

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

No. ~~705920~~ 71618-2

BONITA LYON, a married woman, as her separate property,

Appellant,

vs.

QUALITY LOAN SERVICES OF WASHINGTON; ET AL.,

Respondents

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

OPENING BRIEF OF APPELLANT

BONITA LYON
16652 – 19TH PL. SE
RENTON, WA 98058
(425) 985-8731

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 JUN 29 11 5:00

TABLE OF CONTENTS

	<u>Page</u>	
I	ASSIGNMENTS OF ERROR	4
	A. Assignments of Error	4
	B. Issue Pertaining to Assignments of Error	5
II	STATEMENT OF THE CASE	5
	A. Factual Background.	5
	1. Non-judicial foreclosure in Washington	5
	a. Initial foreclosure proceeding	6
	b. Second foreclosure proceeding	6
	B. April 5, 2013 letter.	7
III.	STANDARD OF REVIEW	8
	A. Summary Judgment	8
	B. Strict Compliance with Provisions of WDTA	10
	C. Preliminary Injunction	10
IV	ARGUMENT	10
	A. Trust not entitled to funds in court registry.	10
	B. Discontinuance of trustee's sale violated preliminary injunction order?	12
	1. Commencing FP2 while FP1 still active violated WDTA.	12
	2. FP 2 terminated by Respondents' discontinuance of FP 2 on August 1, 2013.	13

C.	Discontinuing FP 2 on August 1, 2013 violated preliminary injunction order and conceded Appellant’s claim.	16
D.	Injuries and damages alleged meet CPA’s “damage to business or property” requirement.	17
D.	Simultaneous foreclosure proceedings violated CPA.	18
1.	Unfair or deceptive act or practice.	19
2.	Occurred in trade or commerce, and affected public interest.	20
3.	Injury to Property.	20
4.	Causation	21
V CONCLUSION		22

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

Ameriquest Mortgage Co. v. Attorney General of Washington, 148 Wn. App. 145 (2009)

Bain v. Metropolitan Mortgage Group, Inc., 175 Wn.2d 83 (2012)

Balise v. Underwood, 62 Wn.2d 195, 199, 381 P.2d 966 (1963)

Barber v. Bankers Life & Cas. Co., 81 Wn.2d 140, 500 P.2d 88 (1972)

Barrie v. Hosts of America, 94 Wn.2d 640 (1980)

Gen. Tel. Co. of NW, Inc. v. Wash. Utils. & Transp.

Comm'n, 104 Wn.2d 460, 463, 706 P.2d 625 (1985)

Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co., 105 Wn.2d 778, 784, 719 P.2d 531 (1986).

Harrington v. Spokane County, 128 Wn. App. 202 (2005)

Howard v. Edgren, 62 Wn.2d 884 (1963)

McLean v. Smith, 4 Wn. App. 394, 482 P.2d 798 (1971)

Norlin v. Montgomery, 59 Wn.2d 268, 367 P.2d 621 (1961).

Queen City Sav. & Loan Ass'n v. Mannhalt, 111 Wn.2d 503, 514, 760 P.2d 350 (1988)

Rossiter v. Moore, 59 Wn.2d 722, 370 P.2d 250 (1962)

Short v. Demopolis, 103 Wn.2d 52, 61, 691 P.2d 163 (1984)

State v. Reader's Digest Association, 81 Wn.2d 259, 501 P.2d 290 (1972)

State ex rel. Pay Less Drug Stores v. Sutton, 2 Wn.2d 523, 529, 98 P.2d 680 (1940)

Udall v. T.D. Escrow Servs., Inc., 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007)

Walker v. Quality Loan Service Corp. of Washington, No.65975-8-1 (Div. 1 August 5, 2013)

STATUTORY PROVISIONS

RCW Chapter 7.28

RCW 7.28.230

RCW Chapter 19.86

RCW 19.86.020

RCW 19.86.030(8)(d) – (g)

RCW 19.86.090

RCW Chapter 61.24

RCW 61.24.030(8)

RCW 61.24.031

RCW 61.24.040(1)

RCW 61.24.040(1)(a)

RCW 61.24.040(1)(f)

RCW 61.24.040(6)

RCW 61.24.130(3)

RCW 61.24.130(5) & (6)

OTHER AUTHORITIES

6 J. Moore, Federal Practice 56.07, 56.11(3), 56.15(3)
(2d ed. 1948)

*Trautman, Motions for Summary Judgment: Their Use
and Effect in Washington*, 45 *Washington Law Review* 1
(1970)

I ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The court erred by awarding registry funds to Respondent Citibank.

2. The court erred in failing to recognize that Respondent Quality's discontinuance of FP 2 violated injunction.
3. The trial court erred in dismissing Plaintiff's CPA claim.

B. Issue Pertaining to Assignments of Error

1. Was Respondent Citibank entitled to registry funds even though FP 2 was discontinued as Appellant's complaint demanded?
2. Did the discontinuance of FP 2 violate the injunction?
3. Do the kinds of injuries alleged by Appellant meet CPA's "damage to business or property" requirements?

II STATEMENT OF THE CASE

A. Factual Background

1. Non-judicial foreclosure in Washington

This litigation concerns residential real property located at 4915 S. 184th Street, Renton, WA 98188 (Property). CP at 2: 11-12. At all times relevant to this litigation, the Property has been occupied by renters.

As the court is aware, for *non-owner-occupied-residential-real-property non-judicial foreclosure sales* -- The type of foreclosure sale involved in this case. -- the Washington Deed of Trust Act ("WDTA") mandates a three-step foreclosure process: (1) mailing and serving of a Notice of Default ("NOD");¹ (2) followed, by at least 30 days, by the recording of a notice of trustee's sale ("NOTS");² and (3) followed, by at least 90 days, by the actual sale of the property.³ Pursuant to numerous Washington Supreme Court decisions,⁴ each one of the three steps in the

¹ RCW 61.24.030(8). In lieu of service the trustee is authorized to post a copy of the notice in a conspicuous place on the premises.

² *Id.*

³ RCW 61.24.040(1). A Pre-Foreclosure Letter under RCW 61.24.031 is not required unless the foreclosed upon residential real property is *owner-occupied*.

⁴ *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560, 568, 276 P.3d 1277 (2012); *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007); and *Koegel v. Prudential Mut. Sav. Bank*, 51 Wn. App. 108, 111-12, 752 P.2d 385 (1988).

process is required and must be strictly followed in every non-judicial foreclosure of non-owner-occupied, residential real property. Additionally, the provisions of the WDTA must be interpreted strictly in favor of borrowers.⁵ And, finally, the WDTA contemplates that there will be only one foreclosure proceeding at a time respecting a single piece of residential real property.⁶

a. The initial foreclosure proceeding

Respondents commenced the initial foreclosure proceeding (“FP 1”) when Respondent Quality Loan Services of Washington (Respondent 1) transmitted the initial NOD to Appellant on July 2, 2012. *Id.* at 3: 7-8. Then, on August 8, 2012, Northwest Trustee Services, Inc. (Respondent 1) recorded, transmitted and served the initial NOTS (“NOTS 1”). *Id.* 15-17. NOTS 1 scheduled the sale of the property (“Property”) for December 7, 2012. *Id.* 17-18. The sale did not occur on that date, and Respondents did not continue the sale. *Id.* 18-19. Consequently, on December 7th, *at the earliest*, FP 1 terminated by operation of law.⁷ *Id.* 19-20.

RCW 61.24.040(6) authorizes the trustee to continue a sale for a period or periods not exceeding a total of 120 days. Accordingly, the last day on which the December 7, 2012 sale lawfully could have been conducted was April 6, 2013. *Id.* 21-22.

b. The second foreclosure proceeding.

While FP 1 was still active, Respondents commenced the second foreclosure proceeding (“FP 2”) by mailing and serving or posting a second NOD (“NOD 2”) to Appellant on October 4, 2012. FP 1 had not been discontinued voluntarily or by operation of law on October 4, 2012. This means FP 2 commenced while FP 1 was still active. Respondent 1 admits that it transmitted NOD

⁵ *Id.*
⁶ RCW 61.24.040(1)(a).
⁷ There is a reasonable argument that, consistent with RCW 61.24.040(6), the sale did not terminate by operation of law until April 7, 2013, the 121st day after December 7, 2012, the original sale date. This argument is not particularly important in the instant case because Respondents transmitted a second NOD on October 4, 2012, thereby commencing FP 2, more than two months before December 7, 2012. Respondents admit the initial non-judicial foreclosure proceeding terminated on December 7, 2012. CP at 3: 17-20.

2 before December 7, 2012 (CP at 3: 23-24), and further admits the initial foreclosure proceeding did not terminate until December 7, 2012. *Id.* 17-20.

On December 18, 2012, Respondent 1, on behalf of Citibank (“Respondent 2”), recorded a second Notice of Trustee’s Sale (NOTS 2). *Id.* 25-26. NOTS 2 scheduled the sale of the property for April 19, 2013. *Id.* 26-27. Resultantly, pursuant to RCW 61.24.040(6), without the intervention of this court, the last day on which the property could have been sold lawfully was August 17, 2013.

c. The April 5, 2013 letter.

On or about April 5, 2013, Appellant faxed a letter to Respondent 1. *CP* at 166. In that letter I explained that FP 2 was unlawful because it had been commenced while FP 1 was still active. I also stated that I would sue on April 10, 2013 if FP 2 had not been discontinued by that date. Further, it was made very clear that I would not sue if Respondents discontinued FP 2.

Respondents did not reply to the letter. Thus, on April 10, 2013, as promised, I sued and moved the court for a preliminary injunction. The court granted the preliminary injunction order on May 3, 2013. A copy of the order is Appendix A to this Opening Brief.

The order, *inter alia*, indicates “Plaintiff has met her burden to show that pending further order of the court entry of an injunction as to this foreclosure proceeding only is warranted, and Plaintiff’s motion is granted on condition she posts a \$5,000 bond and makes monthly payments into the court registry of \$1,161.54, payable on the first of each month.” The court subsequently changed the bond amount to \$1,000, which was immediately paid into the registry of the court.

I paid \$1,161.54 into the registry of the court every month from May 2013 until the court granted Respondents’ summary judgment motion on February 7, 2014.

On August 1, 2013, without providing notice to Appellant, Respondent 1 discontinued the sale scheduled by NOTS 2. *CP* at 81. The preliminary injunction was still in place on August 1, 2013.

Respondent 1 filed a motion for summary judgment on December 26, 2013. *CP* at 1. Respondent 2, as trustee for the Trust, followed Respondent 1's lead by filing a motion to dismiss on January 6, 2014. *CP* at 83. Both motions were heard on February 7, 2014.⁸

Respondents argued the lawsuit should be summarily dismissed because the trustee's sale had been discontinued and the basis for a permanent injunction was moot. *Appendix B* at 3: 10-13. I argued Respondents' discontinuance of the sale was a violation of the order and that the court should find Respondents in contempt for discontinuing the trustee's sale without having obtained the court's permission to do so.

After listening to the arguments, the court found that: (1) Respondents had voluntarily given me the discontinuance I sought in the lawsuit (*Id.* at 16: 9-10 and 21: 4-6); (2) the injunction did not preserve (i.e., freeze) the foreclosure process, it merely "stopped" the foreclosure sale (*Id.* at 11: 10-23 and 25: 13-20); and (3) the damages alleged were not the kind of damages that sustain a claim under the CPA. The court then dismissed the entire case. In dismissing the case, the court made clear that it was not ruling one way or the other on Appellant's argument that the Trust was not the appropriate party to foreclose because the Trust did not own or hold the Note. *Id.* at 26: 17 – 24.

III STANDARD OF REVIEW

A. Summary Judgment

When the appellate record consists entirely of written materials, the appellate court is in the same position as the trial court and reviews the record de novo. *Harrington v. Spokane Cty.*

⁸ A transcript of the hearing is Appendix B to this Opening Brief.

A summary judgment is reviewed by an appellate court de novo. The court engages in the same inquiry as the trial court under CR 56(c), viewing the facts of the case and the reasonable inferences from those facts in the light most favorable to the nonmoving party. *Harrington v. Spokane County*, 128 Wn. App. 202 (2005).

The court is not authorized to dismiss a case on summary judgment if a genuine issue of material fact has been raised by the non-moving party. In determining whether a genuine issue of material fact has been raised, the court must view the evidence and inferences there from in a light most favorable to the nonmoving party. *Barrie v. Hosts of America*, 94 Wn.2d 640 (1980),

A fact is material if the outcome of the case, in whole or in part, depends upon it. *Barber v. Bankers Life & Cas. Co.*, 81 Wn.2d 140, 500 P.2d 88 (1972). If reasonable men could reach only one conclusion, no genuine issue of fact exists. *Id.*

A party must demonstrate by uncontroverted evidence that there is no genuine issue of material fact. *Rossiter v. Moore*, 59 Wn.2d 722, 370 P.2d 250 (1962); and 6 J. Moore, *Federal Practice* 56.07, 56.15(3) (2d ed. 1948). If Plaintiff does not sustain that burden, the court should not grant summary judgment, *regardless of whether Defendant submits affidavits or other materials or not.* (Italics added). *Trautman, Motions for Summary Judgment: Their Use and Effect in Washington*, 45 Washington Law Review 1, 15 (1970).

The court must consider all of the material evidence and all of the reasonable inferences that can be drawn from that evidence most favorably to the non-moving party.

As the above standards relate to this case, if, after considering the material evidence in a light most favorable to me, reasonable people might have reached different conclusions about the evidence presented, then Respondents' motions should have been denied. *Balise v. Underwood*, 62 Wn.2d 195, 199, 381 P.2d 966 (1963); *See Also* 6 J. Moore, *Federal Practice* 56.11(3), 56.15(3).

B. Strict Compliance with the provisions of the Washington Deed of Trust Act

The Washington Supreme Court has stated on numerous occasions that beneficiaries and trustees must strictly comply with the provisions of the WDTA and must interpret the act in favor of borrowers. *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83 (2012); *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007) (citing *Queen City Sav. & Loan Ass'n v. Mannhalt*, 111 Wn.2d 503, 514, 760 P.2d 350 (1988) (Dore, J., dissenting)).

C. Preliminary Injunction

A preliminary injunction performs the same function as a temporary restraining order: to preserve the status quo until the trial court can conduct a full hearing on the merits. The “status quo ante” means the “last actual, peaceable, non-contested condition which preceded the pending controversy.” *Gen. Tel. Co. of Nw., Inc. v. Wash. Utils. & Transp. Comm'n*, 104 Wn.2d 460, 466, 706 P.2d 625 (1985) (quoting *State ex rel. Pay Less Drug Stores v. Sutton*, 2 Wn.2d 523, 529, 98 P.2d 680 (1940)). *Ameriquest Mortgage Co. v. Attorney General of Washington*, 148 Wn. App. 145 (2009), at 4-5.

IV ARGUMENT

A. The Trust was not entitled to the funds placed in the registry of the court.

The trial court decided to award the funds I had placed in the court registry to the Trust. *Appendix B* at 26: 11-14. Her Honor provided no explanation for her decision, so I am left to speculate. The only argument I am able to come up with is that the money should be paid to the owner of the debt if I am going to continue to enjoy the use of the property. Under the facts of this case, that rationale is insufficient carries no weight for at least two reasons.

First, Appellant specifically contested that the Trust was the owner or holder of the debt (i.e., the beneficiary of the deed of trust) because the Trust, if it holds the Note at all, holds it as security for a different obligation and on behalf of the certificateholders. *Id.* at 20: 18-20. The trial court, in granting Defendants' summary judgment motion, specifically stated that the court was not deciding whether the Trust was the beneficiary.⁹ In fact, the trial court made no ruling respecting the Trust's "beneficiary" status. It simply awarded the funds to the Trust without explanation.

Only the "beneficiary" has the legal right to claim funds placed in the registry of the court. Since the trial court specifically chose not to make a determination regarding the Trust's beneficiary status, the trial court had no legal basis for determining the Trust was entitled to the funds that I had placed in the court registry. Accordingly, those funds should have been returned to me.

Second, my right to possession of the property has been absolute since the day I purchased the property. *Howard v. Edgren*, 62 Wn.2d 884 (1963). In fact, until removed by a lawful foreclosure, I have an unfettered right to possession of the property, whether I pay the mortgage each month or not.¹⁰

In Washington, a lender, by virtue of its recorded mortgage, has *a lien upon the borrower's equity in the mortgaged property*, as that equity existed on the date of the mortgage. *Norlin v. Montgomery*, 59 Wn.2d 268, 272 (1961). The mortgage does not give the lender ownership of the property or, more importantly, the right to possession.

⁹ "Ms. Lyon, it's important that you understand, I am not ruling on your arguments about who the proper parties are. Those are arguments that you can, if you wish, raise, if there's another notice of foreclosure that goes out. *Appendix B* at 26: 17 – 20.

¹⁰ *Norlin v. Montgomery*, 59 Wn.2d 268, 367 P.2d 621 (1961).

On the date that my lender obtained the trust deed from me, I had 100% equity in the Property, having just paid the full purchase price for the Property. As the mortgagee, however, the lender had no right of possession until after I defaulted on the debt *and* the lender, subsequent to the default, became the successful bidder at the trustee's sale *and* received a trustee's deed . *Id.* See also RCW 7.28.230.

In other words, my absolute right to possession remained fully intact after the default and remains fully intact to this day, even though the default has not been cured. This is because there has been no trustee's sale. The Trust, therefore, has not been the successful bidder at a trustee's sale *and* has not received a trustee's deed. Consequently, my right to possession of the Property remains absolute, even though I have not made the mortgage payment in many months.

Finally, since: (1) the court did not find the Trust was the beneficiary of the deed of trust; (2) I have an unqualified right to possession of the property until someone removes that right by a lawful foreclosure proceeding; and (3) the Trust voluntarily discontinued the foreclosure proceeding; the trial court had no legal basis for ruling that the Trust was entitled to the funds in the registry of the court. Those funds should have been returned to me.

B. The discontinuance of the Trustee's Sale violated the preliminary injunction order?

1. Commencing FP 2 while FP 1 was still active violated the WDTA.

Defendants conducted simultaneous non-judicial foreclosure proceedings on Appellant's property. The right to conduct non-judicial foreclosures is created in the WDTA. A non-judicial foreclosure is lawful only if the steps taken during the foreclosure are explicitly authorized by the WDTA. Defendants did not provide any proof that the WDTA authorizes a successor trustee to conduct simultaneous foreclosures on a single piece of property.

Five days before commencing this litigation, Appellant wrote a very detailed letter to Respondents. In the letter I explained that Respondents were conducting FP 2 unlawfully. I stated clearly that I would not sue if Respondents discontinued the foreclosure and then pleaded with Respondents to discontinue the proceeding. Respondents did not reply to the letter.

By ignoring my pre-litigation plea to discontinue FP 2, Respondents forced me, unnecessarily, to incur the costs of commencing suit and seeking a preliminary injunction. Respondents then fought my effort to obtain the preliminary injunction by claiming that FP 2 was lawful under the WDTA. The trial court, after listening to all of the evidence presented at the preliminary injunction hearing, concluded there was a likelihood that I would prevail on the issue on the merits and granted the preliminary injunction order, thereby -- because the injunction preserved the status quo -- preventing Respondents from selling the Property.

The injunction order recites that I established: (1) a clear legal and equitable right to possession of the property; (2) a well-grounded fear of immediate unlawful invasion of that right; and (3) that resulting injury would occur if the preliminary injunction was not granted.

2. FP 2 was terminated by Respondents' discontinuance of the FP 2 on August 1, 2013, not by operation of law.

FP 2 was terminated by the August 1, 2013 Notice of Discontinuance of Trustee's Sale. It did not terminate by operation of law.

The sale date scheduled by NOTS 2, April 19, 2013, had come and gone by May 3rd, the date on which the injunction was granted. The coming and going of the April 19th date, however -- or of August 17, 2013 (the 120th day following April 19th) -- did not cause FP 2 to lapse by operation of law.

The granting of the injunction preserved the status quo as it existed immediately prior to entry of the injunction --- the *status quo ante* --- until further order of the court. Recalling, the

status quo ante was FP 2 proceeding toward an eventually sale of the property on April 19, 2013, or no later than August 17, 2013 (the 120th day following the April 19th sale date).

The trial court's order could not stop the passage of time, but it could and did preserve FP 2 notwithstanding the passage of time. Thus, even though April 19th and August 17th 2013 — respectively, the scheduled date of sale and the 120th day following the scheduled date of sale --- came and went, because the injunction was in place, FP 2 did not terminate by operation of law.¹¹ The only reason FP 2 is no longer in progress, therefore, is because Respondents discontinued FP 2 on August 1, 2013.

RCW 61.24.130(3) supports Appellant's position on this issue.¹² According to that provision, if the preliminary injunction is dissolved after the originally-scheduled sale date, then, if requested by the trustee, the court is required to set a new sale date. The trustee is not required to restart the process from the beginning by issuing a new NOD; which is what the trustee, of necessity, would be required to do if a foreclosure proceeding could terminate by operation of law while a preliminary injunction is in effect. Instead, if the preliminary injunction is dissolved *after the sale date*, then the original sale, with the new sale date ordered by the court, proceeds as though the preliminary injunction had never happened.

The preliminary injunction order preserved (i.e., froze) the "*status quo ante*" during the pendency of this litigation or until further order of the court. By "freezing" the status quo I do not mean that the passage of time was somehow suspended. I mean that the foreclosure proceeding

¹¹ RCW 61.24.130(3).

¹² "If the restraining order or injunction is dissolved *after the date of the trustee's sale set forth in the notice* as provided in RCW 61.24.040 (1)(f), *the court* granting such restraining order or injunction, or before whom the order or injunction is returnable, *shall*, at the request of the trustee, *set a new sale date* which shall be not less than forty-five days from the date of the order dissolving the restraining order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

conducted by Respondents was “frozen” (i.e., preserved) at the point the proceeding had reached immediately prior to entry of the preliminary injunction order.

The *status quo ante* immediately prior to the commencement of this litigation was Respondents conducting an active foreclosure proceeding – FP 2. That is the status quo that the preliminary injunction preserved until there could be a trial on the merits concerning the lawfulness of FP 2. At the summary judgment hearing, I argued that from the moment the preliminary injunction order was entered, Respondents were precluded from taking any action related to the foreclosure proceeding that would have altered the *status quo* without first obtaining an order from the court approving the action.

The order obviously prevented Respondents from *selling* the Property because selling the property would have resulted in a change in the status quo. Less obviously, however, the order also prevented Respondents from *discontinuing* the sale without further order of the court because Respondents’ discontinuance of the sale undeniably resulted in a change in the status quo every bit as much as selling the Property would have resulted in a change in the status quo.

The preliminary injunction merely preserved the foreclosure proceeding as it existed immediately prior to entry of the preliminary injunction order. The correctness of this view can be deduced from yet another source: a reading of sub-sections (3), (5) and (6) of RCW 61.24.130.

RCW 61.24.130(3), (5) and (6) read as follows:

If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, shall, at the request of the trustee, set a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040 (1)(f) to be published in a legal newspaper in each county in which the property or any

part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee's sale following termination of any injunction or stay on any date to which such sale has been properly continued in accordance with RCW 61.24.040(6).

(6) The issuance of a restraining order or injunction shall not prohibit the trustee from continuing the sale as provided in RCW 61.24.040(6).

If a preliminary injunction did not “preserve” a foreclosure proceeding, a foreclosure proceeding would terminate by operation of law every time a preliminary injunction remained in place beyond the sale date set by the NOTS. Then, to comply with the WDTA, it would be necessary to commence a new foreclosure sale by issuing a new NOD. But that is not what happens under RCW 61.24.130.

Under RCW 61.24.130(3), if the injunction is dissolved after the original sale date, the trustee need only apply to the court for a new sale date. And, under RCW 61.24.130(5)-(6), if the sale has been continued -- pursuant to RCW 61.24.040(6) -- to a date that is within 120 days of the original sale date, and the injunction is dissolved before the date to which the sale has been continued arrives, then the sale may lawfully occur on the date to which it has been continued. These things are only possible because the injunction “preserves” the foreclosure proceeding; it does not “stop” that proceeding.

It is by preserving (i.e., freezing) the foreclosure proceeding in place that the preliminary injunction prevents (i.e., restrains) the foreclosure sale until the issuing concerning the sale can be decided on the merits.

C. Discontinuing FP 2 on August 1, 2013 violated the preliminary injunction order and conceded my claim.

The preliminary injunction order enjoined FP 2 pending further order of the court. This court, any court for that matter, has the power to restrain a non-judicial foreclosure proceeding

only on the basis of the “*status quo ante*.” *General Telephone v. The Utilities and Transportation Commission*, 104 Wn.2d 460, 463, 706 P.2d 625 (1985). In Washington, for more than a century, the “*status quo ante*” has been defined as “the last actual, peaceable, non-contested condition which preceded the pending controversy.” *State ex rel. Pay Less Drug Stores v. Sutton*, 2 Wn.2d 523, 529, 98 P.2d 680 (1940) (quoting 1 J. High, *Injunctions* 5a, at 10 (4th ed. 1905)). This means that a preliminary injunction generally serves the same purpose as a temporary restraining order: to preserve the *status quo* until the court can conduct a full hearing on the merits of a complaint. *Id.* at 528-529; *McLean v. Smith*, 4 Wn.App. 394, 482 P.2d 798 (1971).

In the case before this court, the last actual, peaceable, non-contested condition which preceded commencement of this litigation was FP 2 proceeding on course for the April 19, 2013 sale.¹³ Respondents understood the injunction prevented them from selling the property without further order of the court and made no effort to sell the Property after the injunction was entered.

On August 1, 2013, Respondents, without prior approval of the court, voluntarily discontinued FP 2; exactly the action I had pleaded with them to take eight months earlier, before I commenced this litigation. Respondents did not explain why they discontinued the sale on August 1, 2013, but refused to take the same action eight months earlier, when doing so would have their resources, Appellant’s resources and the court’s resources.

D. The injuries and damages Appellant has alleged in this case meet the damage to business or property requirements for a successful CPA claim in Washington.

In *Walker v. Quality Loan Service Corp. of Washington*, No.65975-8-1 (Div. 1 August 5, 2013), this court makes the following finding:

In *Panag v. Farmers Insurance Co. of Washington* (cite omitted), our Supreme Court held, “[T]he injury requirement is met upon proof the plaintiff’s ‘property interest or money is diminished because of the unlawful conduct even if the expenses caused by the statutory violation are minimal.’” Investigative

¹³ If a non-judicial foreclosure proceeding is uncontested, which is almost always the case, it is a peaceable, non-contested proceeding.

expenses, taking time off from work, travel expenses, and attorney fees are sufficient to establish injury under the CPA. (cite omitted).

Walker also alleges that but for Quality's and Select's deceptive acts, he would not have suffered these same injuries. Walker asserts that the deceptive documents induced him to incur expenses to investigate whether Select and Quality had authority to act against him and to address their allegedly improper deceptive acts. Thus, he pleads facts sufficient to establish causation. Because Walker pleads facts that, if proved, could satisfy all five elements, we conclude that the trial court erred by dismissing his CPA claim.

Walker, No. 65975-8-1 at 25-26.

In the Reply to Respondents' Motion for Summary Judgment, I informed the trial court that I had lost many hours from work and had invested hundreds of hours -- if not more than a thousand hours -- preparing for (i.e., investigating) this case. I also made it clear that I would not have encountered these difficulties but for Respondents' conduct when I stated that I informed Defendants that this lawsuit would not have been commenced if they had simply discontinued the foreclosure proceeding before the lawsuit was commenced.

E. Defendants conduct of simultaneous foreclosure proceedings is a violation of the CPA.

Under RCW 19.86.020, unfair or deceptive acts or practices in the conduct of a trade or commerce are deemed unlawful. The provision must be liberally interpreted to insure that its beneficial purposes are achieved. *Short v. Demopolis*, 103 Wn.2d 52, 61, 691 P.2d 163 (1984).

RCW 19.86.090 provides that any person injured in his property by a violation of RCW Chapter 19.86 is entitled to initiate a civil suit for injunctive relief, damages, attorney fees and costs, and treble damages. To prevail the plaintiff must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 784, 719 P.2d 531 (1986).

I informed the trial court, as outlined below, how the five elements of a CPA claim had been met in this case.

1. Unfair or deceptive act or practice.

If an action is illegal and against public policy it is per se an unfair trade practice within the contemplation of RCW 19.86.020. *State v. Reader's Digest Association*, 81 Wn.2d 259, 501 P.2d 290 (1972).

Respondents initiated two non-judicial foreclosure proceedings---FP 1 and FP 2---at the same time for the same residential real property and for the same set of defaults. This means that for the two-month period during which FP 1 and FP 2 were simultaneously active there were two reinstatement amounts and two sale dates. I had no way of definitively determining which reinstatement amount I was obligated to pay or on which date, December 7, 2012 or April 19, 2013, my property was going to be sold. If I called Northwest to obtain this information and spoke with one of its representatives, and they selected one of the two sale dates over the other, how would I have known for sure I was receiving correct information? Their actions were inherently deceptive.

Moreover, under RCW 61.24.030(8)(d) thru (g), Respondents had the obligation to provide me with accurate, itemized statements regarding how much I had to pay to reinstate my deed of trust. For two months and three days I had two statements, each one of which contained a different amount that I had to pay to reinstate my deed of trust. The WDTA prohibits Defendants from putting me in the position of having to guess what amount I must pay to reinstate my deed of trust.¹⁴

¹⁴ See RCW 61.24.030(8)(f).

Respondents' actions were per se violations of the CPA because they were unlawful and were against public policy as expressed in the WDTA. Additionally, Respondents' actions in initiating FP 1 and FP 2 simultaneously were, independently, deceptive and unfair acts.

2. Occurred in trade or commerce and affects the public interest.

The words "trade or commerce" are defined in RCW 19.86.010(2). They include "... any commerce directly or indirectly affecting the people of the State of Washington."

Quality is in the business of conducting foreclosure sales throughout the State of Washington. It has conducted 10's of thousands of foreclosures in this state in only the last six years. Quality's business is unquestionably commerce that affects the people of the State of Washington.

Citibank is one of the largest banks, loan originators and securitization trust trustees in the United States. Each one of the trusts for which Citibank serves as trustee contains thousands of loans, many of them loans originated in the State of Washington. Of the hundreds of thousands of foreclosures of loans in trusts for which Citibank has served as the trustee over the last six years, hundreds, if not thousands, of those foreclosures were for loans originated in Washington.

Citibank's business is commerce that affects the people of the State of Washington.

3. Injury to my property.

I have spent hundreds, if not more than a thousand hours, of my life fighting FP 2. Additionally, I have lost many hours from work while appearing, preparing to appear, and traveling to and from the courthouse and other locations to pursue this litigation. Finally, I have incurred and am continuing to incur all of the expenses one has to incur to finance litigation of this type. The hours I have spent working on this case are hours out of my life that I can never get

back. Also, I have had to spend thousands of dollars prosecuting this action. Again, these are dollars I would not have had to spend if Respondents had simply done what they have now conceded by their actions they should have done before this litigation started. Nothing changed from December 2012 to August 1, 2013, or at least Respondents did not explain the August 2013 discontinuance by claiming some circumstance had changed. They merely made the initial decision to force me to spend the money to go to court to prevent their illegal actions, on the off chance that I would not have the will or the resources to go to court.

4. Causation

Every one of the hundreds of hours I have spent studying and preparing to defend against this unlawful foreclosure action is an hour I would not have had to spend if Respondents had simply discontinued FP 2 before the litigation commenced. I begged them to do exactly that. They would not even respond to my letter. Instead, Respondents chose to force me to litigate before discontinuing the foreclosure.

But for Respondents' unlawful actions, I would not have had to defend against FP 2. Hence, there is "but for" causation in this case.

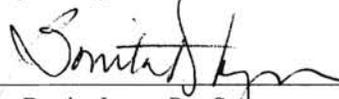
I have had to spend money consulting lawyers and other specialist about the legal issues in this case. In addition, I have paid filing and copying costs, transportation costs, and have lost hours on the job, when the illegality of conducting dual foreclosure actions has been patently clear from before the start of this litigation. Now that Defendants have conceded the central issue in this case, and my position has prevailed, I think justice requires that I be reimbursed for my time, trouble and out of pocket costs.

CONCLUSION

The Trust was not entitled to the funds placed in the registry of the court. Discontinuing FP 2 on August 1, 2013 violated the preliminary injunction order and conceded my claim. And the injuries and damages Appellant has alleged in this case meet the damage to business or property requirements for a successful CPA claim in Washington.

Appellant requests that the Court return this case to the trial court with directions that the trial court: (1) order the registry funds returned to Appellant; (2) find that Respondents' discontinuance of FP 2 was violation of the preliminary injunction order; and (3) reinstate Appellant's CPA claim.

Respectfully submitted,



By: Bonita Lyon, Pro Se

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

BONITA D. LYON

Plaintiff,

vs.

QUALITY LOAN SERVICES CORPORATION OF
WA; CITIBANK, N.A. as TRUSTEE for BEAR
STERNS ALT-A TRUST, MORTGAGE PASS-
THROUGH CERTIFICATES, SERIES 2006-5,

Defendants.

Case No.: 13-2-16079-0 KNT

Grantly
**ORDER DENYING PLAINTIFF'S
MOTION FOR PRELIMINARY
INJUNCTION**

~~[PROPOSED]~~

THIS MATTER having come on regularly before the undersigned Judge of the above-entitled Court upon Plaintiff's Motion for an injunction to enjoin the trustee's sale and the Court having examined the pleadings filed in this action, and being fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

Plaintiff ~~failed to meet~~ *has met* her burden to show that entry of an injunction is warranted, and ** pending further order of the court as to this foreclosure proceeding* Plaintiff's motion is ~~denied~~ *granted on condition she posts a \$5,000.00 bond only and makes monthly payments into the court registry of 1,161.54, payable on the first of each month.*

DONE IN OPEN COURT this 3rd day of May, 2013

Andrea Dawson
JUDGE

Presented by:
MCCARTHY & HOLTHUS, LLP

Mary Stearns
Mary Stearns, Esq., WSBA #A2543
Attorneys for Quality Loan Service

Court finds:
1) Plaintiff has a clear legal or equitable right;
2) has a well grounded fear of immediate invasion of the right;
3) resulting injury will occur if injunction as to this foreclosure action only is not granted

JUN -6 2014

1
2
3
4
5
6
7
8 **IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**
9 **DIVISION I**

10 BONITA LYON,

11 Plaintiff,

12 vs.

13 QUALITY LOAN SERVICES OF WA, INC;
14 ET. AL,

15 Defendants.

No.: 71618 - 2 -1

PROOF OF SERVICE

- 16
17 1. My name is Bonita Lyon, the Appellant Pro se in the case before this Court.
18 2. I am older than 18 years of age.
19 3. By previous agreement of the parties to this litigation, I served copies of Appellant's Opening
20 Brief on the following parties to this litigation as follows:

21 I emailed a copy of the referenced pleadings to the following parties at the following email
22 addresses on or about May 23, 2014, and mailed a copy to addresses for each party:

23 Jensen Mauseth
24 Keesal, Young & Logan
25 1301 5th Ave., Ste. 3300
Seattle, WA 98101-2623
Jensen.mauseth@kyl.com

Robert Joseph Bocko
Attorney at Law
1301 5th Ave., Ste. 3300
Seattle, WA 98101-2623
Robert.bocko@kyl.com

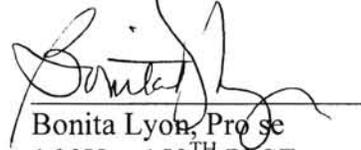
26 Mary Stearns
27 McCarthy & Holthus, LLP
19735 - 10th Ave. NE, Ste. N200
28 Poulsbo, WA 98370 - 7478

mstearns@mccarthholthus.com

I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing statements are true and correct.

Dated this 6th Day of June, 2014.

By: BONITA LYON



Bonita Lyon, Pro se
16652 - 159TH PL SE
Renton, WA 98058
(425) 985-8731