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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SCOTT C TOWNLEY and STEPHANIE A TASHIRO-TOWNLEY,
Defendants/Appellants

vs.

BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK, TRUSTEE FOR CERTIFICATE HOLDERS CWABS, INC. ASSET BACKED CERTIFICATES, 2005-10, MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., AND OCWEN LOAN SERVICING LLC
Plaintiffs/Respondents

REPLY BRIEF OF APPELLANT

Appeal from King County Superior Court Case No: 12-2-06921-2 KNT
The Honorable LeRoy McCullough
The Honorable Hollis Hill

Stephanie A Tashiro-Townley
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Defendant / Appellant

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Respondents' Issues are addressed in the instant Appellants' Reply

1. Contrary to Respondents' misstated of the clear record Townleys' direct appeal was filed timely.
2. Case law and the legislature allows trial court subject matter jurisdiction over Townleys' request for remedy of declaratory judgment.
3. The facts of this case and supportive case law, most favorable to Respondents, show the foreclosure was never legally commencement. Albeit irregularities or the undisputed facts of fraud and deception in the (creation) production of documents that Respondents used to support the illusion of a valid interest in the subject property record, the Court's granting of recovery to Bank of New York Mellon (hereafter known as BONYM) was contrary to law and the facts.
4. The affirmative and equitable defenses not addressed by Respondents are sufficient to reinstate the Counter and Cross Complaint and support recovery for violations of the Consumer Protection Act (CPA) and common law, whereas, facts in support of said affirmative and equitable defenses are properly considered by a jury in a general proceeding.
5. Most favorable to Respondents, the undisputed facts of fraud and deception in light of the recent decisions in Bain and Albice are sufficient to warrant remand of Townleys case for jury trial pursuant to RCW 59.12.130 and its correlated Constitutional right to jury when a property interests (Townleys' home) of this nature stands at the core of the issues.
6. Respondents did not argue Townleys were prejudice by the absence of the filing of the Findings of Facts and Conclusions of Law; it is proper to remand in order for the fact finding Court to produce said findings and conclusions.
7. The record does not support Respondents' request for attorney fees pursuant of RAP 18.1; moreover, Respondents' brief shows bad faith or failure to review the complete record, etc.

C. Statement of the Case.

Procedural

Townleys are owners of the (subject property) single-family home located in Maple Valley, Washington obtained, relevant to the instant appeal, in 2005.

In order to eliminate redundancy, Townleys refer back to their Opening brief for the extensive general and procedural facts in the record.

The record is clear and shows the Motion for Revision of Commissioner's Order was timely filed; in other words, Respondents' claim said motion was not timely filed and the expansion of the claim there from into appeal, etc., is without merit.

Townleys state, with more specificity, the facts established in the Notice of Clarification (CP 89) allowed the Trial Court to address the electronic filing glitch and thereby, judicially determined the Townleys' Motion of Revision of Commissioner's Order (CP 81) timely filed. The Trial Court's review of the Notice of Clarification (CP 89) deemed the Motion for Revision (CP 81) timely filed. (VP pg 28, line 4, July 13th hearing) Townleys also filed a Notice of Appeal on May 30th, this was premature, yet, well within the required 30 day time frame for filing an appeal. (CP87)

C. ARGUMENT

SUMMARY OF ARGUMENT

The premise of Respondents' brief is rooted in inaccurate interpretations of several relevant Washington statutes and the record. Respondents' omission of material facts that sit firmly in the record--pleadings and verbatim record--in order to create issues and grounds is wholly improper and contrary to Rules of Professional Conduct.

Initially, it is reasonable to assume Respondents hoped to catch the Court unaware by improperly interpreting and omitting procedural facts and pleadings that stand in the record (including the verbatim record) in an attempt to sway this Court. Townleys filed a timely Notice of Appeal (CP 87) on May 30th. Granted it

was premature, yet, the notice was, as a matter of law, timely filed. The Trial Court properly addressed the issue of timeliness regarding the filing date of the Motion of Revision of Commissioner's Order (CP 81) on July 13th. The Trial Court ruled the Motion timely filed after considering the Notice of Clarification (CP 89), addressing the one-minute delay between filing and upload time caused by the electronic case filing system, which said system gave an incorrect date designation of May 30th. Therefore, Respondents' claim the document was filed on May 30th instead of the May 29th is contrary to the record, the Court's determination and the facts.

Since the Trial Court ruled the motion, in question timely filed and Respondents offered no factual basis or procedural flaw to support their claim, it is proper to disregard the argument was standing wholly without merit. The motion was timely filed and the Notice of Appeal was timely filed. In addition, Respondents present no facts of prejudice like lack of notice, etc., worked on Respondents relating said motion's filing time. In other words, Respondents raise not of issue of improper notice, therefore, the necessary element required to justify raising the issue for the first time on appeal.

The records show Townleys argued consistently, beginning with their Answer and Affirmative Defenses (CP 12), claiming BONYM had no standing to commence foreclosure or invoke RCW 61.24.et seq.'s proceedings. RCW 61.24. et seq., is a strict compliance statute. Facts in dispute go back the US

Bankruptcy Court records, the relevant part of that case was properly filed in this matter.

With Washington's recent Bain v. Metropolitan decision (infra) the Court address the inability of MERS to transfer property, therefore here, any transfer to BONYM is void. Metaphorically speaking, since Respondents did not possess an apple, they could not hand the Court an apple. Therefore, any transfer of title is void ab initio and Townleys own the subject property because it was taken contrary to Bain (Id.). Of course, the facts supporting fraud and deception warrant additional reasons to show the illegal taking of the subject property.

In other words, pursuant to Bain, Respondents did not hold a valid interest in the property; therefore, they could not transfer authority to the Court in order to obtain an eviction order, recovery, etc. even if Respondents use word "memorializing" to describe the act of late conveyance; it stands against statutory language. Respondents lacked interest in Townleys' home, therefore, they lacked the authority to foreclose or commence a foreclosure regarding Townleys' home. As such, the Court improperly granted Respondents an order of restitution under RCW 59.12. Moreover, the transfer of title of Townleys' home is void and any application of RCW 61.24.040 and 61.24.060 are nullified. BONYM obtained their legal position to file an Unlawful Detainer per RCW 59.12.032, improperly, contrary to Bain, and by the use of the creation of fraudulent documents presented to the Court to create the illusion of a valid interest in

Townleys' home where none existed. Though at this juncture in the matter, by way of the Bain (Id.) decision, the Trial Court's grant of eviction was improper and must be reversed because Respondents' beneficiary (MERS) is deemed unable to stand as a beneficiary under RCW 61.24's criteria in Washington.

The facts presented in this case showing fraud, deception, etc., properly rest in the province of a jury. Allowing Townleys to present said facts to a jury to determine the issues of fraud, CPA violations and common law claims, which said common law claims are authorized in Washington, is proper, warranted and just. Respondents proceeded and took Townleys' home without possess of a valid interest in the subject property. At a minimum and consistent with Bain (Id.) Respondents did not hold legal standing to invoke the Deed Trust Act under the plain language of RCW 61.24., because MERS is not a proper beneficiary. To state it simply, in order to commence a foreclosure, one must possess a legal beneficiary. MERS, under Bain, is not a legal beneficiary. Therefore, BONYM could not legally proceed to foreclose on Townleys' home. The foreclosure was unlawful.

The facts submitted in this case show BONYM chose to commit deception and fraud on the Court, Townleys and the public by creating documents out of thin air that were used to create the illusion of interest in Townleys' home. Under the Deed Trust Act and RCW 59.12.130, given the facts submitted in this case, the Commissioner's failure to grant Townelys a trial on

issue of ownership in the eviction proceedings was reversible error. (CP 12) The issue pertaining to Townleys' right of possession and whether Townleys actually owed BONYM any monies, was one of fact and therefore, rested in the province of the jury.

It is proper to consolidate a Declaratory Judgment remedy in an Unlawful Detainer proceeding when the right of ownership of a home is at stake. Thus, with undisputed facts having to do with right of possession, fraud, and deception, the Trial Court had jurisdiction to hear the Declaratory Judgment, when here, the question of ownership was at stake. Therefore, it is proper to remand the case to address the request for Declaratory Judgment relief and present facts to determine the legality of the unlawful detainer action for jury trial per RCW 59.12.130. Finally, facts showing fraud and deception worked on the Townleys allow Townleys to go beyond the scope of statutory schemes and recovery language (beyond RCW 19.86, et seq.) and seek common law remedy. (Accord, Sofie, (infra))

Respondents put forth an argument about RCW 61.24.127 for the first time on appeal. This is improper because a party cannot raise an issue for the first time on appeal in the manner Respondents raised the issue. However, it is properly to points out the bad faith Respondents counsel continues to operate. This is mentioned regarding Respondents' request for the award of attorney fees; namely, the Court should not award Respondents any fees per RAP 18.1, this

would stand to reward Respondents for their egregious acts in misquoting the record albeit ignoring relevant parts of the record, etc. In the Court the pattern of behavior and bad faith can be seen by the four various BONYM attorneys given Townleys filed those exhibits from the other courts into the instant case. Respondent should be sanctioned for omissions of the record in order to claim valid issues and the misleading of "memorializing". In fact, the memorializing acts to sustain the fraud in Respondents' normal course of business.

Finally, any arguments in Respondents' brief deemed outside any factual basis or law are not argued. However, Townleys do not waive the opportunity to address those sections having to do with Bain, Albice and Cox. (supra)

ARGUMENT: MOTION FOR REVISION WAS PROPERLY RULED TIMELY BY TRIAL JUDGE PER ELECTRONIC FILING ISSUE

Respondents argue incorrectly, when they raise a procedural of filing time errors relating to the Notice of Appeal. This matter was settled in open court on July 13th as the record shows.

Respondents show bad faith by omitting portions of the record that establish the Notice of Appeal was filed and served on May 30th, which well within the 30 day time limit. (CP 87)

Respondents also omit the verbatim record of the July 13th hearing, where the Honorable Judge McCullough ruled the filings and service were timely. The Honorable Judge McCullough stated, "As far as I am concerned it was timely."

(VP, pg 28, line 4). Therefore, the trial judge ruled the motion was filed "timely" and was properly before the Court. Respondent attempt to mislead the Court, whether that is intentional or simply lack of a proper review of the record, the fact remains establishing Respondents' claims hold no merit.

The physical filing of the Motion for Revision of the Commissioner's Order was had on May 29th at 4:25 p.m. (CP 89). The upload time of the documents and final acceptance can go (for every one timely filing close to 4:30 pm) past 4:30 p.m., and this is what happened. Townelys' upload, after filing at 4:25 p.m., was completed at 4:31pm on May 29th, the docket may show May 30th, yet, this is simply because the computer system's default kicks documents completing past 4:30 p.m., to the next day. This default aspect is beyond Townleys' control. The Trial Court ruled the document was timely filed on May 29th at 4:25 pm because that is the truth.

Respondents fail to argue improper notice because they were timely served. Townleys stated the document was filed timely (VP, pg 26, line 7-9 and in the Declaration in Support of Motion for Revision, pg 2, II 8-9) Respondents additionally neglect to note that 10 days after May 17th 2012 is (May 27th) a Sunday. Moreover, the following day, Monday May 28th was Memorial Day and the courthouse was closed. Tuesday was May 29th, the next available day to file. Respondents attempt to mislead the Court by the omission of facts and the Court's determinations regarding this matter.

Though, Appellants feel it is unnecessary to carry this issue further, nevertheless, please note, it is reasonable to state King County stands with more e-filings per day because of the local rule mandating all attorneys must e-file, compared to other Washington Counties that either don't require e-file or hold less strict criteria. A computer system takes time to process the uploading of documents. Without a claim of improper notice, which factually does not exist, the whole of Respondents' issue, if it was valid and it is not, stands without merit.

COURT IMPROPERLY RULED IN RESPONDENTS' FAVOR REGARDING THE UNLAWFUL DETAINER ACTION PER RCW 59.12.032

Subject matter jurisdiction argument by Respondents is contrary Washington Law. Initially, Townleys stated in the Answer and Affirmative Defenses (CP 12, pg 4-15) that BONYM had no right to possession and improperly commencement the foreclosure. Moreover, the foreclosure proceeding held irregularities. Townleys also documented their argument in the Motion for Revision of Commissioner's Order (CP 81, pg 3, ll 4-9). Although Townleys are not attorneys and made an error citing the RCW 59.18 in the Response to the Unlawful Detainer, this does diminish the undisputed facts Respondents ignore.

Without strict compliance with the Deed Trust Act, the court must rule in favor of the borrower (Townleys). Furthermore, the facts the experts presented sustained the improper commencement of the foreclosure. Without a legal

invocation of RCW 61.24 et seq, the alleged waiver per RCW 61.24.130 is moot. (CP 81, pg 7). Without legal standing i.e. a valid interest in the subject property, the invocation of RCW 61.24 et seq., is void ab initio. Absence strict statutory requirements of RCW 61.24.040 and 61.24.060, whereas, these requirements were not satisfied, BONYM had no legal right to pursue Unlawful Detainer action against the Townleys, per RCW 59.12.032.

The Trial Court had no jurisdiction to rule in Respondents' favor in this matter. As the court held in Truly v Heuft, *138 Wn. App. 913, (2007)*, "*A judgment entered by a trial court lacking jurisdiction over the matter must be vacated.*" Therefore, all orders entered in this matter that stand to take Townleys' home from their possession must be vacated as a matter of law.

Further, Respondents did not dispute any facts having to do with authority of the trustee to pin a Notice of Default to the Townleys garage on July 8, 2009. Respondents' brief mentions "memorializing" the alleged transfer of the Note by Assignment of the DOT, in an effort to prove BONYM's right to foreclose. One cannot transfer a Note into a Trust that does not exist per the undisputed communication from the US Securities Exchange Commission (CP 65 – Ex. B and C).

Respondents are aware the Honorable Chief Judge Overstreet of US Bankruptcy Court stated, "The bank's standing has not been proven, Bank of New York standing has not been proven." (CP 73, Motion for Reconsideration of

Denial of Petition for Declaratory Judgment, Declaration in Support of Motion, pg 2, (certified transcript 6/11/2010, pg 7, ll12-15). BONYM has yet to provide any proof of a valid interest (standing); thus, part of the reasons Townleys stand in the instant direct appeal after their bankruptcy case was dismissed. As the Court held in Laffranchi v Lim, quoted in relevant part,

> "While chapter 59.12 is designed to provide expeditious, summary proceedings, it is in derogation of the common law and must be strictly construed in favor of the tenant. To take advantage of these summary proceedings, the purchaser must comply with all statutory requirements. If the purchaser fails to do so, the court lacks subject matter jurisdiction to proceed under chapter 59.12 RCW. For example, we recently held that a landlord's failure to use amended statutory language allowing a tenant to serve an answer not only by personal delivery but also by mail or facsimile deprived the court of subject matter jurisdiction."

Id. *146 Wn. App. 376, (August 2008)*

Finally, Respondents did not dispute any of the facts submitted to the court in various pleadings as shown in the section named Undisputed Facts. Respondents acted without authority to commence a foreclosure action against the Townleys. Townleys state Respondents' acts are tantamount to stealing their home.

COURT HAD NO AUTHORITY TO GRANT THE UNLAWFUL DETAINER - RESPONDENTS FAILED TO LEGALLY COMMENCE THE FORECLOSURE

As previously argued in the Opening brief and the Motion for Reconsideration (CP 73), the Petition for Declaratory Judgment was properly before the Trial Court given the limited proceedings of an Unlawful Detainer; that

is, most favorable to BONYM. The Superior Court Trial heard the review of the Unlawful Detainer and Declaratory Judgment together after the Court consolidated the two issues. *(Fallahzadeh v. Ghorbanian 119 Wn. App. 596 (2004)*.

However, given the lack of authority for the commencement of the foreclosure, the Court improperly granted Respondents the unlawful detainer. Therefore, the Appellate Court must vacate the Order Denying the Petition for Declaratory Judgment per *Truly vs. Hueft*, supra.

COURT HAD NO AUTHORITY TO GRANT THE UNLAWFUL DETAINER – ORDER DISMISSING COUNTER AND CROSS COMPLAINT IS PROPER

Order dismissing Counter and Cross Complaint (CP 69) was due to lack of subject matter jurisdiction as stated in the verbatim record where Commissioner Hill said she would "dismiss the counter and cross complaint because they're not appropriately filed within this writ of restitution action." (VP, pg 16, ll 6-8)

Townleys argued the undisputed facts of fraud and deception (Petition for Declaratory Judgment, CP 11), undisputed equitable defenses (Answer and Affirmative Defenses (CP 12) and Counter and Cross Complaint (CP 16)), as well as violations of RCW 61.24 et seq. At minimum, the Townleys complaint meets the requirements to be reinstituted. *Skarperud v. Long 40 Wn. App. 548, 699 P.2d 786 (1985) and* Motoda v. Donohoe, 1 Wn. App. 174, 459 P.2d 654 (1969).

The undisputed facts in the record show BONYM did not possess valid interest in the subject property, therefore, no legal authority to invoke RCW 61.24., i.e. no authority to commence the foreclosure. Since the facts presented by Townleys stood to show the foreclosure was unlawful, the Trial Court improperly granted the Unlawful Detainer to Respondents. BONYM did not possess the right to foreclose and therefore did not possess the right to evict, etc. The Appellate Court must vacate both Orders coming out of the exparte court, to wit, Order of Writ of Restitution (CP 70) and Order Dismissing the Cross and Counter Complaints (CP 69).

Furthermore, it is proper, since Townleys have already paid the fee required to have the Complaint heard (CP 16 fee received), the Complaint should be transferred to a general proceedings, where, if necessary, Townleys can amend with additional causes of action and correct the list of defendants.

Respondents did not argue or dispute the equitable defenses but attempted to state there are not facts to support the claims, which is contrary to the record and simply without merit.

MOST FAVORABLE TO RESPONDENTS, IRREGULARITIES VOID THE SALE PER THE STRICT COMPLIANCE OF RCW 61.24 et seq

Townleys argued, most favorable to the Respondents, there are numerous other irregularities that make any transfer of the property void, of course, assuming that they properly invoked the Deed Trust Act. The lack of

authority of MERS to transfer a Deed of Trust four years after the alleged transfer of the Note into a non-existent Trust is an undisputed fact and an irregularity.

Respondents chose to characterize the act of signing and filing the Assignment of Deed of Trust as a memorializing event. Given the fact there was no Trust by the name they state on their documents to transfer the Note into, simply means that the Respondents wish to remember, recall and honor an action of deception and fraud worked on the Townleys, the Court and an unwitting public. (CP 73, Declaration in Support of Motion of Reconsideration, pg 6, ll 6-10). This is a direct appeal and Townleys stand as owners of the subject property. As the Court held in *Hous. Auth. of City of Pasco v. Pleasant,* stated in relevant part,

> "'[O]ne may have a right to the possession as against another who has the possession, as in the simple case of one who has been ousted from the land by another.' "Id. (quoting 1 H. TIFFANY, REAL PROPERTY § 20 (B. Jones 3d ed. 1939)). In an unlawful detainer context, it is the right to possession that is pivotal, not mere present possession. *Little v. Catania* , 48 Wn.2d 890 , 893, 297 P.2d 255 (1956); *First Union Mgmt., Inc. v. Slack* , 36 Wn.2d 868, App. 849, 853-54, 679 P.2d 936 (1984); *Motoda v. Donohoe* , 1Wn.App 94, App. 174 , 175, 459 P.2d 654 (1969). When the right to possession is at issue, the issue is not moot. *Lochridge v. Natsuhara* , 114 Wash. 326 , 330, 194 P. 974 (1921). The Washington Supreme simply because the tenant does not have possession of the premises at the time of appeal.

Id. 126 Wn. App. 382, Hous. Auth. of City of Pasco v. Pleasant (Mar 2005)

The undisputed facts and argument regarding a Note transferred into a trust that does not exist and the voidable Assignment of Deed of Trust per Bain vs Metropolitan, stands to show the Commissioner improperly granted Respondents remedy. The Court must vacate the Order for the Writ of Restitution and reinstate the Counter and Cross Complaint into a general proceedings because there were sufficient facts to state a claim.

CPA CLAIMS ARE PROPERLY BEFORE THE COURT – REMAND IS WARRANTED DUE TO IMPROPER FORECLOSURE AND EVICTION

The facts show Respondents compromised the integrity of RCW 61.24 et seq., and RCW 59.12 as well. The evidence of fraud, deception, and pleadings submitted to the Commissioner and in review by the Superior Court, are sufficient sustain the claim of the fraud and deception worked on the Townleys, the Court and the public. Of clear relevance is the fact, the Honorable Judge McCullough stated on July 13th, 2012, quoted in relevant part,

> "Now this does not mean that the fraud that's alleged will not be before a jury or before a court..... I have not been convinced that this plaintiff engaged in fraudulent behavior. But I think that that is proper information to go before a jury and a judge in a different proceeding."

Judge McCullough in VP (July 13, 2012), Pg 41, ll 1-3 and 6-10

Townleys understand to prevail on a CPA claim they need to establish (1) an unfair or deceptive act or practice; (2) that occurs in trade or commerce; (3) a public interest; (4) injury to the plaintiff; and (5) a causal link between the unfair or deceptive act and the injury suffered. The facts stand in support of these

areas. As the Court held in Panag v Farmers Ins, Co. of Wash, quoted in relevant part,

> The CPA is to be "liberally construed that its beneficial purposes may be served." RCW 19.86.920; *Short v. Demopolis*, 103 Wn.2d 52, 61, 691 P.2d 163 (1984).
>
> The CPA's citizen suit provision states that "[a]ny person who is injured in his or her business or property" by a violation of the act may bring a civil suit for injunctive relief, damages, attorney fees and costs, and treble damages. RCW 19.86.090.

Id. 166 Wn.2d 27, (2009)

While the presence of MERS on the Assignment of Deed of Trust voids the transfer of the Deed of Trust to BONYM and thus making title transfer void after the wrongful foreclosure occurred, it also satisfies the first element in the CPA. The expert supporting Townleys claims of fraud and deception was a former Insurance Fraud Examiner and the facts presented stood undisputed in the record, short of nebulous challenges to her expertise—what she was stating (fraud, deception, etc.,) was never objected to or challenged by Respondents. She is the foremost expert on mortgage fraud. These facts were presented and argued in the Petition for Declaratory Judgment and those facts satisfies the necessary CPA elements.

In addition, when added with the undisputed fact the Securities and Exchange Commission Communications (CP 65 – Ex. B and C) (stating the asset backed certificates, to wit "CWL, Inc. Asset-Backed Certificates, Series 2005-10", does not exist), the strength of Townleys claims and the request for relief stands

of merit. If the trust does not exist how can the mortgage or Note be transferred? The answer is the note cannot be transferred.

Case law clarify the legislative intent of CPA (RCW 19,86) is to narrowly construed but applied liberally to "service its purposes". For example, claims regarding MERS typically are dismissed because there is no direct relationship between MERS and the injured party. But this is not proper because the Respondents or actors work in conjunction behind the scene to deceive the Townleys; not MERS but MERS' officers, agents, associated, stand in the acts of fraud and deception worked on Townleys. Moreover, relevant evidence was submitted showing the state of Washington Attorney General's office entered into an agreements not to prosecute these entities for the acts (Townleys) (CP 73, exhibit A) this Washington Homeowner acts to seeks damages, remedies, and recovery. As stated in Panag v. Farmers Ins. Co. of Wash. (2009),

> The CPA also mandates that it be liberally construed to serve its purposes, RCW 19.86.920, and we will not narrowly construe the act by importing a requirement that the plaintiff be a consumer or be in a consensual business relationship, when to do so would conflict with the language of the act and its stated purposes.

Id. Supra

Therefore, the facts Townleys presented show a completed act tantamount to stealing the Townleys' home. The means Respondents carried this out was based on fraud and deception through the seemingly alleged transfer of the title, a transfer that, under the facts, was a fraudulent conveyance.

All four of BONYM attorneys have acted in bad faith, partnering with Respondents while comprehending the plain language and strict statutory requirements of the Deed of Trust Act and the Unlawful Detainer Act; doing whatever was necessary (production of fraudulent documents, etc.) to perform the act of taking the property, contrary Business Community Standards and Practices and in violation of the spirit of the Rules of Professional Conduct for Attorneys. Thus, CPA claims per 19.86 and common law fraud claims exist by and through the undisputed facts in the record.

The completed act of eviction of Townleys was based on fraud, intentional deception through the seemingly alleged transfer of the title, a transfer that, under the facts, was a fraudulent conveyance. The single act of fraudulent conveyance shows completion of the act of fraud, where the Respondents intent was to obtain a property illegally and by whatever means it took including ignoring Washington State statutes. (Accord, 4. Dwyer V. J.I. Kislak Mortgage, 103 Wn. App. 542 (Division I, 2000) and Sofie v. Fibreboard Corp.,112 Wn.2d 636, (1989). Therefore, Respondent committed criminal intent and to a lesser extent civil fraud. A jury trial is proper for recovery of damages beyond the statute RCW 61.24.127 due to the plain language of the statute and the legislative intent was to allow for recovery and restitution for victims of fraud, like the Townleys.

NOT ARGUED BY RESPONDENTS: THE RECORD IS INSUFFICIENT WITHOUT FINDINGS OF FACTS AND CONCLUSIONS OF LAW ENTERED BY THE COURT

The court record is insufficient because it is missing Findings of Facts and Conclusions of Law. These were filed and submitted to the Court by Townleys in March 2012 (CP 15). Since the court denied both motions due to lack of subject matter jurisdiction, Townleys are prejudiced by not having the findings of facts and conclusions of law to use in the appeal in order to properly address the basis of the judge's decision.

> "For an adequate appellate review ... this court should have from the trial court ... findings of fact (supplemented, if need be, by a memorandum decision or oral opinion) which show an understanding of the conflicting contentions and evidence, and a resolution of the material issues of fact that penetrates beneath the generality of ultimate conclusions, together with a knowledge of the standards applicable to the determination of those facts."

Id. Groff v. Dept. of Labor, 65 Wn.2d 35, 40, 395 P.2d 633 (1964)

Since, the direction of the Judge McCullough on July 13th was that Townleys should "go before a jury and a judge in another proceeding" (VP, pg 41, ll 9-10), further clarification regarding findings of facts and conclusions of law would provide a record for review. No Findings of Facts and Conclusions of Law were entered. As such, this is sufficient to show the record is incomplete given the extensive facts submitted and therefore, said failure denied Townleys a proper record for appeal. Respondents have not addressed this in their

Response. It would be proper, as a minimum matter, to remand this matter back to the Court for the entry of Findings of Facts and Conclusions of Law.

UNDISPUTED BY RESPONDENTS: JURY TRIAL WAS PROPER AND CONSTITUTIONAL

Most favorable to Respondents, Townleys' Jury Trial request pursuant to RCW 59.12.130 was properly and made on May 17, 2012. (VP, pg 10, ll 4-11) This is another area Respondents fails to address in their brief.

The Court held in Thompson v Butler, quoted in relevant part,

> "We think that when RCW 59.12.130 and CR 81 are construed together, the result is that jury trials are available in cases of unlawful detainer, subject to the provisions of CR 38 and 39. CR 81 provides that the civil rules shall apply except where inconsistent with rules or statutes governing special proceedings. We need not decide whether unlawful detainer is a special proceeding for purposes of CR 81, because there is nothing inconsistent in CR 38 and 39 with RCW 59.12.130. Those rules provide for trial by jury as does the statute. The civil rules seek to simplify the procedure of the courts in this state and seek to avoid exceptions and different procedures except where there is a demonstrable need served by such exceptions. We can see no reason why RCW 59.12.130 should not be construed as an expression of legislative intention that jury trials be preserved in unlawful detainer actions according to the terms of the civil rules. See Snyder v. Cox, 1 Wn. App. 457, 462 P. 2d 573 (1969). No valuable right will be lost thereby, since the court rules provide for a jury trial in all cases where this is guaranteed by the state constitution

Id. 4 Wn. App. 452, (1971)

It is a fundamental and constitutional protected right to allow a jury to determine facts, when there facts support a valid claim. Here, experts, who possess expertise beyond the knowledge of the court, stood showing fraud and

deception in an elaborate scheme worked in the mortgage business both specific to Townleys foreclosure and through out the United States.

One of the experts was awarded 14 million dollars as a whistleblower. The facts are valid, hold merit, and show fraud and deception worked specific to subject property's documents; namely, the experts evaluated and presented facts pertaining to the exact documents used by Respondents to foreclose.

Townleys meet their burden regarding a valid basis for their request for a jury trial; the denial of the request was manifest error or contrary to the facts. Nevertheless, the denial violated due process protections of Townleys' property rights and denied Townleys' right to jury.

Given the wealth of facts and exhibits presented to the court, it is proper to remand for jury trial. Moreover, Respondents held no valid interest in the property and the documents used to foreclose in this case were fraudulently obtained. In other words, the facts stand to void out Respondents' claim of a valid interest in Townleys home; the facts sound in fraud and step beyond irregularities in the foreclosure proceedings. Townleys were denied the opportunity to present facts offered by two different experts to a jury. (CP 73).

The expert possessed education, a Judicial Doctorate, whistlerblower status with a 14 million dollar award for blowing the whistle on mortgage fraud and held good standing in the business and social community. Plus, the expert's evidence stating fraud was worked on Appellants was corroborated by another

expert securitization forensic accountant who concurred with her evidence. These experts and the evidence were properly and timely presented in support of the request for jury trial. Yet, Appellants were denied their request. Appellants' request for a jury trial on the facts specific of fraud, deception, etc., in their foreclosure, was the same fraud and deception worked on the court by Respondents. The cumulative errors constitute reversible error in this case.

Respondents had the burden of proof for the right to possess while the Townleys provided, utilizing their documents, irregularities within the application of RCW 61.24 et seq., impacting the Court's jurisdiction to hear the matter and thus, providing factual base for a jury trial requested by Townleys per statute RCW 59.12. The decision of *Housing Authority of City of Pasco v. Pleasant (2005)*, is supportive of Townleys, and states in relevant part,

> The burden is upon the plaintiff in an unlawful detainer action to prove, by a preponderance of the evidence, the right to possession. *Duprey v. Donahoe* , 52 Wn.2d 129 , 135, 323 P.2d 903 (1958).

Id 126 Wn. App. 382, (Mar 2005)

It is proper for a jury to make a determination of credibility of experts. Thus, the Townleys believe remand for jury trial is within their constitutionally protected rights and it is proper and just.

REQUEST FOR ATTORNEYS' FEES IS IMPROPER GIVEN THE PATTERN OF BAD FAITH SHOWN IN ALL COURTS BY RESPONDENTS

Respondents request attorney fees based on the claim Townleys three (3) court cases. This is improper and without merit. Dempere v Nelson, *76 Wn. App. 403, (1994)*. Townleys stand properly in direct appeals in Ninth Circuit on both the US Bankruptcy Court case (#09-22120) and US District court case (C10-1720).

Respondents have avoided showing Courts documentation showing ownership. In US Bankruptcy case, Judge Overstreet stated, "You have objected to the standing of the bank. And I agree with you. The bank's standing has not been proven, Bank of New York standing has not been proven." (CP 73, Motion for Reconsideration of Denial of Petition for Declaratory Judgment, Declaration in Support of Motion, pg 2, (certified transcript 6/11/2010, pg 7, ll12-15). BONYM had not sufficiently provided proof of ownership to the court. BONYM has never proven proper standing to invoke the Deed Trust Act in any Court, though, it would seen this element should be a fundamental principle; namely, prove your interest when requested. It appears through the reading of the transcript that BONYM Counsel knew this evidence was not available; yet, tap danced around the issue, and sadly, at least so far, they got away with the deception.

Respondents had an opportunity to provide the US District Court with the Beneficiary Declaration required by statute, to wit, RCW 61.24.031(9). (CP 65 - Ex. D – docket number #11) This document never entered the record. This

shows the defiance and bad faith by Respondents for their failure to adhering to statutory requirements per Townleys' Judicial Notice (stating the absence of the exhibit A per RCW 61.24.031(9)) (CP 65 - Ex. D - #C10-1720 docket) Without this required document and the Note, BONYM could not show no legal standing to invoke the Deed Trust Act, further corroborating lack of interest in Townleys' home.

Finally, Respondents' omission of material fact, misrepresenting the facts to the Court and Trial Courts is punishable by discipline for violating RPCs in Washington State by the Washington Bar Association. (See similar rule violations in Washington State Supreme Court decision in: *In re Discipline of Ferguson, 200,719-8 (2011))*

Townleys only bring this to the Court's attention to show the pattern of bad faith by Respondents. Although currently Respondents' counsel is the recipient of all the record impacted by others before him, he still has a duty and an obligation to review the record and present the facts supported by the whole record. Townleys be awarded cost and Respondents counsel should not be awarded fees. Therefore, the request for fees is unwarranted per RAP 18.1 and 14.2. Yet, costs should be awarded to Townleys per RAP 14.2 and 14.3 if they prevail.

E. Conclusion, Relief Sought.

Townleys stand properly before the Court with a timely filed Motion for Revision and at best, a premature filed the Notice of Appeal. Townleys wish the

Court to note, Respondents, BONYM, MERS, and OCWEN did not address Townleys' constitutional right to a jury trial per RCW 59.12.130 stated in Issue II. It is proper to remand this case to allow Townleys a jury trial in order to have the facts and the facts have shown BONYM did not hold a valid interest in the Townleys' home. Respondents did not dispute the irregularities stated in Issue III and thus, by failing to address the legal and factual basis of the irregularities, do not dispute Townleys' requested relief. As such, Townleys pray the court will grant relief in these two areas.

At most, Townleys ask the Court to vacate the order of Writ of Restitution and void the title transfer of Townleys' property restoring it to the Townleys' possession. Townleys request a remand for the issues within the Declaratory Judgment (CR57) to be heard by a jury or, in the alternative, consolidate this matter with instruction to allow the Counter Complaint to stand in a general proceeding allowing Townleys to pursue recovery against Respondents of Washington State CPA claims due to fraud and deception and common law claims. Finally, Townleys retract the request for costs associated with the appeal per RAP 18.1. However, costs associated with this appeal per RAP 14.2 and RAP 14.3 are appropriate should the Townleys prevail.

Respectfully submitted this February 25, 2013.

Stephanie Tashiro-Townley, representing Appellants / Defendants

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

CASE NO.: 69194-5-I

AFFIDAVIT OF SERVICE

SCOTT C TOWNLEY AND STEPHANIE A TASHIRO-TOWNLEY, DEFENDANTS/APPELLANTS

Plaintiff/Petitioner,

vs.

BANK OF NEW YORK MELLON, fka BANK OF NEW YORK, TRUSTEE FOR CERTIFICATE HOLDERS CWABS, INC. ASSET BACKED CERTIFICATES, 2005-10, ET AL.

Defendant/Respondent.

Received by **JPL Process Service** to be served upon:

ROBERT W. NORMAN - HOUSER &ALLISON, APC

ss.

I, **RYAN LANCASTER**, depose and say that:

On **02/25/2013** at **10:50 AM**, I served the within **REPLY BRIEF OF APPELLANT** on **ROBERT W. NORMAN - HOUSER &ALLISON, APC** at **3780 KILROY AIRPORT WAY STE 130, Long Beach, CA 90806** in the manner indicated below:

By delivering a true copy of this process to **LAURA CHEY, FRONT RECEPTION - PERSON AUTHORIZED TO ACCEPT** of the above named corporation and informing him/her of the contents.

Description of person served:
Sex: Female - Age: 26 - Skin: Asian - Hair: Brown - Height: 5-6 - Weight: 130

I declare under penalties of perjury under the laws of the state of California that the foregoing is true and correct.

Fee: #125-

X Ryan Lancaster 2/25/13
RYAN LANCASTER - 7067
JPL Process Service
P.O. Box 918
Midway City, CA 92655
866.754.0520
Atty File#: - Our File# 27725

WASHINGTON STATE COURT OF APPEALS
DIVISION I

SCOTT C. TOWNLEY STEPHANIE A. TASHIRO-TOWNLEY Appellants/Defendants, vs. BANK OF NEW YORK MELLON, f/k/a BANK OF NEW YORK, TRUSTEE FOR CERTIFICATE HOLDERS CWABS, INC., 2005-10; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC.; OCWEN LOAN SERVICING Respondents/Plaintiff and Cross Complainants.	APPEAL No. 69194-5-I CASE No. 12-2-06921-2 KNT Declaration of Mailing: APPELLANTS' REPLY BRIEF

state of Washington)
County of King)

DECLARATION OF SERVICE

I hereby declare under penalty of perjury of the state of Washington that on this 25th day of February, 2013, I

Scott C. and Stephanie Tashiro-Townley
25437 167 place SE
Covington, WA 98042

caused to be delivered a copy of the Appellants' Reply Brief to Bank of New York Mellon et al, Respondents Court of Appeals Division I case #69194-5-I and have verified document is the same as noted in the caption was physically sent to the following address via the methods noted:

Via USPS Priority Mail

To:

Robert Norman
HOUSER & ALLISON, APC
3780 Kilroy Airport Way, Ste 130
Long Beach, CA 90806

Dated: 2/25/13
By: Cynthia Whitaker

Address
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