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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Case No. 326039

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

THOMAS F. MERRY,

Appellant,

vs.

QUALITY LOAN SERVICE CORP., and

JP MORGAN CHASE BANK, N.A.,

Respondents.

Appeal from an Order of the King County Superior Court
Case No. 13-2-01288-4

RESPONDENT QUALITY LOAN SERVICE CORPORATION OF
WASHINGTON'S BRIEF

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I. INTRODUCTION

On April 24, 2013, Respondent Quality Loan Service Corporation of Washington (“Quality”) was appointed as successor trustee under the subject Deed of Trust. CP at 166-67. The appointment was made by JPMorgan Chase Bank, N.A. (“Chase”). *Id.* At the time the appointment was made, and at all relevant times since, Chase has been the “holder” of the Promissory Note (the “Note”) secured by the Deed of Trust. CP at 74, 250.

It is undisputed that the borrower under the Note defaulted by reason of nonpayment. The Deed of Trust provides the trustee with the power of sale in the event of default. CP at 82.

On May 8, 2013, Quality issued a Notice of Default. CP at 169-182. On August 14, 2013, Quality issued a Notice of Sale against the property, scheduling an auction date for December 13, 2013. CP at 7; 134-37. The Notice of Sale was subsequently discontinued by Quality. CP at 283 (trial court acknowledging no sale pending)¹.

Prior to issuing the Notice of Sale, Quality had in its possession a Beneficiary Declaration from Chase confirming they “held” the Note. CP at 184.

¹ See also Chelan County Recorder’s No. 2399214 (recorded Discontinuance of Sale)

Appellant filed the subject lawsuit against Quality, seeking injunctive and declaratory relief concerning the Deed of Trust and Quality's sale. CP at 10-11. Quality was dismissed from the case on summary judgment. CP at 286-288.

The dismissal should be affirmed. The injunctive relief sought by Appellants was made moot by the cancellation of the sale, and the declaratory relief claims concerning the enforceability of the Deed of Trust did not require adjudication with Quality. Finally, the record demonstrated that Quality was properly appointed successor trustee, undercutting Appellants' claims even if he had standing to assert them.

II. ARGUMENT

A. Injunctive Relief Was Moot.

"A case is moot if a court can no longer provide effective relief." *Orwick v. City of Seattle*, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). The issue of mootness "is directed at the jurisdiction of the court." *Citizens for Financially Responsible Gov't v. City of Spokane*, 99 Wn.2d 339, 350, 662 P.2d 845 (1983). As such, it "may be raised at any time." *Citizens*, 99 Wn.2d at 350.

The Deed of Trust Act provides for injunctive relief against trustee "sales." RCW 61.24.130. There is no stand-alone claim for injunctive relief. *Kwai Ling Chan v. Chase Home Loans, Inc.*, 2012 WL 1576164, 7

(W.D. Wash. 2012) (citing *Jensen v. Quality Loan Serv. Corp.* 702 F.Supp. 2d 1183, 1201 (E.D. Cal. 2010) (“A request for injunctive relief by itself does not state a cause of action”)).

Appellant’s claim for injunctive relief under the Deed of Trust Act became moot when the sale was canceled. Without a sale, there was no activity for the court to enjoin. An adjudication as to a potential future sale would have been an impermissible advisory opinion. *To-Ro Trade Shows v. Collins*, 144 Wn.2d 403, 411, 27 P.3d 1149 (2001). The court was correct in dismissing the claim for injunctive relief as being moot.

Nothing in the court’s dismissal prevents an application for injunctive relief in the event a future sale is scheduled. At that point, legal issues as to the trustee and sale would be ripe for adjudication.

B. Declaratory Relief Not Applicable to Quality.

The thrust of Appellant’s case is that Deed of Trust is not enforceable against the property. This is not relief that is appropriately directed against Quality. Quality is not the lienholder, nor is it the party claiming the ability to enforce the Note obligation. Appellant’s claims for declaratory relief concerning the Property, Note, and Deed of Trust are appropriately directed at Chase, not Quality. And to the extent Appellant sought declaratory relief that Quality was not a valid trustee, that claim was made moot by the absence of any trustee activity by Quality. Thus,

the Court was correct in dismissing Quality from the declaratory relief claims.

C. Appellant's Underlying Allegation of Wrongdoing Has No Merit.

Even if Appellant had standing to adjudicate his underlying claim against Quality (i.e. that it was not properly appointed trustee), that claim fails on the merits.

i. Quality Properly Appointed Successor Trustee.

Under Washington's Deed of Trust Act, the "beneficiary" is the "holder of the instrument or document evidencing the obligations secured by the deed of trust". RCW 61.24.005(2). Washington's Supreme Court has further confirmed that the "beneficiary" is the "holder" of the note obligation. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83 (2012).

In this case, Quality was appointed successor trustee by Chase. Chase is the "holder" of the Note. Therefore, Chase was the proper "beneficiary" with the power to appoint a successor trustee.

ii. "Owner" versus "Holder".

Appellant, for the first time in his opening brief, appears to argue that Chase could not appoint Quality as successor trustee because Chase did not "own" the Note. This argument was squarely rejected by the Court

of Appeals for Division I in the case of *Trujillo v. Northwest Trustee Services, Inc.*, 181 Wn. App. 484 (Div. 1, 2014), where the Court held that the “holder” of the note, not the “owner” (assuming those parties are different), is the beneficiary with the power to appoint a successor trustee. Furthermore, the trustee is entitled to rely on a declaration from the “holder” of the note, not the “owner,” in satisfying its obligation under RCW 61.24.030(7)(a). *Id.* at 502.

In this case, Quality was appointed successor trustee by the “holder” of the Note – Chase. Furthermore, Quality had in its possession the Beneficiary Declaration from Chase prior to issuing the Notice of Sale. No evidence was submitted by Appellant challenging this fact in opposition to summary judgment.

Thus, the record and law at summary judgment demonstrated that Quality complied with the Deed of Trust Act in advancing the sale on behalf of Chase. Even if Appellant had legal standing to challenge Quality’s action, those claims would have been dismissed on the merits.

A. New Trustee Sale.

Appellant in his opening brief alleges that Quality issued a new notice of sale against the property after dismissal of the case. Appellant’s Brief at page 5; Exhibit A.

The new sale has nothing to do with this appeal. This appeal concerns the claims before the trial court at the time of dismissal. There was no sale at that time, and thus nothing for the court to enjoin or otherwise adjudicate. As already mentioned, nothing prevents the Appellant from seeking injunctive relief with the superior court as to a new sale that has been set. *See* RCW 61.24.130 (allowing the court to enjoin a trustee “sale”).

III. CONCLUSION

The Court should affirm the dismissal of Quality.

Dated: October 23, 2014

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