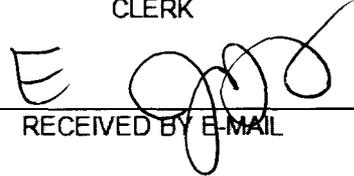


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Case No. 92865-7

SUPREME COURT FOR THE STATE OF WASHINGTON

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KEVIN J. SELKOWITZ,

Petitioner,

v.

LITTON LOAN SERVICING LP, *et. al.*

Respondents.

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ANSWER OF QUALITY LOAN SERVICE CORP. OF  
WASHINGTON TO PETITION FOR REVIEW BY KEVIN J.  
SELKOWITZ

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WA-15-664704-APP

 ORIGINAL

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## I. INTRODUCTION

The appellate court correctly applied the law in affirming the dismissal of respondents. This court should decline review.

## II. FACTS

Quality incorporates the facts set forth in the appellate opinion and responses from co-respondents.

## III. ARGUMENT

### A. Beneficiary Can Act Through Agents.

As the appellate court pointed out, the notice of default and foreclosure loss mitigation form can be executed by the beneficiary's agent. This is permitted by statute. RCW 61.24.031(9); RCW 61.24.031(1)(a); *see also Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 106 (Wash. 2012) (Washington law, and the Deed of Trust Act itself, approves of the use of agents).

In this case, it was not unlawful for Quality to issue the notice of default and foreclosure loss mitigation form as agent for the beneficiary before being appointed trustee. The statute

expressly allows these notices to be issued by an agent.

**B. Quality Was Properly Appointed Trustee.**

As discussed in the response to the petition by MERS (pages 16-19), MERS had the authority from the beneficiary to appoint a trustee. Quality was properly appointed and had the authority to act as trustee

**C. Trustee Allowed to Rely On Beneficiary Declaration.**

The beneficiary declaration is a safe harbor for the trustee against claims the foreclosure was advanced by the wrong party. RCW 61.24.030(7)(a). In *Brown v. Dep't of Commerce*, 184 Wn.2d 509, 544 (Wash. 2015), this court held that the trustee can rely on an unambiguous beneficiary declaration from the holder of the promissory note.

Here, the beneficiary declaration from Litton's vice president unambiguously stated, under penalty of perjury, that Litton was the "actual holder" of the promissory note. The beneficiary declaration was not the ambiguous one from *Trujillo v. Nw. Tr. Servs., Inc.*, 183 Wn.2d 820, 826 (Wash. 2015) ("Wells

Fargo Bank, NA is the actual holder of the promissory note ... or has requisite authority under RCW 62A.3-301 to enforce said [note].”). The beneficiary declaration from Litton complied with the statute in all respects. Quality was allowed to rely on it.

Furthermore, there were no “competing claims” as to who held the note, as Petitioner appears to argue in his brief. Nor did Quality have information that genuinely put into question the accuracy of the beneficiary declaration. It is common practice for loan servicers like Litton to hold the note and give the beneficiary declaration. *See e.g. Brown*, 184 Wn.2d 509, 523 (Freddie Mac guidelines provide that the loan servicer holds the note when advancing a foreclosure). Litton holding the note and executing the beneficiary declaration would not have been a “red flag” for a trustee.

And the judicial foreclosure action where, allegedly, the investor claimed it held the note occurred long after Quality’s foreclosure notices were issued.

**D. Notice of Default Properly Identified Litton.**

The notice of default informs the borrower of the “loan servicer”. RCW 61.24.030(8)(1); *Brown*, 184 Wn.2d 509, 537. The notice of default does not need to identify the “beneficiary,” as Petitioner claims in his brief. However, it makes little difference in this case, as Litton was both the loan servicer and the beneficiary. The identification of Litton in the notice of default was proper, as Litton was the party to whom mortgage payments were owed, and the party with the ability to modify the note obligation. *Brown*, 184 Wn.2d 509, 537-538.

**E. Trustee Did Not Act “Biased” Against Petitioner**

Petitioner makes conclusory allegations that Quality acted biased against him, but he fails to identify any specific facts demonstrating bias in this case. Petitioner’s failure to make his mortgage payments was an event of default triggering the trustee’s power of sale. The foreclosure was advanced by the trustee because Petitioner stopped paying his mortgage, not because of bias against him. And this is not the situation in *Lyons v. U.S. Bank N.A.*, 181 Wn.2d 775 (Wash. 2014) where the borrower

contacted the trustee about defects in the foreclosure, and yet the trustee continued with the sale. Furthermore, the informational “errors” alleged by Petitioner in the foreclosure notices are not traceable to a “trustee bias” against him.

**F. Petitioner Has Not Been Damaged.**

Petitioner did not suffer any legally recoverable damages on account of the trustee’s foreclosure notices. Petitioner stopped paying his mortgage because he could not afford to make the payments. CP at 398-99. The law permits a non-judicial foreclosure of the real property collateral if the borrower defaults on his payment obligations. *Brown*, 184 Wn.2d 509, 515-516; *Bain*, 175 Wn.2d 83, 93. Foreclosure was a legal consequence of the Petitioner’s default. Yet, here, a foreclosure did not even occur; the foreclosure was canceled. CP at 473. Petitioner filed this lawsuit *after* the foreclosure was canceled.

Furthermore, Petitioner did not detrimentally rely on the information contained in Quality’s notices. He knew he owed his mortgage payments to Litton, and knew Litton was the party that

could modify his loan. CP at 400-01. The notice of default from Quality properly identified Litton as the loan servicer. Petitioner cannot claim he was misled by the information in Quality's notices.

IV. CONCLUSION

The appellate court properly affirmed the dismissals. Review should be denied.

Dated: March 20, 2016

MCCARTHY & HOLTHUS, LLP



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Attorney for Quality Loan Service Corp. of Washington

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**Subject:** Kevin J. Selkowitz, v. Litton Loan Servicing LP, et al., No. 92865-7

Please find attached Answer of Mortgage Electronic Registration Systems, Inc., to Petition for Review by Kevin J. Selkowitz, to be filed in the above matter.

**Sent on behalf of:**

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