Supreme Court No. 94552-7

Court of Appeals No. 75020-8-1

SUPREME COURT
OF THE STATE OF WASHINGTON

CONCEPCION HERMOSILLO, a single woman,

Petitioner,

vs.

QUALITY LOAN SERVICE CORP. OF WASHINGTON, a Washington Corporation; ERNST, INC.; MORTGAGE REGISTRATION SYSTEMS, INC., a Delaware Corporation; NEW YORK COMMUNITY BANK; a New York company; and JOHN DOES 1-10

Defendants-Respondents.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF SNOHOMISH

HERMOSILLO PETITION FOR REVIEW

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CASE LAW

1. *Albice v. Premier Mortgage Services of Washington, Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012).....8

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5. ***Herzog v. Herzog,* 23 Wn.2d 382, 387 (1945).....9**

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7. ***Watson v. Northwest Trustee Service, Inc.*, 180 Wash. App. 8 (2014).....11**

MISCELLANEOUS AUTHORITY

1. Report of the Permanent Editorial Board for the Uniform Commercial Code, *Application of the Uniform Commercial Code to Selected Issues Relating to Mortgage Notes* (Neil B. Cohen, Et al eds. 2011).....11-14

2. 25 David K. DeWolf, Keller W. Allen & Darlene Barrier Caruso, Washington Practice: Contract Law and Practice § 16:21, at 511 (3d ed. 2014).....7

3. 18 Williams B. Stoebuck & John W. Weaver, Washington Practice: Real Estate: Transactions, § 20.1a, At 38 (2d Ed. Supp. 2014).....

I ACCEPTANCE OF REVIEW AUTHORIZED BY RAP 13.4(b)(3) AND (4)

A. Significant question of law under the Constitution of Washington.

Brown v. Dept. of Commerce, 184 Wn.2d 509 (2015) is a dominate and controlling authority in the non-judicial foreclosure field. Its holding appears to irreconcilably conflict with the requirements of RCW 62A.3-310, RCW 62A.9-203, and the relevant terms of a standard deed of trust. To eliminate this apparent conflict – which implicates the Separation of Powers Doctrine – the Court should accept this case for review and, through rigorous and sound legal analysis, establish the lack of conflict between the *Brown* holding and the requirements of the statutory provisions. Failing that, the Court should acknowledge the obvious flaws in the *Brown* Opinion. Hundreds, perhaps thousands of foreclosure proceedings per year will be affected by the Court's resolution of this case, and a glaringly obvious set of conflicts between the Court's decision in Brown and the requirements of the referenced statutory provisions – and the standard DOT that is prevalent throughout Washington – will be resolved.

B. Issue of substantial public interest.

The *Brown* decision is implicated in every non-judicial foreclosure proceeding authorized by an entity that admittedly does not own a note it

claims to hold. In Washington, such foreclosures number in the thousands every year. Whether those thousands of non-judicial foreclosures have been conducted in violation of Washington statutory law – and in violation of the homeowner's DOT contract – is an issue of immense interest to the public.

II IDENTITY OF PETITIONER

Concepcion Hermosillo asks this court to accept review of the court of appeals decision terminating review designated in Part III of this petition.

III COURT OF APPEALS DECISION

Petitioner requests this Honorable Court review the Unpublished Opinion ("Opinion") issued and filed by the Court of Appeals on April 24, 2017. A copy of the Opinion is in the Appendix at pages A-1 through A-9.

IV ISSUES PRESENTED FOR REVIEW

1. Did failure to re-issue Notice of Default invalidate the sale?

2. Does RCW 62A.9A-203 prevent foreclosure under facts of this case?

3. Does RCW 62A.3-310 prevent foreclosure under facts of this case?

V STATEMENT OF THE CASE

In both the trial and appellate courts, Defendant-Respondent New York Community Bank ("Defendant 1") claimed entitlement to foreclose because it is the *holder* of Plaintiff's note ("Note") and DOT. Defendant 1 cited *Bain v. Metropolitan Mortgage Grp., Inc.* as support for this proposition. *CP*, at 149: 4 -6. The claim was based on the common-law *security follows the note* doctrine. *Id.*, at 143: 1 - 7. The appellate court agreed with Defendant 1 on this point. *Opinion*, at A-5. As a result, Defendant 1 asserted Petitioner could not establish the CPA claim because there had been no deceptive act (the first element of a CPA claim), no public impact, and no "but for" causation. *Id.*, 150: 11 – 15. The appellate court agreed, refused to analyze the other elements of a CPA claim, and affirmed the trial court result. *Id.*, at 8.

This Petition followed.

VI ARGUMENT

If the holder of a secured mortgage note, regardless of ownership of the note is automatically entitled to enforce the DOT as *Brown*

concludes, then Petitioner's CPA claim is not viable.[1] However, the Security Follows the Note Doctrine (RCW 62A.9A-203, RCW 62A.3-310, and the DOT itself require Defendant 1 to be both the *holder and owner* of the secured note to be entitled to enforce the DOT. There is an unresolved conflict between the *Brown* holding and the Doctrine, RCW 62A.3-310, and the DOT that this Court should not continue to pretend does not exist.

The lives of thousands of current Washington homeowners are affected by these conflicts. And, frankly, with all due respect, the Court's continued failure to resolve these conflicts gives the appearance of the Court only protecting the interests of large financial institutions at the expense of vulnerable Washington homeowners and the law.

The lives of hundreds of thousands of current and future Washington homeowners are and will be affected by these conflicts if this Court refuses to engage, leaving Washington homeowners with the justifiable belief that the courts of this state are knowingly bending the laws to the breaking point to protect the interests of rich and powerful financial institutions. Only this Court can finally resolve these conflicts. If it can do so, the Court should use this case to explain to Washingtonians why the *Brown* holding does not impermissibly conflict with RCW 62A.3-

[1] Plaintiff's other CPA-related claims would be unaffected.

310 and the DOT.[2] Otherwise, the Court should swallow its pride, remember its responsibility to all the citizens of this state and to the law, and acknowledge that *Brown* was decided incorrectly.

A. Mandatory foreclosure procedure under the DTA.

1. DTA provides mandatory 3- or 4-step foreclosure procedure.

In Washington, under the DTA, there is a single, 3- or 4-step procedure for non-judicial foreclosure of *owner-occupied residential real property.*[3] With two exceptions,[4] neither of which apply in this case, the DTA provides no other procedure for conducting a non-judicial foreclosure. If MERS is the DOT nominee, the steps – adhering to the minimum timelines – must be taken in the following order:

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[2] RCW 61.24.030(3), one of the ***requisites*** to a lawful trustee's sale, requires the trustee to determine whether "*a default has occurred in the obligation secured . . ., which* ***by the terms of the deed of trust*** ***makes operative the power to sell***" the property. Paragraph 22 of Petitioner's DOT – and of every other DOT that is utilized in this state -- sets out, in detail, the requirements that must be met to make operative *the power to sell the property*. Since one of the ***requisites*** to a lawful trustee's sale – RCW 61.24.030(3) -- requires that a default must occur which, ***by the terms of the deed of trust***, makes operative the power to sell the property, any competent legal analysis intended to determine whether a default has occurred that makes operative the power to sell the property ***must*** begin with an analysis of Paragraph 22 of the DOT.

In *Brown*, this Court devotes not a single word to an analysis of Paragraph 22 of the DOT. That fact alone should inform the Court that the *Brown* decision is fatally flawed. But there are so many other reasons – If this Petition is granted, and Petitioner can then write in depth, Petitioner will share those reasons with this Court. – why that decision is incorrect.

[3] For ***non-owner-occupied*** residential real property, the pre-foreclosure letter is not required to be sent. *RCW 61.24.030(9).* Thus, in non-owner-occupied cases, the process requires only 3 steps. The 3 step procedure begins with the issuance of the NOD.

[4] RCW 61.24.130(3) and (4).

(a) RCW 61.24.031(1)(a), (b), and 61.24.031(5) require a trustee, beneficiary, or authorized agent to send the borrower a pre-foreclosure;

(b) *No less* than 30 days after the letter is sent, the trustee is authorized to issue a NOD (RCW 61.24.030(1)(a));

(c) *No less* than 30 days after the NOD is issued, the trustee is authorized to record a Notice of Trustee's Sale ("NOTS") ("RCW 61.24.030(8)"); and

(d) No less than 120 days after the NOTS is issued, the trustee is authorized to sell the property.[5]

If the trustee omits one of the steps in the process, none of the steps that follow the omitted step can lawfully be taken. In the case before this Court the trustee omitted one of the required steps. prior to recording the second NOTS ("NOTS 2"), the trustee did not issue a new NOD. Division I ruled that re-issuance of the NOD was not necessary because the NOD merely informed Petitioner she was in default and indicated how much she owed. *Opinion,* at 7-8. Thereafter, there was no need to tell Petitioner again that she was in default. *Id.* Furthermore, the court stated,

[5] For non-owner-occupied residential real property the minimum waiting period is 90 days. *RCW 61.24.040(1)(a).*

Petitioner had failed to demonstrate that there is a significant difference between a discontinued sale and a continued sale.[6] *Opinion,* at 8.

2. Failure to re-issue NOD violated RCW 61.24.030(8) and invalidated sale.

Division I's analysis the NOD issue is woefully inadequate and violates RCW 61.24.030(8).[7] RCW 61.24.030(8) ***requires*** that at least 30 days before the NOD is recorded, transmitted, or served the NOD be transmitted to the borrower and posted in a conspicuous place on the property or must be personally served on the borrower.

Among other things, the NOD ***must contain*** "a concise statement of the default alleged", and "[a]n itemized account of the amount or amounts in arrears if the default alleged is failure to make payments[.]" Every failure to make a monthly installment payment on the mortgage note is a new default that commences a new statute of limitations period.

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[6] There is all the difference in the world between a discontinued sale and a continued sale. One – a discontinued sale – ends the foreclosure proceeding. The other – a continued sale – merely postpones the foreclosure sale to a future date. Under RCW 61.24.040(6) the future must not be more than 120 days beyond the original sale date. In this case, because a new NOD was not issued, the second foreclosure proceeding (which set an August 7, 2015 sale date) was an unlawful attempt to continue the first foreclosure proceeding (which had set an August 16, 2013 sale date). The sale date set by NOTS 2 was more than 730 days after the sale date set by NOTS 1. Since the sale date set by NOTS 2 was more than 120 days after the sale date set by NOTS 1, in addition to violating RCW 61.24.030(8), the second foreclosure proceeding violated RCW 61.24.040(6).

[7] Division I's decision of the issue in this case is consistent with its decision of the issue in *Leahy v. Quality Loan Services Corp.*, 190 Wn. App. 1, 5 (2015*), rev. denied Leahy v. QLS*, 185 Wn.2d 1011 (2016). The decision was wrong in *Leahy* and, for the reasons stated herein above, is equally incorrect in this case.

4518 S. 256th, LLC v. Karen L. Gibbon, PS, 195 Wn. App. 423, 434 (2016); *Edmundson v. Bank of America, NA,* 194 Wn. App. 920, 930 (2016); *accord* 25 David K. DeWolf, Keller W. Allen & Darlene Barrier Caruso, Washington Practice: Contract Law and Practice § 16:21, at 511 (3d ed. 2014) ("Where a contract calls for payment of an obligation by installments, the statute of limitations begins to run for each installment at the time such payment is due.").

The NOD created by RCW 61.24.030(8) is, of necessity, a backward-looking document. It is impossible for a NOD to notify a borrower of a *default in the obligation to make payments that has not occurred by the date the NOD is transmitted to the borrower.* Hence, the sole NOD issued in this case did not, and could not, give Petitioner notice of the $3,935.17 in payments that became due – and were defaulted on – ***after*** the NOD was issued.

RCW 61.24.030(8) requires the beneficiary to give the borrower a statement of the default alleged (RCW 61.24.030(8)(c)); an itemized account of the amount in arrears *if the default alleged is failure to make payments* (RCW 61.24.030(8)(d); and 30 days to cure the default (RCW 61.24.030(8)). In this case, pursuant to assertions in the NOD and both NOTSs, the default alleged was the failure to make payments. Yet the

NOD, in violation of RCW 61.24.030(8)(d), failed to give Petitioner an itemized account of all amounts in arrears, and failed to give Petitioner 30 days to cure the default before the second NOTS was issued.

Defendants failed to transmit a lawful NOD to Petitioner prior to recording the second NOTS. Therefore, the trustee was never authorized to record the second NOTS. In the absence of the lawful recording of an NOTS at least 120 days prior to a trustee's sale, a lawful trustee's sale cannot take place. *RCW 61.24.040(1)(a)*; *Albice v. Premier Mortg. Servs. of Washington, Inc.*, 174 Wn.2d 560, 567-568 (2012). The sale was unlawful.

In addition, a continued trustee's sale may not take place more than 120 days after the original sale date. *RCW 61.24.040(6)*; *Albice*, 174 Wn.2d at 568. In *Albice*, this Court invalidated a sale that occurred a mere 161 days after the original sale date. *CP*, at 136. In this case, without reissuing one of the statutorily-mandated notices (the NOD), Defendants conducted a trustee's sale more than 700 days after the original sale date. The sale violated RCW 61.24.040(6) and must be invalidated.

The alleged beneficiary and the alleged trustee made two attempts to foreclose. A NOTS was recorded as part of the first attempt ("NOTS 1"), and a new NOTS was recorded as part of the second attempt ("NOTS

2"). *CP,* at 82. NOTS 1, a copy of which is included in the Appendix at A-10 through A-13, indicates the default that caused the foreclosure proceeding is failure to make payments in the amount of $20,290.47. *NOTS I,* at A-11, ¶ III. NOTS 1 was preceded by a NOD that was sent to Petitioner on or before March 14, 2013. *Id.,* at ¶ VI. NOTS II, a copy of which is included in the Appendix at A-14 through A-17, indicates the default that precipitated the second attempt to foreclose is failure to make payments in the amount of $24,225.64 – an increase of $3,935.17 over the failures identified in NOTS 1.

NOTS 2 relied on the same NOD on which NOTS 1 relied. *NOTS 2,* at A-15, ¶ VI.

Each missed installment payment is a new and separate default that commences a new limitations period. *Herzog v. Herzog,* 23 Wn.2d 382, 387 (1945). Until an installment payment is missed, the payee on the note is not legally authorized to proceed against the note maker. *Id.* Moreover, each missed installment payment ***reauthorizes*** the payee to commence legal action against the note maker and initiates a new limitations period. *Id.*

The only NOD issued in this case could not have given, and did not give, Petitioner notice of default for the $3,935.17 in payments missed

after the NOD was issued. Those payments were not in default until ***after*** the NOD was issued. NOD's look backward, not forward. Consequently, regarding the $3,935.17 in installment payments, the Defendants did not give Petitioner a statement of the default alleged (as is required by RCW 61.24.030(8)(c)); did not give Petitioner an itemized account of the amount in arrears (as is required by RCW 61.24.030(8)(d)); and did not give Petitioner 30 days to cure the default (as is required by RCW 61.24.030(8)).

In other words, the only NOD ever issued in this case was legally insufficient to serve as the antecedent to NOTS 2 mandated by RCW 61.24.030(8). Because a lawful NOD was never issued prior to the recording of NOTS 2, Quality Loan Services of Washington was never legally authorized to record, transmit, or serve NOTS 2. Therefore, the sale of Petitioner's property under color of law was unlawful and inherently deceptive.

Further, the Court in *Leahy v. Quality Loan Services of Washington,* 190 Wash.App.1 (2015) recognized its decision also turned on the fact they had found that Leahy was not owner-occupied property and that the Courts' decision would be different if it was owner-occupied. Citing *Watson v. Northwest Trustee Service, Inc.*, 180 Wash. App. 8

(2014) which was owner-occupied and required a new NOD to be in compliance with the DTA. In denying a Petition to Review, the Supreme Court affirmed the distinction that the new notice requirements would be required before issuing a new NOTS after the discontinuance in *owner-occupied pro*perty. SEE 18 WILLIAMS B. STOEBUCK & JOHN W. WEAVER, WASHINGTON PRACTICE: REAL ESTATE: TRANSACTIONS, § 20.1A, at 38 (2d ed. Supp. 2014).

B. Rules for enforcement of a Note secured by DOT differ from rules for enforcement of DOT.

One need only be the holder of a note to be entitled to enforce the note. *RCW 62A.3-301.* If the note is blank endorsed, one becomes the holder simply by possessing the note. *RCW 62A.1-201(b)(21)(A).* But notes and DOTs are separate documents, and the UCC regulates them separately. Negotiable instruments (negotiable notes) are regulated by Article 3. DOTs, on the other hand, are regulated by Article 9 -- the *Secured Transactions Article*. After all, a Note and DOT are instruments that define a secured transaction.

Trying to determine the circumstances under which a DOT follows the transfer of rights associated with a mortgage note by searching provisions in Article 3 is the equivalent of trying to find the Devil by

searching Heaven. In either case, what one is searching for will not be found where one is searching.

Whether the DOT follows a transfer of rights associated with a mortgage note is determined by RCW 62A.9A-203, which is the secured transactions provision that codifies the common-law Security follow the Note Doctrine.

1. *Brown* Court's invocation of RCW 62A.9A-203.

The *Brown* Court invoked the Security follows the Note Doctrine by analyzing RCW 62A.9A-203(g), the codification of that doctrine:

> The parties agree the note is secured by a publicly recorded deed of trust, but the deed is not in this court's record. The deed's absence from the record does not affect this case because RCW 62A.9A-203(g) "'codifies the common-law rule that a transfer of an obligation secured by a security interest or other lien on personal or real property also transfers the security interest or lien,'" UCC REPORT ON MORTGAGE NOTES, supra, at 12 n. 44 (quoting RCWA 62A.9A-203 UCC cmt. 9); see also RCW 62A.9A-203(g) ("The attachment of a security interest [i.e., the interest of a . . . ***buyer of . . . a promissory note***," RCW 62A.1-201(b)(35),] in a ***right to payment***[8] . . . secured by a security interest . . . on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.") This statute "explicitly provides that . . . the assignment of the interest of the ***seller***[9] . . . automatically transfers a corresponding interest in the

[8] In the hands of a mortgage lender, a mortgage note is a *right to payment.*

[9] The overriding interest of the seller of a promissory note is the ***ownership interest*** in the note. The Permanent Editorial Board of the UCC (PEB) is talking about transferring *ownership* of a note (i.e., the ***beneficial interest*** in a note).

> mortgage to the assignee." UCC REPORT ON MORTGAGE NOTES, supra, at 12. The parties present no arguments relating to the deed of trust as distinct from the note.

Brown v. Washington Dept. of Commerce, 184 Wn.2d 509, 529, fn. 9 (2015). (emphasis added).

The passage quoted immediately above confirms the meaning of RCW 62A.9A-203 and simultaneously undermines the Court's holding in *Brown.*

In the passage, the Court acknowledges that the attachment of an *ownership* interest of a *buyer* of a promissory note (in *Brown*, a mortgage note) in a *right to payment* (i.e., in *Brown*, the mortgage note) that is secured by a *security interest* on real property (Ms. Brown's DOT provides a security [lien] interest on her real property.) is also attachment of a *security interest* (i.e., an *ownership interest*) in Ms. Brown's property.

Up to this point, the Court's analysis was correct. Next the Court thrusts a dagger into the heart of its Opinion by acknowledging that RCW 62A.9A-203(g) " 'explicitly provides that . . . the assignment of the interest of the <u>seller</u> . . . automatically transfers a corresponding interest in

the mortgage to the *assignee*.' "[10] *Brown*, 184 Wn.2d at 529, fn. 9 [quoting UCC REPORT ON MORTGAGE NOTES].

As this Court indicates in fn. 9 of the opinion, it is the attachment to the promissory note of the *ownership* interest of the *buyer* of the note that automatically transfers to the *buyer* of the note (i.e., the assignee) the *seller's* interest in the deed of trust that secures the note.

The *buyer's ownership interest* in the promissory note attaches to the promissory note only when the *ownership interest* in the promissory note becomes *enforceable against the seller* of the promissory note. *RCW 62A.9A-203(a)*. The *interest* becomes *enforceable against the seller* at the precise moment that the *buyer* of the promissory note can be said to have met the 3 requirements of RCW 62A.9A-203(b). At precisely the same moment that the buyer's ownership interest in the note becomes enforceable against the seller, the *seller's beneficial interest* in the DOT is transferred to the *buyer* of the promissory note and becomes enforceable by the buyer against the seller and the rest of the world. In other words, the security follows a transfer of *ownership* of the note. The security does

[10] Assignment of a note provides an *ownership interest* in the note to the assignee. In *Brown*, it was undisputed that M & T Bank did not own the note it held. Consequently, when the right to enforce the note was allegedly transferred to M & T Bank – I use the word *allegedly* because RCW 62A.9A-313(h) proves Freddie Mac never relinquished *possession of the note* when it transferred physical custody of the note to M & T – the right to enforce the DOT was not transferred with it.

not follow a transfer of the right to enforce the note in the absence of a simultaneous transfer of ownership of the note because such a transfer does not include a transfer of the interest – the *beneficial interest in the note* – the DOT was created to secure.

2. RCW 62A.3-310 requires the foreclosing entity to be the holder and owner of the note and owner of the underlying debt obligation.

Under RCW 62A.3-310(b)(3), if the note is dishonored and the obligee of the obligation for which the note was taken as payment (the ***owner*** of the mortgage debt and note) is the person entitled to enforce the note (is the ***holder*** of the note) (the PETE), then the obligee of the obligation (the ***owner*** of the mortgage debt and note) may enforce ***either*** the note ***or*** the underlying mortgage debt.[11]

If, on the other hand, the owner of the underlying mortgage debt obligation and note ***is not*** the holder of the note, then the owner of the note and underlying mortgage debt obligation ***may not*** enforce the note ***or*** the underlying mortgage debt obligation. This result, as improbable as it reads, obtains because the lender is unable to declare the note dishonored. Under the RCW 62A.3-301 and 62A.3-604(a), only the PETE can declare

[11] Under the terms of the DOT, the underlying mortgage debt, not the note, is enforced by selling the property. As with any other promissory note, a defaulted upon mortgage note is enforced by suing on the note.

the note dishonored.[12] And until the note is declared dishonored, the underlying mortgage debt remains *suspended*!

Official Comment 3 to UCC § 3-310 makes the point very clearly:

> 3. Subsection (b) concerns cases in which an uncertified check or ***a note*** is taken for an obligation. The typical case is that in which a buyer pays for goods or services by giving the seller the buyer's personal check, or in which the buyer signs ***a note*** for the purchase price. . . . If the check or ***note is dishonored***, the seller [lender sells the money the borrower purchases in a mortgage loan transaction] may sue on ***either*** the dishonored instrument [note] ***or*** the contract of sale [the DOT in a mortgage loan transaction] ***if*** the seller [BOA in this case] has possession of the instrument [note] ***and*** is the person entitled to enforce it. If the right to enforce the instrument is held by ***somebody other than the seller*** [Wells in this case], the seller [BOA] ***can't*** enforce the right to payment of the price under the sales contract [BOA can't enforce the DOT] because that right is represented by the instrument [the note] which is enforceable by somebody else [Wells]. Thus, if the seller [BOA] sold the note or the check to a holder ***and*** has not reacquired it after dishonor, ***the only right that survives is the right to enforce the instrument*** [the note].

(bracketed material added).

Please notice, RCW 62A.3-310 does not give a note holder that does not own the note it holds the option of enforcing the underlying mortgage debt (the DOT). Unless the noteholder *own*s the note, the note holder has no interest in the underlying mortgage debt. And if the noteholder has no interest in the underlying mortgage debt, it should go

[12] Under the DTA, only the holder can declare the note dishonored.

without saying that the noteholder has no right to enforce the security for that debt.

Below, NYCB did not claim or prove an ownership interest in the Note. Consequently, NYCB has not proven any interest in the underlying mortgage debt. Therefore, NYCB has not proven that it is a party to the DOT contract, whether it is a party to the DOT or not.

The foreclosure and sale of Petitioner's property was unlawful.

VII CONCLUSION

Based on the foregoing, Petitioner hereby requests that the Court accept review of this case.

RESPECTFULLY SUBMITTED this 15th day of June 2017.

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DECLARATION OF DELIVERY

I, James A. Wexler, declare under penalty of perjury under the laws of the State of Washington that on June 15, 2017, I caused a copy of this Revised Petition for Review to be filed by e-mail with the Supreme Court and to be served on counsel for each of the Respondents by email, as previously agreed.

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RESPECTFULLY SUBMITTED this 15th day of June 2017.

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APPENDIX

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

CONCEPCION HERMOSILLO, Appellant, v. QUALITY LOAN SERVICE CORP. OF WASHINGTON, a Washington corporation; NEW YORK COMMUNITY BANK, Respondents, ERNST, INC.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware corporation; and JOHN DOES 1-10, Defendants.	No. 75020-8-I DIVISION ONE UNPUBLISHED OPINION FILED: April 24, 2017

LEACH, J. — Concepcion Hermosillo appeals the summary dismissal of her Consumer Protection Act (CPA)[1] claim against New York Community Bank (NYCB) and Quality Loan Service Corp. of Washington. After Hermosillo defaulted on a loan, NYCB foreclosed on her property. The property was later sold at public auction. Hermosillo sued NYCB and Quality, the trustee that conducted the sale. She claims their actions in connection with the foreclosure violated the CPA. Because no evidence shows that the respondents' conduct was unfair or deceptive, we affirm dismissal of her CPA claim.

[1] Ch. 19.86 RCW.

FACTS

In 2005, Hermosillo borrowed $212,000 from Ernst Inc. to purchase real property. Hermosillo delivered to Ernst a promissory note and deed of trust against the property to secure payment of the note. Ernst later transferred the note to AmTrust Bank (formerly Ohio Savings Bank). The deed of trust identified Mortgage Electronic Registration Systems Inc. (MERS) as beneficiary. AmTrust failed in 2009, and NYCB acquired the note from the Federal Deposit Insurance Corporation (FDIC), which had been appointed as receiver of AmTrust. The FDIC endorsed the note to NYCB, and NYCB took possession of the original note.

In April 2012, Hermosillo and NYCB entered into a loan modification agreement. Still, in June 2012, Hermosillo stopped making mortgage payments, defaulting on her loan.

MERS purported to assign its beneficial interest in the deed of trust to NYCB in an assignment of deed of trust that it recorded in October 2012.

In March 2013, NYCB gave Quality a beneficiary declaration stating that NYCB was the actual holder of the note and recorded Quality's appointment as successor trustee.

As required by the deeds of trust act (DTA),[2] Quality sent Hermosillo a notice of default and, 30 days later, issued and recorded a notice of trustee's sale.

[2] Ch. 61.24 RCW.

Quality scheduled a foreclosure sale for August 16, 2013. But this sale did not take place. On August 19, 2013, Quality discontinued the trustee's sale.[3]

In April 2015, Hermosillo was still in default, and Quality issued and recorded a second notice of trustee's sale. But it did not send a new notice of default. On December 1, 2015, the trial court denied Hermosillo's motion to enjoin the sale. Facts about the ensuing sale are set forth in the companion case, Haydari v. Hermosillo, No. 74871-8-I.

After the foreclosure sale, Hermosillo sued NYCB, Quality, MERS, and Ernst for violating the CPA. NYCB and Quality moved for summary judgment. The trial court granted the motion, dismissing the case as to those parties. Hermosillo appeals.[4]

ANALYSIS

We review summary judgment orders de novo.[5] A trial court may grant summary judgment only when no genuine issues of material fact exist and the moving party is entitled to judgment as a matter of law.[6] When reviewing a summary judgment order, we engage in the same inquiry as the trial court, considering the facts and all reasonable inferences from the facts in the light most

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[3] The parties claim that Quality discontinued the sale because it had been automatically stayed as a result of bankruptcy proceedings that Hermosillo filed on August 14, 2013. But beyond the pleadings and briefing, the record contains no information about the stay or bankruptcy proceeding.

[4] On June 8, 2016, the superior court dismissed Ernst & MERS. Hermosillo did not appeal any final orders as to MERS or Ernst. We do not consider the merits of any claims Hermosillo has made against these entities.

[5] Hadley v. Maxwell, 144 Wn.2d 306, 310-11, 27 P.3d 600 (2001).

[6] CR 56(c).

favorable to the nonmoving party.[7] We may affirm a trial court's grant of summary judgment on any basis supported by the record.[8]

To prevail on a CPA claim, a plaintiff must show (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) a public interest impact, (4) injury to the plaintiff in his or her business or property, and (5) a causal link between the unfair or deceptive act and the injury.[9] "[A] claim under the Washington CPA may be predicated upon a per se violation of statute, an act or practice that has the capacity to deceive substantial portions of the public, or an unfair or deceptive act or practice not regulated by statute but in violation of public interest."[10] An appellate court reviews whether a particular action gives rise to a CPA violation as a question of law.[11]

Hermosillo bases her CPA claim on alleged wrongful foreclosure and violations of the DTA. Violations of the DTA can support all five elements of a CPA claim.[12] But "[a] claim under the CPA based on violations of the DTA must meet the same requirements applicable to any other CPA claim."[13] Here, because

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[7] Right-Price Recreation, LLC v. Connells Prairie Cmty. Council, 146 Wn.2d 370, 381, 46 P.3d 789 (2002).

[8] Steinbock v. Ferry County Pub. Util. Dist. No. 1, 165 Wn. App. 479, 485, 269 P.3d 275 (2011).

[9] Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 780, 719 P.2d 531 (1986).

[10] Klem v. Wash. Mut. Bank, 176 Wn.2d 771, 787, 295 P.3d 1179 (2013).

[11] Leingang v. Pierce County Med. Bureau, Inc., 131 Wn.2d 133, 150, 930 P.2d 288 (1997).

[12] Lyons v. U.S. Bank Nat'l Ass'n, 181 Wn.2d 775, 785, 336 P.3d 1142 (2014).

[13] Lyons, 181 Wn.2d at 785.

Hermosillo does not show NYCB or Quality committed an unfair or deceptive act, the trial court correctly granted summary judgment to respondents.

First Hermosillo claims that NYCB did not have authority to pursue foreclosure. We disagree. Hermosillo does not dispute that NYCB was the holder of the note. As the note holder, NYCB had authority to foreclose.[14]

Hermosillo claims that the security—the deed of trust—does not automatically follow the note but instead follows ownership of the note. Hermosillo also asserts that a deed of trust does not secure repayment of a promissory note because the promissory note is itself repayment. But our Supreme Court held in Brown v. Department of Commerce[15] that possession of a promissory note determines the right to foreclose. Hermosillo admits that under Brown, her CPA claim lacks merit. She challenges the Brown decision, asserting that it conflicts with the provisions of RCW 62A.9A-203 about the enforceability of security interests. As a result, she claims that Brown unconstitutionally encroaches on the legislature's plenary authority to enact the laws of the State of Washington. But "[w]e are bound by the decisions of our state Supreme Court and err when we fail to follow them.[16] We reject Hermosillo's challenge to Brown.

In addition to being contrary to our Supreme Court's decisions, her claim that the deed of trust does not secure the note is contradicted by the actual

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[14] Brown v. Dep't of Commerce, 184 Wn.2d 509, 524-25, 359 P.3d 771 (2015).

[15] 184 Wn.2d 509, 524-25, 359 P.3d 771 (2015).

[16] MP Med. Inc. v. Wegman, 151 Wn. App. 409, 417, 213 P.3d 931 (2009) (citing 1000 Virginia Ltd. P'ship v. Vertecs Corp., 158 Wn.2d 566, 578, 146 P.3d 423 (2006)).

language of the deed of trust. The deed specifically states that "[t]his Security Instrument secures to Lender (i) the repayment of the Loan" and defines "Loan" to mean "the debt evidenced by the Note."

Hermosillo claims that the MERS assignment of the deed of trust was ineffective because MERS never had a beneficial interest in the note so no beneficial interest ever transferred. But the invalidity of the MERS assignment does not affect NYCB's ability to enforce the deed of trust in this case. As the holder of the note, NYCB had the power to enforce the deed of trust because the deed of trust follows the note by operation of law.[17] NYCB possessed the note. It did not need an assignment of an interest in the deed of trust. Thus, the assignment's invalidity did not affect NYCB's authority to foreclose.

Hermosillo does not show that a question of fact exists about NYCB's right to foreclose. For this reason, Hermosillo does not show that NYCB committed an unfair or deceptive act when it pursued foreclosure.

Next, Hermosillo asserts that the sale was improper because Quality did not comply with the DTA's notification requirements. RCW 61.24.030 details the procedures for a trustee's sale. At least 30 days before a trustee schedules a sale, the trustee must send the borrower a written notice of default.[18] Only then can the trustee record a notice of trustee's sale.[19] The notice of sale must contain the date

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[17] Bain v. Metro. Mortg. Grp. Inc., 175 Wn.2d 83, 104, 285 P.3d 34 (2012) ("Washington's deed of trust act contemplates that the security instrument will follow the note, not the other way around.").

[18] RCW 61.24.030(8).

[19] RCW 61.24.030(8).

of the sale.[20] If the sale is not held within 120 days of that date, the trustee must issue a new notice of sale.[21]

Hermosillo asserts that because Quality did not send a new notice of default after it discontinued the first sale, it could not properly issue a second notice of trustee's sale without first sending a new notice of default. She relies on our Supreme Court's decision in Albice v. Premier Mortgage Services of Washington, Inc.[22] Albice held that the DTA requires a new notice of trustee's sale if the sale date stated in the original notice of trustee's sale expires.[23] But in Leahy v. Quality Loan Service Corp.,[24] we clarified that this does not require the trustee to send a new notice of default. We held that the plain language of the statute requires only a new notice of trustee's sale.[25]

Hermosillo asserts that because Quality terminated the sale, rather than merely postponed it, the DTA requires a new notice of default. In Leahy, we rejected the argument that when a trustee's sale is continued for more than 120 days from the date provided in the notice of trustee's sale, the trustee must issue a new notice of default.[26] We explained that the notice of default serves a different purpose than the notice of trustee's sale.[27] The notice of default notifies the debtor

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[20] RCW 61.24.040(1)(f).

[21] RCW 61.24.040(6); Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 568, 276 P.3d 1277 (2012).

[22] 174 Wn.2d 560, 276 P.3d 1277 (2012).

[23] Albice, 174 Wn.2d at 568.

[24] 190 Wn. App. 1, 6-7, 359 P.3d 805 (2015), review denied, 185 Wn.2d 1011 (2016).

[25] Leahy, 190 Wn. App. at 6-7.

[26] Leahy, 190 Wn. App. at 6-7.

[27] Leahy, 190 Wn. App. at 7.

of the amount she owes and that she is in default.[28] By contrast, the notice of trustee's sale notifies the world of the foreclosure sale.[29] "In light of the function served by the notice of default as compared to the notice of trustee's sale, it would not make sense to interpret the act as requiring reissuance of the notice of default."[30] Hermosillo cites no authority for her argument that a discontinued sale differs significantly from a continued sale. And in light of the different purposes the notices serve, we see no reason to depart from our decision in Leahy.

Here, under Leahy, the statutory requirements for notice were met. Quality properly recorded a new notice of trustee's sale after the original expired. And Hermosillo does not show that she ever cured the default described in the 2012 notice that she received. Thus, the original notice of default was still in effect.

Because NYCB had authority to foreclose and Quality complied with the notification requirements of the DTA, their conduct was not unfair or deceptive. Hermosillo fails to show an issue of fact about an essential element of her CPA claim. Her claim fails, and we need not address any of its other elements.

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[28] Leahy, 190 Wn. App. at 7.
[29] Leahy, 190 Wn. App. at 7.
[30] Leahy, 190 Wn. App. at 7.

We affirm.

WE CONCUR:

ELECTRONICALLY RECORDED
201304160829 4
04/16/2013 04:09 PM 75.00
SNOHOMISH COUNTY, WASHINGTON

WHEN RECORDED MAIL TO:
Quality Loan Service Corp. of Washington
C/O Quality Loan Service Corporation
2141 5th Avenue
San Diego, CA 92101

201304160829

TS No.: WA-12-530649-SH
APN No.: 00517000004802
Title Order No.: 02-12033423
Grantor(s): CONCEPCION H. AZADMANESH
Grantee(s): MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC AS NOMINEE FOR ERNST, INC.
Deed of Trust Instrument/Reference No.: 200508100286

SPACE ABOVE THIS LINE FOR RECORDER'S USE

NOTICE OF TRUSTEE'S SALE

Pursuant to the Revised Code of Washington 61.24, et seq.

I. **NOTICE IS HEREBY GIVEN** that Quality Loan Service Corp. of Washington, the undersigned Trustee, will on **8/16/2013**, at **10:00 AM On the steps in front of the North entrance to the Snohomish County Courthouse, 3000 Rockefeller Avenue, Everett, WA 98201** sell at public auction to the highest and best bidder, payable in the form of credit bid or cash bid in the form of cashier's check or certified checks from federally or State chartered banks, at the time of sale the following described real property, situated in the County of **SNOHOMISH**, State of **Washington**, to-wit:

The East half of the South 17.67 feet of Lot 48 and the East half of Lot 49, Except the South 35.34 feet of said Lot 49, MODERN HOMES, DIVISION NO.1, according to the Plat thereof recorded in Volume 18 of Plats, Page 50, records of Snohomish County, Washington. Situate in the County of Snohomish, State of Washington.

More commonly known as:
15322 20TH PL WEST, LYNNWOOD, WA 98037

which is subject to that certain Deed of Trust dated **8/5/2005**, recorded **8/10/2005**, under **200508100286** and re-recorded on **3/16/2012** as **Instrument Number 201203160277** records of **SNOHOMISH** County, **Washington**, from **CONCEPCION H. AZADMANESH, a married woman as her sole and seperate property** , as Grantor(s), to **FIDELITY NATIONAL TITLE COMPANY OF WASHINGTON** , as Trustee, to secure an obligation in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC AS NOMINEE FOR ERNST, INC.** , as Beneficiary, the beneficial interest in which was assigned by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC AS NOMINEE FOR ERNST, INC.** (or by its successors-in-interest and/or assigns, if any), to **New York Community Bank**.

II. No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust/Mortgage.

A-10

III. The default(s) for which this foreclosure is made is/are as follows:
Failure to pay when due the following amounts which are now in arrears: **$20,290.47**

IV. The sum owing on the obligation secured by the Deed of Trust is: The principal sum of **$213,431.74**, together with interest as provided in the Note from the **6/1/2012**, and such other costs and fees as are provided by statute.

V. The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. Said sale will be made without warranty, expressed or implied, regarding title, possession or encumbrances on **8/16/2013**. The defaults referred to in Paragraph III must be cured by **8/5/2013** (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before **8/5/2013** (11 days before the sale) the default as set forth in Paragraph III is cured and the Trustee's fees and costs are paid. Payment must be in cash or with cashiers or certified checks from a State or federally chartered bank. The sale may be terminated any time after the **8/5/2013** (11 days before the sale date) and before the sale, by the Borrower or Grantor or the holder of any recorded junior lien or encumbrance by paying the principal and interest, plus costs, fees and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI. A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

NAME
CONCEPCION H. AZADMANESH, a married woman as her sole and seperate property
ADDRESS
15322 20TH PL WEST, LYNNWOOD, WA 98037

by both first class and certified mail, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. These requirements were completed as of **3/14/2013**.

VII. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII. The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX. Anyone having any objections to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

NOTICE TO OCCUPANTS OR TENANTS – The purchaser at the Trustee's Sale is entitled to possession of the property on the 20th day following the sale, as against the Grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20th day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060.

THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.

You have only 20 DAYS from the recording date of this notice to pursue mediation.

DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you are eligible and it may help

...you save your home. See below for safe sources of help.

SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission: Toll-free: **1-877-894-HOME (1-877-894-4663)** or Web site: http://www.dfi.wa.gov/consumers/homeownership/post_purchase_counselors_foreclosure.htm.

The United States Department of Housing and Urban Development: Toll-free: **1-800-569-4287** or National Web Site: http://portal.hud.gov/hudportal/HUD or for Local counseling agencies in Washington: http://www.hud.gov/offices/hsg/sfh/hcc/fc/index.cfm?webListAction=search&searchstate=WA&filterSvc=dfc

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys: Telephone: **1-800-606-4819** or Web site: http://nwjustice.org/what-clear.

If the sale is set aside for any reason, including if the Trustee is unable to convey title, the Purchaser at the sale shall be entitled only to a return of the monies paid to the Trustee. This shall be the Purchaser's sole and exclusive remedy. The purchaser shall have no further recourse against the Trustor, the Trustee, the Beneficiary, the Beneficiary's Agent, or the Beneficiary's Attorney.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holders right's against the real property only.

THIS OFFICE IS ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit report agency if you fail to fulfill the terms of your credit obligations.

Dated: APR 15 2013

Quality Loan Service Corp. of Washington, as Trustee
By: Michael Dowell, Assistant Secretary

Trustee's Mailing Address:
Quality Loan Service Corp. of Washington
C/O Quality Loan Service Corp.
2141 Fifth Avenue, San Diego, CA 92101
(866) 645-7711

Trustee's Physical Address:
Quality Loan Service Corp. of Washington
19735 10th Avenue NE, Suite N-200
Poulsbo, WA 98370
(866) 645-7711

Sale Line: 714-730-2727
Or Login to: http://wa.qualityloan.com
TS No.: WA-12-530649-SH

State of: California)
County of: San Diego)

On APR 15 2013 before me, W. Sanchez a notary public, personally appeared Michael Dowell, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under *PENALTY OF PERJURY* under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature W. Sanchez (Seal)

W. SANCHEZ
Commission # 1958442
Notary Public - California
San Diego County
My Comm. Expires Oct 28, 2015

ELECTRONICALLY RECORDED
201504081086 4
04/08/2015 04:28 PM 75.00
SNOHOMISH COUNTY, WASHINGTON

WHEN RECORDED MAIL TO:
Quality Loan Service Corp. of Washington
C/O Quality Loan Service Corporation
411 Ivy Street
San Diego, CA 92101

201504081086

SPACE ABOVE THIS LINE FOR RECORDER'S USE

TS No.: **WA-12-530649-SH**
APN No.: **00517000004802**
Title Order No.: **02-12035423**
Deed of Trust Grantor(s): **CONCEPCION H. AZADMANESH**
Deed of Trust Grantee(s): **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC AS NOMINEE FOR ERNST, INC.**
Deed of Trust Instrument/Reference No.: **200508100286**

NOTICE OF TRUSTEE'S SALE

Pursuant to the Revised Code of Washington 61.24, et seq.

I. **NOTICE IS HEREBY GIVEN** that Quality Loan Service Corp. of Washington, the undersigned Trustee, will on **8/7/2015, at 10:00 AM On the steps in front of the North entrance to the Snohomish County Courthouse, 3000 Rockefeller Avenue, Everett, WA 98201** sell at public auction to the highest and best bidder, payable in the form of credit bid or cash bid in the form of cashier's check or certified checks from federally or State chartered banks, at the time of sale the following described real property, situated in the County of **SNOHOMISH**, State of Washington, to-wit:

The East half of the South 17.67 feet of Lot 48 and the East half of Lot 49, Except the South 35.34 feet of said Lot 49, MODERN HOMES, DIVISION NO.1, according to the Plat thereof recorded in Volume 18 of Plats, Page 50, records of Snohomish County, Washington. Situate in the County of Snohomish, State of Washington.

More commonly known as:
15322 20TH PL WEST, LYNNWOOD, WA 98037

which is subject to that certain Deed of Trust dated **8/5/2005**, recorded **8/10/2005**, under **200508100286** and re-recorded on **3/16/2012** as Instrument Number **201203160277** records of **SNOHOMISH** County, **Washington**, from **CONCEPCION H. AZADMANESH, a married woman as her sole and seperate property** , as Grantor(s), to **FIDELITY NATIONAL TITLE COMPANY OF WASHINGTON** , as Trustee, to secure an obligation in favor of **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC AS NOMINEE FOR ERNST, INC.** , as Beneficiary, the beneficial interest in which was assigned by **MORTGAGE ELECTRONIC REGISTRATION SYSTEMS INC AS NOMINEE FOR ERNST, INC.** (or by its successors-in-interest and/or assigns, if any), to **New York Community Bank**.

II. No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust/Mortgage.

III. The default(s) for which this foreclosure is made is/are as follows:
Failure to pay when due the following amounts which are now in arrears: **$24,225.64**

IV. The sum owing on the obligation secured by the Deed of Trust is: The principal sum of **$203,621.78**, together with interest as provided in the Note from the **3/1/2014**, and such other costs and fees as are provided by statute.

V. The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. Said sale will be made without warranty, expressed or implied, regarding title, possession or encumbrances on **8/7/2015**. The defaults referred to in Paragraph III must be cured by **7/27/2015** (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before **7/27/2015** (11 days before the sale) the default as set forth in Paragraph III is cured and the Trustee's fees and costs are paid. Payment must be in cash or with cashiers or certified checks from a State or federally chartered bank. The sale may be terminated any time after the **7/27/2015** (11 days before the sale date) and before the sale, by the Borrower or Grantor or the holder of any recorded junior lien or encumbrance by paying the principal and interest, plus costs, fees and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI. A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

NAME
CONCEPCION H. AZADMANESH, a married woman as her sole and seperate property
ADDRESS
15322 20TH PL WEST, LYNNWOOD, WA 98037

by both first class and certified mail, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. These requirements were completed as of **3/14/2013**.

VII. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII. The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

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You have only 20 DAYS from the recording date of this notice to pursue mediation.

DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission: Toll-free: **1-877-894-HOME (1-877-894-4663)** or Web site: http://www.dfi.wa.gov/consumers/homeownership/post_purchase_counselors_foreclosure.htm.

The United States Department of Housing and Urban Development: Toll-free: **1-800-569-4287** or National Web Site: http://portal.hud.gov/hudportal/HUD or for Local counseling agencies in Washington: http://www.hud.gov/offices/hsg/sfh/hcc/fc/index.cfm?webListAction=search&searchstate=WA&filterSvc=dfc

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys: Telephone: **1-800-606-4819** or Web site: http://nwjustice.org/what-clear.

If the sale is set aside for any reason, including if the Trustee is unable to convey title, the Purchaser at the sale shall be entitled only to a return of the monies paid to the Trustee. This shall be the Purchaser's sole and exclusive remedy. The purchaser shall have no further recourse against the Trustor, the Trustee, the Beneficiary, the Beneficiary's Agent, or the Beneficiary's Attorney.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holders right's against the real property only.

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBTAND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit report agency if you fail to fulfill the terms of your credit obligations.

Dated: APR 07 2015

Quality Loan Service Corp. of Washington, as Trustee
By: Maria Montana, Assistant Secretary

Trustee's Mailing Address:
Quality Loan Service Corp. of Washington
C/O Quality Loan Service Corp.
411 Ivy Street, San Diego, CA 92101
(866) 645-7711

Trustee's Physical Address:
Quality Loan Service Corp. of Washington
108 1st Ave South, Suite 202
Seattle, WA 98104
(866) 925-0241

Sale Line: 714-730-2727
Or Login to: http://wa.qualityloan.com
TS No.: WA-12-530649-SH

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of: California)

County of: San Diego)

On APR 07 2015 before me, COURTNEY PATANIA a notary public, personally appeared Maria Montana who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under *PENALTY OF PERJURY* under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal. (Seal)

Signature COURTNEY PATANIA

COURTNEY PATANIA
Commission # 2044156
Notary Public - California
San Diego County
My Comm. Expires Nov 1, 2017