

**FILED**

SEP 06 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

NO. 307492-III

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION NO. III

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GMAC MORTGAGE, INC.

Respondent

V.

CITY OF SPOKANE, ET AL

Petitioner

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RESPONDENT'S BRIEF

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## I. INTRODUCTION

This matter deals with the enforceability of a Deed of Trust (“City’s Deed of Trust”) executed by Jeannette J. Swan on July 13, 1998 in favor of the City of Spokane to secure a Promissory Note dated July 13, 1998 in favor of the City (“City’s Note”). The City’s Deed of Trust encumbered property commonly known as 4427 N. Washington Street, Spokane, Washington 99205 (“Property”). Ms. Swan died on October 12, 2000. On November 28, 2001, the Property was conveyed from Jeannette Swan’s Estate to Frank Line, Jeannette Swan’s son. Frank Line lived in the Property for nearly ten years (*i.e.* 2001-2010). During this time, Mr. Line did not make a single payment to the City on the City’s Note, never legally assumed the City’s Note, and never sent any written correspondence to the City. In fact, no payments have ever been made on the City’s Note. In 2011, thirteen years after Ms. Swan executed the City’s Note and Deed of Trust (after Mr. Line had vacated the Property and moved to California), the City commenced a non-judicial Deed of Trust Foreclosure proceeding pursuant to a Notice of Trustee’s Sale dated May 5, 2011. When GMAC questioned the enforceability of the City’s Deed of Trust, the City had Mr. Line sign a document in which Mr. Line purportedly waived the six year statute of limitations relating to the City’s Note and City’s Deed of Trust. The City is seeking to complete the

foreclosure action previously commenced on the City's Deed of Trust. GMAC Mortgage, LLC ("GMAC") asserts that the City's Deed of Trust is unenforceable. GMAC commenced this action seeking declaratory relief relating to the competing interests in the Property and seeking a judgment quieting title to the Property as it relates to the City's claimed deed of trust interest. In the Brief of Appellant, the City essentially argues: (1) that GMAC lacks standing to bring its claims and (2) that Mr. Line has confirmed the note obligation of Jeannette Swan (a claim under which is otherwise time barred by the statute of limitations) entitling the City to pursue its foreclosure proceeding of the 1998 Deed of Trust that was granted to secure the City's Note. The City's arguments are based upon flawed legal premises and are not supported by the uncontroverted evidence which the City itself has presented.

GMAC responds to Appellant City of Spokane's Brief and requests that this Court grant summary judgment in favor of the nonmoving party, GMAC.

## **II. ASSIGNMENTS OF ERROR**

GMAC makes the following Assignments of Error:

1. The Trial Court erred in determining that there were disputed issues of material fact.

2. The Trial Court erred by not denying the City's Motion for Summary Judgment.

### **III. COUNTERSTATEMENT OF ISSUES**

While the assignments of error set out in the Appellant City of Spokane's Brief accurately reflect the errors alleged to have been committed by the trial court in the instant case, the issue statements by the City do not correctly portray the issues to be decided by the Court in this case. A more adequate and thorough statement of the issues to be decided is as follows:

A. Can a holder of a deed of trust enforce the deed of trust when: (1) a claim on the underlying note secured by that deed of trust is barred by the statute of limitations, (2) the obligor on the barred note died prior to the expiration of the statute of limitations, (3) the holder of the deed of trust failed to file a creditor's claim in the deceased note obligor's Estate and (4) the barred note obligation has never been assumed by any other party?

B. Can a subsequent legal owner of property either "reinstate" a barred note or waive the statute of limitations relating to foreclosure proceedings as to a deed of trust which secured the barred note where the effect of the foreclosure proceeding would be to foreclose a deed of trust lien held by a third party?

C. Does the holder of a deed of trust lien on property which interest would be foreclosed by a foreclosure proceeding of a previously recorded deed of trust under the circumstances set forth in Paragraph A above have standing to seek and obtain judicial relief to protect its property interest?

#### IV. COUNTERSTATEMENT OF THE CASE

While GMAC and the City do not dispute the material facts to which the law should be applied in this case, the City's Statement of the Case is insufficient to provide the Court with a complete and thorough understanding of the precise issues raised in this action and of the law governing the disposition of these issues. Therefore, GMAC provides the following counterstatement of the case.

On July 23, 1998, Jeannette Swan obtained a loan from the City under the City's Community Development Single Family Housing Rehabilitation Program ("Program") and executed the City's Note and City's Deed of Trust. (CP 13-18; CP 49-51; and CP 86-94). Under the Program, payments on the Note were deferred for an initial period expiring September 1, 2003, at which time Ms. Swan's eligibility under the Program was to be re-evaluated. As set forth in the City's Note:

**"If, upon the first re-evaluation of loan, Borrower is determined not to be eligible for continued deferral of principal and interest payments, Borrower will begin repaying the principal balance**

of this Note in monthly installments .... **The first payment of \$184.13 or more shall be due on the first day of the succeeding month** and thereafter payments of \$184.13 or more will be due on the first day of each month until the entire balance of principal and interest is paid in full.” (Emphasis added)

(CP 49). Thus, the City’s Note explicitly provided that, if Ms. Swan was no longer eligible as of September 1, 2003, monthly payments would commence on the Note on the first day of the following month; *i.e.*, October 1, 2003.

The Program made home rehabilitation loans to low-income owner-occupants of single-family residential properties within the City. (CP 163). In addition to specified gross household income and asset limits, “criteria for eligibility” for rehabilitation assistance loans included the requirements that “all owners of record must sign the note and Deed of Trust securing the loan” and that “Real Property taxes must be current at the time the applicant is declared eligible for assistance.” (CP 169-172).

Ms. Swan died on October 12, 2000 and, thereafter on November 20, 2001, the Property was conveyed from Ms. Swan’s Estate to her son, Frank Line. (CP 27).

In November 2001, the City received notice of Ms. Swan’s death and was informed that the Personal Representative of her Estate was Mr.

Line and the attorney representing the Estate was Melvin Champagne. (CP 80, para. 5).

On November 27, 2001, the City sent a letter to Mr. Champagne notifying him of the City's lien and requesting him to contact the City's office. (CP 80, para. 6). Mr. Champagne responded by telephone and advised the City that Mr. Line was attempting to refinance the property to pay off the City's Note. (CP 81, para. 7). The City received no written correspondence from Mr. Line or Mr. Champagne. The City did not file a creditor's claim in Ms. Swan's estate.

By September 1, 2003, the date on which the deferral of payments on the City's Note terminated unless the borrower (Jeannette Swan) qualified for continued eligibility, the City "had heard nothing further" from Mr. Line or Mr. Champagne. (CP 81, para. 8). Mr. Line had not assumed the City's Note. On September 9, 2003, the City sent a letter to Mr. Line requesting "an update on the situation and the status of the property." (CP 81, para. 8; CP 102). On September 10, 2003, Mr. Line "called and left a message" stating that "he knows this loan is due to us" and that "he knows it is 1<sup>st</sup> priority to payoff when refinancing." (CP 102).

The City's "Fact Sheet" for the Property dated September 9, 2003, shows that the City was aware that Mr. Line was the owner and taxpayer for the Property at that time. (CP 103). In addition, the Fact Sheet shows

that property taxes due for years 2001-2003 in the amount of \$2,596.46 had not been paid. (CP 103).

On October 1, 2003, the date on which the first payment on the City's Note was due upon expiration of the original deferral of payments, the City received no payment on the City's Note. The City received no correspondence, written or otherwise, from Mr. Line at that time. Mr. Line had not assumed the City's Note. The real estate taxes on the Property were delinquent. The City's eligibility requirements for further deferral of loan payments under the City's Program had not been met.

The City did not take any further action on this delinquent loan for approximately 20 months until July 1, 2005, when the City sent another pay-off letter to Mr. Line. (CP 81, para. 9; CP 106-107). The City received no correspondence, written or otherwise, in response from Mr. Line.

On March 28, 2007 (approximately 21 months after the last correspondence to Mr. Line), the City sent Mr. Line a letter which referred to a phone message he had left three and one-half years earlier on September 9, 2003, in which he had stated that he was planning to refinance the Property in order to pay off the City's Loan. (CP 81, para. 10; CP 109). The City received no response, written or otherwise, to the March 28, 2007 letter to Mr. Line.

In December 2007, the City purportedly “received information from a mortgage broker, Western Capital Mortgage, indicating that Mr. Line was attempting to refinance his loan.” (CP 82, para. 11). The City received no correspondence, written or otherwise, from Mr. Line.

On March 14, 2008, GMAC made a loan to Mr. Line in the amount of \$73,000.00. (CP 29-30). The loan is secured by a deed of trust dated March 14, 2008, and recorded April 2, 2008, under Spokane County Auditor’s File No. 5659520 (“GMAC Deed of Trust”). (CP 29).

As of March 2009, the City had not received a payoff of its loan. (CP 82, para.12). On March 12, 2009, (eight and one-half years after Jeannette Swan’s death), the City sent yet another letter to Mr. Line requesting an update. (CP 82, para. 12; CP 113).

On March 13, 2009, Mr. Line had a phone conversation with Ed Bower of the City, the notes from which state “he called – can’t afford to pay us anything new – *maybe* in July?” (CP 82, para. 13; CP 117). The notes also ask: “Is it possible for him to “assume” our loan as “low-income home owner” – “deferred” status?” (CP 82, para. 13; CP 117)

October 1, 2009 was the sixth anniversary of the date that the first payment on the City’s loan was due following the expiration of the initial eligibility of Ms. Swan.

On or around October 1, 2009, Mr. Line contacted Kiemle & Hagood Company, which acted as the City's Community Development Department property manager, requesting an additional development loan to install a new roof. (CP 83, para. 14). The City sent an email to Kiemle & Hagood Company explaining that Mr. Line had inherited the property from his mother and that there was a preexisting loan on the property in her name. The email states that Mr. Line "has requested to assume her loan instead of paying it off" and that if he was to get the assistance, the old loan on the property would need to be "closed out" and rolled into his "new loan"; otherwise the City "will need to proceed with having him legally assume his mother's loan with us." (CP 83, para. 14; CP 119).

On or around December 21, 2010, Mr. Line vacated the Property and the house was declared vacant. (CP 84, para. 17).

In February of 2011, the City referred the matter to attorney Robert Delaney to commence foreclosure of the City's Deed of Trust. (CP 132, para. 3).

On May 5, 2011, Mr. Delaney issued a Notice of Trustee's Sale to foreclose the City's Deed of Trust with the Trustee's Sale scheduled for October 28, 2011. (CP 20-25).

On June 18, 2011, Mr. Line executed a document entitled Acknowledgment & Reinstatement of Promissory Note

(“Acknowledgement & Reinstatement”) purportedly acknowledging and reinstating the City’s Note that had been executed by Jeannette Swan thirteen years previously. (CP 53). The relevant language provides:

5. I hereby absolutely, unqualifiedly, and unconditionally acknowledge the debt and waive the applicable six-year statute of limitations to pursue a claim on the Note by the Holder and/or to judicially or non-judicially foreclose the Deed of Trust.

6. I hereby reinstate said Note, provided the same shall specifically be “NONRECOURSE” as to me. (CP 53).

On July 12, 2011, Mr. Delaney was contacted by First American Title Company acting on behalf of GMAC on which it was asserted that the City’s foreclosure proceeding was barred by the statute of limitations.

On October 6, 2011, GMAC filed its Complaint for Declaratory Judgment, Quiet Title and Injunctive Relief, seeking, *inter alia*, a judgment: (1) declaring that the City has no right, title, interest or claim in the Property, (2) declaring that the GMAC Deed of Trust is a first lien on the Property prior to any right, title, interest and claim of the City and anyone claiming by, through or under the City, (3) declaring that the GMAC Deed of Trust may be enforced under applicable law, including, but not limited to, a nonjudicial foreclosure proceeding; and (4) restraining the City from foreclosing the City’s Deed of Trust.

On October 28, 2011, the Court below granted GMAC’s motion to

restrain the then pending trustee's sale upon concluding that GMAC had shown proper legal and equitable grounds for the restraint of the sale in this matter.

## V. ARGUMENT

### A. Standard of Review

GMAC agrees with Appellant that, on an appeal of a court's order on a motion for summary judgment, the standard of review is de novo and the appellate court performs the same inquiry as the trial court. *Lybbert v. Grant Cnty., State of Wash.*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000).

GMAC also agrees with Appellant that there are no disputed issues of material fact in this matter and that this Court is presented with only issues of law.

### B. Argument Overview

The City's Deed of Trust (granted to secure Ms. Swan's obligations under the City's Note) is extinguished and is not enforceable under the common law of this state because the six year statute of limitations within which an action was required to have been commenced on the City's Note expired prior to the commencement by the City of its foreclosure proceeding on its Deed of Trust. The obligations on the City's Note have never been assumed by any third party including Frank Line and no one is living against whom the City would be able to assert a claim

on the City's Note. The City had an opportunity to protect its interests in this matter by filing a creditor's claim in Jeannette Swan's Estate but the City failed to do so. If such a claim had been filed, the City's Note would have been presumably satisfied through the Estate administration process.

GMAC has an existing legal interest in the Property and, therefore, has legal and/or equitable standing to proceed with this action to seek a declaration of rights and a judgment of the Court declaring that the Property is no longer subject to the City's Deed of Trust.

**C. The City's Deed of Trust was Extinguished by the Running of the Statute of Limitations on the Note it Secured.**

**1. Common Law of the State of Washington.**

The common law of Washington has long been that, when the statute of limitations has run as to a claim on an underlying debt, the mortgagee's lien rights are extinguished.

As outlined in American Law Reports ("ALR"), 36 A.L.R. 6<sup>th</sup> 387 (2008), "Survival of Creditor's Rights Created by Mortgage or Deed of Trust as Affected by Running of Limitation Period for Action on Underlying Note", the states are split on the issue of whether lien rights represented by a mortgage or deed of trust are extinguished if the statute of limitations has run on the underlying note obligation. (CP 158, para. 4; CP 188-223). As addressed in the ALR, Washington is one of several states wherein

the common law provides “substantial authority holding that ... the bar of the note also bars enforcement of the mortgagee’s lien holder rights...” *Id.* at §2; (CP 205). The ALR explains:

This view is usually based upon the premise that the bar of the statute of limitations for collecting a promissory note extinguishes the unpaid debt evidenced by the note. The mortgage being merely an incident to the debt, these authorities reason, a mortgagee’s lien holder rights are extinguished when collection of the underlying promissory note is barred. (Emphasis added) *Id.* at §2; (CP 250).

The ALR cites to two Washington Supreme Court cases, *Fleishbein v. Thorne*, 193 Wash. 65, 74 P.2d 880 (1937) and *Kirkpatrick v. Collins*, 95 Wash. 399, 163 P. 919 (1917), as holding that “as a matter of common law, the rule that the bar by statute of limitations of an action to collect a promissory note secured by a mortgage operates to automatically extinguish the mortgagee’s lien holders rights.” (CP 220-223). *Id.* at §7; (CP 220).

*Kirkpatrick* involved a quiet title action to remove the cloud of, and prevent the defendants from foreclosing on, a nine-year old mortgage. 95 Wash. at 399. At issue was whether certain alleged payments on the promissory note had been made in the interim to toll the six year statute of limitations. The trial court found sufficient evidence that payments were made and entered

judgment for foreclosure. The Washington Supreme Court found otherwise and reversed and held that “the debt evidenced by the note and mortgage was barred by the six-year statute of limitations” and thus, “[i]t follows that the judgment of foreclosure must be reversed, and a decree entered . . . canceling the mortgage and removing the cloud cast thereby upon her title.” *Id.* at 407.

In *Fleishbein*, the Washington Supreme Court reaffirmed this common law rule that: “[w]hen a debt secured by a mortgage – a mortgage is only a lien upon the property to secure payment of a mortgage debt – is barred by the statute of limitations, the mortgage is also barred.” 193 Wash. at 71-72. The action in *Fleishbein* involved an original note and mortgage executed in 1913 for which no payments had been made. In 1934, the borrower obtained a new mortgage from a different lender and the original lender agreed to release his first mortgage upon the oral promise of the borrower to grant a new second mortgage to that original lender. The borrower died before she executed the new second mortgage to the original lender. The Court held that the original mortgage at issue “no longer existed” and was “outlawed” because the statute of limitations had run on the note secured by that mortgage. *Id.* at 72.

The fact that the common law in Washington holds that a lender is not able to enforce rights under a deed of trust or mortgage if the statute of limitations has run on the underlying debt is further illustrated in *Pratt v. Pratt*, 121 Wash. 298, 209 P. 535 (1922). In *Pratt*, the Washington Supreme Court again articulated the common law rule in Washington, which notably applies to both mortgages and deeds of trust:

An action to foreclose a mortgage or deed of trust is simply, in effect, an action to collect the debt, to secure the payment of which was the sole purpose of its execution; 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 seeking to effectuate that purpose. (Emphasis added)

121 Wash. at 303 (citing with approval *McGovney v. Gwillim*, 16 Colo.App. 284, 65 P. 346 (1901)).

In the court below, the City relied upon the Court of Appeals' decision in *Walcker v. Benson & McLaughlin, P.S.*, 79 Wn. App. 739, 904 P.2d 1176 (1995), in which the Court stated that "[a]t common law, a mortgage existed separately from the obligation it secured; therefore, even when the statute of limitations had run on an underlying debt, a mortgagee still could foreclose on the mortgage." 79 Wn.App. at 742 (citing 1 Grant S. Nelson & Dale A. Whitman, REAL ESTATE FINANCE LAW § 6.11

(3d ed. 1993)). As set forth above, the Washington Supreme Court's holdings in *Kirkpatrick*, *Fleishbein* and *Pratt* make abundantly clear that the reliance of the Court of Appeals in *Walcker* on the Real Estate Finance Law treatise for its articulation of the common law in Washington was misguided. Indeed, the common law in this state is quite the contrary and this common law as enunciated by our Supreme Court in *Kirkpatrick*, *Fleishbein* and *Pratt* has never been overturned or modified by our Supreme Court.

A reasonable extension of the City's legal theory in this case is that a deed of trust interest is never extinguished even though a claim on the underlying note obligation is barred by the statute of limitations as long as the record owner of the property at the time a foreclosure proceeding is commenced acknowledges the enforceability of the deed of trust. Under this theory, 50 years could elapse after the running of the statute of limitations on the underlying note and the City would still have the legal right to commence foreclosure on its deed of trust to the detriment of all intervening third party lien holders. It is for this reason that the common law of this state that provides that the real property security is extinguished when a claim on the underlying note

obligation is barred by the statute of limitations is the appropriate law.

2. **The Statute of Limitations Ran on the Underlying Swan Note Obligation**

(a) **Statute of Limitations Expired as of October 1, 2009.**

The statute of limitations relating to a claim arising from the underlying Note obligation signed by Ms. Swan expired as of October 1, 2009.

The City's Note, which was executed under the City's Program, explicitly provided that, if Ms. Swan, as the borrower, was no longer eligible as of September 1, 2003, her deferment status would expire and she would be required to begin making payments on the Note which "shall be due on the first day of the succeeding month" – *i.e.* October 1, 2003. (CP 49). The "criteria for eligibility" for rehabilitation assistance loans included, among other things, that "all owners of record must sign the note and Deed of Trust securing the loan" and that "Real Property taxes must be current at the time the applicant is declared eligible for assistance." (CP 169-172). Ms. Swan died in October, 2000. Obviously, Ms. Swan, herself, could no longer be an "eligible" borrower if she was then deceased. The City acknowledges that it

became aware of Ms. Swan's death shortly after the commencement of her probate and was aware that the Property had been conveyed by Ms. Swan's estate to her son, Mr. Line. (CP 80, para. 5). The City never required Mr. Line to assume the City's Note. The City was aware that property taxes were delinquent since the Loan was made in 2001 (CP 103). These uncontroverted facts establish that, by the terms of the Note itself, Ms. Swan's deferral status was extinguished as of September 1, 2003. Therefore, the first payment on the Note became due on October 1, 2003. But no payment was ever made at that time, or ever. Accordingly, the six year statute of limitations relating to actions to enforce written contracts expired on October 1, 2009.

(b) **The Fact that the City Never Formally Declared the Borrower to be "ineligible" is Legally Irrelevant.**

The City appears to take the position that the statute of limitations never commenced to run as to a claim under the City's Note because the City never formally declared the borrower, Ms. Swan, to be ineligible. As set forth above, the facts in this case clearly confirm that Ms. Swan was not an eligible borrower when her original deferment status expired as of September 1, 2003 (if, for no other reason than the fact that she was then deceased) and this Court should hold as a matter of law that the City was not able

to suspend the running of the statute of limitations simply because it did not formally “declare” the borrower to be “ineligible” under the Program. In addition to the fact that Ms. Swan was then deceased, the real estate taxes on the property were delinquent as of September 1, 2003, which, under the Program made the borrower ineligible for further deferment of loan payments.

(c) **Communications Between City and Mr. Line Did Not Toll or Extend Statute of Limitations**

In the court below, the City asserted that “[c]ommunications occurred between City and Line regarding the status of the City’s loan at the Property, including Mr. Line’s stated intent to refinance the Property, in 2001, 2003, 2005, 2007, 2009 and 2010” (CP 68) from which the City appeared to take the position that the loan was never formally considered “ineligible”. What needs to be kept in mind is that the only communications the City received from Mr. Line during this timeframe was a telephone message on September 10, 2003, and a phone call on March 13, 2009 (CP 102; CP 82; CP 117). In addition, the provisions of the City’s Note do not refer to an ineligible “loan”, they refer to whether there is an ineligible “Borrower”. Mr. Line was not the “Borrower” on the Loan nor had Mr. Line assumed the City’s Note obligation.

The law is clear that oral communications (such as those made by Mr. Line) are insufficient to toll the statute of limitations:

No acknowledgment or promise shall be sufficient evidence of a new or continuing contract whereby to take the case out of the operation of this chapter, unless it is **contained in some writing signed by the party to be charged thereby**; but this section shall not alter the effect of any payment of principal or interest. (Emphasis added.)

RCW 4.16.280 (Limitations of Action – New promise must be in writing); *see also* RCW 19.36.010(2) (requiring a writing, signed by the party to be charged, for “every special promise to answer for the debt, default, or misdoings of another person”); *Burnham v. Burnham*, 18 Wn. App. 1, 567 P.2d 242 (1977); *Westar Funding, Inc. v. Sorrels*, 157 Wn. App. 777, 786, 239 P.3d 1109, 1113 (2010) (“under the statute of frauds, an oral contract assuming and agreeing to pay the debt of another is unenforceable”).

In order to extend the statute of limitations, Mr. Line would have had to make a payment on the Note or issue a written and signed document evidencing his express promise to pay the debt or express a clear admission of the debt within the statutory time period. The City received no written correspondence from Mr. Line within the statutory period. The only written correspondence Mr. Line provided the City was the signed Acknowledgment &

Reinstatement in August, 2011, thirteen years after the original note was executed by Ms. Swan and nearly eight years after the six year statute of limitations began to run on October 1, 2003.

Even if oral communications were sufficient to extend the debt of another, Mr. Line's communications fall short of the requisite express promise or clear intention to pay the obligation to extend the statute of limitations. The City's files regarding Mr. Line's phone message on September 10, 2003 report that he said that "he knows this loan is due to us" and that "he knows it is 1<sup>st</sup> priority to payoff when refinancing." (CP 102). The notes from Mr. Line's phone conversation on March 13, 2009 state that "he called – can't afford to pay us anything new – *maybe* in July?" (CP 82, para. 13; CP 117 (emphasis added)). The September 10, 2003 phone message is not a clear affirmation of the debt and it certainly was not a communication in writing. Similarly, the March 13, 2009 phone conversation (in which he says he'll "maybe" pay the Loan) is certainly not a stated intention to do so.

The uncontroverted facts in this matter support the legal conclusion that the communications between the City and Mr. Line prior to the "Acknowledgment & Reinstatement" signed by Mr. Line in August 2011, did not toll or extend the statute of

limitations relating to a legal action that could be commenced on the City's Note signed by Ms. Swan.

**(d) City Did Not File Creditor's Claim in Ms. Swan's Estate**

The uncontroverted facts in this matter are: Ms. Swan died on October 12, 2000, prior to the commencement of the running of the statute of limitations on her note obligation to the City, (2) the City was aware of Ms. Swan's death no later than November of 2001 and (3) the City did not file a creditor's claim in Ms. Swan's estate. (CP 27; 80) If the City had filed a claim in Ms. Swan's probate proceeding, that claim would have presumably been satisfied through the estate administration process. Even without filing such a claim, if the City had commenced a foreclosure proceeding on the deed of trust prior to the running of the statute of limitations on October 1, 2009, relating to claims on the underlying note, and Mr. Line did not then object to the foreclosure proceeding as being barred on account of the City's failure to file a claim in Ms. Swan's probate proceeding, the City would have been legally entitled to its recovery. However, the City failed both in not filing a creditor's claim in Ms. Swan's probate proceeding and not commencing its deed of trust foreclosure proceeding prior to October 1, 2009.

(e) **City's Positions That: (1) A Statute of Limitations Defense Can Be Waived and (2) The City's Lien Was Voidable, Not Void, Are Irrelevant To This Case.**

In its Brief, the City argues that a statute of limitations defense can be waived and, therefore, its deed of trust lien herein was “voidable” and not “void”. Brief of Appellant at Pages 11 – 17.

GMAC agrees that a statute of limitations defense can be waived as a matter of a legal statement, but that is not the issue in this case. This case does not involve a collection proceeding by the City against Ms. Swan on the underlying note obligation in which the court needs to address whether Ms. Swan has waived a statute of limitations defense. No such action can be brought by the City against Ms. Swan because she has been deceased for 11 years. If Ms. Swan was alive and the City did bring an action against her on the note obligation and Ms. Swan did not raise a statute of limitations defense, then the issue of waiver would come into play. 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. That issue relates to defenses that could have been asserted by Ms.

Swan in an action commenced against her while she was alive or against her estate following her death. It has absolutely no application to the common law of this state which provides that a deed of trust is extinguished once a statute of limitations has run on a claim on the underlying note obligation.

3. **Ms. Swan's Promissory Note Was Not Reinstated**

(a) **Preface**

The City's Note was not reinstated by Frank Line nor could he waive the statute of limitations on a claim relating to that Note.

The City asserts that the City's Note remains enforceable on account of Mr. Line having executed the Acknowledgment & Reinstatement on July 18, 2011, thirteen years after the Note was originally signed by Ms. Swan and almost two years after the statute of limitations relating to an action on that Note had expired. The City's argument fails under both the law and facts, as detailed below. For ease of reference, a copy of the Acknowledgment & Reinstatement of Promissory Note is attached hereto in the Appendix.

(b) **Frank Line Did Not Have Legal Authority to Reinstatement Ms. Swan's Note**

Mr. Line was not the borrower on the promissory note previously secured by the City's Deed of Trust. Ms. Swan was the

borrower. Ms. Swan died on October 12, 2000, 11 years before Mr. Line executed the Acknowledgement & Reinstatement. The City has provided no legal authority supporting a position that Mr. Line had authority to reaffirm Ms. Swan's debt. Even if Mr. Line had been a joint debtor on the City's Note (which he was not), his acknowledgement that the statute of limitations was suspended would not have any effect on the obligation previously owed by Ms. Swan nor on the City's Deed of Trust previously recorded against Ms. Swan's property. "As a general rule an acknowledgement or part payment by a joint debtor does not suspend the statute of limitations as to the other debtor, unless he or she authorizes or ratifies the payment of acknowledgement." *Matson v. Weidenkopf*, 101 Wn. App. 472, 479, 3 P.3d 805 (2000) (holding that there was no evidence that a husband had authority to acknowledge the debt of his ex-wife, and thereby holding that the statute of limitations did not recommence as to her) (citing 18 Samuel Williston & Walter H.E. Jaeger, A TREATISE ON THE LAW OF CONTRACTS § 2079 (2d ed. 1978); *see also Pederson v Jordan*, 177 Wash. 379, 382-383, 32 P.2d 114 (1934) (holding that a person cannot acknowledge and reaffirm the debt of another without express authority).

(c) **In the “Acknowledgment & Reinstatement”, Mr. Line Did Not Assume the Note Obligations.**

In signing the Acknowledgement & Reinstatement, Mr. Line specifically stated that the obligations under the City’s Note executed thirteen years previously by Ms. Swan were to be “NONRECOURSE” as to Mr. Line; meaning that Mr. Line was not assuming those obligations. Even though Mr. Line did not assume the obligations under the City’s Note, the Acknowledgement & Reinstatement states that he “acknowledges the debt” and waives the six year statute of limitations to pursue a claim on the Note by the City. Since Mr. Line specifically did not personally assume obligations under the Note, the best that can be argued is that he was attempting to “acknowledge” the debt on behalf of a third party, presumably Jeannette Swan. As stated above, Mr. Line had no legal authority to “acknowledge the debt” on behalf of Ms. Swan eleven years after Ms. Swan passed away. Since Mr. Line did not have the legal authority to acknowledge the debt on behalf of Ms. Swan and he did not personally assume the debt obligation, his stated waiver of “the applicable six-year statute of limitations to pursue a claim on the Note by the Holder” (set forth in the Acknowledgement & Reinstatement) is meaningless and of no legal effect.

(d) **Frank Line's Execution of The Acknowledgment & Reinstatement, At Best, Constitutes a New Obligation Not Secured by The City's Deed of Trust.**

When Mr. Line signed the Acknowledgement & Reinstatement, there was no longer an enforceable obligation to assume. Even if Mr. Line had stated in the Acknowledgement & Reinstatement that he was personally assuming the obligation previously owed by Ms. Swan (which he did not), the law treats such an action as resulting in a new contract created through novation which becomes the only agreement between the parties. *Cannovina v. Poston*, 13 Wn.2d 182, 195, 124 P.2d 787 (1942). This new agreement would be a new contract – one that would not be secured by the City's Deed of Trust previously executed by Ms. Swan for the purpose of securing the City's Note which is no longer enforceable. Therefore, the City would be precluded from foreclosing its Deed of Trust to enforce the new agreement signed by Mr. Line. Furthermore, even if Mr. Line did agree that the new obligation was secured by the original Deed of Trust, that deed of trust would be securing a new obligation created in 2011 and would be, therefore, junior to GMAC's 2008 deed of trust.

4. **Mr. Line's Purported Waiver of Statute of Limitations Relating to Enforcement of Deed of Trust ineffective.**

It needs to be kept in mind that there is a distinction between an action to recover on a note obligation and a foreclosure proceeding relating to a mortgage or a deed of trust that was granted to secure the note obligation. The City asserts that, even if the statute of limitations has run relating to a claim to recover upon a promissory note, a record owner of property has separate standing to assert a statute of limitations defense to the foreclosure of a mortgage relying upon *George v. Butler*, 26 Wash. 456, 67 P. 263 (1901). Brief of Appellant at P. 18. GMAC does not contest this legal assertion as stated and as far as it is addressed in *George v. Butler*. However, the City expands upon the holding of *George v. Butler* in asserting that a subsequent third party owner of property (such as Mr. Line) has a sufficient interest to consent to a waiver of a statute of limitations defense on an action brought to enforce the deed of trust impliedly to the detriment of other holders of interests in the property such as GMAC. This legal position is not supported by *George v. Butler* or by any other legal authority in Washington. The Court in *George v. Butler* did not hold that a subsequent owner of property encumbered by a mortgage granted by a prior owner of the property would have the right to allow foreclosure of a deed of trust (the effect of which would be to foreclose out other lien holders of record) after the statute of limitations

had run on the note obligation (signed by the prior owner) that was secured by the deed of trust. The Court's language in *George v. Butler* must be reviewed and understood in light of the unusual facts in that case in which the statute of limitations had not run on the note obligation (due to the statute being tolled under the then existing law of this state because of the note obligor's physical absence from the state) although the statute of limitations would have run on the note if the obligor had remained in Washington resulting in the mortgage being barred. Under those unusual facts and because of the established common law (recognized by the Court in *George v. Butler*) that the mortgage was barred if the note obligor had remained in Washington, the Court appropriately held that the barred mortgage could not be revived without the consent of the subsequent property owner. The Court did not state or hold that a subsequent property owner can revive a statute of limitations on a note obligation on which that subsequent property owner was never legally liable. Nor did the Court hold that, when the statute of limitations has run on the underlying note obligation, a subsequent property owner can consent to the foreclosure of a deed of trust on the property to the detriment of other holders of interest in that property. What is important in *George v. Butler* is the Court's recognition of the common law that a mortgage is extinguished when the

statute of limitations has run on the ability to bring a legal action on the underlying note obligation.

**D. GMAC Has Standing to Bring Its Claims in This Legal Action.**

**1. Preface.**

As set forth above, the statute of limitations has clearly run on any claim by the City to seek recovery on the underlying note obligation signed by Ms. Swan. The common law of this state is that a mortgage or deed of trust that is given to secure a note obligation is extinguished when the statute of limitations has run as to a claim on the underlying note obligation. Prior to the commencement of this litigation, the City commenced foreclosure proceedings on the City's Deed of Trust taking the position that its deed of trust had not been extinguished and that the foreclosure of that deed of trust would foreclose out the deed of trust held by GMAC making GMAC an unsecured creditor of Frank Line. The only way that GMAC was able to assert its legal position in this matter and contest the foreclosure proceeding which, if completed, would remove GMAC's security position in the Property was to bring this legal action to seek declaratory relief and quiet title. The City's position is that GMAC does not have the standing to bring this action in an attempt to protect its property interest. GMAC

certainly has legal recourse to protect its interest under the facts of this case.

2. **GMAC Has Standing to Bring Its Declaratory Relief Claims**

The City's assertion that "in order to challenge the validity of a contract, a person or entity must either be a party to that contract or have the status of a third party beneficiary" (CP 71) is not applicable or legally supportable under the facts of this case. GMAC has not asserted a breach of contract claim. GMAC has brought this action pursuant to Washington's Uniform Declaratory Judgment Act ("UDJA") which has its own standard for who has standing to assert such claims involving contracts. The UDJA expressly provides, in part, that:

"[a] person *interested* under a deed, will, written contract or other writings constituting a contract, or **whose rights, status or other legal relations are affected by a ... contract** ... may have determined any question of construction or validity arising under the instrument ... and obtain a declaration of rights, status or other legal relations thereunder." RCW 7.24.020 (emphasis added).

The operative word here is *interested*, which includes any party whose "financial interests" are affected by an action. *Grant Cnty. Fire Prot. Dist. No. 5 v. City of Moses Lake*, 145 Wn.2d 702, 42 P.3d 394 (2002), vacated in part on rehearing by 150 Wn.2d

791, 83 P.3d 419 (2004). Notably, the UDJA “is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be *liberally construed and administered.*” RCW 7.24.120 (emphasis added).

Indeed, in order to have standing to seek declaratory relief under the UDJA, a party must merely present: (1) an actual, present and existing dispute between parties having genuine and opposing interests, (2) which dispute involves interests that must be direct and substantial, and (3) of which a judicial determination will be final and conclusive. *City of Moses Lake*, 145 Wn.2d at 713 (citing *Walker v. Munro*, 124 Wn.2d 402, 411, 879 P.2d 920 (1994)). There is no question here that the underlying controversy over the lien priority between the City and GMAC is actual, present and existing; that GMAC has a financial interest at stake if the City were to foreclose its Deed of Trust; and that this Court’s determination as to the validity of the City’s Note and Deed of Trust will resolve this matter. *See, e.g., Casey v. Chapman*, 123 Wn. App. 670, 98 P.3d 1246 (2004) (creditor had standing to seek declaratory judgment in debtor’s action to enjoin UCC foreclosure sale after creditor foreclosed on partnership interest which was

collateral in security agreement). Accordingly, GMAC has standing to bring its declaratory relief claims in this action seeking, *inter alia*, a declaration by this court that the City's Note and Deed of Trust are unenforceable.

In the Brief of Appellant, the City argues that GMAC must demonstrate that it has some real interest in the City's Note and the City's Deed of Trust to challenge an action by the City to enforce its Deed of Trust. Brief of Appellant at 20-21.

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 lien holder which is affected by a barred note obligation and extinguished deed of trust. This is precisely the type of litigation that the UDJA contemplates by enabling an entity interested under a contract whose rights, status or other legal relations are affected by the contract to have any question of construction or validity arising under the contract to be determined by a court and to obtain a declaration of rights, status or other legal relations thereunder.

RCW 7.24.020

3. **GMAC Has Standing To Bring Its Quiet Title Claim**

(a) **Preface**

In addition to its claims for declaratory relief, GMAC has also asserted a quiet title claim to remove the cloud of the City's extinguished deed of trust from the title. The City asserts that GMAC does not have statutory standing pursuant to RCW 7.28.300 or pursuant to common law to bring such a claim because: (1) RCW 7.28.300 is in derogation of common law (*i.e.* as the City argues, prior to its enactment, there was no right to a quiet title claim to remove the cloud of an outlawed deed of trust when the statute of limitations had run on the underlying debt) and (2) pursuant to RCW 7.28.300, only a "record owner" has the right to assert such a statute of limitations defense. These legal premises asserted by the City are incorrect.

(b) **Standing Under Common Law**

Contrary to the City's stated position, Washington's common law is clear that there is a right to remove the cloud of a deed of trust when the statute of limitations has run on the underlying debt. RCW 7.28.300 merely codified a portion of the equitable and legal principles of that

common law and RCW 7.28.300 should be construed as such. However, under existing common law, any interested person has the right to bring such a quiet title claim. As a deed of trust lien holder, GMAC clearly has standing to bring its quiet title claims – whether under common law, RCW 7.28.300, or both.

In Washington, quiet title claims are equitable in nature. *Smith v. Monson*, 157 Wn. App. 443, 447, 236 P.3d 991 (2010); (citing *Fleishbein*, 193 Wash. at 72-73); *see also Kobza v. Tripp*, 105 Wn. App. 90, 95, 18 P.3d 621, 623 (2001) (“[a]n action to quiet title is equitable”). Here, GMAC’s legal interest in the Property, itself, entitles it to equitable relief and standing to pursue its quiet title claim. This is because “[s]tanding to assert a claim in equity resides in the party entitled to equitable relief; it is not dependent on the legal relationship of those parties.” *Smith*, 157 Wn. App. at 445. *Smith* involved a quiet title action wherein the plaintiff had conveyed property to a relative so that the relative could borrow money for the plaintiff to buy a mobile home. The plaintiff paid off the loan but the relative conveyed the property by quitclaim deed to other

family members, ostensibly so they could have “access” to the property. The trial court concluded that the plaintiff did not have standing to challenge the conveyance because she was not a party to the underlying transaction. The court of appeals reversed upon concluding that, in such actions of equity, “standing follows the right to assert the equitable claim” and that her claimed interest in the property gave her standing to maintain the action. *Smith*, 157 Wn. App. at 449 (citing *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107, 33 P.3d 735 (2001)).

Similarly here, GMAC’s claimed interest in the Property as a lien holder gives it standing to maintain its quiet title claim regardless of the fact that GMAC was not a party to the transaction between the City and Ms. Swan and regardless of RCW 7.28.300. GMAC clearly has standing under Washington common law to proceed with a quiet title action in this matter.

(c) **In Addition to Common Law, GMAC Also Has Standing Under RCW Chapter 7.28 in General and RCW 7.28.300 In Particular To Bring Its Quiet Title Claim**

In light of the foregoing discussion of Washington common law, RCW 7.28.300 must not be so narrowly

construed (as the City contends) to provide a right of action only for a “record owner.” Indeed, as set forth above, RCW 7.28.300 is not in derogation of common law but, rather, a partial codification of the common law. The obvious intent and purpose of RCW 7.28.300, as reflected in common law, is to avoid the inequities inherent in an outlawed foreclosure right which indisputably affects everybody with a recorded interest in the property, whether the record owner or a record lien holder. There is no logical reason that the legislature would have wanted to protect only the existing fee title holder from the harsh inequities of a foreclosure that would otherwise be time barred and not give that same protection to other holders of property interests (lien holders) in the property. Therefore, utilizing accepted rules of statutory interpretation and applying principles of equity, this Court should rule that the legislature’s intent in adopting RCW 7.28.300 was to codify the common law of Washington and declare that any holder of a property interest (including a lien holder) may maintain an action to quiet title against an outlawed mortgage or deed of trust under RCW 7.28.300.

The fact that GMAC does not have fee title ownership or current possession of the property is legally irrelevant for purposes of quiet title claims under RCW Chapter 7.28 in general, and RCW 7.28.300 in particular. First, under the general quiet title statute, RCW 7.28.010, a plaintiff in a quiet title action must merely have an “interest” in the land which gives the plaintiff a right of possession. 18 William B. Stoebuck & John W. Weaver, WASHINGTON PRACTICE SERIES § 11.3 (2d ed.). Such interests include any “right, title, interest in, or claim or lien upon said real property.” *Symington v. Hudson*, 40 Wn.2d 331, 336, 243 P.2d 484, 487 (1952); *see also* 18 William B. Stoebuck & John W. Weaver, WASHINGTON PRACTICE SERIES § 11.5 (2d ed.) (“interest” need not be fee simple title). As lien holder, GMAC unequivocally has a subsisting interest in the property. Second, the terms of GMAC’s deed of trust give it a right to possession. (CP 35). The City’s argument that GMAC has no standing because it has no “current” right to possess the property until a foreclosure sale is complete is unavailing. The Washington Supreme Court has stated that the rule that an action to quiet title

cannot be maintained by one out of possession applies only where the plaintiff has a complete remedy at law. *Dolan v. Jones*, 37 Wash. 176, 179, 79 P. 640 (1905); *see also* 18 William B. Stoebuck & John W. Weaver, WASHINGTON PRACTICE SERIES § 11.5 (2d ed.) (a plaintiff may use a quiet title action to obtain a declaration of his and other persons' rights that themselves are not possession but are incident to possession or ownership). Here, GMAC has no such remedy at law. Third, RCW Chapter 7.28 is equitable and thus remedial in nature and, therefore, GMAC's prospective right to possession based on its claimed interest – which will essentially be resolved by this Court – is sufficient. Fundamentally, RCW Chapter 7.28.300, by its name, embodies a right to quiet title: “Quieting title against outlawed mortgage or deed of trust” – and thus, the same legal and equitable principles apply. Accordingly, GMAC has established what is a low threshold to maintain a claim to quiet title under RCW Chapter 7.28 in general, and under RCW 7.28.300 in particular.

Even if the only possible basis for GMAC's standing in this matter arises from RCW 7.28.300 (which,

as shown above, it does not), the City's position that RCW 7.28.300 must be strictly construed to only grant standing to "record owners" leads to an absurd and inequitable result, which runs counter to principles of statutory interpretation. See *In re Tyler's Estate*, 140 Wash. 679, 250 P. 456 (1926). The ridiculous result is that it would operate as a "race to foreclose". The effect of the City's position is that, if the City foreclosed its deed of trust before GMAC foreclosed its deed of trust, the property would then be sold at the trustee's sale free and clear of GMAC's lien position. However, if GMAC foreclosed its lien position prior to the City's foreclosure action, the purchaser at the trustee's sale (which could be GMAC as the foreclosing lender) would be able to bring a quiet title action under RCW 7.28.300 as the new "record owner" of the property to extinguish the City's deed of trust lien. In other words, whichever party was able to complete its foreclosure proceeding first would win the spoils of its security interest. Clearly, this was not the legislature's intent in adopting RCW 7.28.300 and the Court should dismiss the City's stated position in this matter.

For the foregoing reasons, the City's arguments that GMAC lacks standing to assert its (1) declaratory relief claims under the UDJA and/or (2) quiet title claims, whether under common law, RCW Chapter 7.28 in general and/or RCW 7.28.300 in particular – should be rejected.

**E. The Court Has Discretion to Grant Summary Judgment to the Non-Moving Party**

When the facts are not in dispute, this Court may grant summary judgment to the non-moving party. *Leland v. Frogge*, 71 Wn.2d 197, 201, 427 P.2d 724 (1967); *Wash. Ass'n of Child Care Agencies v. Thompson*, 34 Wn. App. 225, 660 P.2d 1124 (1983); *Impehoven v. Dep't of Revenue*, 120 Wn.2d 357, 365, 841 P.2d 752 (1992); *see generally* 4 L. Orland, Wash.Prac., Rules §5656 (1983 & Supp. 1991). Here, the parties agree that there are no genuine issues as to any material facts. Accordingly, GMAC requests that the Court grant summary judgment in its favor as the nonmoving party by holding that the City's Deed of Trust is unenforceable and directing that judgment be entered quieting the title of the Property free and clear of any claim by the City arising from or relating to its previously recorded deed of trust in this matter.

**VI. CONCLUSION**

Based on the foregoing, GMAC requests that the Court grant summary judgment in this matter to GMAC as the nonmoving party and

that this matter be remanded to the trial court for further action consistent with that ruling.

DATED this 6<sup>th</sup> day of September, 2012.

WORKLAND & WITHERSPOON, PLLC

By   
PETER A. WITHERSPOON,  
WSBA No. 7956  
Attorneys for Respondent

# APPENDIX

After recording, mail to:

Robert S. Delaney  
Attorney at Law  
3132 East 18<sup>th</sup> Avenue  
Spokane, Washington 99223

**ACKNOWLEDGEMENT AND REINSTATEMENT OF PROMISSORY NOTE**

1. The City of Spokane is the holder of the beneficial interest in that certain Promissory Note (the "Note") for \$23,000.00 executed by Jeannette J. Swan (the "Initial Note Maker") in favor of the City of Spokane (the "Holder") and secured by a Deed of Trust recorded July 17, 1998 under Auditor's File No. 4245363 (the "Deed of Trust") affecting the real property commonly known as 4427 North Washington Street, Spokane, Washington, legally described as follows (the "Property"):

Lots 1 and 2, Block 7, SLATER AND WALKER PARK ADDITION, according to plat thereof recorded in Volume "L" of Plats, page 40, in the City of Spokane, County of Spokane, State of Washington (TPN: 35061.1401).

2. The Initial Note Maker, my mother, died on Oct. 12<sup>th</sup>, 2000. To my knowledge, no Notice to Creditors was sent to the City of Spokane pursuant to Washington law.

3. The Property was deeded to me, Frank Line (the "Owner"), by the Personal Representative of the Estate of Jeannette J. Swan on or about November 28, 2001 under Auditor's File No. 4658339.

4. To my knowledge no payments were made on the Promissory Note to the Holder by the Initial Note Maker and/or by the Owner.

5. I hereby absolutely, unqualifiedly, and unconditionally acknowledge the debt and waive the applicable six-year statute of limitations to pursue a claim on the Note by the Holder and/or to judicially or non-judicially foreclose the Deed of Trust.

6. I hereby reinstate said Note, provided the same shall specifically be "NON RECOURSE" as to me.

DATE: July 1<sup>st</sup>, 2011.

  
\_\_\_\_\_  
Frank Line

**CALIFORNIA JURAT WITH NOTARY ATTACHED HERETO**

JURAT

State of : California

County of: Tuolumne

Subscribed and sworn to (~~or affirmed~~) before me

this 18<sup>th</sup> day of July, 2011, by  
Date Month Year

(1) Frank Line  
Name of Signer (s)

(2) \_\_\_\_\_  
Name of Signer (s)

who proved to me on the basis of satisfactory evidence to be the person (s) who appeared before me.

WITNESS my hand and official seal

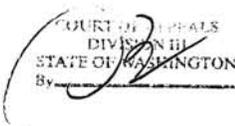


Place Notary Seal Above

Jennifer Bick  
Signature of Notary Public

**FILED**

SEP 06 2012

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By 

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION NO. III

CITY OF SPOKANE,  
Petitioner,

v. ) No. 307492-III  
)  
GMAC MORTGAGE, LLC, ) CERTIFICATE OF SERVICE OF  
) RESPONDENT'S BRIEF  
Respondent. )  
\_\_\_\_\_ )

Stacy Tracht, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States and at all times hereinafter mentioned was over the age of 18 years and competent to be a witness in this action.

On the 6<sup>th</sup> day of September, 2012, I caused to be served a true and correct copy of the Respondent's Brief, filed on this date, by the methods indicated below, and addressed to the following:

<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid	Brian C. Balch
<input checked="" type="checkbox"/>	Hand Delivery	LAYMAN LAW FIRM
<input type="checkbox"/>	Overnight Mail	601 S. Division Street
<input type="checkbox"/>	Facsimile (509-624-2902)	Spokane, WA 99202-1335
<input checked="" type="checkbox"/>	Electronically	<a href="mailto:bbalch@laymanlawfirm.com">bbalch@laymanlawfirm.com</a>

DATED this 6<sup>th</sup> day of September, 2012, at Spokane, Washington.

  
\_\_\_\_\_  
STACY TRACHT  
Paralegal to Peter A. Witherspoon