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No. 92361-2

SUPREME COURT OF THE STATE OF WASHINGTON

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DARLENE T. HOBBS and JOEL HOBBS

Plaintiff-Petitioners,

vs.

NORTHWEST TRUSTEE SERVICES, INC. and
WELLS FARGO BANK, N.A.,

Defendants-Respondents,

**RESPONDENT NORTHWEST TRUSTEE SERVICES, INC.'S
RESPONSE TO PETITION FOR REVIEW**

Submitted By:
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 ORIGINAL

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NWTS incorporates by reference the facts and arguments set forth in Wells Fargo's Response to Petition for Review as they are equally applicable to NWTS. NWTS restates the relevant facts to its Response below.

I. STATEMENT OF FACTS

The Hobbs failed to make the payments required by the subject Note and Deed of Trust and on September 25, 2012, Northwest Trustee Services, Inc. (NWTS), in its capacity as Wells Fargo's agent, issued a notice of default identifying a default of almost \$30,000. CP 293-298.

On November 1, 2012, NWTS received a beneficiary declaration from Wells Fargo stating that "Wells Fargo Bank, N.A. is the actual holder of the promissory note" and that "Federal Home Loan Mortgage Corporation [Freddie Mac] is the actual owner of the promissory note." Petition for Review at 5, ¶ 3.

On January 22, 2013, NWTS recorded a Notice of Trustee's Sale of the Property, scheduling a trustee's sale for May 31, 2013. CP 178-180. NWTS subsequently postponed the trustee's sale to June 21, 2013. CP 184.

NWTS did not have information that conflicted with the unequivocal beneficiary declaration it received from Wells Fargo prior to

recording the Notice of Trustee's Sale stating under the penalty of perjury that Wells Fargo was the actual holder of the promissory note.

II. ARGUMENT

The Hobbs argue that a beneficiary under the Deed of Trust Act must be both the holder and the owner of the note, and because the beneficiary declaration at issue here stated that Freddie Mac was the actual owner of the note, NWTS could not proceed with recording the Notice of Trustee's Sale. This issue has been resolved by *Brown v. Washington State Dept. of Commerce*, 359 P.3d 771 (2015).

“The seventh requisite to a trustee sale under RCW 61.24.030 is at issue in this case. It provides that the trustee must have ‘proof that the beneficiary is the owner’ of the promissory note. [RCW 61.24.030(7)(a)]. The same subsection also provides that a declaration stating that ‘the beneficiary is the actual holder of the promissory note’ ‘shall be sufficient proof’ ‘[u]nless the trustee has violated his or her duty [of good faith] under RCW 61.24.010(4)’. *Id.* at 7(a), (b).” *Brown*, 775, ¶ 15.

These provisions create ambiguity in cases where the owner of the note is different from the holder of the note, and because the holder of the note has the authority to enforce and modify the note, that is the beneficiary. *Brown*, 783, ¶ 51. Therefore, a party's undisputed

declaration submitted under penalty of perjury that it is the holder of the note satisfies RCW 61.24.030(7)(a)'s requisite to a trustee sale. *Id.*

Here, the owner of the note is different from the holder of the note. Therefore, consistent with *Brown* holding, the beneficiary is the holder of the note, not the owner, and the owner and holder are not required to be the same party under the DTA. NWTS's knowledge that Freddie Mac was the owner of the note does not amount to a violation of its duty of good faith because, as *Brown* notes, Article 3 and Article 9 of the UCC authorizes parties to split PETE status from ownership status. *Brown* at 780, ¶ 38. The second sentence of the beneficiary declaration identifying the actual owner of the Note does not conflict with the first sentence, which unequivocally states that Wells Fargo is the actual holder of the Note.¹

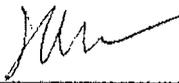
NWTS did not have any information contradicting Wells Fargo's declaration made under the penalty of perjury that it was the actual holder of the note. NWTS was entitled to rely on the unequivocal and undisputed beneficiary declaration.

¹ *See, Brown*, N. 18 (“...*Brown*'s argument that the Department of failed to act in good faith because it knew Freddie Mac was the owner of the note is not well taken ... The situation would be different if the Department had information contradicting M & T Bank's declaration that it was the actual holder of the note, but no one contested the truth of M & T Bank's declaration. The declaration was therefore sufficient proof as required by RCW 61.24.030(7)(a) and RCW 61.24.163(5)(c).”)

As Wells Fargo's brief points out, the precedential holding of *Brown* is the determinative rule in this case, and because it is stare decisis, the petition should be denied.

DATED this 4th day of December.

RCO LEGAL, P.S.

By: 

John A. McIntosh, WSBA #43113

Attorneys for Appellee Northwest
Trustee Services, Inc.

Declaration of Service

The undersigned makes the following declaration:

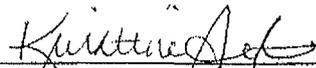
1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.

2. On December 4, 2015 I caused a copy of **Respondent Northwest Trustee Services, Inc.’s Response to Petition for Review** to be served to the following in the manner noted below:

Matthew Geyman Columbia Legal Services 101 Yesler Way, Suite 300 Seattle, WA 98104 Attorneys for Petitioners	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: matt.geyman@columbialegal.org
Gregory D. Provenzano Columbia Legal Services 711 Capitol Way S., #304 Olympia, WA 98501 Attorneys for Petitioners	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: greg.provenzano@columbialegal.org
David C. Spellman Lane Powell, PC 1420 Fifth Avenue, Suite 4200 P.O. Box 91302 Seattle, WA 98111 Attorneys for Respondent Wells Fargo Bank, N.A.	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email: yatesa@lanepowell.com spellmand@lanepowell.com

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

Signed this 4th day of December, 2015.



Kristine Stephan, Paralegal

OFFICE RECEPTIONIST, CLERK

To: Kristi Stephan
Cc: matt.heyman@columbialegal.org; Greg Provenzano (greg.provenzano@ColumbiaLegal.org); 'yatesa@lanepowell.com'; 'spellmand@lanepowell.com'; John McIntosh
Subject: RE: Darlene Hobbs v. Northwest Trustee Services Inc., et al. (Petition for Review) / Supreme Court No. 92361-2 / Court of Appeals No. 71143-1-I

Received on 12-04-2015

Supreme Court Clerk's Office

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To: OFFICE RECEPTIONIST, CLERK <SUPREME@COURTS.WA.GOV>
Cc: matt.heyman@columbialegal.org; Greg Provenzano (greg.provenzano@ColumbiaLegal.org) <greg.provenzano@ColumbiaLegal.org>; 'yatesa@lanepowell.com' <yatesa@lanepowell.com>; 'spellmand@lanepowell.com' <spellmand@lanepowell.com>; John McIntosh <jmcintosh@rcolegal.com>
Subject: Darlene Hobbs v. Northwest Trustee Services Inc., et al. (Petition for Review) / Supreme Court No. 92361-2 / Court of Appeals No. 71143-1-I

Darlene T. Hobbs and Joel Hobbs (Petitioners) v. Northwest Trustee Services, Inc., et al. (Respondents)
Supreme Court No. 92361-2
Court of Appeals No. 71143-1-I
Filed by: John A. McIntosh
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Please file the attached **Respondent Northwest Trustee Services, Inc.'s Response to Petition for Review.**

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

Kristi Stephan
Senior Litigation Paralegal

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