68832-4

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No. 68832-4-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

RYAN SANTWIRE, an individual

Appellant,

v.

UMPQUA BANK, an Oregon Bank

Respondent

RESPONDENT'S ANSWERING BRIEF

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I. INTRODUCTION AND SUMMARY

On June 10, 2009 Appellant Ryan Santwire executed and delivered a promissory note to Evergreen Bank for $1,251,685.04 secured by two separate Deeds of Trust on two separate pieces of real property. The Deeds of Trust expressly provide that the Lender "shall have the right to have a receiver appointed." The note matured and became due in full on July 6, 2010.

On January 22, 2010, the FDIC (as receiver of the failed Evergreen Bank) entered into a Purchase and Assumption Agreement with Respondent. The Agreement specifically conveyed all right, title, and interest of EvergreenBank to Respondent Umpqua bank. Since that time, Umpqua has had physical possession of the promissory note.

When Appellant failed to pay the total amount due and was in default and breach of the promissory note, Umpqua filed suit and sought appointment of a receiver. Appellant failed to present any evidence or argument contesting the allegations of Umpqua or the merits of a receivership. The trial court agreed with Umpqua and appointed an independent receiver to take charge of the real property securing the note.

The majority of Appellant's arguments on appeal should be rejected because they were not raised below. But even if this Court reaches the merits, it must affirm. The standard of review is abuse of discretion.

II. COUNTERSTATEMENT OF ISSUES

A. Is Respondent entitled to enforce the terms of the promissory note and deeds of trust it acquired via agreement with the Federal Deposit Insurance Corporation (FDIC)?

B. Did the trial court abuse its discretion in appointing a custodial receiver to manage the real estate assets which serve as collateral for the 1.2 million dollar (outstanding) promissory note which is indisputably in default?

III. COUNTERSTATEMENT OF THE CASE

Umpqua Bank is an Oregon Bank that is authorized to do business in the State of Washington. CP 13. Umpqua Bank is an assignee of the interest of EvergreenBank pursuant to a certain purchase and assumption agreement between Umpqua Bank and the Federal Deposit Insurance Corporation dated January 22, 2010, and is a successor beneficiary of EvergreenBank. CP 13-14. Umpqua Bank is the owner and holder of the promissory note and other obligations secured by the Deeds of Trust and security

instruments which are the subject of this litigation. CP 14.

On July 10, 2009, Appellant Ryan Santwire executed and delivered to EvergreenBank a Promissory Note (the "Note") for $1,251,685.04. This Note replaced a March 6, 2008, promissory note in the original amount of $1,531,989.21. CP 14. This was due to the Appellant having sold two of the five condominiums which secured the earlier Note.

The Note is secured by two Deeds of Trust on two pieces of real property: (1) the Beach Drive Property located at 4224 Beach Drive in Seattle, Washington and (2) the 75th Street Property located at 12069 75th Avenue South in Seattle, Washington. CP 18 – 36.The Deeds of trust expressly provide for the right of the holder of the note to appoint a receiver:

> Lender **shall have the right to have a receiver appointed to take possession of all or any part of the Property**, with the power to protect and preserve the Property, to operate the Property ***preceding*** or pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the

> Property exceeds the indebtedness by a substantial amount. Employment by lender shall not disqualify a person from serving as a receiver.

CP 24, 33 (emphasis added).

Appellant also executed and delivered to EvergreenBank, Assignments of Rents for both the Beach Drive Property and the 75th Street Property. CP 37 – 48.

As additional security for the Note, Appellant Santwire also executed and delivered to EvergreenBank a Commercial Pledge Agreement. CP 49 – 54. Pursuant to the Commercial Pledge Agreement, Appellant Santwire pledged to EvergreenBank all of his interest in a July 9, 2009, promissory note between Mr. Santwire as lender and Webster and Christina Barth as borrowers. This pledged promissory note was purportedly secured by a Deed of Trust. CP 14, CP 16.

The Note matured on July 6, 2010. Appellant failed to make timely payments under the Note and failed to pay the total amount due when the Note matured. CP 15.

The Beach Drive Property is a five unit condominium and Appellant owns three of the five units.

The Appellant failed to pay property taxes for 2011 and the property taxes for the first half of 2012. CP 15.

In January 22, 2010 the Federal Deposit Insurance Corporation ("FDIC"), as receiver of the failed Evergreen Bank, entered into a Purchase and Assumption Agreement with Respondent Umpqua. CP 302. Under that Agreement, Umpqua is the "Assuming Bank." The Agreement specifically provides:

> **3.1 Assets Purchased by Assuming Bank**. With the exception of certain assets [not applicable here], the Assuming Bank hereby purchases from the Receiver, and the Receiver hereby **sells, assigns, transfers, conveys, and delivers to the Assuming Bank, all right, title, and interest of the Receiver in and to all of the assets** (real, personal and mixed, wherever located and however acquired) including all subsidiaries, joint ventures, partnerships, and any and all other business combinations or arrangements, whether active, inactive, dissolved or terminated, of the Failed Bank whether or not reflected on the books of the Failed Bank as of Bank Closing.

Id.

The promissory note executed by Ryan Santwire to EvergreenBank was one of the assets identified in the Assumption Agreement.

Umpqua Bank sent out three Notices of Enforcement of Assignment of Rents to the tenants at the Beach Drive Property. CP 15. Umpqua subsequently learned that the Appellant had instructed the tenants at the Breach Drive Property to ignore Umpqua Bank's notices and to pay rent directly to him instead. *Id.* After the third notice, one of the tenants of the Beach Drive Property began paying rent to Umpqua Bank. *Id.*

In February 2011, Umpqua Bank received information that there was water intrusion at the Beach Drive Property. CP 15. Appellant did not provide this information despite his obligation to inform Umpqua Bank as an additional insured. *Id.*

The insurance company provided Umpqua Bank with a report showing that there was water damage to Unit 203 causing a ceiling collapse and possible mold growth. CP 55 – 64.

Appellant failed to provide Umpqua Bank with any information on inspection or remediation of the damage. CP 15. In July 2011, the owners of units 101 and 102 had the property inspected and provided a report to Umpqua Bank showing that the water damage had not yet been repaired. CP 65-70.

Umpqua Bank had a reasonable belief that that Appellant

collected insurance proceeds for the repairs of unit 203 but did not complete the repairs. CP 16.

The July 2011 report indicates that the roof and exterior of the Beach Drive Property are only in fair condition and that ongoing maintenance to the property has not been occurring. CP 65 – 70.

Based on this report, Umpqua Bank reasonably believed that the homeowners' association of the Beach Drive Property was not functioning and was not performing its administrative tasks or its protective functions. CP 16. Umpqua Bank believed that the Beach Drive Property was at risk of further deterioration, including mold growth due to water intrusion. *Id.*

The 75th Street Property has tenants. CP 16. Umpqua Bank sent Notices of Enforcement of Assignment of Rents three times to those tenants. *Id.* Because of Santwire's interference, prior to the institution of the receivership, those tenants refused to pay rent to Umpqua Bank. *Id.*

Due to Santwire's failure to cure the default, and his active interference with Umpqua's right to receive rents pursuant to the Assignments of Rents, Umpqua commenced this action on March 16, 2012. The court entered an order on March 20, 2012, requiring

Santwire to "appear and show cause" on April 23, 2012, why a receiver should not be appointed. CP 1 - 2. When he was served with the Order, Santwire had twenty seven (27) days to submit a Response.

On April 20, 2012, Santwire filed a "Response to Plaintiff's Request for Custodial Receiver." CP 754 - 756. The Response failed to address the allegations in the Complaint and Motion for Appointment of Receiver. *Id.* Instead, Santwire claimed that Umpqua lacked "standing" to bring the Complaint.[1]

On April 23, Santwire appeared (through counsel) at the show cause hearing, and requested and obtained a continuance to April 25, 2012. CP 767. On April 24, 2012 Santwire filed a "Supplemental" memorandum with respect to the show cause Order. CP 769 - 771. The memorandum again dealt primarily with the "real party in interest" argument. In dealing with the need for a receiver,

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1 Santwire conceded in his briefing that pursuant to CR 17(a), no action shall be dismissed for the reason that the real party in interest is not named until a "reasonable" time has been allowed to correct such a defect. Although Umpqua maintains it has always been the real party in interest in this action, the only objection Santwire made to Umpqua's standing was its failure to attach to the Complaint the 92 page Purchase and Assumption Agreement with the FDIC. CP 789 – 887. This document was submitted to the Court as an attachment to the Declaration of Ky Fullerton on or about April 24, 2012. CP 782-783.

the memorandum stated that Santwire would testify that the alleged "disrepair, if it ever existed, has been satisfactorily corrected." CP 770.[2] The memorandum did not claim that anyone would dispute Santwire's interference with the Assignment of Rents, failure to pay the promissory note, or other bases asserted by Umpqua supporting the appointment of a receiver. Further, although presented with the proposed Order appointing a Receiver, Santwire never presented any evidence that sales of the condominium units (as contemplated by the Proposed Order) were anything other than in the "ordinary course of business."[3]

At the April 25, 2012 hearing, Umpqua presented evidence in the form of testimony of a bank officer (and the Declaration of Ky Fullerton) relating to ownership of the note. Santwire presented *no* evidence contradicting Umpqua's position that it is the legal owner of the note. Furthermore, Santwire made no offer of proof as to what

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2 The memorandum also referenced a Declaration of Santwire. Counsel for Umpqua does not believe such a Declaration was ever filed.

3 This is important because, as discussed below, Santwire now contends on appeal that the scope of the custodial receivership of property securing the commercial loans exceeds the statutory authority of RCW 7.60.260(1). This argument should be deemed waived.

evidence he would have presented, had he been allowed to testify.

At the conclusion of the hearing, the commissioner ruled:

> I'm satisfied that Umpqua Bank has standing, that they own the note, that they have possession, dominion and control over it, that they have the right to enforce it. As well, I note from the pleadings, if I'm not mistaken, and counsel can correct me if I am, but Mr. Santwire recognized the right of Umpqua to manage these notes and collect the fees. And for a period of time, he actually transmitted money to them and then quit.

(4/25/12 TR p. 13 ll 8-15). The commissioner then entered the Order Appointing Receiver. CP 426 – 442. The Order was affirmed by the Hon. John Erlick on May 17, 2012. CP 969. At that hearing, Judge Erlick ruled as follows:

> The main contention below on why the appointment should not be made is the alleged failure of the plaintiff Umpqua Bank to show pursuant to Rule 17 that it was the real party in interest. The commissioner find -- found, and this court affirms, that there was more than sufficient evidence as to Umpqua Bank's standing to bring this action. It was uncontested that Mr. Santwire had not made payments and had been in default since 2010.
>
> The bank provided significant evidence of the assignment of the negotiable instruments underlying the promissory note -- that is, the deeds of trust and accompanying documents -- along with the assignment of rents provided to Evergreen Bank. Umpqua provided the commissioner with significant evidence that it was the successor in interest to

Evergreen Bank.

> Plaintiff provided proof of waste of the secured property, and most importantly, the deeds of trust, as well as other instruments, provided a contractual provision that allowed for appointment of a custodial receiver upon default of payments owing. With regard to the promissory note, the evidence before the commissioner, which was the sworn testimony of a bank officer that the bank had the original of the note, was sufficient for a finding of ownership of that note for purposes of appointment of custodial receiver.
>
> Considering all of the evidence as a whole, the commissioner did not err in appointing a custodial receiver, both under statutory authority, as well as under the contractual provisions of the deeds of trust....

(5/17/12 TR p. 25 l. 4 – 26 l. 24).

IV. SUMMARY OF RESPONSE

Umpqua bank, via agreement with the FDIC, is the legal and physical holder of underlying promissory note and the beneficiary of the concomitant Deeds of Trust which, in addition to RCW 7.60.025, expressly provide for appointment of a receiver. Appellant has presented no evidence to the contrary.

Appellant is indisputably in default of the subject promissory note, and has produced no evidence (at any stage of these proceedings) that appointment of a receiver is inappropriate.

The trial court did not abuse its discretion in appointing a custodial receiver to manage the real estate assets which serve as security for the defaulted promissory note.

V. RESPONSE

A. Standard of Review

The power to appoint a receiver is discretionary. *Cmt. & Human Servs. V. N.W. Defenders*, 118 Wn.App. 117, 212 (2003). A trial court abuses its discretion when its decision is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *T.S. v. boy Scouts of Am.,* 157 Wn.2d 416, 423 (2006)(quoting *State ex rel. Carroll v. Junker,* 79 Wn.2d 12, 26 (1971)).

B. The Superior Court did not commit error by failing to dismiss the Complaint for lack of standing.

Appellant has never produced any evidence that Umpqua bank is not the real party in interest and holder of the subject promissory note. The promissory note expressly provides that the terms of the note "shall inure to benefit of Lender and its successors and assigns." CP 88. The undisputed record demonstrates that on January 22, 2010 the FDIC, (as receiver of the failed Evergreen

Bank) entered into a Purchase and Assumption Agreement with Umpqua. CP 286-414. Under that Agreement, Umpqua is the "Assuming Bank." The Agreement specifically provides:

> **3.1 Assets Purchased by Assuming Bank**. With the exception of certain assets [not applicable here], the Assuming Bank hereby purchases from the Receiver, and the Receiver hereby **sells, assigns, transfers, conveys, and delivers to the Assuming Bank, all right, title, and interest of the Receiver in and to all of the assets** (real, personal and mixed, wherever located and however acquired) including all subsidiaries, joint ventures, partnerships, and any and all other business combinations or arrangements, whether active, inactive, dissolved or terminated, of the Failed Bank whether or not reflected on the books of the Failed Bank as of Bank Closing.

CP 302.

The promissory note and deeds of trust with Ryan Santwire were some of the assets identified in the Assumption Agreement. Additionally, Lynette Chen-Wagner (a Vice President at Umpqua) testified that Umpqua holds the promissory note and has not sold it. (4/25/12 TR p. 11l 12 – p. 12 l. 20)

Appellant cites RCW 62A.3-203 for the proposition that Umpqua did not establish any present ownership interest in the

promissory note at issue in this case. However, Appellant ignores Washington case law to the contrary:

> We conclude that the unambiguous language of the above statutory provision [RCW 62A.3-203(b)] supports the conclusion that the assignment of a note by the FDIC carries with it the right to enforce the instrument…

Federal Financial Co. v. Gerard, 90 Wn.App. 169, 176 (Div. 1 1998). In *Federal Financial,* the maker of a promissory note argued that the successor bank (through an assignment from the FDIC) did not hold the rights to enforce the note. This Court of Appeals rejected that argument. See also, RCW 30.44.270(3)(stating that when FDIC is appointed as a receiver, it has all the powers of a liquidator under Washington law).

The record demonstrates that as of January 22, 2010 Umpqua bank holds the rights to enforce the promissory note executed by Santwire, as well as the deeds of trust enforcing that debt obligation.

Similarly, Appellant's argument that Umpqua failed to establish its ownership because it did not present the original

documents to the trial court (pursuant to ER 1002) is without merit. ER 1003 specifically provides that

> A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Neither of the above exceptions to ER 1003 are present here. Santwire did not raise any "genuine question" as to authenticity of either the promissory note or the Purchase and Assumption Agreement with the FDIC in the trial court (or even in his briefing before this Court). A duplicate should be excluded only when the opponent produces "cogent and compelling evidence which would require the jury to find that the original is not authentic." *Mueller & Kirkpatrick*, 5 Federal Evidence § 574 (2d ed.). Indeed, he has never disputed that he executed the promissory note or that it is due and owing. Further, Santwire fails to articulate a single reason that admission of duplicates was somehow "unfair" to him.

C. Appointment of a Custodial Receiver was not an abuse of discretion.

As conceded by Appellant, the power to appoint a receiver is discretionary. *Cmty. & Human Servs. v. N.W. Defenders,* 118

Wn.App. 117, 121 (2003). A trial court abuses its discretion when its decision is "'manfiestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *T.S. v Boy Scounts of Am.*, 157 Wn.2d 416, 423 (2006).

A receiver "is a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage or dispose of property of the person." RCW 7.60.005(10). Unless the receiver is appointed under RCW 7.60.025(1)(b), a receiver may be appointed by the Court only if the Court determines that "the appointment of a receiver is reasonably necessary and that other available remedies are either not available or are inadequate." RCW 7.60.025(1)(b). Such a determination, however, is not necessary in a case in which the receiver's appointment with respect to real property is sought under RCW 7.60.025(1)(b).

Umpqua is entitled to appointment of a receiver based on contract as well as statute. The deeds of trust which secure the defaulted promissory not specifically provide for the right to appoint a receiver:

> Lender **shall have the right to have a receiver appointed to take possession of all or any part of the Property**, with the

> power to protect and preserve the Property, to operate the Property ***preceding*** or pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the indebtedness by a substantial amount. Employment by lender shall not disqualify a person from serving as a receiver.

CP 24, 33. This contractual provision alone entitles Umpqua to the relief it seeks in its Complaint.

> The contract between the parties; i.e., the promissory note and/or the deed of trust, may provide in its terms an agreement by the grantor that the beneficiary is entitled to obtain the appointment of a receiver to collect the rents and to manage the property in the event of a default in the terms of the deed of trust or the obligation secured thereby. **With this provision, the beneficiary would be entitled to seek the appointment of a receiver as a contract right separate and apart from the above statutory grounds described in the preceding subsection.**

27 Wash. Prac., Creditor's Remedies – Debtors' Relief § 3.71 (emphasis added).

Statutorily, a receiver may be appointed when:

> (1) a party is determined to have a right or interest in the property that is the subject of the action...or when the property or its revenue producing potential is in danger of being lost or materially injured or impaired. RCW 7.60.025(1)(a);
>
> (2) Upon attachment, with respect to personal or real property, where such property is in danger of waste, impairment, or destruction, or where the property owner has absconded with, secreted, or abandoned property; and, where it is necessary to collect, conserve, manage, control, protect it, or dispose of it promptly. RCW 7.60.025(1)(g).
>
> (3) In such other cases as may be provided for by law or in the discretion of the court, it may be necessary to secure ample justice to the parties. RCW 7.60.025(1)nn).

Umpqua presented ample evidence to the trial court supporting appointment of a receiver, including evidence of Santwire's default, his failure to maintain the roof of the Beach Drive Property, his failure to maintain the exterior of the property, his failure to routinely maintain the property, his failure to pay property taxes for on the Property, and his failure to promptly repair Unit 203 of the property after receiving insurance proceeds for such repairs. CP 13-17 (with attached exhibits).

Further, Umpqua presented evidence that Santwire was subverting the recorded Assignment of Rents by informing tenants to pay him rather than Umpqua. CP 15. It presented evidence that the properties were in danger of waste, impairment or destruction.

Finally, Umpqua established that justice calls for the appointment of a receiver when Santwire is in full default of a $1.2 million dollar debt.

Santwire presented *no evidence* or argument to contradict or rebut the allegations by Umpqua justifying a receiver. Rather, Santwire focused all of his energies on objecting to standing.[4]

On appeal (for the first time), Santwire now argues that appointment of the receiver was unnecessary because other remedies were available (such as a non-judicial foreclosure or mandatory injunction). See Appellant's Opening Brief at 20 - 21. However, Umpqua was not required to commence a foreclosure rather than seek appointment of a receiver. Umpqua has a contractual right to a receiver – especially when Santwire is fully in default of the promissory note.

Santwire also argues that the Court appointed an "expensive

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4 Santwire also argues that he was denied the ability to present evidence. This argument is addressed *infra*.

receiver." Santwire produced no evidence that the receiver is either unqualified or that its fees are unreasonable.

For the first time on appeal, Santwire also argues that the scope of the Order appointing a receiver is overly broad and/or exceeds the scope of RCW 7.60.260. First, Santwire never made any objection as to the scope of the Order in the court below, even though it was served on him on March 27, 2012. An issue or argument not briefed or argued in the trial court will not be considered for the first time on appeal. *See Brower v. Ackerly*, 88 Wn.App 87, 96 (1997); *see also* RAP 2.5(a). This rule ensures that the trial court has an opportunity to fully consider a matter upon proper briefing or argument and to correct its own errors, thereby avoiding unnecessary appeals or retrials. *Demlash v. Ross Stores, Inc.*, 105 Wn.App. 508, 527 (2001).

Second, RCW 7.60.260(1) specifically provides that a custodial receiver may sell property in the "ordinary course of business." Mr. Santwire is a real estate developer, and selling condominium units is in the ordinary course of his business.[5] He

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5 Of course, before any sale is approved by the trial court pursuant to the Order, Umpqua could present evidence that said sales are in the ordinary course of Mr. Santwire's business. Because this issue

does not occupy any of the condominium units as his personal residence. He has presented no evidence that the sale of these units would *not* be in the ordinary course of his business.[6] Appellant has failed to meet his burden.

Third, Santwire's argument about the statute ignores the fact that Umpqua sought a receivership based on its statutory rights, as well as its contractual rights. Appellant has presented no evidence that the trial court acted in a manifestly unreasonable way or on untenable grounds. There was no abuse of discretion.

D. The Appellant was not denied due process of law.

Despite his failure to file any declarations in response to Umpqua's claims of waste and financial mismanagement, Mr. Santwire now claims he was impermissibly prohibited from presenting oral testimony in response to the Umpqua Motions and Declarations. Mr. Santwire has not presented any authority

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was not argued or briefed in the trial court below, the record is incomplete as to this issue. However, the instruments involved (including the Deeds of Trust, Pledge Agreements, and Assignments of Rents) all confirm that this was a commercial, not a consumer, transaction.

6 There is a presumption in favor of the trial court's findings, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence. *Fisher-Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369 (1990).

permitting him to present evidence through testimony rather than Declaration. Regardless, Mr. Santwire has waived any claim of improper exclusion of evidence because he failed to make an offer of proof. ER 103(a)(2). *See also Seattle First Nat. Bank v. West Coast Rubber, Inc.*, 41 Wn.App. 604, 609 (Div. 1 1985) ("Because [defendant] did not make an offer of proof at trial, as required by ER 103(a)(2), error, if any, has been waived.")

In an effort to delay this process (as is evidenced by this appeal), Santwire obtained a continuance in order to purportedly prepare and present evidence, even though he had been served with the Order to Show Cause on March 27, 2012. Despite this continuance, Santwire presented no evidence or offer of proof controverting any of Umpqua's allegations supporting appointment of a receiver. In fact, Santwire's entire briefing consisted primarily of an allegation that Umpqua had failed to prove its 'standing' to bring the action.

Even now, after two hearings before the commissioner, a hearing on Santwire's Motion for Revision, and the filing of his Opening Brief, Santwire fails to articulate (in any form) what

evidence he would have presented that could have possibly changed the outcome.

E. Appellant is not entitled to attorney fees, and Respondent is entitled to attorney fees.

The Defendant should not prevail and is not entitled to an award of attorney fees. He is indisputably in default under the promissory note and deeds of trust. He owes Umpqua more than a million dollars which he is refusing to pay. Umpqua, as the prevailing party, is entitled to its reasonable attorney fees pursuant the Deeds of Trust which provide for both the appointment of a receiver and an attorney fee to the prevailing party:

> If Lender institutes any suit or action to enforce any of the terms of this Deed of Trust, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon appeal.

CP 24, CP 33.

VI. CONCLUSION

This appeal is without merit. Appellant is in full default and owes Umpqua over $1.2 million dollars, which is secured by the property at issue and under the control of the receiver. Umpqua has established its standing, and Santwire has presented no evidence to

CERTIFICATE OF SERVICE

I, Joseph A. Grube, certify that all at times mentioned herein I was and now am a citizen of the U.S. and a resident of the State of Washington, over the age of 18 years, not a party to this proceeding or interested therein, and competent to be a witness therein. My business address is that of Ricci Grube Breneman PLLC, 1200 Fifth Avenue, Suite 625, Seattle, Washington 98101. On October 15, 2012, I caused a copy of the foregoing BRIEF OF RESPONDENT, to be served on the following parties:

Via Mail:

Scott E. Stafne
John Flowers
239 N. Olympic Ave.
Arlington, WA 98223

I DECLARE UNDER PENALTY OF PERJURY UNDER WASHINGTON LAW THAT I HAVE READ THIS DECLARATION, KNOW ITS CONTENTS, AND I BELIEVE THE DECLARATION IS TRUE.

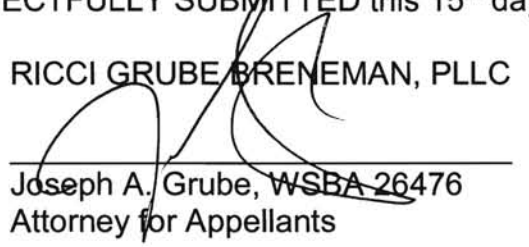
DATED at Seattle, Washington this 15th day of October, 2012.

Joseph A. Grube, WSBA #26476

the contrary. The trial court did not abuse its discretion in appointing a custodial receiver.

RESPECTFULLY SUBMITTED this 15th day of October, 2012.

RICCI GRUBE BRENEMAN, PLLC



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