

No. 48716-1-II  
IN THE COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

---

ALICE LOPEZ, an unmarried woman

Plaintiff/Appellant,

v.

JPMORGAN CHASE & CO., a New York Company; JPMORGAN  
CHASE BANK, NA, an Illinois National Association; DEUTSCHE  
BANK NATIONAL TRUST CO., a California Company; NORTHWEST  
TRUSTEE SERVICES, INC., a Washington corporation; and JOHN  
DOES 1-10,

Defendants/Respondents.

---

BRIEF OF RESPONDENTS JP MORGAN CHASE BANK, N.A., AND  
DEUTSCHE BANK NATIONAL TRUST COMPANY AS TRUSTEE

---

Amy Edwards, WSBA No. 37287  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101  
amy.edwards@stoel.com

*Attorneys for Respondents JPMorgan  
Chase Bank, N.A., and Deutsche Bank  
National Trust Company as Trustee*

**TABLE OF CONTENTS**

|  | Page |
|--|------|
| TABLE OF AUTHORITIES .....   | ii   |
| I. INTRODUCTION .....  | 1    |
| II. RESPONSE TO ASSIGNMENTS OF ERROR.....  | 2    |
| III. RESPONSE TO ISSUES PRESENTED .....  | 2    |
| IV. STATEMENT OF THE CASE.....   | 3    |
| V. ARGUMENT.....   | 5    |
| A. Standard of Review.....   | 6    |
| B. The Trust Was the Holder of the Note with<br>Authority to Enforce the Deed of Trust .....                       | 6    |
| C. Neither the PSA nor the REMIC Statutes Precluded<br>the Trust from Enforcing the Note and Deed of<br>Trust..... | 10   |
| D. Plaintiff's Reliance on RCW 64.04.010-.020 Is<br>Misplaced.....   | 15   |
| VI. CONCLUSION.....  | 16   |

**TABLE OF AUTHORITIES**

Page(s)

**Cases**

*Atl. Cas. Ins. Co. v. Or. Mut. Ins. Co.*,  
137 Wn. App. 296, 153 P.3d 211 (2007).....6

*Bain v. Metro. Mortg. Grp., Inc.*,  
175 Wn.2d 83, 285 P.3d 34 (2012).....9

*Brodie v. Nw. Tr. Servs., Inc.*,  
No. 12-CV-0469-TOR, 2012 U.S. Dist. LEXIS 139451  
(E.D. Wash. Sept. 27, 2012) .....11

*Brown v. Department of Commerce*,  
184 Wn.2d 509, 359 P.3d 771 (2015)..... passim

*Carpenter v. Longan*,  
83 U.S. 271, 21 L. Ed. 313 (1872).....8, 9

*Deutsche Bank Tr. Co. v. Walmsley*,  
277 Or. App. 690, 374 P.3d 937 (2016).....11

*Elene-Arp v. Fed. Home Fin. Agency*,  
No. C12-2154 RAJ, 2013 WL 1898218 (W.D. Wash.  
May 7, 2013).....10

*Fid. & Deposit Co. of Md. v. Ticor Title Ins. Co.*,  
88 Wn. App. 64, 943 P.2d 710 (1997).....8

*Fischer v. Woodruff*,  
25 Wash. 67, 64 P. 923 (1901).....16

*Frazer v. Deutsche Bank Nat’l Tr. Co.*,  
No. 11-cv-5454, 2012 U.S. Dist. LEXIS 69883 (W.D.  
Wash. May 18, 2012).....11

*Howard v. Shaw*,  
10 Wash. 151, 38 P. 746 (1894).....15

*Int’l Marine Underwriters v. ABCD Marine, LLC*,  
179 Wn.2d 274, 313 P.3d 395 (2013).....6

|  |       |
|--|-------|
| <i>In re Jacobson</i> ,<br>402 B.R. 359 .....  | 8     |
| <i>Johnson v. CitiMortgage, Inc.</i> ,<br>No. 2:13-cv-00037 RSM, 2013 WL 6632108 (W.D.<br>Wash. Dec. 17, 2013).....                | 9     |
| <i>Lynott v. Mortg. Elec. Registration Sys., Inc.</i> ,<br>No. 12-cv-5572-RBL, 2012 WL 5995053 (W.D. Wash.<br>Nov. 30, 2012) ..... | 9, 10 |
| <i>Miceli v. Bank of N.Y. Mellon</i> ,<br>No. 1:13-CV-1032, 2015 U.S. Dist. LEXIS 6989 (W.D.<br>Tex. Jan. 21, 2015).....           | 15    |
| <i>Moran v. GMAC Mortg., LLC</i> ,<br>No. 5:13-CV 04981-LHK, 2014 U.S. Dist. LEXIS<br>84411 (N.D. Cal. June 18, 2014) .....        | 13    |
| <i>Myers v. Mortg. Elec. Registration Sys., Inc.</i> ,<br>No. 11-cv-05582 RBL, 2012 WL 678148 (W.D. Wash.<br>Feb. 24, 2012) .....  | 9     |
| <i>Petheram v. Wells Fargo Bank</i> ,<br>No. C13-1016JLR, 2013 WL 6173806 (W.D. Wash.<br>Nov. 21, 2013) .....                      | 10    |
| <i>Saterbak v. JPMorgan Chase Bank, N.A.</i> ,<br>245 Cal. App. 4th 808, 199 Cal. Rptr. 3d 790 (2016).....                         | 12    |
| <i>State v. Tinker</i> ,<br>155 Wn.2d 219, 118 P.3d 885 (2005).....  | 5     |
| <i>Ukpoma v. U.S. Bank Nat'l Ass'n</i> ,<br>No. 12-CV 0184-TOR, 2013 U.S. Dist. LEXIS 66576<br>(E.D. Wash. May 9, 2013).....       | 13    |
| <i>Vacova Co. v. Farrell</i> ,<br>62 Wn. App. 386, 814 P.2d 255 (1991) .....   | 6     |
| <i>Williams v. GMAC Mortg., Inc.</i> ,<br>No. 13 Civ. 4315, 2014 U.S. Dist. LEXIS 77540<br>(S.D.N.Y. June 6, 2014).....            | 14    |

|  |        |
|--|--------|
| <i>Yhudai v. Impac Funding Corp.</i> ,<br>1 Cal. App. 5th 1252, 205 Cal. Rptr. 3d 680 (2016).....                              | 12, 13 |
| <i>Yvanova v. New Century Mortg. Corp.</i> ,<br>62 Cal. 4th 919, 365 P.3d 845, 199 Cal. Rptr. 66 (2016) .....                  | 11, 12 |
| <i>Zalac v. CTX Mortg. Corp.</i> ,<br>No. C12-01474 MJP, 2013 WL 1990728 (W.D. Wash.<br>May 13, 2013).....                     | 6      |
| <i>Zhong v. Quality Loan Serv. Corp.</i> ,<br>No. C13-0814JLR, 2013 U.S. Dist. LEXIS 145916<br>(W.D. Wash. Oct. 7, 2013) ..... | 11, 15 |

**Statutes**

|                                    |          |
|------------------------------------|----------|
| 26 U.S.C. § 860(a)(3)(A)(ii) ..... | 15       |
| 26 U.S.C. §§ 860A-860G.....        | 3        |
| 26 U.S.C. § 860A.....              | 13       |
| 26 U.S.C. § 860B.....              | 13       |
| 26 U.S.C. § 860C .....             | 13       |
| 26 U.S.C. § 860D.....              | 13, 14   |
| 26 U.S.C. §§ 860F-860G .....       | 2, 5, 13 |
| 26 U.S.C. § 860F.....              | 13       |
| 26 U.S.C. § 860F(a)(1) .....       | 13       |
| 26 U.S.C. § 860G(a)(3).....        | 14       |
| Consumer Protection Act.....       | 5        |
| Deed of Trust Act.....             | 9        |
| RCW 61.24.005(2).....              | 9        |
| RCW 62A.1-201(20).....             | 7        |

|                              |       |
|------------------------------|-------|
| RCW 62A.1-201(21)(A).....    | 7     |
| RCW 62A.3-205 .....          | 9     |
| RCW 62A.3-205(b).....        | 7     |
| RCW 62A.3-301 .....          | 7, 9  |
| RCW 64.04.010 .....          | 5, 15 |
| RCW 64.04.010-.020 .....     | 15    |
| Uniform Commercial Code..... | 7, 8  |
| <b>Rules</b>                 |       |
| CR 56(c).....                | 6     |
| RAP 10.3(a)(6).....          | 5     |

## I. INTRODUCTION

Plaintiff-Appellant Alice Lopez (“Plaintiff”) filed this action to enjoin the non-judicial foreclosure sale of her house. Plaintiff now seeks review of the trial court’s orders granting Defendants’ motions for summary judgment, which dismissed her claims with prejudice. At the trial court, Plaintiff admitted that she executed an Adjustable Rate Note (the “Note”) and a Deed of Trust (the “Deed of Trust”). She also admitted that Washington Mutual Bank (“WAMU”) was the beneficiary of the Deed of Trust and that the Federal Deposit Insurance Company (the “FDIC”), as Receiver for WAMU, assigned the Deed of Trust to Deutsche Bank National Trust Company as Trustee for WAMU Mortgage Pass-Through Certificates Series 2005-AR6 (“Deutsche Bank” or the “Trust”).<sup>1</sup> Nor did Plaintiff deny that she was in default on her Note and Deed of Trust.

Plaintiff nonetheless contends that Deutsche Bank could not foreclose on the property because the FDIC did not have authority to assign the Deed of Trust to Deutsche Bank based on its Pooling and

---

<sup>1</sup> Plaintiff named “Deutsche Bank National Trust Co.” as a defendant in this action. The correct party—*i.e.*, the holder of Plaintiff’s Note—is Deutsche Bank solely in its capacity as Trustee for the Trust. (Clerk’s Papers (“CP”) 154.)

Service Agreement (the “PSA”) and on the real estate mortgage investment conduit (“REMIC”) statutes, 26 U.S.C. §§ 860F-860G. She further argues that the Trust had to show that it was not only the holder of the Note but also the “owner” of the Note in order to foreclose.

Plaintiff’s position is based on erroneous legal arguments that have been repeatedly rejected by courts in Washington and throughout the United States. For these reasons, the trial court properly granted Defendants’ motions for summary judgment, and its decision should be affirmed.

## **II. RESPONSE TO ASSIGNMENTS OF ERROR**

Plaintiff identifies two assignments of error: (1) whether the trial court erred in granting Defendants’ motions for summary judgment and (2) whether the trial court erred in entering a “Judgment and Decree of Foreclosure.” (Op. Br. 7.) Plaintiff’s first assignment of error properly states the trial court decision on which Plaintiff seeks review. Plaintiff’s second assignment of error, however, is improper because the trial court did not enter a “Judgment and Decree of Foreclosure” in this case.

## **III. RESPONSE TO ISSUES PRESENTED**

1. The trial court’s decision is consistent with *Brown v. Department of Commerce*, 184 Wn.2d 509, 359 P.3d 771 (2015), which

holds that a holder of an endorsed note need not also show that it is the owner of the note to enforce it through a non-judicial foreclosure.

2. The trial court properly granted Defendants' motions for summary judgment where the Trust was the holder of the original, endorsed Note and had satisfied the other requirements for a non-judicial foreclosure.

3. The trial court properly granted Defendants' motions for summary judgment because the Trust was not required to prove that it also owned the Note.

4. The trial court properly granted Defendants' motions for summary judgment because the Assignment of the Deed of Trust was not a prerequisite to foreclosure and Plaintiff did not have standing to challenge the assignment based on the Trust's PSA and 26 U.S.C. §§ 860A-860G.

#### **IV. STATEMENT OF THE CASE**

On or about November 29, 2004, Plaintiff executed the Note and Deed of Trust. (CP 156-163, 165-192.) WAMU was the beneficiary of the Deed of Trust. (CP 165-192.) On or about July 19, 2012, the FDIC, as Receiver for WAMU, assigned the Deed of Trust to the Trust. (CP 193.) On October 16, 2012, the Trust appointed Northwest Trustee

Services, Inc. (“NWTs”) as successor trustee for the Deed of Trust. (CP 232-234.)

Plaintiff defaulted on the Note and Deed of Trust by failing to make payments when due. (CP 154.) On or about August 28, 2015, NWTs recorded an Amended Notice of Trustee’s Sale. (CP 194-198.) Plaintiff filed this action in Superior Court challenging the trustee sale on October 8, 2015. (CP 3.) She also sought a preliminary injunction to prevent the sale, which was originally scheduled for October 16, 2015. (CP 48, 195.) The trial court denied her motion for preliminary injunction, and the Court of Appeals Commissioner denied her motion for discretionary review of that order. (CP 111; COA Case No. 48371-8-II, Ruling Denying Review.) Plaintiff’s property was subsequently sold at the trustee sale.<sup>2</sup> (Reported Proceedings (“RP”) 5:14-16 (Feb. 12, 2016).)

The Trust and Chase filed a motion for summary judgment seeking to dismiss Plaintiff’s claims, as did NWTs. (CP 201, 260.) The Trust presented the original Note, endorsed in blank, at the hearing as evidence that it was the holder of the Note. (RP 5:9-10 (Feb. 12, 2016).) The Trust

---

<sup>2</sup> Plaintiff also references the proceedings and arguments in the purchaser’s subsequent eviction action. (*See, e.g.*, Op. Br. 12, 21-22.) Because neither the Trust nor JPMorgan Chase Bank, N.A. (“Chase”) is a party to the eviction proceeding, nor has that proceeding been consolidated with this case, those references are irrelevant to this appeal and will not be addressed.

argued that, as holder of the Note, it had authority to enforce the Deed of Trust and to foreclose on the property. (CP 203-206.) The Trust and Chase further argued that Plaintiff did not have standing to enforce the terms of the PSA or to challenge the Trust's status under the REMIC statutes, 26 U.S.C. §§ 860F-860G. (CP 206-209.) The trial court subsequently granted Defendants' motions for summary judgment.<sup>3</sup> (CP 328, 330.)

## V. ARGUMENT

On appeal, Plaintiff argues that (1) *Brown*, 184 Wn.2d 509, was incorrectly decided and, therefore, the Trust had to show that it was both the holder *and owner* of the Note to foreclose; (2) the assignment of the Note and Deed of Trust is void because they were transferred to the Trust after the closing date of the PSA and in violation of the REMIC statutes; and (3) the Note and Deed of Trust were not transferred by deed pursuant to RCW 64.04.010.<sup>4</sup>

---

<sup>3</sup> The orders granting summary judgment were subsequently amended to reflect the pleadings relied on in the summary judgment proceeding. (CP 348-349, 350-351.)

<sup>4</sup> Plaintiff has not sought review of or provided briefing on all of the arguments she made to the trial court, including her Consumer Protection Act claim. (Op. Br. 7.) Therefore, those issues should not be considered. RAP 10.3(a)(6); *see, e.g., State v. Tinker*, 155 Wn.2d 219, 224-25, 118 P.3d 885 (2005) (“Without adequate, cogent argument and briefing, this court should not consider an issue on appeal.”) (citation omitted).

As explained below, the trial court properly granted summary judgment.

**A. Standard of Review.**

Summary judgment rulings are reviewed de novo, with the appellate court engaging in the same inquiry as the trial court. *Int'l Marine Underwriters v. ABCD Marine, LLC*, 179 Wn.2d 274, 281, 313 P.3d 395, (2013); *Atl. Cas. Ins. Co. v. Or. Mut. Ins. Co.*, 137 Wn. App. 296, 302-03, 153 P.3d 211 (2007). Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Int'l Marine Underwriters*, 179 Wn.2d at 281. Unsupported conclusory allegations or argumentative assertions are insufficient to defeat summary judgment. *See Vacova Co. v. Farrell*, 62 Wn. App. 386, 395, 814 P.2d 255 (1991).

**B. The Trust Was the Holder of the Note with Authority to Enforce the Deed of Trust.**

The Trust was the holder of the Note because it had possession of the original Note, which was endorsed in blank, and, therefore, had authority to foreclose on the Deed of Trust.<sup>5</sup> A note endorsed in blank is “bearer” paper, and the holder is entitled to enforce it. *See, e.g., Brown*, 184 Wn.2d at 525; *Zalac v. CTX Mortg. Corp.*, No. C12-01474 MJP, 2013

---

<sup>5</sup> Counsel for the Trust presented the original, endorsed Note to the trial court at the summary judgment hearing. (RP 5:9-10 (Feb. 12, 2016).)

WL 1990728, at \*3 (W.D. Wash. May 13, 2013) (“Under Washington law an instrument endorsed in blank becomes payable to the bearer and may be negotiated. RCW 62A.3-205(b). The holder of a negotiable instrument is the person in possession and is entitled to enforce it. RCW 62A.3-301; 62A.1-201(20).”).

Plaintiff nonetheless contends that the Trust must show that it was also *the owner* of the Note to enforce it. (Op. Br. 13.) Plaintiff’s argument is without merit. In *Brown*, the Washington Supreme Court held that the “holder of the instrument” is 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.” 184 Wn.2d at 525 (quoting RCW 62A.1-201(21)(A)). It further held that the “holder of the instrument” is a “person entitled to enforce the note” (or the “PETE”). *Id.* (citing RCW 62A.3.301). The court stated that the holder of the note need not be the same entity as the owner of the note. *Id.* at 527-28.

Through article 3 and article 9, the [Uniform Commercial Code] authorizes parties to split PETE status from ownership status in certain circumstances. The PETE may modify and enforce the note. The borrower pays the PETE to discharge the borrower’s obligation. All the while, the owner retains entitlement to the economic value of the note.

*Id.* at 529. While Plaintiff may disagree with the court’s interpretation of the Uniform Commercial Code in *Brown*, it is controlling precedent and dispositive of the issues in this appeal.<sup>6</sup>

Because the Trust was the holder of the Note, it was entitled to enforce the Deed of Trust and to foreclose on Plaintiff’s property. When Plaintiff’s Note was transferred to the Trust, her Deed of Trust was also transferred to the Trust by operation of law. It is black letter law in Washington—as well as elsewhere—that the deed of trust follows the transfer of the debt:

The statute merely codifies the longstanding common law rule that the deed follows the debt: “*Transfer of the note carries with it the security, without any formal assignment or delivery, or even mention of the latter.*” *In re Jacobson*, 402 B.R. 359, 367 (noting that “this principle is neither new nor unique to Washington”) (quoting *Carpenter v. Longan*, 83 U.S. 271, 275, 21 L. Ed. 313 (1872)); see also *Fid. & Deposit Co. of Md. v. Ticor Title Ins. Co.*, 88 Wn. App. 64, 68-69, 943 P.2d 710 (1997) (noting “the maxim that the mortgage follows the debt”). Flagstar, as the Note-holder and beneficiary, properly appointed MTC.

---

<sup>6</sup> The Trust did not concede in the trial court, nor does it concede on appeal, that it was not the owner of the Note. (RP 16:13-20 (Feb. 12, 2016).) However, as set forth in *Brown*, the Trust was not required to establish that it was also the owner of the Note to enforce it.

*Myers v. Mortg. Elec. Registration Sys., Inc.*, No. 11-cv-05582 RBL, 2012 WL 678148, at \*3 (W.D. Wash. Feb. 24, 2012) (emphasis added).

As it is well-established that the “security instrument will follow the note,” *Bain*, 285 P.3d at 44, *CitiMortgage’s possession of the original Note imparts the authority to enforce the terms of the Deed of Trust*. See *Lynott v. Mortgage Electronic Registration Systems, Inc.*, 2012 U.S. Dist. LEXIS 170607, 2012 WL 5995053 (W.D. Wash. 2013) (explaining that the Deed of Trust Act merely codifies “the longstanding principle that the ‘deed follows the debt’”) (citing *Carpenter v. Longan*, 83 U.S. 271, 21 L. Ed. 313 (1872)). Thus, Plaintiffs’ argument that CitiMortgage lacks standing to enforce the Deed as a valid contract between the parties is unavailing.

*Johnson v. CitiMortgage, Inc.*, No. 2:13-cv-00037 RSM, 2013 WL 6632108, at \*4 (W.D. Wash. Dec. 17, 2013) (emphasis added); see also *Lynott v. Mortg. Elec. Registration Sys., Inc.*, No. 12-cv-5572-RBL, 2012 WL 5995053, at \*2 (W.D. Wash. Nov. 30, 2012).

Because the Trust was the holder of Plaintiff’s Note, it was, as a matter of law, the beneficiary of Plaintiff’s Deed of Trust. See, e.g., RCW 62A.3-205, 62A.3-301 (holder of note includes any party who takes possession of note, endorsed in blank, by transfer); RCW 61.24.005(2) (beneficiary is “holder of the [promissory note] secured by the deed of trust”); *Bain v. Metro. Mortg. Grp., Inc.*, 175 Wn.2d 83, 104, 285 P.3d 34

(2012) (“[A] beneficiary must either actually possess the promissory note or be the payee.”); *Lynott*, 2012 WL 5995053, at \*2 (“U.S. Bank is the beneficiary of the deed because it holds Plaintiff’s note, not because MERS assigned it the deed.”). Therefore, the Trust had authority to appoint NWTs as successor trustee and, when Plaintiff defaulted on her loan, authority to commence the non-judicial foreclosure of her property. *See Elene-Arp v. Fed. Home Fin. Agency*, No. C12-2154 RAJ, 2013 WL 1898218, at \*4 (W.D. Wash. May 7, 2013); *Petheram v. Wells Fargo Bank*, No. C13-1016JLR, 2013 WL 6173806, at \*2 (W.D. Wash. Nov. 21, 2013).

**C. Neither the PSA nor the REMIC Statutes Precluded the Trust from Enforcing the Note and Deed of Trust.**

Notwithstanding the Trust’s status as the holder of the Note, Plaintiff contends that the Trust could not foreclose on her property because the FDIC’s assignment of the Deed of Trust to the Trust was untimely under the PSA and the REMIC statutes and, therefore, void. (Op. Br. 16-17.) Specifically, Plaintiff contends that, pursuant to the terms of the PSA and the REMIC statutes, any assignment of the Note and Deed of Trust had to occur on or before April 26, 2005. (*Id.*)

Plaintiff is not a party to the PSA, and courts have repeatedly held that borrowers do not have standing to challenge the assignment of their

note or deed of trust to a securitized trust. *See, e.g., Frazer v. Deutsche Bank Nat'l Tr. Co.*, No. 11-cv-5454, 2012 U.S. Dist. LEXIS 69883, at \*4 (W.D. Wash. May 18, 2012) (“Plaintiffs are not parties to the pooling and servicing agreement and present no authority suggesting standing to challenge it.”); *Zhong v. Quality Loan Serv. Corp.*, No. C13-0814JLR, 2013 U.S. Dist. LEXIS 145916, at \*9 (W.D. Wash. Oct. 7, 2013) (concluding that plaintiff, as borrower and third party to the transactions, did not have standing to challenge assignment of trust deed); *Brodie v. Nw. Tr. Servs., Inc.*, No. 12-CV-0469-TOR, 2012 U.S. Dist. LEXIS 139451, at \*12-13 (E.D. Wash. Sept. 27, 2012) (dismissing borrower’s claims alleging that assignment of deed of trust to securitized trust was improper because borrower lacked standing to challenge PSA); *Deutsche Bank Tr. Co. v. Walmsley*, 277 Or. App. 690, 697, 374 P.3d 937 (2016) (trust’s “own contractual obligations and privileges under the trust PSAs . . . have no bearing on plaintiff[’s] right to enforce the note through judicial foreclosure as the holder of the note”).

Relying on California authority, Plaintiff nonetheless suggests that she has standing to challenge the non-judicial foreclosure based on the purported untimely assignment of the Deed of Trust to the Trust. (Op. Br. 16 (citing *Yvanova v. New Century Mortg. Corp.*, 62 Cal. 4th 919, 365 P.3d 845, 199 Cal. Rptr. 66 (2016)).) In *Yvanova*, the California Supreme

Court held that, under California law, a wrongful foreclosure plaintiff may challenge an assignment to the foreclosing entity “[i]f a purported assignment necessary to the chain by which the foreclosing entity claims that power is absolutely void, meaning of no legal force or effect whatsoever.” 62 Cal. 4th at 935. When an assignment is merely *voidable*, however, it does not support a wrongful foreclosure action because “California law does not give a party personal standing to assert rights or interests belonging solely to others.” *Id.* at 936.

Even if the reasoning of *Yvanova* is persuasive, Plaintiff failed to establish that the purported untimely assignment of the Note and Deed of Trust to the Trust in this case was void, rather than voidable. Indeed, California decisions interpreting *Yvanova* have concluded that such assignments are merely voidable. *See, e.g., Yhudai v. Impac Funding Corp.*, 1 Cal. App. 5th 1252, 1259, 205 Cal. Rptr. 3d 680 (2016); *Saterbak v. JPMorgan Chase Bank, N.A.*, 245 Cal. App. 4th 808, 815, 199 Cal. Rptr. 3d 790 (2016).

In *Yhudai*, the court noted that “*Yvanova* did not consider or decide whether the assignment of the plaintiff’s deed of trust to the investment trust after the trust’s closing date rendered the assignment void, and not merely voidable.” 1 Cal. App. 5th at 1257. After reviewing numerous cases, the court held that “a postclosing assignment of a loan to an

investment trust that violates the terms of the trust renders the assignment voidable, not void, under New York law” and, therefore, the plaintiff did not have standing to challenge the assignment.<sup>7</sup> *Id.* at 1259.

Plaintiff’s reliance on the REMIC statutes, 26 U.S.C. §§ 860F-860G, is similarly misplaced. (Op. Br. 18-20.) Section 860A states the general rule for REMICs: “a REMIC shall not be subject to taxation under this subtitle” and, instead, the “income of any REMIC shall be taxable to the holders of interests in such REMIC as provided in this part.” The subsequent provisions set forth the taxation rules that apply to REMICs and define REMICs for purposes of determining their tax status. *See, e.g.*, 26 U.S.C. § 860B (taxation of holders of regular interests); 26 U.S.C. § 860C (taxation of residual interests); 26 U.S.C. § 860D (defining REMICs). Finally, Section 860F provides the *tax ramifications* to a REMIC if it holds a non-qualified mortgage. 26 U.S.C. § 860F(a)(1)

---

<sup>7</sup> Additionally, courts have broadly rejected the contention that a third-party borrower can challenge an assignment of a deed of trust because a borrower cannot show he or she has suffered any injury in fact. *See Moran v. GMAC Mortg., LLC*, No. 5:13-CV 04981-LHK, 2014 U.S. Dist. LEXIS 84411, at \*11-12 (N.D. Cal. June 18, 2014) (and cases cited therein); *Ukpoma v. U.S. Bank Nat’l Ass’n*, No. 12-CV 0184-TOR, 2013 U.S. Dist. LEXIS 66576, at \*13 (E.D. Wash. May 9, 2013) (“Even assuming for the sake of argument that the assignments [of the note and trust deed] in question were fraudulently executed, Plaintiff, as a third party, lacks standing to challenge them.”).

(“There is hereby imposed for each taxable year of a REMIC a tax equal to 100 percent of the net income derived from prohibited transactions.”).

The provision primarily relied on by Plaintiff below—

Section 860G(a)(3)—merely defines what a “qualified mortgage” means for purposes of defining a REMIC under Section 860D. It does not, as Plaintiff asserts, create any right by a borrower to avoid foreclosure based on the timing of an assignment of a deed of trust. Indeed, one court commented:

A REMIC is an entity that receives special tax treatment because it holds a pool of mortgages that does not change following the REMIC’s startup date, subject to certain exceptions. 26 U.S.C. § 860D (defining REMICs); 26 U.S.C. § 860G(a)(3) (defining qualified mortgages that REMICs may hold). If a mortgage is transferred to a REMIC following the REMIC’s startup date, the REMIC may lose its favorable tax treatment. Plaintiffs argue that the endorsement to U.S. Bank as trustee for a REMIC trust was invalid because the REMIC’s startup date was in 2006, and therefore, Plaintiffs’ note could not be transferred to the REMIC in 2011. This point is unpersuasive. While transferring a note to the REMIC might have negative tax consequences for the REMIC investors, Plaintiffs have not argued any reason why such a transfer would be “meaningless and legally unenforceable.”

*Williams v. GMAC Mortg., Inc.*, No. 13 Civ. 4315, 2014 U.S. Dist. LEXIS 77540, at \*13-14 (S.D.N.Y. June 6, 2014) (citation omitted). In addressing a borrower’s argument that an assignment of a deed of trust

was “illegal and ... contrary to public policy under 26

U.S.C. § 860(a)(3)(A)(ii),” another court stated:

Plaintiffs’ argument is entirely frivolous. Plaintiffs cite no relevant authority to support the proposition that the possibility that a transaction may negatively affect the tax-exempt status of a trust renders the transaction illegal or void. A trust’s qualification for REMIC status under the Internal Revenue Code has nothing to do with the validity of assignments made to the trust. Plaintiffs’ attack on Defendant’s authority to foreclose on the Property based on the assignment’s alleged violation of the terms of the PSA thus fails as a matter of law.

*Miceli v. Bank of N.Y. Mellon*, No. 1:13-CV-1032, 2015 U.S. Dist. LEXIS 6989, at \*10, \*11 (W.D. Tex. Jan. 21, 2015); *see also Zhong*, 2013 U.S. Dist. LEXIS 145916, at \*11 (rejecting borrower’s argument in opposition to foreclosure based on trust’s REMIC status, concluding that “it is beyond dispute that [borrower] does not have standing to challenge the tax status of a third party”).

**D. Plaintiff’s Reliance on RCW 64.04.010-.020 Is Misplaced.**

Plaintiff contends that the FDIC’s assignment of the Deed of Trust was improper under RCW 64.04.010-.020. (Op. Br. 19.) Decisions interpreting RCW 64.04.010 are clear, however, that deeds of trust do not fall under its purview. *See, e.g., Howard v. Shaw*, 10 Wash. 151, 155-56, 38 P. 746 (1894) (interpreting virtually identical precursor to RCW 64.04.010, Washington Supreme Court held that assignments of

mortgages, which are treated no differently than deeds of trust, are not subject to transfer-by-deed requirement); *Fischer v. Woodruff*, 25 Wash. 67, 70-71, 64 P. 923 (1901) (same).

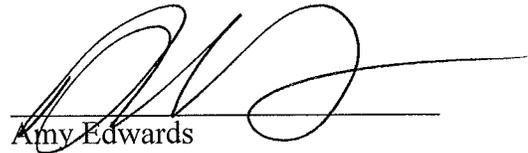
Based on this well-established legal authority, the trial court did not err in granting Defendants' motions for summary judgment.

## VI. CONCLUSION

For the reasons stated above, the trial court's order granting Defendants' motions for summary judgment should be affirmed.

DATED: October 7, 2016.

STOEL RIVES LLP



Amy Edwards

Attorneys for Respondents  
JPMorgan Chase Bank, N.A.,  
and Deutsche Bank National  
Trust Company as Trustee for  
WAMU Mortgage Pass-  
Through Certificates Series  
2005-AR6

**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **Brief of Respondents JPMorgan Chase & Co., JPMorgan Chase Bank, NA, and Deutsche Bank National Trust Co.** to be served on the following named persons on the date and in the manner indicated below:

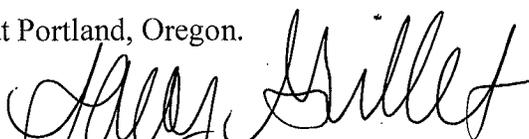
James A. Wexler, WSBA No. 7411     hand delivery via messenger  
2025 201st Ave SE                     mailing with postage prepaid  
Sammamish, WA 98075-9641        copy via email  
wex@seanet.com

*Attorney for Appellant*

Joshua Schaer, WSBA No. 31491     hand delivery via messenger  
RCO Legal PS                             mailing with postage prepaid  
13555 SE 36th St, Suite 300         copy via email  
Bellevue, WA 98006-1489  
jschaer@rcolegal.com

*Attorney for Respondent Northwest  
Trustee Services, Inc.*

DATED: October 7, 2016 at Portland, Oregon.

  
\_\_\_\_\_  
Lacey Gillet, Legal Secretary  
STOEL RIVES, LLP

**STOEL RIVES, LLP PORTLAND**

**October 07, 2016 - 4:21 PM**

**Transmittal Letter**

Document Uploaded: 7-487161-Respondents' Brief.PDF

Case Name: Alice Lopez v. JPMotgan Chase & Co., et al.

Court of Appeals Case Number: 48716-1

**Is this a Personal Restraint Petition?** Yes  No

**The document being Filed is:**

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: \_\_\_\_\_

Answer/Reply to Motion: \_\_\_\_\_

Brief: Respondents'

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_

Hearing Date(s): \_\_\_\_\_

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: \_\_\_\_\_

**Comments:**

No Comments were entered.

Sender Name: Lacey Gillet - Email: [lacey.gillet@stoel.com](mailto:lacey.gillet@stoel.com)

A copy of this document has been emailed to the following addresses:

[amy.edwards@stoel.com](mailto:amy.edwards@stoel.com)

[crystal.chase@stoel.com](mailto:crystal.chase@stoel.com)

[wex@seanet.com](mailto:wex@seanet.com)

[jschaer@rcolegal.com](mailto:jschaer@rcolegal.com)