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A. Introduction

This is an appeal from a Summary Judgment in which the trial court granted U. S. Bank the right to foreclose on Appellants' real property. Appellants are: 1) Georgia A. Plumb, aka Word Church, aka Rev. Georgia Plumb, and her sons, 2) Kameron F. Plumb, and 3) Joshua C. Plumb (the Plumbs), all of whom reside on the foreclosed property as their only home.

U.S. Bank (the Bank) never lent any money to the Plumbs, nor did the Plumbs have any dealings with the Bank prior to the time the Bank sued the Plumbs. In its Complaint, U.S. Bank alleged: that it was a holder of a Note and a beneficiary of a Deed of Trust (DOT) that the Plumbs had executed encumbering their home; that the Plumbs had defaulted on the Note; and that it was entitled to foreclose on the Plumbs' property.

Although the law requires that the Bank had to have possession of the Note before it filed suit on 12/26/2013, the Bank did not have possession of the Note on the date it filed suit. Instead, *Deutsche Bank had possession of the Note on the date that U.S. Bank filed the lawsuit.*

Because U. S. Bank recognized it would lose the case because it failed to comply with the law requiring it to have possession of the Note prior to filing suit, it lied to the court regarding that fact. In bad faith, U.S. Bank's agents willfully committed egregious litigation misconduct and perjury, falsely stating that U. S. Bank's mortgage servicing agent (Ocwen), had possession of the Note when the case was filed.

The Plumbs denied the Bank's allegations and asserted several meritorious legal defenses and genuine issues of material fact that barred summary judgment for the Bank.

The court failed and refused to consider any of the genuine issues of material facts that the Plumbs asserted. It also ruled against the Plumbs, despite their meritorious legal defenses to the Bank's right to judgment as

a matter of law. Accordingly, the court granted Summary Judgment in favor of the Bank and a Judgment and Decree of Foreclosure against the Plumbs and their home.

B. Assignments of Error and Issues

Assignments of Error

1. The court manifestly erred when it entered its Order Granting U. S. Bank's Motion for Summary Judgment and Judgment and Decree of Foreclosure because the Bank did not have standing to file the complaint because the Bank did not possess the Note. Since it was not the Note holder, it was not the true party of interest and lacked authority to initiate foreclosure. As such, the court had no jurisdiction.

2. The court manifestly erred in granting Judgment to U. S. Bank because U.S. Bank's bad faith, fraud and egregious deceitful litigation misconduct against the court and the Plumbs warranted sanctions against the Bank, including that it take nothing by its Complaint and warranting dismissal of the case with prejudice.

3. The court manifestly erred in ruling in U.S. Bank's favor because the originating lender engaged in forgery in the making of the Note and Deed of Trust instruments, and fraud in the origination of the mortgage loan. Said forgery and fraud vitiated the instruments and transaction. The Bank did not prove affirmatively its good faith and that it had no knowledge or reason to know of the forgery and fraud.

4. The court manifestly abused its discretion in granting Judgment for U.S. Bank because laches barred the action and Judgment.

5. The court manifestly erred and unjustly deprived the Plumbs of their property, without Due Process of Law, and denied them the Equal Protection of Laws, in violation of U.S. Const. amend. XIV, § 1 and

Wash. Const. art. I, § 3 by failing to apply the law regarding the above-stated errors.

Issues Pertaining to Assignments of Error

1. Did the court err in failing to dismiss the case because U.S. Bank did not prove its standing, and thus the court's jurisdiction, at the inception of the case? (Assignment of Error 1.)

2. The court held that the Bank did not have to possess the purported original Note when it filed the case. Did the court err in granting Judgment to U.S. Bank, despite the fact that U. S. Bank did not possess the purported original Note on the date the case was filed? (Assignment of Error 1.)

3. Did the court err in failing to sanction U. S. Bank (including the sanction of dismissal of the case) despite the fact that there was unrebutted evidence of the Bank's bad faith, fraud and egregious litigation misconduct that it employed to defraud and deceive the court and the Plumbs? (Assignment of Error 2.)

4. Did the court err in granting judgment to U. S. Bank, despite the Plumbs uncontroverted eye-witness testimony under penalty of perjury, and other unrebutted evidence, all of which proved there was illegal forgery fraud in U.S. Bank's Note and Deed of Trust instruments, and despite the fact that the Plumbs asserted unrefuted law that said forgery fraud voided the instruments and the mortgage loan transaction that was based upon the forged instruments? (Assignment of Error 3.)

5. Did the court err in permitting U.S. Bank to avail itself of the benefits of the forged and fraudulent Note and Deed of Trust instruments in this case? (Assignment of Error 3.)

6. The Plumbs submitted unrebutted material factual evidence showing fraud between the original parties to the written instrument(s) and sub-

ject mortgage loan transaction. Did the court err in giving Summary Judgment to the Bank despite the Bank's failure to meet its burden to affirmatively prove its good faith; that it was a *bona fide* holder in due course and that it came by the possession of the Note fairly, without any knowledge or reason to know of the fraud or illegality in the origination? (Assignment of Error 3.)

7. Did the court erroneously abuse its discretion in refusing to dismiss the case for laches due to U.S. Bank's unreasonable and intentional delay in filing suit, and the Plumbs' unrebutted evidence that showed they were severely prejudiced and harmed due to the Bank's delay? (Assignment of Error 4.)

8. Did the court manifestly err in depriving the Plumbs of their property, without Due Process of Law, and in denying them the Equal Protection of Law, in violation of U.S. Const. amend. XIV, § 1 and Wash. Const. art. I, § 3, due to the fact that the court refused to properly apply the law? (Assignment of Error 5.)

C. Statement of the Case

1. Background Historical Facts

In or about 2004, predatory, unscrupulous originating parties¹ fraudulently worked in concert with each other from time to time to create excessive profits for themselves at the expense of, but hidden from, Borrowers, Carl H. Plumb (now deceased) and Georgia A. Plumb (husband and wife) and their two sons who lived with them, Kameron F. Plumb and Joshua C. Plumb (the Plumbs).

On 08/26/2004 the originating parties lured the Plumbs into entering

¹ The originating lender (Finance America, LLC, now defunct); 1st Columbia Mortgage Corporation (now defunct as its license was later suspended); its mortgage broker, Chris Hutchison; its appraiser (C. Galland); its title company (Fidelity Title Company); and their agents and/or employees.

into an unconscionable, fraudulent mortgage loan transaction, jeopardizing loss of their home, by willful, deliberate falsehood, misrepresentation and threat of lawsuit.²

On 9/13/2004 the Note and Deed of Trust were transferred to Deutsche Bank.³

On 9/14/2004, Ocwen Loan Servicing, LLC (Ocwen) became the servicing agent for the subject mortgage loan who was authorized to collect payments on the loan.⁴

On 5/01/2009 Carl and Georgia Plumb stopped making payments to Ocwen due to information the Plumbs received from mortgage loan experts and professional mortgage loan auditors who discovered numerous fraudulent aspects of the subject mortgage loan. Said experts confirmed that there was fraud and racketeering in the mortgage transaction that the originating parties had perpetrated upon the Plumbs. The fraud and racketeering that the originating parties perpetrated upon the Plumbs was part of the notorious, widespread, nationwide mortgage fraud and racketeering that was perpetrated upon U.S. citizens during that time period.⁵

On or about 6/13/2009, Ocwen sent Notices of Default to the Plumbs, and threatened foreclosure upon the Plumbs' home.⁶

On about 7/08/2009, the Plumbs, through their authorized representative and professional mortgage loan auditors, Dolphin Developments

² CP 60-62 (Affidavit of Fact); CP 64, ¶¶ 46-50; Ex. A, CP 88-90; CP 453-465 (Defendants' Affidavit in Opposition to Plaintiff's Motion for Summary Judgment (Defs' Aff); CP 466, Lines 1-16. (NOTE: Due to the Clerk of Court's mistake and error. Exhibits 1 through 12 referred to in the aforementioned Defs' Aff ((CP 449-489)) were erroneously attached to the Declaration of Mailing – see CP 1239-1241; CP 1016, Line 11; CP 1019-1238.)

³ CP 580.

⁴ CP 817, Line 26.CP 128; CP 782, ¶ 1;

⁵ CP 64, ¶¶ 46, 47 (Affidavit of Fact); CP 466, ¶ 30 (Defs' Aff in Opp. To MSJ).

⁶ CP 783, ¶¶ 9, 10; Ex. E, CP 816-823.

Mortgage Loan Auditors (Dolphin Developments), officially notified Ocwen of fraud in the origination of the subject mortgage loan by written notice and a Qualified Written Request, Complaint, Dispute of Debt, and Validation of Debt Letter, TILA Request (QWR).⁷ The said QWR called Ocwen's attention to the laws that required its timely, proper answers and the "Default Provisions" under the QWR if Ocwen failed to properly respond to the TILA 15 U.S.C. 1601 et seq and RESPA section 6 request.⁸

Beginning on or about 7/08/2009 and thereafter, the Plumbs also personally notified Ocwen in writing of the fraud in the origination of the subject Mortgage Loan (sent via USPS Certified Mail/Return Receipt).⁹

On 07/08/2009 the Plumbs' Mortgage Loan Auditor and Vice-President of Dolphin Developments certified under penalty of perjury in a notarized "Certificate of Non-Response/Notice of Dishonor" (sent by USPS Priority Mail/Signature Confirmation showing that it was delivered to Ocwen) that Ocwen did not properly answer Dolphin Development's QWR or comply with the rules of Section 6 of RESPA, TILA and the FDCPA.¹⁰ By said failure and silence, Ocwen thereby granted to the Plumbs all rights set forth in the Default Provisions under the Qualified Written Request.¹¹

The court record clearly shows that U.S. Bank never rebutted nor denied that: Ocwen received the said written communications; Ocwen vio-

⁷ CP 64, ¶¶ 46, 50, QWR Ex. A, CP 88-92 (Aff of Fact); CP 466, 467, ¶¶ 32 (Defs' Aff in Opp to MSJ).

⁸ CP 90, 115-117.

⁹ CP 64, ¶¶ 50-52, Ex. A, CP 89-134; CP 65, Lines 1-14, Ex. B, CP 135-151; CP 67, ¶¶ 65-67; CP 78, ¶¶ 104-106; CP 79, ¶¶ 107-111; Ex. A, CP 89-134; Ex. B, CP 135-151 (Aff of Fact); CP 466, ¶ 477; CP 467, Lines 1-35; CP 486, 487, ¶¶ 83, 84, Ex. 7, CP 1166-1191; Ex. 8, CP 1192-1199; Ex. 9, CP 1200-1204; CP 1208-1217 (Defs' Aff in Opp to Plt's MSJ).

¹⁰ CP 136-141.

¹¹ CP 136-138; CP 64, ¶¶ 51, 52; CP 65, Lines 1-4, Ex. B, CP 135-151 (Aff. of Fact); CP 466, 467, ¶¶ 32, 33, Ex. 8, CP 1192-1199 (Defs' Aff. in Opp. to MSJ).

lated the said laws; Ocwen knew of the fraud in the origination. The record also shows that the Bank never claimed that there was no fraud in the origination, nor has the Bank claimed that the Bank has not committed fraud in this matter.

On 12/26/2013 (the date this lawsuit was filed) Deutsche Bank held possession of the purported original Note.¹² Despite that fact, U. S. Bank sued the Plumbs to foreclose on their home pursuant to their alleged default of the Note. In its Complaint, U.S. Bank claimed that Plaintiff “is” the holder of the Note. That allegation was false. In reality, Deutsche Bank remained the holder of the Note for roughly an additional 7 and a half months after the Complaint was filed.

Ocwen continued on as U. S. Bank’s agent and loan servicer. Pursuant to the law of agency, U.S. Bank, through Ocwen, had knowledge, or reason to know of forgery fraud and other fraud in the origination of the subject mortgage loan that was manifestly evident in Ocwen’s mortgage loan documents business records.¹³

U.S. Bank’s own records show that it finally acquired possession of the Note on 08/04/14,¹⁴ about 7 ½ months after it filed suit against the Plumbs. Appendix.

During the course of the suit, U. S. Bank’s representatives repeatedly lied to the court and falsely informed it that U. S. Bank had possession of the Note on the date it filed suit against the Plumbs.

The Plumbs were able to uncover U. S. Bank’s fraud regarding the actual date by carefully examining information hidden away in U. S. Bank’s documents that the Bank had provided in response to the Plumbs’ request

¹² CP 580.

¹³ CP 1137, 1138; CP 792; CP 758; CP 89-92; CP 136-141.

¹⁴ CP 665.

for production of documents.¹⁵ The Plumbs informed the court regarding the fraud. U. S. Bank did not deny that it had lied to the court and the Plumbs regarding the actual date that U. S. Bank obtained possession of the Note. U.S. Bank never attempted to explain its false testimony or to provide any documented proof in support of its claims that it held the Note on the date the lawsuit was filed.

The court gave U. S. Bank the right to foreclose on the Plumbs' property, despite the fact that U. S. Bank did not possess the Note on the date it sued the Plumbs and despite the fact that U. S. Bank repeatedly lied to the court over a long period of time regarding that fact, etc.

2. Statement of Procedure

On 12/26/2013 U.S. Bank filed its Foreclosure Complaint wherein it claimed that it was a holder of a Note that the Plumbs had executed and they had defaulted on.¹⁶ *U.S. Bank did not hold possession of the Note when it filed the Complaint.*

On 5/12/2014 Georgia, Kameron and Joshua timely filed their Answers and Affirmative Defenses to Plaintiff's Complaint.¹⁷

Thereafter, U.S. Bank ceased activity in this case for approximately one year. Shortly before the date when the Plumbs could have moved the court to dismiss the case due to the Bank's failure to prosecute, on 5/15/2015, the Bank filed a Motion for Summary Judgment (MSJ) and Memorandum in Support.¹⁸

On 06/12/2015 the Plumbs sent U. S. Bank the Plumbs' Interrogatories and Requests for Production of Documents. (INT; RFP).

On 7/17/2015 U.S. Bank's attorneys—Robinson Tait, P.S. and Tiffany

¹⁵ CP 665.

¹⁶ CP 6, Line 18;

¹⁷ CP 205-222; CP 55-204. Carl Plumb was deceased at the time.

¹⁸ CP 266-300.

Owens, WSB #42449—and an agent from Ocwen, Matthew Owens—responded to the Plumbs’ INT and RFP. Enclosed with U. S. Bank’s voluminous Responses to the RFP, was a document that seemed to have been mistakenly included by Ocwen (it was hidden in a strange out-of-place location within the stack of documents) and signed and dated by Matthew Owens entitled “Note Location Determined.”¹⁹ The said document showed that **Deutsche Bank** held possession of the loan on 12/26/2013 when U.S. Bank filed its Complaint. Appendix.

However, in direct contradiction to said document, in their answers to the Plumbs’ Interrogatories, both Ms. Owens and Mr. Owens stated (Mr. Owens from Ocwen under penalty of perjury) the following:

“INTERROGATORY #6: What corporation held physical possession of the alleged original Note on the date that this lawsuit was filed?
RESPONSE: Ocwen Loan Servicing, LLC as attorney in fact for Plaintiff held the original Note on the date the complaint was filed on December 26, 2013.”²⁰ Appendix.

On 09/28/2015 the Plumbs sent their Defendants’ First Requests for Admissions Propounded to Plaintiff (RFA). On 10/29/2015 U.S. Bank’s attorneys—Robinson Tait, P.S. and Tiffany Owens—and Matthew Owens from Ocwen—sent Plaintiff’s Response to Defendant’s First Request for Admissions. Both Ms. Owens and Mr. Owens certified (Mr. Owens from Ocwen under penalty of perjury) the following:

“REQUEST FOR ADMISSION NO. 25: Admit that on the date the Complaint was filed, Ocwen did not physically possess the note. RESPONSE TO REQUEST NO. 25: “...Plaintiff denies...”²¹ Appendix.

Said denial is in complete contradiction to the documentary proof pro-

¹⁹ CP 580.

²⁰ CP 668, Lines 8-11; CP 669, 670.

²¹ CP 660, Lines 3-8; CP 661, 662.

duced by Ocwen itself²² that on the date U. S. Bank filed its Complaint, *Deutsche Bank*, not Ocwen, possessed the Note. U. S. Bank has provided absolutely no proof in support of Matthew Owens' contradictory testimony and has never attempted to explain Ocwen's contradictory testimony. The Plumbs believe (and assert) that the Bank's attorney did not realize it had sent the Plumbs the Note Location Document until after the Bank had answered the Plumbs' discovery requests under penalty of perjury.

On 3/31/2016 U.S. Bank filed a Motion for Summary Judgment and Memo. in Supp of MSJ.²³ In support, it also filed two Affidavits executed by agents from Ocwen, i.e. Andres Fernandez²⁴ and Daniel Delpesche.²⁵

On 06/17/2016 the Plumbs filed their joint Affidavits²⁶ and Memo. in Opp. to MSJ,²⁷ wherein they denied U.S. Bank's allegations, and asserted several affirmative defenses and genuine issues of material fact that barred summary judgment. Among Plumbs' reasons for opposition, was the fact that U.S. Bank lacked standing because *Deutsche Bank, not U.S. Bank*, held possession of the Note when the case was filed and that U.S. Bank should be sanctioned and the case dismissed because U. S. Bank had committed litigation misconduct and perjury in its responses to the Plumbs' INT, RFP and RFA.

U.S. Bank filed its Reply to the Defendants' Response to Plaintiff's MSJ.²⁸

²² CP 580

²³ CP 824-858.

²⁴ CP 781-823.

²⁵ CP 745-780

²⁶ CP 449-489 (with attached Exhibits 1 through 12 at CP 1020-1238); CP 490-671.

²⁷ CP 912-959.

²⁸ CP 971-992.

On 07/01/2016, at the Summary Judgment hearing, the court ruled in favor of U.S. Bank and refused to take or consider the Plumbs' testimony,²⁹ nor to consider the Plumbs' genuine issues of material fact and affirmative legal defenses. The court held that U.S. Bank did not have to have possession of the Note when the case was filed. It stated that "I'm not making any factual determination. I'm making a legal determination."³⁰ The court thus refused to consider the fraud in the origination of the transaction, the Bank's substantive litigation fraud, the Bank's unclean hands, laches, the U.C.C. requirements, the Bank's burden of proof to substantiate its claims, etc. The court ruled in favor of U.S. Bank.³¹

D. Standard for Review

This court reviews summary judgment determinations *de novo*, engaging in the same inquiry as the trial court. *Durland v. San Juan County*, 182 Wn.2d 55, 69, 340 P.3d 191 (2014).

When reviewing a summary judgment order, the court must review the evidence in a light most favorable to the nonmoving party. *Herron v. Tribune Publ'g Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987).

A trial court abuses its discretion when it bases its decision on unreasonable or untenable grounds. *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007).

E. Argument

1. U.S. Bank did not have standing at the inception of the lawsuit. Therefore, the court had no jurisdiction.

The court erred when it entered its Judgment and Decree of Foreclosure in favor of U. S. Bank because the court did not comply with CR 11(a)(1)(2)&(3), U.C.C. RCW 62A.3 and relevant case law that required

²⁹ RP 85, Line 20; RP 95, Line 1, 2.

³⁰ RP 106, Lines 19, 20

³¹ CP 995-997; CP 998-1003.

the Bank to have standing in order invoke the jurisdiction of the court. As a matter of law, this case must be dismissed without proceeding to the merits because U. S. Bank did not have standing when it filed suit.³² The Bank did not have the requisite standing because it did not possess the subject Note on the date it filed suit against the Plumbs.

The U.S. Supreme Court, Washington State courts and State courts around the country have consistently held that a party must have standing to file suit at its inception. Standing is jurisdictional and cannot be obtained after-the-fact. Because standing is necessary to invoke the jurisdiction of the court, it must be determined at the time suit is filed.³³ The U.S. Supreme Court holds that “standing is to be determined as of the commencement of suit.” *Lujan v. Defenders of Wildlife*, 504 U.S. at 570 n. 5 (1992).³⁴ Courts treat a lack of standing as a bar preventing judgment in favor of the plaintiff. *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County*, 135 Wn.2d 542, 580, 958 P.2d 962 (1998); *Sprague v. Sysco.*, 97 Wn.App. 169, 176 n.2, 982 P.2d 1202 (1999).³⁵

In *U.S. Bank Natl Ass'n v. Kimball*, 27 A.3d 1087 (Vt. 2011), the court upheld the dismissal of a foreclosure action based on the lender's inability to show it was a holder of the note at the time it filed the complaint.³⁶ Likewise, in this present case, U. S. Bank failed to prove that it was a holder in possession of the Note at the time it filed the complaint on 12/26/2013.³⁷ In fact, U. S. Bank's own documents proved that it was not a holder in possession on the date it filed suit. Appendix. In *Deutsche Bank Nat'l Trust Co. v. Mitchell*, 27 A.3d 1229 (N.J. Super. App. Div.

³² CP 924, ¶ C; CP 925-930; CP 931, Lines 1-19.

³³ CP 924, Lines 14-18.

³⁴ CP 924, Lines 22-23.

³⁵ CP 924, Lines 24-26.

³⁶ CP 924, Line 30; CP 925, Lines 1-3.

³⁷ CP 928, ¶ 7; CP 929, ¶¶ 7-8; CP 665.

(2011), the court reversed judgment in favor of the bank, and also voided a completed foreclosure sale, on the grounds that the bank had not provided any evidence that it had possession of the Note on the date it filed the foreclosure suit. Applying U.C.C. Article 3, the court found that the bank was not a holder or a transferee in possession under U.C.C. §3-301. The court looked past conclusory affidavits from the bank's attorney and the bank's servicer asserting that the bank was the holder and owner of the note and mortgage and cited the affidavits' fatal failure to say 'how' and 'when' the bank came into possession of the original note.³⁸

In the instant case, the Plumbs set forth undisputed evidence that U.S. Bank's counsel, Tiffany Owens, and U. S. Bank's agent, Matthew Owens, committed egregious litigation misconduct and/or perjury herein because, in response to the Defendants' RFP, U.S. Bank provided a business record from Ocwen entitled "Note Location Determined" (signed and dated by Matthew Owens in the lower right-hand corner) that clearly shows that *Deutsche Bank, not Ocwen*, held the purported original Note when the case was filed on December 26, 2013.³⁹ Appendix.

The said "Note Location Determined" document directly contradicts U.S. Bank's counsel's (Tiffany Owens) and its agent's (Matthew Owens) statements in their responses in discovery. The said agents both twice falsely stated that "Ocwen" (Plaintiff's servicer and attorney-in-fact) held physical possession of the purported original Note when this case was filed.⁴⁰ With its own records in direct contradiction to Matthew Owens' testimony, the burden of proof shifted to U. S. Bank to support Matthew Owens' testimony with evidence. U. S. Bank never produced any records

³⁸ CP 925, Lines 3-10.

³⁹ CP 665; CP 668, Lines 8-11; CP 669, 670; CP 660, Lines 3-8; CP 661, 662.

⁴⁰ CP 668, Lines 8-11; CP 669, 670; CP 660, Lines 3-8; CP 661, 662.

supporting Matthew Owens' contradictory testimony and never provided any explanation for the contradiction. Instead it pointed to Matthew Owens' unsubstantiated testimony as its own proof. It was an abuse of the trial court's discretion and a denial of due process for the court to avoid addressing this important issue, to ignore such a serious defect and to treat U. S. Bank's agents as if they were completely trustworthy, despite clear and convincing evidence indicating otherwise.

As a defense to summary judgment, the Plumbs asserted these unrebutted material facts that manifestly showed the conflict in U. S. Bank's stories.⁴¹ This evidence clearly shows there is a genuine issue of material fact that bars summary judgment. The record is clear that U.S. Bank did not deny the veracity of the said "Note Location Determined" business record from Ocwen that U. S. Bank's attorney (Tiffany Owens) and agent (Matthew Owens) both sent in their responses to the Plumbs' INT and RFP.⁴² U. S. Bank's failure to deny not only warrants reversal of summary judgment in U. S. Bank's favor, but warrants summary judgment in the Plumbs' favor.

Furthermore, the Bank did not at all dispute, or even try to rebut, the allegations that both of its agents lied and committed perjury in their above-referenced responses to discovery. The Bank simply tried unsuccessfully to strike the Plumbs' affidavits that recounted those facts.⁴³

Regarding the issue of Tiffany Owens' and Matthew Owens' material misrepresentations, Georgia Plumb stated to the court:

If they did not have that Note, but some third party unrelated to the Plaintiff or their agent Ocwen [had the Note] and [U. S. Bank

⁴¹ CP 492, Lines 3-27; CP 493-499; Ex. 14, CP 665; CP 668-670; CP 660, Lines 3-8; CP 661-663.

⁴² CP 665.

⁴³ CP 972, ¶ A; CP 973; CP 974, Lines 1-17; RP 76-118

agents] have declared under penalty of perjury twice...that Ocwen had the Note on the date that the Complaint was filed...how is it that this court would grant [U. S. Bank] summary judgment when they have lied and perjured themselves? How can you do that?”⁴⁴

The record shows the court did not address Georgia’s defense.⁴⁵

The court simply ignored the un rebutted material facts the Plumbs alleged that showed there were genuine issues of material fact that barred summary judgment. Without giving any rationale, the court erroneously declared that it was not taking testimony⁴⁶ or making a “factual determination,” but that it was making a “legal determination”⁴⁷ in favor of U.S. Bank. The court erred because any legal determination was dependent on the material fact concerning whether the Bank possessed the Note on the day it filed suit. Said material fact was genuinely disputed.

The court erred in granting judgment despite the genuine issues concerning these material facts that barred summary judgment.

Furthermore, U.S. Bank’s two Affidavits did not support summary judgment because they were conclusory and ambiguous in that they failed to say “how” and “when” the Bank came into possession of the purported original Note.⁴⁸ The Plumbs properly opposed summary judgment on this ground, as well. In *Lyons v. U. S. Bank Nat’l Ass’n*, 181 Wn.2d 775; 336 P.3d 1142 (2014) and *Trujillo v. Nw. Tr. Servs., Inc.*, 355 P.3d 1100, 1106 (2015), the Washington Supreme Court held that “ambiguous language” in a beneficiary declaration precludes summary judgment.⁴⁹ Neither of the Bank’s Affiants declared **the date** when the purported original Note was “endorsed in blank” or **the date** when the purported original Note was

⁴⁴ RP 116, Lines 9-16.

⁴⁵ RP 116, Lines 19-25.

⁴⁶ RP 85, Line 20.

⁴⁷ RP 106, Line 19.

⁴⁸ CP 781-823; CP 745-780.

⁴⁹ CP 395, Lines 14-27; CP 396; CP 397, Lines 1-13.

“transferred” or “delivered” to U.S. Bank or its agent or that U.S. Bank or its agent held “possession” of the purported original Note on **the date** when the case was filed, giving the Bank the right to enforce the Note.

CR56(e) states that the affidavits in support of a motion for summary judgment shall show affirmatively that the affiant is competent to testify to the matters stated therein. The Plumbs properly opposed summary judgment in favor of U. S. Bank (and objected to its affidavits and evidence being entered into the court record⁵⁰) because the Bank’s Affiants were incompetent to testify to the matters stated in their Affidavits and therefore proper foundation was not laid.⁵¹ The Bank did not rebut the Plumbs’ objections to the Affidavits. The Plumbs further objected to Tiffany Owens entering the alleged original Note and Deed of Trust into the court record as evidence, since she was simply U.S. Bank’s attorney, not a competent fact witness with personal first-hand testimony who could testify as to the authenticity of the instruments. The court erred in allowing the alleged original Note and Deed of Trust to be entered into the court record based on the testimony of Tiffany Owens.

Additionally, the court erred in relying on U.S. Bank’s Affidavits in order to grant judgment because neither of U.S. Bank’s two Affiants declared anything under penalty of perjury, as required by law.⁵²

The court also erred by ignoring the fact that the Plumbs are clearly protected from foreclosure in this case by the U.C.C. RCW 62A.3.⁵³ RCW 62A.3-104(a)(b)&(c) identifies a promissory Note as a negotiable instrument. The Code defines and controls who is entitled to enforce a ne-

⁵⁰ RP 113, Lines 18-25; RP 114, Lines 1-12

⁵¹ CP 368, Lines 5-20; CP 371, Lines 16-27; CP 372; CP 374, Lines 1-17; CP 930, Lines 12-17; CP 935, ¶ 8; RP 114, Line 12.

⁵² CP 781-823; CP 745-780.

⁵³ CP 924, Lines 22-30; CP 925, Lines 1-17; CP 929, Lines 29, 30; CP 930, 931.

gotiable interest in a Note. The statute requires that U.S. Bank had to be the “holder of the instrument” with the right to enforce the instrument at the time it filed suit:

RCW 62A.3-301 "'Person entitled to enforce' an instrument means (i) the holder of the instrument". Pursuant to the U.C.C. RCW 62A.3-203 "Transfer of instrument; rights acquired by transfer. An instrument is transferred WHEN IT IS DELIVERED by a person other than its issuer for the purpose of giving to the person receiving delivery the right to enforce the instrument." [emphasis added]⁵⁴

U.S. Bank’s purported original Note is indorsed in blank.⁵⁵ U.S. Bank did not prove when the Note was indorsed or when it became the “holder of the instrument” or that the Note instrument was “delivered” to it or its agent and that the Bank had “possession” of the Note prior to its filing suit. Without this proof, the court could not grant judgment to U. S. Bank.

The Bank cited *Trujillo, supra*,⁵⁶ in support of its position. In *Trujillo*, Washington’s Supreme Court required the beneficiary to declare, under penalty of perjury, that the beneficiary is the actual holder of the promissory note. The Bank deceitfully and falsely implied that the Bank had submitted such a declaration in Fernandez’s Affidavit.⁵⁷ However, Fernandez’s Affidavit was deficient as it was not made under the penalty of perjury, as required by *Trujillo*. Not only were both Fernandez’s and Delpesche’s Affidavits not made under penalty of perjury as required by *Trujillo*, but both the *Trujillo* and *Lyons, supra*, holdings that “ambiguous language” in a beneficiary declaration precludes summary judgment also apply to both Fernandez’s and Delpesche’s “ambiguous” declarations. Those affiants did not establish the requisite facts as to when the Note was

⁵⁴ CP 924, Lines 22-30; CP 925, Lines 1-16.

⁵⁵ CP 790.

⁵⁶ CP 831, Lines 1-9.

⁵⁷ CP 831, Lines 1-14.

endorsed or when it was delivered to U. S. Bank proving that the Bank was a holder in due course when the case filed on 12-26-2013. Later, on 4/23/2015, Fernandez simply deficiently said, "Sometime thereafter, the Note was duly endorsed and delivered to Plaintiff."⁵⁸ Fernandez's statement failed to prove the Bank's standing or the court's jurisdiction at the inception of the suit. Therefore, neither the Bank nor the court can rely on the holding in *Trujillo*, nor can they rely on Fernandez's and Delpesche's incompetent Affidavits.⁵⁹

U. S. Bank also erroneously relied on *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015),⁶⁰ for its holding that "[A] promissory note is often a negotiable instrument and therefore article 3 of the UCC is applicable. RCW 62A.3-102."⁶¹ In *Brown*, the Court held that "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]⁶² *Brown* does not support U. S. Bank, however, because **Deutsche Bank** held "possession" of the Note on the day the suit was filed. Therefore, *Brown* actually supports the Plumbs' position.

Nevertheless, the court unreasonably and wrongfully ruled directly contrary and opposite to the U.C.C., to *Brown*, and to other case law in Washington and other notice-pleading states across the country. The court erroneously held that because Washington is a notice-pleading state, U.S. Bank did not need to possess the Note when the case was filed.

THE COURT: Whether somebody had the Note at one particular point in time or didn't have the Note really doesn't matter, because

⁵⁸ CP 782, Lines 25, 26. CP 930, ¶ 13.

⁵⁹ CP 395, Lines 14-27; CP 396; CP 397, Lines 1-13.

⁶⁰ CP 831, Lines 17, 18.

⁶¹ CP 831, Lines 24, 25.

⁶² CP 714, Lines 9-11.

they have the Note now...⁶³ JOSHUA PLUMB: There've been many cases where, if the Plaintiff does not have possession of the Note or is not the holder in due course when they file the lawsuit, then in these notice pleading states across the country they are dismissing the cases. They are reversing cases, like if summary judgment was granted then the Appeals Court is saying it's not proper to grant summary judgment in that instance if they were not the holder, because according to the UCC., it's when it's transferred.⁶⁴ THE COURT: This is a real estate transaction. This is not a UCC transaction.⁶⁵ They have the Note now. I'm finding that's all they need.⁶⁶ They since got the Note so it doesn't make any difference whether they had it at the time.⁶⁷

The court erred by failing to comply with Washington's U.C.C. and all the above well-established, relevant case law requiring U.S. Bank to prove the date when its "possession" of the Note occurred—which date had to be before it filed this suit—in order for U.S. Bank to prove its standing and the court's jurisdiction. The court erred when it held that U.S. Bank did not have to have possession of the Note when the case was filed and when it granted Judgment to the Bank. Even U.S. Bank agrees that the *Brown* court held that the U.C.C. is applicable in a foreclosure case and that, under *Brown*, a foreclosing plaintiff must have "possession" of the Note in order to enforce the Note.⁶⁸ Absent that prerequisite, the Bank's foreclosure suit must fail. Here, the Bank clearly failed to prove that it held possession of the purported original Note on the date the case was filed. Due to the fact that U. S. Bank did not hold possession of the Note on the date the case was filed, U.S. Bank's agents willfully, falsely and deceitfully stated that U. S. Bank's agent, Ocwen, held the Note when the complaint

⁶³ RP 99, Lines 6-8.

⁶⁴ RP 101, Lines 18-25; RP 102, Line 1.

⁶⁵ RP 102, Lines 2, 3.

⁶⁶ RP 102, Lines 17, 18.

⁶⁷ RP 103, Lines 7, 8.

⁶⁸ CP 831, Lines 15-28; CP 832, Lines 1-4; CP 714, Lines 9-11.

was filed.⁶⁹ Ocwen provably did not possess the Note on 12/26/2013 when the Bank filed the suit, as Ocwen's un rebutted "Note Location Determined" document clearly shows that *Deutsche Bank* held the said Note on the 12/26/2013 date of suit (Appendix), and that U. S. Bank's agent, Ocwen, did not receive the Note until much later on "8/4/14."⁷⁰ Therefore, by its own admission, U. S. Bank did not possess the Note on the day it filed suit and thus, based on its own records, it did not have standing to file suit. This fact warrants judgment in favor of the Plumbs, and bars judgment in favor of U. S. Bank.

In summary: U. S. Bank failed to establish that it had standing with the right to enforce the Note when it filed the lawsuit. To the contrary, the Bank's own records indicate that it did not possess the Note on that date. Thus, the Bank could not invoke the jurisdiction of the court and the court lacked jurisdiction to rule in this case.⁷¹ The court had a non-discretionary duty to dismiss U.S. Bank's complaint without proceeding to considering the merits of the case. The court erroneously failed to dismiss this case. In *Ullery v. Fulleton*, 162 Wn. App. 596, 256 P.3d 406 (2011), this appeals Court held that, having found that the plaintiff lacked standing, the trial court should not have proceeded to the merits.⁷² The Bank is not entitled to judgment as a matter of law. This Court should find that the trial court's holding that U.S. Bank did not have to possess the Note when it filed the case was an error of law.

2. U.S. Bank's Bad Faith, Fraud and Egregious Litigation Misconduct Committed in Order to Defraud and Deceive the Court and the Plumbs Warrant Sanctions and Dismissal of the Case.

⁶⁹ CP 924, Lines 22-30; CP 925, Lines 1-16.

⁷⁰ CP 665.

⁷¹ CP 930, Lines 25; CP 931, Lines 1-19.

⁷² CP 931, Lines 10-19.

As affirmative defenses, the Plumbs properly established with particularity genuine issues of material facts that proved the Bank's bad faith, fraud and litigation misconduct, which barred Judgment in its favor.⁷³ The Bank did not respond to, rebut nor deny any of the said defenses.⁷⁴ The court erroneously refused to consider or rule on any of the Plumbs' testimony, defenses or facts on these matters before deciding to rule in favor of the Bank. Instead, the court stated that "...I'm not considering any of this as testimony for purposes of the summary judgment."⁷⁵ "...I'm not making any factual determination. I'm making a legal determination...."⁷⁶

The Plumbs set forth clearly-established, unrefuted evidence that barred summary judgment in the Bank's favor, including, but not limited to that which is set forth in the Issue No. 1, *supra*, of the Bank's lack of standing, how in bad faith the Bank filed this lawsuit, knowing full well that neither it nor its agent, Ocwen, possessed the purported original Note on the date U. S. Bank filed suit, as is required by law. The Bank's action in filing the suit and thereafter was clearly deceptive, maintained in bad faith, and was fraud upon the court and the Plumbs. This willful misrepresentation of material facts and refusal to correct its deception, despite many opportunities to do so, (now over 3 years) destroys its credibility.

The Plumbs established in their Memo. in Opp to MSJ and Affidavits, cited in Issue No. 1, *supra*, how, in bad faith, U.S. Bank's attorney, Tiffany Owens and Ocwen's agent, Matthew Owens, twice willfully and falsely certified that "Ocwen" possessed the purported original Note when the case was filed, when they both knew that "*Deutsche Bank*," *not*

⁷³ 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.

⁷⁴ CP 971-992.

⁷⁵ RP 95, Lines 1, 2.

⁷⁶ RP 106, Lines 19, 20

“Ocwen,” was in possession of said Note. U. S. Bank’s material misrepresentation significantly prejudiced the Plumbs’ ability to defend themselves. Had the Bank truthfully stated in its Complaint that it was not a holder of the Note, the Plumbs would have moved the court to dismiss the case for lack of standing and this would have been granted. If U. S. Bank did not hold the Note, it was not the true party in interest and it lacked standing to file suit. Therefore, the court lacked jurisdiction. Ocwen’s agent, Matthew Owens, clearly signed and dated a “Note Location Determined” document from Ocwen (that both he and the Bank’s attorney together provided in their response to the Plumbs’ RFP discovery request) that showed Deutsche Bank held possession of the said Note on 12/26/2013.⁷⁷ Appendix.

The trial court, however, erroneously, and contrary to due process, justice and well-established law, ruled that **it does not matter if the Bank lied** about its having possession of the Note when the case was filed.

THE COURT: ...they since got the Note so it doesn’t make any difference whether they had it at the time.⁷⁸ GEORGIA PLUMB: But **if they lied about it...does that not matter?** THE COURT: **It doesn’t matter** with regard to the question of whether or not they’re entitled to the foreclosure. GEORGIA PLUMB: If they weren’t entitled when they filed the Complaint, are you saying that doesn’t matter? THE COURT: I’m saying it doesn’t matter now....⁷⁹

The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary’s ability to uncover falsehoods is doomed to failure, which is why U.S. Bank’s type of conduct must be discouraged in the strongest possible way. Although a plaintiff may possess a right to have its case heard, it can, by its own conduct, for-

⁷⁷ CP 665; CP 668, Lines 8-11; CP 669, 670; CP 660, Lines 3-8; CP 661, 662.

⁷⁸ RP 103, Lines 7, 8.

⁷⁹ RP 103, Lines 16-23.

feit that right. A party who has been guilty of fraud or misconduct in the prosecution of a civil proceeding should not be permitted to continue to employ the very institution it has subverted to achieve its ends.

When the lower court failed to recognize this conflict, failed to require a greater burden of proof for U.S. Bank's assertions and failed to impose any sanction, it abused its discretion.

The court further erred when it failed to acknowledge the severe prejudice suffered by the Plumbs as a result of U.S. Bank's dishonesty. U. S. Bank failed to present any rebuttal evidence disputing the Plumbs' claim that U.S. Bank had acted in bad faith, with unclean hands and that it was committing fraud in this case.⁸⁰ U.S. Bank came to the court with forged documents, false statements and perjured testimony. It has attempted to steal the Plumbs' home via fraudulent means. This illegal foreclosure constitutes a severe deprivation of the Plumb's right to Due Process.

It is an undisputed fact that the Bank had knowledge of fraud in the origination through its servicing agent, Ocwen, who is the Bank's attorney-in-fact and who has been the only servicing agent for the subject loan that was authorized to collect payments from the beginning.⁸¹ U.S. Bank's servicing agent (Ocwen) possessed copies of all the subject mortgage loan documents in its own business records including, but not limited to, 3 different DOT records that proved beyond all reasonable doubt there was illegal forgery in the version of the DOT recorded in Yakima County.⁸² (Compare: **(1)** Fernandez;⁸³ **(2)** Delpesche;⁸⁴ and **(3)** Ocwen's "certified"

⁸⁰ CP 925, Lines 23-39; CP 926-957; CP 958, Lines 1-10.

⁸¹ CP 782, ¶ 1; CP 817, Line 26; CP 128.

⁸² CP 1137, 1138, 1140; CP 792; CP 758.

⁸³ CP 792.

⁸⁴ CP 758.

copies⁸⁵). If U.S. Bank's two Affiants were truly competent, then they would have known of the fraud when they made their Affidavits for this case. If they did not know of this obvious fraud, then they are incompetent. In either case, whether dishonest or incompetent, their Affidavits were clearly made in bad faith and should not have been allowed or relied upon by the court. When considering the fact that Ocwen's other testimony involved substantive deception and perjury, it is proper to require a higher standard of proof. Generic, unsubstantiated, conflicting assertions in affidavits signed by incompetent or dishonest affiants are not sufficient to establish foundation for the Bank's evidence. The Bank's evidence should be stricken from the record since it has not been properly authenticated by a competent fact witness in order to create admissible evidence.

Furthermore, Ocwen's records put U. S. Bank on notice that, beginning as early as about July, 2009, Ocwen had received official written notices/communications regarding the fraud in the origination, including, but not limited to, those from the Plumbs' authorized Mortgage Loan Auditors.⁸⁶ Ocwen's records also put U. S. Bank on notice that, in bad faith, Ocwen willfully refused to properly respond to the written notices in violation of RESPA, TILA, and the FDCPA.⁸⁷ U.S. Bank did not controvert, rebut, nor deny any of these genuine issues of material fact that the Plumbs established. (See further discussion in Section 3 below.)

The lower court's erroneous decision to grant relief to the Bank, when the Bank was guilty of such egregious misconduct, and to decline to require the Bank to act in "entire good faith," was directly contrary to the

⁸⁵ CP 556.

⁸⁶ CP 64, ¶¶ 46, 50, 51; CP 65, Lines 1-4; Ex. A, CP 89-92; Ex. B, CP 136-151; CP 1171-1199; CP 1210, 1211; CP 1216, 1217, 1219, 1222, 1226); CP 404, Lines 10-27; CP 405, 406; CP 951-954; CP 955, Lines 1-11.

⁸⁷ CP 136-151.

Washington Supreme Court's holding in *Arnold v. Melani*, 75 Wn.2d 143, 437 P.2d 908 (1968), where the Court held that "The trial court, in protecting the encroacher, was clearly in error because of the absence of 'entire good faith' as required in *Peoples Sav. Bank v. Bufford*." [emphasis added]⁸⁸ Additionally, in *J. L. Cooper & Co. v. Anchor Sec. Co.*, 9 Wn.2d 45, 113 P.2d 845; (1941), the Supreme Court held that:

The courts do not aid anybody in his effort to violate law nor give him the benefit or fruit of his own violation thereof. **No court of law or equity will enforce or give any right upon an illegal contract.** Following the same principle, a court will not allow the use of its power and process to obtain a benefit founded directly upon a breach of law by the applicant therefore. The courts of equity go still further and refuse relief, even in cases of equitable right, if the applicant has been guilty of fraud or misconduct in or about the matter in respect to which he seeks relief."⁸⁹ [emphasis added]

Furthermore, because U.S. Bank did not have standing to file this suit, it substantially violated CR 11(a)(1)(2)&(3).⁹⁰ The court erred because it should have imposed an appropriate sanction upon U. S. Bank for filing this suit, including dismissal with prejudice and granting the Plumbs' expenses. *Bigg v. Vail*, 124 Wn.2d 193, 876 P.2d 448 (1994).⁹¹ Lack of standing is an appropriate basis to award CR 11 sanctions. *State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 904-05, 969 P.2d 64 (1998).⁹² The court erred when it did not impose sanctions herein because the Bank not only failed to establish its standing and the court's jurisdiction, but it is quite apparent from Ocwen's "Note Location Determined" document that attorney Tiffany Owens and Matthew Owens from Ocwen willfully lied on at least two different occasions in their above-quoted discovery re-

⁸⁸ CP 406, Lines 7-9.

⁸⁹ CP 406, Lines 13-19.

⁹⁰ CP 924, ¶ C; CP 925-930; CP 931, Lines 1-19.

⁹¹ CP 931, Lines 11-14.

⁹² CP 931, Lines 14, 15.

sponses and Mr. Owen twice committed perjury. "The purposes of sanctions orders are to deter, to punish, to compensate and to educate." *Wash. State Physicians Ins. Exch. v. Fisons Corp.*, 122 Wn.2d 299, 356, 858 P.2d 1054 (1993). The court should have imposed sanctions, including dismissal of the case.

The Bank's litigation misconduct in the instant case resembles the plaintiff's misconduct in *Jackson v. Microsoft Corp.*, 78 Fed. Appx. 588 (2003). There, the court held that the plaintiff's litigation misconduct warranted dismissal of the plaintiff's complaint. The *Jackson* plaintiff showed a pattern of deceptive acts and fraudulent testimony. The court said it had no assurance that a trial in the matter would indeed be a fact-finding endeavor because the plaintiff had undermined the truth-finding function of the court beyond repair. The court held that the defendant had been prejudiced in its ability to defend itself in the litigation and it dismissed the plaintiff's complaint. The same result should have been reached in the instant case.

Lying under oath about facts pertinent to this lawsuit is egregious misconduct. The Bank's dishonest scheme was perpetrated in deliberate disregard of the court's authority. It was calculated to directly subvert the judicial process. U.S. Bank's refusal to reveal the truth on many occasions over the course of 3 years did not result from mere oversight or forgetfulness. Its intent was to deceive. (Appendix.) The fact that this was done by a national bank is outrageous. It has a higher standard of obligation and duty to act in good faith. It also has the potential to harm the public on a large scale. There is a strong societal interest in preventing such future conduct through a punitive award. That cheaters should not be allowed to prosper has long been central to the moral fabric of our society and is one of the underpinnings of our legal system. Dismissal with prejudice has

long been available as the ultimate civil sanction against substantive litigation misconduct. Lying about facts central to the case simply cannot be tolerated and in this case cannot be remedied by any lesser sanction than dismissal with prejudice.

U.S. Bank's false and misleading statements, given under oath concerning issues central to the case, amount to fraud. The trial court's unwillingness to dismiss U.S. Bank's claim for fraud was an abuse of discretion. The trial court erred when it ruled in favor of the Bank. The court should impose sanctions on the Bank, including the Plumb's expenses, and the case should be dismissed with prejudice.

Furthermore, U. S. Bank did not dispute the Plumbs' assertion that U. S. Bank "has not proven that it paid anything for the Note or that it would suffer any hardship whatsoever by the dismissal of its case, whereas the Plumbs would suffer irreversible devastation and harm. They are unemployed and the fraudulent taking of their home would leave them homeless."⁹³

3. Forgery in U.S. Bank's Note and Deed of Trust Instruments and Fraud in the Origination of the Mortgage Loan Vitiates the Instruments and Transaction. The Bank Did Not Prove Affirmatively Its Good Faith and that It had No Knowledge or Reason to Know of the Fraud.

Pursuant to Washington Rule of Civil Procedure 8(c), fraud is an affirmative defense. The plea is "available...in every civil action to bar all forms of relief." "Fraud" is anything "calculated to deceive, including all acts, omissions, and concealments involving a breach of legal or equitable duty, trust, or confidence resulting in damage to another." *Crisman v. Crisman*, 85 Wash.App. 15, 931 P.2d 163 (1997).⁹⁴ In *Webster v. L. Ro-*

⁹³ CP 484, Lines 12-15.

⁹⁴ CP 931, Lines 26-28.

mano Engineering Corp., 178 Wash. 118, 34 P. 2d 428 (1934), and in many decisions citing *Webster*, the Supreme Court set forth the nine essential elements of fraud. The nine essential elements of fraud are:

- (1) a representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of its falsity; (5) the intent of the speaker that it should be acted upon by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom the representation is addressed; (7) the latter's reliance on the truth of the representation; (8) the right to rely upon it; and (9) consequent damage.⁹⁵

The Plumbs properly pled with particularity the 9 essential elements of fraud in U.S. Bank's Note and DOT instruments and in the origination, all of which they established by clear, cogent, and convincing evidence.⁹⁶

U.S. Bank did not controvert with any evidence the Plumbs' evidence.

Under RCW 9A.60.010(a)(3)(4)(5)(6)(7), "Forged instrument" means a written instrument which has been falsely made, completed, or altered."⁹⁷ Pursuant to RCW 9A.60.020 Forgery (1):

A person is guilty of forgery if, with intent to injure or defraud: (a) He falsely makes, completes, or alters a written instrument or; (b) He possesses, utters, offers, disposes of, or puts off as true a written instrument which he knows to be forged. (3) Forgery is a class C felony."⁹⁸

The Supreme Court held in *State v. Scoby*, 117 Wn.2d 55, 810 P.2d 1358 (1991), that:

"Under the present forgery statute...what is prohibited is simply the forgery of a 'written instrument'" and " ...under the common law 'an instrument is something which, if genuine, may have legal effect or be the foundation of legal liability.'" *State v. Scoby*, 57 Wn. App. at 811 P.2d 226 (1990) (citing *State v. LaRue*, 5 Wn. App. 299, 302, 487 P.2d 255 (1971)); accord, *State v. Haislip*, 77 Wn.2d 838, 842,

⁹⁵ CP 932, Lines 1-6.

⁹⁶ CP 931, ¶ D; CP 932-954; CP 955, Lines 1-11.

⁹⁷ CP 932, Lines 21, 22.

⁹⁸ CP 932, ¶ 2.

467 P.2d 284 (1970).⁹⁹

The Plumbs filed affidavits opposing summary judgment under penalty of perjury based upon their own first-hand personal knowledge, and they set forth such facts as were admissible in evidence and showed affirmatively that the Affiants were competent to testify to the matters as stated therein per CR 56(e).^{100 101}

As relevant, clear evidence of forgery, and of U.S. Bank’s knowledge (or reason to know of) the forgery, the Plumbs presented parts of the originating lender’s (Finance America, LLC) sworn and “certified” copy of the purported original Deed of Trust that Ocwen sent to the Plumbs’ residence per a “Loan Document Request.”¹⁰² The face (1st page) of Ocwen’s copy of the said DOT had two “certification” stamps wherein the originating agents certified that the document was a true and correct copy of the original. One certification stamp was made by the originating lender, Finance America.¹⁰³ The face of the “certified” copy that Ocwen sent to the Plumbs clearly had missing required material information, including, but not limited to, the name of the trustee and legal description of the property.¹⁰⁴ Ocwen’s “certified” copy of the DOT even had a handwritten “circle” placed thereon that clearly indicated that there was “missing” required information on the face of the instrument.¹⁰⁵ The said DOT also had a form name in the lower left-hand corner—“MABK.”¹⁰⁶ In stark contrast, both of U.S. Bank’s Affiants from Ocwen attached to their Affi-

⁹⁹ CP 932, ¶ 4.

¹⁰⁰ CP 55-204; CP 490-671; CP 449-489, Ex. 1-12, CP 1019-1238.

¹⁰¹ CP 493, ¶ 6; CP 494, Lines 1-7.

¹⁰² CP 1137, 1138, 1140; CP 126, 128; CP 782, ¶ 1; CP 817, Line 26.

¹⁰³ CP 1138.

¹⁰⁴ *Id.*

¹⁰⁵ *Supra.*

¹⁰⁶ *Supra.*

avits an “Exhibit B” which was a purported copy of the original Deed of Trust that is recorded in Yakima County.¹⁰⁷ The said copies both show on the face of the DOT, that the once prior “circled” “missing” information in Ocwen’s “certified” copy of the DOT was now falsely completed (forged) by apparently multiple parties with different handwriting styles. In addition, the document form name in the lower left-hand corner “MABK” that is on Ocwen’s “certified” copy of the purported original DOT was now also fraudulently obliterated in the Bank’s Affiants’ copies.

One should also compare and note the differences between the 1st page of the DOT from each of the following: (1) Fernandez,¹⁰⁸ (2) Delpesche;¹⁰⁹ (3) Ocwen’s “certified” copy;¹¹⁰ and (4) the original first page of the DOT that closing agent, JoAnna McDonald from Fidelity Title Company handed to the Plumbs after signing.¹¹¹

Additionally, it is a material fact that all the said four copies of the purported original DOT are each clearly and unreasonably different on their face, proving beyond all reasonable doubt that there is illegal forgery in the recorded DOT in Yakima County Auditor’s Office and that U.S. Bank through its loan servicer, Ocwen, and its Affiants knew or should have known of the illegal forgery in the DOT from Ocwen’s own business records from the beginning.¹¹²

The record concerning the forgery fraud is clear. U.S. Bank did not deny, rebut or controvert with any evidence that 1) Ocwen has at least 3 differing copies of the DOT in its own business records; 2) Ocwen sent the

¹⁰⁷ CP 792; CP 758.

¹⁰⁸ CP 792.

¹⁰⁹ CP 758.

¹¹⁰ CP 556.

¹¹¹ CP 517; CP 1047.

¹¹² CP 792; CP 758; CP 556; CP 517; CP 935, ¶ 8; CP 1137, 1138, 1140. See also RP 98, Lines 4-7; CP 952, Line 30; CP 953, Lines 1-4.

copy of the DOT with the “missing” information on the face of the DOT to the Plumbs; 3) there was fraud in the DOT; 4) U. S. Bank knew, or had a reason to know of fraud in the DOT; 5) U.S. Bank is in bad faith committing fraud in this case because it is falsely presenting as true what it knows is a forged instrument; and, 6) the law does not allow an assignee of a forged instrument, however ignorant he may be, any protection.¹¹³

It is also a material fact barring summary judgment that U. S. Bank’s agents illegally forged the handwritten date of “26th” of “August 2004” on the Prepayment Rider page to U.S. Bank’s purported original Note.¹¹⁴ As unrebutted evidence of this fact, the Plumbs presented an unrebutted copy of the purported original Note that was “certified” to be a true and correct copy of the original by an Escrow Agent from Fidelity Title Co., Christina Morehead, that DOES NOT SHOW the handwritten date of the “26th” of “August 2004” on the Prepayment Rider page.¹¹⁵ As further supporting, unrebutted evidence proving the forgery in the Bank’s purported original Note, the Plumbs provided a second copy of the Note that Jenny Britz, another Escrow Agent from Fidelity Title Co., sent to the Plumbs. Ms. Britz’s copy also DOES NOT SHOW the handwritten date of the “26th” of “August 2004” on the Prepayment Rider page of U.S. Bank’s purported original Note.

One should also compare and note the differences between the relevant parts of **(1)** Fidelity Title Co.’s Escrow Agent Christina Morehead’s “certified” copy of the purported original Note;¹¹⁶ **(2)** Escrow Agent Jenny

¹¹³ CP 939, Lines 27-30; CP 940, Lines 1-14; CP 945, Lines 17-30; CP 946-955.

¹¹⁴ CP 789.

¹¹⁵ CP 1131, 1134; CP 933, Lines 11-14; CP 458, Lines 9-24, Ex. 2, CP 1046; Ex, 4, 1131, 1134.

¹¹⁶ CP 1131, 1134.

Britz's copy of the Note;¹¹⁷ (3) U.S. Bank's Affiant Andres Fernandez's copy of the purported original Note;¹¹⁸ (4) U.S. Bank's Affiant Daniel Delpesche's copy of the purported original Note;¹¹⁹ and, (5) the true copy of the original Note that the closing agent, JoAnna McDonald from Fidelity Title Co. handed to the Plumbs after signing.¹²⁰

One should also compare and note the differences between U.S. Bank's Affiant from Ocwen, Fernandez's, copies of the Prepayment Rider pages of both the subject Note and DOT instruments showing the handwritten date of the "26th" of "August 2004" in two different handwriting styles¹²¹

The Plumbs gave unrefuted material evidence proving that U. S. Bank and/or its agents fraudulently added information to the instruments:

The handwriting of the '26th' 'August 2004' on the Note and Deed of Trust instruments is not ours. No one added anything in writing to the papers that we signed, in our presence. The original loan papers we signed were preprinted, but otherwise were blank when we signed them. Ex. 2.¹²² Plus, it is obvious that two different people with two different handwriting styles hand-wrote the date '26th' 'August 2004' on the 'Prepayment Rider' pages in both the Note and Deed of Trust.¹²³ "The handwritten date of '26th' 'August 2004' on the 'Prepayment Rider' pages of both the Note and Deed of Trust were added after we left the premises of Fidelity Title Company, as well as Victoria Hallock's notarization on page 15 of the Deed of Trust.¹²⁴

Georgia Plumb swore under oath:

All of these writings, including everything that has been recorded in Yakima County, those were, after the fact without our authorization,

¹¹⁷ CP 1118, 1126, 1129.

¹¹⁸ Ex. A, CP 786, 789.

¹¹⁹ Ex A. CP 752, 755.

¹²⁰ Ex. 2, CP 1031, 1043-1046.

¹²¹ CP 789 and CP 808.

¹²² Ex. 2, CP 1030, 1031, 1043-1064.

¹²³ Doc. 31, Ex. A, p 4, Ex. B, p 17 (Aff. in Supp. of MSJ); CP 789; CP 808.

¹²⁴ CP 458, Lines 9-12.

without our knowledge...¹²⁵ We deny that we signed the documents that have been presented to the Court. We deny that we signed those documents, those fraudulent documents, and in fact, I went to Fidelity Title this summer and I got two different, from two different escrow agents – Christina Morehead, she certified and the Court has a copy of the Note that she certified that does not match the Note that Tiffany Owens said is the copy that they have there of the original....¹²⁶ THE COURT: “Well, again, I’m trying to get back to the fact that at the time of the loan you signed a Note for \$360,000, correct?” GEORGIA PLUMB: “Not the Note that’s in the record....”¹²⁷ THE COURT: “...you’re saying the Note that the Bank asserts is not the Note that you signed.” GEORGIA PLUMB: “That is correct.” THE COURT: How about the signatures that appear on that Note? Are you saying those are...” GEORGIA PLUMB: “There’s a similarity. We have no knowledge because it wasn’t the note that we signed. There were additional things added to the Note, as well as to the Deed of Trust.”¹²⁸

The Plumbs also testified under penalty of perjury:

The Note contains unauthorized additions that were not present when Defendants signed it.¹²⁹ The recorded version is NOT the same Deed of Trust that we signed.¹³⁰

Georgia Plumb testified in the Summary Judgment hearing: “They don’t have an original Note. Their Note is a fraudulent Note. That’s not what we signed.”¹³¹ The Plumbs also declared in their joint Aff in Opp to MSJ:

There are a total of seven 7 notarizations done by 2 different notary publics in the loan documents. (See Ex.3)¹³² There was no notary public present at loan closing. No documents were notarized in our presence at loan closing. Any notarizations currently present in the loan documents were added after-the-fact, without our authorization and

¹²⁵ RP 18, Lines 14-17.

¹²⁶ RP 19, Lines 14-20.

¹²⁷ RP 20, Lines 1-4.

¹²⁸ RP 21, Lines 1-9.

¹²⁹ CP 496, Line 23.

¹³⁰ CP 459, Line 2.

¹³¹ RP 108, Lines 14-16.

¹³² CP 536-543; CP 806.

were done without our knowledge.”¹³³ “There are several changes that were made to the original Deed of Trust instrument after we left the premises of Fidelity Title Company, without our knowledge or authorization, which included, but it not limited to: 1) the addition of the ‘legal description of the property’ on pages 1 and page 18; 2) the addition of the notarization on page 15; 3) the ‘deletion’ of the ‘Form Name’ in the lower left-hand corner of pages 1 through 15; 4) the addition of the hand-written date of ‘26th August 2004’ on the ‘Prepayment Rider’ page 17.) Ex. 2, pp 17-34;¹³⁴ Doc. 31, Ex. B (Aff in Supt of MSJ).¹³⁵

Under Washington’s Fraud law at RCW 9A.60.010(a)(3)(4)(5)(6)(7), U.S. Bank’s instruments are “forged instruments” and the Bank is prohibited from availing itself of a forged instrument or of the fraud of another. “[O]ne holding under a forged instrument, however ignorant he may be of the forgery or how much of value he may have parted with in reliance on the genuineness of the instrument, cannot claim protection against the title of the rightful owner on the ground that he is an innocent purchaser in good faith and for value.” *Lewis v Kujawa*, 185 Wash. 607, 617, 291 P. 1105 (1930).¹³⁶

It is also an undisputed material fact that the originating parties conspired together and committed other fraud, including, but not limited to, inducing the Plumbs to take out the loan for the full \$360,000 abusive, fraudulent over-appraised amount. Compared to Yakima County Assessors’ Office’s certified assessed value record for that same year in 2004 of \$199,000¹³⁷, the subject real property was nearly \$161,000 over-appraised.

The originators also committed abusive predatory fraud when they illegally required Carl and Georgia Plumbs’ two young sons, Kameron and Joshua, to each promise to repay the entire \$360,000 loan, even though

¹³³ CP 497, ¶ 20.

¹³⁴ Ex. 2, CP 1047-1064.

¹³⁵ Ex. B, CP 792-809; CP 459, Lines 3-9.

¹³⁶ CP 939, Lines 4-8.

¹³⁷ CP 1022-1029.

they had no income, no assets, no bank accounts and no ability to make any payments on the loan whatsoever.¹³⁸ The originating parties also threatened the Plumbs with a lawsuit if they did not sign the papers.¹³⁹ This was a material factor in their signing and constituted fraud in the inducement.

U.S. Bank and its agent, Ocwen, are in the business of mortgage loans and they had knowledge, and/or a reason to know, of the said fraud from copies of the Appraisal Report in their business records that showed the dishonest appraiser unreasonably and fraudulently used “comparables” well outside the proper area that were “view” properties, despite the fact that the subject residential property had “no view.”¹⁴⁰ Furthermore, U.S. Bank and Ocwen had copies of the Residential Loan Applications that showed the subject mortgage loan was an illegal predatory loan because Kameron and Joshua Plumb had no income, no assets, no bank accounts and no means to make payments on the loan.¹⁴¹

In *Glaser v. Holdorf*, 56 Wn.2d 204, 352 P.2d 212 (1960), the Supreme Court held that "Although a third person shall not be punished for the fraud of another, he shall not avail himself of it. There is no case in the law where that can be done."¹⁴² The Supreme Court held in *Weller v. Advance-Rumely Thresher Co., Inc.*, 160 Wash. 510, 295 P. 482 (1931), "[W]e have repeatedly held that provisions...in a contract cannot be used as a cloak to cover fraud." "Fraud vitiates everything it touches and is not merged in the written contract."¹⁴³ Fraud clearly vitiated U.S. Bank's in-

¹³⁸ CP 1110, 1111, 1114, 1115; CP 941, Lines 8-30; CP 942-947; See damages listed - CP 937, ¶ 9; CP 938, Lines 1-27.

¹³⁹ CP 61 ¶¶ 32-35; CP 62 ¶¶ 36-38

¹⁴⁰ CP 1021-1025.

¹⁴¹ CP 1108, 1110, 1111, 1113-1115.

¹⁴² CP 954, Lines 16-20.

¹⁴³ CP 934, ¶ 7.

struments and the subject loan transaction. Therefore, U. S. Bank is not an assignee or transferee of a valid Note or Deed of Trust. U. S. Bank's mere holding of a Note or the recording of an instrument or the recording of an assignment of Deed of Trust cannot create legal obligations to pay where none existed before. See *Coson v. Roehl*, 63 Wn.2d 384, 387 P.2d 541 (1963), where the Supreme Court held that "A contract, the making of which was induced by deceitful methods or crafty device, is nothing more than a scrap of paper." The Court also held that trusting to a misrepresentation would not excuse positive willful fraud or deprive the defrauded person of his remedy, and fraud vitiated the contract.¹⁴⁴ The false nature of the Bank's Note and the DOT are themselves sufficient to prove intent to defraud per *State v. Velasquez-Bautista*, 2009 Wash. App. [Unpublished Opinion]¹⁴⁵ A party's misrepresentation renders a contract defective. *Austin v. Ettl*, 171 Wn. App. 82, 87 n.6, 286 P.3d 85 (2012).¹⁴⁶ The Bank's instruments and the subject loan are fatally defective and cannot support judgment against the Plumbs.

As discussed above, the Plumbs gave the court their testimony and other evidence that showed the fraud upon which they relied. The Washington Supreme Court held in *Producers Grocery Co. v. Blackwell Motor Co.*, 123 Wash. 144, 212 P. 154 (1923), that "... the rule contended for by appellants would be applicable, but it is inapplicable as against testimony tending to show fraud or false representations which were relied upon and which entered into the making of the contract of purchase. Fraud vitiates everything it touches and is not merged in the written contract. *Schroeder v. Hotel Commercial Co.*, 84 Wash. 685, 147 Pac. 417; 88 Wn. App. 64;

¹⁴⁴ CP 939, Lines 8-16.

¹⁴⁵ CP 934, Lines 29, 31.

¹⁴⁶ CP 935, Lines 1-4.

943 P.2d 710 (1997); *Wells v. Walker*, 109 Wash. 332, 186 Pac. 857."¹⁴⁷ In *Coson, supra*, the Court held that "A contract the making of which was induced by deceitful methods or crafty device, is nothing more than a scrap of paper, and it makes no difference whether the fraud goes to the factum, or whether it is preliminary to the execution of the agreement itself."¹⁴⁸ Furthermore, the fraud in the origination rendered the subject mortgage unenforceable per the following court decisions that have held that if the obligation for which the mortgage was given fails for some reason, the mortgage is unenforceable. *Fidelity & Deposit Co. of MD v. Ticor Title Ins. Co.*, Wn. App. 64, 943 P.2d 710 (1997); *Anderson v. Co. Prop. Inc.*, 14 Wn. App. 502, 503, 543 P.2d 653 (1975); *Koster v. Wingard*, 50 Wn.2d 855, 314 P.2d 928 (1957).¹⁴⁹

Washington law requires that once the Plumbs proved fraud perpetrated by the original parties to the instruments, the burden was on U. S. Bank to affirmatively prove its good faith, that it was a *bona fide* holder and that it took possession of the Note without any knowledge of fraud in the origination. In *H H Higgins v. Radach*, 12 Wn.2d 628, 123 P.2d 352 (1942), the Supreme Court held that:

"Proof by the plaintiff that he is the holder of a negotiable instrument raises a presumption that such plaintiff is a *bona fide* holder. When, however, the defendant proves fraud between the original parties to the instrument, the burden is on the plaintiff to prove that he is a *bona fide* holder."¹⁵⁰ "[Every] holder is deemed *prima facie* to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course....Rem.

¹⁴⁷ CP 946, Lines 5-19.

¹⁴⁸ CP 946, Lines 10-19; CP 939, Lines 10-15.

¹⁴⁹ CP 952, Line 30; CP 952, Lines 1-5.

¹⁵⁰ CP 954, Lines 5-8

Rev. Stat. . § 3450 [P.C. § 4130].¹⁵¹ "We have consistently held that proof of fraud between the original parties imposes upon the plaintiff the onus of proving good faith."¹⁵²

In *Spokane Sec. Fin. Co. v. De Lano*, 168 Wash. 546, 12 P.2d 924 (1932), the Supreme Court held that:

But the burden of making out good faith is always upon the party asserting his title as a bona fide holder, in a case where it is admitted or the proof shows that the paper has been fraudulently, feloniously, or illegally obtained from its maker or owner. Such a party makes out his title by presumptions, until it is impeached by evidence showing that the paper had a fraudulent inception, and when this is done the plaintiff can no longer rest upon the presumptions, but must show affirmatively his good faith."¹⁵³ "[The holder] must show that he came by the possession of the note fairly, and without any knowledge of the fraud or illegality, and unattended with any circumstances justly calculated to awaken suspicion."¹⁵⁴

U.S. Bank did not affirmatively claim that it had good faith nor prove that it did not know of fraud in the origination, nor that it did not have any reason to know of any fraud prior to its receiving possession of the purported original Note, as is required by the above-quoted Washington State Supreme Court decisions.¹⁵⁵

In summary, evidence of illegal forgery in both U.S. Bank's Note and the Deed of Trust instruments is well-established and uncontroverted. The record shows that the Plumbs properly pled the nine essential elements of other fraud in the origination and the Plumbs established fraud in the origination by clear, cogent, and convincing evidence. The lower court erroneously did not follow the well-established law that applied in this case as set forth above, including, but not limited to the Washington Su-

¹⁵¹ CP 954, Lines 9-12

¹⁵² CP 954, Lines 12, 13.

¹⁵³ CP 953, Lines 24-28.

¹⁵⁴ CP 953, Line 30; CP 954, Lines 1, 2.

¹⁵⁵ CP 952, ¶ 12; CP 953, 954; CP 955, Lines 1-11.

preme Court's holdings in *H H Higgins* and *Spokane Sec. Fin. Co., supra*, that require that U. S. Bank affirmatively prove its good faith once the Plumbs showed evidence of the said fraud.¹⁵⁶ Therefore, the trial court erred when it granted Judgment to U. S. Bank.

In fact, these meritorious reasons, concerning which there is no material fact in dispute, clearly warranted that the court should have found that the Plumbs were entitled to have the case dismissed, and that the court should have granted the Plumbs' Prayer for Relief¹⁵⁷ and their requests set forth in section "G. Conclusion" below.

4. Laches Barred the Judgment and Foreclosure.

The Plumbs have an affirmative equitable defense for an equitable remedy pursuant to the doctrine of laches.¹⁵⁸ Pursuant to Washington Rule of Civil Procedure, CR 8(c), laches is an affirmative defense. The plea is "available...in every civil action" to bar all forms of relief. Laches can be asserted regardless whether a suit is a legal or equity case. The affirmative defense of laches can apply where there is an ordinary 6-year statute of limitations, as in this present case, because there are extraordinary circumstances that warrant a ruling that U.S. Bank's suit was filed too late. The consequences of U.S. Bank's unreasonable delay in commencing its action in this case is of sufficient magnitude to warrant, at the very outset of the litigation, curtailment of the relief legally or equitably awardable.

Laches bars the action when a party that should have been aware that it had a cause of action unreasonably sits on its claim long enough to have

¹⁵⁶ CP 950 ¶ 5.

¹⁵⁷ CP 958, 959.

¹⁵⁸ CP 956, ¶¶ 1, J; CP 400, Lines 11-27; CP 401; Ex. 8, CP 1192-1199; CP 402, Ex. 7, CP 1166-1191; Ex. 8, CP 1192-1199; Ex. 9, CP 1200-1217; CP 403; CP 404, Lines 1-8; CP 484, ¶ 82; CP 485-487; CP 220.

damaged the defendant. *Carlson v. Gibraltar Sav. of Wash.*, 50 Wn App. 424, 749 P.2d 697, 700 (1988);¹⁵⁹ *Davidson v. State*, 116 Wn.2d 13, 802 P.2d 1374 (1991).¹⁶⁰ Laches is an implied waiver arising from knowledge of a given state of affairs and acquiescence in it. *Buell v. Bremerton*, 80 Wn.2d 518, 522, 495 P.2d 1358 (1972).¹⁶¹ A defendant asserting the doctrine of laches must affirmatively establish: (1) knowledge by plaintiff of facts constituting a cause of action or a reasonable opportunity to discover such facts; (2) unreasonable delay by plaintiff in commencing an action; and (3) damage to defendant resulting from the unreasonable delay in bringing the action. *Buell*, 80 Wn.2d at 522. *Hayden v. Port Townsend*, 93 Wn.2d 870, 874-75, 20 613 P.2d 1164 (1980). *Prater v. Houston*, 123 Wash. 640, 212 P. 1064 (1923).¹⁶² The Plumbs showed that the required elements are all present in this case.

(1) There is no dispute that U.S. Bank had knowledge of facts constituting a cause of action as early as 5/1/2009. On or about 6/13/2009, Ocwen sent the Plumbs a Notice of Default.¹⁶³ The said Notice(s) stated: “Failure to bring your account current may result in our election to exercise our right to foreclose on your property.”¹⁶⁴

(2) U.S. Bank unreasonably delayed commencing this foreclosure action. There is no dispute that U.S. Bank had knowledge of an alleged cause of action on 5/1/2009.¹⁶⁵ Despite that fact, the Bank unreasonably waited until 12/26/2013—over four and one-half years—to bring this ac-

¹⁵⁹ CP 400, Line 27.

¹⁶⁰ CP 401, Line 1.

¹⁶¹ CP 400, Line 15.

¹⁶² CP 400, Lines 19, 20.

¹⁶³ CP 783, ¶ 9; Ex. E, CP 815-823

¹⁶⁴ CP 817, Line 1; CP 819, Line 1; CP 821, Line 1; CP 823, Line 1

¹⁶⁵ CP 783, ¶ 9; Ex. E, CP 815-823

tion.¹⁶⁶ U.S. Bank did not present any facts that would justify its unreasonable delay in bringing the action after it threatened foreclosure in June, 2009.

(3) U.S. Bank damaged the Plumbs due to its unreasonable delay in bringing this action. In their opposing Affidavits, the Plumbs showed genuine factual issues and evidence of the Plumbs' severe hardship, prejudice, injury and damage they have suffered due to U.S. Bank's unreasonable, unwarranted delay after its June, 2009 threatened foreclosure action.¹⁶⁷

One of the main reasons the Plumbs set forth that showed their severe injury due to U.S. Bank's unreasonable delay was the fact that, on May 30, 2012, Georgia Plumb lost her husband, and Kameron and Joshua Plumb lost their father, Carl Plumb.¹⁶⁸ The record shows that, for the years 2009, 2010, 2011 and 2012, Carl Plumb was the primary person involved in investigating and defending against the fraud in the origination of the subject mortgage loan by working with experts and the mortgage loan auditors;¹⁶⁹ sending official written notices and inquiries to Ocwen and other parties;¹⁷⁰ and recording the documents in Yakima County Auditor's office that the trial court vacated in U.S. Bank's Judgment and Decree of Foreclosure.¹⁷¹

The unrefuted evidence that the Plumbs established also shows that Carl Plumb was clearly the sole source of financial support for the Plumb family, so they were clearly prejudiced, harmed and put at a great disadvantage by U.S. Bank's delay because they had to defend themselves in

¹⁶⁶ CP 1-54

¹⁶⁷ CP 484, ¶ 82; CP 485-487

¹⁶⁸ CP 780

¹⁶⁹ CP 63, ¶ 43; CP 64

¹⁷⁰ CP 469, ¶ 43; CP 1137; CP 1167-1180; CP 1193-1206; CP 1208-1226

¹⁷¹ CP 1001, ¶¶ 3, 4; CP 834, ¶ F; Ex. 1, CP 836-848; Ex. 2, CP 849-850

this matter *pro se*, without Carl Plumb's financial support and the aid of an attorney, which they could have hired to help them in this case if Carl Plumb were still alive.¹⁷²

The court itself acknowledged the fact that Georgia, Kameron and Joshua were greatly prejudiced and harmed by having to defend themselves in this matter *pro se*:

I'm just suggesting that you consider that proving [fraud] – and particularly since you are not attorneys, you don't necessarily know how to go about this. You don't necessarily know how to handle a trial if this case went to trial.¹⁷³ It's quite possible you have a valid claim that you would still lose because you don't know how to prove it correctly in Court because you don't know the rules that apply, the evidentiary rules and so on.¹⁷⁴ You're going to have additional problems with the fact that your husband is deceased and he can't testify and you can't testify about what he said, and so that may make it more difficult for you in terms of your trying to prove your allegations.¹⁷⁵

Georgia, Kameron and Joshua also declared the following facts under penalty of perjury:

Plaintiff's unwarranted delay and repeated dishonesty, oppressive, unreasonable, deceptive refusal to acknowledge or accept any information it received about the fraud in the loan was also a direct and/or indirect cause of my (Georgia's) husband's, and our Father's death (who was never previously sick and had not [needed to see or] been to a doctor (other than a dentist) for over forty (40) + years. As a result of Plaintiff's abuse and his death, we, his family, have been left without his financial support and his help to defend in this matter.¹⁷⁶ "Now, because of Plaintiff's purposeful sitting on its claim...it has cost each of us (Kameron, Joshua and Georgia Plumb) great amounts of loss of time, loss of livelihood, financial damage, social embarrassment, and extreme mental and emotional anguish."¹⁷⁷ "...[U.S.

¹⁷² CP 486, Lines 14, 15; CP 487, Line 13; CP 1031, 1105-1116

¹⁷³ RP 38, Lines 23-25; RP 39, Lines 1, 2

¹⁷⁴ RP 39, Lines 24, 25; RP 40, Lines 1, 2; RP 40, Lines 8-14

¹⁷⁵ RP 42, Lines 8-12

¹⁷⁶ CP 486, Lines 10-15.

¹⁷⁷ CP 486, Lines 22-25.

Bank] had full knowledge of what it was doing; that Plaintiff had a reasonable opportunity to take action from about May 2009 forward; that Plaintiff had full knowledge that it was causing injury to us, the Defendants, by its delay; that Plaintiff consciously made the decision not to take action [in order] to add up more costs, charges and expenses to the account, and even when it did, in bad faith it unreasonably delayed in proceeding to note the case for trial for over a year, again causing us much further damage emotionally, financially, socially, and in the loss of time, and ability to make a living to support ourselves just so we could find ways to defend ourselves in this matter. We are unemployed. We couldn't afford a lawyer to help us in this matter. We have been unable to make money because of the immense time and effort it has taken for us to learn how to defend ourselves in this matter. Different parties involved in this matter have for over six (6) years time been absolutely unreasonable, unfair and malicious which has caused extreme harm and damage to each of us on every level. The effect of their absolute bad faith, obstruction and silence was a direct and/or indirect cause why we lost our husband and/or father, Carl Plumb, in May 2012. Carl Plumb could have much more ably to defend in this case, but for Plaintiff's...fraudulent and deceitful...tactics." [emphasis added]¹⁷⁸

The Plumbs established, by clear and convincing unrefuted evidence, U.S. Bank's bad faith and fraud, through its servicing agent, Ocwen, and how it unreasonably, maliciously, and intentionally subjected them to constant abuse, harassment, and emotional stress by refusing to properly respond to their many written official notices and written requests as was required by RESPA, TILA, and FDCPA.¹⁷⁹

Georgia Plumb's first-hand, personal testimony in the July 1, 2016 Summary Judgment hearing regarding the extreme harm she and her family had suffered due to U.S. Bank's servicing agent's (Ocwen) intentional refusal to properly respond to them and to take action when they no longer

¹⁷⁸ CP 486, Lines 26, 27; CP 487, Lines 1-14.

¹⁷⁹ CP 916-919; CP 920, Lines 1-12; CP 466, ¶ 32; CP 467; CP 468, Lines 1-9, 14-27; CP 469, Lines 1-21; CP 472, ¶ 47; CP 473; CP 474, Lines 1-10; CP 89-92; CP 136-151; CP 1167-1191; CP 1192-1199; CP 1200-1217.

made payments was not only directly relevant, but clearly reliable.¹⁸⁰

Georgia testified:

“The emotional distress that we went through as a family was extreme. I believe that even my illness has been a result of it.¹⁸¹ I believe that my husband’s death has been a result of it, and because of the frustration and the unfairness of just the absolute bad faith of Ocwen...there has been a great deal of damage emotionally and physically....It’s been an extreme distressful situation and it’s been going on for years, and they could have taken care of this from the very beginning when we didn’t make any more payments.” “...it’s so affected our health. I lost my husband. His whole life was involved in it. It was like there was no answer. You could not get Ocwen to do anything, and Ocwen is a known, you know, 49 states’ Attorney Generals have, they’ve gotten two and a half or \$2.125 billion dollar settlement because they did what they did to us to lots of people throughout the nation.”¹⁸²

U.S. Bank did not offer any evidence to refute Georgia Plumb’s personal testimony of the damages that she and her family had suffered due to U.S. Bank’s actions and its delay in its making a claim, nor did U.S. Bank controvert with any evidence that the material facts and first-hand testimony of Georgia, Kameron and Joshua that they submitted of the severe prejudice, extreme harm and damage they have suffered due to Ocwen’s unconscionable, illegal actions and U.S. Bank’s unfair and intentional delay in bringing its threatened foreclosure were not true.

In summary: This exceptional case calls for exceptional, extraordinary relief. It would be substantially inequitable and unjust to grant U.S. Bank any relief given the clear, unrebutted evidence in this case of U.S. Bank’s and its agents’ pattern of behavior of abuse and illegality, and given the clear severe prejudice, harm and injury that Georgia, Kameron and Joshua

¹⁸⁰ RP 80, Lines 5-18.

¹⁸¹ CP 865-874

¹⁸² RP 83, 84; RP 85, Lines 1-11; CP 339, ¶ 1; CP 340, ¶ 1; CP 343, ¶¶ 1, 2; CP 344; CP 345, Lines 1-9.

have suffered due to U.S. Bank's dishonesty, and the unreasonable, intentional delay by U.S. Bank in bringing its claim, including, but not limited to, the loss of Carl Plumb and his financial support so they could hire a lawyer to defend in this case.

5. The Court Manifestly Erred and Unjustly Deprived the Plumbs of Their Property, Without Due Process of Law and Denied Them the Equal Protection of the Law, in Violation of U.S. Const. Amend. XIV, § 1 and Wash. Const. Art. I, § 3.

Pursuant to RAP 2.5(a)(3), the Plumbs may for the first time raise in this Appellate Court the fact that the trial court manifestly erred in its determination(s) affecting their U.S. Const. amend. XIV, § 1 and Wash. Const. art. I, § 3 rights to Due Process of Law and Equal Protection of Laws. The U.S. Constitution, Article 6 provides in pertinent part: "This constitution, and the laws of the United States which shall be made in pursuance thereof...shall be the supreme law of the land; and the judges in every state shall be bound thereby..." U.S. Const. amend. XIV, Section 1 also provides in pertinent part, "...nor shall any state deprive any person of...property, without due process of law; or deny to any person within its jurisdiction the equal protection of the laws." The Washington State Constitution also provides that "The Constitution of the United States is the Supreme law of the land." Wash. Const. art. I, § 2. "No person shall be deprived of...property, without due process of law." Wash. Const. art. I, § 3. Aside from the above Due Process Clauses, the Plumbs' property interests are also created by statutes or regulations, as well as the common law. Wash. Rev. Code § 4.04.010 (2008) ("The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and condition of society in this state, shall be the rule of decision in all the courts of this state.") The Plumbs' Due Process protections apply to both permanent and

temporary deprivation of property. *Reilly v. State*, 18 Wn. App. 245, 566 P.2d 1283 (1977). The Plumbs' "deprivation of property" protections of Due Process are applicable whenever any significant property interest is at stake." *Olympic v. Chaussee Corp.*, 82 Wn.2d 418, 511 P.2d 1002 (1973).

The subject residential property upon which the court foreclosed is Georgia, Kameron and Joshua's home, where they have lived together since 1999. Carl and Georgia Plumb purchased the property in 2000.¹⁸³

The court's above-stated errors amount to a gross denial of the Plumbs' right to be free from deprivation of their property without Due Process of Law. The court erroneously violated the Plumbs' constitutional rights in that it failed to follow the law, as described above. In violation of the Constitution, it granted judgment to the Bank, despite the fact that the Bank did not have possession of the Note when it filed suit, the Bank did not have standing, the court did not have jurisdiction, the Bank was charged with knowledge of fraud in the origination of the mortgage transaction, the Bank was charged with knowledge of the forged and fraudulent instruments, the Bank could not avail itself of fraudulent and forged instruments and a fraudulent mortgage transaction, the Bank committed litigation misconduct, the Bank had unclean hands, the Bank acted in bad faith, the Bank was barred from judgment by laches, the Plumbs had meritorious affirmative defenses, and there were genuine issues of material fact that barred summary judgment.

The court erroneously deprived the Plumbs of Due Process because it unreasonably ignored the facts and ruled that "...I'm not making any factual determination. I'm making a legal determination..."¹⁸⁴ This was erroneous because the facts are inextricably intertwined with the law. There-

¹⁸³ CP 453, ¶ 17; Ex. 1, 1028; RP 6, Lines 9-12; RP 13, Lines 18-25; RP 14, Lines 1-11.

¹⁸⁴ RP 106, Lines 19, 20.

fore, it would be impossible for the court to simply make a legal determination. The court thereby erroneously deprived the Plumbs of their property without Due Process of Law.

Additionally, other than the issue of laches, U.S. Bank filed no response whatsoever to several “Other Defenses” that the Plumbs claimed barred Judgment.¹⁸⁵ The Bank denied nothing and offered no evidence countering those defenses.¹⁸⁶ Pursuant to *Gerimonte v. Case*, 42 Wn. App. 611, 712 P.2d 876 (1986), where the court held that where undue influence was claimed as an affirmative defense and where plaintiff offered no evidence to the contrary, a summary judgment in favor of U. S. Bank was erroneous.¹⁸⁷

The court’s summary ruling not only resulted in the loss of the Plumbs’ home, leaving them homeless, but it also resulted in forfeiture of all the monies that the Plumbs had paid for that home, which amounted to about \$150,000.00.¹⁸⁸ The law abhors a forfeiture.

In summary, the court’s ruling was so erroneous that the Plumbs were denied a fair Due Process determination of the case. The Plumbs were further denied Equal Protection of the Law because other similarly-situated homeowners are protected from foreclosure and loss of their property.

The court was so biased and prejudiced against the Plumbs’ right to keep their home that it unjustly, against reason, evidence, Washington State rules, statutes, and well-established common law, manifestly erred and prevented the Plumbs from having a fair determination and deprived them of their fundamental protected interest in their property, violated their rights to justice and denied them Due Process of Law and Equal Pro-

¹⁸⁵ CP 956, 957.

¹⁸⁶ CP 971-992.

¹⁸⁷ CP 956, Lines 15-18.

¹⁸⁸ CP 498; CP 938, Line 12.

tection of the Law under the U.S. Const. amend. XIV, § 1 and Wash. Const. art. I, § 3. This Court should find that this gross deprivation of the Plumbs' rights constitutes just cause to reverse the court's ruling in favor of U.S. Bank.

F. Request for Fees or Expenses.

The Appellants hereby request fees or expenses as provided in RAP 18.1 14.1, 14.2, and 14.3. If the Appellants prevail on appeal, they should be awarded, at a minimum, their costs under RAP 14.2, as being the substantially prevailing party on the appeal. See, *NW Television Club, Inc. v. Gross Seattle, Inc.*, 96 Wn.2d 973, 986,640 P.2d 710 (1982); *Satomi Owners Ass'n. v. Satomi LLC*, 167 Wn.2d 781, 225 P.3d 213 (2009).

G. Conclusion

For the foregoing meritorious reasons, the Plumbs respectfully request that this Honorable Appellate Court do justice and reverse the trial court's erroneous Order Granting [U.S. Bank's] Motion for Summary Judgment and Judgment and Decree of Foreclosure.¹⁸⁹ Furthermore, the Plumbs request that the Court Order, Adjudge and Decree the following: **(1)** Order the case dismissed with prejudice; **(2)** Declare the Note to be null and void;¹⁹⁰ **(3)** Order that the Note be Destroyed and/or given to the Plumbs;¹⁹¹ **(4)** Declare that the Deed of Trust instrument recorded in the Yakima County Auditor's Office No. 7417552 on 08/31/2004 is null and void;¹⁹² **(5)** Order that the Title is cleared from any encumbrance pursuant to the Deed of Trust with respect to the real property that is the subject of this suit; **(6)** Order the vacation of any records in Yakima County Auditor's Office that were filed based upon the subject loan transaction and Deed of

¹⁸⁹ CP 995-997; CP 998-1003.

¹⁹⁰ CP 994.

¹⁹¹ CP 994.

¹⁹² CP 792-809.

Trust and Note written instruments, i.e. #7417552 (Deed of Trust filed on 08/31/2004;¹⁹³ and the *Lis Pendens* recorded on 12-26-2013;¹⁹⁴ **(7)** Order that the rights and claims of any purported related party(s) of interest in, and/or entitlement to enforce and/or attempting to collect on, the subject, mortgage loan debt obligation with the identifying account Number 40596926 and/or 0040596926 (or any other purported related account number) based on U.S. Bank's purported original Note and Deed of Trust instruments, or to take and foreclose on the subject property based on the same, are forever barred and foreclosed;¹⁹⁵ **(8)** Grant the costs the Plumbs have incurred to file and proceed in this appeal; **(9)** Grant the Plumbs their costs;¹⁹⁶ **(10)** Order a reversal of any purchase at any Sheriff's sale that might have taken place, and that the purchaser restore any property taken through the sale to the Plumbs; **(11)** Order U.S. Bank to repay to Georgia Plumb all monies whatsoever that its servicing agent, Ocwen, received, from Carl and/or Georgia Plumb for the subject fraudulent Mortgage Loan with identifying Number 40596926 or 0040596926;¹⁹⁷ **(12)** Order that Ocwen immediately request that all credit reporting agencies and/or repositories to whom Ocwen has reported the Plumbs' file status information reports, to permanently remove account information from each of the Plumbs' credit reports; and **(13)** grant such other and further relief as may be proper and equitable.

¹⁹³ CP 792-809.

¹⁹⁴ CP 957, ¶ S; CP 426-429

¹⁹⁵ CP 126, 128, 176-178, 182, 752, 755, 756, 758, 773

¹⁹⁶ CP 498, Ex. 6, CP 574-579

¹⁹⁷ CP 817, ¶ 8; CP 498, Ex. 6, CP 574-579; CP 126, 128, 176-178, 182, 752, 755, 756, 758, 773.

Respectfully submitted on the 9th day of January, 2017.

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

By Kameron F. Plumb
Kameron F. Plumb

By Joshua C. Plumb
Joshua C. Plumb

Appellants / Defendants *Pro Se*
4902 Richey Rd. Yakima, WA 98908; Tel. (509) 965-4304;
Fax (509) 965-4304; Email Georgia@plumbsafety.com

APPENDIX

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Comments Inquiry For: 40596926

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Yum
lot
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Date: 07/13/2015 10:03:51 PM By: valencir Rocio Valencia Gen By: User

Class: VT Vault Rpt in Comm Log

Alias: NOTLL Gen Mhd Manual View as Warning

Std Cde: VT Seq: 0031 Disp in Stat Area

Note Location Determined
Hello Raquel,

This is the information I am able to obtain for you in such little notice. In the future please do not wait until last minute to ask us to do research for you as we need to contact several parties to obtain certain information. Also, please be aware that I work the night shift. Any "Emergency" requests should be sent to hester.townsend@ocwen.com, matthew.johnson@ocwen.com or megan.williams@ocwen.com as they work the day shift and will have better access to parties that need to be contacted. With that said, based on Deutsche Bank data base they first initially received the loan on 9/13/2004 then withdrew and sent it to CHAC on 10/14/04, received it back on 11/9/04, withdrew and sent it to Ocwen on 7/22/10, received it again on 9/14/13 and withdrew and sent it out to Ocwen on 7/28/14. Ocwen received the Original Note and Mortgage on 8/4/14 and has remained in custody of the Original documents since that date. I have included screen shots of the records I was able to find.

OK Cancel New Print Forms Mod Undo

14 56:07PM 16-Jul-2015

People	Due \$	Ticker	Codes	FC	FP3	LS	NP	BNL	60DY	90R	CNLI	coco	EFPI	LHN	LNAC	Int Rate: 07.26000
Loan # 40596926		Stat: R		Next Bt: 07/16/2015	ADP: 31	Due: 05/01/2009										Current Bal: 341,774.79
Service:		Serv:		Last Bt: 547,977.51	Inv: 2394: SAIL 2005-1											N Loan#: 40596926
Name: Plumb, Kame		Nd Pnt: 2,581.19		Lst Pnt: 04/16/2009	Ins: Investor Guaranteed											Agency Nbr:
Prt: Not Available		Tot Pnt: 185,841.57		Que: CU	Lien: 1st	Loan Typ: I										Pool Code: 1
Addr: 4902 Richey Rd, Yakima, WA 98908					City: Yakima	Acct Typ:										Send Ln St:

15 08:44PM 16-Jul-2015

Trans History Mortgage History Comments Referrals

Matthew Owens

7/16/15

1

1 **REQUEST FOR PRODUCTION OF DOCUMENTS #2:** If the answer to Interrogatory #5 is
2 “yes”, please produce certified proof from someone with personal knowledge of the Defendant’s
3 personal acceptance of and assent to the terms of the said Note and Deed of Trust “[o]n or about
4 August 16, 2004”.

5 **RESPONSE:** See response to Interrogatory #5.
6
7

8 **INTERROGATORY #6:** What corporation held physical possession of the alleged original
9 Note on the date that this lawsuit was filed?

10 **RESPONSE:** Ocwen Loan Servicing, LLC as attorney in fact for Plaintiff held the original Note
11 on the date the complaint was filed on December 26, 2013. Plaintiff reserves the right to
12 supplement this response in accordance with the Rules of Civil Procedure.
13

14 **Interrogatory #7:** Please identify the date that Robinson Tait, P.S. received physical possession
15 of the alleged original Note.

16 **RESPONSE:** In preparation for litigation for Plaintiff, Robinson Tait, P.S. received physical
17 possession of the Original Note on or about August 11, 2014. Plaintiff reserves the right to
18 supplement this response in accordance with the Rules of Civil Procedure.

19 **INTERROGATORY #8:** Please identify the corporate entity that sent the alleged original Note
20 to Robinson Tait, P.S. on the date described in INTERROGATORY #7
21

22 **RESPONSE:** Ocwen Loan Servicing, LLC as attorney in fact for Plaintiff sent the original Note
23 to Robinson Tait, P.S. in preparation for litigation. Plaintiff reserves the right to supplement this
24 response in accordance with the Rules of Civil Procedure.
25
26
27

1 commercially sensitive, confidential, and/or proprietary; (4) is vague, ambiguous and compound as
2 it requests information related to discrete subparts; and (5) duplicative and/or redundant of another
3 request. Plaintiff further objects on the grounds that said request is not likely to lead to any
4 discoverable information. Subject to and without waiving the foregoing objections, Plaintiff
5 responds as follows: See Exhibits B, C, D and E. Plaintiff reserves the right to supplement this
6 response in accordance with the Rules of Civil Procedure.
7

8
9 **REQUEST FOR PRODUCTION OF DOCUMENTS #15:** Please provide all notices of sale
10 from the original lender as listed in the Definitions within the subject deed of trust and as required
11 by the deed of trust in section 20, Notice of Sale.

12 **RESPONSE:** Plaintiff refers to and incorporate by reference its General Objections. Plaintiff
13 further objects to this request on grounds that it is compound, vague, and unduly burdensome and
14 overbroad as to time, scope, and subject matter. Subject to and without waiving the foregoing
15 objections, Plaintiff responds as follows: see Exhibit A. Plaintiff reserves the right to supplement
16 this response in accordance with the Rules of Civil Procedure.
17

18
19
20 Dated: July 17, 2014

ROBINSON TAIT, PS
By: 
Craig Peterson, WSBA #15935
Tiffany Owens, WSBA #42449
Attorneys for Plaintiff



PARTY VERIFICATION

1
2 I, Matthew Owens
Matthew Owens, am the Contract Manager for Ocwen
3 Loan Servicing, LLC, the loan servicer for U.S. BANK NATIONAL ASSOCIATION, AS
4 TRUSTEE, SUCCESSOR IN INTEREST TO WILMINGTON TRUST COMPANY, AS
5 TRUSTEE, SUCCESSOR IN INTEREST TO BANK OF AMERICA, NATIONAL
6 ASSOCIATION, AS TRUSTEE FOR STRUCTURED ASSET INVESTMENT LOAN TRUST
7 MORTGAGE PASS-THROUGH CERTIFICATES SERIES 2005-1, the Plaintiff in this action,
8 and have read the foregoing Defendant's First Set of Interrogatories and Request for Production
9 Documents Answers and Responses Thereto and swear under penalty of perjury under the laws of
10 the State of Washington that they are true and correct to the best of my knowledge.

11 Dated this 16 day of July, 2015, at West Palm Beach, FL.



14 Printed Name: Matthew Owens
15 Title: Contract Manager

1 Complaint was filed Plaintiff had the authority to enforce the Note. Plaintiff reserves the right to
2 supplement this response in accordance with the Rules of Civil Procedure.

3 **REQUEST FOR ADMISSION NO. 25:**

4 Admit that on the date the Complaint was filed, Ocwen did not physically possess the note.

5 **RESPONSE TO REQUEST NO. 25:**

6 Plaintiff refers to and incorporate by reference its General Objections. Plaintiff responds as
7 follows: Plaintiff denies, Plaintiff is the holder of the Original Note which endorsed in blank and
8 is currently maintained in Plaintiff's Counsel's office in preparation for litigation. On the date the
9 Complaint was filed Plaintiff had the authority to enforce the Note. Plaintiff reserves the right to
10 supplement this response in accordance with the Rules of Civil Procedure.

11 **REQUEST FOR ADMISSION NO. 26:**

12 Admit that on the dated the Complaint was filed, Plaintiff did not have standing to bring this
13 lawsuit against Defendants.

14 **RESPONSE TO REQUEST NO. 26:**

15 Plaintiff refers to and incorporate by reference its General Objections. Plaintiff responds as
16 follows: Plaintiff denies, Plaintiff is the holder of the Original Note which endorsed in blank and
17 is currently maintained in Plaintiff's Counsel's office in preparation for litigation. On the date the
18 Complaint was filed Plaintiff had the authority to enforce the Note. Plaintiff reserves the right to
19 supplement this response in accordance with the Rules of Civil Procedure.

20 **REQUEST FOR ADMISSION NO. 27:**

21 Admit that Plaintiff had the means to verify whether Plaintiff had physical possession of the
22 promissory note prior to filing the Complaint.

23 **RESPONSE TO REQUEST NO. 27:**



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REQUEST FOR ADMISSION NO. 33:

Admit that the copy of the Deed of Trust attached to the Complaint and filed along with the Complaint is not a true, accurate and complete copy as it existed when Defendants signed it.

RESPONSE TO REQUEST NO. 33:

Plaintiff refers to and incorporate by reference its General Objections. Plaintiff additionally objects to the extent that this is irrelevant. Subject to and without waving said objections, Plaintiff responds as follows: Plaintiff denies, the copy of the Note attached to the Complaint is a true and correct copy of the recorded Deed of Trust, which includes recording information that was added to when the Deed of Trust was recorded after it was signed. Plaintiff reserves the right to supplement this response in accordance with the Rules of Civil Procedure.

Dated: ~~October~~ ^{November} 2, 2015

ROBINSON TAIT, PS

By: Tiffany Owens
Tiffany Owens, WSBA #42449
Craig Peterson, WSBA #15935
Attorneys for Plaintiff



PARTY VERIFICATION

I, Matthew Owens, am the Contract Manager for Ocwen Loan Servicing, LLC, the loan servicer for Plaintiff in this action, and have read the foregoing Plaintiff's Response to Defendant's First Request for Admissions, Answers and Responses Thereto and swear under penalty of perjury under the laws of the State of Washington that they are true and correct to the best of my knowledge.

Dated this 29 day of October, 2015, at West Palm Beach, Florida.

Matthew Owens 10/29/15

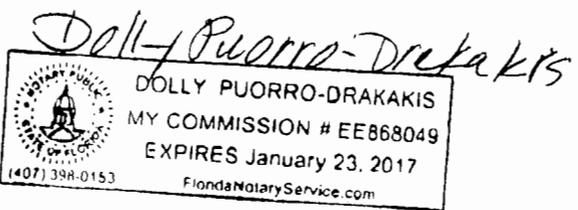
Printed Name: Matthew Owens
Title: Contract Manager

STATE OF Florida)
COUNTY OF Palm Beach)

The foregoing instrument was acknowledged and sworn before me Dolly Puorro-Drakakis this 29th day of October, 2015, by Matthew Owens as a Contract Manager of Ocwen Loan Servicing, LLC, who is personally known to me or who has produced Driver License as identification. ~~DD 10-29-2015~~

Dolly Puorro-Drakakis
Notary Public - State of

My Commission Expires: 1-23-2017



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

DECLARATION OF MAILING OF APPELLANTS' BRIEF

By Joshua Plumb
Joshua Plumb

Appellant / Defendant *Pro Se*
4902 Richey Rd. Yakima, WA 98908; Tel. (509) 965-4304;
Fax (509) 965-4334; Email: georgia@plumbsafety.com

I, Joshua Plumb, declare:

I am a citizen of the United States over the age of 21 years and I am competent to be a witness herein. On January 9, 2017, I, in compliance with the notification requirements pursuant to the laws of the State of Washington and on the behalf of Appellants in the above entitled lawsuit, i.e. 1) Word Church aka Rev. Georgia Plumb 2) Georgia A. Plumb; 3) Joshua C. Plumb; and 4) Kameron F. Plumb caused to be deposited in the United States Postal Service Mail, Media Mail postage prepaid, 2 copies of the following to Renee S. Townsley, Clerk/Admin, The Court of Appeals, Div 3, 500 N. Cedar St Spokane, WA 99201-1905:

APPELLANTS' BRIEF

DECLARATION OF MAILING APPELLANTS' BRIEF

I also caused to be deposited in the United States Postal Service Mail, Media Mail, postage prepaid, 1 copy of the following to Ryan M. Carson, Wright Finlay & Zak, LLP, 3600 15th Ave W, Ste 200, Seattle, WA 98119-1330:

APPELLANTS' BRIEF

VERBATIM REPORTS OF PROCEEDINGS

DECLARATION OF MAILING APPELLANTS' BRIEF

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty of perjury under the laws of the State of Washington.

DATED this 9th day of January 2017 in the County of Yakima, Washington.

By Joshua Plumb
Joshua Plumb

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