

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

NO. 75020-8-I

CONCEPCION HERMOSILLO, a single woman,

Appellant,

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**

Respondents.

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

**APPELLANT HERMOSILLO'S REPLY TO RESPONDENTS'
OPENING BRIEFS**

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COURT OF APPEALS DIV I
SNOHOMISH

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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).....4, 8

I ARGUMENT

A. Real Property is not Security for Repayment of Promissory Note.

New York Community Bank claims, “Under the terms of deed of trust, the real property serves as collateral securing repayment of the promissory note.” *Reply Brief*, at pp. 3-4. This statement is at the heart of the widespread misconception that the holder of a secured mortgage note, regardless of whether it owns the note it holds, is entitled to enforce the deed of trust (“DOT”) that secures the note. The *security follows the note* doctrine is actually a misnomer. The security follows the *debt* for which the note is taken as payment.

The real property does not secure repayment of the promissory note because a promissory note is itself payment. A promissory note is never an amount of money that is loaned. It is payment for an amount of money that has been loaned. See *RCW 62A.3-310(b)(1) and (2)*. Thus A promissory note is *never repaid*.

In a typical mortgage loan transaction, the amount of money loaned (the *debt*) is repaid. The promissory note is merely the method agreed upon by the borrower and Lender for repayment of the amount of money loaned (the debt). In other words, except for one significant difference, a promissory (mortgage) note serves precisely the same function in a mortgage loan transaction as a personal check serves in an everyday, typical grocery store transaction: each instrument is a method (mutually agreed

upon by a debtor and a creditor) for paying off a debt obligation. *RCW 62A.3-310(b)(1) and (2)*.

Respondent, like many of those who analyze mortgage loan transactions in Washington, is laboring under the fallacy that the obligation to pay the note according to its terms and the obligation to pay the mortgage debt are the same obligation. They are not the same obligation, and they are not enforced in the same way. If the note is dishonored, it is enforced by suing on the note. If, on the other hand, the mortgage debt obligation is defaulted upon, it is enforced by invoking the power of sale in the DOT.

Together, the terms of the note and the Uniform Commercial Code (“UCC”) determine who is authorized to enforce the note. RCW 62A.3-301 authorizes the holder of the note, *inter alia*, to enforce the note. Similarly, the terms of the deed of trust (“DOT”) and the UCC determine who is authorized to enforce the DOT. Both the DOT¹ and RCW 62A.9A-203 authorize only the person who maintains an *enforceable ownership interest in the note* to enforce the DOT. Thus, if the person entitled to enforce the note is not the owner of the mortgage debt obligation, then the person entitled to enforce the note is not entitled to enforce the DOT.

The DOT always follows a sale of the mortgage debt obligation for which the note is taken as payment because the DOT ensures *repayment* of the mortgage debt by giving the trustee named in the DOT, or its successor,

¹ “This Security Instrument secures to *Lender* [the *owner* of the mortgage debt obligation] (i) the repayment of the *Loan* . . .” (emphasis added).

the power to sell the property if the borrower fails to repay the loan in accordance with the covenants and agreements contained in the note. The right to sell the property to obtain repayment of the *mortgage debt obligation*, not the note,² is the “*benefit*” the DOT confers on the owner of the mortgage debt (i.e., the Lender and, consequently, “*beneficiary*” of the DOT).

B. RCW 62A.9A-203.

The Permanent Editorial Board (“PEB”) of the Uniform Commercial Code (“UCC”), the organization that is officially charged by the *creators of the UCC*—the American Law Institute (“ALI”) and the National Conference of Commissioners on Uniform State Laws (“NCCUSL”)—with the responsibility of issuing periodic commentaries reflecting the correct interpretation of provisions of the UCC, agrees with Appellant’s analysis of RCW 62A.9A-203.

On November 14, 2011, because of the tremendous amount of confusion among judges, lawyers, and legal commentators concerning the application of certain UCC provisions to mortgage-related transactions, the Permanent Editorial Board (“PEB”)³ of the UCC issued a commentary. The

² The note never has to be *repaid* because the note is the mutually agreed upon method of payment of the mortgage debt. It is the mortgage debt that is created by origination of the loan that must be repaid to the Lender. The note is merely the agreed upon method of paying the mortgage debt. The failure of many Washington courts to understand this subtle point of commercial law is the source of much of the confusion that exists in the foreclosure field.

³ In 1961, the American Law Institute and the Uniform Law Commission, the organizations that jointly sponsor the Uniform Commercial Code, established the

PEB is not a group of run-of-the-mill commentators. The PEB is charged by the creators of the UCC with the responsibility of issuing the *Official Comments* to the UCC.

The PEB is the definitive authority in the entire world concerning the meaning of the UCC. Before considering the November 14, 2011 commentary's analysis of UCC § 9-203, Appellant believes it is important for the court to understand what is the status within the commercial law field that each of the 17 members of the PEB has achieved. Further, Appellant believes this understanding can best be acquired by the court's review of just a few of the commercial law-related accomplishments of a typical member of the PEB.

1. Typical Member of PEB.

James J. White is a typical member of the PEB. He is one of the authors of the November 14, 2011 PEB Report.

J.J. White, the Robert A. Sullivan Professor of Law Emeritus at the University of Michigan School of Law, has written on many aspects of commercial law. His book, *Uniform Commercial Code* (with Summers and

Permanent Editorial Board for the Uniform Commercial Code (PEB). One of the charges of the PEB is to issue commentaries "and other articulations as appropriate to reflect the correct interpretation of the [Uniform Commercial] Code and issuing the same in a manner and at times best calculated to advance the uniformity and orderly development of commercial law." Such commentaries and other articulations are issued directly by the PEB rather than by action of the American Law Institute and the Uniform Law Commission. Report of the Permanent Editorial Board for the Uniform Commercial Code, *Application of the Uniform Commercial Code to Selected Issues Relating to Mortgage Notes*, (November 14, 2011), at ii.

Hillman), is considered to be the most widely recognized treatise on the subject.⁴ He is also the author of several casebooks on commercial, bankruptcy, and contracts law. Prof. White has served as the reporter for the Revision of Article 5 of the Uniform Commercial Code and is a Commissioner on Uniform Laws from Michigan. He also has served on several American Law Institute and NCCUSL committees dealing with revision to the Uniform Commercial Code. He received the Homer Kripke Achievement Award, given by the American College of Commercial Finance Lawyers. Prof.

For decades, Mr. White's *The Uniform Commercial Code* has been required reading for commercial law students at the Nation's best law schools—Yale, Harvard, Stanford, Columbia, and the University of Chicago—and the vast majority of the remaining more than 350 law schools. A complete list of his published writing on the subject of the UCC would exhaust 15 or more pages of this memorandum.

Here are just a few of the commercial law-related books he has authored or co-authored:

Books

1. Co-editor. *Uniform Commercial Code*. 6th ed. R. S. Summers and Hillman, R. A., co-editors. Practitioner Treatise Series, vol. 3. St. Paul, MN: Thompson Reuters, 2014.

⁴ The case book has been *the* commercial law textbook of choice at the best law schools in the country for the past forty years.

2. Co-author. Secured Transactions: Teaching Materials. 4th ed. Brunstad Jr.,G.E., co-author. American Casebook Series. St. Paul, Minn: Thomson/West, 2013.
3. Co-author. The Modern Law of Contracts. 3rd ed. B. Frier, co-author. St. Paul: West, 2012.
4. Co-author. Uniform Commercial Code. 6th ed. R. S. Summers, co-author. Practitioner Treatise Series. St. Paul, MN: West, 2010.
5. Co-author. Uniform Commercial Code. 6th ed. R. S. Summers, co-author. Hornbook Series. St. Paul, MN: West, 2010.
6. Co-author. Principles of Sales Law. R. S. Summers, co-author. Concise Hornbook Series. St. Paul, Minn.: Thomson/West, 2009.
7. Co-author. The Modern Law of Contracts. 2d ed. B. Frier, co-author. American Casebook Series. St. Paul, Minn.: Thomson/West, 2008.
8. Co-author. Principles of Payment Systems. R. S. Summers, co-author. Concise Hornbook Series. St. Paul, Minn.: Thomson/West, 2008.
9. Co-author. Principles of Secured Transactions. R. S. Summers, co-author. Concise Hornbook Series. St. Paul, Minn.: Thomson/West, 2007.
10. Secured Transactions: Teaching Materials. 3rd ed. American Casebook Series. St. Paul, Minn.: Thomson/West, 2006.
11. Co-author. Uniform Commercial Code: Revised Article 1 and Amended Article 2: Substance and Process. R. S. Summers, co-author. St. Paul, Minn.: West, 2005.
12. Co-author. The Modern Law of Contracts. B. Frier, co-author. American Casebook Series. St. Paul, Minn.: Thomson/West, 2005.
13. Co-author. Uniform Commercial Code. 5th ed. R. S. Summers, co-author. Practitioner Treatise Series. St. Paul, Minn.: West Group, 2002-. (Will co-author supplements and new volumes for this edition.)
14. Secured Transactions: Teaching Materials. 2nd ed. American Casebook Series. St. Paul, Minn.: Thomson/West, 2002.
15. Co-author. Uniform Commercial Code: Secured Transactions. 5th ed. R. S. Summers, co-author. Hornbook Series. St. Paul, Minn.: West Group, 2000. (Excerpt from his book Uniform Commercial

- Code. 5th ed. Hornbook Series. St. Paul, Minn.: West Group, 2000.)
16. Co-author. Uniform Commercial Code. 5th ed. R. S. Summers, co-author. Hornbook Series. St. Paul, Minn.: West Group, 2000.
 17. Secured Transactions: Teaching Materials. American Casebook Series. St. Paul, Minn.: West Group, 2000.
 18. Co-author. Uniform Commercial Code: Sales. 4th ed. R. S. Summers, co-author. Hornbook Series. St. Paul, Minn.: West, 1995. (Excerpt from his book Uniform Commercial Code. 4th ed. Hornbook Series. St. Paul, Minn.: West Group, 1995.)
 19. Co-author. Uniform Commercial Code: Payment Systems. 4th ed. R. S. Summers, co-author. Hornbook Series. St. Paul, Minn.: West Group, 1995. (Excerpt from his book Uniform Commercial Code. 4th ed. Hornbook Series. St. Paul, Minn.: West Group, 1995.)
 20. Co-author. Uniform Commercial Code. 4th ed. R. S. Summers, co-author. Hornbook Series. St. Paul, Minn.: West, 1995.
 21. Co-author. Uniform Commercial Code. 4th ed. R. S. Summers, co-author. Practitioner Treatise Series. St. Paul, Minn.: West, 1995. (Co-authored supplements to this edition through 2001.)
 22. Co-author. Sales and Secured Transactions: Teaching Materials. 5th ed. R. E. Speidel and R. S. Summers, co-authors. American Casebook Series. St. Paul, Minn.: West, 1993.
 23. Co-author. Banking Law: Teaching Materials. 3rd ed. E. L. Symons, co-author. American Casebook Series. St. Paul, Minn.: West, 1991.
 24. Co-editor. Banking Law: Selected Statutes and Regulations. E. L. Symons, co-editor. St. Paul, Minn.: West, 1991.
 25. Co-author. Uniform Commercial Code. 3rd ed. R. S. Summers, co-author. Practitioner Treatise Series. St. Paul, Minn.: West, 1988-1993. (Volume 1-2 are Hornbook Series, Practitioner's ed.)
 26. Co-author. Uniform Commercial Code. 3rd ed., Student ed. R. S. Summers, co-author. Hornbook Series. St. Paul, Minn.: West, 1988.
 27. Co-author. Secured Transactions: Teaching Materials. R. E. Speidel and R. S. Summers, co-authors. American Casebook Series. St. Paul, Minn.: West, 1987.

Mr. White's achievements in the field of commercial law, particularly the analysis of the UCC, are typical of the achievements of each of the 17 lawyers who sat on the PEB and participated in the production of the November 14, 2011 PEB Report ("Report").

2. The Report.

The Report was intended to offer clear guidance to judges and lawyers across the country concerning four mortgage-related issues:

1. Who is the person entitled to enforce a mortgage note and, correspondingly, to whom is the obligation to pay the note owed?
2. How can the owner of a mortgage note effectively transfer ownership of that note to another person or effectively use that note as collateral for an obligation?
3. What is the effect of transfer of an interest in a mortgage note on the mortgage securing it?
4. May a person to whom an interest in a mortgage note has been transferred, but who has not taken a recordable assignment of the mortgage, take steps to become the assignee of record in the real estate recording system of the mortgage securing the note?

The commentary under Question 3 is extremely important to this court's deliberations. Therein the point is made that ownership of the note is required before one is entitled to utilize the DOT to foreclose:

What if a note secured by a mortgage is sold (or the note is used as collateral to secure an obligation), but the parties do not take any additional actions to assign the mortgage that secures payment of the note, such as execution of a recordable assignment of the mortgage? UCC Section 9-203(g) explicitly provides that, in such cases, *the assignment of the interest of the seller or other grantor of a security*

*interest⁵ in the note automatically transfers a corresponding interest in the mortgage to the assignee: “The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.” (As noted previously, a “security interest” in a note includes the right of a *buyer of the note*.)*

While this question has provoked some uncertainty and has given rise to some *judicial analysis that disregards the impact of Article 9*, the UCC is unambiguous: *the sale of a mortgage note* (or other grant of a security interest in the note) not accompanied by a separate conveyance of the mortgage securing the note does not result in the mortgage being severed from the note.

It is important to note in this regard, however, that UCC Section 9-203(g) addresses only whether, as between *the seller* of a mortgage note (or a debtor who uses it as collateral) and *the buyer* or other secured party, the interest of *the seller* (or debtor) in the mortgage has been correspondingly *transferred to the secured party [buyer]*.

PEB Report, November 14, 2011, at 12. (emphases added).

As can be read in the commentary quoted immediately above, it is the unanimous opinion of the 17 members of the PEB that the transfer of the right to enforce a DOT is always incidental to the transfer of *ownership* of the note the DOT secures. This is the true meaning of the *security follows the debt* doctrine.⁶ The right to enforce a DOT by foreclosing is *not transferred* by a transfer of the *right to enforce the note* unless the transfer of the right to enforce the note is incidental to the transfer of *ownership* of the note. See *RCW 62A.9A-203(a), (b), and (g)*; *RCW 62A.3-310(b)(3)*; and *Official Comment 3 to UCC 3-310*.

⁵ Under the UCC, the term “security interest” includes the interest of a *buyer of a promissory note in a transaction that is governed by Article 9*. *RCW 62A.1-201(b)(35)*.

⁶ Official Comment 9 to UCC § 9-203.

As a direct consequence of the information provided in the preceding paragraph, if a person who claims the right to enforce the DOT fails to establish *ownership* of the note the DOT secures, that person simultaneously fails to establish that it has an enforceable interest in the DOT. And if the person does not have an enforceable interest in the DOT, it has no right to foreclose, judicially or non-judicially.

Respondent has asserted that it “acquired” Appellant’s note. What does that mean? Did it purchase or borrow the note? Either way, Respondent has not *proven* that it purchased Appellant’s note. As such, Respondent is not entitled to foreclose.

On the basis of the correct interpretation of RCW 62A.9A-203, Appellant has a clear legal right to retain possession and ownership of the Property.

II CONCLUSION

Based on the foregoing, Appellant hereby requests that this Court enter an order reversing the trial court’s order granting summary judgment to Respondents, and each of them, rescinding the sale and thereby

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returning the Property to Appellant, and requiring the trial court to conduct the trial of this matter.

RESPECTFULLY SUBMITTED this 3rd day of October, 2016.

JAMES A. WEXLER



James A. Wexler, WSBA #7411

Attorney for Appellant, Hermosillo

III. APPENDIX

STATE STATUTES

- | | |
|--------------------------|----------------|
| 1. RCW 62A.1-201 | 7 pages |
| 2. RCW 62A.3-301 | 1 page |
| 3. RCW 62A.3-310 | 1 page |
| 4. RCW 62A.9A-203 | 2 pages |



RCW 62A.1-201

General definitions.

(a) Unless the context otherwise requires, words or phrases defined in this section, or in the additional definitions contained in other articles of this title that apply to particular articles or parts thereof, have the meanings stated.

(b) Subject to definitions contained in other articles of this title that apply to particular articles or parts thereof:

(1) "Action," in the sense of a judicial proceeding, includes recoupment, counterclaim, set-off, suit in equity, and any other proceeding in which rights are determined.

(2) "Aggrieved party" means a party entitled to pursue a remedy.

(3) "Agreement," as distinguished from "contract," means the bargain of the parties in fact, as found in their language or inferred from other circumstances, including course of performance, course of dealing, or usage of trade as provided in RCW 62A.1-303.

(4) "Bank" means a person engaged in the business of banking and includes a savings bank, savings and loan association, credit union, and trust company.

(5) "Bearer" means a person in control of a negotiable electronic document of title or a person in possession of a negotiable instrument, negotiable tangible document of title, or certificated security that is payable to bearer or indorsed in blank.

(6) "Bill of lading" means a document of title evidencing the receipt of goods for shipment issued by a person engaged in the business of directly or indirectly transporting or forwarding goods. The term does not include a warehouse receipt.

(7) "Branch" includes a separately incorporated foreign branch of a bank.

(8) "Burden of establishing" a fact means the burden of persuading the trier of fact that the existence of the fact is more probable than its nonexistence.

(9) "Buyer in ordinary course of business" means a person that buys goods in good faith, without knowledge that the sale violates the rights of another person in the goods, and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. A buyer in ordinary course of business may buy for cash, by exchange of other property, or on secured or unsecured credit, and may acquire goods or documents of title under a preexisting contract for sale. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 of this title may be a buyer in ordinary course of business. "Buyer in ordinary course of business" does not include a person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt.

(10) "Conspicuous," with reference to a term, means so written, displayed, or presented that a reasonable person against which it is to operate ought to have noticed it. Whether a term is "conspicuous" or not is a decision for the court. Conspicuous terms include the following:

(A) A heading in capitals equal to or greater in size than the surrounding text, or in contrasting

type, font, or color to the surrounding text of the same or lesser size; and

(B) Language in the body of a record or display in larger type than the surrounding text, or in contrasting type, font, or color to the surrounding text of the same size, or set off from surrounding text of the same size by symbols or other marks that call attention to the language.

(11) "Consumer" means an individual who enters into a transaction primarily for personal, family, or household purposes.

(12) "Contract," as distinguished from "agreement," means the total legal obligation that results from the parties' agreement as determined by this title as supplemented by any other applicable laws.

(13) "Creditor" includes a general creditor, a secured creditor, a lien creditor, and any representative of creditors, including an assignee for the benefit of creditors, a trustee in bankruptcy, a receiver in equity, and an executor or administrator of an insolvent debtor's or assignor's estate.

(14) "Defendant" includes a person in the position of defendant in a counterclaim, cross-claim, or third-party claim.

(15) "Delivery," with respect to an electronic document of title means voluntary transfer of control and with respect to an instrument, a tangible document of title, or chattel paper, means voluntary transfer of possession.

(16) "Document of title" means a record (i) that in the regular course of business or financing is treated as adequately evidencing that the person in possession or control of the record is entitled to receive, control, hold, and dispose of the record and the goods the record covers and (ii) that purports to be issued by or addressed to a bailee and to cover goods in the bailee's possession which are either identified or are fungible portions of an identified mass. The term includes a bill of lading, transport document, dock warrant, dock receipt, warehouse receipt, and order for delivery of goods. An electronic document of title means a document of title evidenced by a record consisting of information stored in an electronic medium. A tangible document of title means a document of title evidenced by a record consisting of information that is inscribed on a tangible medium.

(17) "Fault" means a default, breach, or wrongful act or omission.

(18) "Fungible goods" means:

(A) Goods of which any unit, by nature or usage of trade, is the equivalent of any other like unit;

or

(B) Goods that by agreement are treated as equivalent.

(19) "Genuine" means free of forgery or counterfeiting.

(20) "Good faith," except as otherwise provided in Article 5 of this title, means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(21) "Holder" with respect to a negotiable instrument, means:

(A) The person in possession of a negotiable instrument that is payable either to bearer or to an identified person that is the person in possession;

(B) The person in possession of a negotiable tangible document of title if the goods are deliverable either to bearer or to the order of the person in possession; or

(C) The person in control of a negotiable electronic document of title.

(22) "Insolvency proceeding" includes an assignment for the benefit of creditors or other proceeding intended to liquidate or rehabilitate the estate of the person involved.

(23) "Insolvent" means:

(A) Having generally ceased to pay debts in the ordinary course of business other than as a

result of bona fide dispute;

(B) Being unable to pay debts as they become due; or

(C) Being insolvent within the meaning of federal bankruptcy law.

(24) "Money" means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.

(25) "Organization" means a person other than an individual.

(26) "Party," as distinguished from "third party," means a person that has engaged in a transaction or made an agreement subject to this title.

(27) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(28) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain by use of either an interest rate specified by the parties if that rate is not manifestly unreasonable at the time the transaction is entered into or, if an interest rate is not so specified, a commercially reasonable rate that takes into account the facts and circumstances at the time the transaction is entered into.

(29) "Purchase" means taking by sale, lease, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property.

(30) "Purchaser" means a person that takes by purchase.

(31) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Remedy" means any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

(33) "Representative" means a person empowered to act for another, including an agent, an officer of a corporation or association, and a trustee, executor, or administrator of an estate.

(34) "Right" includes remedy.

(35) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. "Security interest" includes any interest of a consignor and a buyer of accounts, chattel paper, a payment intangible, or a promissory note in a transaction that is subject to Article 9A of this title. "Security interest" does not include the special property interest of a buyer of goods on identification of those goods to a contract for sale under RCW 62A.2-401, but a buyer may also acquire a "security interest" by complying with Article 9A of this title. Except as otherwise provided in RCW 62A.2-505, the right of a seller or lessor of goods under Article 2 or 2A of this title to retain or acquire possession of the goods is not a "security interest," but a seller or lessor may also acquire a "security interest" by complying with Article 9A of this title. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer under RCW 62A.2-401 is limited in effect to a reservation of a "security interest." Whether a transaction in the form of a lease creates a "security interest" is determined pursuant to RCW 62A.1-203.

(36) "Send" in connection with a writing, record, or notice means:

(A) To deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and, in the case of an instrument, to an address specified thereon or otherwise agreed, or if there be none

to any address reasonable under the circumstances; or

(B) In any other way to cause to be received any record or notice within the time it would have arrived if properly sent.

(37) "Signed" includes using any symbol executed or adopted with present intention to adopt or accept a writing.

(38) "State" means a State of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(39) "Surety" includes a guarantor or other secondary obligor.

(40) "Term" means a portion of an agreement that relates to a particular matter.

(41) "Unauthorized signature" means a signature made without actual, implied, or apparent authority. The term includes a forgery.

(42) "Warehouse receipt" means a document of title issued by a person engaged in the business of storing goods for hire.

(43) "Writing" includes printing, typewriting, or any other intentional reduction to tangible form. "Written" has a corresponding meaning.

[2012 c 214 § 109; 2001 c 32 § 9; 2000 c 250 § 9A-802; 1996 c 77 § 1. Prior: 1993 c 230 § 2A-602; 1993 c 229 § 1; 1992 c 134 § 14; 1990 c 228 § 1; 1986 c 35 § 53; 1981 c 41 § 2; 1965 ex.s. c 157 § 1-201.]

NOTES:

Reviser's note: This table indicates the latest comparable former Washington sources of the material contained in the various subsections of RCW 62A.1-201. Complete histories of the former sections are carried in the Revised Code of Washington Disposition Tables.

HEREIN SUBD.	COMPARE FORMER
(1)	RCW: (i) 22.04.585(1) (ii) 62.01.191 (iii) 63.04.755(1) (iv) 81.32.531(1)
(2)	None
(3)	None
(4)	RCW: (i) 30.52.010 (ii) 62.01.191
(5)	RCW 62.01.191
(6)	RCW 81.32.011 ¹
(7)	None
(8)	None
(9)	RCW 61.20.010

- (10) None
- (11) RCW: (i) 63.04.040
(ii) 63.04.720
- (12) None
- (13) RCW 63.04.755(1)
- (14) RCW: (i) 22.04.585(1)
(ii) 62.01.191
(iii) 63.04.755(1)
(iv) 81.32.531(1)
- (15) RCW 63.04.755(1)
- (16) RCW 63.04.755(1)
- (17) RCW: (i) 22.04.585(1)
(ii) 63.04.060
(iii) 63.04.070
(iv) 63.04.755(1)
- (18) None
- (19) RCW: (i) 22.04.585(2)
(ii) 23.80.220(2)
(iii) 63.04.755(2)
(iv) 81.32.531(2)
- (20) RCW: (i) 22.04.585(1)
(ii) 62.01.191
(iii) 81.32.531(1)
- (21) None
- (22) None
- (23) RCW 63.04.755(3)
- (24) RCW 62.01.006(5)
- (25) RCW 62.01.056
- (26) None
- (27) None
- (28) RCW: (i) 22.04.585(1)
(ii) 23.80.220(1)
(iii) 61.20.010
(iv) 62.01.191
(v) 63.04.755(1)
(vi) 81.32.531(1)
- (29) None

- (30) RCW: (i) 22.04.585(1)
(ii) 23.80.220(1)
(iii) 61.20.010
(iv) 62.01.191
(v) 63.04.755(1)
(vi) 81.32.531(1)
- (31) None
- (32) RCW: (i) 22.04.585(1)
(ii) 23.80.220(1)
(iii) 61.20.010
(iv) 63.04.755(1)
(v) 81.32.531(1)
- (33) RCW: (i) 22.04.585(1)
(ii) 23.80.220(1)
(iii) 61.20.010
(iv) 63.04.755(1)
(v) 81.32.531(1)
- (34) None
- (35) None
- (36) None
- (37) RCW 61.20.010
- (38) None
- (39) None
- (40) None
- (41) None
- (42) None
- (43) None
- (44) RCW: (i) 22.04.585(1)
(ii) 23.80.220(1)
(iii) 61.20.010
(iv) 62.01.025
(v) 62.01.026
(vi) 62.01.027
(vii) 62.01.191
(viii) 63.04.755(1)
(ix) 81.32.531(1)
- (45) RCW: (i) 22.04.020

(ii) 63.04.755(1)

(46)

RCW 62.01.191

¹The repeal of RCW sections 81.32.010 through 81.32.561 ". . . shall not affect the validity of sections 81.29.010 through 81.29.050, chapter 14, Laws of 1961 (RCW 81.29.010 through 81.29.050)." Section 10-102(a)(xvii), chapter 157, Laws of 1965 ex. sess.

Application—Savings—2012 c 214: See notes following RCW 62A.1-101.

Effective date—2001 c 32: See note following RCW 62A.9A-102.

Effective date—2000 c 250: See RCW 62A.9A-701.

Effective date—1993 c 230: See RCW 62A.11-110.

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

Short title—1992 c 134: See RCW 63.19.900.

Effective date—1981 c 41: See RCW 62A.11-101.

**RCW 62A.3-301****Person entitled to enforce instrument.**

"Person entitled to enforce" an instrument means (i) the holder of the instrument, (ii) a nonholder in possession of the instrument who has the rights of a holder, or (iii) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to RCW 62A.3-309 or 62A.3-418(d). A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument.

[1993 c 229 § 29; 1965 ex.s. c 157 § 3-301. Cf. former RCW 62.01.051; 1955 c 35 § 62.01.051; prior: 1899 c 149 § 51; RRS § 3442.]

NOTES:

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.

**RCW 62A.3-310****Effect of instrument on obligation for which taken.**

(a) Unless otherwise agreed, if a certified check, cashier's check, or teller's check is taken for an obligation, the obligation is discharged to the same extent discharge would result if an amount of money equal to the amount of the instrument were taken in payment of the obligation. Discharge of the obligation does not affect any liability that the obligor may have as an indorser of the instrument.

(b) Unless otherwise agreed and except as provided in subsection (a), if a note or an uncertified check is taken for an obligation, the obligation is suspended to the same extent the obligation would be discharged if an amount of money equal to the amount of the instrument were taken, and the following rules apply:

(1) In the case of an uncertified check, suspension of the obligation continues until dishonor of the check or until it is paid or certified. Payment or certification of the check results in discharge of the obligation to the extent of the amount of the check.

(2) In the case of a note, suspension of the obligation continues until dishonor of the note or until it is paid. Payment of the note results in discharge of the obligation to the extent of the payment.

(3) Except as provided in subsection (b)(4), if the check or note is dishonored and the obligee of the obligation for which the instrument was taken is the person entitled to enforce the instrument, the obligee may enforce either the instrument or the obligation. In the case of an instrument of a third person which is negotiated to the obligee by the obligor, discharge of the obligor on the instrument also discharges the obligation.

(4) If the person entitled to enforce the instrument taken for an obligation is a person other than the obligee, the obligee may not enforce the obligation to the extent the obligation is suspended. If the obligee is the person entitled to enforce the instrument but no longer has possession of it because it was lost, stolen, or destroyed, the obligation may not be enforced to the extent of the amount payable on the instrument, and to that extent the obligee's rights against the obligor are limited to enforcement of the instrument.

(c) If an instrument other than one described in subsection (a) or (b) is taken for an obligation, the effect is (i) that stated in subsection (a) if the instrument is one on which a bank is liable as maker or acceptor, or (ii) that stated in subsection (b) in any other case.

[1993 c 229 § 38.]

NOTES:

Recovery of attorneys' fees—Effective date—1993 c 229: See RCW 62A.11-111 and 62A.11-112.



RCW 62A.9A-203

Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) **Attachment.** A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) **Enforceability.** Except as otherwise provided in subsections (c) through (i) of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under RCW 62A.9A-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under RCW 62A.8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, letter-of-credit rights, or electronic documents, and the secured party has control under RCW 62A.7-106, 62A.9A-104, 62A.9A-105, 62A.9A-106, or 62A.9A-107 pursuant to the debtor's security agreement.

(c) **Other UCC provisions.** Subsection (b) of this section is subject to RCW 62A.4-210 on the security interest of a collecting bank, RCW 62A.5-118 on the security interest of a letter-of-credit issuer or nominated person, RCW 62A.9A-110 on a security interest arising under Article 2 or 2A, and RCW 62A.9A-206 on security interests in investment property.

(d) **When person becomes bound by another person's security agreement.** A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this Article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) **Effect of new debtor becoming bound.** If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) **Proceeds and supporting obligations.** The attachment of a security interest in collateral

gives the secured party the rights to proceeds provided by RCW 62A.9A-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) **Lien securing right to payment.** The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) **Security entitlement carried in securities account.** The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) **Commodity contracts carried in commodity account.** The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

[2012 c 214 § 1503; 2000 c 250 § 9A-203.]

NOTES:

Application—Savings—2012 c 214: See notes following RCW 62A.1-101.

CERTIFICATE OF SERVICE

I certify that on October 3, 2016, I caused a true and correct copy of this Appellant's Reply to Respondents Opening Briefs and this Certificate of Service to be served on the following in the manner indicated below:

1. On Defendant Quality Loan Service Corporation of Washington, a Washington corporation by causing a copy of said document to be delivered to Robert McDonald, General Counsel for Quality Loan Service at 108 1st Ave. S. #202, Seattle, WA 98104 by e-mail as agreed;
2. On Joseph McIntosh, McCarthy-Holthus LLP, Attorney for Defendant New York Community Bank and Quality Loan Service Corporation 108 – 1st Avenue S. Suite 300, Seattle, WA. 98104 by email as agreed;

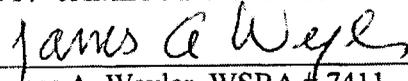
AND TO the Clerk with a Judge's working copy hand delivered and filed with:

Court of Appeals, Division I
One Union Square
600 University Street
Seattle, Washington 98101-4170

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 03rd Day of October 2016 at Issaquah, Washington.

BY: JAMES A. WEXLER


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Attorney for Appellant Hermosillo