

FILED

JAN 09 2015

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 324745

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION III

Thomas F. Merry,
Appellant,

v.

NORTHWEST TRUSTEE SERVICES, INC.;

and,

NATIONSTAR MORTGAGE LLC.
Respondents.

Appellant's Reply to Respondents Answering Brief

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I. INTRODUCTION

Merry complains that the trial court improperly dismissed his claims without hearing them. Respondants' answer that Merry waived any claim he had by not enjoining the trustee's sale, and that Merry lacked standing to raise the claims of another.

2. ARGUMENT

1. Merry's Standing.

Through Merry's deed of trust against the PROPERTY, CP pp. 68-71; an assignment of rights, CP p. 104; and a Special Power of Attorney, CP pp. 105-106, Merry has a distinct and personal interest in the issue of who, if anyone, has the authority to foreclose on the NOTE, CP pp. 38-39, under the WEIRICH DOT, CP pp. 40-50.

“A party has standing to raise an issue if that party has a distinct and personal interest in the issue. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S.Ct. 2965, 2972, 86 L.Ed.2d 628, 637 (1985). Here, Paris Beauty Supply's security interest in the tanning equipment would be deemed superior to the McCauslands' lien for rent, if Paris Beauty Supply can establish that the McCauslands' landlord's lien fails because of Total Tan's defenses to the claim of lien. Thus, Paris Beauty Supply has a personal interest in the issue and, consequently has standing to raise Total Tan's defenses.”

Paris American Corp. v. McCausland, 759 P.2d 1210, 52Wn.App. 434 (Wash.App. Div. II, 1988)

If Merry can establish that Nationstar and NWTS claims fail because of WEIRICH's defenses to the instrument, Merry's DOT would be in first position against the property. Merry has standing to raise WEIRICH's claims, including but not limited to the claim that the note is a lost or stolen instrument which WEIRICH is not obligated to pay, RCW 62A.3-305(c), Appeal Brief, P. 21.

2. Merry's Failure to Enjoin.

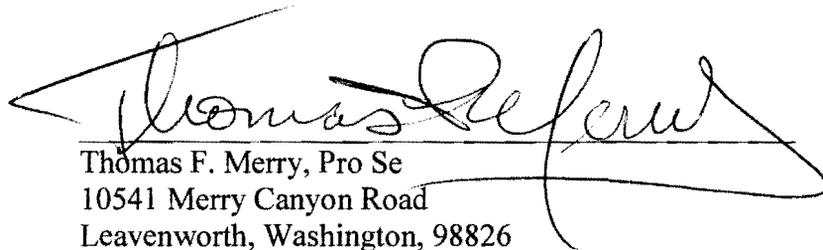
Merry was not required to enjoin the trustee's sale when the trustee is without statutory authority to conduct it. "[W]hen an unlawful beneficiary appoints a successor trustee, the putative trustee lacks the legal authority to record and service a notice of trustee's sale." *Rucker v. Novastar Mortgage, Inc.*, Wash. App. No. 67770-5-1 (2013), citing *Walker v Quality Loan Service Corp.*, Wash Apps, Div I, No. 65975-8-1 (Aug. 2013). "...[V]acation of a foreclosure sale is required where a trustee has conducted the sale without statutory authority." *Walker*. Before Defendants answered Merry's complaint in the trial court, the trustee rushed to sale and issued a questionable trustee's deed, CP 11, Exhibit No. 11. The trustee's sale having been held, lawlessness notwithstanding, the trial court dismissed Merry's claims for failure to enjoin an unlawful trustee.

3. CONCLUSION

Under *Paris American Corp*, Merry had and has standing to raise Weirich's claims. Merry introduced documents for the record that show it possible for him to prove a set of facts, consistent with his complaint, among which being the trustee and beneficiary were unlawful and/or that the note is a lost or stolen instrument. Merry's claims should not have been dismissed.

For the reasons stated above, and stated in his Appeal Brief and Response to Joint Motion on the Merits, Merry requests the Court reverse the trial court dismissal and remand for further proceedings.

RESPECTFULLY SUBMITTED this 7th day of January, 2015.

A handwritten signature in black ink, appearing to read "Thomas F. Merry", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

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DECLARATION OF SERVICE

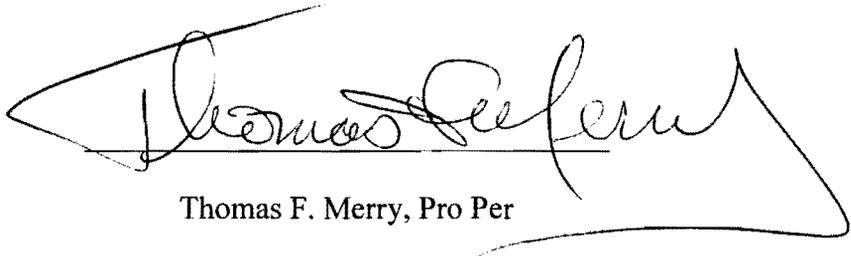
Thomas F. Merry, under penalty of perjury states:

That on January 7, 2015 I placed in the US Mail a copy of Appellant's Response to Joint Motion on the Merits, Postage Prepaid, with sufficient first class postage affixed thereto to ensure delivery to the parties listed below.

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Signed this 7th day of January, 2015, at Leavenworth, Washington.



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