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No. 90078-7 (Consolidated with No. 90085-0)
SUPREME COURT OF
THE STATE OF WASHINGTON

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WASHINGTON FEDERAL, a federally chartered savings association,

Respondent,

vs.

LANCE HARVEY *et ux*,

Petitioners.

Filed *E*
Washington State Supreme Court

OCT 15 2014

Ronald R. Carpenter
Clerk *hjh*

WASHINGTON FEDERAL, a federally chartered savings association,

Respondent,

vs.

KENDALL D. GENTRY and NANCY GENTRY,

Petitioners.

AMICUS CURIAE BRIEF BY WASHINGTON BANKERS
ASSOCIATION SUPPORTING AFFIRMANCE

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I. INTRODUCTION

Amicus curiae the Washington Bankers Association supports affirmance of Division I's decisions in *Gentry* and *Harvey*. No compelling argument, precedent or policy ground supports reversal. Division I's analysis is sound and consistent with this Court's decisions.

This dispute—and the myriad of similar disputes pending in Washington courts awaiting the outcome of this review—turns on commercial contract enforcement. Washington Federal asks this Court to enforce its creditor remedies. The law requires that the guarantors perform their willing bargain, undertaken with commercial motive, to guaranty the borrowers' unpaid loans.

The guarantors offer incorrect arguments to escape the consequences of the transactions they voluntarily entered. Unfortunately, similar disputes over commercial defaults on real estate development loans are prevalent in the courts in the aftermath of the 2008 recession. Here, the commercial guarantors hoped to profit on real estate deals, but the market crashed. They now face significant liability. These repercussions are of their own making.

The Court should come down on the side of enforcement of these common, commercial lending transactions.

II. INTEREST OF AMICUS CURIAE

The Washington Bankers Association (“WBA”) is a non-profit association serving the interests of Washington banks. Through advocacy, comprehensive programming, and information exchange, the WBA protects, develops, and advances the business of banking in Washington. The WBA represents commercial banks operating in every county of the State, ranging in size from large financial institutions to smaller, family-owned and community-based banks. The WBA seeks to foster a healthy banking industry, which is vital to Washington’s economic interests.

The issues before the Court impact many WBA members. Members have rights under deeds of trust and guaranties that are identical or similar to the loan documents at issue in this case. A portion of such documents presently are the subject of at least 20 lawsuits similar to this one involving commercial guarantors who—like the Harveys and Gentrys—seek to avoid payment obligations to which they expressly, and with commercial motive, agreed.

III. STATEMENT OF THE CASE

The WBA relies on Washington Federal’s “Statement of the Cases.” *Comb. Suppl. Brief of Wash. Fed.* 2-10.

Determinative facts include that the guarantors offered no property as security. This is highly relevant when the Court considers the

provisions of RCW 61.24.100 of the Deed of Trust Act and the *quid pro quo* upon which the Legislature based the trade-offs in this provision.

Concerning the deeds of trust, these guarantors never signed them. CP 853-63 (Harvey); CP 178-97, 137-57 (Gentry). They are not parties to the deeds of trust. The deeds of trust are between the lenders and the borrowers.

To win reversal, the guarantors must convince this Court of all three of their arguments. The Court could address the arguments in any order. An adverse holding on any issue should result in affirmance.

IV. **ARGUMENT TO ENFORCE THE COMMERCIAL CONTRACTS AND AFFIRM**

The WBA supports the reasoning and correct outcome of *Gentry* and *Harvey*. The WBA offers several points in support of affirmance to augment the supplemental briefs by the parties on two issues: statutory interpretation and construction of the deeds of trust.

Regarding the statutory interpretation issue, the WBA will address how Division I's decisions do justice to the actual language in RCW 61.24.100 (see Appendix), the statute's structure and the intent of the statutory scheme. The Act's direct language permits deficiency judgments against guarantors of commercial loan transactions.

In support of reversal, the guarantors ignore the plain language in Subsections (1), (3)(c) and (6) of the Act, and instead rely on Subsection

(10). They insist that Subsection (10) has an implicit meaning that is “the key” to the section. But that implicit meaning—that they are exonerated from their guaranties if the nonjudicially foreclosed deeds of trust granted by the borrowers secured not just the borrowers’ obligations but also the guarantors’ obligations under the guaranties—does not follow from the Legislature’s language.¹ Subsection (10) does not express a bar. Subsection (10) states an affirmative right that remains preserved after a nonjudicial foreclosure: the lender’s right to pursue unrelated obligations.

The guarantors’ reading not only ignores the plain language, but it would contradict other express provisions in the section. And, reading Subsection (10) as the key provision regarding deficiency judgments illogically reverses the order and structure of the statute. Such a reading finds no support in the *quid pro quo* upon which the section is based. All of these reasons should convince this Court that the Legislature did not intend what the guarantors assert.

The guarantors’ contractual construction argument regarding the meaning of the deeds of trust also is wrong. The guarantors ignore both the specified scope of the deeds of trust and rules of grammar. They

¹ Subsection (10) reads: “A trustee’s sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.” RCW 61.24.100(10).

unsuccessfully attempt to rely on rules of construction that would require this Court to ignore the content of the agreements.

A. Correct interpretation of the Deed of Trust Act permits the deficiency actions.

The Deed of Trust Act at RCW 61.24.100 establishes this basic scheme for nonjudicial foreclosures: first, no deficiency judgments are available for loans that are not commercial loans (Subsection (1))²; second, borrowers are subject to limited deficiencies for commercial loans (Subsection (3)(a)); and third, guarantors are subject to deficiencies for commercial loans. Subsection (3)(c). Guarantor liability for deficiencies is limited—as it is for borrowers—if the guarantor offered its own property and was a grantor of the deed of trust. (Subsection (6)). In this case the commercial guarantors executed commercial guaranties but did not offer their own properties and were not grantors of the deeds of trust. Thus, according to this basic scheme, these guarantors are subject to deficiency judgments pursuant to Subsection (3)(c).

After these general rules are set forth at Subsections (1), (3)(c) and (6), the statute addresses some limitations on deficiency actions at Subsections (4) (time to bring an action) and (5) (fair value), and then the

² The Legislature announced this general rule in Subsection (1), where its very first words make clear that the bar on deficiency judgments only applies “[e]xcept to the extent permitted in this section for deeds of trust securing **commercial loans**.” RCW 61.24.100(1) (emphasis added). Commercial loans are set apart.

remainder of the statute explains what the parties remain free to do in light of a nonjudicial foreclosure. *See* Subsections (7)-(11). For example, if a commercial creditor accepts a deed in lieu of foreclosure, the guarantor normally is exonerated, but the parties can agree otherwise. Subsection (7). Lenders can elect not to pursue nonjudicial foreclosure. Subsection (8). Parties can limit deficiencies by agreement. Subsection (9). The parties can agree that the guarantor may not obtain reimbursement from the borrower. Subsection (11). Subsection (10) is found with these expressions of what the parties remain free to do. Subsection (10) affirmatively states that lenders can pursue unrelated obligations that arise under contracts that are not secured by the deed of trust. Subsection (10). Under this orderly scheme, commercial guarantors like the Harveys and Gentrys are subject to actions for deficiency judgments.

The Harveys and Gentrys, and many similarly situated commercial guarantors, seek to transform Subsection (10) from a permissive clause clarifying the lender's rights into a major prohibition on deficiency judgments in contradiction of (3)(c) and (6). The guarantors avoid discussing the provisions that address "deficiency judgments" by name, such as Subsection 3(c). The guarantors' premise their argument on Subsection (10), denoting "key" importance to it. *See Consol. Suppl. Br. of Petitioners*, 20-22. The guarantors insist that the Legislature meant

something in Subsection (10) other than what the Legislature said. As Division I rightly pointed out, to achieve the guarantors' reading, one must insert an "only" so that it reads "only if," and delete the "not" so that the provision "precludes" rather than "does not preclude." *Wash. Fed. v. Gentry*, 179 Wn. App. 470, 483, 488-89, 319 P.3d 823 (2014), *rev. granted*, 180 Wn.2d 1021 (2014). But the Court may not, in the guise of statutory interpretation, take such liberties with the statutory language.

In addition to ignoring the statute's plain language, the guarantors also seek to turn the statute upside down. They argue that the right to pursue deficiency judgments from commercial guarantors recognized by Subsections (1), (3)(c), and (6) is subsequently swallowed in the statute by Subsection (10). That would be a tortured way to construct a statute. The guarantors' argument is unpersuasive that the Legislature would wait until the end of the statute to reveal its "key," make the revelation in an indirect manner and have the revelation contradict prior provisions. The explicit phrasing (rather than indirect phrasing) and the structure of the statute instruct otherwise.

The Legislature made no statement in the legislative history materials that would support the guarantors' argument.³ This is yet

³ See H.B. Rep. on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998) (<http://apps.leg.wa.gov/documents/billdocs/1997-98/pdf/Bill%20Reports/House/6191-ES.HBA.pdf>); S.B. Rep. on

another factor weighing against the guarantors' argument that Subsection (10) is the key provision. The guarantors find no support in the legislative materials for their unlikely interpretation.

To make their argument, the guarantors must ignore not only the actual words and structure of the statute, but its *quid pro quo* rationale. Washington law is settled that the statute is based on a give and take "between lenders and borrowers"—not guarantors. *Thompson v. Smith*, 58 Wn. App. 361, 793 P.2d 449 (1990); *Donovick v. Seattle-First Nat'l Bank*, 111 Wn.2d 413, 416, 757 P.2d 1378 (1988). The borrower gives up certain rights attendant to *judicial* foreclosure to allow a speedy *nonjudicial* foreclosure procedure in exchange for a deficiency bar. *Id.* These guarantors did not offer property or give up rights. A bar in these circumstances is unjustified because there has been no *quid pro quo*. Gentry and Harvey seek the reward of a deficiency bar when they did not give up anything. Their argument is contrary to the recognized *quid pro quo* that underlies the statutory trade-offs.

Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998) (<http://apps.leg.wa.gov/documents/billdocs/1997-98/Pdf/Bill%20Reports/Senate/6191-S.SBR.pdf>). The House Bill Analysis, like the House Bill Report, sets forth at page 3 the central features relevant to a deficiency judgment against a commercial guarantor without any mention of terms that are stated in Subsection (10). H.B. Analysis on Engrossed Substitute S.B. 6191, 55th Leg., Reg. Sess. (Wash. 1998) (<http://apps.leg.wa.gov/documents/billdocs/1997-98/Pdf/Bill%20Reports/House/6191-ES.HBA.pdf>).

The weakness of the guarantors' position is further underscored by their attempted reliance on the statutory maxim *expressio unius est exclusio alterius*, or "legislative inclusion of certain items in a category implies that other items in that category are intended to be excluded." *Consol. Suppl. Brief of Petitioners Gentry and Harvey*, 21-23, citing *First-Citizens*, 178 Wn. App. at 216-17, n. 15. Guarantors argue that this maxim turns Subsection (10) from a permissive provision clarifying the lender's rights into a significant prohibition on the lender's right to seek a deficiency judgment from a commercial guarantor. This would be a misuse of the maxim. Courts do not apply the maxim when the legislative intent is plainly indicated. *Boise Cascade Corp. v. Washington Toxics Coalition* 68 Wn. App. 447, 455, 843 P.2d 1092 (1993) (application of the maxim "should not be permitted to defeat the plainly indicated purpose of the legislature."), *rev. denied*, 121 Wn.2d 1017 (1993). Here, Subsection (10) is permissive, not prohibitive. The maxim should not defeat the Legislature's phrasing.

Subsection (10) also does not fit the maxim because it does not list "items in a category." The maxim may appropriately be applied when statutes set forth lists, like in these cases cited by guarantors: *Bour v. Johnson*, 122 Wn.2d 829, 836, 864 P.2d 380 (1993) (statute listed events triggering early termination of garnishment); *Landmark Dev., Inc. v. City*

of Roy, 138 Wn.2d 561, 980 P.2d 1234 (1999) (statute specified three types of water corporations engaged in water purveying but left out fourth type of corporation); and *Adams v. King County*, 164 Wn.2d 640, 192 P.3d 891 (2008) (statute specified multiple donees including hospitals as recipients of designated anatomical gifts, but specified only hospitals as able to accept undesignated anatomical gift.). Here, Subsection (10) does not set forth a list. The content of Subsection (10) does not fit the maxim. And, as Division I explained, the structure of the statute also does not fit the maxim. 179 Wn. App. at 489-89.

The *Boise Cascade* court reasoned, when rejecting another ill-advised application of the maxim, “It is also unlikely the Legislature would incorporate the provisions of the APA which authorize stay relief, then restrict such stay relief in a **most indirect way** in the FPA.” *Id.* at 456 (emphasis added). The same holds true here where the Legislature authorized deficiency judgments against commercial guarantors in Subsections (3)(c) and (6) of the Deed of Trust Act, but—according to the guarantors—indirectly prohibited this right in Subsection (10). The indirect manner of expression invites scrutiny and skepticism of the guarantors’ interpretation.

A more helpful interpretive tool is the rule that a more specific provision supersedes a more general one. *See Waste Management v. Utils.*

& Transp. Comm'n, 123 Wn.2d 621, 629-30, 869 P.2d 1034 (1994) (specific provision allowing certain disposal costs for mandatory inclusion in rates controls over general provision regarding process for inclusion of costs generally). Here, Subsections (3)(c) and (6) specifically authorize deficiency judgments against commercial guarantors. Subsection (10) speaks generally and does not specifically address “deficiency judgments.” Subsection (3)(c) controls the outcome of these cases.

This Court should reject the gymnastics required to endorse the guarantors’ interpretation. “Strained, unlikely or unrealistic interpretations are to be avoided.” *Bour v. Johnson*, 122 Wn.2d 829, 834, 864 P.2d 380 (1993), citing *State ex rel. Faulk v. CSG Job Ctr.*, 117 Wash. 2d 493, 500, 816 P.2d 725 (1991). This Court should affirm the sensible interpretation in *Gentry* and *Harvey*.

B. The deeds of trust simply do not secure the guarantors’ obligations

Guarantors simply are wrong that the deeds of trust secure their obligations under their commercial guarantees.

To begin, all parties agree that the deeds of trust are not ambiguous. *Consol. Suppl. Brief of Gentry and Harvey*, 20 n. 25 (“there is no ambiguity to resolve”); *Comb. Suppl. Brief of Wash. Fed.* 16-21 (plain language of the deeds of trust supports affirmance). Yet, the guarantors attempt to benefit from a rule that applies only if ambiguity exists. They

argue that *contra proferentum*, or construe against the drafter, is not reserved for ambiguous language and therefore supports reversal. See *Consol. Suppl. Brief of Gentry and Harvey*, 7 n. 7, citing *McKasson v. Johnson*, 178 Wn. App. 422, 429, 315 P.3d 1138, 1142 (2013). *McKasson* does not support this position. The guarantors misread it, failing to notice that *McKasson* relies on cases finding ambiguity. 178 Wn. App. at 429. See also *Rouse v. Glascam Builders, Inc.*, 101 Wn.2d 127, 135, 677 P.2d 125 (1984). Additionally, *contra proferentum* is a rule of “last resort.” *Kwik-Lok Corp. v. Pulse*, 41 Wn. App. 142, 148, 702 P.2d 1226 (1985). This Court need not resort to it.

The rule also does not apply because the guarantors are not parties to the deeds of trust. The guarantors offer not a single authority employing *contra proferentum* to favor a **non-party** to the agreement like themselves. *Contra proferentum* might be applied by a court as a last resort where parties to the document dispute ambiguous language, but the guarantors fail to show that they can benefit from the doctrine as non-parties. The guarantors are not the grantors. The Court should not apply *contra proferentum* in their favor.

The content of the deeds of trust, moreover, defeats the guarantors’ arguments. The guarantors draw this Court’s attention myopically to the definition of “Related Documents.” But the deeds of trust are not given to

secure “Related Documents” in the first place. The guarantors repeatedly paraphrase or summarize the deeds of trust as “given to secure” “any and all obligations under . . . the Related Documents.” *See, e.g., Consol. Suppl. Brief of Gentry and Harvey* 4. This misrepresents the actual direct objects—“PAYMENT” and “PERFORMANCE”—found in the operative sentence of the provision that defines what is secured. By replacing the actual direct objects with “any and all obligations under . . . the Related Documents,” the guarantors seek to re-write the controlling paragraph. Guarantors’ error is one of grammar.

Division I’s construction of the deeds of trust is sound. It is premised on reading together all of the provisions of the deeds. The deeds of trust specify that they are given to secure “PAYMENT” and “PERFORMANCE,” and then define “PAYMENT AND PERFORMANCE” as that of the *grantor*. CP 138, 179 (*Gentry*); 855 (*Harvey*).⁴ The deeds do this expressly in the paragraph titled “PAYMENT AND PERFORMANCE.” *Id.* The guarantors overlook this provision. Division I did not. The *Gentry* and *Harvey* decisions properly construe the deeds of trust.

⁴ Guarantors falsely contend that the deeds are given “without limiting [payment] to the payment obligations of a particular party.” *Consol. Suppl. Brief of Gentry and Harvey* 12 (underscore original). The opposite is true. The deeds limit “payment” to the payment obligations of the borrowers/grantors.

Division I's construction is consistent with the contemporaneous documents. Most significantly, the notes specify that they are secured by the deeds of trust (CP 845 (Harvey); CP 93, 97, 101 (Gentry)), but the guaranties do not. CP 848-51 (Harvey); CP 118-23 (Gentry). The lack of an equivalent provision in the guaranties evidences that the parties never intended that the deeds of trust secured the guarantors' obligations.

In the context of this commercial real estate development transaction there would be no reason for a contrary intent. A guarantor's liability mirrors the borrower's liability. A lender, thus, is entitled to obtain every cent owed it through nonjudicial foreclosure of the property simply by having the property secure the borrower's obligations. The guarantors (in this or any of the other similar cases) never have articulated a reason why the parties would intend that the guarantors' obligations be secured by the deeds of trust when the whole purpose of the guaranties is to provide security to the banks additional to the property.⁵ If the parties

⁵ Some guarantors have argued generally that the lenders sought zealously to cross-collateralize anything they could. But this vague answer is unpersuasive. Lenders already have a right, according to the "cross default" provisions in the notes, to declare default and foreclose on the deeds of trust if anything goes south with the guaranties. *See, e.g.*, CP 92 (Gentry note at "DEFAULT: Events Affecting Guarantor"), CP 109 (Harvey note at "DEFAULT: Events Affecting Guarantor"). This right is repeated in the deeds of trust. *See, e.g.*, CP 141-42 and 182-83 (Gentry Deed of Trust at "EVENTS OF DEFAULT: Events Affecting Guarantor"); CP 123-24 (Harvey Deed of Trust at "EVENTS OF DEFAULT: Events Affecting Guarantor"). It cannot be, thus, that the parties intended to have the deeds of trust secure the guarantors'

had so intended, one would expect some evidence of it. But the guarantors offered none.

Division I correctly construed the terms and provisions of the deeds of trust.

V. CONCLUSION

Washington Federal does not seek an extraordinary result. It seeks the *expected* result that where a commercial party guaranties a loan, that party will be called on to satisfy that loan when the borrower and its property fail to do so. This is the purpose of a commercial guaranty. This is exactly the result for which the parties bargained. The commercial

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performances so that the property could be foreclosed upon in the event of a problem with, or default by, a guarantor. That base already was covered.

guarantors have no compelling grounds to justify the obliteration of their business commitments.

Respectfully submitted on this 3rd day of October, 2014.

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APPENDIX

Rev. Code Wash. (ARCW) § 61.24.100

ANNOTATED REVISED CODE OF WASHINGTON

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TITLE 61. MORTGAGES, DEEDS OF TRUST, AND REAL ESTATE CONTRACTS

CHAPTER 61.24. DEEDS OF TRUST

Rev. Code Wash. (ARCW) § 61.24.100 (2013)

§ 61.24.100. Deficiency judgments -- Foreclosure -- Trustee's sale -- Application of chapter

(1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2) (a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after June 11, 1998:

(a) (i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under RCW 61.24.042.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to June 11, 1998, shall be determined in accordance with the laws existing prior to June 11, 1998.

HISTORY: 1998 c 295 § 12; 1990 c 111 § 2; 1965 c 74 § 10.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2014, I caused to be served *via Email and U.S. Mail* the foregoing AMICUS BRIEF BY WASHINGTON BANKERS ASSOCIATION SUPPORTING AFFIRMANCE on the following at the following addresses:

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To: Pesek, Sue
Subject: RE: For filing in Combined Cases 90085-0 (Gentry) and 90078-7 (Harvey): Motion by Amicus WBA; Proposed Amicus Brief by WBA

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From: Pesek, Sue [mailto:suepesek@dwt.com]
Sent: Friday, October 03, 2014 3:50 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: For filing in Combined Cases 90085-0 (Gentry) and 90078-7 (Harvey): Motion by Amicus WBA; Proposed Amicus Brief by WBA

Re: Washington Federal v. Harvey; Washington Federal v. Gentry
Washington Supreme Court No. 90078-7 (Consolidated with No. 90085-0)
Motion to Participate as Amicus Curiae by Washington Bankers Association; Amicus Curiae Brief by Washington Bankers Association Supporting Affirmance

Dear Clerk:

Please find attached for filing with the Court in .PDF format, *Motion to Participate as Amicus Curiae by Washington Bankers Association* and *Amicus Curiae Brief by Washington Bankers Association Supporting Affirmance*.

This Motion and Amicus Curiae Brief is being submitted by:

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Email: petermucklestone@dwt.com
Attorney for Amicus Curiae Washington Bankers Association

Thank you for your assistance.

Sent on behalf of Peter Mucklestone by:

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