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No. 70629-2-1

IN THE COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

RYAN HOWARD,

Appellant/Plaintiff,

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee of the IndyMac INDA
Mortgage Loan Trust 2007-AR7, Mortgage Pass-Through Certificates, Series 2007-AR7 under
the Pooling and Servicing Agreement dated 8/9/2007, ET AL.,

Respondents/Defendants.

COURT OF APPEALS
STATE OF WASHINGTON
JUL 14 2:19 PM '14

APPELLANTS REPLY BRIEF

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CONSTITUTIONAL PROVISIONS

- a) The Washington State Constitution holds that “no person shall be disturbed in his private affairs... without authority of law” (Article 1, §7);
- b) WA. Const. art. I, §3 (“No person shall be deprived of life, liberty, or property, without due process of law”);
- c) **U.S. Const.** - 14th Amendment, §1 “All Persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens and of the State wherein they reside. No State shall make or enforce any law which abridges the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

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I. **Argument - RE: Respondent Brief - I Introduction:**

This case stems from criminal actions tied to loans made by Pierce Commercial Bank; a majority of the banks employees who directly dealt with this transaction where federally indicted by the FBI and are serving extensive prison terms.

In the recent Respondent Brief, Deutsche Bank is attempting to misdirect the court and fails to address key questions raised by the Appellant Ryan Howard.

Deutsche Bank entered into Mediation under false pretenses with no intention to settle; they used the opportunity to obtain an appraisal of Howard's property prior to Mediation and failed to provide a copy to Howard as agreed.

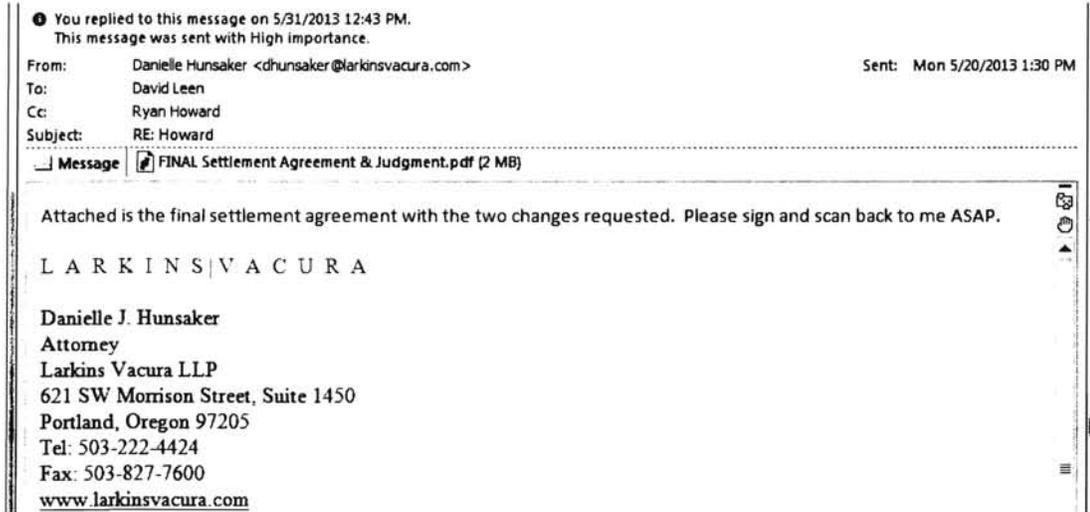
The Mediation agreement was clearly breached by Deutsch Bank; they withheld the appraisal and insisted on terms that where so onerous they violated Howard's Constitutional Due Process rights in any future litigation.

Would a "Reasonable Mind" agree and adhere to the following stipulations in Good Faith?

- G. **Release.** Howard hereby releases, acquits, and forever discharges Deutsche Bank and OneWest and all of their respective past, present, and future trustees, partners, members, shareholders, owners, investors, officers, directors, managers, employees, independent contractors, agents, insurers, attorneys, subsidiaries, affiliates, parent companies, successors, heirs and assigns from any and all rights, interests, claims, demands, liabilities, obligations, debts, suits, and/or causes of action, of any and every nature, known and unknown, matured and unmatured, liquidated and unliquidated, disputed and undisputed, which Howard has or ever had or may have arising out of or related to any actual or alleged fact, act, omission, transaction, practice, conduct, event, or other matter that occurred before the signing of this Agreement (the "Released Claims"). The Released Claims specifically include, but are not limited to, any and all claims for damages or relief of any and every nature, including but not limited to claims for economic and noneconomic damages, punitive damages, attorney fees, interest, costs, contribution, indemnity and/or injunctive or declaratory relief. This release does not include a release of claims for violating any provision of this Agreement.

Additional terms were added by the Bank in settlement drafts such as Non-Disparagement and Confidentiality clauses which were never discussed nor contemplated; giving absolutely no benefit or consideration to Howard for the covenants. *Any outcome* in trial court would have been a more favorable path.

Contrary to misleading statements in the Respondents Brief that Mr. Howard contacted the prior attorney for Deutsche Bank, Danielle Hunsaker “around his attorney” the opposite is true. Below is a screen shot of an email directly from Mr. Hunsaker with a return version on a Draft from Monday 5/20/2013 at 1:30PM:



Ms. Hunsaker negotiated directly with Howard and his attorney David Leen via email and phone conferences, exchanging redline documents watermarked “DRAFT” by Howard. The **following day** May 21st 2013 Ms. Hunsaker wrote a letter on ***behalf*** of the Mediator titled:

“REPORT AND RECOMMENDATION OF JOINTLY APPOINTED MEDIATOR”:



A signed version by the mediator Margo Keller was not included in the trial courts records, an unsigned copy was forwarded to Howard via email.

With the Defendant's attorney drafting a document in lieu of the Mediator in conjunction with the appraisal being withheld; concerns of a conflict of interest arose. Per RCW 7.07.080 Howard requested documents related to the Mediators background as well as financial accounting information which was discussed but not supplied by Deutsche after Mediation. These requests where pertinent and required by IRS for tax purposes. CP 102-104

The next day Wednesday, May 22nd 2013 Ms. Hunsaker submitted to the trial court Draft agreements claiming Howard refused to execute the documents. No further attempts were made to meditate the matter by Deutsche Bank.

That night at 6:13PM Mr. Howard was finally forwarded the appraisal by David Leen, an email in which he removed the receive date from Ms. Hunsaker.

From:	David Leen <david@leenandosullivan.com>	Sent:	Wed 5/22/2013 6:13 PM
To:	Howard Ryan		
Cc:			
Subject:	Fwd: Howard		

Message	2013.04.13 Appriaisal.pdf (3 MB)	ATT00001.htm (259 B)	

Howard's attorney David Leen was not performing his duties nor regarding direct written instructions from Howard. This was conveyed to the trial court and known to Ms. Hunsaker and the Mediator. David Leen was dismissed as Howard's council Thursday, May 30th 2013 after David sent an email to Howard stating he had not taken any action in opposition to Deutsche Bank's filings. Howard had no choice but to represent himself Pro Se to mitigate his damages.

Below is the email which notified Mr. Hunsaker that Ryan Howard would be acting Pro Se and that David Leen was no longer Howards Attorney:

From: Ryan Howard <ryan@levitate.com> Sent: Fri 5/31/2013 12:43 PM
To: 'Danielle Hunsaker'
Cc:
Subject: Notice

Message  OBJECTION TO PROPOSED HEARING and REQUEST FOR OPPORTUNITY TO BE HEARD_Dig_Sig.pdf (367 KB)

Ms. Hunsaker,

Due to Service Issues and irregularities in the Communications between the Mediator and my Legal Counsel I am forwarding you this Objection filed with the court. Additional information may follow.

David Leen has refused to answer your Motion as directed by myself for potential reasons of self-interest; there has also been delays sending me documents via email, which may be an issue between email servers and/or negligence.

I'm am attempting to obtain new counsel; in the interim please direct all correspondence to myself at the address below as I am being forced to act Pro Se.

I will allow Service by email and/or KKSC E-Service on the condition you also agree to accept Service by email and/or KKSC-E-Service; the caveat would be a mutual short reply back when opened to avoid miscommunication or server error and to determine actual receipt.

Please feel free to contact me with any questions or to discuss or email me with any resolution to the issues you may believe to be a mutual compromise/solution.

Sincerely,

Ryan Howard
Cellular – 206-422-8892
11310 Riviera PL NE
Seattle, WA 98125

From: Danielle Hunsaker [<mailto:dhunsaker@larkinsvacura.com>]
Sent: Monday, May 20, 2013 1:30 PM
To: David Leen
Cc: Ryan Howard
Subject: RE: Howard
Importance: High

Howard electronically filed an Objection and Request to be Heard. [CP 94-100]

FILED
13 MAY 31 AM 11:51
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE NUMBER: 11-2-05565-5 SEA

NO. 11-2-05565-5 SEA
**OBJECTION TO PROPOSED HEARING
and
REQUEST FOR OPPORTUNITY TO
BE HEARD**

Howards pleadings were electronically served, e-faxed and certified mailed to Ms. Hunsaker with Larkins Vacura LLP representing Deutsch Bank.

Working papers were delivered to the trial court Judge:

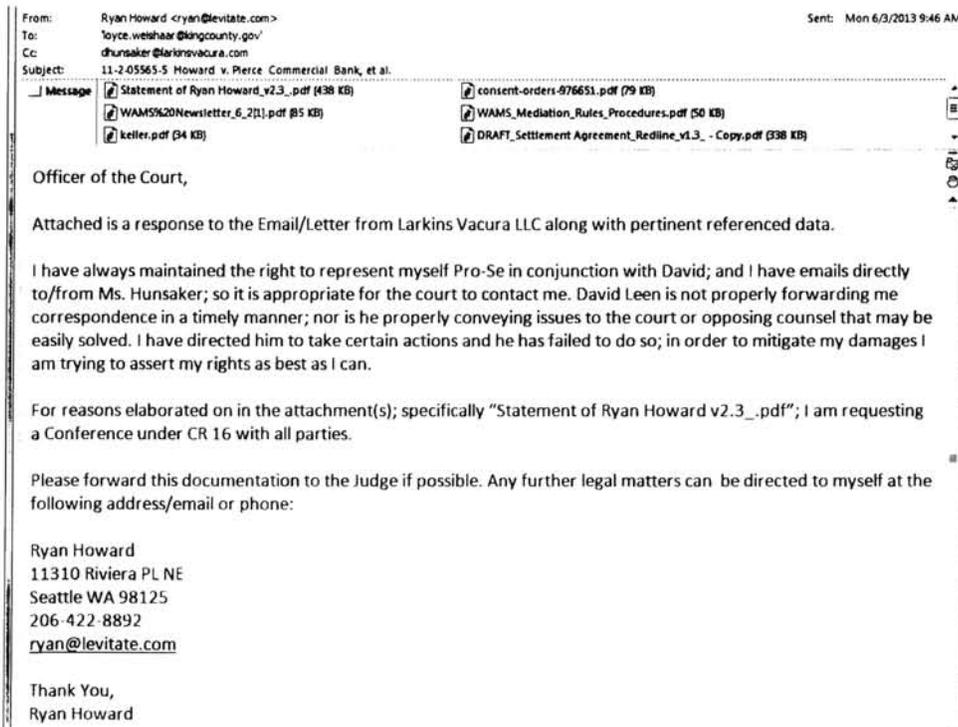
Working Copies Submission Receipt

Case Information	
OFFICIAL - PAYMENT COMPLETE	
Case Title: HOWARD VS PIERCE COMMERCIAL BANK ET AL	
Case Number: 11-2-05565-5	
Judge: Timothy A. Bradshaw	
Without Oral Argument	
Hearing Date: 6/3/2013	
Hearing Location: SEA	
Type of Submission: reply	
Payment Type: Credit Card or Internet Check	
Payment Reference #: 3589774813	
Submitting Party: Ryan Howard Phone: 206-422-8892 Email: ryan@levitate.com	

Payment Information	
Working Copies submission paid on 5/31/2013 11:59:58 AM	
Total Cost: \$22.49 (including convenience fee of \$2.49)	
Payment Reference Number is 3589774813	

Participant Information	
Ryan Howard 11310 Riviera PL NE Seattle WA 98125	Danielle Hunsaker 621 SW Morrison ST Suite 1450 Portland OR 97205

Howard sent an email to Ms. Loyce Weishaar Monday June 3rd 2013 [CP 101].



The court **redacted** the email on record and ignored Howards multiple requests.

The Washington Supreme Court unanimously held in *Condon v. Condon*, 177 Wn.2d 150 (2013), that unless a written release was clearly intended by the parties, the trial court errs by making it an implied term of their settlement agreement. While a personal injury case the body cites elements that negate a majority of the arguments in the Respondents Brief.

IN PART:

[10] ¶19 The trial court follows summary judgment procedures when a moving party relies on affidavits or declarations to show that a settlement agreement is not genuinely disputed. «4» *Brinkerhoff*, 99 Wn. App. at 696; *Lavigne v. Green*, 106 Wn. App. 12, 16, 23 P.3d 515 (2001); *Ferree*, 71 Wn. App. at 43. "[T]he party moving to enforce a settlement agreement carries the burden of proving that there is no genuine dispute over the existence and material terms of the agreement." *Brinkerhoff*, 99 Wn. App. at 696-97 (citing *Ferree*, 71 Wn. App. at 41). The parties' submissions must be read in the light most favorable to the nonmoving party in order to determine whether reasonable minds could reach only one conclusion. *Id.* at 697. Because the proceeding to enforce a settlement is similar to a summary judgment proceeding, we review the court's order de novo. *Id.* at 696.

«4» Although the Court of Appeals has used an abuse of discretion standard in the past when reviewing the enforcement of a settlement agreement, its more recent rulings clarify that de novo review is appropriate. *Brinkerhoff*, 99 Wn. App. at 696; *Lavigne v.*

Green, 106 Wn. App. 12, 16, 23 P.3d 515 (2001). As discussed in *Brinkerhoff*, summary judgment procedures are used in motions to enforce a settlement agreement. *Brinkerhoff*, 99 Wn. App. at 696. However, a trial court abuses its discretion **if the nonmoving party raises a genuine issue of material fact and the trial court fails to hold an evidentiary hearing to resolve the disputed issues of fact.** *Id.* at 697.

[11, 12] ¶20 Settlements are considered under the common law of contracts. *Ferree*, 71 Wn. App. at 39 (CR 2A acts as a supplement but does not supplant the common law of contracts in settlements). Washington follows the objective manifestation theory of contracts, which has us determine the intent of the parties based on the objective manifestations of the agreement, rather than any unexpressed subjective intent of the parties. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005). "It is the duty of the court to declare the meaning of what is written, and not what was intended to be written." *J.W. Seavey Hop Corp. v. Pollock*, 20 Wn.2d 337, 349, 147 P.2d 310 (1944). **Determining the intent of the parties** is paramount in settlements. See, e.g., *Evans & Son, Inc. v. City of Yakima*, 136 Wn. App. 471, 479, 149 P.3d 691 (2006) (holding that there was a genuine issue of material fact over whether the parties agreed on all material terms); see also *Nationwide Mut. Fire Ins. Co. v. Watson*, 120 Wn.2d 178, 190, 840

P.2d 851 (1992) (considering whether there was mutual mistake by the parties). However, "the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used." *Hearst*, 154 Wn.2d at 504. These words are given their ordinary, usual, and popular meaning unless a contrary intent is shown from the entirety of the agreement. *Id.* Courts will not revise a clear and unambiguous agreement or contract for parties or **impose obligations that the parties did not assume for themselves.** *Puget Sound Power & Light Co. v. Shulman*, 84 Wn.2d 433, 439, 526 P.2d 1210 (1974); *Seattle-First Nat'l Bank v. Earl*, 17 Wn. App. 830, 835, 565 P.2d 1215 (1977). **Courts will also not imply obligations into contracts, absent legal necessity typically resulting from inadequate consideration.** *Oliver v. Flow Int'l Corp.*, 137 Wn. App. 655, 662, 155 P.3d 140 (2006)....

[13, 14] ¶21 Applying the principles of contract law to this settlement agreement, we conclude that the trial court erred by enforcing terms that were not implied within the agreement. Here, there is no indication in the record or transcripts that the release agreement was intended by the parties.

RE: Respondent Brief - III A:

Deutsch Bank was aware of this matter as shown in the second Report of Proceedings on March 4th 2011; Attorney Joe Solseng made an appearance on behalf of both Regional Trustee Services and Deutsche Bank Trust, objecting to the hearing without the bank being served. Mr. Solseng admitted that he was unaware of whether he had an ethical obligation to disclose an address to serve the "Lender" (emphasis added) Deutsche Bank. RP 3/4/11, p. 2, 9.

RE: Respondent Brief - III B and C:

To argue one has benefit from its agency or relationship and then disavowing any past actions of those parties conflicts with the Law of Agency. If the agent has actual or apparent authority, the agent will not be liable for acts performed within the scope of such authority, so long as the relationship of the agency and the identity of the principal have been disclosed. ***When the agency is undisclosed or partially disclosed, however, both the agent and the principal are liable.*** Where the principal is not bound because the agent has no actual or apparent authority, the purported agent is liable to the third party for breach of the implied warranty of authority.

The language used in the amended complaint covered undisclosed or partially disclosed parties, i.e. Deutsch Bank and was not interpreted by the trial court correctly nor was the *law*. Evidence such as police reports; and other relevant *facts* were also not considered. A trial courts dismissal of a partial action under CR 12(b)(6) should be reviewed de novo as justified in Howards opening Brief.

To come to the conclusion that “garden-variety criminals” would break into home and proceed to place a lockbox on the door is not a reasonable deduction. Would this be to facilitate breaking in at a later time?

In regards to dismissal of RICO claims (without prejudice) the direct actions of Deutsche Bank, legal counsel, related and agents show a pattern of criminal activity that cannot be coincidental. This would give rise to new claims if one was not potentially barred by an *overly broad general release*. (emphasis added).

RE: Respondent Brief - III D, E:

Multiple versions of purported instruments show blatant fraud and active alterations along a Chain of Custody would bar any “holder in due course” arguments. Deutsche Bank acted without authority in multiple roles, far from a conventional “Trustee” trying to obtain Summary Judgment against Howard. Ms. Allison Moon now represents Deutsche Bank and points out that mediation was entered only 13 days after its SJ motion was denied on April 4th, 2013. A “Joint Motion to Extend Pretrial Deadlines” was submitted April 2nd, 2013 as follows:

	Deadline	Current Date	Proposed Date
1			
2			
3	Deadline to exchange Witness Lists, Exhibit Lists, and	April 1	April 15
4	documentary exhibits		
5	Deadline to advise court on settlement	April 2	April 22
6	Deadline to inspect exhibits	April 8	April 17
7	Joint Statement of Evidence	April 15	April 17
8	Trial Brief	April 15	April 17
9	Motions in Limine	April 15	April 17
10	Jury Instructions	April 15	April 17
11	Proposed Findings of Fact & Conclusions of Law	April 15	April 17
12	Use of Discovery/Depositions at Trial	April 15	April 17
13			
14			

LCR 16(b)(1) states in part: *“dispute resolution process conducted by a neutral third party no later than 28 days before trial.”*

With a scheduled mediation date of April 16th 2013, the proposed deadline dates do not make sense *if one actually intended to go to trial.*

Howard was not shown this submitted schedule. He had in fact pointed out to David Leen that any Mediation should have occurred far sooner; allowing Deutsch Bank to roll the dice with another Summary Judgment hearing prior to the Mediation was not strategically viable. Adequate time should be allowed for pre-trial activities if mediation failed; upon review it shows inexcusable error or potential malfeasance, by both attorneys and the trial court.

RE: Respondent Brief - III F:

No one is arguing the fact that a CR 2A agreement was reached; the question comes down to the party that breached. The agreement states in part:

2. The parties will work together to formalize this agreement with appropriate documentation, and in addition, the Bank shall provide Plaintiff with a copy of the appraisal on the subject real property within two weeks of receipt by Defense Counsel;

The language *“within two weeks of receipt by Defense Counsel”* is in no way ambiguous.

The appraisal was critical in this matter, it was intended to provide a baseline for negotiations as to the value of the property, its condition and established the appraiser as a neutral third party in the event of a dispute as to what was affixed to the property verses personal or corporate assets of Howard's.

1. The appraisal of the property took place on April 12th 2013, 4 days before the Mediation;
2. Delivery of the appraisal was “held back” from Howard as an illegal punitive measure until he signed documents that were clearly not “appropriate” or “Commercially Reasonable”; nor was this action within the Mediators power.
3. The appraisal was **not** sent to Howard until May 22nd 2013 at **6:13PM**; which was **AFTER** Danielle Hunsaker representing Deutsche Bank filed for a CR 2A judgment with the trial court under **false** declarations and assertions that Howard was not complying.
4. Deutsche Bank did not propose nor accept reasonable “appropriate documentation”; a breach of the CR 2A agreement.
5. Further mediation was stipulated to upon a dispute in drafting settlement documentation. This did not occur due to Ms. Hunsaker’s refusal to continue:

From: Danielle Hunsaker [<mailto:dhunsaker@larkinsvacura.com>]
Sent: Tuesday, May 21, 2013 3:56 PM
To: David Leen
Cc: Margokeller
Subject: RE: Howard

David,

We discussed this issue at the last round and you told me that if we removed the one clause, he would sign. I have an email from you stating that exact thing. We removed the requested clause. I **did not add any additional information from the last round until now**. I am not recommending further changes to my client. We have acted in nothing but good faith, and every time we respond to an issue raised by Mr. Howard, he just moves the target. It has been over a month since the parties entered into the settlement. Enough is enough.

Danielle

From: David Leen [<mailto:david@leenandosullivan.com>]
Sent: Tuesday, May 21, 2013 3:52 PM
To: Danielle Hunsaker
Cc: Margokeller
Subject: RE: Howard

His hang up on the release is that it is still broad and seems to go beyond what issues were in the case (or could have been litigated in the case). You added more language to Par. G that is not limited to what was in controversy. Can't you just say he "Releases all claims that were or could have been raised in this lawsuit"? One sentence.

6. The email on the prior page was not included in the trial court record and intentionally omitted by Ms. Hunsaker who specifically attested to the record being complete.
7. Beyond breaching the CR 2A agreement violations of the CPA, Deeds of Trust Act, Title 61 RCW and many other laws and statutes; it should be apparent the Statute of Frauds has not been satisfied and a fundamental breach of contract has occurred.

RE: Respondent Brief - III G:

Howard objected to the Confirmation of the Sherriff's Sale because he had the right to. A CR 2A agreement is not in force to the benefit of Deutsche Bank as they have fundamentally breached any agreement. His position and allegations of fraud in the Chain of Title are well supported. Akin to preserving ones rights by taking action prior to a Non-Judicial foreclosure and aligned with the principle of judicial estoppel, one would question why all remedies where not pursued if Howard did not consistently stay the course on the matter.

In executing the Sheriffs sale as well as pre and post judgment motions; Deutsche Bank, the Trial Court and the King County Sheriff's office did not comply with the law. CP 226-236

A \$750,662.52 "Credit Bid" was placed in the name DEUTSCHE BANK NATIONAL TRUST COMPANY, as Trustee of the IndyMac INDA Mortgage Loan Trust 2007-AR7, Mortgage Pass-Through Certificates, Series 2007-AR7 under the Pooling and Servicing Agreement dated 8/9/2007; no Surety Bond has been sworn to the King County Sheriff's Office.

II. CONCLUSION

It's not within the scope of a Reply Brief to regurgitate legalese or establish every new cause of action that may have stemmed from the trial court proceedings, hence minimal additional authorities and laws have been cited beyond Howards initial Appellant Brief.

In the Respondents Brief Deutsche bank did not address the fact that the INDA 2007-AR7 PASA was not even drafted until September 1st 2007 (9/1/2007) and filed with the SEC September 27th 2007; evidence produced by Deutsche Bank the "PASA Agreement" is also dated September 1st, 2007.

The significance of Deutsche Bank acting as the Trustee of "Pooling and Servicing Agreement dated 8/9/2007" (the date of Howards property purchase) is more than a simple scrivener's error; tied to other exhibit's it shows both a human and automated "batch processing" of fraudulent title modifications which have been ***utilized to steal properties for the cost of legal fees.***

Also not addressed by Deutsche are the fraudulent MERS issues and robo-signers such as "Chamagne Williams" signing as the corporate officer named "Authorized Signatory" for both MERS and OneWest Bank.

Bain vs. Metro clearly covers actual MERS issues in this matter. In parallel the case delves into a new type of Fraud emerging to avoid BAIN by ***appending*** title companies into documents ***underneath*** MERS. Post notarization and in non-negotiable portions of an instrument, any alterations of a similar nature should void the contract under numerous legal concepts.

In this matter the trial court failed to hold an evidentiary hearing to resolve the disputed issues of fact and has significantly altered the status quo.

Recent COA District I Opinions such as Daniel Watson v. Northwest Trustee Services, No. 69352-2-I (March 18, 2014) echo a very similar situation as to defective notices and the behaviors of both the Trustee's and Banking entities. Howard received hundreds of pages of internal emails and other paperwork from Regional Trustee Services upon his initial FDCPA request; these documents were disclosed to Deutsche Bank in discovery requests. The bank inadvertently produced different sets of fraudulent documents and realized their mistake upon Howard's deposition. Howard is likely to prevail at trial.

Based on the foregoing and his Appellant Brief, Mr. Howard respectfully requests the Honorable Appellant Court:

- (1) reverse the trial court's Orders June 7th, 2013 and June 10, 2013,
- (2) vacate and set aside the Sale August 9th, 2013,
- (3) remand this matter for jury trial on the merits; and
- (4) award Mr. Howard his taxable costs and reasonable attorney's fees incurred herein.

RESPECTFULLY SUBMITTED this 11th day of Aug, 2014.

 /s/ 
Signature
Ryan Howard – Pro Se Appellant
11310 Riviera PL NE
Seattle, WA 98125