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Case No. 89132-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

WINNIE LYONS

Appellant,

v.

U.S. BANK NATIONAL ASSOCIATION, as Trustee for for Stanwich
Mortgage Loan Trust Series 2012-3, by Carrington Mortgage Services,
LLC; CARRINGTON MORTGAGE SERVICES, LLC; WELLS FARGO
BANK, N.A., a chartered national bank; WELLS FARGO BANK, N.A.,
as servicer; and NORTHWEST TRUSTEE SERVICES, INC., as Trustee,

Respondents.

**RESPONDENT NORTHWEST TRUSTEE SERVICES, INC.'S
ANSWER TO *AMICUS CURIAE* BRIEF OF
THE ATTORNEY GENERAL OF THE STATE OF WASHINGTON**

Submitted By:
Joshua S. Schaer, WSBA No. 31491
RCO LEGAL, P.S.
13555 S.E. 36th St., Suite 300
Bellevue, WA 98006
(425) 457-7810

 ORIGINAL

TABLE OF CONTENTS

I. Introduction	1
II. Argument and Authority	1
A. <u>Amicus WSAG Mistakenly Suggests Appellant Lyons Pled a CPA Claim Implicating NWTs’ Fulfillment of its Statutory Duties.</u>	2
B. <u>The Court Should Not Hold that Any Claim of Error in a Non-Judicial Foreclosure Gives Rise to an “Unfair or Deceptive Act.”</u>	3
C. <u>The Court’s Holding in <i>Klem</i> Cuts Against the WSAG’s Position that “An Arguable Interpretation of Existing Law” Should Not be a Defense to the CPA.</u>	6
D. <u>When There is No <i>Per Se</i> CPA Violation, a Plaintiff Must Show the Alleged Unfair or Deceptive Act Had the Capacity to Injure, or Did Injure, Other Persons</u>	9
E. <u>This Case is Not Like <i>Klem</i>.</u>	13
III. Conclusion	17

TABLE OF AUTHORITIES

Case Law

<i>Albice v. Premier Mortg. Servs. of Wash., Inc.</i> , 174 Wn.2d 560, 276 P.3d 1277 (2012) (Stephens, J., concurring).....	4, 13
<i>Babrauskas v. Paramount Equity Mortgage</i> , 2013 WL 5743903 (W.D. Wash. Oct. 23, 2013)	11
<i>Bhatti v. Guild Mortg. Co.</i> , 2013 WL 6773673 (9th Cir. Dec. 24, 2013)	12
<i>Bryant v. Bryant</i> , 125 Wn.2d 113, 882 P.2d 169 (1994)	17

<i>Cervantes v. Countrywide Home Loans, Inc.</i> , 2009 WL 3157160 (D. Ariz. Sept. 23, 2009), <i>aff'd</i> , 656 F.3d 1034 (9th Cir. 2011)	16
<i>Coleman v. Am. Commerce Ins. Co.</i> , 2010 WL 3720203 (W.D. Wash. Sept. 17, 2010)	11
<i>Cox v. Helenius</i> , 103 Wn.2d 383, 693 P.2d 683 (1985)	12
<i>Demopolis v. Galvin</i> , 57 Wn. App. 47, 786 P.2d 804 (1990)	10
<i>Douglass v. Bank of Am. Corp.</i> , 2013 WL 2245092 (E.D. Wash. May 21, 2013)	5
<i>Gray v. Suttel & Assocs.</i> , 2012 WL 1067962 (E.D. Wash. Mar. 28, 2012)	10
<i>Hallquist v. United Home Loans, Inc.</i> , 715 F.3d 1040 (8th Cir. 2013)	16
<i>Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.</i> , 105 Wn.2d 778, 719 P.2d 531 (1986)	10, <i>passim</i>
<i>Klem v. Wash. Mut. Bank</i> , 176 Wn. 2d 771, 295 P.3d 1179 (2013)	6-7, 14, <i>passim</i>
<i>Koegel v. Prudential Mut. Sav. Bank</i> , 51 Wn. App. 108, 752 P.2d 385 (1988)	4-5
<i>Leingang v. Pierce County Med. Bureau, Inc.</i> , 131 Wn.2d 133, 930 P.2d 288 (1997)	6, 7
<i>Massey v. BAC Home Loans Servicing LP</i> , 2013 WL 6825309 (W.D. Wash. Dec. 23, 2013)	10
<i>McCrorey v. Fed. Nat. Mortg. Ass'n</i> , 2013 WL 681208 (W.D. Wash. Feb. 25, 2013)	11
<i>Mickelson v. Chase Home Fin. LLC</i> , 2011 WL 5553821 (W.D. Wash. Nov. 14, 2011)	16
<i>Mickelson v. Chase Home Fin. LLC</i> , 2012 WL 6012791 (W.D. Wash. Dec. 3, 2012)	16

<i>Moss v. Vadman</i> , 77 Wn.2d 396, 463 P.2d 159 (1970) (en banc)	17
<i>Oliveros v. Deutsche Bank Nat'l Trust Co., N.A.</i> , 2012 WL 113493 (W.D. Wash. Jan. 13, 2012).....	5
<i>Patrick v. Teays Valley Trs., LLC</i> , 2012 WL 5993163 (N.D. W.Va. Nov. 30, 2012).....	16
<i>Perry v. Island Sav. & Loan Ass'n</i> , 101 Wn.2d 795, 684 P.2d 1281(1984).....	8
<i>Petree v. Chase Bank</i> , 2012 WL 6061219 (W.D. Wash. Dec. 6, 2012)	5
<i>Plein v. Lackey</i> , 149 Wn.2d 214, 67 P.3d 1061 (2003)	12
<i>Reid v. Countrywide Bank, N.A.</i> , 2013 WL 7801758 (W.D. Wash. Apr. 3, 2013).....	11
<i>Saunders v. Lloyd's of London</i> , 113 Wn.2d 330, 779 P.2d 249 (1989)	10
<i>State v. McFarland</i> , 127 Wn.2d 322, 899 P.2d 1251 (1995).....	3
<i>State v. Norman</i> , 61 Wn. App. 16, 808 P.2d 1159, review denied, 117 Wn.2d 1018, 818 P.2d 1099 (1991).....	3
<i>Steward v. Good</i> , 51 Wn. App. 509, 754 P.2d 150 (1988)	4
<i>Thurman v. Wells Fargo Home Mortgage</i> , 2013 WL 3977622 (W.D. Wash. Aug. 2, 2013)	10
<i>Tuttle v. Bank of N.Y. Mellon</i> , 2012 WL 726969 (W.D. Wash. Mar. 6, 2012)	5
<i>US Bank Nat. Ass'n v. Woods</i> , 2012 WL 2031122 (W.D. Wash. June 6, 2012).....	16-17
<i>Walker v. Quality Loan Serv. Corp.</i> , 176 Wn. App. 294, 308 P.3d 716 (2013).....	8

Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp.,
122 Wn.2d 299, 858 P.2d 1054 (1993).....10

Wivell v. Wells Fargo Bank, N.A., 2013 WL 3442810
(W.D. Mo. July 9, 2013).....16

Statutes

RCW 19.86.0939

RCW 61.24.010(3).....7

RCW 61.24.010(4).....15

RCW 61.24.030(7)(a)13, 14

RCW 61.24.030(7)(b)13

RCW 61.24.1275

RCW 61.24.127(1)(b)3

RCW 61.24.127(2)(b), (c).....4

RCW 61.24.130 12

I. INTRODUCTION

Respondent Northwest Trustee Services, Inc. (“NWTS”) hereby provides the following answer to the Brief of Amicus Curiae submitted by the Washington State Attorney General’s Office (“WSAG”).

NWTS takes issue with the WSAG’s expansionist view of Consumer Protection Act (“CPA”) claims in the context of a foreclosure trustee’s material duties under the Deed of Trust Act (“DTA”).

In this case, Lyons’ CPA claim did not plead facts suggesting that NWTS engaged in conduct contrary to the Act. But even generally speaking, mere allegations of non-compliance with the DTA do not inevitably create *per se* CPA liability, as the DTA specifically enumerates limited situations where such liability accrues. Claims of non-prejudicial errors in the foreclosure process still require evidence of an unfair or deceptive act likely to impact the public, and causing injury to a borrower.

Here, NWTS did what this Court expected of a trustee in *Klem* and other cases when it investigated Lyons’ assertions prior to a scheduled sale, and ultimately determined that a discontinuance was warranted before the sale was due to occur. This Court should not find that a trustee must immediately acquiesce to a borrower’s unilateral demands for the sale’s cancellation; rather, acting in good faith necessitates due diligence once a trustee is provided with notice and an opportunity to respond.

II. ARGUMENT AND AUTHORITY

A. Amicus WSAG Mistakenly Suggests Appellant Lyons Pled a CPA Claim Implicating NWTs' Fulfillment of its Statutory Duties.

Although not precisely accurate, the WSAG states that its “brief focuses solely on the CPA.” Brief of Amicus WSAG at 2. In this case, however, Lyons’ CPA cause of action *did not implicate NWTs in any way.*

Analyzing Lyons’ Complaint, while she refers to “Defendants” in the plural, her specific averments evidence no theory of liability accusing NWTs of wrongdoing that constitutes a CPA violation. *See* CP 1-44 (Compl., ¶¶ 6.1-6.9).

Lyons offered the conclusory allegations that “Defendants’ acts occurred within their trade or commerce...,” and “Defendants’ actions have caused injury to Ms. Lyons and her property.” *Id.* (Compl., ¶¶ 6.3, 6.6). But these formulaic recitations of CPA-claim elements do not reveal the factual bases of Lyons’ theory in the action. Rather, the predicate unfair or deceptive acts Lyons complained of are shown in Paragraphs 6.5, 6.7, and 6.8 to the Complaint, and do not concern the conduct of NWTs.

Lyons asserted, “Defendants’ actions of offering a loan modification to obtain lump sum payment and then proceed to continue the foreclosure sale impacts the public interest...” *Id.* (Compl., ¶ 6.5). She continued, “*particularly*, defendants have engaged in deceptive

practices by misrepresenting to Ms. Lyons if she made the initial payment of \$10,000 then Wells Fargo would discontinue the foreclosure sell date.” *Id.* (Compl., ¶ 6.7; emphasis added). And “moreover, if Lyons made all trial payments on time then Lyons would be converted to a permanent modification.” *Id.* (Compl., ¶ 6.8).

It is undisputed that NWTs played *no role* in Lyons’ modification efforts with Wells Fargo. *Id.* (Compl., ¶¶ 5.36-5.50). Noticeably absent in Lyons’ CPA claim is any mention of a beneficiary declaration, NWTs’ investigation of her assertions concerning the Note’s ownership, or the issuance of statutorily-mandated foreclosure notices. Thus, consideration of whether “a trustee’s violations of the DTA are... ‘unfair’....” for purposes of CPA liability should not be an issue squarely before the Court in this matter. Brief of Amicus WSAG at 16. The Court should not be tempted to expand the scope of Lyons’ allegations beyond what was pled and noticed in her Complaint.¹

B. The Court Should Not Hold that Any Claim of Error in a Non-Judicial Foreclosure Gives Rise to an “Unfair or Deceptive Act.”

Amicus WSAG is correct that “several DTA provisions give rise to *per se* CPA claims.” Brief of Amicus WSAG at 3, *citing* RCW

¹ An appellate review is limited to matters in the record. *See, e.g., State v. McFarland*, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995); *State v. Norman*, 61 Wn. App. 16, 27, 808 P.2d 1159, *review denied*, 117 Wn.2d 1018, 818 P.2d 1099 (1991).

61.24.135(2). Such claims do not specifically relate to a trustee, and they are not waived even after a non-judicial sale occurs. RCW 61.24.127(1)(b).²

The WSAG's arguments go beyond the limited class of *per se* CPA claims, however, to advocate that "violations of the DTA" generally should "fall within the rubric for 'unfairness' ..." in terms of satisfying one element under the CPA. Brief of Amicus WSAG at 16. But while the "rules of the game" in the DTA, as the WSAG puts it, are to be strictly complied with and strictly construed, they are not grounds for *strict liability* against a trustee such as NWTs.

Rather, a borrower must be *prejudiced* by material defects in the non-judicial process that amount to a cognizable violation of law. *See, e.g., Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560, 581 n.4, 276 P.3d 1277 (2012) (Stephens, J., concurring); *Steward v. Good*, 51 Wn. App. 509, 754 P.2d 150 (1988) (noting a "requirement that prejudice be established" where a "'technical violation' of the DTA occurs and finding that there [was] no showing of harm to the debtor").

In the case of *Koegel v. Prudential Mut. Sav. Bank*, the Notice of Default erroneously contained an "additional description of a plot that had

² Post-sale, a borrower cannot "seek any remedy at law or in equity other than monetary damages" and cannot "affect in any way the validity or finality of the foreclosure sale or a subsequent transfer of the property." RCW 61.24.127(2)(b), (c) (respectively).

been conveyed and was no longer part of the transaction.” 51 Wn. App. 108, 110, 752 P.2d 385 (1988). Further, the Notice of Trustee’s Sale “was sent only 25 days after the corrected notice of default,” which is contrary to RCW 61.24.030. *Id.* at 111. The Court of Appeals, Division One, found that “[t]his is not to say, however, that the strict compliance requirement eliminates any consideration of prejudice before a sale may be set aside.” *Id.* at 112.³

Just as in *Koegel*, nowhere did Lyons articulate the prejudice suffered simply because NWTS relied on a Beneficiary Declaration that was accurate, not publicly-recorded or otherwise provided to borrowers, or because NWTS took steps to investigate her counsel’s allegations before ultimately discontinuing the sale.⁴

When NWTS argued that, because “Lyons does not cite to a per se violation of the CPA, she must establish there is a genuine issue of

³ The Court wrote:

Appellant was aware of the technical defects in the notices of default. Nonetheless, appellant neither provided U.S. Trustee with documentation of the precise errors alleged, nor acted to restrain the sale. In fact, the trustee granted appellant a series of continuances.... The continuances alone would ameliorate any harm appellant suffered by having 5 fewer days’ notice between the notice of default and notice of sale than required by RCW 61.24.030(6).

Id. at 112. Nothing in the more recent DTA amendments, including RCW 61.24.127, changes this necessity of showing prejudice in order to challenge a sale.

⁴ Beneficiary declarations are presented to a trustee, but not a borrower. See *Douglass v. Bank of Am. Corp.*, 2013 WL 2245092 (E.D. Wash. May 21, 2013); *Petree v. Chase Bank*, 2012 WL 6061219 (W.D. Wash. Dec. 6, 2012); *Tuttle v. Bank of N.Y. Mellon*, 2012 WL 726969 (W.D. Wash. Mar. 6, 2012); *Oliveros v. Deutsche Bank Nat’l Trust Co., N.A.*, 2012 WL 113493 (W.D. Wash. Jan. 13, 2012).

material fact as to whether NWTs' conduct constituted an unfair or deceptive practice," there is no "mistake" in requiring that a plaintiff who did not plead a *per se* CPA claim establish a material issue of fact to overcome summary judgment. *Cf.* Brief of Amicus WSAG at 7, *citing* Response Brief of NWTs at 26.

This Court should not be persuaded to construe any sort of allegations related to the DTA as sufficient for establishing a *per se* unfair or deceptive act under the CPA, especially where the claimed conduct was fully authorized and proper, and there was no prejudicial effect on a borrower.

C. The Court's Holding in *Klem* Cuts Against the WSAG's Position that "An Arguable Interpretation of Existing Law" Should Not be a Defense to the CPA.

The WSAG argues that the Court should not adopt a "good faith" defense in the context of a CPA claim when a trustee acts based on an "arguable interpretation of existing law." Brief of Amicus WSAG at 12, *citing Leingang v. Pierce County Med. Bureau, Inc.*, 131 Wn.2d 133, 930 P.2d 288 (1997). This conclusion is based, in part, on the notion that the "arguable interpretation" exception "has no application in non-judicial foreclosure because (a) there is no judge involved... and (b) thousands of such proceedings are instituted each year." *Id.* at 15.

In *Klem v. Wash. Mut. Bank*, this Court stated:

[i]n a nonjudicial foreclosure, the trustee undertakes the role of the judge as an impartial third party who owes a duty to both parties to ensure that the rights of both the beneficiary and the debtor are protected.

176 Wn. 2d 771, 790, 295 P.3d 1179, 1188 (2013). Although the facts of *Klem* pre-dated the abolishment of a trustee's fiduciary duty as set forth in RCW 61.24.010(3), the Court's reasoning appears to analogize trustees to "the role" of a fair, impartial, contemplative jurist.⁵

In *Leingang*, the plaintiff contended that the his insurer "failed to make a good faith investigation of the legal validity of the UIM exclusion, and that its reliance on an exclusion which ultimately was determined to violate public policy was an unfair or deceptive act in violation of the [CPA]." 131 Wn.2d at 154-55. This Court stated that the question was whether an insurer "had a reasonable justification for relying on the exclusion which was ultimately determined to be unenforceable...." *Id.* at 155. This Court held that the insurer "was relying on a reasonable interpretation of existing law to contend that the exclusion was valid," as supported by the decisions of "at least four trial courts and two Court of Appeals decisions." *Id.*

⁵ This does not mean, however, that a trustee is *literally transformed* into a judge during the course of a foreclosure, *i.e.*, a trustee is not "adjudicating" anything as part of carrying out its proscribed duties.

Likewise, when NWTS recorded a Notice of Trustee's Sale in March 2012 with respect to Lyons' commercial property, and subsequently conducted an investigation of Lyons' accusation that Wells Fargo was no longer the beneficiary, NWTS was entitled to rely on the state of the law at that time.⁶

Moreover, if a trustee is expected to undertake its obligations in a similar manner to that of a judge, then its adherence to existing law based on a reasonable interpretation of it should not be considered "self-serving." *Cf.* Brief of Amicus WSAG at 12. In fact, the investigation NWTS undertook in this case – to assess the rights of both the lender and borrower – is akin to the "conduct in a single case attempting to determine the legal rights and responsibilities of both parties [which] should not be considered 'unfair' in the context of the consumer protection law." *Perry v. Island Sav. & Loan Ass'n*, 101 Wn.2d 795, 810, 684 P.2d 1281, 1289 (1984).

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⁶ The opinion in *Walker v. Quality Loan Serv. Corp.*, 176 Wn. App. 294, 308 P.3d 716 (2013) – which NWTS maintains does not correctly interpret the DTA on the question of pre-sale foreclosure claims – was not even decided until after the summary judgment hearing in Lyons' litigation.

D. When There is No *Per Se* CPA Violation, a Plaintiff Must Show the Alleged Unfair or Deceptive Act Had the Capacity to Injure, or Did Injure, Other Persons.

The WSAG states that “it would be redundant and unnecessary to incorporate an ‘injury’ component into the standard for ‘unfairness’.” Brief of Amicus WSAG at 10. But, to the contrary, that component is unequivocally part of the necessary analysis in a private CPA claim where no *per se* violation of statute is pled; namely:

[i]n a private action in which an unfair or deceptive act or practice is alleged under RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public interest because it:

- (1) Violates a statute that incorporates this chapter;
- (2) Violates a statute that contains a specific legislative declaration of public interest impact; or
- (3)(a) *Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons.*

RCW 19.86.093 (emphasis added). This 2009 codification of the “unfair or deceptive act” element in the CPA clearly articulates the “legal standard for ‘unfairness’...” and it requires a capacity to *injure* others at a minimum. *Cf.* Brief of Amicus WSAG at 9.⁷

Additionally, when a plaintiff does not allege a *per se* CPA violation, he or she must show “that an act or practice ‘has a capacity to deceive a substantial portion of the public’...” in order to be deemed

⁷ Indeed, upon remand of the *Bain* case, *supra.*, the trial court granted summary judgment to MERS on Plaintiff’s CPA claim due to a *lack of injury and causation*. See Order, King County Superior Court Case No. 08-2-43438-9 SEA (Aug. 30, 2013).

“unfair or deceptive.” *Saunders v. Lloyd's of London*, 113 Wn.2d 330, 344, 779 P.2d 249, 256 (1989), quoting *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 785-86, 719 P.2d 531 (1986).

It makes sense that a court analyzing a CPA claim should consider the nature of acts at issue, *together* with public impacts, *along with* whether those acts had the capacity to cause injury, because *every one* of those “elements” articulated in *Hangman Ridge* must be proven for liability to accrue.

This Court should reject the WSAG’s interpretation of “injury” to include a borrower’s investigation and initiation of a lawsuit as compensable under the CPA. Brief of Amicus WSAG at 16; *see Wash. State Physicians Ins. Exch. & Ass’n v. Fisons Corp.*, 122 Wn.2d 299, 858 P.2d 1054 (1993) (Lost wages or personal injuries, including pain and suffering, are not compensable through CPA), *Demopolis v. Galvin*, 57 Wn. App. 47, 786 P.2d 804 (1990) (litigation expenses are *not* an “injury” under the CPA); *Massey v. BAC Home Loans Servicing LP*, 2013 WL 6825309, *8 (W.D. Wash. Dec. 23, 2013) (a “laundry list... including attorney fees, ‘wear and tear’ on [a] vehicle, and buying postage stamps, is inapposite.”); *Thurman v. Wells Fargo Home Mortgage*, 2013 WL 3977622 (W.D. Wash. Aug. 2, 2013), *citing Gray v. Suttel & Assocs.*, 2012 WL 1067962 (E.D. Wash. Mar. 28, 2012) (“time and financial

resources expended to... pursue a WCPA claim do not satisfy the WCPA's injury requirement."), *Coleman v. Am. Commerce Ins. Co.*, 2010 WL 3720203 (W.D. Wash. Sept. 17, 2010) ("The cost of having to prosecute a CPA claim is not sufficient to show injury to business or property.").

To hold otherwise would result in the automatic satisfaction of the CPA's "injury element" simply by virtue of a frivolous lawsuit filed for the sole purpose of slowing down the foreclosure process, or upon a borrower's accusation that he or she needed to "investigate" the foreclosing entity's authority. *See Reid v. Countrywide Bank, N.A.*, 2013 WL 7801758, *5 (W.D. Wash. Apr. 3, 2013) (alleged deception in making payments to "parties who are not the true holders and owners of the Note" suggested no factual basis for injury).

Further, the proximate cause of any purported injury to Lyons was her own default, not NWTS' fulfillment of its statutory duties as trustee. *See, e.g., Babrauskas v. Paramount Equity Mortgage*, 2013 WL 5743903 (W.D. Wash. Oct. 23, 2013) (plaintiff's failure to meet obligation "is the 'but for' cause of the default" and foreclosure), *McCrorey v. Fed. Nat. Mortg. Ass'n*, 2013 WL 681208 (W.D. Wash. Feb. 25, 2013) (plaintiffs' failure to pay led to default and foreclosure). As the Ninth Circuit Court of Appeals recently held concerning a CPA claim in the foreclosure context:

Plaintiffs' foreclosure was not caused by a violation of the DTA

because... [the foreclosing entity] was both the note holder and the beneficiary when it initiated foreclosure proceedings, and therefore the 'cause' prong of the CPA is not satisfied.

Bhatti v. Guild Mortg. Co., 2013 WL 6773673, *3 (9th Cir. Dec. 24, 2013).

Similarly, Lyons' argument to the trial court offered no facts demonstrating that she suffered injuries as a result of receiving *required* foreclosure notices from NWTs due to her own failure to pay the subject secured loan. *See* CP 1-44 (Compl., ¶ 5.9).

The WSAG is incorrect that "consumers have no way to avoid the harm caused when the rules are broken during foreclosure." Brief of Amicus WSAG at 16. A borrower has a clear, direct way to prevent a trustee's sale from occurring, *i.e.*, seeking an injunction pursuant to RCW 61.24.130, which is "the *only means* by which a grantor may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure." *Plein v. Lackey*, 149 Wn.2d 214, 226, 67 P.3d 1061, 1066 (2003), *quoting Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985) (emphasis added). And if there is truly an unfair or deceptive act based on a DTA violation that prejudices a borrower, *and* is likely to impact the public, *and* caused actual compensable injury, then an independent CPA claim can also be pursued. There is no need to judicially create a "wrongfully initiated foreclosure" cause of action that would permit an "open-season" approach to

attacking each aspect of the non-judicial process in court, thus defeating a core goal of the DTA, *i.e.*, that the non-judicial process “should be efficient and inexpensive.” *Albice v. Premier Mortgage Servs. of Wash.*, *supra.* at 567; *cf.* Brief of Amicus WSAG at 16.

Here, not only did Lyons fail to adequately plead a CPA claim against NWTs, but to the extent that one can be inferred from the Complaint’s allegations, she could not establish all necessary elements that this Court previously articulated in *Hangman Ridge*.

E. This Case is Not Like *Klem*.

The WSAG misapprehends the record below when it impugns NWTs’ actions as “deceptive.” Brief of Amicus WSAG at 17.

First, NWTs did not rely on an “outdated beneficiary declaration.” *Id.* The *only* temporal restriction on a beneficiary declaration found in the DTA is that a trustee shall have proof of note ownership “for residential real property, *before the notice of trustee’s sale is recorded, transmitted, or served....*” RCW 61.24.030(7)(a) (emphasis added). A declaration of holder status is sufficient for this purpose, and can be relied upon by a trustee. *Id.*; *see also* RCW 61.24.030(7)(b).

The WSAG cites to *no authority* for the proposition that the declaration was “outdated,” or that a trustee must confirm the note holder’s status because of the declaration’s date. Lyons even agrees that

NWTS was in possession of the beneficiary declaration in June 2010. Brief of Appellant at 7, *citing* CP 118. The Notice of Trustee’s Sale was recorded in March 2012. CP 60. Even assuming, in a light most favorable to Lyons, that the subject property was residential, Wells Fargo’s sworn declaration (stating “Note Holder” at the top) pre-dated the sale notice and satisfied the temporal requirement in RCW 61.24.030(7)(a).

Second, NWTS did not fail to “act in good faith to exercise its duty to *both* sides and discontinue the trustee’s sale when it knows or should know it has no authority to do so....” Brief of Amicus WSAG at 17 (emphasis in original).

Unlike in *Klem*, where evidence of false notarizations existed, the trustee slavishly deferred to the bank’s directions, refused to acknowledge a guardian’s documentation showing a purchase agreement, and ultimately refused to delay the sale, NWTS did *the precise opposite* of these things. 176 Wn.2d at 778-79.

Lyons concedes that the *initial notification* to NWTS that Wells Fargo had sold her loan occurred in April 2012, over one month *after* the Notice of Trustee’s Sale was already recorded. Brief of Appellant at 10;

see also CP 97.⁸ When Lyons' counsel unilaterally demanded the sale be discontinued – not just merely postponed – NWTS conducted an investigation with the assistance of its own counsel. CP 100-101. Once that investigation was complete, and *weeks before the scheduled sale date*, NWTS was able to ascertain that a trial loan modification was actually offered, which resulted in discontinuing the sale process. *Id.*; *see also* CP 60. Nonetheless, it turned out Lyons had already filed this lawsuit just hours earlier. CP 141.

If NWTS had acquiesced to the demand of Lyons' counsel without any form of research, due diligence, or inquiry, NWTS would have surely violated its *equal* good faith duty to the beneficiary. *See* RCW 61.24.010(4). This Court should not hold that a trustee must do as a borrower or her counsel instructs, just as a trustee is prohibited from acting solely to please the beneficiary. *See Klem, supra.*

Equally as important, this Court should also not hold that a trustee must conduct some self-directed investigation into the validity of documents it receives, such as a beneficiary declaration, when no such requirement is found in the DTA. In addressing whether a trustee has an “affirmative duty of investigation,” the United States District Court for the

⁸ It is unclear how NWTS “should have known” that Lyons' loan was sold based on the “Notice of Sale of Ownership of Mortgage,” which was not addressed to NWTS. CP 96-102; 110-11.

Western District of Washington found in *Mickelson v. Chase Home Fin.*

LLC, that:

[t]he duty of good faith does not create a duty to conduct an independent verification of sworn affidavits. This expansive view of good faith remains untenable. NWTS relied, as they are specifically permitted to do, on a declaration made under penalty of perjury. They did not breach their duty of good faith in so doing.

2012 WL 6012791, *3 (W.D. Wash. Dec. 3, 2012).⁹

Third, the WSAG draws an erroneous inference that NWTS acted deceptively by having represented “to the homeowner and the public that it is the trustee.” Brief of Amicus WSAG at 17 (emphasis in original).

Lyons has never argued in this case, however, that NWTS was not properly appointed as the successor trustee; she agrees that the Appointment of Successor Trustee was executed through an attorney-in-fact on behalf of Wells Fargo. Brief of Appellant at 6. The DTA expressly contemplates that the actions of the trustee or beneficiary can be performed by authorized agents. *See US Bank Nat. Ass'n v. Woods*, 2012

⁹ *See also Mickelson v. Chase Home Fin. LLC*, 2011 WL 5553821 (W.D. Wash. Nov. 14, 2011) (“Plaintiffs would have every trustee conduct a secondary investigation into the papers filed by the beneficiary, which is simply too great a demand.”). *Accord Hallquist v. United Home Loans, Inc.*, 715 F.3d 1040, 1048 (8th Cir. 2013) (“[I]n the absence of unusual circumstances known to the trustee, he may, upon receiving a request for foreclosure from the creditor, proceed upon that advice without making any affirmative investigation and without giving any special notice to the debtor.”); *Wivell v. Wells Fargo Bank, N.A.*, 2013 WL 3442810 (W.D. Mo. July 9, 2013), *Patrick v. Teays Valley Trs., LLC*, 2012 WL 5993163, *9 (N.D. W.Va. Nov. 30, 2012), *Cervantes v. Countrywide Home Loans, Inc.*, 2009 WL 3157160, *38 (D. Ariz. Sept. 23, 2009), *aff'd*, 656 F.3d 1034 (9th Cir. 2011).

WL 2031122 (W.D. Wash. June 6, 2012); *accord Bryant v. Bryant*, 125 Wn.2d 113, 882 P.2d 169 (1994); *Moss v. Vadman*, 77 Wn.2d 396, 463 P.2d 159 (1970) (en banc) (agency relationships are a long-established part of Washington common law).

In sum, there is absolutely no evidence that NWTS engaged in “representations” with the “capacity to mislead or deceive the ‘reasonable’ or ‘ordinary’ consumer” with a “capacity for repetition.” Brief of Amicus WSAG at 17.

III. CONCLUSION

Beyond the use of the word “Defendants,” no mention was made in Lyons’ Complaint concerning how NWTS ostensibly violated the CPA, and the trial court agreed through its grant of summary judgment in NWTS’ favor.

But in general, claims arising from certain actions identified in the DTA, *e.g.*, failure to conduct pre-foreclosure outreach, mediating in bad faith, etc., can be *per se* CPA violations. However, not every allegation of DTA non-compliance falls within that *per se* category.

NWTS’ reliance on Wells Fargo’s sworn declaration that it was the subject Note holder – pre-dating the Notice of Trustee’s Sale and stating that Wells Fargo had “*requisite*” authority to enforce Lyons’ obligation – was not an unfair or deceptive act likely to impact the public, and causing

injury to Lyons herself. In fact, by statute, the declaration was not provided to Lyons or publicly-recorded, and only a *trustee* is entitled to rely on it.

Ultimately, Lyons' commercial property was *not* sold, because NWTS undertook an investigation in response to her counsel's concerns before that date arrived. In doing so, NWTS acted in good faith towards both the beneficiary and borrower, and fulfilled its DTA obligations. NWTS should not be forced to defend against CPA liability under these circumstances.

DATED this 9th day of May, 2014.

RCO LEGAL, P.S.

By: 
Joshua S. Schaer, WSBA #31491
Of Attorneys for Respondent
Northwest Trustee Services, Inc.

Declaration of Service

The undersigned makes the following declaration:

1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.

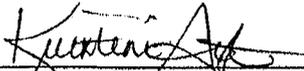
2. That on May 9, 2014, I caused a copy of **Respondent Northwest Trustee Services, Inc.’s Answer to *Amicus Curiae* Brief of The Attorney General of the State of Washington** to be served to the following in the manner noted below:

<p>Mary C. Anderson Guidance to Justice Law Firm 2320 130th Ave. NE Suite E-250 Bellevue, WA 98005</p> <p>Attorneys for Appellant</p>	<p><input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile</p>
<p>Melissa A. Huelsman Law Offices of Melissa A. Huelsman, P.S. 700 Second Ave., Suite 601 Seattle, WA 98104</p> <p>Attorneys for Appellant</p>	<p><input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile</p>
<p>Ronald E. Beard Lane Powell, PC 1420 5th Avenue, Suite 4200 Seattle, WA 98111</p> <p>Attorney for Respondents Carrington Mortgage Services, LLC, US Bank, Wells Fargo Bank, N.A.</p>	<p><input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile</p>

Matthew Geyman Columbia Legal Services 101 Yesler Way, Suite 300 Seattle, WA 98104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile
Eulalia Sotelo Lisa von Biela Thomas McKay Northwest Justice Project 401 Second Ave. S., Suite 407 Seattle, WA 98104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile
Sheila M. O'Sullivan Audrey Udashen Northwest Consumer Law Center 520 E. Denny Way Seattle, WA 98122	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile
Kimberlee Gunning Shannon Smith Office of the Attorney General Consumer Protection Division 800 Fifth Ave., Suite 2000, TB-14 Seattle, WA 98104	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile

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

Signed this 9th day of May, 2014.



Kristine Stephan, Paralegal

OFFICE RECEPTIONIST, CLERK

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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Kristi Stephan [mailto:kstephan@rcolegal.com]
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Winnie Lyons (Appellant) v. US Bank National Association, et al. (Respondents)
Cause No. 89132-0
Filed by: Joshua Schaer
WSBA #31491
425-457-7810
jschaer@rcolegal.com

Please file the attached **Respondent Northwest Trustee Services, Inc.'s Answer to Amicus Curiae Brief of the Attorney General of the State of Washington**.

If there are any questions, please contact us. Thank you.

Kristi Stephan
Senior Litigation Paralegal

Direct: 425.458.2101
Fax: 425.283.0901
kstephan@rcolegal.com