

No. 307492

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

FILED

OCT 05 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

GMAC MORTGAGE,

Respondent,

v.

CITY OF SPOKANE,

Appellant.

**JEANNETTE J. SWAN
HEIRS OF JEANNETTE J. SWAN, FRANK
LINE AND JANE DOE LINE, and the marital
community thereof, and ROBERT S.
DELANEY PLLC, TRUSTEE,**

Defendants.

Appellant's Reply Brief

Brian C. Balch, WSBA #12290
Layman Law Firm, PLLP
601 South Division Street
Spokane, WA 99202-1335
(509) 455-8883 Telephone
(509) 624-2902 Facsimile

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

I. REPLY TO GMAC’S INTRODUCTION 1

II. RESPONSE TO ASSIGNMENTS OF ERROR..... 2

III. REPLY TO GMAC’S COUNTERSTATEMENT OF ISSUES 2

IV. CITY’S REPLY TO GMAC’S COUNTERSTATEMENT 2

OF THE CASE 2

V. REPLY TO GMAC’S ARGUMENT 3

 A. Reply to Stated Standard of Review. 3

 B. Reply to GMAC’s Overview. 3

 C. Reply to GMAC’s Contention that City’s Deed of Trust was
 Extinguished. 4

 1. Common Law of the State of Washington. 4

 2. Response to GMAC’s Claim that the Statute of Limitations
 Ran on City’s Note..... 11

 3. City’s Note was Never Invalidated. 14

 4. Mr. Lines’s Actions Validated the Existing Obligation,
 Rather than Creating a New Contract. 16

 5. Mr. Line had Authority to Waive the Statute of Limitations
 Defense. 16

 6. GMAC Lacks Standing. 17

VI. CONCLUSION 23

TABLE OF AUTHORITIES

Cases

<i>Am. Legion Post No. 32 v. City of Walla Walla</i> , 116 Wn.2d 1, 802 P.2d 784 (1991).....	12, 15
<i>Board of Church Erection Fund of General Assembly of Presbyterian Church in the United States of America v. First Presbyterian Church of Seattle</i> , 19 Wash. 455, 53 P. 671 (1898).....	8
<i>Boeing Employees' Credit Union v. Burns</i> , 167 Wn. App 265, 272 P.3d 908 (2012).....	16
<i>CHD, Inc. v. Boyles</i> , 138 Wn. App 131, 138-139, 157 P.3d 415, 418 (2007).....	8, 15, 16
<i>Dolan v. Jones</i> , 37 Wash. 176, 79 P. 640 (1905).....	21
<i>Fleishbein v. Thorne</i> , 193 Wash. 65, 74 P.2d 880 (1937)	5, 6
<i>George v. Butler</i> , 26 Wash. 456, 67 P. 263 (1901).....	7, 14, 21
<i>Grant Cnty. Fire Prot. No. 5 v. City of Moses Lake</i> , 145 Wn.2d 702, 42 P.3d 394 (2002).....	19
<i>Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake</i> , 150 Wn.2d 791, 83 P.3d 419 (2004).....	19
<i>Guaranty Sec. Co. v. Coad</i> , 114 Wash. 156, 161, 195 P. 22 (1921)....	8, 12, 13, 18
<i>Holland v. City of Tacoma</i> , 90 Wn. App 533, 954 P.2d 290 (1998)	12
<i>Kirkpatrick v. Collins</i> , 95 Wash. 399, 163 P. 919 (1917).....	5, 7
<i>Mike M. Johnson, Inc. v. Cnty. of Spokane</i> , 150 Wn.2d 375, 78 P.3d 161 (2003).....	12
<i>Peeples v. Hayes</i> , 4 Wn.2d 253, 104 P.2d 305 (1940).....	9, 14
<i>Pratt v. Pratt</i> , 121 Wash. 298, 209 P. 535 (1922)	5, 6, 18
<i>Smith v. Monson</i> , 157 Wn. App 443, 236 P.3d 991 (2010)	22
<i>Washington Securities and Investment Corp. v. Horse Heaven Heights, Inc.</i> , 132 Wn. App 188, 130 P.2d 880 (2006).....	20

Statutes

RCW 11.12.070	17
RCW 7.24.020	22
RCW 7.28.010	23
RCW 7.28.230	24
RCW 7.28.300	8, 15, 19, 20
RCW Chapter 7.24.....	21

I. REPLY TO GMAC'S INTRODUCTION

Respondent GMAC acknowledged that City's Note and City's Deed of Trust were executed and recorded in 1998. GMAC made its loan to Mr. Line and recorded GMAC's Deed of Trust in 2008. GMAC does not contend it lacked notice City's Deed of Trust encumbered the Property in first lien position when GMAC made its loan, or that it had any reason to expect anything other than a second priority lien. Further, GMAC does not claim to have been a party to either City's Note or City's Deed of Trust, a successor under City's Note or City's Deed of Trust, an owner of the Property, or an intended beneficiary under City's Note or City's Deed of Trust.

Rather, GMAC asserted throughout its brief that it is not attempting to assert a state of limitations defense against City's Note or to interject itself into that contractual relationship, to which it was not a party. Instead, GMAC contended the statute of limitations had to have run on City's Note, enforcement of that Note is therefore barred as a matter of law, and that the lien under City's Deed of Trust is therefore "unenforceable," and has been "extinguished" as a matter of law. This essential underlying premise, which provides the basis for GMAC's entire argument, is incorrect.

II. RESPONSE TO ASSIGNMENTS OF ERROR

City agrees with GMAC's first stated assignment of error, but notes GMAC is not a cross-appellant in this matter with a right to make assignments of error.

III. REPLY TO GMAC'S COUNTERSTATEMENT OF ISSUES

Even though GMAC has not filed a cross-appeal, GMAC presented a counterstatement of issues. GMAC's counterstatement addressed some issues raised by City in a different sequence than did City, and did not address other issues City raised. Presumably, GMAC is conceding City's position on issues for which GMAC provided no response.

IV. CITY'S REPLY TO GMAC'S COUNTERSTATEMENT OF THE CASE

A review of GMAC's counterstatement of the case demonstrates that, apart from agreeing with City's statement of the case, GMAC identified a number of instances in which City did not comply with stated provisions in City's Note and Deed of Trust, and pointed out that Mr. Line never assumed personal liability or made payments on City's Note. City

does not dispute these additional facts, but contends they are not relevant to disposition of the issues presented.

V. REPLY TO GMAC'S ARGUMENT

A. Reply to Stated Standard of Review. City and GMAC agree regarding the applicable standard of review and that no disputed issues of material fact remain.

B. Reply to GMAC's Overview. GMAC contended in its Overview that, since written requirements in City's Note and City's Deed of Trust were not all followed, and since more than six years passed following the death of Ms. Swan with no payment having been made on City's Note, the statute of limitations ran on enforcement of City's Note as a matter of law. As a result, according to GMAC, foreclosure under City's Deed of Trust is also barred as a matter of law.

Contrary to GMAC's position, Washington's common law clearly establishes that potential running of an applicable statute of limitations under a debt obligation does not bar its enforcement. Nor will that bar foreclosure of a deed of trust securing such a debt as a matter of law. Rather, a claim that the applicable statute of limitations has run on the debt

is a potential defense to foreclosure of a deed of trust securing a debt that only parties with standing may assert.

At common law and under Washington statutes, only the obligors or intended beneficiaries on the debt obligation, and owners of the property encumbered by the applicable deed of trust (regardless of whether they have personal liability on the debt), have such standing. If not asserted by a party with standing, the statute of limitations affirmative defense is waived. The only party in any way involved in this matter with such standing, Mr. Line, has not only failed to assert the defense, he has affirmatively waived it in writing.

C. Reply to GMAC's Contention that City's Deed of Trust was Extinguished.

1. Common Law of the State of Washington. At pages 12 through 17 of its brief, GMAC presented argument on the central premise underlying its position. First, it contended that "when the statute of limitations has run as to a claim on an underlying debt, the mortgagee's lien rights are extinguished." Second, GMAC argued that, because City did not follow requirements contained in its Note, the applicable statute of limitations had to have run six years after Ms. Swan's death, with no

payments having been made on City's Note. GMAC cited no authority that supports either assertion and they are both incorrect.

To support its argument that running the statute of limitations will automatically bar enforcement of a promissory note and render a deed of trust securing it "unenforceable" and "extinguished," GMAC relied at pages 14 and 15 of its brief on statements in *Fleishbein v. Thorne*, 193 Wash. 65, 74 P.2d 880 (1937); *Pratt v. Pratt*, 121 Wash. 298, 209 P. 535 (1922); and *Kirkpatrick v. Collins*, 95 Wash. 399, 163 P. 919 (1917). The statements GMAC quoted from these three cases are: "when a debt secured by a mortgage ... is barred by the statute of limitations, the mortgage is also barred," *Fleishbein v. Thorne*, 193 Wash. at 71-72; and "when the statute, after the lapse of a certain time bars an action upon the debt for its collection, we believe it includes all actions to effectuate that purpose." *Pratt v. Pratt*, 121 Wash. at 303. (Emphasis supplied.)

Under GMAC's analysis, the statute of limitations bars enforcement of a debt automatically whenever any party presents facts potentially demonstrating the applicable statute of limitations has run. However, none of the three cases upon which GMAC relied discussed the circumstances under which expiration of the applicable statute of limitations will be held to bar enforcement of a debt obligation. In each of

those three cases, the affirmative defense of expiration of the statute of limitations was timely asserted by a party with recognized standing. As a result, the issue that is central to GMAC's position, what happens when no party with standing asserts this affirmative defense, was not before the court in those cases.

In *Fleishbein v. Thorne*, Fleishbein sued the personal representative of the original obligor to enforce obligations on a note he held. The defendant was the note obligor, a party with standing under traditionally recognized principles of standing. The defendant timely asserted the statute of limitations defense. The Court had no reason to address whether expiration of the statute of limitations would render a deed of trust securing that debt unenforceable if the defense had not been asserted by a party with standing.

Similarly, in *Pratt v. Pratt*, a father had loaned money based on a verbal agreement with his son, who made partial repayments that terminated more than three years before the father instituted suit to collect. By the time the father instituted litigation, the son had passed away and the statute of limitations defense was asserted by the son's surviving spouse who was the executrix of his estate. The defendant estate was the obligor on the debt, a party with recognized standing.

Finally, in *Kirkpatrick v. Collins*, a successor owner of property subject to a mortgage instituted litigation to remove the cloud upon her title created by the mortgage, contending that enforcement of the promissory note for which the mortgage was given as security was barred by the applicable statute of limitations. Owners of property encumbered by mortgage loans have been held to have standing to assert a statute of limitations defense to block foreclosure of a mortgage in cases such as *George v. Butler*, 26 Wash. 456, 67 P. 263 (1901). That right in favor of the record owner of property has been codified in RCW 7.28.300. Again, the statute of limitations defense was timely asserted by a party with recognized standing.

None of the three cited cases stand for the proposition that potential expiration of a statute of limitations on a debt obligation renders a mortgage or deed of trust securing that debt automatically unenforceable or extinguished. None of these cases suggests that a statute of limitations defense can be asserted by a party that lacks standing to challenge enforcement of the debt, or that a party without standing to challenge enforcement of the debt can override the affirmative decision of a party with standing to waive the statute of limitations defense.

Cases that have actually discussed principles of standing demonstrate that GMAC's essential underlying premise is incorrect and contrary to the common law of this state. In *Board of Church Election Fund of General Assembly of Presbyterian Church in the United States of America v. First Presbyterian Church of Seattle*, 19 Wash. 455, 53 P. 671 (1898), the Court recognized that pleading the statute of limitations on a debt securing a mortgage is a privilege that is accorded by law to the owner of property covered by a mortgage securing a debt obligation. The court recognized that such a defendant has the right and ability to assert the statute of limitations defense or to default in asserting that defense, thereby waiving it. That case made it clear that, at common law, potential expiration of the statute of limitations on a debt renders enforcement of the debt and the mortgage or deed of trust securing it potentially voidable upon timely challenge by a party with standing. Absent such a challenge, early common law recognized the defense is waived. More recent cases continue to recognize and uphold that principle. See e.g. *CHD, Inc. v. Boyles*, 138 Wn. App 131, 138-139, 157 P.3d 415, 418 (2007).

Similarly, in *Guaranty Sec. Co. v. Coad*, 114 Wash. 156, 161, 195 P. 22 (1921) rehearing denied 114 Wash. 156, 197 P. 326, the Supreme Court held that a statute of limitations defense may only be asserted by the

obligor, not a third party lacking standing. The court recognized that a debtor can not only waive a statute of limitations defense, a debtor has the right to do so in a way that will favor one creditor over another.

In like fashion, the Supreme Court noted in *Peeples v. Hayes*, 4 Wn.2d 253, 257, 104 P.2d 305 (1940) that an ordinary statute of limitations operates for the benefit of a defendant, but in no way affects a plaintiff's right. Rather, it gives a defendant a privilege only, which the defendant can exercise or waive. That rule is completely inconsistent with GMAC's assertion that expiration of a statute of limitations renders a debt obligation unenforceable as a matter of law, or extinguishes any enforcement rights under a deed of trust securing that debt.

Contrary to GMAC's position, Washington cases that have dealt with the issue have clearly and consistently established from early common law cases and statutes through the present that potential expiration of an applicable statute of limitations does not bar enforcement of a debt, it merely creates a potential defense that must be asserted by a party with standing. If not so asserted, it is waived. If the defense is waived, the applicable debt obligation and deed of trust securing it remain valid and enforceable, even if that causes one creditor to be favored over another.

GMAC also confirmed throughout its brief that it was not attempting to assert a statute of limitations defense. For example, in the last paragraph on page 23, GMAC stated “GMAC is not defending a claim in this matter based on the statute of limitations. Only Ms. Swan would have the right to do that. Therefore, the issue of whether the City’s deed of trust was ‘voidable’ rather than ‘void’ has no application in this case.” GMAC did not explain the distinction between its claim that City’s Deed of Trust was “unenforceable” and “extinguished” and its contention in this portion of its brief that it is irrelevant whether City’s Deed of Trust is “void” or voidable.”

Similarly, at page 33 of its brief, GMAC stated: “GMAC is not attempting to assert rights under the contract between the City and Ms. Swan (or Mr. Line) or interject itself into the private contract between those parties. This litigation is not about asserting rights under the note obligation. This action is about GMAC’s rights and priority interest in real property as a [lienholder that are] affected by a barred note obligation and extinguished deed of trust.” As shown above, potential expiration of the applicable statute of limitations under City’s Note did not render City’s Note “barred” or City’s Deed of Trust “extinguished.” Both remain valid and enforceable unless and until successfully challenged by a party

with standing, based on assertion of the affirmative defense of expiration of the applicable statute of limitations.

With no party asserting a statute of limitations defense, apparently including GMAC, the above cases firmly establish that City's Note and City's Deed of Trust remain valid and enforceable. Any potential assertion of a defense to enforcement based on expiration of the statute of limitations has apparently been waived, including by GMAC.

2. Response to GMAC's Claim that the Statute of Limitations Ran on City's Note. At pages 17 through 24 of its brief, GMAC argued that the statute of limitations ran on the "underlying Swan note." GMAC noted events and dates that are supplied by the record. However, it provided no citation to authority that actually supports its position that such underlying facts lead to the legal conclusion that any statute of limitations has run.

For example, at pages 17 and 18, City contended in conclusory fashion that the statute of limitations on City's Note expired as of October 1, 2009. However, GMAC provided no authority or argument explaining when the statute of limitations had to commence, why Mr. Line could not have waived it through his conduct (including actions he took while acting through legal counsel when he was Personal Representative of Ms. Swan's

estate), and why the actual parties in interest in connection with City's Deed of Trust were not at liberty to modify, relax, or waive any contractual provisions. An appellate court should not consider an issue raised on appeal that is not supported by argument and citation to authority, or when the issue is given only passing treatment. *Am. Legion Post No. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991); *Holland v. City of Tacoma*, 90 Wn. App 533, 538, 954 P.2d 290 (1998).

GMAC also failed to acknowledge that parties can waive contract requirements through agreement or their conduct. *Mike M. Johnson, Inc. v. Cnty. of Spokane*, 150 Wn.2d 375, 386, 78 P.3d 161, 166 (2003). GMAC is not a party to the contract with the right to assert that contract requirements were not followed, or that they were not amended by the parties' conduct. Further, GMAC did not counter clear Washington law cited in City's opening brief and stated above in this reply brief that establishes only an obligor on a note has standing to challenge its enforcement. See e.g. *Guaranty Sec. Co. v. Coad*, supra, at 161.

On the other hand, Mr. Line was appointed Personal Representative of Ms. Swan's estate, and is the successor owner of the Property encumbered by City's Deed of Trust. As the successor owner of the Property, he has separate standing and authority to assert or choose not

to assert the statute of limitations defense. See e.g. *George v. Butler*, 26 Wash. 456, 461-63, 67 P. 263 (1901) (“[W]hen a debt secured by a mortgage is barred by the statute of limitations ... the mortgage cannot be revived ... as against a subsequent grantee without his consent.” at 462 (emphasis supplied)). The obvious corollary to the statement in *George v. Butler* is that, with a successor property owner’s consent, the statute of limitations defense to enforcement of a mortgage can be waived. This common law rule is consistent with and has been codified in RCW 7.28.300, which gives the record owner of property encumbered by a deed of trust the right, not the obligation, to challenge foreclosure of a deed of trust based on expiration of the statute of limitations on the debt obligation.

In this case, Mr. Line, as successor owner of the Property, had the statutory and common law right to challenge foreclosure of City’s Deed of Trust based on alleged expiration of the applicable statute of limitations. Since that defense is a personal defense that may be asserted or waived by the party holding the right, Mr. Line had the right to favor City as one creditor, over GMAC as another. See *Guaranty Sec. Co. v. Coad*, supra, at 161. Mr. Line affirmatively exercised that right when he waived the statute of limitations defense. GMAC has cited no authority, and

presented no argument, suggesting it has any right or authority to override Mr. Line's decision.

3. City's Note was Never Invalidated. At pages 24 through 27, GMAC argued that City's Note was never "reinstated" and that Mr. Line could not waive the statute of limitations. GMAC did not explain how it has the right make these claims since, as noted above, GMAC was never a party to, successor under, or intended beneficiary of City's Note. GMAC's argument that Mr. Line could not reinstate City's Note also ignores the fact that City's Note has always remained a valid obligation and would only cease to be so if its Note were successfully challenged by a party with standing. See e.g. Peeples v. Hayes, supra, at 257.

GMAC's argument regarding Mr. Line's purported lack of authority to take the action he did also ignores the obvious implications regarding GMAC's authority. If GMAC were correct in that assertion (which it is not since Mr. Line was appointed Personal Representative of Ms. Swan's estate and is record owner of the Property), GMAC's argument would lead to the inescapable conclusion that GMAC certainly has no right or standing to assert rights or claims related to enforcement of City's Note or Deed of Trust. GMAC does not purport to have any right

or authority to interject itself into or assert rights under that contractual relationship to which it is a stranger. Again, failure of a party with standing to assert the affirmative defense of expiration of the statute of limitations causes the defense to be waived and the obligation to remain binding and enforceable. See *CHD, Inc. v. Boyles*, supra, at 138-139, 418.

City's alleged failure to file a creditor's claim in Ms. Swan's probate proceeding, as argued on page 22 of GMAC's brief, and Mr. Line's failure to assume any personal obligation under City's Note, as argued on page 26 of GMAC's brief, are also irrelevant. GMAC provided no argument or citation to authority that explained why failure to file a creditor's claim had any impact on the continuing validity of City's Deed of Trust. Again, this Court should not consider a claim that is merely conclusory and not supported by authority or argument. *Am. Legion Post N. 32 v. City of Walla Walla*, 116 Wn.2d 1, 7, 802 P.2d 784 (1991). Further, GMAC did not respond to City's argument in its opening brief that the only impact of failing to have anyone assume City's loan and having Mr. Line accept ownership of the Property was that he took ownership of the Property subject to City's Deed of Trust lien. RCW 11.12.070. GMAC also failed to respond to the argument in City's opening brief that deeds of trust securing what began as or have become

non-recourse notes are valid and enforceable, even in situations where the obligor cannot be sued. For example, a deed of trust lien remains valid and enforceable as a lien against property even when the debt obligor has been discharged from any liability in bankruptcy. See e.g. Boeing Employees' Credit Union v. Burns, 167 Wn. App 265, 272 P.3d 908 (2012).

4. Mr. Lines's Actions Validated the Existing Obligation, Rather than Creating a New Contract. At page 27, GMAC argued that, if Mr. Line's waiver is effective, it could only operate to create a new contract. As noted above in this brief and in City's opening brief, potential challenge to enforcement of a note or deed of trust based on expiration of the statute of limitations creates a situation in which the obligation remains valid but is potentially voidable. Waiver of the statute of limitations, whether done affirmatively or through failure to assert the defense, causes the obligation to remain valid and enforceable. See e.g. CHD, Inc. v. Boyles, supra, 138-139, 418.

5. Mr. Line had Authority to Waive the Statute of Limitations Defense. At pages 18 through 30, GMAC argued that a successor property owner is not permitted to waive a statute of limitations defense on an action brought to enforce a deed of trust encumbering

property. Again, the statute of limitations is an affirmative defense that the record owner of property has the right, but not the obligation, to assert pursuant to RCW 7.28.300. Since this defense is a privilege that can be asserted or waived, Mr. Line, as the record owner of the Property clearly had the right to waive the defense.

6. GMAC Lacks Standing. At pages 30 through 41 of this matter, GMAC contends it has standing to assert its claims. GMAC's arguments regarding standing generally, but not entirely, track with City's arguments at pages 20 through 34 of its opening brief.

At pages 20 through 22 of its opening brief, City set out the common law requirements a party must establish in order to demonstrate standing. GMAC responded by contending that principles of standing are not relevant because "GMAC has not asserted a breach of contract claim." (GMAC's Brief at 31.) Again, this argument is based on GMAC's initial incorrect premise that the alleged expiration of the statute of limitations on City's Note caused City's Deed of Trust to become wholly unenforceable. As a result, GMAC cannot prevail in this case without demonstrating it has standing to assert the statute of limitations defense a defense it acknowledges it is not attempting to assert.

At pages 23 through 25, City discussed the grant of statutory standing accorded to the record owner of property encumbered by a deed of trust under RCW 7.28.300. The language in RCW 7.28.300 is clear in according the right to assert the statute of limitations only to the record owner of property, not to third parties. GMAC argued at pages 34, 35, and 36 through 41 of its brief that RCW 7.28.300 is merely a codification of common law and should therefore be so broadly construed that it will confer its rights on a class of persons not included within its provisions, namely junior lienholders.

GMC cited no authority that supported its claim regarding common law and the assertion is incorrect. At common law, a successor owner of property had the right to assert a statute of limitations defense in order to block foreclosure of a mortgage. See *Pratt v. Pratt*, supra, and *George v. Butler*, supra. In cases such as *Guaranty Sec. Co. v. Coad*, supra, at 161, the Supreme Court made it clear that a debt obligor may favor one creditor over another when waiving a statute of limitations defense. Obviously, the disfavored creditor was given no right to override that action.

At pages 26 through 29 of its opening brief, City analyzed Washington's Uniform Declaratory Judgment Act, RCW Chapter 7.24,

and its requirements regarding standing. City cited *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) in which the Supreme Court denied fire districts any standing under the UDJA, even though they had a financial stake in the interpretation of statutes at issue. Their interest was not direct, a traditional requirement for standing. The Supreme Court noted in that decision that principles of standing under the UDJA are “clarified by the common law doctrine of standing, which prohibits a litigant from raising another’s legal right.” *Id.* at 802, 423.

GMAC argued that it has standing based on the UDJA, relying on the 2002 Supreme Court decision in *Grant Cnty. Fire Prot. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 42 P.3d 394 (2002), which GMAC acknowledged was partially vacated in the 2004 decision. Interestingly, it was the financial stake in the matter upon which GMAC relies, that was held sufficient to grant the fire districts standing in the 2002 decision, that was held insufficient and reversed in the 2004 decision. The portion of the 2002 decision on which GMAC relied has no continuing precedential value. After 2004, parties seeking standing under the UDJA must have a direct and substantial interest, consistent with common law principles of

standing. Parties are forbidden, under the UDJA, from attempting to assert the rights of others.

GMAC's reliance on language in RCW 7.24.020 stating that a person interested in or affected by a contract may obtain a "declaration of rights, status or other legal relations thereunder" does not assist it. Nothing in that language and no other provision in the UDJA grants GMAC, as a party with no direct interest under City's Note or City's Deed of Trust, standing to assert the substantive rights of those parties with direct interests. At most, GMAC would have the right under the UDJA to have a court confirm that GMAC lacks standing to assert a statute of limitations defense to block foreclosure of City's Deed of Trust.

At pages 30 and 31 of City's opening brief, City argued that GMAC lacked standing under Washington's Quiet Title Statute, RCW 7.28.010. GMAC responded that a quiet title action is equitable in nature, but largely ignored the fact that Washington decisions require the provision in RCW 7.28.010 to be met in order that a plaintiff may pursue a quiet title action. *Washington Securities and Investment Corp. v. Horse Heaven Heights, Inc.*, 132 Wn. App 188, 130 P.2d 880 (2006) rev. denied 158 Wn.2d 1023, 149 P.3d 379. In fact, GMAC acknowledged at page 38 of its brief that "under the general quiet title statute, RCW 7.28.010, a

plaintiff in a quiet title action must merely have an 'interest' in land which gives the plaintiff a right of possession." (Emphasis supplied.) GMAC then claimed its deed of trust gave it a right to possess the Property, but failed to recognize that, as a junior lienholder that has not foreclosed, GMAC has no right to possession. RCW 7.28.230.

GMAC also argued at pages 38 and 39 of its brief that the obligation to have possession of a property in order to maintain a quiet title action only applies when a plaintiff has a complete remedy at law, citing *Dolan v. Jones*, 37 Wash. 176, 179, 79 P. 640 (1905). First, GMAC has the same complete remedy at law it received when it made its loan to Mr. Line. It made its loan as a junior lienholder, and can now pursue the remedies as a junior lienholder upon City's foreclosure of its first lien deed of trust.

Second, GMAC's reliance on *Dolan v. Jones*, supra, is misplaced. In that case, a property owner sued to have a tax foreclosure sale be declared invalid, asserting the sale had been improperly conducted. The Supreme Court stated the claim was not brought to quiet title and confirmed the common rule that a party not having possession of property is not entitled to bring a quiet title action. It did not state a party without a remedy at law can pursue a quiet title action.

Finally, GMAC contended that any quiet title action is equitable in nature, and principles of equity would apply. City agrees with that proposition. At pages 31 through 34 of its opening brief, City argued and explained why GMAC is not entitled to the relief it requests based on equitable considerations. GMAC did not respond to those arguments. In *Smith v. Monson*, 157 Wn. App 443, 447, 236 P.3d 991 (2010) that standing to assert a claim in equity “rests in the party entitled to equitable relief ...”

As noted in City’s opening brief, GMAC has articulated no principle whatever suggesting any right to equity resides in GMAC. Nothing in GMAC’s brief suggested otherwise. GMAC had notice of City’s lien when it made its loan and had no right to expect that it would have anything other than a junior lien. This case is in no way analogous to the situation in *Smith v. Monson*, supra, where the plaintiff was granted standing to assert a claim in equity in order to enforce a promise on which the plaintiff had reasonably relied to her detriment. GMAC has asserted no promise, no action taken in reliance on a promise, and no reliance, reasonable or otherwise, on any belief that it expected to or should be granted a lien priority better than that for which it bargained when it

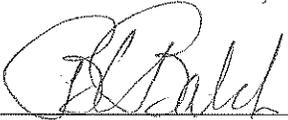
recorded its Deed of Trust. It was a junior lienholder when it made its loan, and it should remain a junior lienholder.

VI. CONCLUSION

For the reasons stated in its opening brief and in the Reply, Appellant City of Spokane respectfully requests that this Court reverse the trial court's denial of its motion for summary judgment, directing entry of summary judgment in City's favor, and remand to the trial court for further proceedings consistent with that decision.

RESPECTFULLY SUBMITTED this 5th day of October 2012.

LAYMAN LAW FIRM, PLLP

By: 

Brian C. Balch, WSBA #12290
601 South Division Street
Spokane, WA 99202-1335
(509) 455-8883
Attorney for Appellant

FILED

OCT 05 2012

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 307492

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

GMAC MORTGAGE,

Respondent,

v.

CITY OF SPOKANE,

Appellant.

**JEANNETTE J. SWAN
HEIRS OF JEANNETTE J. SWAN, FRANK
LINE AND JANE DOE LINE, and the marital
community thereof, and ROBERT S.
DELANEY PLLC, TRUSTEE,**

Defendants.

Certificate of Service

Brian C. Balch, WSBA #12290
Layman Law Firm, PLLP
601 South Division Street
Spokane, WA 99202-1335
(509) 455-8883 Telephone
(509) 624-2902 Facsimile

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury according to the laws of the State of Washington that the following statements are true and correct:

On the 5th day of October 2012, I caused to be served a true and correct copy of Appellant's Reply Brief by the method indicated below, and addressed to the following:

<input type="checkbox"/>	U.S. Mail, postage prepaid	MR. PETER WITHERSPOON ATTORNEY AT LAW 601 WEST MAIN AVENUE SUITE 714 SPOKANE, WA 99201-0636
<input checked="" type="checkbox"/>	Hand Delivery	
<input type="checkbox"/>	Overnight Mail	
<input type="checkbox"/>	Facsimile (509/624-6441)	
<input type="checkbox"/>	Electronically pwitherspoon@workwith.com	

DATED this 5th day of October 2012.


LISA Y. OESTREICH-BERG