

**FILED**

SEP 24 2014

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

No. 326039

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

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Thomas F. Merry,  
Appellant,

v.

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Quality Loan Service Corp. of Washington, Inc.;  
and,  
JPMorgan Chase Bank, National Association,  
Respondents.

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Brief of Appellant

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## I. INTRODUCTION

This appeal involves the enforceability of a deed of trust under which Respondent JPMorgan Chase Bank, National Association (“CHASE”) claims to be the successor beneficiary. The note (“NOTE”), unauthenticated copy found at CP pp. 19-22, and deed of trust at issue (“RUTHERFORD DOT”), CP pp. 24-31, were executed on January 31, 2001 by Gaery D. Rutherford and Janet L. Rutherford (“Rutherford”) as borrower, with Washington Mutual Bank (“WAMU”) as lender, and Pioneer Title Company (“PIONEER”) as trustee. The RUTHERFORD DOT encumbers real property commonly known as 17600 Chumstick Highway, Leavenworth, Washington 98826 (“PROPERTY”). CHASE, while acting as Attorney-In-Fact for the Federal Deposit Insurance Corporation (FDIC), assigned itself the RUTHERFORD DOT but not the NOTE, CP p. 126. Defendant Quality Loan Service Corp. of Washington, Inc. (“QLS”), claiming to have been substituted as trustee of the DOT by CHASE under Appointment of Successor Trustee, CP pp. 166-167, recorded May 8, 2013, served Rutherford with Notice of Default, CP pp. 170-183, dated May 9, 2013, and recorded its Notice of Trustee’s Sale, CP pp. 133-136, on August

14, 2013, initiating non-judicial foreclosure upon Rutherford's default. Thomas F. Merry ("Merry"), Plaintiff, a junior lienholder CP pp. 129-132, filed his Complaint to Declare Lien Priority and Declare Deed of Trust Void and Promissory Note Unenforceable on December 19, 2013.

During the pendency of Merry's action Rutherford attempted a loan modification with CHASE resulting in QLS discontinuing its trustee's sale, CP, p. 157, and causing the court to find there was no judicial controversy, CP p.283. That modification attempt failed, QLS has since recorded a new trustee's sale scheduled for December 26, 2014, a true and correct copy attached hereto as Exhibit A, and Merry is back to where he began in filing this action ...threatened with the theft of his equity.

CHASE made Motion for Summary Judgment, CP 14, on grounds that it was the holder of the NOTE based upon the Declaration of Amber Alegria, CP Doc. No. 15. Merry challenged CP Doc. No. 15 for lack of personal knowledge on the part of the declarant, CP pp. 93-94. The original note was never produced by CHASE. QLS made motion for Summary Judgment, CP Doc. No. 18, based upon the Declaration of Sierra Herbert-West, CP Doc.

No. 19, and the Substitution of Trustee and Notice of Default attached thereto.

Hearing was held on April 11, 2014 on the Summary Judgment Motions. The trial judge requested briefing on Merry's standing to bring the action, CP p. 232, and continued the hearing to May 23, 2014, where the trial judge granted Respondents' motions and dismissed Merry's action. The court found there was no judicial controversy, CP p. 283. The question of CHASE's standing as holder in due course of the NOTE and the standing of QLS to act as trustee having not been considered, this appeal followed. Merry contends the trial court improperly dismissed his claims and causes of action in granting Respondents Motion for Summary Judgment.

Merry contends that documents of record in the Clerk's Papers establish that CHASE was and is an unlawful beneficiary, a holder NOT in due course of the NOTE, and holds the NOTE, if it indeed holds the original instrument, subject to defenses of the maker. Merry further contends that QLS was and is an unlawful trustee, and the actions of CHASE and QLS in regard to non-judicial foreclosure of the PROPERTY by trustee's sale fail to meet the

mandates of RCW 61.24 and are void. Further, Merry contends that the NOTE is unenforceable by CHASE and is void.

## **II. ASSIGNMENTS OF ERROR**

Merry makes the following assignments of error:

1. The trial court erred by granting Respondents' Motions for Summary Judgment.

### **Issues related to assignments of error:**

1. The Standard of Review.
2. Merry's Standing.
3. Whether issues of material fact bar Summary Judgment for Respondents.
4. Whether the Note is enforceable.
5. The lien priority of the Merry DOT.

## **III. STATEMENT OF THE CASE**

CHASE, QLS, and Merry agree on some of the facts underlying this dispute. In regard to documents recorded with the Chelan County

Auditor, those documents speak for themselves. The undisputed material facts in this matter include the following:

1. A NOTE in the amount of \$210,000 was dated January 31, 2001 and signed by Rutherford, CP pp. 77-80. This note was made payable to WAMU.
2. The RUTHERFORD DOT securing the note and dated January 31, 2001, was signed by Rutherford and notarized February 1, 2001, and recorded with the Chelan County Auditor on February 6, 2001, CP pp. 104-110.
3. CHASE acquired certain assets and liabilities of WAMU from the FDIC, CP p.21.
4. On October 7, 2005, Rutherford granted a Quit Claim Deed to the PROPERTY to their limited liability company, J&S Land LLC, CP pp. 123-125.
5. On September 25, 2008, CHASE purchased WAMU's assets, including all of WAMU's loans then held by WAMU, from the FDIC, after the Office of Thrift supervision placed WAMU in receivership, CP p. 22.

6. On February 19, 2013, CHASE, in its capacity as Attorney-in-fact for FDIC, assigned itself FDIC's interest in the RUTHERFORD DOT, CP p. 126.
7. On May 8, 2013 an Appointment of Successor Trustee signed by a CHASE Vice President was recorded with the Chelan County Auditor under Auditor's File Number (AFN) 2381889, CP pp. 127-128, appointing QLS as trustee.
8. On July 12, 2013 Merry recorded his deed of trust against the PROPERTY with the Chelan County Auditor, CP pp. 129-132.
9. On August 14, 2013, QLS recorded its Notice of Trustee Sale with the Chelan County Auditor, CP pp.133-136.
10. On December 19, 2013, Merry filed his Summons and Complaint, CP pp. 1-11.
11. On January 16, 2014, counsel for CHASE mailed its answer to Merry, CP pp. 12-16.
12. On February 10, 2014, counsel for QLS mailed its answer to Merry, CP pp. 17-20.

14. On February 20, 2014 Merry sent Plaintiff's First Set of Interrogatories and Request for Production of Documents to CHASE, CP pp. 137-156. CHASE did not respond to this request for discovery.

15. CHASE noted its motion for summary judgment for April 11, 2014.

16. On April 11, 2014 the trial court heard Respondents Motion for Summary Judgment. The court questioned Merry's standing and instructed the parties to provide briefing to the Court on the issue, continuing the matter to May 23, 2014, CP p. 28.

17. On May 23, 2014 hearing was held on the matter and the court granted Respondents summary judgment, CP p. 39.

## **LEGAL ARGUMENT**

### 1. Standard for review.

This court reviews de novo a trial court's order for summary judgment.

"In reviewing an order of summary judgment, we engage in the same inquiry as the trial court. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). The facts and all reasonable inferences therefrom must be viewed in the light most favorable to the nonmoving party. *Lybbert*, 141 Wn.2d at 34. Summary judgment is proper where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Lybbert*, 141 Wn.2d at 34. Mere allegations or conclusory statements of facts

unsupported by evidence are not sufficient to establish a genuine issue. *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). Nor may the nonmoving party rely on "speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value." *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986). Although normally left for the trial process, questions of fact may be treated as matters of law when reasonable minds could reach only one conclusion. *Colo. Structures, Inc., v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 661, 246 P.3d 835 (2011).” *RUCKER V. NOVASTAR MORTG., INC.*, 177 Wn. App. 1 (2013).

This matter was not decided on the facts, but on the trial court’s opinion of Merry’s standing and the court’s presumed lack of ability to provide Merry relief. CP p. 39. If Merry has standing to raise Rutherford’s defenses to enforcement of the NOTE, and if the facts and all reasonable inferences therefrom must be viewed in the light most favorable to Merry, then the court improperly and untimely granted Respondents’ summary judgment.

## 2. Merry’s Standing.

Because of his deed of trust, CP pp. 129-132; Merry has a distinct and personal interest in the issue of whom, if anyone, has the standing of “person entitled to enforce the instrument”...the NOTE.

“A party has standing to raise an issue if that party has a distinct and personal interest in the issue. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 105 S.Ct. 2965, 2972, 86 L.Ed.2d 628, 637 (1985). Here, Paris Beauty Supply's security interest in the tanning equipment would be deemed superior to the McCauslands' lien for rent, if Paris Beauty Supply can establish that the McCauslands' landlord's lien fails because of Total Tan's defenses to the claim of lien. Thus, Paris

Beauty Supply has a personal interest in the issue and, consequently has standing to raise Total Tan's defenses." *Paris American Corp. v. McCausland*, 759 P.2d 1210, 52Wn.App. 434 (1988).

If Merry can establish that CHASE's lien fails because of Rutherford's defenses to CHASE's claim of lien, then Merry has a personal interest in the issue and, consequently has standing to raise Rutherford's defenses. With such a direct substantial interest, Merry has standing to seek declaratory judgment under Washington's Declaratory Judgment Act<sup>1</sup>. If Merry proves his facts his lien position would move up in order of priority and his equity is defended from attempted theft by an imposter beneficiary.

3. Issues of Material Fact.

The documents on record with the Chelan County Auditor that are a part of the pleadings in this matter speak for themselves. These documents raise issues of material fact, which if proven by Merry, would entitle him to relief.

A. CHASE is not a holder in due course of the NOTE.

CHASE took possession of the NOTE, if it took possession of the NOTE, on February 19, 2013, knowing that the instrument was

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<sup>1</sup> RCW 7.24.

“overdue”<sup>2</sup>, CP pp. 96-98. CHASE is not a holder in due course of the NOTE and has not alleged otherwise. “[W]hile many defenses would not run against a holder in due course, they could against a holder who was not in due course. AG Br. at 11-12 (citing RCW 62A.3-302, .3-305).” *BAIN V. METRO. MORTG. GRP., INC.*, 175 Wn.2d 83 (2012) at ¶ 54.

As Attorney-In-Fact for FDIC at the time of default, CHASE, because of its close connectedness to FDIC<sup>3</sup>, knew or should have known of Rutherford’s default on November 1, 2012 when it assigned itself the RUTHERFORD DOT<sup>4</sup>, and thus does not have the rights of a holder in due course and is subject to Rutherford’s claims<sup>5</sup>. And if Merry proves that the NOTE is a lost or stolen instrument, it is

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<sup>2</sup> CHASE assigned itself the RUTHERFORD DOT in its capacity as Attorney-In-Fact for FDIC on February 19, 2013 (CP p. 126). On May 8, 2013, QLS mailed its Notice of Default (CP pp. 170-183) to Rutherford. This Notice of Default states A: “the current owner of the Note secured by the Deed of Trust is: Federal National Mortgage Association. (CP p. 172), and B: “The Loan Servicer JP Morgan Chase Bank, N.A. is managing your loan.” (CP p. 174), and C: “The present beneficiary under said Deed of Trust alleges that you or your successors in interest are in default for the following reasons: **Failure to make the 11/1/2012 payment ...**” (CP p.174,bold added). CP p. 126 did not assign the Note, but only assigned the RUTHERFORD DOT, and that subsequent to the default while CHASE was in close connection to FDIC as its Attorney-In-Fact.

<sup>3</sup> “Under the judicially developed close connection doctrine, the purchaser of a negotiable instrument is not a holder in due course if the purchaser is too closely connected to his or her transferor. *Maynard v. England*, 13 Wn. App. 961, 970, 538 P.2d 551 (1975)”. *Wesche v. Martin*, 64 Wn. App. 1, 822 P.2d 812 (1992)

<sup>4</sup> “[H]older in due course” means the holder of an instrument if: ...The holder took the instrument...without notice that the instrument is overdue...”. RCW 62A.3-302(a)(2)(iii).

<sup>5</sup> “A person taking an instrument, other than a person having rights of a holder in due course, is subject to a claim of a property or possessory right in the instrument or its proceeds, including a claim to rescind a negotiation and to recover the instrument or its proceeds. A person having rights of a holder in due course takes free of the claim to the instrument.” RCW 62A.3-306

unenforceable against Rutherford and void because Rutherford is not obligated to pay it, RCW 62A.3-305(3)(c).

B. Purchase and Assumption Agreement.

CHASE relies on the 39 page Purchase and Assumption Agreement attached as Exhibit A to its Motion for Summary Judgment, CP pp. 29-72, and referred to by CHASE as a “self-authenticating public record pursuant to ER 902(a) and is available on the FDIC’s website at [www.fdic.gov/about/freedom/Washington Mutual P and A.pdf](http://www.fdic.gov/about/freedom/WashingtonMutualPandA.pdf)”, CP p. 22, lines 16-17. This document is not the document through which CHASE obtained the interest in the WAMU assets acquired from FDIC. The actual document, that CHASE chooses not to disclose<sup>6</sup>, is identified in *Jolley v Chase Home Financing, LLC.*, 213 Ca.;App. 4th 872 (2013), CP pp. 94-96, as a private 118 page purchase and assumption agreement. Collateral estoppel prevents CHASE from denying the existence and controlling elements of this private document<sup>7</sup>. Based on the decision in *Jolley*, this 118 page private document lists the assets under the control of

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<sup>6</sup> See unanswered Request for Production No. 4, CP p.150.

<sup>7</sup> “Collateral estoppel requires: “(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied.” *SCHROEDER V. EXCELSIOR MGMT. GRP., LLC*, 177 Wn.2d 94 (2013).

WAMU at the time of FDIC's take over, while the 39 page document does not. Based on the documents in the record on review, Merry maintains that the NOTE, was lost or assigned by WAMU to another party prior to the FDIC take over<sup>8</sup>, and if not lost or previously assigned would be identified in the real purchase and assumption agreement containing 118 pages. In *Jolley*, CHASE chose to forfeit the case rather than produce the real purchase and assumption agreement.

C. Attorney-In-Fact Did Not Assign The NOTE.

The assignment document under which CHASE claims it acquired the NOTE does not assign the NOTE. How CHASE came to be in possession of the NOTE is not revealed in the record on review or in the chain of title. Assignment of the security instrument does not negotiate the instrument it secures<sup>9</sup>.

D. CHASE's Status as Holder of the Original NOTE.

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<sup>8</sup> See Notice of Default, CP pp. 172, Fannie Mae is owner of the NOTE at that time. There is no public record of an assignment of ownership from Fannie Mae to anyone. There is no public record of an assignment of ownership from WAMU to anyone, including Fannie Mae. Deeds of trust are subject to all mortgage laws, RCW 61.24.020. Recording of assignment of mortgage or deed of trust is mandatory under RCW 61.16.010 or the assignee may not "acknowledge satisfaction of the mortgage, and discharge the same of record."

<sup>9</sup> "Washington's deed of trust act contemplates that the security instrument will follow the note, not the other way around." *Bain v. Metro Mortg. Grp., Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012).

CHASE has provided a declaration from Amber Alegria in Support of CHASE's Motion for Summary Judgment, CP 15. A photocopy of a note is attached thereto as Exhibit A, CP. Pp. 77-80. While Alegria declares that she has personal knowledge of the matters set forth in her declaration, she doesn't provide her qualifications for determining authenticity of original documents, or that she has personal knowledge of the creation and signing of the documents in the file she has access to. The NOTE copy provided by Alegria is otherwise unauthenticated. Merry objected to CP 15 as hearsay pending examination of the Alegria NOTE by the court, CP pp. 93-94. The NOTE was not produced for examination. All public documents in the record on review pertaining to the chain of title to the NOTE show that CHASE, at best, is a mere service provider, holding the NOTE in the capacity of caretaker, not as holder in due course, and without standing as holder in due course<sup>10</sup>.

CHASE also provided the same photocopy of the NOTE as Exhibit A to Declaration of Sunserayer W. Edwards, CP. 32 pp. 253-256. The Edwards Declaration fails for the same reasons as the Alegria Declaration. The declarant has personal knowledge of how CHASE records are kept, but no personal knowledge of creation of the original

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<sup>10</sup> See footnotes No. 4 and 10.

documents. Edwards dose not declare qualifications for determining authenticity of original documents, or personal knowledge of the signing of the documents in the file being accessed.

CHASE did not produce the original NOTE for inspection.

E. QLS as unlawful trustee.

This action was started after QLS recorded and served its notice of trustee's sale. The trustee's sale was subsequently discontinued prior to summary judgment for Respondents. Merry raised the issue of QLS's standing as a lawful trustee as his first cause of action in his complaint, CP 2, Complaint page 6, alleging that QLS was not appointed by a lawful beneficiary because CHASE was not assigned the NOTE by a lawful beneficiary<sup>11</sup>, CP 2, Complaint page 7, and thus lacked standing to substitute QLS as trustee under RCW 61.24<sup>12</sup>. Merry submitted further evidence of QLS's violations of RCW 61.24 in regard to its notice of trustee's sale, CP pp. 133-136, in his opposition to QLS's motion for summary judgment and motion for

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<sup>11</sup> "[W]hen an unlawful beneficiary appoints a successor trustee, the putative trustee lacks the legal authority to record and serve a notice of trustee's sale." *Walker v. Quality Loan Serv. Corp. of Wash.*, 176 Wn. App. 294 (2013).

<sup>12</sup> "Walker pleads facts sufficient to show that Quality and Select violated RCW 61.24.005(2) and former RCW 61.24.010(2) because Select was not a lawful beneficiary at the time it appointed Quality. Walker also pleads facts sufficient to establish a violation of former RCW 61.24.040 because he alleges that an unlawful trustee recorded and transmitted the notice of sale." *Walker*.

permission to amend his complaint, CP 26, and in his declaration in support, CP 27, showing evidence that QLS was not following the DTA at the times involved in the nonjudicial foreclosure of the RUTHERFORD DOT.

QLS did not offer or claim it had the proof of ownership required by RCW 61.24.030(7)(a). CHASE provided a copy of a beneficiary declaration letter in its pleadings, CP p. 185, signed by Douglas Theener as Vice President of CHASE, signed May 9, 2013, the day after Rodney McCumsey, Assistant Secretary for QLS mailed out his Notice of Default to Rutherford, CP pp.170-183, stating that Fannie Mae was the owner of the NOTE, CP p. 172. QLS was appointed substitute trustee by CHASE on April 24, 2013, CP pp. 166-167. If Fannie Mae was owner of the NOTE on May 8, 2013, CHASE could not have been, and its appointment of QLS as trustee was unlawful<sup>13</sup>. The recording of the notice of trustee's sale by QLS was therefore unlawful<sup>14</sup>.

By pleading facts sufficient to show CHASE and QLS violated the DTA, that if proved, would entitle him to relief against Respondents<sup>15</sup>,

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<sup>13</sup> See footnotes 11 and 12

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

the trial court's order dismissing his claims under CR 12(c) for violations of the DTA should be reversed<sup>16</sup>.

4. The NOTE is Unenforceable.

CHASE claims it is the owner/holder of the NOTE contrary to the public records, and claims the right to enforce the instrument because it is a mere holder. CHASE has never claimed to be a holder in due course, merely the "holder" of the NOTE<sup>17</sup>. It is this status of mere holder that Merry illuminates by raising Rutherford's defenses<sup>18</sup>.

"An obligor is not obliged to pay the instrument if the person seeking enforcement of the instrument does not have rights of a holder in due course and the obligor proves that the instrument is a lost or stolen instrument." RCW 62A.3-305(3)(c).

If Merry proves that the NOTE is a lost or stolen instrument, Rutherford is not obligated to pay it, it is unenforceable and a void instrument.

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<sup>16</sup> "Because Walker alleges facts that, if proved, would entitle him to relief, we reverse the trial court's order dismissing his claims under CR 12(c) for violations of the DTA..." *Walker*.

<sup>17</sup> "[S]o long as Chase holds the Note endorsed in blank, it makes no difference how Chase came to hold the note. Argument as to how Chase came to hold the Note is immaterial." CP p.25, lines 22-24.

<sup>18</sup> "[W]hile many defenses would not run against a holder in due course, they could against a holder who was not in due course. AG Br. at 11-12 (citing RCW 62A.3-302, .3-305)." *BAIN V. METRO. MORTG. GRP., INC.*, 175 Wn.2d 83 (2012) at ¶ 54.

5. Merry's Lien Priority Moves Up.

Merry is currently in 4<sup>th</sup> lien position. When the NOTE is ruled void his lien priority moves up to 3<sup>rd</sup> position, and his equity is defended from attempted theft by an imposter beneficiary.

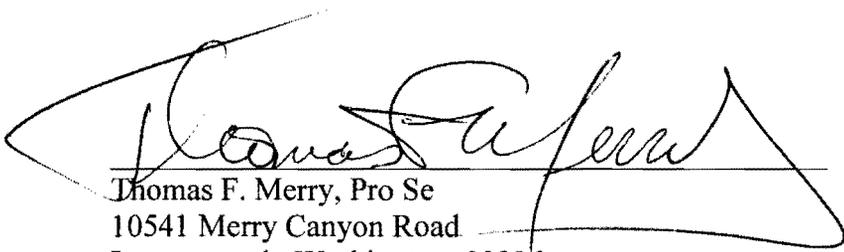
6. The Trial Court Had Jurisdiction to Provide Merry the Relief Requested.

With Merry's standing, under RCW 7.24 the trial court had jurisdiction to grant Merry the relief requested<sup>19</sup>.

**IV. CONCLUSION**

For the reasons stated above, Merry requests that the trial court's grant of summary judgment be reversed and that this matter be remanded to the trial court for further action consistent with that ruling.

RESPECTFULLY SUBMITTED this 22 day of September, 2014.

  
Thomas F. Merry, Pro Se  
10541 Merry Canyon Road  
Leavenworth, Washington, 98826  
(509)433-2263

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<sup>19</sup> "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 statute, municipal ordinance, contract or franchise, **may have determined any question of construction or validity arising under the instrument**, statute, ordinance, contract or franchise **and obtain a declaration of rights, status or other legal relations thereunder.**" RCW 7.24.020 (bold added)

DECLARATION OF SERVICE

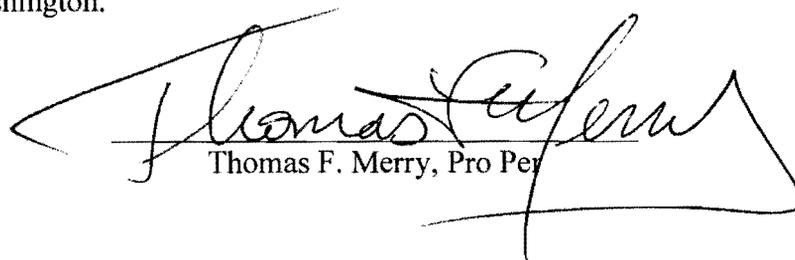
Thomas F. Merry, under penalty of perjury states:

That on September 22, 2014 I placed in the US Mail a copy of Brief of Appellant, Postage Prepaid, with sufficient first class postage affixed thereto to ensure delivery to the parties listed below. Also on this date I sent a copy of same by email to the same parties at the corresponding e-addresses listed below.

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Signed this 22nd day of September, 2014, at Leavenworth,  
Washington.

  
Thomas F. Merry, Pro Per

WHEN RECORDED MAIL TO:  
Quality Loan Service Corp. of Washington  
C/O Quality Loan Service Corporation  
411 Ivy Street  
San Diego, CA 92101

TS No.: WA-13-549711-SH

SPACE ABOVE THIS LINE FOR RECORDER'S USE

APN No.: 261819240100

Title Order No.: 130085435-WA-MSO

Grantor(s): GAERY D RUTHERFORD, JANET L RUTHERFORD

Grantee(s): WASHINGTON MUTUAL BANK

Deed of Trust Instrument/Reference No.: 2087664

### **NOTICE OF TRUSTEE'S SALE**

Pursuant to the Revised Code of Washington 61.24, et seq.

I. **NOTICE IS HEREBY GIVEN** that Quality Loan Service Corp. of Washington, the undersigned Trustee, will on 12/26/2014, at 10:00 AM The main entrance to the Chelan County Courthouse, 350 Orondo St., Wenatchee, WA 98801 sell at public auction to the highest and best bidder, payable in the form of credit bid or cash bid in the form of cashier's check or certified checks from federally or State chartered banks, at the time of sale the following described real property, situated in the County of CHELAN, State of Washington, to-wit:

**THE EAST 660 FEET OF THE FOLLOWING DESCRIBED: THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 26 NORTH, RANGE 18, EAST OF THE WILLAMETTE MERIDIAN, CHELAN COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS: COMMENCED AT THE WEST QUARTER CORNER OF SAID SECTION 19; THENCE NORTH 01°02'32" WEST ALONG THE WEST LINE THEREOF 614.88 FEET TO THE TRUE POINT OF BEGINNING. THENCE CONTINUING NORTH 01°02'32" WEST 346.06 FEET; THENCE SOUTH 89°48'20" EAST 2567.35 FEET TO THE EAST LINE OF THE SOUTH HALF OF THE NORTHWEST QUARTER OF SAID SECTION; THENCE SOUTH 00°35'48" WEST ALONG SAID EAST LINE 136.85 FEET TO THE CENTERLINE OF EASEMENT ROAD 60 FEET IN WIDTH; THENCE SOUTHERLY ON A CURVE TO THE RIGHT WITH A RADIUS OF 262.41 FEET AND A CENTRAL ANGLE OF 41°43'19", A DISTANCE OF 191.08 FEET; THENCE SOUTH 11°53'19" WEST 10.76 FEET; THENCE 89°48'20" WEST 2594.69 FEET TO THE TRUE POINT OF BEGINNING.**

More commonly known as:

**17600 CHUMSTICK HIGHWAY, LEAVENWORTH, WA 98826**

which is subject to that certain Deed of Trust dated 1/31/2001, recorded 2/6/2001, under 2087664 records of CHELAN County, Washington, from GAERY D RUTHERFORD AND JANET L RUTHERFORD, HUSBAND AND WIFE, as Grantor(s), to PIONEER TITLE COMPANY - WENATCHEE, A WASHINGTON CORPORATION, as Trustee, to secure an obligation in favor of WASHINGTON MUTUAL BANK, as Beneficiary, the beneficial interest in which was assigned by WASHINGTON MUTUAL BANK (or by its successors-in-interest and/or assigns, if any), to JPMorgan Chase Bank, National Association.

**EXHIBIT A, P1**

II. No action commenced by the Beneficiary of the Deed of Trust is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust/Mortgage.

III. The default(s) for which this foreclosure is made is/are as follows:  
Failure to pay when due the following amounts which are now in arrears: **\$39,391.38**

IV. The sum owing on the obligation secured by the Deed of Trust is: The principal sum of **\$157,818.95**, together with interest as provided in the Note from the **11/1/2012**, and such other costs and fees as are provided by statute.

V. The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. Said sale will be made without warranty, expressed or implied, regarding title, possession or encumbrances on **12/26/2014**. The defaults referred to in Paragraph III must be cured by **12/15/2014** (11 days before the sale date) to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time before **12/15/2014** (11 days before the sale) the default as set forth in Paragraph III is cured and the Trustee's fees and costs are paid. Payment must be in cash or with cashiers or certified checks from a State or federally chartered bank. The sale may be terminated any time after the **12/15/2014** (11 days before the sale date) and before the sale, by the Borrower or Grantor or the holder of any recorded junior lien or encumbrance by paying the principal and interest, plus costs, fees and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI. A written Notice of Default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor at the following address(es):

NAME

**GAERY D RUTHERFORD AND JANET L RUTHERFORD, HUSBAND AND WIFE**

ADDRESS

**17600 CHUMSTICK HIGHWAY, LEAVENWORTH, WA 98826**

by both first class and certified mail, proof of which is in the possession of the Trustee; and the Borrower and Grantor were personally served, if applicable, with said written Notice of Default or the written Notice of Default was posted in a conspicuous place on the real property described in Paragraph I above, and the Trustee has possession of proof of such service or posting. These requirements were completed as of **5/9/2013**.

VII. The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII. The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX. Anyone having any objections to this sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

**NOTICE TO OCCUPANTS OR TENANTS – The purchaser at the Trustee's Sale is entitled to possession of the property on the 20<sup>th</sup> day following the sale, as against the Grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants who are not tenants. After the 20<sup>th</sup> day following the sale the purchaser has the right to evict occupants who are not tenants by summary proceedings under Chapter 59.12 RCW. For tenant-occupied property, the purchaser shall provide a tenant with written notice in accordance with RCW 61.24.060.**

**THIS NOTICE IS THE FINAL STEP BEFORE THE FORECLOSURE SALE OF YOUR HOME.**

**EXHIBIT A, P2**

You have only 20 DAYS from the recording date of this notice to pursue mediation.

**DO NOT DELAY. CONTACT A HOUSING COUNSELOR OR AN ATTORNEY LICENSED IN WASHINGTON NOW** to assess your situation and refer you to mediation if you are eligible and it may help you save your home. See below for safe sources of help.

#### SEEKING ASSISTANCE

Housing counselors and legal assistance may be available at little or no cost to you. If you would like assistance in determining your rights and opportunities to keep your house, you may contact the following:

The statewide foreclosure hotline for assistance and referral to housing counselors recommended by the Housing Finance Commission: Toll-free: **1-877-894-HOME (1-877-894-4663)** or Web site: [http://www.dfi.wa.gov/consumers/homeownership/post\\_purchase\\_counselors\\_foreclosure.htm](http://www.dfi.wa.gov/consumers/homeownership/post_purchase_counselors_foreclosure.htm).

The United States Department of Housing and Urban Development: Toll-free: **1-800-569-4287** or National Web Site: <http://portal.hud.gov/hudportal/HUD> or for Local counseling agencies in Washington: <http://www.hud.gov/offices/hsg/sfh/hcc/fc/index.cfm?webListAction=search&searchstate=WA&filterSvc=dfc>

The statewide civil legal aid hotline for assistance and referrals to other housing counselors and attorneys: Telephone: **1-800-606-4819** or Web site: <http://nwjustice.org/what-clear>.

If the sale is set aside for any reason, including if the Trustee is unable to convey title, the Purchaser at the sale shall be entitled only to a return of the monies paid to the Trustee. This shall be the Purchaser's sole and exclusive remedy. The purchaser shall have no further recourse against the Trustor, the Trustee, the Beneficiary, the Beneficiary's Agent, or the Beneficiary's Attorney.

If you have previously been discharged through bankruptcy, you may have been released of personal liability for this loan in which case this letter is intended to exercise the note holders right's against the real property only.

**EXHIBIT A, P. 3**

QUALITY MAY BE CONSIDERED A DEBT COLLECTOR ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE

As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit report agency if you fail to fulfill the terms of your credit obligations.

Dated:

**AUG 22 2014**

  
Quality Loan Service Corp. of Washington, as Trustee  
By: Tricia Moreno, Assistant Secretary

Trustee's Mailing Address:  
Quality Loan Service Corp. of Washington  
C/O Quality Loan Service Corp.  
411 Ivy Street, San Diego, CA 92101  
(866) 645-7711

Trustee's Physical Address:  
Quality Loan Service Corp. of Washington  
108 1<sup>st</sup> Ave South, Suite 202  
Seattle, WA 98104  
(866) 925-0241

**Sale Line: 714-730-2727**  
**Or Login to: <http://wa.qualityloan.com>**  
**TS No.: WA-13-549711-SH**

State of: California  
County of: San Diego

On **AUG 22 2014** before me, Ashley Maxwell a notary public, personally appeared Tricia Moreno, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under *PENALTY OF PERJURY* under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature  (Seal)  
Ashley Maxwell



**EXHIBIT A, P. 4**