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STATE OF WASHINGTON
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Appeal No. 346153

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

WORD CHURCH AKA REV. GEORGIA PLUMB, GEORGIA A.
PLUMB, JOSHUA C. PLUMB, KAMERON F. PLUMB

Appellants/Defendants, *Pro Se*

v.

U.S. BANK NATIONAL ASSOCIATION, ET AL

Respondent/Plaintiff

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR THE COUNTY OF YAKIMA
CASE NO. 13-2-04236-2

APPELLANTS' AMENDED REPLY TO RESPONDENT'S BRIEF

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I. ARGUMENT IN REPLY TO RESPONDENT'S BRIEF

A. U.S. Bank did not have standing to file the Foreclosure Complaint because it did not possess the purported original Note when it initiated the case; therefore, the trial court did not have jurisdiction.¹

The *pro se* Appellants, the Plumbs, have established that CR 11(a)(1)(2)&(3), U.C.C. RCW 62A.3 and relevant case law including, but not limited to Washington State Supreme Court's ruling in *Brown v. Dept of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015) are directly applicable in this foreclosure case.² In *Brown*, the Supreme Court of the State of Washington held that “[A] promissory note is often a negotiable instrument and therefore article 3 of the U.C.C. is applicable. RCW 62A.3-102.”³ The Supreme Court held, “When a note is indorsed in blank, it is ‘payable to a bearer and may be negotiated by transfer of possession alone.’ RCW 62 A.3-205(b).” [emphasis added] The U.C.C. RCW 62A.3-203 states the instrument is transferred when it is delivered for the purpose of giving to the person receiving delivery the right to enforce the instrument.⁴ Thus, U.S. Bank had to prove that it was a holder in due course of an original Note that the Plumbs signed, and that U.S. Bank had actual possession of the Note on the day this foreclosure case was filed in order to have standing and to invoke the jurisdiction of the court.⁵ The Bank did not prove that it held actual possession of the Note when the case was filed, therefore, the lower court did not have jurisdiction in this case. U.S. Bank's own business records produced in discovery establish the fact

¹ Appellants' Brief (Appellants' Br.) pp 11-20.

² Id.

³ Appellants' Br., p 18.

⁴ Clerk's Papers (CP) 930, ¶ 11; CP 931, Lines 1-5.

⁵ Appellants' Br., pp 11-20.

that *Deutsche Bank* held the purported original Note when the case was filed and for several months afterward. Specifically, U.S. Bank's un-rebutted signed and dated "*Note Location Determined*" business record that its attorney-in-fact and loan servicing agent, Ocwen, provided in discovery.⁶ There is no court record where the Bank has ever disputed the veracity of the said business record. It also never claimed that it was in control of the purported original Note at *Deutsche Bank*, or that *Deutsche Bank* was U.S. Bank's agent or custodian of records when the case was filed. Thus, U.S. Bank never proved that it was a holder in due course in actual possession of the Note when the case was filed. The trial court incorrectly ruled, "[U.S. Bank] didn't have to actually have possession of [the Note]" when the case filed.⁷ Thus, the lower court manifestly erred, abused its discretion and ruled directly contrary to CR 11(a)(1)(2)&(3), U.C.C. RCW 62A.3, *Brown supra* and other relevant case law (shown below).

1. U.S. Bank incorrectly argues in its Respondent's Brief (Resp Br) on p 16, ¶ 1 that after receiving the "*Note Location Determined*" document in discovery, the Plumbs never made any motion to dismiss and that the Plumbs did not countermove for summary judgment at any time in answer to the Bank's motions for summary judgment, thus waiving their rights to object. The record clearly shows that the Plumbs moved the lower court to dismiss the case for "lack of standing"⁸ and to "dismiss the fraudulent

⁶ Appellants' Br., Appendix I, p 1.

⁷ Verbatim Reports of Proceedings (RP) 28, Lines 17-22; See also, RP 28, Lines 1-6; RP 99, Lines 6-8; RP 101, Lines 11-25; RP 102, Lines 1-16; RP 103, Lines 7, 8, 21-23.

⁸ CP 383, Line 27; CP 384, Lines 1, 25-27; CP 399, Lines 8, 9; CP 445, Lines 25-27; CP 446, Lines 1-5.

case per CR 41(b)(2)(D).”⁹ The Plumbs also prayed that the court would grant summary judgment to them as a “non-moving party.”¹⁰

2. U.S. Bank incorrectly argues in its Resp Br. p 15, ¶ 2 that *U.S. Bank National Ass'n v. Kimball*, 2011 VT 81 doesn't apply because the Plumbs did not move the court to dismiss the case or countermove for summary judgment at any time. As shown above, the Bank's assertion is false. The Bank tries to highlight differences between this case and the *Kimball* case in an attempt to demonstrate that the two are incompatible, yet fails to recognize the underlying controlling factors regarding the dismissal which directly applies to this case. In that case and this case, U.S. Bank foreclosed on a homeowner. U.S. Bank was not the holder of the note on the date the lawsuit was filed and thus was not authorized to enforce the provisions of the note. In both cases, U.S. Bank later became the holder of the note after the suit was filed. According to the Vermont Supreme Court, dismissal is warranted for this reason alone.

The court said, in relevant part, "*When a plaintiff is not able to establish that it possessed a note on the date a foreclosure complaint was filed, the complaint should be subject to dismissal if only to provide a clear incentive to plaintiffs to see that the issue of standing is properly addressed before any complaint is filed.*" (Emphasis added)

"It is neither irrational nor wasteful to expect a foreclosing party to actually be in possession of its claimed interest in the note, and have the proper supporting documentation in hand when filing suit."

It is not just the Bank's failure to *allege* they were the holder in due course as U.S. Bank selectively implied, it is also the failure to *demonstrate* (as the court described). *9A V.S.A. § 3-201*. In other words,

⁹ CP 956, ¶ M; CP 445, Lines 25-27; CP 446, Lines 1-5, 11-15.

¹⁰ CP 958, Lines 16-19.

the Bank could have simply alleged it was the holder in due course, but if it were unable to demonstrate that fact when its standing is legitimately challenged, its unsupported allegation would be insufficient and the same result would occur. The same underlying reasoning applies in the present case.

In *Deutsche Bank Nat'l Trust Co. v. Johnston*, 2016-NMSC-013 (2016), the New Mexico Supreme Court concluded that the plaintiff did not establish standing to foreclose on the defendant's home when it could not prove that it had the right to enforce the promissory note on the mortgage at the time it filed suit. Even though the plaintiff subsequently became holder of the note after the case was filed, because it was not the holder at the inception of the suit, the court found it did not have standing. The foreclosure was vacated and the case was dismissed. The court stated: “[2]-The bank did not produce a note indorsed in blank when it filed suit, and the subsequent production of a blank note did not prove that the bank possessed the blank note when it filed suit; [3]-The date that the homeowner's mortgage was assigned to the bank did not establish a corresponding date indicating when the note was transferred to the bank or even if the note was transferred; [4]-Standing had to be established as of the time of filing suit in mortgage foreclosure cases ...” (Emphasis added.)

Here the New Mexico Supreme Court emphasized the importance of establishing “when” the note was transferred, since this connects directly to proving possession on the date the lawsuit was filed. In our case, U.S. Bank has claimed that Ocwen (U.S. Bank's authorized agent, attorney-in-fact and loan servicer) held the Note on the date this lawsuit was filed¹¹,

¹¹ CP 668, Lines 8-11; CP 670. CP 660, Lines 4-8; CP 662.

yet the Bank avoids discussing exactly “when” this alleged transfer happened.

For example, Ocwen's affiants never state “when” this Note transfer occurred. The lower court asked the Bank’s counsel, “*When did the transfer [of the Note] take place?*” Attorney Tiffany Owens indicated to the court that *she did not know*.¹² When U.S. Bank's affiants fail to state when the transfer occurred, and the bank's attorney doesn't know when the transfer occurred, and Ocwen's own unrefuted *Note Location Determined* document produced by Ocwen in discovery indicates that *Deutsche Bank* held the Note when the case was filed (and for several months afterward), and the Bank fails to controvert their own evidence with substantive proof, then the Bank has failed to show that it possessed the Note when it filed suit and has failed to prove standing.

In *Deutsche Bank Nat'l Trust Co. v. Ben. N.M., Inc.*, 2014-NMCA-090, a foreclosure granted by the lower court for the bank against the homeowner was reversed by the appeals court after finding that although Deutsche Bank held the note at the time of the trial, it did not hold the note when it originally filed the complaint, thus it lacked standing to foreclose. “*Although an undated note indorsed in blank was sufficient [...] to show that the bank that produced the note was the holder at the time of a foreclosure trial, it did not show that the bank was the holder at the time it filed its complaint and thus did not establish that the bank had standing to foreclose*”

In *Bank of Am., N.A. v. Reyes-Toledo*, 139 Haw. 361, 368-69, 390 P.3d 1248, 1255-56 (2017), the Hawaii Supreme Court held that granting plaintiff mortgagee summary judgment in a foreclosure erred because, despite its blank-indorsed note when it sought summary judgment, there

¹² RP 23, Lines 20-25; RP 24, Lines 1-9.

was a fact issue as to whether it held the note when the case was filed and thus had standing.

In *Deutsche Bank Nat. Trust v. Brumbaugh*, 2012 OK 3, 270 P.3d 151, 154 (Okla. 2012), the Oklahoma Supreme Court held, "*Being a person entitled to enforce the note is an essential requirement to initiate a foreclosure lawsuit. In the present case, there is a question of fact as to when Appellee became a holder, and thus, a person entitled to enforce the note. Therefore, summary judgment is not appropriate.*"

In *Focht v. Wells Fargo Bank, N.A.*, 124 So. 3d 308 (2013), the Florida 2nd District Court of Appeal found that the trial court erred by granting summary judgment for the bank on its foreclosure action because there existed a genuine issue of material fact regarding whether the bank had standing to enforce the note and mortgage at the time it filed the complaint, as holder of the note. The bank was required to show evidence that it was in possession of the original note with the blank endorsement at the time it filed the complaint to establish standing. Since the bank could not provide evidence that it possessed the original note at the time it filed its complaint, summary judgment against the homeowner was reversed.

The court held that "*A plaintiff's lack of standing at the inception of the case is not a defect that may be cured by the acquisition of standing after the case is filed.*"

It is important to note that New Mexico, Hawaii, Oklahoma and Vermont are notice pleading states. This is relevant because the lower court took the position that proving standing at the inception of the case does not matter because Washington State is a notice pleading state.¹³ In other words, it made no difference to the lower court if the Bank didn't

¹³ RP 28, RP 102-103.

have possession of the note on the date the lawsuit was filed. As a result, the lower court improperly rejected all of the Plumbs' standing defenses. As shown above, standing defenses *do* apply in notice pleading states.

Additionally, in the Vermont Supreme Court case cited above, the foreclosure case against the homeowners was dismissed with prejudice because U.S. Bank not only lacked standing at the inception of the case, but the Bank had also engaged in dishonest practices during the course of the case. This is relevant because of the systemic dishonesty engaged in by U.S. Bank in our own case.

When U.S. Bank filed its defective complaint, the deficiencies therein were not mere technicalities, but essential items, without which the case could not proceed. U.S. Bank not only lacked standing when the complaint was filed but also several months afterwards. It knowingly concealed this essential fact from the court and the Plumbs in U.S. Bank's attempt to maintain the case deceptively and to prevent the case from being dismissed. According to U.S. Bank's own records, CP 665, it wasn't until almost 8 months after the case was filed that U.S. Bank received the alleged original Note and Deed of Trust from Deutsche Bank. During this time, U.S. Bank allowed the case to languish for almost a year, with nothing done in court. U.S. Bank's attorney-in-fact, Ocwen, committed perjury in its discovery responses¹⁴ in the attempt to cover-up the Bank's earlier deceit.

U.S. Bank's extensive deception, perjury and refusal to correct these issues has undermined the truth-finding function of the court and has prejudiced the *pro se* Plumbs' ability to defend themselves. The Bank's bad faith in this case, combined with its failure to show standing, warrant dismissal with prejudice.

¹⁴ CP 668, Lines 8-11; CP 670. CP 660, Lines 4-8; CP 662.

3. U.S. Bank's argument at Resp Br, p 14, ¶ 2 fails. U.S. Bank has never stated it wasn't "*the real party in interest*" at the time of the complaint and has never claimed, "*the wrong plaintiff is named though an honest or understandable mistake*". U.S. Bank had notice of the standing deficiency from the start of litigation. Over the years, there has been more than a reasonable time allowed for U.S. Bank to resolve the issue yet they have stubbornly refused to do so. Instead, at virtually every opportunity, the Bank has chosen to conceal the fact that Deutsche Bank was the holder of the Note on the date this lawsuit was filed. Rather than acknowledge reality, the Bank sought to exclude their own damning evidence from being entered into the record. The Bank's attorney-in-fact (Ocwen) has even gone to the extreme of committing perjury in its attempts to cover up this fact.¹⁵ This undermines subsequent claims by the Bank of an "honest" mistake. The court is not required to give U.S. Bank another opportunity and does not abuse its discretion in denying the Bank's request at this late stage in the proceeding.

U.S. Bank implies that it should be permitted to proceed because it would be waste of judicial resources to prevent it from being able to cure its standing problem. The source of the unnecessary proceedings in this case was not an overly-rigid application of the rules, but U.S. Bank's failure to abide by them. What might have been a fairly straightforward proceeding under the rules was rendered inefficient by U.S. Bank's failure to marshal its case before compelling the Plumbs and the court to waste time and resources by responding to what could not be proven. There is nothing inequitable in dismissing this matter. As the Vermont Supreme Court case stated above, dismissal is proper if for no other reason than to send a message and to incentivize good behavior.

¹⁵ CP 368 lines 5-27; CP 370-384.

Further, any suggestion that the Bank's actions were an “honest mistake” is undermined by the fact that six days prior to this case being filed, the Washington State Attorney General's official website¹⁶ posted a press release announcing a settlement between Ocwen and forty-nine state attorney generals (including Washington State's own Attorney General) and the Consumer Financial Protection Bureau along with the District of Columbia, who had combined together to file a lawsuit against Ocwen, alleging wide-spread systemic abuses by Ocwen against homeowners on a nation-wide level, including Ocwen's abusive filing of foreclosures prematurely before they were authorized to do so and ‘robo-signing’ affidavits in foreclosure proceedings.¹⁷ “Robo-signing” is a term used by consumer advocates to describe the robotic process of the mass production of false and forged execution of mortgage assignments, satisfactions, affidavits and other legal documents related to mortgage foreclosures and legal matters being created by persons without knowledge of the facts being attested to. Georgia Plumb provided un-rebutted evidence and testimony in court under oath, “We had sent our own attorney general information of Ocwen’s illegal behavior toward us, and so our information was part of the information that our Attorney General had in bringing this case against Ocwen.”¹⁸ Ocwen settled the case, paying \$2.125 billion dollars and giving assurance to the attorney generals that they would no longer engage in these kind of abusive behaviors. Ironically, six days after this press release was posted on the Washington State Attorney General's website, this foreclosure case was filed prematurely against the Plumbs by

¹⁶ CP 338, 339, 343-345

¹⁷ CP 338, Lines 22-27; CP 339, Lines 1-5; CP 343, Lines 16-27; CP 344; CP 345, Lines 1-10.

¹⁸ RP 7, Lines 23-25; RP 8, Lines 1-5. See also CP 136-139, 146, 147; RP 85, Lines 6-12.

U.S. Bank (working with Ocwen) months before the Bank actually held possession of the Note and was authorized to file suit. Despite having access to the pertinent records at all times relevant to this case, the Bank has never waived from its false position that it held the Note on the date the lawsuit was filed. Its actions were not an “honest mistake”, but bad faith which rises to the level of egregious judicial misconduct.

4. U.S. Bank claims at Resp Br, p 18, ¶ 3 that there is no evidence in the record that the “*Note Location Determined*” document was made by an individual who was authorized to make that statement for U.S. Bank. That is false. There is evidence in the record below that the subject “*Note Location Determined*” business record¹⁹ was made by a person who had authority to make a statement for U.S. Bank. This individual was directly and/or indirectly implicitly authorized by agent(s) of U.S. Bank when they requested, collected then provided his response to the Plumbs in discovery. The business record itself is signed and dated by Matthew Owens, U.S. Bank’s authorized agent, declarant and “Contract Manager” in a representative capacity from the U.S. Bank’s attorney-in-fact and servicing agent, Ocwen.²⁰ Matthew Owens officially responded to Defendants’ First Request for Admissions (ADM)²¹ and provided the subject “*Note Location Determined*” business record that he signed and dated in Plaintiff’s Responses to Defendants’ First Set of Interrogatories (INT) and Requests for Production of Documents (RFP).²² His two sworn declarations were made under penalty of perjury.²³ His Admissions

¹⁹ Appellants’ Br., Appendix I, p 1.

²⁰ Appellants’ Br., Appendix I, pp 4, 7.

²¹ Appellants’ Br., Appendix I, p 7.

²² Appellants’ Br., Appendix I, p 4.

²³ Appellants’ Br., Appendix I, p 7.

declaration was notarized.²⁴ In the dated “16 day of July, 2015” discovery response,²⁵ at the same he *specifically* put his name and his hand-written date of “7/16/15” in the lower right-hand corner of the subject “*Note Location Determined*” business record.²⁶ Besides the Note Location Document, Mr. Owens did not sign and date any other business record that he provided in his discovery response.²⁷ Furthermore, U.S. Bank didn’t and couldn’t point to any place in the entire court record where U.S. Bank ever once denied or disputed the signed and dated “*Note Location Determined*” document²⁸ that showed *Deutsche Bank* held the purported original Note when the case was filed on 12/26/2013 or that the Bank ever denied the admissibility of the record, or attacked the credibility of its creator or its own Declarant, Matthew Owens, or that the Bank ever claimed that Matthew Owens didn’t have authority to request, collect and forward this information for U.S. Bank. Furthermore, the Bank did not and could not point to any place in the entire record where U.S. Bank even once mentioned the “*Note Location Determined*” record. U.S. Bank has always been able to obtain specific records showing which entity held possession of the Note on the date this lawsuit was filed. If U.S. Bank were able to controvert the damaging information contained within the *Note Location Determined* document, it would have done so long ago. Any reasonable, fair-minded person can conclude that U.S. Bank knew of the information contained within the “*Note Location Determined*” document, the nature of which called for a reply. U.S. Bank's complete lack of response, failure to rebut or dispute the information contained in

²⁴ Appellants’ Br., Appendix I, p 7.

²⁵ Appellants’ Br., Appendix I, p 4.

²⁶ Appellants’ Br., Appendix I, p 1.

²⁷ CP 560-583.

²⁸ Appellants’ Br., Appendix I, p 1.

this document constitutes an admission by silence and is a waiver of objection.

U.S. Bank implicitly authorized the creation of the “*Note Location Determined*” document when it directly requested the information regarding the location of the Note. Matthew Owens acknowledged and authorized that document when he received, signed, dated and forwarded it to Tiffany Owens (U.S. Bank's previous attorney). U.S. Bank's attorney further acknowledged and authorized that document when she provided it to the Plumbs. Through the law of agency, actions by the Agent are actions by the Principal. U.S. Bank thus directly and/or indirectly implicitly authorized the statements contained within the “*Note Location Determined*” document.

Furthermore, the “*Note Location Determined*” business record²⁹ was not hearsay, but admissible evidence under ER 801, as it contained a special written “declaration” and “statement” of its veracity by Declarant Matthew Owens in the lower right-hand corner.³⁰ The signed and dated “*Note Location Determined*” business record was also not hearsay under ER 803(6)(7)&(15) as it was a (6) “Record of Regularly Conducted Activity” produced from U.S. Bank’s servicing agent’s (Ocwen’s) own business records’ “screen shots”;³¹ (7) there is no evidence anywhere from other sources of information or other circumstances to indicate lack of trustworthiness of the business record; and (15) Matthew Owens’ statement in the document itself affected an interest in the subject, residential property at 4902 Richey Rd. Yakima, WA 98908. The matter stated was relevant to the purpose of the document. No dealings with the

²⁹ Appellants’ Br., Appendix I, pp 1-4; CP 560-583.

³⁰ Appellants’ Br., Appendix I, p 1.

³¹ Appellants’ Br., p 1.

property since the document was made have been inconsistent with the truth of the statement or the purport of the document.

5. U.S. Bank's argument at Resp Br, p 17, ¶ 1³² fails because of the Plumbs' above reply, also, a). Ocwen's Affiants never "*represented that they were acting on behalf of the holder, U.S. Bank, at all times relevant to the action.*" b) The Affiants' affidavits were "ambiguous" as to the date when the Bank became the holder of the purported original (albeit forged) Note and they were not made under penalty of perjury as required by *Trujillo v. Nw. Tr. Servs., Inc.*, 355 P.3d 1100, 1106 (2015). (In both *Lyons v. U.S. Bank Nat'l Assn'n*, 181 Wn.2d 775; 336 P.3d 1142 (2014) and *Trujillo*, Washington's Supreme Court held that "ambiguous language" in a beneficiary declaration precludes summary judgment.) c) U.S. Bank's affiants from Ocwen and its counsel didn't and couldn't openly reveal the date when the actual "transfer" of the purported original Note document to U.S. Bank and/or its agent occurred because the "transfer" from Deutsche Bank to Ocwen occurred on "8/4/14" (about seven months) after the fraudulent foreclosure complaint was filed on 12/26/13.³³

6. U.S. Bank argues at Resp Br, p 13 ¶ 2; p 14 ¶ 1 that if the "Note Location Determined" document accurately identifies Deutsche Bank as holding the note on the date the complaint was filed, that this defect was "ratified" by the Bank's two motions for summary judgment. U.S. Bank proposes that the courts may allow such a ratification if it were due to an "honest or understandable mistake." Does this theoretical "ratification" proposed by U.S. Bank involve it being done secretly by the Bank, all

³² Resp Br, p 17, ¶ 1; RP 23, Lines 20-25; RP 24, Lines 1-9; See also CP 994.

³³ RP 23, Lines 20-15; RP 24, Lines 1-9; Appellants' Br., Appendix I, p 1; CP 1; CP 745-780; CP 781-823.

whilst they adamantly deny that any mistake occurred and swear under penalty of perjury that U.S. Bank was always the holder in due course? Is this the good-faith solution to the “honest mistake” they seek to imply? As mentioned above, the Bank's attorney-in-fact (Ocwen) has been accused of this exact kind of abuse on a national level (i.e., filing cases prematurely before being authorized to do so) by forty-nine credible state attorney generals. This relevant information should be taken into account when weighing the Bank's claims of innocence. The Bank has always had access to the pertinent records detailing exactly who held the Note on the date this lawsuit was filed. Thus, the Bank's phrasing which continues to cast doubt on the veracity of the *Note Location Determined* record is disingenuous. The Bank continues to avoid being forthcoming. Rather than admit that Deutsche Bank held the Note, they are have instead worked to have their own records excluded from being considered. Let us not call such attempts “honest” and “good faith”, nor a “mistake”. Truth is not the Bank's goal. Winning is. Their actions are not the work of an “honest” party, their actions are done in bad faith.

7. U.S. Bank argued, “*The ‘Note Location Determined’ document was properly excluded by the trial court.*”³⁴ That is false. The lower court did not “exclude” that particular business record and U.S. Bank did not and could not point to a single place in the entire record where the lower court did. Further, the said business record was attached to two of the Defendants’ Affidavits,³⁵ and U.S. Bank did not and could not show anywhere where the lower court ever struck any of the Plumbs’ affidavits, because it did not. Furthermore, as mentioned above, U.S. Bank could not

³⁴ Respondent Brief (Resp Br), pp 17-19;

³⁵ CP 452, ¶¶ 7, 8; CP 453, Lines 1, 2; Exhibit 6, p 21 - CP 1162-1165. (Note: All of Defs’ Affidavit’s Exhibits 1 through 12 were by clerical error in the trial court attached to the Defendants’ Declaration of Mailing. See 1240.)

point to any place in the entire court record where the Bank ever even once mentioned or denied or disputed its own signed and dated “*Note Location Determined*” business record. The Bank gave the lower court absolutely no reason whatsoever to “exclude” the said business record. And the court did not exclude it. The lower court (incorrectly) avoided discussing or addressing it.

8. U.S. Bank argued, “*There is no testimony on the record, and certainly nothing in the appellant’s opposing affidavit to indicate that the records reviewed by the speaker would qualify as business records.*”³⁶ In direct contradiction, the Plumbs have fully described above how the said ‘*Note Location Determined*’ business record was especially signed and dated by the Bank’s own Declarant, representative and agent, Matthew Owens, a “Contract Manager” for U.S. Bank’s attorney-in-fact and loan servicing agent, Ocwen.³⁷ Mr. Owens clearly held a position of higher qualification than either of the Bank’s Affiants from Ocwen, Mr. Fernandez and Mr. Delpesche, as they were each only a “Contract Management Coordinator”³⁸ and they did not sign and date any of the Exhibits they attached to their affidavits. Mr. Owens on the other hand made the effort to specifically sign and date the said business record. Additionally, Mr. Owens made his separate “Party Verification” for the Plaintiff *under penalty of perjury under the laws of the State of Washington* TWICE, whereas, Mr. Fernandez and Mr. Delpesche never made either of their Affidavits under penalty of perjury.³⁹ Also, in the Defendants’ Affidavit in Opposition to Plaintiff’s Motion for Summary

³⁶ Resp Br, p 19, ¶ 2.

³⁷ CP 662; CP 670.

³⁸ CP 784; CP 750.

³⁹ Id.

Judgment⁴⁰ and in the Defendants' Second Affidavit in Opposition to Plaintiff's Motion for Summary Judgment⁴¹ the Plumbs jointly declared under penalty of perjury that they received the attached Exhibit "*business record or report*"⁴² and "*business record*"⁴³ from the Plaintiff in discovery and that they attached to their affidavit(s) a true and correct copy⁴⁴ of the said "*Note Location Determined*" business record.⁴⁵ U.S. Bank never disputed that it sent the record to the Plumbs. It did not dispute that Matthew Owens signed and dated the record. The Bank did not produce any business record to contradict the information contained within the *Note Location Determined* business record. Instead, the Bank completely avoided mentioning it. Their lack of response constituted an admission by silence and was a waiver of objection.

B. U.S. Bank's bad faith, fraud and egregious deceitful litigation misconduct against the court and the Plumbs warrant sanctions against the Bank, including that it take nothing by its fraudulent foreclosure Complaint and warrant reversal and dismissal of the case with prejudice.⁴⁶

The Plumbs combined six of their different affirmative defenses into this one Assignment of Error No. 2.⁴⁷ In its Respondent's Brief, U.S. Bank

⁴⁰ CP 449-489.

⁴¹ CP 490-671.

⁴² CP 452, ¶ 7; Exhibit 6, p 21 at CP 1162, 1163.

⁴³ CP 495, ¶¶ 11-13; CP 496, Line 1.

⁴⁴ CP 491, Lines 20-25.

⁴⁵ CP 664-670; CP 492, ¶ 2. Appellants' Br., Appendix I, p 1.

⁴⁶ Appellants' Br., pp 20-27;

⁴⁷ CP 947, ¶ F; CP 948-954; CP 955, Lines 1-11, ¶ H; CP 956, ¶¶ I, K, L, M; CP 957, ¶ U; CP 404, Lines 10-27; CP 405-418; CP 432-438; CP 441, Lines 20-27; CP 442-446; CP 447, Lines 1-6; Affidavit of Fact, CP 55-204; Defs' Aff in Opp to Plt's MSJ, CP 449-489; (Exhibits are at CP 1019-1241.) Defs' 2nd Aff in Opp to Plt's MSJ, CP 490-671; RP 7, Lines 9-25; RP 8, Lines 1-6; RP 9, Lines 8-25; RP 10, Lines 6-25; RP 11-13; RP 14, Line 1.

failed to prove that the Plumbs were incorrect in this assignment of error and it did not, and could not, refer to even one relevant court record in its entire response⁴⁸ because *U.S. Bank never responded to or denied any of the Plumbs' issues of material facts in the six different affirmative defenses* in either its Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Summary Judgment⁴⁹ nor in the court proceedings. U.S. Bank's complete lack of response constitutes a waiver. The Plumbs should win on this issue.

U.S. Bank argued: "*appellants' arguments are not properly preserved for appeal*"; "*the issue for dismissal or sanction had not been placed squarely before the trial court*"; "*The only possible outcome in the appellants' favor on appeal would be where the trial court is reversed and the case remanded for further proceedings.*"⁵⁰ None of this is true. In the lower court the Plumbs prayed, "That the Court would grant Summary Judgment to the Defendants. (A trial court may grant summary judgment to the non-moving party where there are no issues of material fact. *See, e.g. Rubenser v. Felice*, 58 Wn.2d 862, 365 P.2d 320 (1961); *Impecoven v. Department of Revenue*, 120 Wn.2d 357, 841 P.2d 752 (1992) (summary judgment for nonmoving party entered by appellate court))."⁵¹ The Plumbs also moved the court to sanction Ms. Owens...per ER 11(a)(b) and to dismiss the fraudulent case per CR 41(b)(2)(D).⁵² In addition they filed a [Proposed] Order to Dismiss with Prejudice.⁵³ Thus, U.S. Bank failed

⁴⁸ Resp Br., pp 19-22.

⁴⁹ *Supra*

⁵⁰ Resp Br, p 20, ¶ 2

⁵¹ CP 958, Lines 16-19.

⁵² CP 445, Line 27; CP 446, Lines 1, 4, 5.

⁵³ CP 958, Lines 14, 15.

completely in its argument. There simply are no genuine issues of material fact in dispute for this assignment of error.

U.S. Bank hopes that this Court will decide for “reversal and remand for further proceedings,” and that “the case would simply proceed to trial,”⁵⁴ because the Verbatim Reports of Proceedings clearly show that the trial court is arbitrary and prejudiced in its favor of U.S. Bank and against the *pro se* Plumbs. (Please see evidence of this bias in the footnote below⁵⁵ and in Section A above and in Sections C, D, and E *infra*).

U.S. Bank also made the preposterous argument that *there is no question of material fact as to fraud in the origination because the appellants failed to properly plead and demonstrate facts to support the affirmative defense.*⁵⁶ Any reasonable, fair-minded person can see that the Plumbs properly pled with particularity all the nine essential elements of multiple frauds in the origination of the subject mortgage loan, as well as forgery fraud in both U.S. Bank’s Note and DOT written instruments.⁵⁷ Furthermore, these frauds were fully supported by clear, cogent and convincing facts that U.S. Bank did not, and could not, dispute with any evidence whatsoever.⁵⁸

⁵⁴ Resp Br, 21,

⁵⁵ RP 20, Lines 1-3; RP 33, Lines 23-25; RP 36, Lines 6-13; RP 55, Lines 15-19; RP 57, Lines 2, 4-12; RP 59, Lines 5-11, 24, 25; RP 60, Lines 11-15, 23, 24; RP 61, Line 10; RP 62, Lines 11-20; RP 64, Lines 5, 6; RP 90, Lines 1-6, 12, 13, 23-25; RP 91, Line 1; RP 99, Lines 6-8, 10-20; RP 102, Lines 7-18; RP 103, Lines 7, 8, 16, 17; RP 108, Lines 3-18.

⁵⁶ Resp Br 22, ¶ 2.

⁵⁷ CP 931, ¶ D; CP 932-954.

⁵⁸ Appellants’ Br., pp 27-39; CP 931-955; Affidavit of Fact, CP 55-204; Defs’ Aff in Opp to Plt’s MSJ, 449-489; (Exhibits at CP 1019-1241.) Defs’ 2nd Aff in Opp to Plt’s MSJ, CP 490-671.

Therefore, U.S. Bank completely failed to prove that the lower court did not manifestly err and severely harm the rights of the Plumbs when it granted U.S. Bank summary judgment.⁵⁹

C. Forgery in U.S. Bank's purported original Note and Deed of Trust Instruments and fraud in the origination of the subject mortgage loan vitiated the instruments and transaction and the Bank did not prove affirmatively its good faith and that it had no knowledge or reason to know of the fraud.⁶⁰

U.S. Bank failed in all of its arguments on this issue. The Plumbs clearly demonstrated that there are genuine material issues regarding multiple frauds in the origination of the subject mortgage loan, and regarding forgery, and violation of the statute of frauds in the Note and/or Deed of Trust (DOT) instruments. The Plumbs *properly pled with particularity the nine essential elements of fraud* and proved each of the nine elements by *clear, cogent, and convincing evidence*.⁶¹

U.S. Bank did not, and it could not, point to any court record where U.S. Bank has ever denied that there was fraud in the origination of the subject mortgage loan and in the purported original Note and DOT instruments.

U.S. Bank did not, and could not, point to any place in the entire Verbatim Reports of Proceedings where the lower court found that there was no fraud in the origination of the mortgage loan or fraud and/or forgery or a violation of the statute of fraud in the purported original Note

⁵⁹ Appellants' Br., pp 20-27.

⁶⁰ Appellants' Br., pp 27-39.

⁶¹ CP 931, ¶ D; CP 932-CP 954; CP 955, Lines 1-11; Affidavit of Fact, CP 55-204; Defs' Aff in Opp to Plt's MSJ, 449-489; (Exhibits at CP 1019-1238. See 1239-1241.) Defs' 2nd Aff in Opp to Plt's MSJ, CP 490-671. See *Coson v. Roehl*, 63 Wn.2d 384; 387 P.2d 541; 1963; *Crisman v. Crisman*, 85 Wash. App. 15, 931 P.2d 163 (1997)

and/or recorded Deed of Trust written instruments that voided the instrument(s).

U.S. Bank could not show where the lower court actually rejected the Plumbs' affirmative defense of fraud in the origination of the loan and/or where it directly made a finding or ruled on the defense. Instead, the lower court unfairly held, *"So you're talking about types of claims that if they're legally recognizable, and I'm not making a finding one way or the other as whether they are or aren't, might be made against other parties."*⁶² *"The fraud issue I don't think applies to this party because if there was fraud committed it wasn't committed at the instigation of the loan by this party."*⁶³ *"I'm not making any factual determination."*⁶⁴

U.S. Bank did not, and could not, disprove with any evidence that the Plumbs established the following facts: 1) On about July 8, 2009 U.S. Bank through its servicer, Ocwen, was officially notified of fraud in the origination of the subject mortgage loan in a "Qualified Written Request, Complaint, Dispute of Debt and Validation of Debt Letter, TILA Request" that the Plumbs' authorized representatives and expert mortgage auditors, Dolphin Developments Mortgage Loan Auditors sent.⁶⁵ 2) In bad faith, Ocwen did not properly respond to the said Qualified Written Request as required by law and Dolphin Developments later sent Ocwen and Washington State's Attorney General a notarized, sworn under penalty of perjury "Certificate of Non-Response" regarding Ocwen's lack of response.⁶⁶ 3) Ocwen and U.S. Bank's predecessors and other parties of interest were also officially notified of the fraud in the origination by the

⁶² RP 94, Lines 11-13;

⁶³ RP 95, Lines 11-13.

⁶⁴ RP 106, Lines 19, 20.

⁶⁵ CP 89-134.

⁶⁶ CP 135-151; CP 1193-1199.

Plumbs.⁶⁷ 4) U.S. Bank and/or its predecessors and their loan servicer, Ocwen, all knew or had a reason to know as early as in year 2009 of the fraud in the origination of the subject loan. 5) The year 2009 is about five years prior to when U.S. Bank received the transfer or delivery and actual possession of the purported original Note on the date of “8/4/14”⁶⁸ (which is several months after U.S. Bank filed its complaint on 12/26/2013.) 6) The Plumbs properly pled the nine essential elements of fraud in the origination on several issues that were fully supported by clear, cogent, convincing evidence wherein the Plumbs proved the fraud, the forgery and the violation of the statute of frauds. 7) U.S. Bank knew or had a reason to know of the fraud in the origination prior to its receiving possession of the purported original Note.⁶⁹ 8) The Washington State Supreme Court has consistently held that once a defendant proves fraud between the original parties to the instrument, the burden is on the plaintiff to affirmatively prove its good faith, that he is a *bona fide* holder, that he came by the possession of the note fairly and without any knowledge of the fraud or illegality, and that although a third person shall not be punished for the fraud of another, he shall not avail himself of it, and “there is no case in the law where that can be done”. (See *H H Higgins v Radach*, 12 Wn.2d 628; 123 P.2d 352 (1942);⁷⁰ *Glaser v. Holdorf* 56 Wn.2d 204; 352 P.2d 212 (1960);⁷¹ *Spokane Sec. Fin. Co. v. De Lano*, 168 Wash. 546; 12 P.2d 924 (1932)). 9) U.S. Bank did not affirmatively prove its good faith and lack of

⁶⁷ CP 1201-1226.

⁶⁸ CP 665.

⁶⁹ See Georgia Plumb’s testimony at RP 96, Lines 12-25; RP 97; RP 98, Lines 1-7; RP 99, Lines 19, 20 and infra Section E; CP 931, ¶ D; CP 932-953; CP 954, ¶¶ 13, 14; CP 955, Lines 1-11; CP 89, 90, 116, 117; CP 64, ¶¶ 51, 52; CP 65, Lines 1-4; CP 466, ¶ 32; CP 467, Lines 1-7; CP 88-134.

⁷⁰ CP 954,

⁷¹ CP 954, ¶ 14.

knowledge of the fraud in the origination and Note and DOT instruments.
10) The lower court did not rule according to the genuine material facts of the case and the controlling case law that the Plumbs presented. Thus, U.S. Bank failed in its argument that the trial court did not err on this issue.

Also, it is obvious from the record that the Plumbs proved appraisal fraud from un-rebutted evidence they obtained through discovery from U.S. Bank's own expert affiliate, Altisource Real Estate Valuation Services, who executed a second valuation of their home that shows an "Estimated Value" for the subject property of \$266,000, for year 2015, which is still \$94,000 less than the said false over-appraisal value of \$360,000.⁷² The Yakima County Assessor's Office certified assessed value for the same year was \$242,100, which is still \$117,900 less than the false appraisal value in 2004.⁷³ Furthermore, the year of the false appraisal in 2004 was the *lowest* of all 16 years according to Yakima County's certified assessments.⁷⁴ These undisputed facts prove conclusively that the appraisal of \$360,000 was a grossly fraudulent over-appraisal of about \$161,000 compared to Yakima County's reasonable assessment of \$199,000 for the same year.⁷⁵

U.S. Bank fails in its argument at Resp Br, p 25, ¶ 1 because the Plumbs testified under penalty of perjury, "*The mortgage broker...and/or the Lender sent out their own appraiser to appraise our home.*"⁷⁶ "*The broker and lender then unfairly induced us to take out a loan for the full amount of the appraisal value. (We would not have taken out the loan*

⁷² CP 1026; CP 942, Lines 13-16.

⁷³ CP 1028; CP 942, Lines 16-18.

⁷⁴ CP 1028.

⁷⁵ CP 942, Lines 5-13.

⁷⁶ CP 453, Lines 24-26; CP 60, ¶¶ 25, 26.

absent the false, fraudulent representation of the value of the property.)”⁷⁷

The Lender and Broker were obviously experts in the area of appraisal and they knew that their appraiser used comps well outside the normal range for appraisals and that comps chosen had “scenic views” whereas the Plumbs’ home did not. Thus, the comps were clearly illegitimate.

U.S. Bank failed in its argument at Resp Br p 26, ¶ 1. The Plumbs swore under penalty of perjury and offered un-rebutted, clear, cogent evidence how that as a consequence of the forgeries in U.S. Bank’s purported original Note and DOT instruments and frauds in the origination of the subject mortgage loan, they were tricked by the false representations made by the Lender and its Affiliates, and that they have in the past, are currently and will continue to suffer and be severely damaged and injured directly and indirectly, tangibly and financially, including, but is not limited to “[M]oney actually spent totaling about \$183,971.15, not including escrow and interest from about 08/2004;”⁷⁸ 2) “[I]nability to make money and a living;”⁷⁹ 3) “[L]oss of earnings;”⁸⁰ and 4) Forfeiture of the Defendant’s long-time residence and the real property located at 4902 Richey Rd. Yakima, Washington.”⁸¹ 5) See also footnote below for a complete list of damages ⁸² and Sections D and E, *infra*.

U.S. Bank failed in its arguments at Resp Br p 26, ¶¶ 2, 3; p 27. The Plumbs presented strong, convincing, unrebutted evidence establishing

⁷⁷ CP 454, Lines 11-13; CP 486, Line 21. RP 11, Lines 22-25; CP 453, ¶ 17; (Exhibits at CP 1020-1238; See CP 1239-1241.) Compare the false appraisal for \$360,000 CP 1022; Altisource Valuation CP 1026; Yakima County Assessor’s Office Assessed Value CP 1028.

⁷⁸ CP 938, Lines 6-14.

⁷⁹ CP 938, Lines 21, 22.

⁸⁰ CP 478, ¶ 71; CP 479, Lines 1-12; CP 489.

⁸¹ CP 85, Line 29; CP 86, 87.

⁸² RP 83, Lines 16, 17; CP 866, 872; CP 484, Lines 12-15; CP 86, Lines 1-3; CP 938, Line 18; CP 938, Lines 19, 20; RP 83, Lines 17, 18; CP 486, Lines 8-15.

that U.S. Bank's predatory and unscrupulous predecessor and the originating Lender, Finance America, LLC (defunct) working through its agent 1st Columbia Mortgage Company (defunct), and their agents/employees pursued the Plumbs regarding refinancing a home loan, not visa versa;⁸³ that the Lender's and/or its Mortgage Company's own appraiser over-appraised the property about \$161,000 and then the Lender and Broker enticed the Plumbs to take out a loan for 100% of the false valuation;⁸⁴ then they switched and unfairly required that Carl and Georgia Plumb's younger sons who lived with them, Appellants Kameron and Joshua Plumb, to also sign on the mortgage loan, which neither of them wanted to do and after Georgia Plumb had told the loan officer that neither of them had any income.⁸⁵ The Uniform Residential Loan Applications that the broker/loan officer filled out for the sons, without their knowledge, also shows the young men did not have any income, assets, bank accounts or any means to make any payments on the loan.⁸⁶ The Plumbs also declared under penalty of perjury, "Without receiving either of our (Kameron or Joshua Plumb's) written permission and without our knowledge, the broker unfairly obtained our credit reports and then later on 08-14-2004 filled out Uniform Residential Loan Applications for us to sign at closing. We (Kameron and Joshua) had no assets and no income and we didn't want to be on the loan."⁸⁷ Also, Fidelity Title's own business records for the related escrow account show that on 08/16/2004, prior to any signing, 1st Columbia Mortgage asked Fidelity Title Company to

⁸³ CP 60, ¶ 24; CP 60-62; CP 453-466; (Exhibits at CP 1020-1238; See CP 1239-1241.)

⁸⁴ CP 60, ¶¶ 25, 26.

⁸⁵ CP 60, ¶ 27.

⁸⁶ CP 60, ¶ 28; CP 1108, 1110, 1111, 1113-1115.

⁸⁷ CP 455, ¶ 20; CP 1108, 1110, 1111, 1113-1115.

deposit \$8000.75⁸⁸ into their bank account on that same day so the loan officer could be paid “today.”⁸⁹ (This evidence provides the incentive/motive as to why the loan officer later called the Plumbs and angrily threatened them with a lawsuit for pulling out of the transaction.) On about 08/17/2004 when the Plumbs were scheduled to go into Fidelity Title Company to sign loan documents, the loan officer called the Plumbs’ home and said that the Lender had switched to a higher interest rate and the Plumbs canceled their appointment with the title company.⁹⁰ Fidelity Title’s business record for 08/17/2004 shows five internal emails between it and 1st Columbia agents and that they were very concerned that the Plumbs had canceled the closing appointment.⁹¹ The emails show that the parties involved were in a “rush” to get the Plumbs into signing on the loan and that the loan officer from the mortgage company wanted the agent at the title company to “... *just leave docs there a few days ... we have gotten an ok from the lender to keep the current rate on the docs and extend it out so we don't have to redraw. Chris will talk to the Plumbs.*”⁹² Thus, because the Lender and the originating parties involved were going to lose out financially when the Plumbs pulled out, the parties had a strong motivation to apply unfair, undue pressure on the Plumb family to sign on the loan. Georgia Plumb testified under penalty of perjury, “After we canceled the appointment on August 17, 2004, the loan officer telephoned me at our home. He angrily threatened that they may sue us if we didn’t sign the loan...against my sons’ will and under the pressure and threat of a lawsuit from the loan officer, my husband, my two sons and I went to the

⁸⁸ CP 156.

⁸⁹ CP 158.

⁹⁰ CP 60, ¶ 2

⁹¹ CP 159.

⁹² CP 159.

said title company and signed the loan papers we were told to sign.”⁹³ “It was under legal threat, duress and pressure from the loan officer that we had gone in and signed the loan documents, sight unseen.... We ended up forced to sign at the higher interest rate, both of my sons (Kameron and Joshua) were forced unwillingly to sign onto the mortgage and we were now paying hundreds of dollars more per month than we did under the previous mortgage. We were also charged over \$13,500 in exorbitant undisclosed closing costs and fees. Each of us (the Plumbs) were damaged as a result of the lender's willful, fraudulent, predatory actions.”⁹⁴ U.S. Bank did not deny or rebut any of this sworn testimony. The Plumbs also proved that they had not been provided any legally required material disclosure information in connection with the mortgage loan. The Title Company's internal email records actually show that on 8/16/04 when 1st Columbia asked Fidelity Title to deposit money in the bank, the originating parties were still creating the HUD-1, Good Faith Estimate, Truth in Lending and other document(s),⁹⁵ the Plumbs pulled out of the transaction on 8/17/2004,⁹⁶ and it was only at the last moment they went in and signed loan documents.⁹⁷

The Bank did not, and could not, deny the fact that the Plumbs declared that they dispute that they actually signed the documents on August 26, 2004 and that they do not know for sure what date they signed the loan documents since the closing agent only gave them one copy of an "unsigned" pre-printed, otherwise blank loan origination papers at the end

⁹³ CP 61, ¶¶ 32, 33.

⁹⁴ CP 62, Lines 13-15.

⁹⁵ CP 61, ¶¶ 32-35.

⁹⁶ CP 156-159.

⁹⁷ CP 457, Line 3.

of closing.⁹⁸ The Plumbs later corrected any time where they had ever stated in the court record that they signed loan documents on August 26, 2004, because they do not actually know for sure that is true.⁹⁹ The Plumbs swore under penalty of perjury and established the undisputed fact that *no notary public notarized any loan paper in their presence and yet there are six notarizations in the loan documents made by two different notary publics and two different people with two different handwriting styles hand-wrote extra information on both the Note and DOT after they left signing and two different individuals made the notarization on page fifteen on the recorded DOT.*¹⁰⁰ U.S. Bank did not, and could not, dispute the fact that there were two totally different, distinctive hand-writing styles of the two different notary publics from Fidelity Title Company (who were not at the closing), on the loan documents.¹⁰¹ U.S. Bank did not dispute or deny any of these material facts that clearly established there was forgery and a violation of the statute of fraud, in the loan documents and the Note and DOT instruments, therefore, U.S. Bank conceded that this was all true.

Georgia Plumb further testified in court that they had provided letters to the court which were originally sent by them to Ocwen who has been a part of this loan from the very beginning and that Ocwen received “multiple communications” from them regarding the fraud and regarding the appraisal fraud.¹⁰² Georgia Plumb referred the lower court to the evidence attached to the Plumbs’ Affidavit showing that U.S. Bank

⁹⁸ CP 1030-1104.

⁹⁹ CP 458, Lines 3-7.

¹⁰⁰ CP 1118-1125; CP 1139; CP 456, ¶¶ 23, 24; CP 457-465; CP 466, Lines 1-16. (Exhibits at CP 1020-1238; See CP 1137-1140; CP 1239-1241.)

¹⁰¹ CP 1139; CP 1131; CP 1118-1125

¹⁰² RP 10, Lines 6-25; RP 11.

through its servicer, Ocwen, had knowledge of fraud.¹⁰³ Also, Georgia Plumb showed the court a “*Loan Document Request*” communication they received from Ocwen (along with the cover letter and envelope it was mailed in) showing that Ocwen and its two Affiants had to have knowledge that the “recorded” DOT was a fraud (if they were competent people with first-hand, personal knowledge) based on the fact that if anyone compares Ocwen’s copy of the DOT that Ocwen sent to them in the mail, that has two “*certificates*” at the top upper right-hand corner, certifying it to be a true and correct copy of original, but it also has a “*circle*” around where the “*legal description*” was “*missing*”¹⁰⁴ with the one that U.S. Bank’s Affiants from Ocwen provided in the court record, it clearly shows that *somebody hand-wrote in a “legal description” that was never in the original!*¹⁰⁵ Georgia Plumb swore under oath in court, “*All of these writings, including everything that has been recorded in Yakima County, those were, after the fact without our authorization, without our knowledge.*”¹⁰⁶ (This also included the *notarization* on page fifteen of the DOT; the hand-written date of the “26th” day of “August 2004” on page seventeen; the hand-written legal description on page one and the insertion on page eighteen that was not there at signing; the hand-written name of the “Trustee” on page one; and all of the extra hand-writing on page one in the upper right-hand corner; plus, the purported “Full legal description” is not located on page “16” as is falsely indicated in hand-writing on page one.)¹⁰⁷ U.S. Bank did not, and could not, dispute any of this clear, cogent, convincing evidence. Thus, the Plumbs properly pled forgery fraud and

¹⁰³ RP 12, Lines 24, 25.

¹⁰⁴ CP 1138; CP 792.

¹⁰⁵ CP 792; CP 806; CP 808, 809.

¹⁰⁶ RP 18, Lines 14-17.

¹⁰⁷ CP 1138; CP 792; CP 806; CP 792-809.

violation of the statute of frauds and established undisputed, clear, cogent, convincing evidence in their filings in the lower court and in sworn testimony in court that proves conclusively the Bank's recorded DOT is a forged written instrument, a violation of the statute of frauds and thus, it is void and unenforceable.¹⁰⁸ "A party's misrepresentation renders a contract defective." *Austin v. Ettl*, 171 Wn. App. 82, 87 n.6, 286 P.3d 85 (2012).¹⁰⁹

The lower court clearly erred in its opinion in several ways, including, but not limited to the fact that the Plumbs provided undisputed evidence that U.S. Bank, its servicing agent, Ocwen, and its predecessors and other interested parties all knew about the fraud beginning as early as year 2009 from the many written communications they had received from the Plumbs and their Mortgage Auditor, Dolphin Developments.¹¹⁰

Furthermore, the statute of frauds at RCW 64.04.010 says "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 says "Requisites of a deed. 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." [emphasis added] Here Georgia Plumb swore under oath in court and the Plumbs swore under penalty of perjury that they did not sign and acknowledge before any notary public the subject Deed of Trust and Note and they established credible evidence that two different notary publics notarized a minimum of six loan documents, in addition to the recorded DOT after the Plumbs left signing.¹¹¹ They declared that a notary public, who was not present when the deed was signed, notarized the deed

¹⁰⁸ CP 931, ¶ 3; CP 932-939; CP 940, Lines 1-14.

¹⁰⁹ RP 13, Lines 11-16; RP 15, Lines 23-25; RP 16-17; RP 18.

¹¹⁰ CP 89-151; CP 1167-1227.

¹¹¹ CP 456, ¶¶ 23; CP 459, Lines 2-27; CP 460, Lines 1-7.

at a later time and that they did not give their authorization for any party to add any information to the deed at a later time.¹¹² The addition of the notarization was a clear violation of Washington State's statute of frauds and rendered the deed void. (The notarization was also notary fraud and forgery under RCW 9A.60.020(1) which also voided the instrument.)¹¹³ Furthermore, U.S. Bank did not dispute that the Plumbs' sworn testimony and evidence was not true. Therefore, it admitted that it was all true. This made no difference to the lower court.

In summary: the Plumbs established the undisputed genuine issue of material fact and factual record that the addition of the *legal description* and *notarization* on the DOT and the additions of the hand-written date on both the DOT and the Note without their knowledge and authorization is illegal forgery and/or is a violation of the statute of frauds, thus, the instruments and the mortgage loan are void and unenforceable. They also established the fact that the subject mortgage loan was unconscionable, predatory, and fraudulent; that they were deceived and deprived of their free will by the wrongful oppressive conduct of the Lender and the other originating parties; that the Bank knew or had reason to know of the fraud and forgery; that the Bank has no legal right to take anything by its fraudulent foreclosure complaint; the Bank never proved its good faith and that it didn't have any reason to know of the fraud; and that there is no genuine issue of material fact in this regard. Thus, the lower court was grossly in error when it refused to rule justly on this issue and the lower court's decision should be completely reversed and the case dismissed

¹¹² CP 456, ¶¶ 23, 24; CP 457-465; CP 455, Lines 1-16; (Note: the Exhibits were erroneously by clerk error in the trial court attached to the Declaration of Mailing - Ex. 2, CP 1030, 1043-1064; Ex. 4, CP 1130-1135; Ex. 3, 1117-1129; Ex. 1, CP 1020-1030; Ex. A, CP 785-790; Ex. B, CP 791-809.

¹¹³ CP 939, Lines 21-30; CP 940, Lines 1-14;

with prejudice. This Court can also grant summary judgment to the non-moving Appellants, the Plumbs, where there are no genuine issues of material fact in dispute in this assignment of error. Please see *Rubenser, supra* and *Impecoven supra* (summary judgment for nonmoving party entered by appellate court).¹¹⁴

D. Laches Barred the trial court's Order Granting U.S. Bank's Motion for Summary Judgment and Judgment and Decree of Foreclosure.¹¹⁵

U.S. Bank did not, and could not, disprove the fact that the Plumbs were correct in this issue and that they properly pled and affirmatively established the three required elements that proved the doctrine of Laches applied in this case where there is an ordinary six-year statute of limitation, because there are extremely unusual, extraordinary circumstances that warranted a ruling that U.S. Bank's suit was filed too late.¹¹⁶ The Plumbs established that they had suffered extreme prejudice, severe harm and damage due to U.S. Bank's purposeful delay in filing its lawsuit and its pattern of behavior of bad faith, silence, dishonesty, illegality, and abusive, malicious treatment it had perpetrated on them for many years from about June 2009 onward.¹¹⁷ U.S. Bank never objected to, disputed or denied the Plumbs' damage that they raised in their affirmative defense,¹¹⁸ therefore, U.S. Bank waived its objection and it conceded that

¹¹⁴ CP 958, Lines 16-19.

¹¹⁵ Appellants' Br., pp 39-45.

¹¹⁶ Id.

¹¹⁷ CP 64, ¶¶ 46-52; CP 65, Lines 1-14; CP 67, ¶¶ 65-67; CP 69, ¶¶ 77, 78; CP 70, ¶¶ 83-86; CP 71-74; CP 75, Lines 1-19, ¶ 94; CP 76; CP 77, Lines 1-4; CP 78, ¶ 104-106; CP 79-151; CP 176-178; CP 190, 191; CP 195-204; CP 338, Lines 22-27; CP 339, Lines 1-5; CP 343, Lines 16-27; CP 344; CP 345, Lines 1-9. CP 466, ¶¶ 30-32; CP 467; CP 468, Lines 1-9, 14-27; CP 469-471; CP 472, Lines 1-3; CP 473-478; CP 479, ¶ 73; CP 480; CP 484, ¶¶ 81, 82; CP 485-489. CP 497, ¶ 24; CP 498; CP 818, 819.

¹¹⁸

all the facts were true. The Bank's complete lack of denying and disputing the severe damages it cause the Plumbs barred the Bank's action short of the applicable statute of limitations. This warranted a ruling that U.S. Bank's suit was filed too late. Accordingly, U.S. Bank is precluded from foreclosure; summary judgment should not be found in U.S. Bank's favor; judgment should be completely reversed; the case should be dismissed with prejudice; and this Court should grant the Plumbs' requests for costs and those found in section G. Conclusion of the Appellants' Brief.¹¹⁹

E. The trial court manifestly erred and unjustly deprived the Plumbs of their property without due process of law and denied them the equal protection of law, in violation of U.S. Const. Amend. XIV, § 1 and Wash. Const. Art. I, § 3.¹²⁰

In U.S. Bank's arguments in this Assignment of Error No. 5, it did not and could not disprove the genuine issue of material fact that the Plumbs, established that the lower court was so prejudiced for the Bank against the *pro se* Plumbs that it unfairly treated the Plumbs differently than other similarly situated individuals. The lower court refused to impartially consider any of the Plumbs' legitimate affirmative defenses that barred summary judgment. The lower court clearly expressed its bias when it held, "*It comes down to the fact that money was loaned and there was agreement to repay it...and it hasn't been paid back. That's what this all comes down to.*"¹²¹ (See the footnote below for full proof of the lower court's completely unfair, point of view.)¹²²

¹¹⁹ Appellants' Br., pp 48, 49.

¹²⁰ Appellants' Br., pp 45-48.

¹²¹ RP 55, Lines 15-19.

¹²² RP 9, Lines 8-25; RP 10-22; RP 23, Lines 1-4; RP 23, Lines 20-25; RP 24, Lines 1-9; RP 28, Lines 1-24; RP 32, Lines 6-25; RP 33-25; RP 36, Lines 1-14; RP 37, Lines 19-25; RP 38-41; RP 42, Lines 1-12; RP 45, Lines 10-25; RP 46, Lines 1, 2; RP 55, Lines 15-19; RP 57, Lines 2, 4-12; RP 59, Lines 5-11, 24, 25; RP 60, Lines 11-15, 23, 24; RP 61, Line

There were two relevant Motion for Summary Judgment hearings and one Motion to Continue hearing.¹²³ The lower court was so prejudiced against the Plumbs that it unfairly only allowed Georgia Plumb to testify under oath one time. The court refused to allow both, Kameron and Joshua Plumb, to testify in all three hearings. It refused to take any testimony from any of the Plumbs in the Motion to Continue hearing and in the second Motion for Summary Judgment hearing.¹²⁴ The lower court held, “*I’m not taking testimony.*”¹²⁵ The lower court also refused to consider or rule on the nineteen genuine issues of material fact that clearly barred summary judgment for the Bank that the Plumbs presented as affirmative defenses in their new joint Memorandum in Opposition to Plaintiff’s Motion for Summary Judgment.¹²⁶ The court held, “*I’m not making any factual determination.*”¹²⁷ The lower court then unfairly entered its Order Granting Plaintiff’s Motion for Summary Judgment¹²⁸ and Judgment and Decree of Foreclosure,¹²⁹ whereby it immediately harmed and injured the Plumbs and deprived them of their property. The Plumbs lost their title and ownership interest in their long-time home since the year 1999. The court gave U.S. Bank the immediate right to order the Plumbs’ residential property sold by the Sheriff; and it immediately vacated relevant written instrument(s) and document(s) recorded in Yakima County.¹³⁰

10; RP 62, Lines 11-20; RP 64, Lines 5, 6; RP 90, Lines 1-6, 12, 13, 23-25; RP 91, Line 1; RP 99, Lines 1-20; RP 101, Lines 11-25; RP 102, Lines 1-18; RP 103, Lines 7-23; RP 108, Lines 3-18.

¹²³ See Verbatim Reports of Proceedings.

¹²⁴ RP 83, Line 20.

¹²⁵ RP 83, Line 20.

¹²⁶ CP 912-959.

¹²⁷ RP 83, Line 20.

¹²⁸ CP 995-997.

¹²⁹ CP 998-1003.

¹³⁰ CP 153, 154; CP 955, ¶ G; Appellants’ Br., p 46, ¶ 2; RP 6, Lines 9-13; CP 1000, ¶ 2; CP 1001, Lines 1-18, ¶¶ 3, 4; CP 837-848; CP 850.

Each one of the Plumbs, individually, has a fundamental due process right to testify and defend him/herself and his/her own interests on his/her own behalf in court. The lower court denied each one of the Plumbs of this right and then deprived them of their property. The lower court's denials in all three hearings was more than a mere abuse of discretion. It was a gross denial of due process of law and the equal protection of law, in direct violation of U.S. Const. Amend. XIV, § 1 and Wash. Const. Art. I, § 3. **“[No] state [shall] deprive any person of...property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”** Therefore, the *pro se* Appellants have a **“free standing claim”** for the lower court's egregious violations of their constitutional rights that cannot be remedied by anything other than a complete dismissal of the case with prejudice.

U.S. Bank claims, *“The remedy for [the lower court's] errors, if established, would simply be reversal and remand back to the lower court for further determination.”*¹³¹ The Plumbs would obviously not receive a fair determination from the lower court if this were remanded back for further consideration or trial. Because U.S. Bank has abused the Plumbs and has demonstrated an attitude and pattern of behavior that has a potential to harm the public on a large scale, there is a strong societal interest in preventing such future conduct. Reversal and dismissal with prejudice has long been available to this Court as an ultimate action against such clear, gross litigation misconduct and unfair treatment. There is no genuine issue as to any material fact. Such unfairness and injustice central to the case by the lower court and the Bank cannot be tolerated and cannot be remedied by anything less than a total reversal and dismissal of the case with prejudice and the Plumbs' costs granted.

¹³¹ Resp Br, p 31, last 2 lines.

II. CONCLUSION

U.S. Bank failed to prove that the Plumbs didn't establish five separate issues where the trial court manifestly erred, greatly prejudiced and harmed the rights of the Plumbs and that each error warrants that this Court should completely reverse in total the trial court's unjust Order Granting Plaintiff's Motion for Summary Judgment and Judgment and Decree of Foreclosure without the case being remanded back to the clearly biased, unreasonable lower court for further consideration or for trial. Instead, this Court should grant a judgment of dismissal with prejudice as a matter of law and grant the Plumbs' costs and their other requests found in the Conclusion section of their Appellants' Brief.¹³²

Respectfully submitted and dated this 1st day of June 2017.

By Rev. Georgia Plumb
Word Church aka Rev. Georgia Plumb

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¹³² Appellants' Br., pp 48, 49.

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Appeal No. 346153

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

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

WORD CHURCH AKA REV. GEORGIA PLUMB, GEORGIA A.
PLUMB, JOSHUA C. PLUMB, KAMERON F. PLUMB

Appellants/Defendants, *Pro Se*

v.

U.S. BANK NATIONAL ASSOCIATION, ET AL

Respondent/Plaintiff

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON IN AND FOR THE COUNTY OF YAKIMA
CASE NO. 13-2-04236-2

**CERTIFICATE OF SERVICE
OF APPELLANTS' AMENDED REPLY TO
RESPONDENT'S BRIEF**

By Joshua Plumb

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CERTIFICATE OF SERVICE

I, the undersigned party, declare that I am a citizen of the United States of America over the age of 21 years. I am competent to be a witness herein and I certify that on the 1st day of June 2017 I caused a true and correct copy of **1) APPELLANTS' AMENDED REPLY TO RESPONDENT'S BRIEF**; and **2) this CERTIFICATE OF SERVICE** to be served on the Counsel indicated below in the manner indicated:

Counsel for U.S. Bank National Association, et al (X) U.S.P.S. Mail
Name Ryan M. Carson, WSBA #41057 first-class
Address Wright Finlay & Zak, LLP postage prepaid
3600 15th Ave W, Suite 200
Seattle, WA 98119

I also caused **2** true and correct copies of **1) APPELLANTS' AMENDED REPLY TO RESPONDENT'S BRIEF**; and **2) this CERTIFICATE OF SERVICE** to be served on Washington State Court of Appeals: Division III in the manner indicated below:

Name Renee S. Townsley, Clerk/Administrator (X) U.S.P.S.
Washington State Court of Appeals: Div III Priority Mail
Address 500 N. Cedar St. postage prepaid
Spokane, WA 99201

I hereby declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 1st day of June 2017 at Yakima (Yakima County) Washington.

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