruling as long as the record supports its application. *See Tyler v. Grange Ins. Ass'n*, (1970) 3 Wn. App. 167, 179-80; 473 P.2d 193 (an appellate court may uphold the trial court's judgment on any valid basis, even one not considered by the trial court).

first party were not estopped from repudiating the original act.

Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc., 168 Wash.App. 56, 79 (Wash.App. Div. 1,2012). Here, Mr. DeNova argues (without evidence) that he and Mr. Everham erroneously failed to record an instrument that would have shown their actual intent prior to execution of the Deed of Trust. Both the originating lender and Deutsche acted in reliance on the state of record title as it existed at the time the loan was originated and assigned. Deutsche would be unfairly injured if its bargained-for security interest in the Property were to be reduced based on Appellant's secret intent.

Appellant argues that Deutsche was not entitled to foreclose on the garage or mobile home situated on the Property. However, to the extent that the garage and mobile home are movable chattel rather than fixtures, Deutsche does not take the position that it has any right or title to moveables and would not object to their being removed by DeNova if he can do so without damage to the property. *See Report of Proceedings*, p. 7, *ln 7-19*; p. 8, *ln. 13-20*; p. 9, 4-8. The issues were whether Mr. DeNova's Warranty Deed conveyed less than the entire Property and/or whether the parties conveyed a *valid* easement interest in real property to Mr. DeNova as part of the sale that would be binding on Deutsche, and which would

permit him to continue to use any portion of the real property to house those personal items of his. *Report of Proceedings*, p. 12, lines 7-18. Mr. DeNova's position in this regard is, of course, inconsistent. If he only sold a portion of the Property he would not need an easement to allow him to use that portion (he is not arguing about an access easement here); conversely, if he and Mr. Everham intended to grant an easement, Mr. DeNova would not have any ownership interest in that portion of the Property. *See Crisp v. Vanlaeken*, 130 Wn. App. 320, 323 (Wash. Ct. App. 2005): "The term 'easement' means ``a right, distinct from ownership, to use in some way the land of another, without compensation.'" [citation omitted]"

The trial court ruled that the real property belongs to Deutsche, free of any easements or interests recorded after its Deed of Trust. DeNova remains entitled to remove any chattels he might have on the Property (as long as he does not damage the Property or any fixtures thereon in the process) regardless of the rulings of the either trial court or this Court of Appeals; he simply cannot keep them on Deutsche's property, let alone use them there.

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**2. The Sale Contract between Everham and DeNova Is
Not in the Record and Would Violate the Parol
Evidence Rule.**

It was only after the loan fell into default and foreclosure proceedings had commenced that Mr. DeNova and Mr. Everham decided to create documents to record to attempt to carve out the garage and mobile home from the foreclosure. *Brief*, p. 1. On appeal, Mr. DeNova claims that he had a Sales and Purchase agreement with Mr. Everham that they had intended would control and limit the scope of the scope of the recorded deed despite the express language in that Warranty Deed. Unsurprisingly, Mr. DeNova's brief fails to cite to any authority for his argument, and this Court could reject it on that basis alone. *Collins v. Clark County Fire Dist. No. 5*, 155 Wash.App. 48, 96 (Wash.App. Div. 2,2010) (appellant waives assignment of error without supporting argument or authority). Moreover, the record on appeal does not contain a copy of such an agreement in any form, and Mr. DeNova did not present one for the trial court to consider. *Report of Proceedings, Report of Proceedings*, p 17, ln. 13-18; p. 23, ln. 7-8. The claim thus finds no support from law or from the factual record and should be rejected.

Even if the record had supported Mr. DeNova's claim, though, that evidence would still fail to overcome the bar of the Parol Evidence Rule, which provides:

...that all conversations and parol agreements between the parties prior to a written agreement are so merged therein that they cannot be given in evidence for the purpose of changing the contract or showing an intention or understanding different from that expressed in the written agreement.

Buyken v. Ertner, 632, 33 Wash.2d 334, 342 (Wash. 1949). Accordingly, regardless of alleged previous discussions, a promissory instrument to convey an interest in land cannot be negated or materially altered by evidence of prior discussions that contradict the plain language of the written agreement.

It is well-settled that parol evidence is not admissible to vary the promissory terms of a written instrument. *Shelton v. Fowler*, 69 Wash.2d 85, 93 (Wash. 1966). In Washington, parol evidence may be used to determine the meaning of a contract; however, it cannot be used to change the substance of the contract or to eliminate terms contained within. "The [parol evidence] rule forbids the use of parol evidence to add to, **subtract from**, modify, or contradict the terms of a fully integrated contract." [Emphasis supplied] *Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 28 (Wash. Ct. App. 2005), citing *DePhillips v. Zolt Constr. Co.*, 136 Wn.2d

26, 32, 959 P.2d 1104 (1998). Further, a litigant may not use parol evidence to show an intent contrary to the terms of the written agreement:

Since [*Berg v. Hudesman*, 115 Wn.2d 657 (Wash. 1990)], however, the Washington Supreme Court has further explained that surrounding circumstances and other extrinsic evidence are admissible only “to determine the meaning of *specific words and terms used*” in a contract and not to “show an intention independent of the instrument’ or to ‘vary, contradict or modify the written word.’” *Hearst*, 154 Wn.2d at 503 (quoting *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999)).

Int'l Shellfish v. Dep't of Natural Res., Aquatic Div., 2012 Wash. App. LEXIS 737, *20 (Wash. Ct. App. Mar. 27, 2012). Indeed, Washington courts have repeatedly affirmed that courts may consider parol evidence only to determine the meanings of terms used, not to alter or negate terms.

[N]either *Berg* nor *Avery* authorize unrestricted use of extrinsic evidence in contract analysis. Instead, “extrinsic evidence is relevant only to determine the meaning of specific words and terms used, not to show an intention independent of the instrument or to vary, contradict, or modify the written word.

Because Barber urges the court to utilize the declarations to vary, contradict, or modify the written release, neither *Berg* nor *Avery* require this court to consider the declarations. “It is the duty of the court to declare the meaning of what is written, and not what was intended to be written.”

Barber v. Ankeny, 2013 Wash. App. LEXIS 337, *9-10 (Wash. Ct. App. 2013) (holding that the trial court properly rejected declarations offered to attach different and contradictory meanings into the terms of subject

release agreements). Courts may not rely on declarations or even sworn evidence that contradict the written instrument when the contract in question contains the terms being contradicted within its four corners.

On summary judgment, neither Mr. DeNova nor Mr. Everham put forth any competent evidence of a mutual mistake in drafting, negotiating, or delivering the Warranty Deed and there was no evidence of ambiguity regarding the material terms of that deed--it expressly conveyed the *entire* Property described therein from Mr. DeNova to Mr. Everham. *Report of Proceedings*, p. 20, ln. 2-5; p. 24, ln 1-3. Nor did they provide any evidence that the Deed of Trust to Mr. Everham's lender in any way, shape or form apprised the lender that it was getting security in anything less than the entire Property. As Mr. Everham pledged the *entire* Property as security in the Deed of Trust, Deutsche therefore properly relied on the recorded instruments when it foreclosed in the entire Property following Mr. Everham's uncured default.

Mr. DeNova cannot defeat Deutsche's superior right, title and interest in the Property by asserting a "secret" intent **eleven years later.**

Mr. DeNova offers no plausible excuse for the severely late recording of instruments seeking to retroactively "correct" or clarify" the scope of the conveyance after eleven years, especially in light of his actual knowledge that foreclosure of the Property would soon follow. At best, the

2016 “correction deed” operated as a conveyance back to Mr. DeNova of a portion of the property that Mr. Everham had validly encumbered. However, because this conveyance was well after the Deed of Trust, any such conveyance was subject to the Deed of Trust and therefore was properly foreclosed upon. *First Bank of Lincoln v. Tuschoff*, 193 Wash. App. 413, 422-23 (Wash. Ct. App. 2016).

CONCLUSION

Appellants’ argument on appeal is unsupported by a sufficient record for the Court to review the trial court’s decision. Further, the limited record supports a finding that the trial court’s ruling was proper. For this reason, the Court should affirm the lower court’s grant of summary judgment in favor of Deutsche.

August 25, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on the date stated below, I served a copy of the foregoing document, described as **Answer Brief**, on the following persons by U.S. First Class Mail:

Stan DeNova
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Oakville, WA 98568

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this Declaration was executed in Seattle, Washington.

Dated: August 25, 2020

/s/Karina Khamidullina
Karina Khamidullina
Paralegal
Wright, Finlay & Zak, LLP

WRIGHT FINLAY ZAK, LLP

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