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## **I. INTRODUCTION**

The Brief of Appellants substantially misstates the nature of the proceeding below. It asserts Assignments of Error respecting matters which the trial court did not address. In addition the Assignments of Error reference portions of the record which do not appear to relate to the alleged Assignments of Error.

With respect to the trial court's determination that Respondent, RON DICKINSON ("DICKINSON"), was a bona fide purchaser for value ("BFP") at the trustee's sale that is the subject matter of this litigation, the Assignments of Error misstate the procedural nature of that determination which was resolved at the summary judgment level not at trial.

Lastly, Appendix "F" to the Brief of Appellants contains materials which are not, so far as the undersigned is aware, contained in the record of the trial court. Appendix "F", therefore, should be stricken and disregarded by this Court, entirely.

## **II. APPELLANTS' ASSIGNMENTS OF ERROR**

Appellants' ("Albice/Teccas") recitation of their first three Assignments of Error is confusing and may mislead this Court as to the trial court's rulings below. See Brief of Appellants at 1-2.

First, Albice/Teccas' references to the pages in the Clerk's Papers where the alleged errors are reflected in the record, are largely inaccurate. For example, Albice/Teccas' first Assignment of Error alleges that the trial court erred in ruling that the "Dickinsons" (sic) were bona fide purchasers (sic) for value ("BFP"). The conclusion that Dickinson was a BFP was articulated by the trial court in its letter ruling on Appellants' Motion for Summary Judgment dated May 11, 2008 (CP at 184) and its Order on Cross Motions for Summary Judgment, Motion for Reconsideration, and Motion to Strike Reconsideration. (CP at 145).

However, there are references to the record attached to the first Assignment of Error to the trial court's Findings of Fact and Conclusions of Law (see Appendix A) and to its Judgment entered after its one issue trial held on March 24, 2009. Brief of Appellants at 1.

There were only two issues left for trial after the trial court's letter ruling dated June 26, 2008 (CP at 108-110) and its Order Granting Dickinsons' Motion for Reconsideration and Denying Albice/Tecca's Motion for Summary Judgment (CP at 100-102). The first issue for trial was whether or not the successor trustee on the Deed of Trust, Premier Mortgage Services of Washington, Inc. ("Premier"), had any officer who was a resident of the State of Washington at the time of the trustee's sale. CP at 109. The second issue was whether or not Respondents, Ron and

Cheryl Dickinson (“Dickinsons”), were entitled to a judgment for their damages resulting from Albice/Teccas’ denying them the use and possession of the property following the trustee’s sale.

Accordingly, none of the Findings of Fact and none of the Conclusions of Law entered by the Court following trial addressed whether or not Dickinson was a BFP. CP at 48-53. Likewise, the trial court’s Judgment entered after trial did not directly address Dickinson’s status as BFP. CP at 45-47.

With respect to Assignment of Error number 2, Dickinsons would urge that the trial court did not ever conclude that “the trustee could continue and conduct a non-judicial Deed of Trust Foreclosure (sic) to a date that was more than 120 days after the date originally set for sale.” Quite the contrary, the trial court ruled that the continuance “was in clear violation of the Washington Deed of Trust Act, . . .” CP at 183.

Whether or not the continuance of this sale to the actual date of sale, February 16, 2007, was a violation of the statute will be discussed in some detail below because it tangentially relates to Dickinson’s BFP status. See Section VI at pages 34-35 below. However, it is clear that the trial court did not condone the continuance and did not conclude that a sale could be extended beyond the 120 days set forth in RCW 61.24.040(6). Rather, the trial court’s inquiry was “whether this violation of the act voids the sale as to

a bona fide purchaser for value....” CP at 184. The trial court did conclude that what it considered a violation of the statute would not void the sale as to Dickinson because he was a BFP. CP at 184. Dickinsons will urge below that, in this case, the extension of the trustee’s sale date to February 16, 2007 was not a violation of this statutory provision, in any event. See Section VI (B) at pages 28-30 below.

None of the citations to the Clerk’s Papers associated with the second Assignment of Error references a conclusion by the trial court that the Trustee could continue and could conduct a foreclosure sale more than 120 days after the date originally set for the sale.

With respect to Assignment of Error number 3, Albice/Teccas never presented any evidence to the trial court that they had tendered funds sufficient to cure the defaults more than eleven days prior to the trustee’s sale scheduled for February 16, 2007. Accordingly, Dickinsons never had the opportunity to respond to any such evidence at the trial court and the trial court was never asked to rule on whether or not Albice/Teccas had so tendered and, in fact, did not make a ruling on that issue. Albice/Teccas should not be permitted to raise this issue for the first time on appeal. This Assignment of Error appears to be totally fictitious.

### **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

#### **A. Appellants' Issues Pertaining to Assignments of Error**

Based upon the foregoing comments with respect to Assignments of Error numbers 2 and 3, those Assignments of Error should not be considered matters before this Court. Accordingly, Issues numbered 2 and 3, pertaining to those Assignments of Error, are not Issues before this Court. Dickinsons would respectfully submit that the only appropriate descriptions of the Issues which Appellants desire to raise pertaining to those Assignments of Error which are accurately stated are Issues numbered 1, 4 and 5. Brief of Appellants at 2-3.

#### **B. Respondents' Issues Pertaining to Assignments of Error.**

More appropriately, however, based upon the Assignments of Error and Argument presented in the Brief of Appellants, Dickinsons believe that this Court should focus on the following issues on this appeal.

1. Does the Trustee's Deed issued to Dickinson by Premier Mortgage contain the recitals required by RCW 61.24.040(7)? (Argued in the Brief of Appellants without Assignment of Error.)

2. Are there any genuine issues of material fact relating to whether or not Dickinson is a BFP? (Assignment of Error number 1)

3. Based upon the material facts as to which there were no genuine issue presented on the parties' cross Motions for Partial Summary

Judgment and Summary Judgment, did the events surrounding the trustee's sale of the Albice/Teccas' property create a duty in Dickinson to inquire into possible flaws in the foreclosure process? (Assignment of Error number 1)

4. Is there substantial evidence in the record to support the trial court's Finding of Fact number 1.1.10 respecting the existence of a resident officer for Premier? (Assignment of Error number 5)

5. Are Conclusions of Law 2.1 through 2.4 respecting Premier's authority to act as a trustee at the time of the trustee's sale pursuant to the Deed of Trust Act, Chapter 61.24 RCW, accurate reflections of the law of the State of Washington and supported by unchallenged Findings of Fact numbers 1.1.4 through 1.1.9 and substantial evidence supporting Finding of Fact number 1.1.10? (Assignment of Error number 5)

6. Is there substantial evidence in the record to support Findings of Fact numbers 1.2.3, 1.2.4, 1.2.8 and 1.2.9 respecting the deprivation of Dickinsons' possession and use of the property and the measure of damages therefore? (Assignment of Error number 6)

7. Are Conclusions of Law numbers 2.5 through 2.9, respecting Dickinsons' damages, accurate reflections of the law of the State of Washington and supported by unchallenged Findings of Fact numbers 1.2.1, 1.2.2, 1.2.5, 1.2.6 and 1.2.7 and substantial evidence supporting Findings of Fact numbers 1.2.3, 1.2.4, 1.2.8 and 1.2.9? (Assignment of Error number 6)

**IV. RESPONDENTS' STATEMENT OF THE CASE**

**A. Factual Background**

Except as set forth below, Dickinsons agree with the factual background set forth at pages 3-11 of the Brief of Appellants which is material to the issues before this Court.

The "fair market value" of the property is not clearly established in the record.

Although specifically noted in the trial court's Order on Cross Motions for Summary Judgment, Motion for Reconsideration, and Motion to Strike Reconsideration as "documents and evidence that was brought to the Court's attention before the Order on Summary Judgment was entered", (CP at 144) the Declaration of "Karen Tecca Dated 5/18/2007" and the "Declaration of Christa Albice" were not included in Appellants' Designation of Clerk's Papers and Exhibits. CP at 1-12, 833-835.

Accordingly, on December 15, 2009 Dickinsons filed with the trial court Defendants' Supplemental Designation of Clerk's Papers identifying these two items of evidence and one other that was before the trial court for purposes of resolving the cross Motions for Partial Summary Judgment and for Summary Judgment. CP at \_\_\_\_\_.

In these Declarations, Ms. Albice and Ms. Tecca, two of the Appellants and previous owners of the property purchased by Dickinson at

the foreclosure sale, rendered opinions that the property had a value of \$750,000.00. Although these Declarations are part of the Clerk's Papers pursuant to RAP 9.6(a), they have not yet been assigned page numbers under the Clerk's Papers.

In their Complaint (CP at 788) and their Second Amended Complaint (CP at 642) Albice/Teccas alleged that:

“The parcel of property foreclosed upon has an assessed, taxable value of \$428,555.00 and a fair market value of \$750,000.00 or more.”

Albice/Teccas submitted an appraisal dated November 17, 2007 prepared by M.S. Preppernau indicating “Market Value” of \$950,000.00. CP at 386-410.

Albice/Teccas submitted, as Exhibit K to Ms. Tecca's May 18, 2007 Declaration, an appraisal dated April 11, 2003, also prepared by M.S. Preppernau, indicating a market value of \$607,000.00. CP at \_\_\_\_\_.

In addition, the record contains Dickinson's opinion of value. In his deposition, taken on May 1, 2007 (two and one-half months after the date of the trustee's sale) which was published, marked and admitted as Exhibit 40 at trial (RP at 77), Dickinson testified that the house located on the property was

“dilapidated . . . in dire need of repair. The roof needs to be fixed, gutters are falling off, the windows are shot out from vandals. Basically, if I, you know, end up retaining the

property through this whole thing, I'll probably end up taking the house down and starting over because its not hardly worth saving." Ex. 40 at 15-16.

Dickinson testified that the assessed value of the property was \$428,000.00. Ex. 40 at 26-27. He further testified that the fair market value was about the same as the assessed value because the home on the property was basically a tear down and it would be expensive to tear down and rebuild the improvements. Ex. 40 at 27.

This testimony, was not in the record before the trial court at the time of its ruling on Dickinsons' Motion for Partial Summary Judgment holding that Dickinson was a BFP. Counsel for Albice/Teccas had placed before the Court two Declarations purporting to present "true and accurate portions of the transcript" of this deposition.

The first was titled "Declaration of Jonathan Blado Regarding Documents of Public Record and Deposition of Ron Dickinson" and was filed with the trial court on May 24, 2007 ("First Blado Declaration re: Dickinson Deposition"). Albice/Teccas did not identify this document in either of their Designations of Clerk's Papers. This document was identified in Defendants' Supplemental Designation of Clerk's Papers filed with the trial court on December 15, 2009, however, it has not yet been assigned page numbers under the Clerk's Papers.

The second such Declaration was titled "Declaration of Jonathan Blado Regarding Documents and Deposition of Ron Dickinson" and was filed with the trial court on February 29, 2008 ("Second Blado Declaration re: Dickinson Deposition"). CP at 411-451.

Both of these Declarations were before the trial court at the time it ruled at the conclusion of oral argument on the Dickinsons' Motion for Partial Summary Judgment and Albice/Teccas' Motion for Summary Judgment. CP at 343-345. That hearing was held on April 7, 2008.

Even though Albice/Teccas had put in issue the adequacy of the purchase price at the trustee's sale (CP at 331, 336-337) and had placed before the trial court their own opinions of value of the property and the Declaration of M.S. Preppernau (CP at 386-410) submitting an opinion of value of the property, the Declarations respecting the deposition of Ron Dickinson, carefully excluded his testimony as to the condition of the house and the fair market value of the property. CP at 411-451 and Ex. 40 at pg. 27.

The terms of the Forbearance Agreement required Albice/Teccas to make a down payment and six, not five (Brief of Appellants at page 5), subsequent monthly payments of \$1,220.14. CP at 460. CP at 466. These monthly payments were payable on August 16, 2006, September 16, 2006,

October 16, 2006, November 16, 2006, December 16, 2006 and January 16, 2007.

The Teccas did pay the \$3,000.00 down payment timely, but each of the six subsequent monthly payments was paid delinquent. See Exhibits C-H to Declaration of Karen Tecca filed May 24, 2007. CP at \_\_\_\_\_.

The Brief of Appellants, at page 6, references “Ex. 24 through 30 (none of which were admitted at trial)”, “Ex. 26 (not admitted)” and “Ex. 27 (not admitted)”. It is not clear to the undersigned that these Exhibits, which were a portion of Albice/Teccas’ (Plaintiffs’) Exhibits offered at trial (RP at ii) are included in the record before this Court. They are not identified on the Clerk’s Papers Index although Albice/Teccas included a request for all Exhibits in the Designation of Clerk’s Papers and Exhibits. CP at 37-38. If they are in the record, as non-admitted exhibits, they should be disregarded by this Court. There is no Assignment of Error respecting the trial court’s rulings on the admissibility of evidence.

As was true with respect to the previous five monthly payments, the sixth and final monthly payment was forwarded by Karen Tecca via Western Union, late and in default of the Forbearance Agreement. Although it was due January 16, 2007 (CP at 466), it was not forwarded until February 2, 2007. See Exhibit H to the Declaration of Karen Tecca filed May 24, 2007. CP at \_\_\_\_\_. At the time Ms. Tecca delivered the funds to Western

Union in Puyallup, the payment was already seventeen days delinquent. CP at 454, lines 13-14.

The citations to the record at page 6 of the Brief of Appellants do not confirm Albice/Teccas' representation of fact that Ms. Tecca contacted Option One after her delinquent payment forwarded on February 2, 2007 from Karen Tecca to Option One. Exhibit H to the Declaration of Karen Tecca filed May 24, 2007 does contain what purports to be a copy of a facsimile transmission from Ms. Tecca to Option One dated February 12, 2007 CP at \_\_\_\_\_. In addition, the citations to the record at page 6 of the Brief of Appellants, purporting to support the representation of fact that Ms. Tecca received no response to her inquiry, do not, in fact, support that representation of fact. There are indications in the record, however, that Option One made several attempts to reach the Albice/Teccas between January 31, 2007 and February 16, 2007.

On January 31, 2007, Option One Mortgage Corporation ("Option One") sent a letter to the Teccas, at their home, informing them that they had breached the "repayment agreement" and that the agreement was, therefore, null and void. Exhibit "C" to, and paragraph 5 of, the Declaration of Lisa Clary in Support of Dismissal filed with the trial court on April 27, 2007 ("Declaration of Clary"). This document was not included in either of Albice/Teccas' designations of Clark's papers. Accordingly Dickinsons

included it in their Second Supplemental designation of Clark's papers. No designation of page numbers in the Clark's papers. CP at \_\_\_\_.

This letter further informed the Teccas that the foreclosure proceedings would "continue" without further demand. Exhibit "C" to the Clary Declaration. CP at \_\_\_\_.

Lastly the letter provided a toll free contact number for Option One's "Borrower's Assistance Team" and encouraged the Teccas to call if they had any questions. Paragraph 5 of the Declaration of Clary. CP at \_\_\_\_.

There is no indication in the records of Option One that this letter was returned to sender for any reason. Id.

Option One maintained a Consolidated Notes Log ("Log") for the Teccas' account. CP at 280-281 and 301-304. This Log documents any conversations or accounts throughout the loan. CP at 281. According to this Log, Option One made two contacts on February 1, 2007 with a person at a business number associated with this account and left messages to return the call. CP at 301. Again, on February 2, 2007, Option One made two calls to a business number associated with the account and left messages to return the call.

On February 2, 2007 at "16:06", 4:06 PM in the afternoon, Karen Tecca placed funds in the amount due on January 16, 2007 with Western

Union. CP at 300. The Court is asked to take judicial notice of the fact that February 2, 2007 was a Friday. See Appendix "B".

On Monday, February 5, 2007, the Log indicates that Option One recognized that its cashier had received the Western Union payment late on February 2, 2007. CP at 301. Also on February 5, 2007, Option One immediately rejected the payment, directed Western Union to return it to the Teccas and sent a letter to the Teccas that the payment was being returned, stating the reason therefore, i.e., that the payment was not enough to bring the loan current. CP at 279-280, 302.

The Log further indicates that Option One made ten calls to either the borrowers' home number or the business number associated with their account between February 5, 2007 and February 13, 2007. CP at 302-304. On the eight occasions, when it "made contact" with persons or answering machines, Option One left messages for return calls. Id. There is no indication in the Log that the calls were returned. Also, there is no indication in the Log that Option One received any phone calls from Karen Tecca or the purported facsimile transmission from Ms. Tecca dated February 12, 2000 which is attached as Exhibit "H" (CP at \_\_\_ ) to Ms. Tecca's Declaration filed May 24, 2007. CP at 301-304.

Ms. Teresa Harding was identified by the Dickinsons as an officer of Premier as early as May 11, 2008. Her identity was communicated to the

trial court on May 9, 2008 by counsel for the Dickinsons. Unfortunately, Dickinsons' counsel failed to provide a copy of the Declaration identifying Ms. Harding as an officer when the same was filed with the trial court. However, the information forwarded to the trial court was forwarded to Albice/Teccas by the trial court in its letter ruling on Plaintiffs' Motion for Summary Judgment dated May 11, 2008. CP at 183-186.

Accordingly, Ms. Harding's identity was known to Albice/Teccas well before the March 24, 2009 trial date. Counsel for Albice/Teccas took the Deposition of Ms. Harding on August 22, 2008. Any inference to the effect that Ms. Harding's identity did not "emerge" until "shortly before trial", somehow prejudicing Albice/Teccas, is misplaced. See Brief of Appellants at page 8.

The representation that Ms. Harding did not become a resident of Washington until October 2004 is not established anywhere in the record of the trial court, including the portion thereof cited by Albice/Teccas at page 8 of the Brief of Appellants.

Dickinson's highest level of formal education is graduation from high school. Ex. 40 at page 7. He has never held licenses for real estate sales, real estate brokerage, mortgage brokerage or real estate appraisal. Ex. 40 at page 7. He has never been involved in a lawsuit where someone

challenged a foreclosure sale at which he bought property. Ex. 40 at page 17.

Dickinson had been purchasing properties at foreclosure sales for eight or nine years at the time of the foreclosure sale at issue. Ex. 40 at pg. 33. Prior to that he worked on a crab boat, worked in a saw mill, ran a tugboat and was a truck driver and a heavy equipment operator. Ex. 40 at 34.

Dickinsons' Answer (CP at 685-692) contains the following allegations labeled "Affirmative Defenses":

2.7 Neither Ron Dickinson nor Cheryl Dickinson had any knowledge of a forbearance agreement between plaintiffs and defendants Premier Mortgage Services of Washington, Inc. or Option One Mortgage Corporation.

2.8 Neither Ron Dickinson nor Cheryl Dickinson had any knowledge of any agreements, payments, defaults, or other acts or omissions that occurred from the time of default through the date of Trustee's Sale and which involved plaintiffs and defendants Premier Mortgage Services of Washington, Inc. and Option One Mortgage Corporation.

2.9 Neither Ron Dickinson nor Cheryl Dickinson had any knowledge of defects in the Trustee's Sale, if any such defects are deemed to exist.

2.10 Ron Dickinson and Cheryl Dickinson are bona fide purchasers for value of the real property, having relied upon the published notices, recorded notices and continuances of the sale announced by agents of Premier Mortgage Services of Washington, Inc. at the Mason County Courthouse.

CP at 687.

Dickinson never spoke to anyone at Option One prior to the sale. First Blado Declaration re Dickinson Deposition at pg. 7. CP at \_\_\_\_\_. Prior to the sale, he did have a brief conversation with Karen Tecca at her home. First Blado Declaration re: Dickinson Deposition at pages 6-7. CP at \_\_\_\_\_. This contact was initiated by Dickinson so he could offer to purchase the property prior to the sale. Id. The conversation was very brief, approximately one minute. First Blado Declaration re: Dickinson deposition at page 12. CP at \_\_\_\_\_. Ms. Tecca declined Mr. Dickinson's offer to buy the property and was primarily dismissive of the contact. Id. During the conversation, Ms. Tecca did not disclose the existence of a forbearance agreement or any details respecting the foreclosure process or details respecting her intention to cure the default. Id.

Dickinson did contact the trustee prior to the sale to find out when the sale was going to proceed or if it was gong to proceed. First Blado Declaration re: Dickinson Deposition at pgs. 7, 9-10. CP at \_\_\_\_\_. This contact was either through a recorded "sale line" or through a live person. Id.

Dickinson had no knowledge that there were statutory time limits on the continuance of a trustee's sale. Ex. 40 at pg. 30.

Dickinson's "research" of the property consisted of obtaining an over the counter property profile at the title company and a "narrow" view of the property approximately one week before the originally scheduled Trustee's Sale date Ex. 40 at Page 15.

V. **SUMMARY OF ARGUMENT**

Dickinsons urge that the overall inquiry for this Court is to determine if there are issues of Dickinson's status as a BFP and issues related to trustee's sale procedure which are significant enough to void the trustee's sale at issue *in a post sale challenge*.

The background for that inquiry is that there are three goals underlying the Washington Deed of Trust Act, Chapter 61.24 RCW. Those goals are,

"(1) that the nonjudicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles."

Plein v. Lackey, 149 Wn.2d 214, 225, 67 P.3d 1061 (2003).

Courts need to be extremely cautious about voiding sales *in the post sale context* to preserve and foster these goals.

Undermining public confidence in the finality of foreclosure sales is contrary to the [Deed of Trust] Act's goals of promoting efficient, inexpensive, and procedurally sound foreclosures and the stability of land titles.

Udall v. T.D. Escrow Services, Inc., 159 Wn.2d 903, 916, 154 P.3d 882 (2007).

Dickinsons argue that nothing in the record before this Court is significant enough to warrant the extraordinary relief sought by Appellants, i.e., to set aside the completed foreclosure sale at issue.

First, the Trustee's Deed contains those recitals required by RCW 61.24.040(7). Appendix G to Brief of Appellants.

Second, there were no material facts or circumstances, based upon the undisputed facts before the trial court when it determined that Dickinson was a BFP, which militate against the trial court's ruling. See below at Section VI(B), pgs. 21 - 23.

Third, as a BFP, Dickinson is entitled to the benefit and protection of RCW 61.24.040(7) which provides that the recitals are *conclusive evidence* of compliance with the requirements of the Deed of Trust Act, Chapter 61.24 RCW as to a BFP.

Lastly, Albice/Teccas wrongfully deprived Dickinsons of the use and possession of the property from the date of the trustee's sale, to the date of the trial court's Judgment. Dickinsons are statutorily entitled to judgment for their damages for this wrongful deprivation. See below at Section VI(G), pages 39-44.

Based upon the foregoing, the trial court should be affirmed on all issues.

## **VI. ARGUMENT**

**A. The Trustee's Deed delivered to Dickinson by Premier following the foreclosure sale contains recitals sufficient to satisfy the requirements of RCW 61.24.040(7).**

Although not raised before the trial court, identified in any Assignment of Error or any issue pertaining to Assignments of Error identified in the Brief of Appellants, Albice/Teccas argue at page 18 of the Brief of Appellants that Premier's Trustee's Deed did not contain sufficient recitals to satisfy RCW 61.24.040(7).

Apparently Albice/Teccas are asserting that, even if Dickinson was a BFP, the Trustee's Deed contained insufficient recitations with respect to compliance with the Deed of Trust Act to permit Dickinson to enjoy the protection of the conclusive evidence rule of RCW 61.24.040(7). Brief of Appellants at 17-18. The insufficiencies alleged are that the recitations did not include "specific statements of fact that the sale was held within 120 days of the date originally set for the sale or that the trustee was duly qualified to act as a trustee in Washington State." Brief of Appellants at 18.

Not surprisingly, Albice/Teccas cite no authority for the proposition that these specific recitations are required to be included in a trustee's deed

by RCW 61.24.040(7). No cases holding that those specific recitations are required have been found by the undersigned.

RCW 61.24.040(7) indicates that,

“. . . the [trustee's] deed shall recite facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, . . .

The trustee's deed in this case included extensive recitations respecting compliance with the Deed of Trust Act and the deed of trust. See recital paragraphs 1-10 of Premier's Trustee's Deed, Appendix G to the Brief of Appellants. These recitals serve the purpose set forth in the quoted portion of the statute.

Attached hereto as Appendix C is the form of trustee's deed recommended by the Washington State Bar Association in the Washington Real Property Deskbook, 3d Ed. (Wash. State Bar Ass'n. Supp. 2001), §47.11 (16). The recommended form is virtually identical to Premier's Trustee's Deed. Appendix G to the Brief of Appellants.

Albice/Teccas' argument that the recitals in the Trustee's Deed are insufficient to satisfy the requirements of RCW 61.24.040(7) is not supported by any case law and is without merit.

**B. There are no genuine issues of material fact relating to the trial court's ruling on Dickinsons' Motion for Partial Summary Judgment that Dickinson was a BFP.**

Next, Albice/Teccas argue that “Dickinsons were not bona fide purchasers for value” because they were on notice of defects in the sale and either ignored the defects or failed to inquire further about the defects. Brief of Appellants at 18. Strictly speaking, the trial court’s ruling deals only with the determination that Ron Dickinson was a BFP. CP at 145. Ron Dickinson was the purchaser at the sale and is the grantee on the Trustee’s Deed. See Appendix G to the Brief of Appellants.

Dickinson, on the basis of the evidence before the trial court at the time of the oral argument on the parties’ cross Motions for Partial Summary Judgment and Summary Judgment was a BFP. He purchased the property at the trustee’s sale without any knowledge, actual or constructive, of competing interests. Glaser v. Holdorf, 56 Wn.2d 204, 209, 352 P.2d 212 (1960). Specifically he did not know, and was not on notice of, any defects in the sale.

It is not disputed that, at the time the trial court determined Dickinson to be a BFP on Dickinsons’ Motion for Partial Summary Judgment, the undisputed facts of record were as follows:

1. Dickinson had been employed in the business of investing in real estate for eight to nine years prior to the trustee’s sale at issue. CP at 413-415. First Declaration of Blado re: Dickinson Deposition at 12. CP at \_\_\_\_.

2. In the course of that business he had attended non-judicial trustees' foreclosure sales and had acquired at least eight properties through those sales. CP at 431-417.

3. Dickinson was not an attorney. CP at 427.

4. Prior to the sale Dickinson had (a) reviewed the Notice of Trustee's Sale, CP at 419, (b) contacted Premier to ascertain the status of the Trustee's Sale, CP at 425, (c) had a very brief conversation with Karen Tecca, one of the grantors on the Deed of Trust, who rejected his offer to purchase the property prior to sale and informed him that she intended to cure the default prior to the sale, First Declaration of Blado re: deposition of Dickinson at pg. 12. CP at \_\_\_\_, (d) conducted a "narrow" view of the property and noticed the house was in a dilapidated condition, CP at 420, (e) become aware that the original scheduled date for the trustee's sale was in September, 2006, that the sale had been continued and that the sale ultimately took place on February 16, 2007, CP at 421-422, 426, and (f) had familiarized himself with various Washington foreclosure laws to a "degree." CP at 427.

Dickinson's knowledge or lack of knowledge with respect to the 120 day limitation on the continuance of trustee's sales set forth at RCW 61.24.060 was not a part of the record at that time despite the fact that

Albice/Teccas' counsel knew that Dickinson testified under oath that he did not know about any such statutory limitations. Ex. 40 at 30.

Albice/Teccas argued to the trial court at the time of the ruling that Dickinson was a BFP, and argued before this Court that Dickinson knew that a 161 day continuance of the sale from the originally scheduled sale date was indicative of defect. They have presented these arguments despite the fact there is no evidence in the record that he had that knowledge and that Dickinson testified that he did not even know there was a 120 day limitation. Their argument is that the length of the continuance is a basis for Dickinson's constructive knowledge of defects in the foreclosure process defeating his BFP status.

Albice/Teccas also did not make known to the trial court, though within the knowledge of their counsel at that time, the facts that Dickinson had testified under oath that he had only a high school education, had been employed during the majority of his life as a manual laborer and had never held any licenses for dealing in real estate in any way. Exhibit 40 at pg. 7 & 33-34.

Dickinsons are aware, however, that this Court, pursuant to RAP 9.12, will not consider on this appeal those matters which were not before the trial court at the time of its BFP ruling. Nevertheless, those matters are a part of the record and are referenced herein to underscore the

appropriateness of the trial court's ruling with respect to Dickinson's BFP status even though that ruling was based upon a record which Albice/Teccas' counsel intentionally limited.

On the basis of the facts before the court on summary judgment, Albice/Teccas argue that Dickinson was on notice, at the time of the trustee's sale, of possible defects in the process, and could therefore not be a BFP.

The undisputed evidence of pre-sale knowledge by Dickinson set forth above, place this case squarely within the fact pattern described in Steward v. Good, 51 Wn. App. 509, 513, 754 P.2d 150 (1988). In that case, the status of the purchaser at a trustee's sale was challenged in post-sale litigation based upon a theory of constructive, as opposed to actual, knowledge. The trial court and Division I of the Court of Appeals rejected the challenge to BFP status. *Id* at 510 and 513.

The basic facts in Steward v. Good are only slightly distinguishable from the facts before the trial court in this case.

As with the Goods, Albice/Teccas presented no facts or inferences from any facts, viewing the evidence in the light most favorable to Albice/Teccas, that Dickinson had any notice of defects in the sale. *Id* at 513. Nor was evidence presented by Albice/Teccas that he was aware of Albice/Teccas' claim to, right to, or equity in, the property that might defeat

a trustee's deed. Id. Like the Goods, Dickinson had not met with the successor trustee or the beneficiary of the deed of trust and had not had any communication from them that would indicate any defects in the procedure. Id.

There are two distinctions between the fact pattern in Steward v. Good and the fact pattern in this case, worth commenting upon, but not significant enough to dictate a different result and a holding that the undisputed facts before the trial court do not dictate a ruling that Dickinson was a BFP.

First, Dickinson, unlike the Goods, had been in the business of buying and selling real property for a period of eight to nine years and had participated in, and purchased property at, non-judicial deed of trust foreclosure sales. CP at 415-417. The Goods had "little real estate investing, experience." Id at 513.

Second, Dickinson did have a very brief conversation with one of the grantors on the Deed of Trust prior to the sale and there is no indication in the trial court record that the Goods had any contact with the Stewards. Id at 510-514.

Albice/Teccas ask this Court to make a giant leap from the fact that Dickinson had participated in, and acquired property at, prior trustee's sales; to a conclusion that he knew or must have known that, statutorily, and with

limited exceptions, the trustees' sale could not be continued more than 120 days from the originally scheduled date of sale. Albice/Teccas made no record for the trial court's attention respecting the degree to which Dickinson had reviewed the Deed of Trust Act. CP at 427. Obviously, it is one thing to attend trustees' sales and observe the process, and quite another thing to study and commit to memory the statutory provisions governing the sale process. A showing of the former does not dictate the conclusion, even by inference, that Dickinson knew of the 120 day continuance limitation. Albice/Teccas' evidence at summary judgment does not dictate a different result than that reached by the trial court.

At page 19 of the Brief of Appellants, Albice/Teccas assert that Dickinson testified in his May 1, 2007 deposition that,

“ . . . in his experience, if a sale is continued, it is usually continued for thirty days.”

At best, this representation of the record is a poorly constructed, truncated paraphrase. At worst it is an intentional effort to mislead the Court. The transcript of Mr. Dickinson's deposition testimony is as follows:

Q And he told you the sale wasn't going to take place?

A Well, he told me – he just cried it to everybody. There was more than just me there. There was probably four or five people there ready for the sale.

Q So did he tell you then the date to come back?

A Yes.

Q And what date did he tell you?

A I don't – I don't have any idea at this point. I could go back and probably find it in my records, but I just kind of toss that stuff.

Q Did you go back on the day he said to go back?

A Oh, yeah.

Q Do you recall in terms of the September '06 about when that was? I mean, was it days, weeks, months?

A Usually they're at least 30 days out, and I don't remember if this was 30 days or two months or four months or what it was, but I always go home and write it down, and I got a whole stack of them at home where I go back through it weekly. I just file it and when it comes up –

CP at 423.

It is clear that Mr. Dickinson would not have been concerned about the continuance of the sale for an extended period to be a cause for concern that there may have been possible flaws in the foreclosure process.

Moreover, the emphasis which Albice/Teccas place upon the fact that the sale took place 161 days after the date originally scheduled is misplaced. That fact, standing alone, is not notice to anyone, even a purchaser aware of the 120 day rule, of potential defects in the process.

There are circumstances other than a violation of the rule *by the trustee* which can result in continuing the sale beyond 120 days, which do not make the foreclosure process defective. One of those circumstances was present here.

As noted, Option One and the Teccas entered into a Forbearance Agreement by the terms of which *those parties* agreed that the trustee's sale

could be continued to, at least, January 26, 2007. CP at 459-466. Under their agreement, Option One agreed to suspend and continue the foreclosure, so long as Teccas made the payments required. In effect, the Teccas agreed to permit this continuance.

This potential continuance to, at least January 26, 2007 was an agreement by the grantors and the beneficiary to the Deed of Trust of 140 days. Their agreement to a 140 day continuance does not violate RCW 61.24.040(6) because it is not the Trustee exercising discretion to continue the sale but the Grantor on the Deed of Trust agreeing to a substantial continuance in consideration for an extension of time to cure the default.

Time continuance of the sale 161 days, in this case, is *not* in violation of the statute and the foreclosure process there present was *not* defective.

RCW 61.24.130(4) creates another circumstance under which a foreclosure sale could be continued beyond 120 days, without creating a defect in the foreclosure process. That provision provides that, if a foreclosure sale is stayed as a result of the filing of a bankruptcy petition, the sale can be rescheduled to a new date provided the trustee gives notice of the new date not less than 45 days from the date of the order dissolving the stay. Obviously, that new sale date could be well beyond the 120 days.

Accordingly, the 120 day rule of RCW 61.24.040(7) is not as sacrosanct as Albice/Teccas have argued and the fact that the sale took place 161 days after originally scheduled is not notice of defect, even to the most sophisticated purchaser.

The erroneous recital in the Trustee's Deed that the trustee's sale was *originally* set for February 16, 2007 does not impact Dickinson's status as a BFP at the time of the sale. First, the error did not manifest itself until after the sale. Second, the error is a meaningless scrivener's error which should not be the basis for post-sale relief.

Also, Dickinson's contact with Karen Tecca produced no information which created any actual or constructive notice to Dickinson of potential defects in the sale process. Ms. Tecca simply declined an offer to purchase the property and an intention to cure the defaults. CP at \_\_\_\_.

Common sense would dictate that these responses, under the circumstances, are standard, not extraordinary and certainly not an indication of a defect in the foreclosure process.

Albice/Teccas cite to the Court Glidden v. Municipal Authority of the City of Tacoma, 111 Wn.2d 341, 350-353, 758 P.2d 487 (1988) ("Glidden"), as containing guidance for resolution of the BFP issues in this case.

The Glidden Court, citing Miebach v. Colasurdo, 102 Wn.2d 170, 175-177, 685 P.2d 1074 (1984) established a two pronged test for determining if a purchaser at a deed of trust foreclosure sale had constructive knowledge of defects in the foreclosure process which would preclude BFP status:

“First, did the events surrounding Rourke’s sale create in Municipal Authority a duty to inquire into possible flaws in the foreclosure process? Second, if Municipal Authority did have such a duty, did it satisfy that duty?”

Glidden, supra at 350.

The first prong of the Glidden test is, basically, identical to the inquiry undertaken in Steward v. Good, supra, at 513. In Glidden, however, Municipal Authority conceded that, with respect to the first question, presumably because it had knowledge that it, as a junior lien holder had not received the notice of the trustee’s sale “the circumstances surrounding the Glidden sale were such as to require it to make inquiry.” Accordingly, Glidden does not add to the present inquiry.

Since Dickinson did not have notice of matters creating a duty for further inquiry, the second question does not come into play.

**C. The purchase price of the property does not result in diminishing Dickinson’s status as a BFP.**

Albice/Teccas represent that the purchase price which Dickinson paid at the trustee’s sale was 13% of its fair market value. Brief of

Appellants at 25. This assertion is based upon the representation that the property had a fair market value of \$950,000.00. Brief of Appellants at 4. As indicated above, the record of this case at the time the trial court ruled that Dickinson was a BFP, indicated that the property value ranged from \$607,000.00, Exhibit K to May 24, 2007 Declaration of Karen Tecca, CP at \_\_\_\_, to \$950,000.00. CP at 4. Appellants, Christa Albice and Karen Tecca, thought that the fair market value was \$750,000.00 or more. May 24, 2007 Declaration of Karen Tecca; Declaration of Christa Albice. CP at \_\_\_\_.

Not before the court at that time, because it was cleverly withheld from the court by counsel for Albice/Teccas, was Dickinson's own estimate of fair market value in the amount of approximately \$428,000.00. Ex. 40 at 27.

Based upon the range of the estimates of fair market value in the record at the time of the trial court's determination that Dickinson was a BFP, the purchase price represented from 13.7% to 21.4% of fair market value. If Dickinson's own estimate of fair market value is considered, the purchase price represented 30.4% of fair market value. Nothing in the record discloses whether the property was subject to another mortgage or unpaid real property taxes which would erode the value of the property to Albice/Teccas.

The opinion in Steward v. Good, supra, suggests an analysis for determining whether or not the purchase price paid by Dickinson undermines his status as a BFP on the trial court's record.

“ . . . Thus, the Goods showed they lacked any actual notice and also showed the payment of a valuable consideration. The burden of showing that the purchase price was so inadequate as to put the Goods on inquiry notice then shifted to the Stewards. They did not meet this burden. The Stewards contend that obtaining the property for this small price amounts to a windfall. There is, however, nothing in the record to indicate what, if any, equity the Stewards had at the commencement of the default proceedings. Moreover, “[a] naked assertion of unresolved factual questions is not sufficient to oppose a motion for summary judgment.” *Jacobsen v. State*, 89 Wn.2d 104, 111, 569 P.2d 1152 (1977). The record does not specifically disclose whether the property was subject to a mortgage on which the Stewards may have defaulted. There is, however, an indication in the record that an indebtedness was due and owing to Pacific First Federal Savings Bank. On the record before us, we cannot say the purchase price was inadequate.

Id at 513-514.

The property sold at the trustee's sale in Steward v. Good apparently had a fair market value of \$64,000.00. Id at 511. The price paid for the property at the sale was \$4,870.00. Id at 513. The purchase price was, accordingly, 7.6% of fair market value. As the quote above indicates, however, the court in that case refused to hold that the purchase price was inadequate.

Furthermore, even though not part of the record at the time of the trial court's ruling on Dickinson's BFP status, it is clear that Dickinson's opinion of value would not have raised in him any concern that there may have been flaws in the foreclosure process because, in fact, he did not believe the purchase price was grossly inadequate. Accordingly, he was not on any constructive notice of any potential defects in the foreclosure process.

Based upon the record before this Court, it cannot be said that the purchase price was inadequate or so inadequate as to put Dickinson on inquiry notice. The purchase price does not diminish Dickinson's status and the trial court did not error in holding that Dickinson was a BFP.

Albice/Teccas argue at pages 38 and 39 that Dickinsons' Motion for Reconsideration of Order on Cross Motions for Summary Judgment (CP at 137-142), as a second motion for reconsideration on the same motions as Albice/Teccas had previously submitted a Motion for Reconsideration (CP at 174-181) is preceded by CR 59(j).

The argument has specifically rejected by Division III of the Court of Appeals in Barry v. USAA, 98 Wn. App. 19, 202-203, 989 P.2d 1172. (1999).

"...USAA moved for reconsideration in July 1998 the court granted the motion. In doing so, the court refused to inspect the claims file and concluded that Ms. Barry had failed to establish sufficient wrongful conduct to invoke the fraud exception to the attorney-client privilege.

One week after the order granting the motion to reconsider was filed, Ms. Barry moved to reconsider the order.

\* \* \* \* \*

[1] Nothing in CR 59 leads this court to declare a one-consideration limit for trial court decisions. The rule specifically limits certain motions in CR 59(j). There the rule declares that if a motion for reconsideration is made and heard before the entry of judgment, no further motion may be made for a new trial, for reopening judgment, to alter or amend the judgment, or to amend the findings “without leave of court first obtained for good cause shown.” CR 59(j). Ms. Barry’s motion for reconsideration does not come under any of the above classifications and was at any rate considered by the trial court without challenge.”

In this case, the procedural background is identical to Barry. Dickinson’s Motion for Reconsideration does not come under any of the classifications requiring a showing of good cause and court pre-approval.

The argument is totally without merit.

**D. There is substantial evidence in the record to support the trial court’s Finding of Fact 1.1.10.**

Finding of Fact number 1.1.10 reads as follows:

Teresa Harding did maintain her residency in the State of Washington and served as Vice President of Premier until August, 2007.

Teresa Harding testified at trial as follows on direct examination by

Dickinson’s counsel:

A 2004. So, within my first ninety days we learned that Diane was not coming back to Option One, which then made me the senior officer in the State of Washington.

Q And where did you reside during the period of time that you were employed by Option One and officer of Premier Mortgage Services?

A In Kirkland, Washington.

Q Was there any break in your position as an officer of Premier Mortgage Services or in your residency in the State of Washington –

A No.

Q -- during that period?

A No.

Q In February of 2007, were you both an officer of Premier Mortgage Services and a resident of the State of Washington?

A Yes, to my knowledge.

RP at 30-31.

On redirect examination by Albice/Teccas' counsel, Ms. Harding testified as follows:

Q You said you were an officer – you were an officer of Premier Mortgage Services; what kind of officer were you?

A Just an officer.

Q Were you vice president?

A Yes.

RP at 33-34.

Admitted into evidence at trial were the Bylaws of Premier, Ex. 8.

Article III, Section 2 of the Bylaws provides as follows:

Section 2. Election and Term of Office. The officers of the Corporation shall be elected annually by the Board of Directors at the meeting of the Board of Directors held after each annual meeting of the stockholders. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as is convenient. ***Unless an officer dies, resigns or is removed from office, he or she shall hold office until his or her successor shall have been duly elected and shall have qualified.*** (Emphasis added.)

Also admitted into evidence at trial was a Premier Mortgage Services of Washington, Inc., Consent by Directors to Resolutions in Lieu of Annual Meeting dated May 31, 2005 which provided, inter alia, as follows:

“FURTHER RESOLVED, That, with the exception of various limited purpose officers who have been appointed from time to time by this Board of Directors and whose appointment for limited purposes is still in effect on this date, the present officers of this corporation are hereby removed, and the following persons be and they are hereby elected as officers of this corporation, to serve in the capacities set forth opposite their respective names below:

*	*	*
Teresa Harding		Vice President
*	*	*

*to hold such office at the pleasure of this Board of Directors.*  
(Emphasis added.)

Based upon this evidence, the trial court entered Finding of Fact 1.1.10. See the oral decision at RP 60-63.

A trial court’s findings of fact supported by substantial evidence will not be overturned on appeal. Xebek, Inc. v. Nickum & Spaulding Associates, Inc., 43 Wn. App. 740, 742, 718 P.2d 851 (1986) (“Xebek”).

“Substantial evidence is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.”

Ridgeview Properties, Inc. v. Starbuck, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982).

“Even where the evidence conflicts, a reviewing court must determine only whether the evidence most favorable to the prevailing party supports the challenged findings.”

Xebek, supra at 742.

The evidence described above is substantial evidence supporting the trial court's Finding of Fact number 1.1.10.

**E. Conclusions of Law 2.1 through 2.4 respecting Premier's authority to act as trustee at the time of the trustee's sale pursuant to RCW 61.24.010(1)(a) are supported by unchallenged Findings of Fact numbers 1.1.4 through 1.1.9 and substantial evidence supporting Finding of Fact number 10.**

RCW 61.24.010(1)(a) provides as follows:

The trustee of a deed of trust under this Chapter shall be:

(a) Any domestic corporation incorporated under Title 23B, 30, 31, 32 or 33 RCW of which at least one officer is a Washington resident; . . .

Following trial, the trial court entered Findings of Fact 1.1.4 through 1.1.9 which have not been so challenged by Albice/Teccas on this appeal. A trial court's unchallenged findings are verities on appeal. Morin v. Harrell, 161 Wn.2d 226, 230, 164 P.3d 495 (2007).

Taken together, these unchallenged Findings of the trial court, together with substantial evidence supporting Finding of Fact number 1.1.10 establish that, at the time of the sale and through the date of the execution of the Trustee's Deed on February 28, 2007, Premier was a Washington corporation, incorporated under Title 23B RCW, having at least one officer a Washington resident, and support the trial court's Conclusions of Law numbers 2.3 and 2.4.

Albice/Teccas devoted a substantial portion of the Brief of Appellants arguing that Premier's failure to include Ms. Harding on the list of officers it was required by RCW 23B.16.220(1) to deliver to the Secretary of State for filing is evidence, even conclusive evidence, that Premier had no resident officer. Brief of Appellants, pages 41-44.

The trial court concluded that this failure was not determinative of whether or not Ms. Harding was, in fact, an officer of Premier. Rather, the internal records of Premier are determinative of that issue and those internal records clearly demonstrate that she was. Conclusions of Law numbers 2.1 and 2.2. RP at 52. Appendix A.

Albice/Teccas' argument that if Ms. Harding is not on Premier's, RCW 23B.16.220(1), then she is, ipso facto, not an officer is not supported by any case law. The only case remotely on point holds as follows with respect to a predecessor to RCW 26B.16.220(1)

It is true that appellant failed to file a list of its officers and directors, as required by Rem. Rev. Stat. (Sup.), § 3803-32 ½ [P.C. § 4503-132q], but the only consequence of a failure to comply with the statute is that service of process against such corporation may be made by service upon the secretary of state.

Stouffer-Bowman, Inc. v. Webber, 18 Wn.2d 416, 432, 139 P.2d 717 (1943).

There is not a rational basis for concluding that Premier's errors in listing its officers in its reports to the Secretary of State controls whether or

not it has such officers. The trial court's Conclusions of Law 2.1 and 2.2 should not be overturned.

**F. There is substantial evidence in the record to support the trial court's Findings of Fact numbers 1.2.3, 1.2.4, 1.2.8 and 1.2.9.**

Finding of Fact 1.2.3 provides as follows:

1.2.3 Dickinson was entitled to possession on March 8, 2007, 20 days after the date of the Trustee's Sale.

RCW 61.24.060 provides, in pertinent part, as follows:

"The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale as against the grantor under the deed of trust . . ."

Dickinson was the purchaser at the trustee's sale. Appendix G to Brief of Appellants. The trustee's sale took place on February 16, 2007. *Id.* The twentieth day following February 16, 2007 is March 8, 2007. Appendix "B".

These Findings are supported by substantial evidence in the record and should not be overturned on this appeal.

Unless the sale is voided, Finding of Fact number 1.2.3 is unassailable.

Finding of Fact number 1.2.4 provides as follows:

1.2.4 Dickinson was denied the use and enjoyment of the property he acquired at the trustee's sale from March 8, 2007 to the date of trial.

At trial Dickinson testified as follows on direct examination:

Q Okay. Did you make an attempt to obtain the possession and use of this property?

A Yes.

A. Did you contact the plaintiffs and ask them to move? Or what went on; how did you pursue possession?

A. I had a previous attorney by the name of Marianne Strickler who we filed a three-day notice to vacate and then whatever the next procedure after that is. They have twenty days and then, at that point, they're supposed to either move out or start this lengthy court system – you know, the – the lengthy procedure that we've been involved with the last two years.

Q Did they move out as a result of the actions of your attorney?

A. They moved out some of their stuff. But then when they won on one of the other proceedings, a year or year and a half ago, or whatever, they moved everything back in. They never totally moved out all their stuff.

Q Did you have conversations with either of the plaintiffs with respect to their delivering possession of the property to you?

A Just shortly. The weekend after I bought the property at the sale, I had gone out to the property and they happened to be there. And I just asked them what they were gonna do, that, you know, that I had just bought the property at a trustee's sale and wanted to know what their plans were. But other than that, I had never had any more further direct conversations with them, no.

Q Did they ever indicate that they were prepared to deliver the possession of the property to you?

A No.

Q Is it your – is it, or is it not – your understanding that they resisted the two attempts to obtain writs of restitution before this court?

A Yes.

RP at 64-65.

Dickinson's testimony constitutes substantial evidence, as defined above, that he was denied the use and enjoyment of the property from March 8, 2007 and Finding of Fact number 1.2.4 is not in error.

Finding of Fact number 1.2.8 provides as follows:

1.2.8 That Plaintiff was deprived of possession for 24 months and 29 days as of the date of judgment.

Plaintiff refers to Dickinson, Plaintiff in Mason County Superior Court Cause No. 07-2-00177-1, consolidated with the case on appeal. CP at 50 and CP at 836-837.

The date of the entry of Judgment was April 6, 2009. CP at 45-47. The Court is asked to judicially recognize that the time frame from March 8, 2007 to April 6, 2009 is 24 months and 29 days.

This Finding of Fact springs directly from uncontested facts of record and from Finding of Fact 1.2.4 and is unassailable on appeal.

Finding of Fact number 1.2.9 reads as follows:

1.2.9 That Plaintiff's damages consist of \$41.60 per day for a total of \$30,708.22.

Again, Plaintiff in this Finding, refers to Dickinson.

At trial, Dickinson testified on direct that he had been in the business of renting homes in Western Washington for about six years. RP 65-66.

He also described the nature of the property and home acquired at the trustee's sale and pictures of the property and home were admitted into evidence. RP 66-69. Ex. 38 and 39.

Dickinson next testified about the relative condition and rental generated by his other rentals in the Mason County and Shelton, Washington

areas and offered an opinion that the fair market rent of the property was, at least, \$1,250.00 per month. RP 69-73.

The foregoing is substantial evidence of damages in the amount of \$41.60 per day during the 24 months and 29 days during which Dickinson was denied the use and enjoyment of the property and Finding of Fact number 1.2.9 must be upheld on appeal.

**G. Conclusions of Law numbers 2.8 through 2.11 respecting Dickinson's damages are supported by unchallenged Findings of Fact numbers 1.2.1, 1.2.2, 1.2.5, 1.2.6 and 1.2.7 and by substantial evidence supporting Findings of Fact 1.2.3, 1.2.4, 1.2.8 and 1.2.9.**

Conclusion of Law 2.8 reads as follows:

2.8 Dickinson is entitled to an Order and Judgment granting him a writ of restitution restoring to him possession of the property he acquired at the trustee's sale.

Pursuant to RCW 61.24.060, the purchaser at a trustee's sale has the right to the summary proceedings to obtain possession of real property provided in Chapter 59.12 RCW, including the issuance of a writ of restitution.

Dickinson is the BFP purchaser of the property and Conclusion of Law 2.8 is an accurate interpretation of the law applicable to this case.

The court having previously concluded that Dickinson is a BFP purchaser at the trustee' sale and having concluded at trial that Premier had the qualifications to act as Trustee at the time of the sale and the execution

and delivery of the Trustee's Deed, judgment of dismissal of Albice/Teccas' prayer for relief voiding the sale is proper. Accordingly, Conclusion of Law 2.9 should not be disturbed on appeal.

RCW 59.12.170 provides in pertinent part that the court *shall* assess the damages in an unlawful detainer action which are occasioned by the unlawful detainer. Dickinson, as the BFP purchaser at the trustee's sale, is entitled to have those damages assessed against Albice/Teccas and Conclusion of Law 2.10 should not be disturbed on appeal.

As the prevailing party, Dickinson is entitled to an award of costs pursuant to RCW 4.84.010 and Conclusion of Law 2.11 should also not be disturbed on appeal.

## **VII. CONCLUSION**

The trial courts challenged rulings must be affirmed on appeal.

The foreclosure sale was not defective in any of the respects suggested by Albice/Teccas, or any other respect. Even if defects are present, Dickinson had no constructive notice of such defects and he is a bona fide purchaser for value.

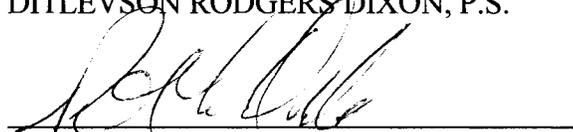
Premier was qualified to act as a trustee pursuant to RCW 61.24.010(1)(a).

Dickinsons are entitled to recover damages for the loss of the use and possession of the property pursuant to RCW 59.12.170. The amount thereof determined by the trial court is supported by substantial evidence.

Albice/Teccas' appeal should be dismissed.

Respectfully submitted this 23<sup>rd</sup> day of December, 2009.

DITLEVSON RODGERS DIXON, P.S.



By: Richard L. Ditlevson, WSB # 735  
Attorney for Respondents

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the 23<sup>rd</sup> day of December, 2009, she placed with ABC Legal Services, Inc. an original of the preceding Brief of Respondents and this Certificate of Service for filing with the Court of Appeals, Division II, and a true and correct copy of the same for delivery to the following:

Attorney for Appellants: Douglas Kiger  
Blado Kiger, P.S.  
3408 S. 23<sup>rd</sup> Street  
Tacoma, Wa. 98405-1609

  
Legal Assistant

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STATE OF WASHINGTON  
BY  DEPUTY

# **APPENDIX A**

**Findings of Fact and Conclusions of Law**

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*to file*

PAT SWARTOS, Clerk of the  
Superior Court of Mason Co. Wash.

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF MASON**

**CHRISTA L. ALBICE, a married woman, and  
BART A. TECCA and KAREN L. TECCA,  
husband and wife,**  
**Plaintiffs,**

**No. 07-2-00172-1**

**vs.**

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

**PREMIER MORTGAGE SERVICES OF  
WASHINGTON, INC., a Washington  
Corporation; OPTION ONE MORTGAGE  
CORPORATION, a California Corporation;  
RON DICKINSON and "JANE DOE" DICKINSON,  
husband and wife,**  
**Defendants.**

**RON DICKINSON,**  
**Plaintiff,**

**07-2-00177-1**

**vs.**

**CHRISTA L. ALBICE, fka CHRISTA L.  
DEYOUNG and BART A. TECCA and KAREN L.  
TECCA, husband and wife, Any Subtenants, and  
All Others Acting By or Through Them,**  
**Defendants.**

*151*

This matter having come on regularly for trial before the above-entitled Court, the Honorable Toni A. Sheldon presiding, on the 24<sup>th</sup> day of March, 2009. Plaintiffs, CHRISTA L. ALBICE, a married woman, and BART A. TECCA and KAREN L. TECCA, husband and wife, appeared and were represented by DOUGLAS KIGER of BLADO KIGER, P.S.; and the

Findings of Fact and  
Conclusions of Law - 1

**ORIGINAL**

**DITLEVSON RODGERS DIXON, P.S.**  
ATTORNEYS AT LAW  
324 West Bay Drive NW, Suite 201  
Olympia, Washington 98502  
(360) 352-8311, FAX: (360) 352-8501

1 Defendants, RON DICKINSON and CHERYL DICKINSON, appeared and were represented by  
2 RICHARD L. DITLEVSON of DITLEVSON RODGERS DIXON, P.S.

3 The Court, having heard the trial of the above-entitled causes, being fully informed in the  
4 premises and having announced its oral decision following trial on March 24<sup>th</sup>, 2009, now,  
5 therefore the Court hereby enters the following:  
6

7 **I. FINDINGS OF FACT**

8 1.1 **ALBICE, et al v. PREMIER MORTGAGE, et al, Mason County Superior**  
9 **Court Cause No. 07-2-00172-1.**

10 1.1.1 Teresa Harding was employed by OPTION ONE MORTGAGE  
11 CORPORATION ("OPTION ONE") on or about May 1, 2004.

12 1.1.2 As a result of that employment, Teresa Harding returned to the State of  
13 Washington and resided in Kirkland, Washington.

14 1.1.3 OPTION ONE was affiliated with PREMIER MORTGAGE SERVICES OF  
15 WASHINGTON, INC. ("PREMIER").

16 1.1.4 PREMIER is a Washington corporation.

17 1.1.5 On May 2, 2005 the Board of Directors of PREMIER, via a Consent in Lieu  
18 of Special Meeting, elected Teresa Harding as vice president of PREMIER with an effective date  
19 of July 1, 2004 and ratified and confirmed all actions she had taken from and after July 1, 2004.  
20

21 1.1.6 Effective May 31, 2005 the sole shareholder of PREMIER, by resolution  
22 pursuant to a Consent in Lieu of the Annual Shareholders Meeting, set the number of directors for  
23 the corporation at two (2) members and elected Fabiola Camperi ("Camperi") and Monika C.  
24 Troester ("Troester") to serve as directors.  
25

26 1.1.7 The shareholder's action was consistent with Article II, Sections 1 and 2 of  
PREMIER'S Bylaws which direct that PREMIER'S board of directors shall consist of at least one

1 (1) member and not more than seven (7) members and authorizing the shareholders to determine  
2 the number of members at a shareholder's meeting.

3 1.1.8 Effective May 31, 2005 Camperi and Troester, in a Consent in Lieu of the  
4 Annual Meeting of the Board of Directors of PREMIER, elected Teresa Harding as vice president  
5 of PREMIER, “. . . to hold such office at the pleasure of this Board of Directors.”

6  
7 1.1.9 Teresa Harding was informed of her responsibility to serve as vice president  
8 of PREMIER within 90 days of her employment by OPTION ONE and understood her  
9 responsibility to so serve and to maintain her residency in the State of Washington.

10 1.1.10 Teresa Harding did maintain her residency in the State of Washington and  
11 served as vice president of PREMIER until August 2007.

12 1.1.11 PREMIER filed annual reports in connection with its applications for  
13 renewal of its Washington corporation license in 2006 and 2007 without identifying Teresa  
14 Harding as an officer of the corporation.

15  
16 (2) **DICKINSON v. ALBICE, et al, Mason County Superior Court Cause No. 07-**  
17 **2-00177-1.**

18 1.2.1 Plaintiff, RON DICKINSON (“DICKINSON”), purchased, at a Trustee’s  
19 Foreclosure Sale on February 16, 2007, real property and improvements commonly known as 1222  
20 E. South Island Drive, Shelton, Washington, and more particularly described as follows:  
21

22 That portion of Government Lot eight (8) and of a tract of second-class tidelands  
23 suitable for the cultivation of oysters, as conveyed by the State of Washington, to  
24 J.D. Layne by deed recorded in Volume 8 of Oyster Lands, page 47, Auditor’s  
25 File No. 21435, all in Section fifteen (15), Township twenty (20) North, Range  
26 two (2) West, W.M., particularly described as follows:

BEGINNING at the Northeast corner of said Government Lot eight (8); thence  
South 1°59’46” West along the East line thereof, 45 feet; thence South 61°07’29”  
West, 828.28 feet to the head of a cove lying on the Easterly side of Peale  
Passage; thence South 37°41’31” West, 520 feet, more or less, to the Westerly  
line of a tract of land conveyed to J.D. Layne by deed recorded in Volume 9 of

1 Oyster Lands, page 47, Auditor's File No. 21435; thence Northwesterly along the  
2 Westerly line of said Layne tract to the Southerly line of a tract of land conveyed  
3 to Louise H. Meyers by deed recorded August 20, 1932, Auditor's File No.  
4 69912; thence South 87°55'29" East along said Southerly line, 148 feet, more or  
5 less, to the Westerly line of said Government Lot eight (8); thence North  
6 38°50'00" East, 280 feet, more or less, to the North line of said Government Lot  
7 eight (8); thence South 87°55'29" East along said North line, 817 feet, more or  
8 less, to the POINT OF BEGINNING; excepting therefrom road rights-of-way.

9 Parcel No. 22015 21 00020.

10 (the "Property").

11 1.2.2 Defendants, ALBICE and TECCA, failed and refused to surrender the  
12 possession of the Property which DICKINSON had purchased at the Trustee's Sale on February  
13 16, 2007.

14 1.2.3 DICKINSON was entitled to possession on March 8, 2007, 20 days after the  
15 date of the Trustee's Sale.

16 1.2.4 DICKINSON was denied the use and enjoyment of the Property he acquired  
17 at the Trustee's Sale from March 8, 2007 to the date of trial.

18 1.2.5 The testimony of DICKINSON as to the fair market rent of the Property he  
19 acquired at the Trustee's Sale is more credible than the testimony offered by Defendants, ALBICE  
20 and TECCA, because DICKINSON has specific knowledge of the Mason County rental market;  
21 has two rental properties in Mason County; is in the business of buying, owning and renting  
22 residential properties and was so engaged in the time frame from March 8, 2007 to the date of trial.

23 1.2.6 The Property consists of a 3-bedroom, 2-bath home in disrepair on a parcel  
24 with 1,000 feet of low bank saltwater front.

25 1.2.7 The fair market rent of the Property is \$1,250.00 per month.

26 1.2.8 That Plaintiff was deprived of possession for 24 months and 29 days as of  
the date of judgment.

1 1.2.9 That Plaintiff's damages consist of \$41.60 per day for a total of \$30,708.22.

2 ***Based on the foregoing Findings of Fact, the Court makes the following***

3 **II. CONCLUSIONS OF LAW**

4 2.1 Annual renewal reports filed by PREMIER in 2006 and 2007 do not control the  
5 determination of whether or not Teresa Harding was an officer of PREMIER at the times relevant to  
6 the PREMIER Trustee's Sale of the Property to DICKINSON.  
7

8 2.2 PREMIER'S internal corporate records control that determination.

9 2.3 Those records establish that Teresa Harding was an officer of PREMIER at all times  
10 relevant to its Trustee's Sale of the Property to DICKINSON.  
11

12 2.4 PREMIER was qualified to act as Trustee at the time of the Trustee's Sale to  
13 DICKINSON pursuant to the Deed of Trust Act, Chapter 61.24 RCW.

14 2.5 DICKINSON, previously found in this Court's Order on Cross Motions for Summary  
15 Judgment, Motion for Reconsideration, and Motion to Strike Reconsideration entered herein on June  
16 2, 2008 to be a bona fide purchaser for value, is entitled to Judgment for his damages in the amount of  
17 fair market rent for the period he was denied possession of the Property by ALBICE and TECCA  
18 pursuant to both RCW 7.40.200 and RCW 59.04.050.  
19

20 2.6 DICKINSON is not entitled to doubling of the fair market rental value of the Property  
21 pursuant to RCW 59.12.170.  
22

23 2.7 DICKINSON is not entitled to damages in the amount of unpaid taxes from March 8,  
24 2007 to the date of trial.

25 2.8 DICKINSON is entitled to an Order and Judgment granting him a writ of restitution  
26 restoring to him, possession of the Property he acquired at the Trustee's Sale.



# **APPENDIX B**

**2007 Calendar**

# 2007

JANUARY

FEBRUARY

MARCH

APRIL

MAY

JUNE

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
1 NEW YEAR'S	2	3	4	5	6 7
8	9	10	11	12	13 14
15 MARTIN LUTHER KING, JR. DAY (US)	16	17	18	19	20 FIRST OF MUHARRAM 21
22	23	24	25	26	27 28
29 ASHURA	30	31	1	2	3 4
5 ANNIVERSARY OF THE CONSTITUTION (M)	6	7	8	9	10 11
12 LINCOLN'S BIRTHDAY (US)	13	14 VALENTINE'S DAY (C, UK, US)	15	16	17 18 CHINESE NEW YEAR
19 PRESIDENTS' DAY (US)	20	21 ASH WEDNESDAY	22 WASHINGTON'S BIRTHDAY (US)	23	24 FLAG DAY (M) 25
26	27	28	1	2	3 4
5	6	7	8	9	10 11
12	13	14	15	16	17 ST. PATRICK'S DAY (C, US) 18 MOTHERING SUNDAY (UK)
19	20	21 BENITO JUAREZ' BIRTHDAY (M) SPRING begins	22	23	24 25
26	27	28	29	30	31 1 DAYLIGHT SAVING TIME begins PALM SUNDAY
2 PASSOVER begins at sundown	3 PASSOVER	4	5	6 GOOD FRIDAY	7 8 EASTER
9 EASTER MONDAY (C, UK)	10	11	12	13	14 HOLOCAUST 15 REMEMBRANCE DAY
16	17	18	19	20	21 22
23	24	25 ADMINISTRATIVE PROFESSIONALS DAY (US)	26	27	28 29
30	1 LABOR DAY (M)	2	3	4	5 BATTLE OF PUEBLA (M) 6
7 MAY DAY BANK HOLIDAY (UK)	8	9	10 MOTHER'S DAY (M)	11	12 13 MOTHER'S DAY (C, US)
14	15	16	17	18	19 ARMED FORCES DAY 20
21 VICTORIA DAY (C)	22	23	24	25	26 27
28 MEMORIAL DAY, OBSERVED (US) SPRING BANK HOLIDAY (UK)	29	30	31	1	2 3
4	5	6	7	8	9 10
11	12	13	14 FLAG DAY (US)	15	16 17 FATHER'S DAY
18	19	20	21 SUMMER begins	22	23 ST. JEAN BAPTISTE 24 (QUÉBEC)
25	26	27	28	29	30

2007

JULY  
AUGUST  
SEPTEMBER  
OCTOBER  
NOVEMBER  
DECEMBER

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SAT/SUN
					1 CANADA DAY
	3	4 INDEPENDENCE DAY (US)	5	6	7 8
	10	11	12	13	14 15
6	17	18	19	20	21 22
13	24	25	26	27	28 29
20	31	1	2	3	4 5
27 CIVIC HOLIDAY (C)	7	8	9	10	11 12
3	14	15	16	17	18 19
12	21	22	23	24	25 26
17 SUMMER BANK HOLIDAY (UK)	28	29	30	31	1 2
24 LABOR DAY (C, US)	4	5	6	7	8 9
30	11	12 ROSH HASHANAH begins at sundown FIRST OF RAMADAN	13 ROSH HASHANAH	14	15 DECLARATION OF INDEPENDENCE (M) 16 INDEPENDENCE DAY (M)
7	18	19	20	21 YOM KIPPUR begins at sundown	22 YOM KIPPUR 23 AUTUMN begins
14	25	26	27	28	29 30
	2	3	4	5	6 7
COLUMBUS DAY, OBSERVED (US) THANKSGIVING (C)	9	10	11	12 DAY OF THE RACE (M) (EID) AL FITR	13 14
5	16 NATIONAL BOSS DAY (US)	17	18	19	20 21
2	23	24 UNITED NATIONS DAY (US)	25	26	27 28 DAYLIGHT SAVING TIME ends
9	30	31 HALLOWEEN	1 ALL SAINTS DAY (M)	2 DAY OF THE DEAD (M)	3 4
	6 ELECTION DAY (US)	7	8	9	10 11 VETERANS' DAY (US) REMEMBRANCE DAY (C)
2	13	14	15	16	17 18
9	20 REVOLUTION ANNIVERSARY (M)	21	22 THANKSGIVING (US)	23	24 25
6	27	28	29	30	1 2
	4 HANUKKAH begins at sundown	5 HANUKKAH	6	7 PEARL HARBOR REMEMBRANCE DAY (US)	8 9
0	11	12 VIRGIN OF GUADALUPE (M)	13	14	15 16
7	18	19	20 (EID) AL ADHA	21	22 WINTER begins 23
4	25 CHRISTMAS	26 BOXING DAY (C, UK) KWANZAA begins	27	28	29 30

# **APPENDIX C**

**Trustee's Deed Form – Washington Real Property Deskbook**

**(16) Trustee's Deed**

COUNTY RECORDING INFORMATION
------------------------------

After Recording Return to:

&lt;2&gt;

&lt;3&gt;

File No. &lt;1&gt;

TRUSTEE'S DEED
----------------

Grantor: &lt;2&gt;

Grantee: &lt;5&gt;

Legal Description: &lt;12&gt;

Assessor's Tax Parcel ID#: &lt;55&gt;

**THE GRANTOR**, <2>, as current Trustee under that Deed of Trust, as hereinafter particularly described, in consideration of the premise and payment recited below, **HEREBY GRANTS AND CONVEYS**, without warranty, to **the Grantee**, <5>, that real property, situated in the County of <11>, State of Washington, described as follows:

AS IN SAID DEED OF TRUST AND DESCRIBED ABOVE

Property Address: &lt;13&gt;

**RECITALS:**

1. This conveyance is made pursuant to the powers, including the power of sale, conferred upon said Trustee by that certain Deed of Trust dated <7>, recorded <8>, under Auditor's File No. <9>, records of <11> County, State of Washington from <48> as Grantor to <6> as Trustee, to secure an obligation in favor of <50>, the Beneficiary. Said Deed of Trust was assigned to <5> on \_\_\_\_\_, under Auditor's File No. <9>.
2. Said Deed of Trust was executed to secure, together with other undertakings, the payment of a promissory note in the original sum of <46> with interest thereon, according to the terms thereof, in favor of <50> and to secure any other sums of money which might become due and payable under the terms of said Deed of Trust.
3. The described Deed of Trust contains a statement that the real property conveyed therein is not used principally for agricultural purposes.
4. Default having occurred in the obligations secured and/or covenants of the Grantor under said Deed of Trust, as set forth in the Notice of Trustee's Sale described below, which by the terms of the Deed of Trust made operative the power to sell, the thirty-day advance Notice of Default was transmitted to said Grantor, occupants, and tenants, and a copy of said Notice was posted or served in accordance with law.
5. <5>, being then the holder of the indebtedness secured by said Deed of Trust, delivered to said Trustee a written request directing said Trustee or his authorized agent to sell the described property in accordance with law and the terms of said Deed of Trust.
6. The defaults specified in the Notice of Default not having been cured, the Trustee, in compliance with the terms of said Deed of Trust, executed and on <40>, recorded in the office of the Auditor of <11> County, Washington, under Auditor's File No. <9>, a Notice of Trustee's Sale of said property.

§47.11(16) / DEEDS OF TRUST

7. The Trustee, in its aforesaid Notice of Trustee's Sale, fixed the date of the sale as <28>, and place of sale at the following location: <35>, <36>, State of Washington, a public place, at <34>, and in accordance with law caused copies of the statutory Notice of Trustee's Sale to be transmitted by mail to all persons entitled thereto and either posted or served prior to 90 days before the sale; further, the Trustee caused a copy of said Notice of Trustee's Sale to be published once between the thirty-fifth and twenty-eighth day before the date of sale, and once between the fourteenth and seventh day before the sale; and further, included with this Notice, which was transmitted to or served upon the Grantor or his successor in interest, a Notice of Foreclosure in substantially the statutory form, to which copies of the subject Note and Deed of Trust were attached. The Trustee's Sale was postponed to <41>.

8. During the foreclosure, no action was pending on an obligation secured by said Deed of Trust.

9. All legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in Revised Code of Washington, Chapter 61.24.

10. The defaults specified in the Notice of Trustee's Sale not having been cured no less than eleven days prior to the Trustee's Sale and said obligation secured by said Deed of Trust remaining unpaid, on <28>, the date of sale, which was not less than 190 days from the date of default in the obligation secured, the Trustee then and there sold at public auction to <49>, the highest bidder therefore, the property hereinabove described, for the sum of <47>, by the satisfaction in full of the obligation then secured by said Deed of Trust, together with all fees, costs and expenses as provided by statute.

11. Words and expressions used herein shall be applicable according to the context hereof, and without regard to the number of gender of such words or expressions.

DATED: \_\_\_\_\_, 20\_\_.

<2>

By \_\_\_\_\_

Its \_\_\_\_\_

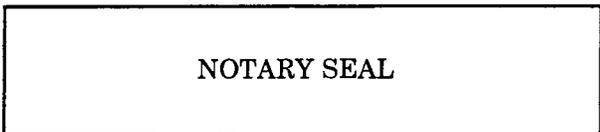
STATE OF WASHINGTON )

) ss:

COUNTY OF \_\_\_\_\_ )

I certify that I know or have satisfactory evidence that \_\_\_\_\_ is the person who appeared before me, and said person acknowledged that he signed this instrument and on oath stated that he was authorized to execute the instrument and acknowledged it as \_\_\_\_\_ of <2> to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: \_\_\_\_\_, 20\_\_.



\_\_\_\_\_  
Print Name \_\_\_\_\_

Notary Public in and for the State of Washington

My Commission/Appointment expires \_\_\_\_\_

FILED  
COURT OF APPEALS  
DIVISION II

10 JAN -6 PM 1:51

IN THE COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

OF THE STATE OF WASHINGTON

BY  DEPUTY

No. 39265-8-II

---

**CHRISTA ALBICE, a married woman, and  
BART A. TECCA and KAREN L. TECCA, husband and wife,**

**Appellants,**

**vs.**

**PREMIER MORTGAGE SERVICES OF WASHINGTON, INC.,  
a Washington Corp.; OPTION ONE MORTGAGE CORPORATION,  
a California Corp.; RON DICKINSON and "JANE DOE"  
DICKINSON, husband and wife,**

**Respondents.**

---

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

---

**RESPONDENTS' NOTICE OF ERRATA  
FOR BRIEF OF RESPONDENTS**

---

**RICHARD L. DITLEVSON, WSB # 735  
Attorney for Respondents DICKINSON**

**DITLEVSON RODGERS DIXON, P.S.  
324 West Bay Drive NW, Suite 201  
Olympia, Wa. 98502  
Telephone (360) 352-8311  
Fax (360) 352-8501**

With apologies to the Court and Counsel, please take notice of the following errors contained in the Brief of Respondents.

**A. TABLE OF CONTENTS TO BRIEF OF RESPONDENTS:**

1. On page i, III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR should reference beginning at page 5, not page 4.

2. On page i, III (A) Appellants' Issues Pertaining to Assignments of Error should reference beginning at page 5, not page 4.

3. On page i, IV. RESPONDENTS' STATEMENT OF THE CASE should reference beginning at page 7, not page 6.

4. On page i, VI. ARGUMENT should reference beginning at page 20, not page 19.

5. On page i, VI(A) should reference beginning at page 20, not page 19.

6. On page ii, VI(E) should reference beginning at page 38, not page 37.

7. On page ii, VI(F) should reference beginning at page 40, not page 39.

**B. TABLE OF AUTHORITIES TO BRIEF OF RESPONDENTS:**

1. On page iii, reference to Glaser v. Holdorf should be at pg. 22, not pg. 13.

2. On page iii, reference to Jacobsen v. State should be at page 33, not 32.

3. On page iii, reference to Udall v. T.D. Escrow Services, Inc. should be at pg. 19, not page 18.

**C. BRIEF OF RESPONDENTS:**

1. On page 3, line 18, the citations to Section VI at pages 34-35 should be changed to Section VI(B) at 28-29.

2. On page 4, line 6, should be changed to pages 28-29 below.

3. On page 7, line 8 of the text should read “to Strike Reconsideration as ‘documents and evidence that was (sic) brought to . . .’”

4. On page 12, line 6 of the text should refer to Exhibit I, not Exhibit H to the Declaration of Karen Tecca.

5. On page 13, line 13, the word “accounts” should be “acts”.

6. Last line of page 19 should refer to pgs. 40-44 not 39-44.

7. On page 23, line 3, citation to the record should be CP at 413-417, not 431-417.

8. On page 23, line 4, reference should be CP at 428, not 427.

9. On page 23, line 17, reference should be CP at 428, not 427.

10. On page 27, line 4, the reference should be CP at 428, not 427.

11. On page 30, line 13, the reference should be CP at 429.

12. On page 34, line 15, the word "precluded" should be substituted for the word "preceded" in the text.

13. On page 36, line 16, the word "cross" should be substituted for the word "redirect" in the text.

14. On page 37, citation for the Consent by Directors to Resolutions in Lieu of Annual Meeting of Premier Mortgage Services of Washington, Inc., dated May 31, 2005 is to Ex. 2 for trial.

Respectfully submitted this 31<sup>st</sup> day of December, 2009.

DITLEVSON RODGERS DIXON, P.S.



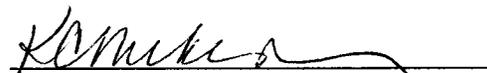
By: Richard L. Ditlevson, WSB # 735  
Attorney for Respondents

STATE OF WASHINGTON  
DEPT. OF JUSTICE  
COURT OF APPEALS  
DIVISION II  
10 JAN -4 PM 1:51

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the 31<sup>st</sup> day of December, 2009, she placed with ABC Legal Services, Inc. an original of the preceding Notice of Errata and this Certificate of Service for filing with the Court of Appeals, Division II, and a true and correct copy of the same for delivery to the following parties and their counsel of record:

Attorney for Appellants: Douglas Kiger  
Blado Kiger, P.S.  
3408 S. 23<sup>rd</sup> Street  
Tacoma, Wa. 98405-1609

  
Legal Assistant