

**IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON**

**DIVISION I**

**NO. 74871-8-I**

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**CONCEPCION HERMOSILLO**, a single woman,

Appellant/Defendant,

Vs.

**ELIAS HAYDARI and AMIR BAHANDARI**,

Respondents/Plaintiffs.

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

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**RESPONDENTS' OPENING BRIEF**

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## **I. INTRODUCTION**

Respondents/Plaintiffs Elias Haydari and Amir Bahandari (Respondents) seek possession of a house purchased at a Trustee's sale on December 4<sup>th</sup>, 2016. *CP 359*. This house was purchased at the public auction in Snohomish County.

Appellant/Defendant Concepcion Hermosillo Azadmanesh (Appellant or Hermosillo) is the holdover who remains in possession. *CP 359*.

The Trustee that sold the Property is Quality Loan Service Corp. of Washington (QLS, *CP 359*) and the Beneficiary of the Note is New York Community Bank (NYCB).

## **II. COUNTERSTATEMENT OF ISSUES**

Whether Appellant's appeal should be dismissed;

Whether the Courts should issue a writ of restitution granting possession to the Respondents;

Whether Respondents should be awarded a judgment for all items available to them through RCW 59.12.100 and RAP 8.1(c).

## **III. STATEMENT OF FACTS**

On January 22, 2016, Respondents filed an unlawful detainer action under Snohomish County Case number 16-2-02014-1. *Id at 359*. The Respondents *did* purchase the property at public auction as is evidenced by the Trustee's Deed which was attached to the Complaint as exhibit C and is found under Snohomish County Record's #201512170495. *CP 373-375*.

Appellant Herмосillo continues to insist that there is no evidence supporting the claims of the Respondents. *See Appellant Herмосillo's Opening Brief, p2-7*. On 2-9-16, having seen that there was a valid Trustee's Deed on file with the County, as well as accepting the other allegations in the complaint that are not on appeal, the court granted judgment and the writ of restitution. *CP 23 and CP 271-274*. As the court is wont to do, the Trustee's Deed was prima facie evidence of ownership of the property. *Id. See also RCW 61.24.040(7)*,

#### **IV. ARGUMENT**

In *Albice v. Premier Mortg. Services of Washington, Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012), the Supreme Court explained that “[t]he deeds of trust act, chapter 61.24 RCW,[3] CREATES A THREE-party mortgage system allowing lenders, when payment default occurs, to nonjudicially foreclose by trustee's sale. The act furthers three goals: (1) that the

nonjudicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles. *Cox v. Helenius*, 103 Wash.2d 383, 387, 693 P.2d 683 (1985). Because the act dispenses with many protections commonly enjoyed by borrowers under judicial foreclosures, lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor. *Udall v. T.D. Escrow Servs., Inc.*, 159 Wash.2d 903, 915-16, 154 P.3d 882 (2007); *Koegel v. Prudential Mut. Sav. Bank*, 51 Wash.App. 108, 111-12, 752 P.2d 385 (1988). The procedural requirements for conducting a trustee sale are extensively spelled out in RCW 61.24.030 and RCW 61.24.040. Procedural irregularities, such as those divesting a trustee of its statutory authority to sell the property, can invalidate the sale. *Udall*, 159 Wash.2d at 911, 154 P.3d 882.” *Albice at 567*.

Respondents further must agree that only a beneficiary can appoint a trustee under RCW 61.24.010(2), that the beneficiary is the holder of the promissory note secured by the deed of trust under RCW 61.24.005(2), and that only a trustee can conduct a non-judicial foreclosure under RCW 61.24.040(1). Also, only the current beneficiary could have appointed QLS as the trustee.

It was therefore incumbent on the Appellant as the defendant in the unlawful detainer case to prove that QLS was not the proper Trustee as appointed by the current beneficiary and also to provide some kind of explanation, if any there were, showing that the recitals in the Trustee's Deed were false to an degree that the sale would be invalidated. This is why it is a "Show Cause" hearing: the defendant comes to the hearing and *shows* cause why a writ of restitution should not be granted. It is the defendant's opportunity to give rise to issues of fact by a *showing* of some evidence against the allegations in the complaint.

At the time of the Show Cause hearing, Appellant knew that her case was under review in an underlying litigation. However, she did not provide any declaration or evidence from that underlying litigation such that anyone would be able to infer that there were any facts that needed to be disputed in a trial setting. She did not provide a single piece of evidence disputing either the validity of the sale or of the recitals in the Trustee's Deed. If she had provided some kind of evidence of these, *if any*, then the Court could have "strictly construe[d] the statutes in the borrower's favor" (*Albice* at 567) and perhaps ordered a trial to examine the presented evidence more closely. But she did not.

Appellant insists that QLS was not the trustee and that NYCB was not the beneficiary (*See Appellant Hermosillo's Opening Brief, p2-7*); otherwise their appeal fails immediately. Then Hermosillo failed to produce any evidence proving that QLS and NYCB lacked power. However, the recorded Trustee's Deed and the declarations on record explain otherwise sufficiently for a court of competent jurisdiction to determine as a matter of law that QLS was the trustee and that NYCB was the beneficiary.

Appellant argues (*See Appellant Hermosillo's Opening Brief, p 4*) that there are certain elements that must be satisfied in order to prove that QLS was the proper trustee. Hermosillo failed to bring any contrary evidence to the Show Cause hearing to negate or support any of these elements. Instead, she simply requested a trial. The Court relied, properly, on the Trustee's Deed as prima facia evidence and denied a trial.

Appellant argues that the Trustee's Deed should have given an explanation of the contents of a number of documents in order to be a proper Trustee's deed. *See Appellant Hermosillo's Opening Brief, p 4*. However, a Trustee's deed does not have to give a run-down of the note's history, but rather explain the process as proscribed in RCW 61.24.040 was followed when foreclosing on the note. RCW 61.24.040(7) requires

that “the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust...” (Emphasis added). Therefore the recitals do not need to expound upon the sundry history of the note and the appointment of the trustee, but rather recite that the *sale* was handled according to statute (i.e., RCW 61.24.040). The Trustee’s Deed so recites in paragraph 9. *CP 374*.

The Trustee’s Deed as presented in the unlawful detainer case does in fact recite those facts according to the Statute supporting the foreclosure proceedings. *CP 373-75*. A simple reading of the Trustee’s Deed makes clear that QLS followed the statute with regard to the sale, and the recitals are therefore complete and Appellant’s compliance challenge fails on its face based solely on the Trustee’s Deed. *Id.* Had Hermosillo shown any evidence contradicting or proving any of the said recitals were false then the Court could have ordered a trial or even denied the writ at the Show Cause hearing (e.g., Hermosillo would have “*shown cause*” why the writ shouldn’t have been issued).

To follow the Appellant’s arguments, there would need to be an exhaustive checklist following each line of each element of RCW 61.24 followed by an explanation of why that particular part of 61.24 does or does not apply. The way that QLS followed the statute is much more

precise in that they recited “9. All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in chapter 61.24 RCW.” CP 374.

Appellant argues that the Respondents did not properly allege ownership of the property. *See Appellant Hermosillo's Opening Brief, page 1 and 6.* However, it is the Trustee's Deed that conveyed to the Respondents' their interest in the Property, which is prima facie evidence of an ownership interest. CP 373. See RCW 61.24.040(7). What other evidence would be better to prove an ownership interest in a piece of real property other than a recorded deed? It is important to note that at no time does Hermosillo's brief nor do her arguments at the hearing claim that Respondents are not “bona fide purchasers.” The issues raised by Hermosillo in her assignment of error do not request a review finding that Haydari and Bahandari were not bona fide purchasers. *See Appellant Hermosillo's Opening Brief, page 1.*

If the Court of Appeals determines that more than a Trustee's deed will be necessary to prove ownership after a trustee's sale it will impose a statutorily improper and extremely onerous requirement on bona fide purchasers and trustees. Purchasers will then be without recourse as the only document they could use to prove ownership would be a Trustee's

Deed that recites compliance to RCW 61.24. Appellant suggests no alternative method of proving one's ownership other than a Trustee's Deed.

If Hermosillo wishes to prove that the Trustee or the Beneficiary were not proper then it was her responsibility to bring that evidence to *the Show Cause Hearing*. Hermosillo brought allegations and claims but no evidence to prove that the Trustee's Deed was invalid in any way.

The Trustee's deed was the only physical evidence in possession of Counsel for Respondents at the time of the hearing, but it is enough. If it were not enough then unlawful detainer proceedings would be far more cumbersome than they are. The legislature clearly wanted unlawful detainer proceedings to be far simpler than Counsel for Appellant insists. See RCW 59.12. Counsel for Respondents is unaware of *any cases or statutes that support Hermosillo's insistence that a plaintiff in an unlawful detainer proceeding should present more evidence than the Trustee's Deed to prove ownership*. Nor is there a case or statute that requires a plaintiff in an unlawful detainer proceeding to prove to the court that the beneficiary was proper. Such a requirement would be unduly cumbersome to purchasers and would have a chilling effect on the foreclosure system and on innocent purchasers. As Justice Stephens

explained in *Albice*, “There may be some merit to creating a system that allows courts to broadly review procedural irregularities in foreclosure proceedings after a sale is complete, *but this is not the system our legislature created in the act*. The legislature ranked finality of land sales over entertaining the postsale grievances of grantors. This valuing of sale finality is evidenced by the *conclusive presumption given to deed recitals* showing statutory compliance when the buyer is a bona fide purchaser. RCW 61.24.040(7)... ” *Albice*, at 581, emphasis added.

Hermosillo’s argument that a Trustee’s deed is not a sufficient basis for a purchaser or the Courts to rely on is not cogent. *See Appellant Hermosillo’s Opening Brief, p 1, 6*. A Trustee’s deed is the standard and statutory document given to any purchaser to prove conveyance after a Trustee’s sale. RCW 61.24.050. It is not incumbent on purchasers at Trustee sales to also seek the long chain of documents that lead up to the sale, much of which would be unavailable to potential purchasers due to privacy laws. After obtaining a property at a foreclosure sale it is entirely reasonable for a purchaser to rely upon the Trustee’s deed without further investigation. See RCW 61.24.050.

Appellant argues that “the only way QLS could have been the trustee on December 14 [sic], 2015, the date on which a representative of QLS

executed the trustee's deed...is if QLS at some point in time was appointed the successor trustee by a lawful beneficiary." See *Appellant's Opening Brief*, 3-4. Then Appellant argues that the plaintiff in an unlawful detainer action would somehow have the burden to prove that the Trustee was a proper trustee. *Id at 4*. Appellant fails to present any evidence of who or what would be the proper beneficiary and/or Trustee if not NYCB or QLS. Appellant fails to present a case or statute that would give rise to an obligation to find and/or prove that claim in an unlawful detainer proceeding absent contrary evidences.

The real burden of proof is upon the defendant to prove that the Trustee did not have the power to sell. See RCW 59.18.370. Since they could not make an honest insufficiency argument about QLS's position as the proper trustee *and* present evidence to the contrary such that an issue of fact would arise, the commissioner properly ordered that a writ of restitution be granted and denied a trial.

It is one thing to say that a promissory note is invalid; it is a wholly different thing to then also produce the valid promissory note. Hermosillo should not be allowed to turn a blind eye to the evidence staring her in the face to the detriment of the other parties, deny its existence, and then attempt to win on appeal without any contradictory evidence in her favor.

RCW 59.18.380 does not automatically give rise to the right to trial by jury. Rather, in part it states “if it shall appear to the court that there is *no substantial issue of material fact* of the right of the plaintiff to be granted other relief as prayed for in the complaint and provided for in this chapter, the court may enter an order and judgment granting so much of such relief as may be sustained by the proof...” (emphasis added). Respondents offered a Trustee’s Deed that is valid and clear. *CP 373-75*. Appellant offered no proof that the Trustee’s Deed was invalid or anything to prove that QLS was not the proper trustee. There was no substantial issue of material fact to prompt the Court to order a trial. There was no testimony presented purporting different documents that could prove QLS was not the proper Trustee.

RCW 59.12.130 provides in part that “Whenever an issue of fact is presented by the pleadings it must be tried by a jury...” It then becomes incumbent on the Appellant to show evidence to the Court that would bring into question whether there be a question of fact. Simply stating “I don’t believe it is so” does not give rise to an issue of fact. Nor is it sufficient to simply state what you hope to be the case, or wish were the case. There are no allegations made by Appellant at any time that truly give rise to an issue of fact AND are supported with evidence. The commissioner granted a ten day stay of the writ in order to request a

revision. Hermosillo did not attempt to provide any new evidence negating the sale nor clear corroborating argument as to why anything presented proved that QLS or NYCB were improper.

Was there a Trustee's Deed recorded pursuant to a Trustee's sale conducted on December 4<sup>th</sup>, 2016? The evidence as recorded in Snohomish County's records under #201512170495 evidences that there was. *CP 373-75*. Therefore, this is not a question of fact.

Did the Trustee's Deed properly recite everything necessary per RCW 61.24.040(7)? A cursory examination of the Trustee's Deed shows that it does comply with the facts (which facts as recited Appellant did not object to specifically). *Id. especially paragraph 9*. Therefore, this is not a question of fact.

Did Appellant present any documentary evidence to prove that QLS was not the proper Trustee or NYCB wasn't the proper beneficiary? She did not; so no question of fact to dispute at trial based on evidence.

Is the Court's ability to rely solely on a Trustee's Deed as evidence of ownership an issue of fact to determine at trial? No, it is a matter of law that should be handled by the judge/commissioner.

Is the Appellant alleging any falsity in the Trustee's Deed's recitals that would cause a question of fact? No, Appellant only argues that additional information should have been included. This is a question of law. Again, no issue of fact to dispute at trial.

Hermosillo relies on an interpretation of *Albice v. Premier Mortgage Services of Washington, Inc.*, 174 Wn. 2d 560, 276 P.3d 1277, that is wholly against the spirit of the case. In *Albice* there were undisputed defects to many of the procedures of RCW 61.24, including a failure to make proper recitals per RCW 61.24.040(7). Some of the recitals in the *Albice* Trustee's deed were also factually incorrect on their face. These fact patterns do not apply to the Trustee's deed from QLS in the instant case, nor did Hermosillo make such claims.

First, the recitals in the Trustee's Deed are all correct. Appellant does not dispute any of the alleged recitals, she only states that there should have been additional recitals outside of the required ones. *See Appellant Hermosillo's Opening Brief, pages 4-7.*

Second, the recitals in the Trustee's Deed are exhaustive in explaining compliance with RCW 61.24. *CP 373-75.*

Since Appellant fails to show how the Trustee's Deed was insufficient and fails to show why additional recitals would be required beyond what is

in the Trustee's Deed per the statute, the preclusive presumption must be that the Trustee's Deed conveyed title to the Respondents.

## **V. REQUEST FOR RELIEF**

In the proceedings of the Superior Court, Judge Okrent set a supersedeas bond of \$37,500 initially (*CP 21-22*) and later approved an additional bond of \$18,000 plus \$1,200 a month. The damages caused by Appellant's appeal have been very substantial and heavy to bear.

RCW 59.12.100 and RAP 8.1(c) both require the bond in order to stay the writ of restitution and to commence the appeal. The Court of Appeals should include in its ruling an award of all items allowed and listed in RCW 59.12.100 and RAP 8.1(c) to be proven by cost bill and motion according to RAP 18.1.

The damages Respondents have suffered are at least in the form of attorney's fees, lost rental income, payments to their hard money lender, and costs of the action.

## **VI. CONCLUSION**

There are no questions of fact that would arise to either deny Respondents possession of the Property nor preventing the Court from issuing a writ of Restitution. Appellant's appeal should be dismissed, a

writ of restitution should issue, and Respondent's should be awarded all of their legal costs, financial losses, and all other items as allowed per RCW 59.12.100 and RAP 8.1(c).

Respectfully submitted this 10/25/16

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**CERTIFICATE OF SERVICE**

I, Joshua Dabling, attorney for Respondents/Plaintiffs, certify and declare that I caused a copy of the Respondents' Opening Brief and this

Certificate of Service to be filed with:

The Clerk of the Court (with a Judge's working copy to be hand delivered)  
Court of Appeals Division I  
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 10/25/16 at Edmonds, Washington  
BY: JOSHUA DABLING

  
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