

88853-1

NO. 67608-3-I  
COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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BANK OF AMERICA, N.A.

Appellant,

v.

MICHAEL FULBRIGHT,

Respondent.

RECEIVED  
COURT OF APPEALS  
DIVISION ONE

APR 27 2012

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SUPPLEMENTAL BRIEF OF RESPONDENT

MICHAEL FULBRIGHT

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APPEAL FROM KING COUNTY SUPERIOR COURT

The Honorable Suzanne Barnett, Case No. 11-2-16855-7 SEA

---

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Respondent  
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**COPY**

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## INTRODUCTION

This Brief is in response to the Court's direction, entered on March 5, 2012, for supplemental briefing on the impact on this matter, if any, of Summerhill v. Roughley, No. 66455-7-I filed February 21, 2012; 270 P.3d 639 (2012). It should be noted that the Summerhill Appellant (GMACM) has filed a motion for reconsideration. As of the filing of this Supplemental Brief, the Court has not ruled on such motion or requested any answer from the Respondent (Plumbline).

The legal issue and key facts in Summerhill and this case are not distinguishable. Both cases concern whether a lender with a deed of trust recorded after the condominium declaration and before the due date of unpaid condominium assessments has a redemption right after the foreclosure of the lien for such assessments when the deed of trust beneficiary is named and served as a defendant in the lien foreclosure suit and fails to respond. In Summerhill, this Court ruled that the lender, GMACM, did not have a legal redemption right.

The only difference between Summerhill and this case is that Bank of America places more emphasis on a particular legal argument than GMACM did in Summerhill. In addition to making the same or similar arguments to those GMACM briefed in Summerhill, Bank of America

argues in its briefing for this case that it should have a redemption right because of RCW 64.34.364(7). Bank of America suggests that this Court was unaware of its RCW 64.34.364(7) argument when it rendered the Summerhill decision. Although GMACM did not elect to include that argument in its briefing, it was brought to the Court's attention three times before the Summerhill decision was issued. The Court was not persuaded by such argument in Summerhill. The Summerhill decision should control and the Superior Court decision in this case should be affirmed.

## ARGUMENT

### A. Summerhill Decision.

In Summerhill, the Court ruled that the lender deed of trust was extinguished by the sheriff's sale because of the super priority afforded by RCW 64.34.364, not because the condominium association's assessment lien was prior in time to the assessment lien or because the condominium declaration was recorded before the lender deed of trust. Summerhill at 3-5. After first acknowledging that only deeds of trust "subsequent in time" to the lien foreclosed upon have the right to redeem under RCW 6.23.010, the Court went on to rule that the lender's "2006 deed of trust was not subsequent in time to Summerhill's 2008 super priority assessment lien, so GMAC/Deutsche Bank is not a proper redemptioner under the statute." Summerhill at 5-6. The decision was based upon the Courts finding that

the statute is unambiguous and consistent with the expressed legislative intent when RCW 64.34.364 was enacted. Summerhill at 7. The Summerhill decision rejected GMACM's arguments for disregarding the plain meaning of the statutes.

In summary, the Court stated:

“Where such a lien is foreclosed [condominium super priority lien], Washington's redemption statute offers no safe haven to mortgage lenders who ignore the proceedings.”

Summerhill at 1.

**B. Same Facts in Both Cases.**

As acknowledged by Bank of America, the relevant facts for its argument in this case and their sequence are as follows: (1) the recording of the subject condominium declaration (12/20/06); (2) recording of the lender deed of trust (3/9/07); (3) default in payment of condominium assessments (5/2/08); (4) sheriff's sale foreclosing the condominium assessment lien (5/7/10); and (5) attempted redemption during the statutory redemption period (4/29/11). Bank of America Supplemental Brief at 2-3. Although the specific dates vary, the same facts occurred in the same sequence in Summerhill: (1) recording of Summerhill Village condominium declaration (7/9/99); (2) recording of lender deed of trust (11/20/06); (3) default in payment of condominium assessments (August, 2008); (4) sheriff's sale foreclosing the condominium assessment lien

(12/18/09); and (5) attempted redemption during the statutory redemption period (9/15/10). Summerhill CP 416; Summerhill Respondent's Brief pp. 4-6. In both cases, the record beneficiary under the lender deed of trust was included as a defendant in the condominium association's judicial foreclosure action, but did not defend the action and no one tendered the condominium association's lien priority before the sale in either case. Brief of Respondent at 5-6; Summerhill Respondent Brief at 5.

**C. Bank of America's Legal Arguments.**

Bank of America makes two basic legal arguments. Reply Brief, p 1. First, it argues that its deed of trust is subsequent in time to the condominium assessment lien because the condominium declaration was recorded before its deed of trust. This argument is based upon RCW 64.34.364(7) and essentially ignores RCW 64.34.364(1). Reply Brief, pp 3-9. Second, it argues that if the recording date of the condominium declaration does not control, it should still interpret the redemption statute as giving Bank of America a redemption right in spite of the plain language of RCW 6.23.010 and 64.34.364(1). Reply Brief, pp 9-17.

**1. RCW 64.34.364(7) Argument Raised Three Times.**

Bank of America argues that 64.34.364(7) was not before the Court in Summerhill and application of such provision should result in a different outcome in this case. Bank of America Supplemental Brief at 1.

It is true that GMACM did not elect to brief that argument in Summerhill and that it is not specifically addressed in the Summerhill decision. Bank of America suggests that the Court was unaware of RCW 64.34.364(7) when it rendered that decision. Even if one assumes the Court would have otherwise ignored RCW 64.34.364(7) (part of the two key statutes at issue), RCW 64.34.364(7) and Bank of America's argument were brought to the Summerhill panel's attention three times before the Summerhill decision was issued.

First, Bank of America's counsel in this case attempted to file an Amicus Curiae Brief in Summerhill. The primary basis for its motion was that the parties had not briefed its argument on RCW 64.34.364(7). Appendix A at 1. In its Answer opposing such motion, Plumline (the primary Respondent in Summerhill) noted that Subsection (7) is quoted in full along with other Subsection of RCW 64.34.364 in GMACM's Opening Brief. Appendix B at 2. It was Plumline's position that the Court was capable of interpreting two straightforward statutes (RCW 64.34.364 and 6.23.010) without the unrequested assistance of Bank of America. Appendix B at 3 and 5. Although the Summerhill panel denied the motion, the motion clearly brought Bank of America's RCW64.34.364(7) argument to the Court's attention.

Second, counsel for GMACM raised the impact of RCW 64.34.364(7) in his oral argument to the Summerhill panel. Undersigned counsel is aware of this because undersigned counsel (and Respondent here) was counsel for the Plumblin in Summerhill. Admittedly, the argument was only touched on briefly in the rebuttal portion of GMACM's oral argument and the Summerhill panel did not ask any questions about it. Nonetheless, it was brought up in oral argument.

Third, after oral argument and before the Summerhill decision was issued, GMACM filed a Statement of Additional Authorities pointing out RCW 64.34.364(7) and arguing, like Bank of America does in this case, that it affects the "subsequent in time" issue presented in Summerhill. Appendix C at 2. The Statement of Additional Authorities specifically directed the Summerhill panel's attention to the briefing on that very issue already submitted in this appeal. Appendix C at 2. Plumblin did not object to GMACM's Statement of Additional Authorities.

It should also be noted that the RCW 64.34.364(7) argument is also included in GMACM's pending motion for reconsideration. Appendix D at 2 and 5-6.

Under the circumstances, it is not reasonable to infer that the Summerhill panel was oblivious to RCW 64.34.364(7) in rendering its decision. To the contrary, it is more reasonable to conclude that the

Summerhill panel simply did not find Bank of America's RCW 64.34.364(7) argument persuasive enough to specifically address in its decision.

## **2. Redemption Statute Arguments Essentially the Same.**

Bank of America's second line of argument is not materially or substantially different than the arguments briefed extensively by GMACM and clearly rejected in the Summerhill decision. Compare Reply Brief 9-16 with GMACM Reply Brief 3-16. While there are differences in drafting style and nuances, those arguments are essentially the same. All of the arguments advanced by Bank of America in its Supplemental Brief about Summerhill concern RCW 64.34.364(7). They do not assert that any of their second line of argument is not settled by the Summerhill decision.

## **3. Supplemental Arguments by Bank of America.**

Bank of America also uses its Supplemental Brief on Summerhill to reinforce and supplement its RCW 64.34.364(7) argument in a couple of ways that have nothing whatsoever to do with the Summerhill decision itself. First, it supplements the argument already addressed in its Reply Brief regarding how a deed of trust for a home equity line of credit ("HELOC") works by analogy when interpreting RCW 64.34.364(1) and (7). Reply Brief at 8-9; Bank of America Supplemental Brief at 5-6.

Bank of America's Supplemental Brief includes the statute concerning the treatment of a deed of trust securing a HELOC and elaborates on that argument in more detail than set forth in the Reply Brief.

RCW 60.04.226 provides:

“Except as otherwise provided in RCW 60.04.061 and RCW 60.04.221, any mortgage or deed of trust shall be prior to all liens, mortgages, deeds of trust, and other encumbrances which have not been recorded prior to the recording of the mortgage or deed of trust to the extent of all sums secured by the mortgage or deed of trust regardless of when the same are disbursed or whether the disbursements are obligatory.”

Under RCW 60.04.226, only the recording date of the HELOC deed of trust matters for priority over subsequently recorded items. The dates of advances and payment defaults are irrelevant under a HELOC deed of trust. Bank of America argues that the recording of a condominium declaration is equivalent to the recording a HELOC deed of trust and that the due date for subsequent unpaid condominium assessments is analogous to payment defaults occurring after recording of a HELOC deed of trust. Bank of America Supplemental Brief at 5-6. It would be more accurate to compare the due date of subsequent condominium assessments with the date funds are advanced under a HELOC deed of trust.

The analogy fails because RCW 64.34.364 takes a completely different approach to the priority of assessment liens relative to deeds of trust recorded after a condominium declaration. Under RCW

64.34.364(2), a deed of trust has priority over the lien for assessments due after recording of the deed of trust, even though the deed of trust is recorded after the condominium declaration and except for the limited super priority under RCW 64.34.364(3). If a condominium declaration was equivalent to a HELOC deed of trust and if the HELOC approach was used, a condominium assessment lien would have complete priority over deeds of trust recorded after the condominium declaration, not just for assessments due before recording of the deed of trust and the six-month priority. If anything, the HELOC statute demonstrates by contrast why Bank of America's RCW 64.34.364(7) argument is wrong.

Bank of America also uses its Supplemental Brief to interject briefing by another attorney representing a condominium association in a completely different Superior Court case: Lakewest Condominium Ass'n v. Blumfield, No. 11-2-04005-4 SEA (King County). Bank of America Supplemental Brief at 6-7. As noted by Bank of America, the Lakewest case concerns the priority of a condominium lien for assessments first due after recording of a deed of trust with a defective legal description, not a right of redemption. While the position taken by counsel in that case is consistent with Bank of America's RCW 64.34.364(7) argument, it is not legal authority and it does not explain the language in RCW 64.34.364(1) about the lien for unpaid assessments from the date due. It quotes that

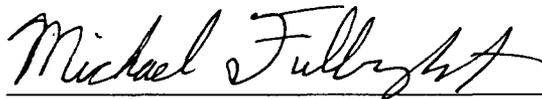
portion of the statute, and then simply ignores the “from the date due” text. Ironically, lenders’ counsel in that same case takes the position that the condominium lien arose when the unpaid assessments were due, not the date the condominium declaration was recorded. Bank of America Supplemental Brief Appendix E at 4. Lenders’ counsel in Lakewest includes one of the law firms (Routh Crabtree Olsen, P.S.) representing Bank of America in this case. Appendix F.

### CONCLUSION

The relevant facts and the legal issues in Summehill are the same as this case. The RCW 64.34.364(7) argument was not briefed directly in Summerhill, but it was brought to the Summerhill panel’s attention three times before that decision was issued. Absent a material change in any subsequent ruling on the pending motion for reconsideration in Summerhill, this Court should follow the Summerhill decision and affirm the Superior Court’s decision in this matter.

RESPECTFULLY SUBMITTED this 27<sup>th</sup> day of April, 2012.

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---

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CERTIFICATE OF MAILING

I certify that I mailed a copy of the foregoing Supplemental Brief of Respondent Michael Fulbright to the Appellant's attorneys listed below, at the addresses listed below, postage prepaid, on April 27<sup>th</sup>, 2012.

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I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Signed at Bellevue, Washington, on April 27<sup>th</sup>, 2012.

  
\_\_\_\_\_  
Michael Fulbright, WSBA #11821

No. 67608-3-I COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON

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BANK OF AMERICA, N.A.

Appellant,

v.

MICHAEL FULBRIGHT,

Respondent.

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DIVISION ONE

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APPENDIX TO SUPPLEMENTAL BRIEF OF  
RESPONDENT MICHAEL FULBRIGHT

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- A. Motion of Bank of America, N.A. for Leave to File Brief Amicus Curiae
- B. Plumblin's Answer to Bank of America, N.A.'s Motion for Leave to File Brief Amicus Curiae
- C. Appellant GMAC Mortgage's Statement of Additional Authorities
- D. Appellant GMAC Mortgage, LLC's Motion for Reconsideration
- E. Defendant JP Morgan Chase Bank, N.A.'s Opposition to Plaintiff's Motion for Summary Judgment
- F. Defendant Wells Fargo Bank, N.A., as Trustee of WaMu Mortgage Pass-Through Certificates, Series 2005-PR4's

**COPY**

Joinder in Defendant JP Morgan Chase Bank, N.A.'s Opposition to  
Plaintiff's Motion for Summary Judgment

No. 66445-7-I

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

---

**GMAC MORTGAGE, LLC, *Appellant,***

**v.**

**SUMMERHILL VILLAGE HOMEOWNERS  
ASSOCIATION, *Respondent.***

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**MOTION OF BANK OF AMERICA, N.A.,  
FOR LEAVE TO FILE  
BRIEF *AMICUS CURIAE***

---

Appeal from the Superior Court of King County,  
the Honorable Mary Yu

---

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**Attorneys for *Amicus Curiae*  
BANK OF AMERICA, N.A.**

Pursuant to RAP 10.6(b), Bank of America, N.A., seeks leave to file the attached Brief *Amicus Curiae*.

1. This case presents an issue of first impression: whether Washington's Condominium Act, RCW 64.34.364, vitiates a mortgage lender's statutory right to redeem residential property sold in foreclosure, RCW 6.23.010.

2. The issue of statutory interpretation decided by the Superior Court and briefed by the parties to this appeal is the wrong one. The parties have ignored a vital and decisive provision of the Condominium Act, RCW 64.34.364(7). The result is a misinterpretation of the Condominium Act's impact on statutory redemption that cannot stand as precedent. Consistent with RAP 10.3(e), Bank of America's proposed Brief *Amicus Curiae* presents arguments pertaining to RCW 64.34.364(7) along with additional reasoning and supporting authorities not cited by the parties.

3. Bank of America also has a direct interest at stake. In a separate, subsequently filed appeal to this Court (No. 67608-3-I), Bank of America currently seeks review of the same misinterpretation of the Condominium Act and the Redemption Act. Bank of America has also filed two lawsuits with the King County Superior Court in order to preserve the status quo and toll the expiration of the redemption period for two additional and opposed redemption attempts (King County Superior Court Cause Nos. 11-2-26940-0 SEA and 11-2-35753-8 KNT). Without the benefit of Bank of America's Brief *Amicus Curiae*, this Court would

not know the pervasiveness of this issue and how this Court's decision could affect a pending appeal and two pending Superior Court lawsuits.

4. Bank of America is very familiar with the issues involved and the scope of argument presented by the parties. Appellant GMACM and Bank of America are similarly situated residential mortgage servicers. Counsel for Respondent Plumline also represents each of the three parties opposed to Bank of America in its pending lawsuits. Consistent with RAP 10.3(e), Bank of America's Brief *Amicus Curiae* presents argument that does not appear in the briefs of either party.

5. Although Bank of America asks this Court to reverse the decision of the Superior Court – and its Brief *Amicus Curiae* is thus aligned with the interests of Appellant GMACM – the fundamental issue and argument presented by *Amicus Curiae* are different from those posed by GMACM's Opening Brief and Reply.

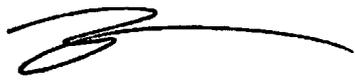
6. As the nation's – and the State of Washington's – leading mortgage originator and servicer, Bank of America seeks to assist this Court in understanding and curing an error of law that, unless corrected, would have a dramatic adverse impact on Bank of America and similarly situated lenders.

For these reasons, Bank of America requests to leave to file the attached Brief *Amicus Curiae*. The proposed Brief *Amicus Curiae* accompanies this Motion.

Dated: October 31, 2011

Respectfully submitted,

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IN THE COURT OF APPEALS OF THE STATE  
OF WASHINGTON, DIVISION ONE

GMAC MORTGAGE, LLC

Appellant,

v.

SUMMERHILL VILLAGE  
HOMEOWNERS ASSOCIATION  
and PLUMBLINE MANAGEMENT  
PROFIT SHARING PLAN,

Respondents.

APPEAL NO. 66455-7-1

PLUMLINE'S ANSWER TO  
BANK OF AMERICA,  
N.A.'S MOTION FOR  
LEAVE TO FILE BRIEF  
AMICUS CURIAE

**I IDENTITY OF ANSWERING PARTY**

Respondent Plumline Management Profit Sharing Plan ("Plumline") is answering and opposing the Motion for Leave to File Brief Amicus Curiae (the "Amicus Motion") filed by Bank of America, N.A. ("Bank America").

**II STATEMENT OF RELIEF SOUGHT**

Plumline respectfully requests denial of Bank America's motion.

**III FACTS RELEVANT TO MOTION**

One of the issues in this case concerns the statutory right of a deed of trust lender to redeem from a judicial foreclosure of a condominium

assessment lien. That issue involves interpretation of two straightforward statutes. Three other pending cases with Bank America involve the same issue. Bank America, represented by some of the same counsel as here, already lost in the trial court on one of these cases. This case involves additional issues not present in the pending Bank America cases. The decision in this case may or may not entail a ruling on the common issue, and may or may not be reported as precedent for future cases.

By letter dated June 9, 2011, the Court indicated this case could be set during the Court's November term, but it has not been set yet to Plumblin's knowledge. GMAC Mortgage, LLC ("GMACM"), the appellant in this matter, twice moved for leave to file an overlength reply brief. Both motions were denied. The briefing of the parties to this case was completed on or about July 22, 2011, with the filing of GMACM's Reply Brief. Undersigned counsel for Plumblin believes that GMACM's then counsel and present counsel for Bank America were in contact with each other about their respective cases during the previous briefing process for this case. The Appendix to Reply Brief of Appellant (GMACM) even includes a copy of the complaint and answer in one of these other cases. Exhibits I and J. Even so, Bank America delayed filing the pending Amicus Motion until October 31, 2011.

#### IV ARGUMENT

In essence Bank America argues that its Brief Amicus Curiae should be allowed because (1) GMAC and the Court are not able to correctly interpret these relatively straight forward statutes without its assistance, (2) the Court will not understand the pervasiveness of the issue without Bank America's assistance, (3) the outcome in this case may affect other cases involving Bank America, and (4) Bank America is a very big bank.

This case involves the interpretation of two limited and straightforward statutes: RCW 6.23.010 and RCW 6.34.364. The Court is more than capable of addressing the matter without the intervention or assistance of Bank America. GMAC's briefing already alerts the Court that the redemption issue is not unique to this case. GMACM Reply Brief, p. 2, fn 2, Appendix to GMAC Reply Brief, Exhibits I and J. The existence of three other cases involving the redemption issues is hardly a pervasive one or one with dire consequences for the entire mortgage industry. Recent events have shown that Bank America and the mortgage industry in general are capable of mismanagement and bad decisions on a far larger scale. Any case this Court rules upon may affect other cases, pending or yet to be filed. That is not a sufficient basis to allow a third party to interject itself into this case. Under that logic, Bank America, as a

very large bank, should be allowed to participate in virtually any commercial case under consideration by the Court. GMACM is more than capable of representing the lender point of view in this matter.

Bank America's proposed Brief Amicus Curiae makes two arguments. First, Bank America argues that Subsection (7) of RCW 64.34.364 dictates a favorable outcome for Bank America. Brief Amicus Curiae, p. 19, ¶ 1. Bank America contends that the Court will ignore RCW 64.34.364(7) if it is not allowed to participate. While GMACM does not rely on that Subsection for its arguments, that Subsection is quoted in full, along with several other Subsections, in GMACM's Opening Brief (pages 16-17). Bank America implies that the Court will not be aware of Subsection (7) without Bank America's help. Second, Bank America argues that if its first argument fails, the Court should still interpret or "harmonize" RCW 6.23.010 and RCW 64.34.364 in a manner that favors lenders because of public policy considerations. Brief Amicus Curiae, pp. 14-19. This second argument is not materially or substantially different than the position already taken and briefed by GMACM. There are differences in drafting style and nuances, but it is not a new or materially different position from GMACM's.

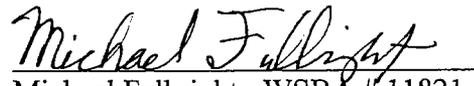
The Court has already ruled that the issues presented in this case do not warrant allowing GMACM to file an overlength reply brief. These

lenders are trying to circumvent that ruling through the artifice of an amicus curiae brief. The same considerations that led to rejection of an overlength reply brief apply to the Amicus Motion. The Court is more than capable of issuing an appropriate ruling without the unrequested “assistance” of Bank America.

#### V CONCLUSION

Based on the foregoing, Plumblin respectfully requests that this Court deny Bank America’s motion to file an amicus curiae brief.

RESPECTFULLY SUBMITTED this 2nd day of November, 2011.

  
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#### DECLARATION OF SERVICE

I certify that, I mailed a copy of the foregoing Plumblin’s Answer to Bank of America, N.A.’s Motion for Leave to File Brief Amicus Curiae to the attorneys listed below, at the addresses listed below, postage prepaid, on November 2, 2011.

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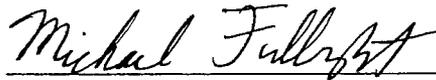
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Washington DC, 20004

Signed at Bellevue, Washington, on November 2, 2011.



Michael Fulbright, WSBA No. 11821  
Attorney for Respondent Plumline  
Management Profit Sharing Plan

IN THE COURT OF APPEALS OF THE STATE  
OF WASHINGTON, DIVISION ONE

GMAC MORTGAGE, LLC

Appellant,

v.

SUMMERHILL VILLAGE  
HOMEOWNERS ASSOCIATION and  
PLUMBLINE MANAGEMENT  
CORPORATION PROFIT SHARING  
PLAN,

Respondents.

Case No. 66455-7-I

APPELLANT GMAC  
MORTGAGE'S STATEMENT  
OF ADDITIONAL  
AUTHORITIES

Pursuant to RAP 10.8, Appellant GMAC Mortgage, LLC  
("GMACM") submits this Statement of Additional Authorities.

**I. ADDITIONAL AUTHORITY**

RCW 64.34.364(7) - Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

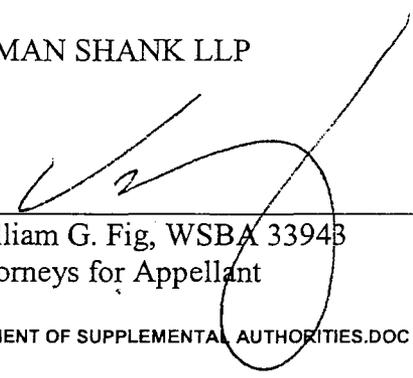
## II. ISSUE TO WHICH ADDITIONAL AUTHORITY APPLIES

At issue in this appeal are the application and interplay of Washington's redemption statute, RCW 64.34.364, and Washington's condominium assessment lien statute, RCW 6.23.010. Of specific importance is the meaning/application of the "subsequent in time" language in found in RCW 6.23.010. Neither Appellant nor Respondents raised or addressed RCW 64.34.364(7) in their briefing. RCW 64.34.364(7) is offered regarding the issues of when a condominium lien attaches to or encumbers a unit and whether, under RCW 6.23.010, a condominium's assessment lien is "subsequent in time" to Appellant's trust deed.

The briefing submitted by the parties in Case No. 67608-3-I before this court regarding the same statutes fully discusses this issue.

RESPECTFULLY SUBMITTED this 3rd day of February, 2012.

SUSSMAN SHANK LLP

By 

William G. Fig, WSBA 33943  
Attorneys for Appellant

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IN THE COURT OF APPEALS OF THE STATE  
OF WASHINGTON, DIVISION ONE

GMAC MORTGAGE, LLC,

Appellant,

v.

SUMMERHILL VILLAGE  
HOMEOWNERS ASSOCIATION  
and PLUMBLINE MANAGEMENT  
CORPORATION PROFIT SHARING  
PLAN,

Respondents.

Case No. 66455-7-I

APPELLANT GMAC  
MORTGAGE, LLC'S  
MOTION FOR  
RECONSIDERATION [Rule  
12.4]

**I. IDENTITY OF MOVING PARTY**

The moving party is Appellant GMAC Mortgage, LLC ("GMACM").

**II. STATEMENT OF RELIEF SOUGHT**

GMACM respectfully requests the court reconsider its ruling affirming the trial court's ruling as set forth in the court's opinion dated February 21, 2012.

**III. FACTS RELEVANT TO MOTION**

In its February 21, 2012 opinion, the court held that GMACM, holder of the first priority lien on a condominium unit,

was not a proper redemptioner under RCW 6.23.010(1)(b). The court's decision was based on the grounds that: (1) "subsequent in time" does not mean or is not equivalent to "subsequent in priority"; and (2) despite the super-priority given to a home owner association's ("HOA") assessment lien under RCW 64.34.364(3), GMACM's encumbrance was not "subsequent in time" to the HOA's assessment lien.

#### **IV. GROUNDS FOR RELIEF AND ARGUMENT**

RAP 12.4(a) provides that a party may file a motion for reconsideration of a decision of the court that terminates review. GMACM believes reconsideration is proper in this instance because: (1) the court improperly interpreted the meaning of RCW 6.23.010(1)(b) and RCW 64.34.364 separately, rather than harmonizing these two statutes and interpreting their meaning so they may be read together; and (2) it appears the court overlooked RCW 64.34.364(7) when analyzing which party's lien was subsequent in time.

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Washington authority clearly states that the intent and purpose of RCW 6.23.010(1)(b) is to give a foreclosed creditor a “second bite at the apple” to protect its secured interest. *See Millay v. Cam*, 135 Wn.2d 193, 207, 955 P.2d 791 (1998) (en banc) (stating that the purpose of the redemption statute “is to allow creditors to recover their just demands”); 27 Marjorie Dick Rombauer, *Washington Practice, Creditors’ Remedies – Debtors’ Relief* § 3.19 (2010). Washington authority also requires the court, to the extent possible, to interpret statutes in a manner that preserves and gives effect to the language and intent of all statutes and in a manner that does not lead to an absurd result. *In re Donnelly’s Estates*, 81 Wn.2d 430, 435, 502 P.2d 1163 (1972), *citing Connick v. Chehalis*, 53 Wn.2d 288, 290, 388 P.2d 647 (1958); *Kirk v. Miller*, 83 Wn.2d 777, 781, 522 P.2d 843 (1974); *State v. Day*, 96 Wn.2d 646, 648, 638 P.2d 546 (1981); *see also State v. Brasel*, 28 Wn. App. 303, 309, 623 P.2d 696 (1981).

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By reading the “subsequent in time” language of RCW 6.23.010(1)(b) alone in a vacuum, and by determining that “subsequent in time” did not mean, or was not synonymous with, “subsequent in priority,” the court did, in fact, contravene the well-established intent of RCW 6.23.010(1)(b), thereby necessarily leading to an absurd and inequitable result.

The only way to give full effect to, and harmonize the intent of, both RCW 6.23.010(1)(b) and RCW 64.34.364, is for the court to interpret subsequent in *time* to mean or be synonymous with subsequent in *priority*. This interpretation carries out the intent of RCW 6.23.010(1)(b) by giving a foreclosed creditor a “second bite at the apple” to protect its secured interest while keeping the language of RCW 64.24.364 intact.<sup>1</sup> In contrast, the court’s decision in this case not only fails to harmonize the language of the two statutes, it completely negates the legislative intent behind RCW 6.23.010(1)(b). Moreover, the court’s interpretation leads to an absurd result – a third party receives a significant windfall at the expense of a known secured creditor.

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<sup>1</sup> This interpretation does not prejudice the HOA’s rights or remedies under RCW 64.34.364.

Secondly, reconsideration is also proper because the court's decision did not indicate whether it considered RCW 64.34.364(7) in determining whether GMACM was a proper redemptioner. The language of RCW 64.34.364(7) is plain and unequivocal: "Recording of the [condominium association] declaration constitutes record notice and perfection of the lien for assessments." RCW 64.34.364(7), emphasis added. As a result, a deed of trust recorded after the condominium declaration is recorded is "subsequent in time" to the perfection of the HOA's assessment lien against the unit and, therefore, subject to redemption under RCW 6.23.010(1)(b). As set forth below, the language of RCW 64.34.364 supports this very conclusion.

Under RCW 64.34.364(2)(a), a mortgage lender is immune from the condominium lien if its mortgage or deed of trust is "recorded before the recording of the declaration." Thus, the super-priority given to an HOA assessment lien under RCW 64.34.364(3) applies only to a mortgage lender whose mortgage or deed of trust is recorded subsequent in time to the declaration and "before the date on which the assessment sought to be enforced became delinquent."

RCW 64.34.364(2)(b). Therefore, by the statute's own terms, any mortgage lender subject to the assessment lien is "subsequent in time" for purposes of RCW 6.23.010(1)(b).

GMACM's lien against the subject condominium unit arose (*i.e.* the trust deed was recorded) after the condominium declaration was recorded.<sup>2</sup> CP 29-35; CP 125-143; CP 416-436. Therefore, for the purposes of RCW 6.23.010(1)(b), GMACM's encumbrance against the unit was "subsequent in time" to the date the HOA assessment lien against the unit was perfected.<sup>3</sup> As a result, GMACM was and is a proper redemptioner under RCW 6.23.010(1)(b).

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<sup>2</sup> RCW 64.34.200(1) provides a condominium does not exist until the declaration is recorded in the real property records. The declaration defines and creates the condominium units. *Id.*; RCW 64.34.216. Thus, it is axiomatic that a condominium unit cannot exist until the declaration is recorded.

<sup>3</sup> Perfection (creation) must be distinguished from attachment (enforcement). The perfected, pre-existing lien attaches to the unit "at the time the assessment is due." RCW 64.34.364(1).

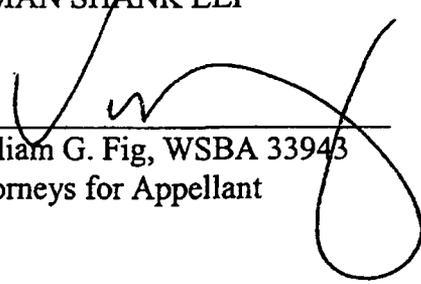
**V. CONCLUSION**

Based on the foregoing, GMACM respectfully requests this Court reconsider its decision and find that GMACM is a proper redemptioner under RCW 6.23.010(1)(b).

RESPECTFULLY SUBMITTED this 9th day of March, 2012.

SUSSMAN SHANK LLP

By

  
\_\_\_\_\_  
William G. Fig, WSBA 33943  
Attorneys for Appellant





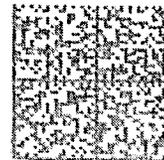
**SUSSMAN SHANK LLP**

**ATTORNEYS AT LAW**

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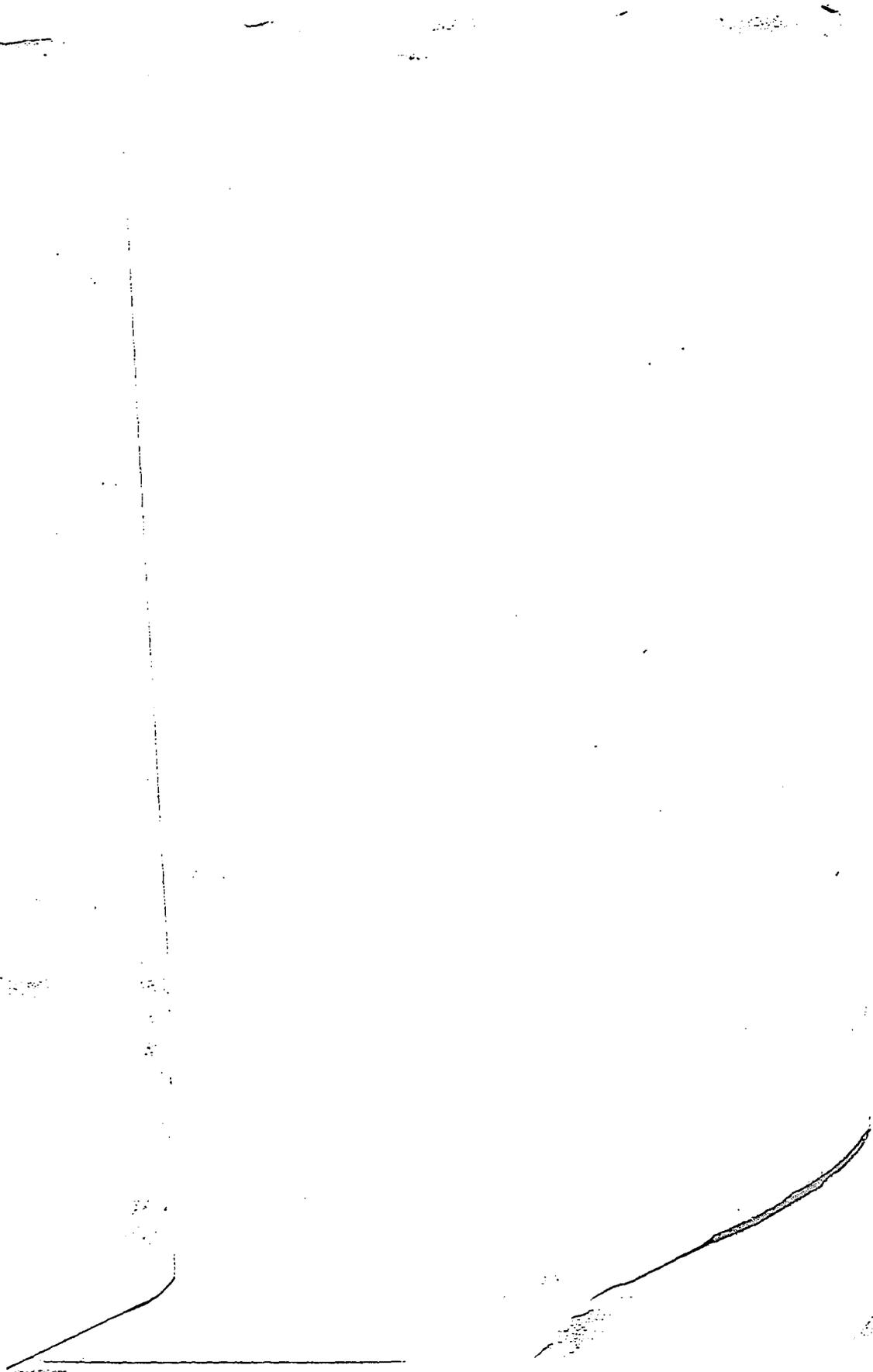
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KING COUNTY  
Honorable Suzanne Barnett  
SUPERIOR COURT CLERK  
Hearing: April 6, 2012 @ 9:15 a.m.  
E-FILED  
With Oral Argument  
CASE NUMBER: 11-2-04005-4 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LAKEWEST CONDOMINIUM  
ASSOCIATION, a Washington nonprofit  
corporation,

Plaintiffs,

v.

SCOTT BLUMFIELD and JANE DOE  
BLUMFIELD, husband and wife or state  
registered domestic partners; JP MORGAN  
CHASE BANK, N.A., successor in interest to  
WASHINGTON MUTUAL BANK, a  
Washington corporation; WELLS FARGO  
BANK, N.A., as Trustee of WaMu Mortgage  
Pass-Through Certificates, Series 2005-PR4,  
successor in interest to Washington Mutual  
Bank, a Washington corporation; NATIONAL  
CITY BANK, a national association; PNC  
BANK, National Association, a national  
banking association, successor by merger to  
National City Bank, a national association;  
JOHN DOE and JANE DOE, Unknown  
Occupants of the Subject Real Property; and  
also all other persons or parties unknown  
claiming any right, title, estate, lien, or interest  
in the real estate described in the Complaint  
herein,

Defendants.

NO. 11-2-04005-4 SEA

DEFENDANT JP MORGAN CHASE  
BANK, N.A.'S OPPOSITION TO  
PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT

DEFENDANT JP MORGAN CHASE BANK,  
N.A.'S OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

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**I. RELIEF REQUESTED**

Defendant JP Morgan Chase Bank, N.A. ("JP Morgan") requests that the Court deny Plaintiff's motion for summary judgment because JP Morgan's Deed of Trust is valid, enforceable and was properly recorded prior to the accrual of Plaintiff's lien. Plaintiff bases its challenge to JP Morgan's priority upon a minor and immaterial error in the legal description of the JP Morgan Deed of Trust. Plaintiff argues that it violates the statute of frauds and is void because the building number is missing from the legal description. Plaintiff also argues that the properly recorded Deed of Trust did not impart constructive notice, and therefore Plaintiff obtains priority as a bona fide purchaser without notice of the prior recorded deed of trust. However, JP Morgan's Deed of Trust complies with the statute of frauds because it contains the correct tax parcel number and because the building number is set forth in the address immediately following the legal description. Further, notwithstanding the missing building number, the Deed of Trust was properly indexed in the official grantor-grantee index. Had Plaintiff searched the official index, it would have easily found the JP Morgan Deed of Trust. Thus, Plaintiff is charged with constructive notice, which defeats Plaintiff's status as a bona fide purchaser. For all the foregoing reasons, JP Morgan's Deed of Trust is valid and senior to the interests of Plaintiff, and the Court should deny Plaintiff's motion for summary judgment.

**II. STATEMENT OF FACTS**

Scott Blumfield ("Blumfield") purchased the below described property at a trustee's sale on or about August 14, 2003. Title to the property was conveyed to Blumfield by Trustee's Deed, recorded on August 18, 2003, under King County Recording No. 20030818001409. (Declaration of Thomas F. Peterson ("Peterson Decl."), Ex. A, Trustee's Deed.) The Subject Property is located at 2125 Westlake Ave. N. #301, Seattle, Washington

1 98190, and is legally described as follows:

2 UNIT 301, BUILDING 2125, LAKEWEST, A CONDOMINIUM,  
3 ACCORDING TO DECLARATION THEREOF RECORDED UNDER  
4 KING COUNTY RECORDING NO. 8808260522 AND ANY  
5 AMENDMENT(S) THERETO; SAID UNIT IS LOCATED ON SURVEY  
6 MAP AND PLANS FILED IN VOLUME 89 OF CONDOMINIUMS, AT  
7 PAGES 12 THROUGH 22, IN KING COUNTY, WASHINGTON

8 TOGETHER WITH AN UNDIVIDED 1.89502 PERCENTAGE INTEREST  
9 IN THE COMMON AREAS AND FACILITIES APPERTAINING TO SAID  
10 UNIT;

11 SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF  
12 WASHINGTON.

13 (the "Subject Property").

14 On or about October 26, 2005, Blumfield granted a deed of trust to Washington  
15 Mutual Bank, which was recorded on October 31, 2005, under King County Recording No.  
16 20051031003600 (hereinafter "JP Morgan Deed of Trust"). (Peterson Decl., Ex. B., JP  
17 Morgan Deed of Trust.)

18 JP Morgan succeeded to Washington Mutual's interest under the Deed of Trust.  
19 Subsequently, the JP Morgan Deed of Trust was combined with other deeds of trust in a  
20 mortgage-backed security. JP Morgan assigned the Deed of Trust to Wells Fargo Bank,  
21 N.A., as Trustee of WaMu Mortgage Pass-Through Certificates, Series 2005-PR4. JP  
22 Morgan remains as the loan servicer.

23 The cover page of the JP Morgan Deed of Trust contains the following tax parcel  
24 number: 415233-0420-01. (*Id.*) It is undisputed that this is the correct tax parcel number for  
25 the Subject Property. Page 3 of the JP Morgan Deed of Trust contains the following legal  
26 description:

...Borrower irrevocably grants and conveys to Trustee, in trust, with power of  
sale, the following described property located in King County, Washington:

DEFENDANT JP MORGAN CHASE BANK,  
N.A.'S OPPOSITION TO PLAINTIFF'S  
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1 UNIT 301, OF LAKEWEST, A CONDOMINIUM, ACCORDING TO  
2 DECLARATION THEREOF RECORDED UNDER KING COUNTY  
3 RECORDING NO. 8808260522 AND ANY AMENDMENT(S) THERETO;  
4 SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN  
5 VOLUME 89 OF CONDOMINIUMS, AT PAGES 12 THROUGH 22, IN  
6 KING COUNTY, WASHINGTON

7 which currently has the address of 2125 Westlake Ave N #301, Seattle,  
8 Washington 98109 (“Property Address”)[.]

9 (*Id.* at Page 3.) This legal description is missing “Building 2125” following “Unit 301.”

10 (*Id.*) However, the building number is included in the address “2125 Westlake Ave N #301,”  
11 directly below the legal description. (*Id.*) (Emphasis added.)

12 Plaintiff’s lien arises out of Blumfield’s alleged failure to pay assessments and special  
13 assessments since April 1, 2008. (Declaration of Robert Guyott ¶ 1.9.) Any such lien arose  
14 nearly two and one-half years after JP Morgan recorded its Deed of Trust. It is therefore  
15 undisputed that the JP Morgan Deed of Trust was recorded prior to Plaintiff’s lien.

16 Plaintiff recorded a Notice of Claim of Lien for Condominium Assessments on May  
17 12, 2009, under King County Recording No. 20090512002340. (Peterson Decl., Ex. C,  
18 Claim of Lien.) The legal description in the Claim of Lien is missing “Building 2125.” (*Id.*)  
19 This is the same defect that Plaintiff alleges renders the JP Morgan Deed of Trust void.  
20 Plaintiff’s original Complaint filed on January 24, 2011 similarly contains a legal description  
21 that is missing “Building 2125.” (Pl.’s Compl. at Page 8.)

22 JP Morgan’s counsel has searched the King County Property Records online at  
23 <http://www.kingcounty.gov/business/Recorders/RecordsSearch.aspx>. (Peterson Decl. ¶ 6.)  
24 Upon searching under the grantor/grantee index for “Blumfield, Scott,” the search revealed  
25 the JP Morgan Deed of Trust. (Peterson Decl., Ex. D, Records Search Report.) Similarly, it  
26 was also located by searching under Tax Parcel No. 415233-0420-01. (Peterson Decl., Ex. E,

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1 Records Search Report.) Therefore, despite the error in the legal description, the King  
2 County Recorder's Office properly indexed the JP Morgan Deed of Trust as encumbering the  
3 Subject Property.

### 4 III. ISSUES PRESENTED

- 5 1. Does JP Morgan's Deed of Trust comply with the statute of frauds when it  
6 references the correct tax parcel number of the Subject Property?
- 7 2. Is Plaintiff a bona fide purchaser when it had actual or constructive notice of  
8 JP Morgan's interest in the Subject Property?
- 9 3. Is Plaintiff's priority, if any, limited to six months of assessments, pursuant to  
10 RCW 64.34.364(3)?

### 11 IV. EVIDENCE RELIED UPON

12 This opposition is based on the pleadings and files herein, and on the Declaration of  
13 Thomas F. Peterson, with exhibits.

### 14 V. AUTHORITY

#### 15 A. JP Morgan's Deed of Trust Complies with Statute of Frauds

16 JP Morgan's Deed of Trust complies with the statute of frauds. While the legal  
17 description is missing the building number, the Deed of Trust nevertheless meets the  
18 requirements of the statute of frauds because it contains the correct assessor's tax parcel  
19 number on its face. *Stoebuck & Weaver, 18 Washington Practice: Real Estate Transactions*  
20 § 13.3 (2nd ed. 2004) ("[D]escription by tax lot number has been held sufficient, on the  
21 theory that the assessor's records are public records, which in return refer to the legal  
22 description of record in the auditor's office."); *Bingham v. Sherfey*, 38 Wn.2d 886, 889, 234  
23 P.2d 489 (1951); *City of Centralia v. Miller*, 31 Wn.2d 417, 187 P.2d 244 (1948) (description  
24 by tax lot number is adequate for tax foreclosure proceedings.)

25  
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1 In *Bingham*, the Washington Supreme Court held that a legal description that  
2 included the tax parcel number was adequate because “a reference to this public record  
3 furnishes the legal description of the real property involved with sufficient definiteness and  
4 certainty to meet the requirements of the statute of frauds.” *Bingham*, 38 Wn.2d at 889.  
5 Here, JP Morgan’s Deed of Trust listed Assessor’s Property Tax Parcel No. 415233-0420-01  
6 on its cover page. Therefore, under *Bingham*, reference to the correct tax parcel number is  
7 sufficient to comply with the statute of frauds.

8 Further, the description contained in the JP Morgan Deed of Trust is sufficiently  
9 definite to comply with the statute of frauds. To comply with the statute of frauds, “a  
10 contract or deed for the conveyance of land must contain a description of the land sufficiently  
11 definite to locate it without recourse to oral testimony, or else it must contain a reference to  
12 another instrument which does contain a sufficient description.” *Berg v. Ting*, 125 Wn.2d  
13 544, 551 886 P.2d 564 (1995); *Bigelow v. Mood*, 56 Wn.2d 340, 341, 353 P.2d 429 (1960);  
14 *Martin v. Seigel*, 35 Wn.2d 223, 212 P.2d 107 (1949).

15 Here, the JPMorgan Deed of Trust contains the following description:

16 ...Borrower irrevocably grants and conveys to Trustee, in trust, with power of  
17 sale, the following described property located in King County, Washington:

18 UNIT 301, OF LAKEWEST, A CONDOMINIUM, ACCORDING TO  
19 DECLARATION THEREOF RECORDED UNDER KING COUNTY  
20 RECORDING NO. 8808260522 AND ANY AMENDMENT(S) THERETO;  
21 SAID UNIT IS LOCATED ON SURVEY MAP AND PLANS FILED IN  
22 VOLUME 89 OF CONDOMINIUMS, AT PAGES 12 THROUGH 22, IN  
23 KING COUNTY, WASHINGTON

24 which currently has the address of 2125 Westlake Ave N #301, Seattle,  
25 Washington 98190 (“Property Address”)[.]

26 (Peterson Decl., Ex. B, JP Morgan Deed of Trust at Page 3.) While “Building 2125” is  
omitted from the description following the unit number, the building information is provided

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1 in the address: "2125 Westlake Ave N #301." Thus, taken together, the description and  
2 address are sufficiently definite to locate the Property without recourse to oral testimony, and  
3 the JP Morgan Deed of Trust complies with the statute of frauds.

4 In a twist of irony, Plaintiff's Claim of Lien suffers the same defect that, according to  
5 Plaintiff, renders the JP Morgan Deed of Trust void. Plaintiff's Claim of Lien and original  
6 Complaint contain legal descriptions that are missing the building number. Accepting  
7 Plaintiff's hyper-technical argument would require the Court to hold that Plaintiff's Claim of  
8 Lien is also defective. Fortunately, this is not the law in Washington.

9 **B. JP Morgan's Deed of Trust was Recorded First, Plaintiff had Constructive**  
10 **Notice of it, and Therefore is not a Bona Fide Purchaser**

11 JP Morgan's Deed of Trust is superior to the Plaintiff's lien because JP Morgan's was  
12 recorded first and the Plaintiff is not a bona fide purchaser without notice. Washington's  
13 race-notice recording act, contained in RCW 65.08.070, provides,

14 A conveyance of real property, when acknowledged by the person executing  
15 the same . . . may be recorded in the office of the recording officer of the  
16 county where the property is situated. Every such conveyance not so recorded  
17 is void as against any subsequent purchaser or mortgagee in good faith and for  
18 a valuable consideration from the same vendor, his heirs or devisees, of the  
19 same real property or any portion thereof whose conveyance is first duly  
20 recorded. An instrument is deemed recorded the minute it is filed for record.

19 In a race-notice system, the subsequent party gains priority only if: (1) the prior party has not  
20 recorded when the subsequent party takes his interest; (2) the subsequent party has no notice  
21 of the prior party's interest; (3) the subsequent party gives value for his interest; and (4) the  
22 subsequent party records before the prior party. RCW 65.08.070; Stoebuck & Weaver, 18  
23 *Washington Practice, Real Estate: Transactions* § 14.5 (2nd ed. 2004).

24 Plaintiff may argue that it should be in first-position due to the missing building  
25 number in the legal description in the JP Morgan Deed of Trust. However, it is undisputed

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1 JP Morgan recorded its deed of trust before Plaintiff's lien arose. Further, Plaintiff is not a  
2 bona fide purchaser. Notwithstanding the missing building number, Plaintiff had actual or  
3 constructive notice of JP Morgan's interest, which defeats a bona fide purchaser defense.

4 "A bona fide purchaser for value is one who without notice of another's claim of  
5 right to, or equity in, the property prior to his acquisition of title, has paid the vendor a  
6 valuable consideration." *Miebach v. Colasurdo*, 102 Wn.2d 170, 175, 685 P.2d 1074 (1984)  
7 (quoting *Glaser v. Holdorf*, 56 Wn.2d 204, 209, 352 P.2d 212 (1960)). "The notice 'need not  
8 be actual, nor amount to full knowledge . . .'" *Id.*

9  
10 It is a well-settled rule that where a purchaser has knowledge or information  
11 of facts which are sufficient to put an ordinarily prudent man upon inquiry,  
12 and the inquiry, if followed with reasonable diligence, would lead to the  
13 discovery of defects in the title or of equitable rights of others affecting the  
14 property in question, the purchaser will be held chargeable with knowledge  
15 thereof and will not be heard to say that he did not actually know of them. In  
16 other words, knowledge of facts sufficient to excite inquiry is constructive  
17 notice of all that the inquiry would have disclosed.

18  
19 *Id.* at 175-76 (citation omitted). Generally, there is constructive notice of information that is  
20 reasonably disclosed in the statutorily required columns of the general index. *Stoebuck &*  
21 *Weaver*, 18 *Washington Practice, Real Estate: Transactions* § 14.6 (2nd ed. 2004) ("a person  
22 who acquires an interest in land is *charged in law* with notice of those prior interests in the  
23 land that he would reasonably discover if he used the official recording and index system.")  
24 (Emphasis in original.)

25 Plaintiff, at the very least, had constructive notice of JP Morgan's Deed of Trust. The  
26 process of indexing deeds is governed by statute. RCW 65.04.050 provides, in part, as  
follows:

Every auditor or recording officer must keep a general index, direct and  
inverted. . . . The auditor or recording officer shall correctly enter in such  
index every instrument concerning or affecting real estate which by law is

1 required to be recorded, the names of grantors being in alphabetical order.  
2 The inverted index shall also be divided into eight columns, precisely similar,  
3 except that "grantee" shall occupy the second column and "grantor" the third,  
4 the names of grantees being in alphabetical order.

5 RCW 65.04.050 (Index of instruments, how made and kept—Recording of plat names).

6 Recorded documents are kept in numerical order based upon the recording numbers, which  
7 are issued sequentially in order of the time of filing. For example, in King County, the first  
8 document filed on January 1, 2012 was numbered 20120101000001 and the second  
9 document was numbered 20120101000002 and so on. Pursuant to statute, these random  
10 documents are thereafter indexed, not by legal description, but alphabetically by grantor and  
11 grantee. RCW 65.04.050; Stoebuck & Weaver, 18 *Washington Practice, Real Estate:  
12 Transactions* § 14.6 (2nd ed. 2004) (Washington's grantor-grantee index is two separate  
13 indexes; a direct index sorted by grantor and indirect index sorted by grantee.)

14 In this case, a person examining title using the official index would have discovered  
15 the JP Morgan Deed of Trust. If one wanted to know if Scott Blumfield granted any  
16 encumbrances on the Subject Property, one would search Scott Blumfield's name as grantor.  
17 Barlow Burke, Law of Title Insurance, § 12.01 (2006); Stoebuck & Weaver, 18 *Washington  
18 Practice, Real Estate: Transactions* § 14.6 (2nd ed. 2004). One would then examine the  
19 instruments to see what they provide. In this case, that search would have revealed the JP  
20 Morgan Deed of Trust. Indeed, counsel for JP Morgan searched the property records for  
21 "Blumfield, Scott" and easily located the JP Morgan Deed of Trust. One examining the JP  
22 Morgan Deed of Trust would find that it covered the Subject Property because it contained  
23 the tax parcel number, a near complete legal description, and the property address with the  
24 building number.<sup>1</sup> Therefore, Plaintiff had constructive notice of JP Morgan's interest and

25 <sup>1</sup> It is undisputed that Plaintiff had actual knowledge of Blumfield's building number as it maintains such  
26 records in the ordinary course of Association business. Therefore, Plaintiff cannot argue that upon reviewing  
the JP Morgan Deed of Trust that it did not know in which building Blumfield's property was located.

1 Plaintiff holds a subordinate position under RCW 65.08.070.

2 Plaintiff cites *Koch v. Swanson*, 4 Wn. App. 456, 481 P.2d 915 (1971) for the  
3 proposition that an erroneous legal description does not impart constructive notice. *Koch* is  
4 factually distinguishable. There, Swanson granted a mortgage to Plaintiffs to "Tract 125" of  
5 Opportunity Plat. Tracts 124 and 125 were the only two tracts in the plat. Swanson  
6 thereafter granted a mortgage to Pacific First Federal over "Tract 124." Subsequently,  
7 Plaintiffs learned that their mortgage erroneously referred to "Tract 125" instead of "Tract  
8 124." Plaintiff filed a foreclosure action alleging that its mortgage had priority and that  
9 Pacific First Federal was charged with constructive notice.

10 The court disagreed. The court found that had Pacific First Federal searched the  
11 index, it would have found no document affecting Tract 124. *Id.* at 459. For instance, had  
12 Pacific First Federal searched for the grantor "Swanson," it would have only found a  
13 mortgage on Tract 125, but not for Tract 124. The court cited the general rule that "[w]here  
14 existing property is described, the index and the recorded document imparts notice only as to  
15 matters within its chain of title." *Id.* The court held, "Therefore, one searching the index has  
16 a right to rely upon what the index and recorded document discloses and is not bound to  
17 search the record outside the chain of title of the property presently being conveyed." *Id.*

18 In this case, we are not dealing with an erroneous description of a different property.  
19 Rather, we simply have a legal description that is missing a reference to a building number.  
20 Unlike the situation in *Koch*, Plaintiff was not required to search outside the chain of title to  
21 the Subject Property to find the JP Morgan Deed of Trust. A simple search in the grantor  
22 index would have located the deed of trust. Upon review of the JP Morgan Deed of Trust,  
23 Plaintiff would have easily determined that it encumbered the Subject Property. The legal  
24 description does not describe a different existing property. Therefore, the decision in *Koch* is  
25

26 DEFENDANT JP MORGAN CHASE BANK,  
N.A.'S OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT

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-10-

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1 inapposite. For the reasons stated above, Plaintiff is not a bona fide purchaser.

2 **C. Plaintiff is Entitled Only to Limited Priority Pursuant to RCW 64.34.364.**

3 As Plaintiff acknowledges, the general rule of priority is “first in time, first in right.”  
4 Indeed, RCW 64.34.364(2) provides, “A lien under this section shall be prior to all other  
5 liens and encumbrances on a unit except: . . . (b) a mortgage on the unit recorded before the  
6 date on which the assessment sought to be enforced became delinquent.” As discussed  
7 above, it is undisputed that the JP Morgan Deed of Trust was recorded over two years before  
8 Plaintiff’s lien arose in April 2008.

9 Notwithstanding this general rule, RCW 64.34.364(3) provides for limited super  
10 priority for assessment liens for the six months preceding the date of foreclosure. RCW  
11 64.34.364(3) provides, in pertinent part, as follows:

12 . . . the lien shall also be prior to the mortgages described in subsection  
13 (2)(b) of this section to the extent of assessments for common expenses,  
14 excluding any amounts for capital improvements, based on the periodic  
15 budget adopted by the association . . . which would have become due during  
the six months immediately preceding the date of a sheriff’s sale in an action  
for judicial foreclosure by . . . the association. . . .

16 (Emphasis added.) Plaintiff, in its motion, states that the regular monthly assessment in 2012  
17 is \$415.80 per month. (Pl.s’ Mot. at 5.) Therefore, assuming a foreclosure occurs in 2012,  
18 Plaintiffs would have super priority over the JP Morgan Deed of Trust for only \$2,494.80, six  
19 months of regular budgeted assessments. Its lien is otherwise junior to the JP Morgan Deed  
20 of Trust.

21 **VI. CONCLUSION**

22 For the foregoing reasons, JP Morgan requests that the Court deny Plaintiff’s motion  
23 for summary judgment. The JP Morgan Deed of Trust is senior in time to the interests of  
24 Plaintiff. Further, it complies with the statute of frauds because it references the correct tax  
25

26 DEFENDANT JP MORGAN CHASE BANK,  
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parcel number and contains the correct building number in the address annexed to the legal description. Moreover, Plaintiff is not a bona fide purchaser because it had constructive, if not actual, notice of JP Morgan's senior interest. Therefore, as a matter of law, the JP Morgan Deed of Trust is valid and senior to the interests held by Plaintiff, except to the extent of the limited super priority created by RCW 64.34.364(3).

DATED this 26<sup>th</sup> day of March, 2012.

SOCIUS LAW GROUP, PLLC

By   
Thomas F. Peterson, WSBA #16587  
Adam R. Asher, WSBA #35517  
Attorneys for JP Morgan Chase Bank, N.A.

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N.A.'S OPPOSITION TO PLAINTIFF'S  
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Honorable Suzanne Barrett  
Hearings Date: April 6, 2012  
Hearing Time: 9:00 a.m.  
CASE NUMBER: 11-2-05005-4 SEA

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

LAKEWEST CONDOMINIUM )  
ASSOCIATION, a Washington nonprofit )  
corporation, )

Plaintiff, )

v. )

SCOTT BLUMFIELD and JANE DOE )  
BLUMFIELD, husband and wife or state )  
registered partners; JPMORGAN CHASE )  
BANK, N.A., successor in interest to )  
WASHINGTON MUTUAL BANK, a )  
Washington corporation; WELLS FARGO )  
BANK, N.A., as Trustee of WaMu Mortgage )  
Pass-Through Certificates, Series 2005-PR4, )  
successor in interest to Washington Mutual )  
Bank, a Washington Corporation; NATIONAL )  
CITY BANK, a national association; PNC )  
BANK, National Association, a national )  
banking association, successor by merger to )  
National City Bank, a national association; )  
JOHN DOE and JANE DOE, Unknown )  
Occupants of the Subject Real Property; and )  
also all other persons or parties unknown )  
claiming any right, title, estate, lien, or interest )  
in the real estate described in the Complaint )  
herein, )

Defendants. )

No. 11-2-05005-4 SEA

**DEFENDANT WELLS FARGO BANK,  
N.A., as Trustee of WaMu Mortgage  
Pass-Through Certificates, Series 2005-  
PR4's JOINDER IN DEFENDANT  
JPMORGAN CHASE BANK, N.A.'S  
OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY  
JUDGMENT**

Defendant Wells Fargo Bank, N.A., as Trustee of WaMu Mortgage Pass-Through  
Certificates, Series 2005-PR4 ("Wells Fargo") joins in the Opposition to Plaintiff's Motion for

1 Summary Judgment filed on March 26, 2012 by Defendant JPMorgan Chase Bank, N.A.  
2 (“JPMorgan”) through its counsel.

3 JPMorgan’s interest and Wells Fargo’s interest in the subject lawsuit are identical and are  
4 likewise aligned. As Wells Fargo’s position is identical to JPMorgan’s, Wells Fargo hereby  
5 submits this joinder to JPMorgan’s Opposition to Plaintiff’s Motion for Summary Judgment. For  
6 the reasons presented in JPMorgan’s Opposition brief, Wells Fargo requests that Plaintiff’s  
7 Motion for Summary Judgment is denied.

8 **I. RELIEF REQUESTED**

9 Wells Fargo incorporates JPMorgan’s request for relief as if fully set forth herein.

10 **II. STATEMENT OF FACTS**

11 Wells Fargo incorporates JPMorgan’s statement of the facts as if fully set forth herein.

12 **III. ISSUES PRESENTED**

13 Wells Fargo incorporates JPMorgan’s issues presented as if fully set forth herein.

14 **IV. EVIDENCE RELIED UPON**

15 Wells Fargo incorporates JPMorgan’s evidence relied upon as if fully set forth herein.

16 **V. AUTHORITY**

17 Wells Fargo incorporates JPMorgan’s argument and authority as if fully set forth herein.

18 **VI. CONCLUSION**

19 Based on the foregoing, Wells Fargo respectfully requests the Court allow Wells Fargo to  
20 join in JPMorgan’s Opposition and accordingly deny Plaintiff’s Motion for Summary Judgment.

21 DATED this 26<sup>th</sup> day of March, 2012.

22 **ROUTH CRABTREE OLSEN, P.S.**

23  
24 By: 

Caitlin R. Finley, WSBA No. 40715  
Attorney for Wells Fargo Bank, N.A., as  
Trustee of WaMu Mortgage Pass-  
Through Certificates, Series 2005-PR4