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No. 90509-6

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

No. 705920

ROCIO TRUJILLO, an unmarried woman,

Appellant,

vs.

NORTHWEST TRUSTEE SERVICES, INC;
Washington Corporation

Respondent

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred in finding that Northwest Trustee Services Corporation (NWTS) was not the real party in interest.

2. The trial court erred in ruling that NWTS was authorized by RCW 61.24.030(7)(a) to record a notice of trustee's sale after receiving a declaration from Wells Fargo Bank, NA (Wells) stating that Wells was the actual holder of the promissory note.

B. Issues Pertaining to Assignments of Error

1. Did the trial court commit reversible error by ruling the foreclosure proceeding was conducted lawfully even though, before recording the notice of trustee's sale (NOTS), NWTS never received proof that Wells was the owner of the Note?

2. Did NWTS violate its duty of good faith under RCW 61.24.010(4) by recording a NOTS after receiving a declaration from Wells stating Wells was the actual holder of the Note?

II. STATEMENT OF THE CASE

A. Uncontested Factual Background

Arboretum Mortgage Corp. (Arboretum) originated the mortgage loan on Marcy 29, 2006. CP 2. The mortgage note (Note) named Arboretum as the Note holder and Mortgage Electronic Registration Systems, Inc. (MERS) as the beneficiary of the deed of trust (DOT) solely as nominee for Arboretum, its successors and assigns. CP 3.

On an undetermined date, a date that fell between April 1, 2006 and May 31, 2006, Arboretum sold the mortgage loan---Note and DOT--- to Wells Fargo Bank, NA (Wells). On June 1, 2006, Wells sold the loan to Fannie Mae and retained the loan-servicing rights.

I defaulted on the mortgage loan on November 1, 2011. On May 30, 2012, as required by RCW 61.24.030(8), NWTS transmitted the notice of default ("NOD") to me by both first class and certified mail. To comply with RCW 61.24.030(8)(l), NWTS provided the name and address of the owner of the Note in Section K of the NOD. That Section lists the Federal National Mortgage Association (Fannie Mae) as the owner of the Note. RP 14: 15-19.

By May 30, 2012, at the latest, NWTS knew Wells was not the owner of the Note. On July 10, 2012, 41 days after transmitting the NOD that listed Fannie Mae as the owner of the Note, NWTS recorded the NOTS.

Fannie Mae remained the owner of the Note, uninterrupted, until at least June 4, 2013.

B. Procedural History

On May 31, 2013, the Honorable Judge Beth Andrus heard Respondent's Motion to Dismiss. RP 6: 5-7. During the hearing, Respondent accurately represented that I had alleged several bases for the complaint: (1) that the trustee issued a NOD before it was appointed the trustee; (2) that, after *Bain*, the Mortgage Electronic Registrations Systems, Inc. (MERS) cannot be the beneficiary of the DOT; and (3) NWTS breached its duty of good faith under RCW 61.24.010(4) by recording, transmiting and serving the NOTS after receiving a declaration from Wells stating that Wells was the actual holder of the Note. The third of these three issues, alone, is the foundation for this appeal.

At the hearing, I claimed NWTS had to obtain proof that Wells was the *owner* of the Note before it would be authorized by RCW 61.24.030(7)(a) to record, transmit or serve the NOTS. RP 17: 3-8. Respondent countered by claiming my position was a misstatement of Washington law. RP 12: 1-8.

After the trial court acknowledged that the first sentence of RCW 61.24.030(7)(a) uses the word *owner*, the following colloquy took place between the court and Counsel for Respondent:

THE COURT: - - but then it says that the Trustee may rely on an affidavit from someone saying they're the holder of the Note as prima facie evidence that they have the right to initiate a non-judicial foreclosure.

MR. KATZ: It's - - that sentence, that first sentence in RCW 61.24.030(7)(a), does create confusion.

THE COURT: Yeah.

MR. KATZ: But the reliance has been on the actual definition of a Beneficiary under 61.24.005(2), that it's the holder of the Note. And I think, Your Honor, before the foreclosure crisis, if you will, happened in the United States, the terminology, at least in Washington, is intermixed, that an owner, that the holder of a Note must also be the owner of a Note.

That contradicts the system in the United States set up by the government with Fannie Mae and Freddie Mac who purchased these Notes on the secondary money market which, in this case, Fannie Mae purchased the plaintiff's Note. And our briefing will demonstrate to the Court that someone can have a contractual interest and be the owner of a Note versus a party who has holder status under the Uniform Commercial Code that's entitled to enforce the Note. And that's the typical way Fannie Mae and Freddie Mac operate through a servicer who then becomes the holder of the Note and conducts the foreclosure.

THE COURT: But from your client's perspective - - because it seems to me that Ms. Trujillo is making an interesting argument that under the language of our Deed of Trust Act, must the owner be the holder of the Note?

MS. TRUJILLO: Right.

THE COURT: That's the argument she's making. And that's really an issue, I think, is between her and Wells Fargo. For your client's perspective, the statute says that a declaration by the beneficiary made under penalty of perjury stating that the Beneficiary is the actual holder of the Promissory Note shall be sufficient proof for the trustee as required under this section.

So Wells Fargo may not have the legal authority, as you're arguing, but nevertheless there may not be anything the Trustee did that's illegal because the statute says it has a right to rely on a representation made by Wells Fargo.

RP 12: 20 through 14: 14.

Of course, Respondent's Counsel agreed with the courts thinking on this point.

Then, after confirming that the NOD indicated Fannie Mae was the *owner* of the Note (RP 14: 15-19), and that NWTS had received a declaration from Wells made under penalty of perjury stating that Wells was the actual *holder* of the Note (RP 15: 6-10), the court offered the following:

> THE COURT: Okay. This language of the statute, however, says - - oh, I see. So the language of subsection (a) says the Trustee must have proof that the Beneficiary is the owner of the promissory Note.
>
> MS. TRUJILLO: Right.
>
> THE COURT: Then it goes on to say a declaration by the Beneficiary made under penalty of perjury stating that the Beneficiary is the actual holder of the Promissory Note shall be sufficient proof as required under this subsection. In other words, the first sentence, it seems very unambiguous, this is what proof needs to be presented. But then the legislature, in its infinite wisdom, has muddied the waters by saying Trustee - - all they have to do is give you a signed affidavit under penalty of perjury saying we are the actual holder of the Note.
>
> And Wells did that. And so can they be held - - can Northwest be held legally liable if they received what the

> legislature said is sufficient? It, you know, it could very well be that Wells doesn't have the authority to foreclose because it doesn't own the Note, but that's a different issue then whether Northwest could be separately liable for issuing the Notice of Default or the Notice of Trustee Sale.
>
> So I think I see your argument is - - I understand exactly where your argument is coming from because I think that you've got a textual basis for making the argument that you've made.
>
> RP: 17: 15 through 18: 17.

Next, the court offered me one last chance to comment before issuing its ruling. RP 19: 25 through 20: 2. I repeated that Fannie Mae, not Wells, was the owner of my Note and that Wells was not the Beneficiary of the DOT. The court then made its ruling:

> THE COURT: Well, and I appreciate the point that you're bringing up because this does raise a very interesting legal issue that I think, at least from my understanding, hasn't been resolved yet by our State Supreme Court.
>
> But I agree with Northwest that they're not the real party in interest here. Your beef is really with Wells Fargo because - - and I'm not going to rule today on the legal argument because Wells Fargo hasn't asked me to rule that it can foreclose - - so that's going to be an issue that has to be reserved for a later date. Today, the only issue before me is whether you can recover monetary damages from Northwest for anything they did.
>
> I'm going to grant the Motion to Dismiss against Northwest. You still have your claim pending against Wells Fargo. The Temporary Restraining Order still remains in effect. Wells Fargo cannot do a non-judicial foreclosure

until the legal issues you're raising about the owner versus holder gets resolved. All right?

III. ARGUMENT

A. STANDARD OF REVIEW

A summary judgment is reviewed by an appellate court de novo. The court engages in the same inquiry as the trial court under CR 56(c), viewing the facts of the case and the reasonable inferences from those facts in the light most favorable to the nonmoving party. *Harrington v. Spokane County*, 128 Wn. App. 202 (2005).

The court is not authorized to dismiss a case on summary judgment if a genuine issue of material fact has been raised by the non-moving party. In determining whether a genuine issue of material fact has been raised, the court must view the evidence inferences therefrom in a light most favorably to the nonmoving party. *Barrie v. Hosts of America*, 94 Wn.2d 640 (1980),

A fact is material if the outcome of the case, in whole or in part, depends upon it. *Id.* If reasonable men could reach only one conclusion, no genuine issue of fact exists. *Id.*

When the appellate record consists entirely of written materials, the appellate court is in the same position as the trial court and reviews the record de novo. *Harrington v. Spokane Cty.* Questions of law are reviewed de novo. *Detention of Petersen*, 145 Wn.2d 789 (2002).

B. WELLS' DECLARATION DID NOT SATISFY THE REQUIREMENTS OF RCW 61.24.030(7)(a).

RCW 61.24.030(7)(a) reads as follows:

> That, for residential real property, before the notice of trustee's sale is recorded, transmitted or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

The first sentence of .030(7)(a) requires the trustee to obtain proof that the beneficiary is the "owner" of the promissory note secured by the deed of trust before the trustee is authorized to record, transmit, or serve

the notice of trustee's sale. The language of the sentence is unambiguous. It is susceptible of only one reasonable interpretation: the trustee must have proof that the beneficiary of the DOT is the *owner* of the promissory note or other obligation secured by the deed of trust. The first sentence means the beneficiary of the DOT and the owner of the Note must be the same person.

The fact that the first sentence of (7)(a) establishes that the beneficiary of the DOT and owner of the Note must be the same person must be keep firmly in mind when the second sentence of (7)(a)---the only other sentence (7)(a) contains---is read. The second sentence of RCW 61.24.030(7)(a) states:

> A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

Remember, pursuant to the first sentence of (7)(a), the beneficiary of the DOT and the *owner* of the Note secured by the DOT must be the same person. Consequently, the portion of the second sentence of (7)(a) that reads "A declaration by the beneficiary" actually means "A declaration by the owner of the Note." Thus, the only person who can provide the declaration authorized by the second sentence of RCW

61.24.030(7)(a) is the owner of the Note (i.e., the beneficiary). If any declarant other than the owner of the Note provides a declaration, regardless of what the declaration states, the declaration cannot meet the requirements of (7)(a).

With utmost respect to the courts, the fact that the first sentence of (7)(a) establishes that the word "beneficiary" is a synonym for the clause "owner of any promissory notes or other obligations secured by the deed of trust" means that when the word "beneficiary" is used in the second sentence of (7)(a) in the phrase "A declaration by the beneficiary" in the second sentence of (7)(a), the statute is authorizing the trustee to accept a declaration from one person *only*---the "owner of any promissory notes or other obligations secured by the deed of trust (i.e., the beneficiary)."

This---that the "owner of any promissory notes or other obligations secured by the deed of trust (i.e., the beneficiary) is the only person from whom the trustee is authorized by (7)(a) to accept a declaration---is the central point that the trial court missed and that a whole line of cases in the Federal District Court for the Western District of Washington has missed over the past several years. As soon as this point is fully grasped, however, the "confusion" that the trial court and

Respondent's Counsel acknowledge at the summary judgment hearing disappears.

If anyone other than the *owner* of the promissory note (i.e., the Beneficiary) provides the declaration, the declaration, regardless of what it states, cannot meet the requirements of the second sentence of RCW 61.24.030(7)(a). Submission of such a declaration to the trustee, therefore, does not authorize the trustee to record, transmit or serve the NOTS.

In the case before this court, Wells was not the owner of the Note. The parties are not in dispute on this point. Accordingly, Wells' declaration, regardless of what it stated, did not satisfy the requirements of RCW 61.24.030(7)(a). More importantly for the purposes of this appeal, before NWTS mailed the NOD, it knew Wells was not the owner of the Note.

NWTS was obligated to have proof that Wells was the owner of the Note before it recorded, transmitted, or served the NOTS. *Bain v. MERS*, 175 Wn.2d 83, 108, 285 P.3d 34(2012). Not only did NWTS fail to obtain proof that Wells was the owner of the Note before NWTS recorded the NOTS, NWTS knew Wells was not the owner of the Note at least 41 days before it filed the NOTS. Recording the NOTS while knowing Weels

was not the owner of the Note was a breach of NWTS's statutory duty of good faith. RCW 61.24.010(4).

C. A CENTURY OF STATUTORY CONSTRUCTION PRINCIPLES SUPPORT MY INTERPRETATION OF RCW 61.24.030(7)(a).

No other provision of the Washington Deed of Trust Act (WDTA) negates or even modifies the language in the first sentence of .030(7)(a). As a result, the portion of RCW 61.24.030(7)(a) that the first sentence represents is not subject to judicial interpretation. Its meaning must be derived from the language of the sentence, and effect must be given to the plain meaning of the language by applying the language as written. *Kilian v. Atkinson* , 147 Wn.2d 16 , 20, 50 P.3d 638 (2002) ("If a statute is clear on its face, its meaning is to be derived from the language of the statute alone."). *Cerrillo v. Esparza*, 158 Wn.2d. 194, 202 (2006) ("This court does not subject an unambiguous statute to statutory construction and has "declined to add language to an unambiguous statute even if it believes the Legislature intended something else but did not adequately express it." *Kilian* , 147 Wn.2d at 20 (citing *Keller*, 143 Wn.2d at 276 ; *Wash. State Coalition for the Homeless v. Dep't of Soc. & Health Servs.*, 133 Wn.2d 894 , 904, 949 P.2d 1291 (1997)). "Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute." *Kilian*, 147 Wn.2d at 21 (footnote omitted) (citing

Progressive Animal Welfare Soc'y v. Univ. of Wash., 114 Wn.2d 677 , 688, 790 P.2d 604 (1990); and *Associated Gen. Contractors of Wash. v. King County*, 124 Wn.2d 855 , 865, 881 P.2d 996 (1994)). Thus, when a statute is not ambiguous, only a plain language analysis of a statute is appropriate."); *Vita Food Prods., Inc. v. State*, 91 Wn.2d 132, 134, 587 P.2d 535 (1978) ("We should not and do not construe an unambiguous statute."); and *Snow's Mobile Homes, Inc. v. Morgan*, 80 Wn.2d 283, 494 P.2d 216 (1972) (". . . where a statute is plain, unambiguous and clear on its face, there is no room for construction.")

Under these circumstances, the trial court was required to assume that the legislature meant exactly what it said. This is the first rule of judicial interpretation of a statute. *Sidis v. Brodie/Dohrmann*, Inc., 117 Wn.2d 325, 329, 815 P.2d 781 (1991) ("In judicial interpretation of statutes, the first rule is 'the court should assume that the legislature means exactly what it says. Plain words do not require construction.' *Snohomish v. Joslin*, 9 Wn. App. 495, 498, 513 P.2d 293 (1973).")

The trial court was obligated to find that NWTS was required to obtain proof that the beneficiary was the owner of the promissory note before NWTS was authorized by RCW 61.24.030(7)(a) to issue the notice of trustee's sale. NWTS never obtained that proof. As a result, the NOTS

was not lawfully issued, and, under the current foreclosure proceeding, the public auction of my home cannot be preceded by at least 90 days by the lawful recording of a notice of trustee's sale, as is required by RCW 61.24.040(1)(a). Thus, the public auction of my home would be a violation of the WDTA.

1. Grammatical analysis of RCW 61.24.030(7)(a) proves the beneficiary must provide proof it is the owner of the promissory note secured by the deed of trust.

a. Sentence one of RCW 61.24.030(7)(a) grammatically analyzed.

The first word in the first sentence of RCW 61.24.030(7)(a), "That," is a relative pronoun that relates the prepositional phrase, "for residential real property," to the essential subject of the sentence, "trustee." It also relates the prepositional clause, "before the notice of trustee's sale is recorded, transmitted or served," to the essential subject. The prepositional phrase and prepositional clause modify the essential subject by telling us for what type of property the trustee is required to have proof and when the trustee is required to have that proof. Thus, the complete subject of the first sentence of RCW 61.24.030(7)(a) is "the trustee, for residential real property, before the notice of trustee's sale is recorded, transmitted or served."

This leaves only one finite verb that is not part of the complete subject of sentence one, "shall be." "Shall be," therefore, is the essential predicate of sentence one. The direct object of the essential predicate in sentence one is the noun "proof." The clause that immediately follows the direct object, "that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust," serves as an adjective that modifies the direct object. Hence, the complete predicate for sentence one is the essential predicate, "shall have," plus all of the words that come after it in the sentence: "shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust."

Having grammatically de-constructed sentence one, the essential meaning of the sentence is now fully visable: the trustee (subject) shall have (essential predicate) proof (direct object of essential predicate) that the beneficiary is the owner of the promissory note secured by the deed of trust (adjectival modifier of the direct object), exactly as the unambiguous language of the sentence indicates. Because the language, and meaning of the language, is unambiguous, the trial court was required to enforce the language exactly as written. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518 (2004) ("Our primary objective is to ascertain and give effect to the intent and purpose of the legislature in creating the statute. *State v. Watson* , 146 Wn.2d 947 , 954, 51 P.3d 66 (2002) ("First, we attempt to derive

legislative intent from the language of the statute itself. *Id.* If the statute is clear on its face, its meaning is to be ascertained from the language of the statute alone. *Id.* Legislative definitions included in the statute are controlling. *Id.* However, in the absence of a statutory definition, we give the term its plain and ordinary meaning ascertained from a standard dictionary. *Id.*")

There is no ambiguity about the word "owner." People across the world, including very young children, know precisely what the word means. Respondent admits Wells has not been the owner of the promissory note at any time during the foreclosure proceedings. Consequently, the trial judge was duty bound to find the NOTS had been unlawfully recorded in violation of RCW 61.24.030(7)(a) and was therefore a violation of NWTS's statutorily-imposed duty of good faith. Instead, on the basis of the second sentence of RCW 61.24.030(7)(a), the trial court ruled Wells was the holder of the note and Wells declaration therefore authorized NWTS to record the NOTS. As the analyses of sentence two of (7)(a) provided above and below demonstrate, the basis for the court's ruling is fatally flawed. Consequently, the ruling was erroneous and should be reversed.

b. NWTS claimed Wells' lack of ownership of the Note was irrelevant and the trial court agreed.

NWTS claimed Wells' lack of ownership of the note was irrelevant. The trial court agreed with this claim.

The claim that ownership of the note is irrelevant is based upon the antecedent claim that RCW 61.24.030(7)(a)'s requirements are met by the submission of a declaration stating that the declarant is the holder of the promissory note secured by the deed of trust, even if the declarant is not the owner of the promissory note. The claim is utter nonsense. Taken in conjunction with the clear meaning of the first sentence of RCW 61.24.030(7)(a), the analyses provided above and below prove, beyond reasonable dispute, that NWTS's reliance on Wells' declaration as the basis for its ruling was reversible error.

c. Understanding the need to harmonize the purpose of sentence two of RCW 61.24.030(7)(a) with the purpose of sentence one.

To understand the meaning of sentence two of RCW 61.24.030(7)(a), it is necessary to understand first that the meaning of sentence two is inextricably connected to the meaning of the first sentence of RCW 61.24.030(7)(a). Consequently, to understand the meaning of sentence two, it is necessary that we study the sentence with the objective of harmonizing its meaning with the meaning of sentence one.

Harmonization of the various parts of a statute---rather than the establishment of conflict between the various parts of a statute---is precisely the approach that Washington courts have insisted upon for at least the past 90 years. *Hansen v. Harris*, 123 Wash. 109, 212 P. 171 (1923); *Burlington N., Inc. v. Johnston*, 89 Wn.2d 321, 572 P.2d 1085 (1977) ("In interpreting a statute, it is the duty of the court to ascertain and give effect to the intent and purpose of the legislature, as expressed in the act. The act must be construed as a whole, and effect should be given to all the language used. Also, all of the provisions of the act must be considered in their relation to each other and, if possible, harmonized to insure proper construction of each provision."(emphasis added)); *Publishers Forest Products Co. v. State*, 81 Wn.2d 814, 816, 505 P.2d 453 (1973); *Estate of Kerr*, 134 Wn.2d 328, 335, 949 P.2d 810 (1998) ("In interpreting a statute, we are obliged to construe the enactment as a whole, and to give effect to all language used. Every provision must be viewed in relation to other provisions and harmonized if at all possible." (emphasis added)); and *Regence Blueshield v. Office of Ins., Comm'r.*, 131 Wn. App. 639, 648 (2006) (". . . to ensure proper construction, we should consider and harmonize the statutory provisions in relation to each other." (emphasis added)).

Of course, it is impossible to harmonize one provision of a statute with other provisions of the same statute unless each provision of the statute is internally harmonized. This task of internally harmonizing RCW 61.24.030(7)(a) will be completed by performing the same type of grammatical analysis on sentence two that was performed herein above on sentence one of RCW 61.24.030(7)(a).

d. Grammatical analysis of sentence two of RCW 61.24.030(7)(a).

The second sentence of RCW 61.24.030(7)(a) reads as follows:

> A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.

The noun "declaration" is the essential subject of the sentence. The prepositional phrases, "by the beneficiary" and "made under the penalty of perjury" both function as adjectives to modify the essential subject. The participial clause, "stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust," also functions as an adjective to modify the essential subject, "declaration." Thus, the complete subject of the sentence is "A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by

the deed of trust." The only finite verb in this complex sentence that is not part of the complete subject of the sentence is the verb, "shall be." "Shall be," therefore, is the essential predicate of the sentence.

As was the case with the first sentence of RCW 61.24.030(7)(a), the direct object of the essential predicate in sentence two is the noun "proof." The prepositional phrase, "as required under this subsection," modifies the direct object, "proof," in the second sentence in the same way that the adjectival clause, "that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust," modifies the direct object, "proof," in the first sentence. Hence, the complete predicate for sentence two is the essential predicate, "shall be," plus all of the words that come after it in the sentence: "shall be proof as required under this subsection."

e. Analysis of the relationship of sentence two of RCW 61.24.030(7)(a) to sentence one of RCW 61.24.030(7)(a).

Notice that the structure of sentence two is almost the mirror image of the structure of sentence one. The essential subject is modified by two or more phrases and/or clauses in both sentences. The noun that serves as the direct object of the essential predicate is the same in both sentences, "proof." The direct object---proof---in sentence one is modified by the

adjectival clause, "that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust," while the direct object---proof---in sentence two is modified by the prepositional phrase, serving as an adjective element, "as required by this subsection." Additionally, it is clear, as explained immediately below, that the adjectival phrase, "as required by this subsection," in sentence two is a direct reference back to the adjectival clause, "that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust," in sentence one.

The complete predicate in sentence two does not explicitly read, "proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust." It reads, "proof as required under this subsection." But a review of each of the subparts of subsection 7 of RCW 61.24.030, (a) through (c), reveals that the only "proof" requirement mentioned in any of the subparts is the "proof" requirement in subpart (a). As an inescapable result of this fact, the complete predicate in sentence two is, undeniably, a direct reference back to the complete predicate in sentence one. And the adjectival modifier, "as required under this subsection," in sentence two is a direct reference back to the adjectival modifier, "that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust," in sentence one.

Both sentences in RCW 61.24.030(7)(a) require proof that the beneficiary is the owner of the promissory note secured by the deed of trust. Accordingly, a declarant does not meet the ownership requirements of RCW 61.24.030(7)(a) by submitting a declaration that states the beneficiary is the actual holder of the promissory note unless the declaration is submitted for the purpose of proving the beneficiary is the owner of the promissory note.

Consequently, the meticulous grammatical interpretations of sentences one and two of (7)(a) provided above firmly support the less arduous, but equally accurate, interpretation in which we substituted the adjectival clause, "that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust" from sentence one for the word "beneficiary" in the phrase "A declaration by the beneficiary" in sentence two.

NWTS has admitted Wells was not the owner of the Note when NWTS recorded the NOTS. NWTS admits it knew Wells was not the owner of the Note when NWTS recorded the NOTS. Consequently, NWTS could not have accepted the declaration as proof that Wells was the owner of the Note. Hence, NWTS had no right to record, transmit or serve the NOTS. Issuance of the notice, therefore, was illegal, and the trial

court's order granting Respondent's dismissal motion was reversible error.

D. BENEFITS OF MY POSITION VERSES BURDENS OF RESPONDENT'S POSITION.

1. My position requires the court to enforce RCW 61.24.030(7)(a) exactly as written. Respondent's position requires the court to remove language---"owner of any promissory note or other obligation secured by the deed of trust"---from sentences one and two of RCW 61.24.030(7)(a). *Washington in re Longview Fire Fighters Union v. Longview*, 65 Wn.2d 568, 571 (1965) ("Courts will not construe a statute so that words used therein are meaningless.").

2. Because the language of the statutory provision is unambiguous, my position requires the court to interpret the meaning of the provision by analyzing the words of the statute alone. Respondent's position requires the court to look outside the statute. *Regence Blueshield v. Office of Insurance. Comm'r.*, 131 Wn. App. 639, 647 (2006) (". . . if the statutory language is clear, the court may not look beyond that language or consider legislative history but should glean the legislative intent through the statutory language.").

3. My position requires the court to consider the two sentences of RCW 61.24.030(7)(a) in relation to one another and to harmonize the two sentences. Respondents' position pits the two sentences against one another. *See citations for Position 4 next below.*

4. My position harmonizes the meaning of the clause, "owner of the promissory note secured by the deed of trust" in RCW 61.24.030(7)(a) with the meaning of that same clause in the other three subsections of the WDTA in which the clause is utilized. RCW 61.24.030(8)(l) ("the name and address of the *owner of any promissory notes or other obligations secured by the deed of trust*"); RCW 61.24.040(2) ("*Beneficiary of your Deed of Trust and owner of the obligation secured thereby.*"); and RCW 61.24.163(5)(c) ("Proof that the entity claiming to be the beneficiary is the *owner of any promissory note or obligation secured by the deed of trust.*"). *Publishers Forest Products Co. v. Washington*, 81 Wn.2d 814, 816 (1973) ("All the provisions of an act must be considered in their relation to each other and, if possible, harmoniously construed to insure proper construction of each provision; and *Hansen v. Harris*, 123 Wash. 109, 212 P. 171 (1923). Respondent's position requires the court to find that the same clause used in different sections of the WDTA means different

things, even though, in the case of RCW 61.24.030(8)(l), the clause became law in the State of Washington as part of the same bill, SB 5810, that made the clause in RCW 61.24.030(7)(a) law in Washington.

5. My position gives meaning to every word in each of the two sentences of RCW 61.24.030(7)(a). Respondent's position renders key portions of RCW 61.24.030(7)(a) superfluous and requires the court to read key words out of each sentence of the provision. *State ex rel. Longview Fire Fighters Union v. Longview*, 65 Wn.2d 568, 571, 399 P.2d 1 (1965) ("Courts will not construe a statute so that words used therein are meaningless."); *Health Cooperative of Puget Sound v. King Cy. Medical Soc.*, 39 Wn. (2d) 586, 637, 237 P. (2d) 737 (1951) ("A statute or constitutional provision should, if possible, be so construed that no clause, sentence or word shall be superfluous, void, or insignificant.");

6. My position is a reasonable interpretation of RCW 61.24.030(7)(a) which reinforces the meaning of the unambiguous language used in subsection 7 and makes the subsection internally sensible. Respondent's position, on the other hand, turns the provision into an absurdity. Respondent's assertion that a declaration submitted by a declarant who admits he *is not the owner* of a promissory note satisfies the requirements of a statutory provision that requires proof that the declarant *is the owner*

of that note is absurd, and, if accepted by this court, turns RCW 61.24.030(7)(a) into an absurdity. *Martin v. Department of Social Security*, 12 Wn. (2d) 329, 331, 121 P. (2d) 394 (1942) ("A statute should not be given an interpretation which would make it an absurdity when it is susceptible of a reasonable interpretation which would carry out the manifest intent of the legislature.").

7. My interpretation aligns the meaning of beneficiary in the WDTA with the meaning of the same term in the private agreement between the parties: the DOT. The DOT secures *to the Lender*: *repayment* of the debt evidenced by the Note. The Lender as the entity that created the debt by lending the money is the *owner* of the debt. The idea that the *owner* of the debt is the *beneficiary* the deed of trust is reinforced by the word "repayment." One cannot be *repaid* unless one has first *paid*.

The Lender (or its successors or assigns) is the only person that has paid. It makes all the sense in the world that the beneficiary of a DOT that secures repayment of a debt should be the person to whom the debt is owed: the Lender (or its successors or assigns). It makes no sense that the beneficiary of a DOT that secures repayment of a debt should be someone to whom no portion of the debt is owed.

Notice that the owner of the debt and the beneficiary of the DOT that secures repayment of the debt are the same person under the DOT. Under my analyses of RCW 61.24.030(7)(a), the beneficiary of the DOT and the owner of debt are the same person. My analyses perfectly align the meaning of the word "beneficiary" contained in (7)(a) with the meaning of the word "beneficiary" in the DOT itself. This is exactly as it should be. Respondent's analysis, on the other hand, brings the meaning of the word in (7)(a) into conflict with the meaning of the word in the DOT itself.

There is no indication anywhere, either in the WDTA or its legislative history, that the Legislature intended the WDTA's definition of "beneficiary" to conflict with the definition found in the DOT itself. There is substantial evidence that the Legislature intended the two definitions to coincide---RCW 61.24.030(7)(a), 61.24.030(8)(l), 61.24.040(2), 61.24.070, and 61.24.163(5)(c).

8. Finally, my position prevents thieves and others who obtain notes by illegal means from foreclosing on defaulting borrowers. Respondent's position would make such conduct legal.

On each of the eight points discussed above, my position is completely supported by at least 100 years of Washington statutory-construction history (*State v. Miller*, 72 Wash. 154, 129 Pac. 1100 (1913).

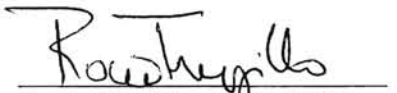
Wright v. Engum, 124 Wn.2d 343, 352, 878 P.2d 245 (1993); *Seattle v. McCready*, 123 Wn.2d 260, 280, 868 P.2d 134 (1994)); and by the grammatical analysis of the two sentences that comprise RCW 61.24.030(7)(a). Respondents' position on each of the eight points runs counter to that history and to the grammatical analysis.

IV CONCLUSION

The trial court's ruling is erroneous. This case should be returned to the trial court with instructions that the trial court find that the NOTS was recorded without lawful authority and that the foreclosure sale scheduled as part of the foreclosure proceeding that is the subject of this litigation cannot take place.

DATED this 7th day of October, 2013.

By: ROCIO TRUJILLO



Rocio Trujillo, Plaintiff Pro se

IN THE WASHINGTON STATE COUR OF APPEALS FOR DIVISION

ROCIO TRUJILLO, Appellant, vs. NORTHWEST TRUSTEE SERVICES, INC; and WELLS FARGO BANK, NA, Respondents.	Case No.: 705920 CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that, on the date stated below, I did the following:

On the 7th day of October, 2013, on behalf of myself, I mailed and emailed copies of the of the Opening Brief in Appeals Court Cause No. 705920 to:

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Dated this 7th day of October, 2013, in Seattle, WA.

R.T.

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