73833-0

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

Deutsche Bank National Trust Co., as trustee for Long Beach Mortgage Loan Trust 2006-4, et al.

Respondents,

vs.

John E. Erickson and Shelley A. Erickson, et al.

Appellants.

NO. **73833-0-I**

(Trial Ct # 14-2-00426-5 KNT
King County Superior Court)

APPELLANTS' REPLY BRIEF

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Other State's Cases: California

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REPLY TO RESPONDENT'S BRIEF

All issues raised by Deutsche Bank's brief are addressed in Ericksons' opening brief. None-the-less, a brief reply is called for.

The issue of standing is addressed at pp. 18 -22 of Ericksons' opening brief. As shown, a plaintiff must have standing at the inception of the lawsuit. The subsequent acquisition of standing does not cure the absence of a valid right of action at the time the suit was commenced. Deutsche Bank's failure to submit any competent evidence of standing at the inception of the lawsuit is fatal to its claims in this case.

Deutsche Bank did not prove it possessed the original promissory note at the time of the hearing on summary judgment nor at the commencement of this lawsuit. Deutsche Bank submitted no evidence that the piece of paper its lawyer said was the original note was in fact the original note. Its arguments regarding authenticity of signatures, self-authentication, holder of the note, and possession of the note, all assume the fundamental fact that was never proven, i.e. that Deutsche Bank possessed and possesses the original Erickson promissory note, an presume to shift its burden of affirmatively proving those facts and issues to the Ericksons.

Contrary to Deutsche Bank's argument, it is not universally held that borrowers lack standing to challenge prior assignments.

In *Yvanova v. New Century Mortgage Corp.*, 365 P.3d 845, 62 Cal.4th 919,942-943, 199 Cal.Rptr.3d 66 (Feb 18, 2016), the California Supreme Court held:

> We conclude a home loan borrower has standing to claim a nonjudicial foreclosure was wrongful because an assignment by which the foreclosing party purportedly took a beneficial interest in the deed of trust was not merely voidable but void, depriving the foreclosing party of any legitimate authority to order a trustee's sale. * * * .

In *Sciarratta v. U.S. Bank National Assn.*, ___ Cal.Rprt.3d ___, 247 Cal App.4th 552, 555 (May 18, 2016), the California Court of Appeals held:

> Accordingly, we conclude that a homeowner who has been foreclosed on by one with no right to do so - by those facts alone-sustains prejudice or harm sufficient to constitute a cause of action for wrongful foreclosure. When a non-debtholder forecloses, a homeowner is harmed by losing her home to an entity with no legal right to take it. Therefore under those circumstances, the void assignment is the proximate cause of actual injury and all that is required to be alleged to satisfy the element of prejudice or harm in a wrongful foreclosure cause of action.

In *Glaski v. Bank of America*, 218 Cal.App.4th 1079, 160 Cal.Rptr.3d 449 (2013), the California Court of Appeals held:

> We conclude that a borrower may challenge the securitized trust's chain of ownership by alleging the attempts to transfer the deed of trust to the securitized trust (which was formed under New York law) occurred after the trust's closing date. Transfers that violate the terms of the trust instrument are void under New York trust law, and borrowers have standing to challenge void assignments of their loans even though they are not a party to, or a third

party beneficiary of, the assignment agreement.

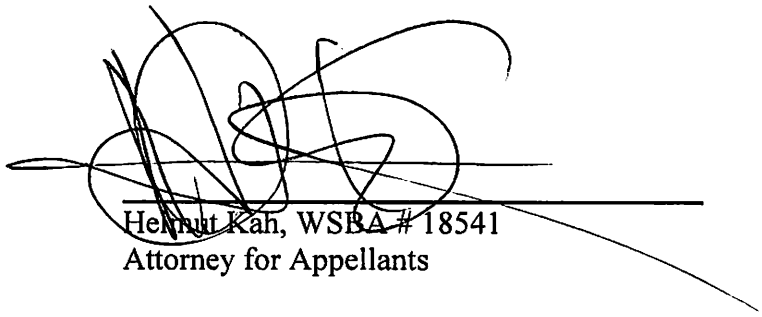
The 2010 U.S. District Court decision in *Erickson v. Long Beach Mortg. Co. (Long Beach),* No. 10-1423 MJP, 2011 WL 830727 (W.D. Wash. Mar. 2, 2011), *aff'd* 473 F.Ap'x 746 (9th Cir. 2012), on which Deutsche Bank relies for its collateral estoppel argument, does not hold that Deutsche Bank was a holder of the Erickson promissory note. Rather, it states at Section 2 regarding Declaratory and Injunctive Relief, only that

> "Defendants provide evidence demonstrating their ownership of the note, which the Ericksons do not credibly challenge."

It states nothing as to which of the defendants is the owner or which of them is the holder of the note. It does not control as to whether in January 2014 or in 2015 Deutsche Bank had possession of the Ericksons' original note.

Appellants Ericksons respectfully ask this Court to grant the relief request in their opening brief on this appeal.

Respectfully submitted this 29th day of August 2016.



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PROOF OF SERVICE BY MAIL and EMAIL

I hereby certify that on August 29, 2016, I deposited a true and complete copy of this APPELLANTS' REPLY BRIEF, together with any attachments, with first class postage prepaid, in a blue USPS mail receptacle, addressed to:

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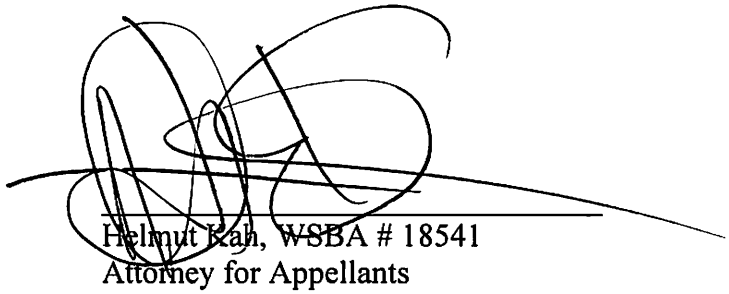
DATED this 29th day of August, 2016.



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