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

MARION RUCKER AND APRIL MILLER,

Appellants,

v.

NOVASTAR MORTGAGE COMPANY INC.,

Respondents.

BRIEF OF APPELLANTS

Appeal from King County Superior Court

Case No: 08-2-34769-9

The Honorable Judge Barnett

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A. INTRODUCTION

The Washington Deed of Trust act at RCW 61.24 et. seq. permits lenders to conduct residential foreclosures without court oversight. The lack of judicial oversight raises challenges to the borrower's ability to identify problems with the foreclosure and to protect themselves.

Novastar Mortgage Inc., claims that its trustee conducted a trustee sale in June of 2007. However, there are significant factual disputes regarding whether this sale was actually announced, whether Novastar Mortgage Inc., was the beneficiary of the borrower's note with the right to appoint a successor trustee of the deed of trust or to proceed with the foreclosure in its own name when the borrower's note had been transferred on to a third party and whether Novastar Mortgage Inc., may execute on a writ of restitution where an amended trustee deed lists another entity as the transferee of the trustee deed after Novastar obtained its writ of restitution. The trial court erred when it disposed of these matters at summary judgment instead of setting the matter for trial.

The court of appeals should reverse the trial court so the matter may be set for trial.

B. Assignments of Error:

The Appellant asserts the following assignments of error:

1. The trial court erred when it entered its order for summary judgment in favor of Novastar Mortgage Inc., when there was a factual dispute regarding whether a sale had been announced.

2. The trial court erred when it entered its order for summary judgment in favor of Novastar Mortgage Inc., when there were factual disputes regarding whether it was a beneficiary with the right to appoint a trustee or pursue a foreclosure on its own behalf.

3. The trial court erred in entering a judgment permitting Novastar Mortgage Inc., to proceed with an unlawful detainer action when it was not the winning bidder at the sale and was not permitted to do business in the State of Washington.

4. The trial court erred when it failed to grant the appellant's motion for partial summary judgment seeking an order reversing the underlying trustee sale and restraining Novastar Mortgage from executing on its writ of restitution.

C. Statement of Facts

1. Origination of Rucker Loan

Mr. Rucker approached Novastar Mortgage Inc., for a loan in February or March of 2006 to finance the purchase of residential property in Woodinville, Washington (hereinafter "Rucker property"). CP 261-262. He was assisted in this endeavor by Clarion Mortgage Inc., a mortgage brokerage. His daughter, April Rucker worked for Clarion Mortgage Inc., at the time. Id. April Rucker subsequently married and changed her name to April Miller.

Mr. Rucker resided in California at the time and so was unable to personally oversee the closing of the loan. He asked his daughter, Micaela Rucker, to act as his power of attorney to assist him with a financing of the Woodinville Property. The escrow officer, Colleen Penick, arrived late to Micaela Rucker's work on March 23, 2006 so Micaela was unable to review the papers she signed. Micaela Rucker simply signed the documents presented to her by the escrow agent. April Rucker (now April Miller) was also present at the signing. CP 1324-1321.

The following day after Micaela Rucker signed these documents Mr. Rucker signed a power of attorney on March 24, 2006. CP 1324-1400 (exhibit A). Thus, on the date the Micaela Rucker signed the various loan documents for Marion Rucker there was no power of attorney in effect.

Marion Rucker later clarified that he did not authorize her to act as his power of attorney on March 23, 2006. CP 128-129. In addition, Ms. Miller and Mr. Rucker later learned that the escrow agent's license had expired and her notary was fraudulent. CP 111.

A short time after this closing Novastar Mortgage Inc., called April Miller regarding these documents and the circumstances surrounding the loan signing. They said that they would rescind the loan and that Novastar would pursue a fraud claim against the O'Conner Law Firm's bond. CP 68-69, CP 179, RP 15 - 18.

2. Issues Surrounding Whether Novastar Mortgage Funded the Rucker Loans.

Despite making these statements to Ms. Miller, Novastar now maintains that it in fact funded these loans and did not rescind the loans in question. It would seem that a company like Novastar should easily be able to establish whether they funded a loan or did not fund a loan. However, despite requests by the plaintiff for a copy of the wire or bank statement showing that Novastar funded the underlying loans to Marion Rucker, it has been unable to provide anything dispositive on this issue.

A careful review of the evidence in this case shows that the core documents that could demonstrate that the Rucker Loans were funded were either lost or destroyed or never existed. Novastar Mortgage Inc.,

relies a "Funding Sheet" to support its assertion the loan was funded. CP 1671-1672 (Exhibit A).

This document indicates preparation on the part of Novastar Mortgage Inc. to fund a loan but is not evidence the funds were actually sent. The form is dated March 23, 2006 indicating it was last updated on March 23, 2006. However, no funds would have been sent on March 23, 2006. Novastar's closing instructions explicitly stated it would not release funds until all conditions were met. It further stated that the cutoff time was 11:00 AM Eastern Standard time every day. Id. Micaela Rucker testified that she did not sign any documents until the end of the day on March 23, 2006. CP 1324-1325. Novastar Mortgage Inc., would not have funded the loan on March 23, 2006. The fact that the funding sheet was not updated after March 23, 2006 indicates that Novastar Mortgage Inc. never in fact funded the Rucker loans.

Other documents provided by Novastar Mortgage Inc., also indicate the loan was never funded. In particular, the Funding tab on the NovaLinq program purportedly kept by Novastar Mortgage Inc., indicates the Funding Source was UBS. Presumably this is a bank. However, the Reference Number and Advance Wire Date are both blank indicating that UBS never provided funds. CP 1671-1672 (Exhibit C).

Novastar Mortgage Inc., was repeatedly cited by the Washington Department of Financial Institutions for keeping inadequate records. This eventually led to a consent decree wherein Novastar Mortgage Inc., agreed not to do any business in the State of Washington. Id. (Exhibit E).

The plaintiffs requested in their request for production that Novastar Mortgage Inc., produce any documents showing that Novastar Mortgage Inc., funded this loan. The plaintiff at the deposition of John Holtmann further requested a bank wire or other document showing funds were wired. Finally, the plaintiff's counsel orally requested a bank wire or other bank statement showing funds were wired. To this date nothing has been provided showing funds were ever wired to fund this loan. Id (Exhibit D).

3. Transfer of Rucker Loan

On June 15, 2006 the Rucker loans were transferred to the Novastar Mortgage Funding Trust, Series 2006-2. The Funding Trust retained Novastar Mortgage Inc., to act as its servicer. CP 1299-1300 (Exhibit 12, Novastar Deposition page 5 lines 15-16). Novastar Mortgage Inc., did not disclose this transfer of ownership to the April Miller or Marion Rucker.

4. Rucker Loan Securitized

On June 15, 2006 the Rucker loans were transferred to the Novastar Mortgage Funding Trust, Series 2006-2 (hereinafter "Funding Trust"). The Funding Trust retained Novastar Mortgage Inc., to act as its servicer. CP 1299-1300; CP 582. Novastar Mortgage Inc., did not disclose this transfer of ownership to the April Miller or Marion Rucker.

5. Foreclosure Process

There is no evidence in the record that notice to the Ruckers was provided of the transfer of the Rucker notes from Novastar to the Funding Trust. Instead, as the Ruckers did not pay on this note due to the ongoing issues surrounding whether the loan had funded properly Novastar Mortgage Inc., commenced foreclosure proceedings on its own behalf.

6. Notice of Default

The original trustee of the Rucker deed of trust was Quality Loan Service Corporation located in San Diego, California. Quality Loan Service Corporation is not registered with the Washington Department of Corporations. CP CP 541, CP 1296. On December 6, 2006, a different corporation, Quality Loan Service Corporation of Washington created and signed a notice of default. CP 558-560. In this notice, Quality Loan Service Corporation of identified the beneficiary under the Rucker note as Novastar Mortgage Inc.,. *Id.*

7. Purported Appointment of Successor Trustee

Approximately two weeks after issuing the purported notice of default, the Novastar Mortgage Inc., with MERS, appointed Quality Loan Service Corporation of Washington as Successor Trustee CP 539, CP 562-563. This appointment was recorded with the King County recorder's office on December 20, 2006. This appointment recited:

Notice is hereby given that Quality Loan Service Corporation of Washington, a corporation formed under RCW 61.24, whose address is 319 Elm St, 2nd Floor, San Diego, CA 92101 is hereby appointed Successor Trustee under that certain Deed of Trust dated 3/22/2006, executed by Marion Rucker, a married man as his sole and separate property as Grantor, in which Quality Loan Services was named as Trustee, Mortgage Electronic Registration Systems, Inc., *For Novastar Mortgage Inc., as Beneficiary*, and recorded on 3/24/2006, under Auditor's file No 20060324002749 as book XXX and page XXX, Official Records. Said real property is situated in King County, Washington and is more particularly

IN WITNESS WHEREOF, *the Beneficiary, NOVASTAR MORTGAGE INC.*, has hereunto set his hand; if the undersigned is a corporation, it has caused its corporate name to be signed and affixed hereunto by its duly authorized officers.

Id.

This document establishes that MERS appointed Quality Loan Service Corporation of Washington as the successor trustee of the deed of trust on behalf of Novastar Mortgage Inc., the purported beneficiary of the note. In making this purported appointment, Novastar Mortgage Inc.,

represented to the Ruckers and any other interested parties that it was the beneficiary of the Rucker deeds of trust.

MERS subsequently recorded a document purporting to assign the deed of trust to Novastar Mortgage Inc., on or about March 16, 2007. CP 539, CP 565. This assignment occurred contrary to the Servicing and Pooling Agreement governing Novastar Mortgage Inc., and its relationship to the Novastar Mortgage Funding Trust Series 2006-2. Pursuant to the Servicing and Pooling agreement, Novastar Mortgage was to note the June 15, 2006 transfer of this loan to the Novastar Mortgage Funding Trust Series 2006-2 with MERS:

In connection with the assignment of any Mortgage Loan registered on the MERS System, promptly after the Closing date in the case of a Mortgage Loan . . . the Sponser [Novastar Mortgage Inc.,] further agrees that it will cause, at the Sponser's own expense, the MERS System to indicate that such Mortgage Loan has been assigned by the Sponser to the Trustee in accordance with this Agreement. . . by including (a) the applicable Trustee Code in the field "Trustee" which identifies The Trustee and (b) the code "NovaStar 2006-2" (or its equivalent) in the field "Pool Field" which identifies the Certificates issued in connection with such Mortgage Loans. The Sponser further agrees that it will not, and will not permit the Servicer to, and the Servicer agrees that it will not, alter the codes referenced in this paragraph with any such Mortgage Loan during the term of this Agreement

CP 539, CP 624.

By the terms of the Pooling and Servicing Agreement, MERS and Novastar Mortgage Inc., should have recorded the transfer of the Rucker loan to the Novastar Mortgage Funding Trust Series 2006-2 on its records in 2006.

8. Notice of Trustee Sale

Quality Loan Service Corporation of Washington subsequently recorded a notice of trustee sale dated March 29, 2007. This notice of sale purported to state that Quality Loan Service Corporation of Washington was the trustee and that Novastar Mortgage Inc., was the beneficiary secured by the deed of trust. CP 567-569.

9. Purported Sale and First Trustee Deed

The Notice of Trustee Sale listed a sale date for the Rucker property for 6/29/2007. CP 567. April Miller and Marion Rucker contacted Quality Loan Servicing Corporation and Novastar regarding this coming foreclosure. In particular, April Miller testified that she contacted a Lysette Vargas at Quality Loan Service Corporation on several occasions. RP 17- 19. She discussed the origination issues related to the Rucker loans and the fact that Novastar had told her the loans were rescinded. RP 17-19. Quality eventually told Ms. Miller that due to the uncertainty related to the origination they were going to postpone the sale.

RP 19. CP 6-7. Quality never contacted Ms. Miller following this discussion to state that the sale would go forward as scheduled.

April Miller and Carl Miller, her husband, subsequently decided to go down to the auction to confirm that the sale was postponed as promised. CP 179. April Miller and Carl Miller went to the King County Administration building and listened to various properties being called. CP 179-180. They talked to various people and no one had any information about a sale. After staying in the area well after 10:00 AM they left the administration building. CP 180. Carl Miller also testified that he went with April Miller to the sale location and that he also listened to the sales being called and talked to the various people calling sales and that there was no sale announced regarding the Rucker property. CP 176-177.

After April Miller and Carl Miller returned home April Miller testified that she called Quality Loan and was told that the sale would not occur and that the file would be sent back to Novastar. CP 180.

The following Monday, Tony Rodriguez signed a Trustee Deed in San Diego, California purporting to deed the Rucker property to Novastar Mortgage Inc., claiming that it bid \$106,852.95 at the trustee sale. CP 571-572. The Trustee Deed further identified Novastar Mortgage Inc., as the beneficiary of the deed of trust. Id. This document was subsequently recorded in King County, Washington on July 9, 2007. Id.

When the Ruckers later challenged whether an auction had been announced on June 29, 2007, Quality admitted that it did not actually perform the sale but contracted the sale out to Priority Posting and Publishing to conduct the sale. CP 186. In turn Priority Posting stated that Northwest Legal actually conducted their sales in King County. CP 186.

Jake Patterson, an employee of Northwest Legal submitted an affidavit showing a sale sheet but testified that nothing stood out about the sale, indicating he did not remember the sale. CP 188-189. The sale sheet he provided indicated that the crier was to contact the sales department prior to the sale and then after the sale. CP 190. However, subsequent notes provided by Quality Loan do not show that there was ever a call made verifying that the sale had been called. CP 1585.

A review of the website maintained by Priority Posting also casts doubt on the assertion that Jake Patterson announced a sale on June 29, 2007. Priority Posting maintains a website that tracks what properties are scheduled for auction, when auctions have been postponed and when a sale is completed. CP 192-202. The website lists information connected with various properties but does not show that the Rucker property sold, or that it was even handled by Priority Posting.

The fact that Priority Posting routinely maintains listings regarding the progress of sales it handles, but failed to maintain a listing regarding

the Rucker property creates an inference that Jake Patterson in fact dropped the ball and failed to conduct the sale.

10. Unlawful Detainer Proceeding in King County Superior Court

Up to this point, Novastar Mortgage Inc., and Quality Loan Service Corporation of Washington had operated outside of court. Further, up to this time, Novastar Mortgage Inc., had been at least somewhat involved with the Rucker loan as the servicer for Novastar Mortgage Funding Trust Series 2006-2. On November 1, 2007 Novastar Mortgage Inc., closed down its servicing business and transferred its servicing rights to Saxon Mortgage. CP 1300. Novastar Mortgage Inc., had to close down this business due to a number of administrative actions including a settlement with the Washington Department of Financial Institutions that required it to cease doing business in Washington. CP 1276-1294.

At this point, Novastar Mortgage should have withdrawn from any further proceedings because any shred of authority to pretend to be the owner of the Rucker note expired on November 1, 2007 when the servicing contract was transferred to Saxon Mortgage. CP 1300. It did not. Instead, Novastar Mortgage Inc., continued to pretend that it was still the beneficiary of the Rucker loan. It retained the law firm of Bishop, White, Marshall and Weibell to pursue an unlawful detainer action against the Ruckers. This action was filed identifying Novastar Mortgage Inc., as the

plaintiff and alleged that it had right to the Rucker property due to the July 7, 2007 trustee deed. CP 1311-1315. Based on this deed a commissioner granted a writ of restitution to Novastar Mortgage Inc., to take possession of the property. CP 6.

11. Quiet Title Action

The Ruckers filed an action for quiet title seeking an order confirming that Novastar Mortgage Inc., had no right to the Rucker property. CP 6. Novastar Mortgage Inc., appeared in this action and subsequently argued throughout the course of the case that it was the beneficiary of the Rucker note, and the winning bidder at the trustee sale. CP 165-169. They eventually obtained an order for summary judgment on April 6, 2010 dismissing the Rucker action based on its continued assertion that it was the beneficiary and winning bidder on the trustee sale.

12. The Amended Deed and Federal Court

Over four years after Novastar Mortgage Inc., had sold all ownership interest in the Rucker loans, and having successfully dismissed the Rucker lawsuit challenging this fact, Novastar Mortgage Inc.'s law firm finally recorded a corrected deed on July 10, 2010 over three years after the purported sale and over four years after the underlying loan had been transferred to Novastar Mortgage Funding Trust Series 2006-2 before the purported June 29, 2007 sale date. CP 574-577. This corrected

trustee deed was filed by the same law firm that represents Novastar Mortgage Inc., in this matter. This deed indicated (1) that the plaintiff's property was purportedly conveyed to The Bank of New York Mellon, as Successor Trustee under Novastar Mortgage Funding Trust, Series 2006-2 and (2) that the Trust was the beneficiary of the note. *Id.* This revised trustee deed contradicts the deed filed over three years ago on July 9, 2007.

13. The Washington Attorney General.

The Washington Attorney general wrote a letter to all servicers and trustees in Washington identifying concerns they have regarding the conduct of foreclosures in the State of Washington. In part this letter states:

In Washington, we have found evidence that foreclosure trustees appear to be ignoring laws specific to our state and may be regularly using some of the same questionable practices used by national banks, such as:

- Trustees may be foreclosing on homes when there is no clear chain of ownership for the loan or the security interest. Trustees must be sure that the lender has the authority to foreclose and that the documents which create the chain of ownership are accurate. One of the problems emerging nationally is that lenders are “reverse-engineering” the chain of title, including back-dating documents to make it appear as though the loan was passed from company to company

on certain dates when no such assignment actually occurred.

CP 1317-1318.

This case appears to be an example of the problem outlined by the Washington Attorney General. Novastar Mortgage Inc., for the sake of convenience or through pure negligence has misrepresented to the Ruckers, the State of Washington, the King County Recorder's Office and to the King County Superior Court that it was the beneficiary of the Rucker note, authorized to appoint a successor trustee and make a creditors bid on its own behalf years after its interest in the Rucker loan had been transferred away. This kind of series of misrepresentations is not harmless and falls within the scope of conduct that the Washington Attorney General condemned.

D. Argument of Respondent.

1. The Trial Court Erred When It Entered an Order for Summary Judgment When There Was a Clear Issue of Material Fact Regarding Whether Quality Loan Service Corporation Publicly Announced the Sale of the Rucker Property.

The Washington Deed of Trust Statute provides the precursor to conducting a trustee sale is a notice of default that is to be mailed to the borrower informing them that the property may be sold at public auction if

the default is not cured. RCW 61.24.030(7)(g)¹. The Statute further provides that the sale must be conducted in a designated public place. RCW 61.24.040(5). The intent of these requirements is to establish that the sale is to take place publicly where bidders can appear at the auction and bid on the property. This public auction is the capstone of the deed of trust act. If the trustee did not announce the sale, or announce the sale in a recognizable manner, there was no sale and no foreclosure.

This case was disposed of on a motion for summary judgment brought by Novastar Mortgage Inc., CP 1722-1724, CP 1748. When determining whether an issue of material fact exists on summary judgment courts must construe all facts and inferences in favor of the nonmoving party. *Ranger Ins. Co. v. Pierce County*, 164 Wash.2d 545, 192 P.3d 886 (2008). The bulk of the evidence provided by the parties in this case indicate that there was no sale.

April Miller and Carl Miller both filed declarations stating that no sale occurred. They were there, they questioned people and listened for the sale. It did not occur.

Novastar made two arguments in summary judgment regarding this evidence. First, Novastar argued that April Miller contradicted herself in her testimony. CP 2481-2507. They then argued that the second

¹ All references to the deed of trust act at RCW 61.24 et. seq. are to the statute as written effective in 2007 unless otherwise noted.

declaration they submitted of Jake Patterson established that a sale occurred. CP 1817-1820. There are two problems with the trial court basing its decision on the purported impeachment of April Miller and the declaration of Jake Patterson. First, the declaration of Carl Miller was never impeached and never called into question. Carl Miller declared that he went to the auction with April Miller, that he talked with several people at the auction and listened to properties be announced at auction and the Woodinville Property was never announced. CP 176-177. For purposes of summary judgment the trial court was required to accept Mr. Miller's testimony as true. Mr. Miller was there and the Rucker property was not announced.

Second, April Miller provided unrefuted declarations that Priority Posting, the agency designated by Quality Loan Service Corporation of Washington to post sale information on its website did not list the property as sold. CP 18, CP 192-196. This testimony must also be considered true for purposes of summary judgment.

There are further inferences from evidence provided by Novastar and Quality that a sale did not occur. For example, at the commencement of this litigation the bid sheet could not be located when requested. CP 185-186. This suggests that the bid sheet did not exist. If it did not exist there was probably not a sale. Second it is suspicious how Jake Patterson's

memory appears to improve between his initial declaration in 2008 where he does not remember anything unusual about the Miller sale - suggesting that he does not remember the sale, and the subsequent declaration he filed in 2009. CP _.

The trial court erred when it entered an order for summary judgment on this record since there was a clear issue of material fact regarding whether Quality announced the sale of the Rucker property on June 29, 2007 as required by statute. Resolution of the conflicting evidence on this issue requires a trial and a credibility determination by the finder of fact.

2. Novastar Mortgage Inc., Did Not Have Authority to Authorize Quality Loan Service Corporation to Pursue a Trustee Sale that Identified Itself as a Beneficiary.

The Trustee sale should be set aside on the basis of a procedural irregularity that goes to the heart of whether the trustee has power to conduct a sale for two reasons. First, the trustee in question was never appointed by the beneficiary of the Rucker loans and was never properly identified in the various recorded documents filed in support of the foreclosure. Second, Novastar exceeded its authority to act as an agent for the Funding Trust when it identified itself as the beneficiary of the deed of trust to Quality during the process of the foreclosure.

The deed of trust act provides a mechanism for a trustee to sell property for the benefit of the beneficiary of the note secured by a deed of trust. The term "Beneficiary" is defined under RCW 61.24.005(2):

Beneficiary means the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.

The statute also defines the term "Affiliate of Beneficiary."

The Beneficiary in this case was likely the Funding Trust both by operation of Washington law and the contract between the parties. First, a holder of the note would be the party entitled to collect on the promissory note signed by Marion Rucker's power of attorney. While this party was initially Novastar Mortgage Inc., CP 1375. The note provides that the property may be transferred to a third party. In this case, the note was transferred to the funding trust. CP 582, CP 1299-1300. The note provides that the "Note Holder" is the party transferee of the note who is entitled to receive payments. CP 1375. In this case, the servicing and pooling agreement executed between Novastar Mortgage Inc., and the Funding Trust provided that payments were to be deposited in a deposit account for the Funding Trust called the "Collection Account, JP Morgan Chase Bank, National Association, as Trustee for the registered holders of NovaStar Mortgage Funding Trust 2006-2, Home Equity Loan Asset-Backed

Certificates, Series 2006-2." CP 636. Thus, any funds collected on this loan were to be deposited in the Funding Trust account. This indicates that the beneficiary of the Rucker loan at the time of the foreclosure was not Novastar Mortgage but may have been the Funding Trust.

A trustee may only be appointed by the Beneficiary pursuant to RCW 61.24.010(2) which provides:

The trustee may resign at its own election or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall appoint a trustee or a successor trustee. Upon recording the appointment of a successor trustee in each county in which the deed of trust is recorded, the successor trustee shall be vested with all powers of an original trustee.

It is interesting to note that the statute clearly provides that the appointment must be made by the beneficiary and does not include the term affiliate of the beneficiary which is a defined term under the act. This suggests that the appointment of a trustee must be made by the beneficiary itself on its own behalf and not in the name of its agents.

The trustee's right to conduct a sale is dependent on its appointment as a trustee by the beneficiary. RCW 61.24.010(2).

Novastar Mortgage Inc., exceeded its authority to act as an agent for Novastar Mortgage Funding Trust, Series 2006-2 when it identified itself as a beneficiary and when Quality Loan Service Corporation of Washington executed a trustee deed in favor of Novastar Mortgage Inc., following the purported sale. The failure (1) of the beneficiary to appoint the trustee, (2) and the erroneous designation of Novastar as the beneficiary of the deed of trust was a procedural irregularity that defeats the trustee's authority to sell the property. *T.D. Escrow Service Company v. William Udall et. al.* 159 Wn.2d 903, 911 (2008).

Novastar Mortgage Inc., transferred the Rucker loan to Novastar Mortgage Funding Trust Series 2006-2. CP 582-585. The closing date for this transaction was defined as June 15, 2006. CP 730. Following the closing of this transaction, the Trust retained Novastar Mortgage Inc., as a servicing agent on its behalf. The conduct of this servicing agent was governed by a servicing and pooling agreement executed between the Trust and Novastar Mortgage. This servicing and pooling agreement contained some specific procedures that governed how a servicer was to enforce an obligation owed on a note held by the Trust.

Specifically, Section 3.13 of the agreement provides,

In the event that title to any Mortgaged Property is acquired in foreclosure or by deed in lieu of foreclosure, the deed or certificate of sale shall be issued to the Trustee and held by

the Custodian, who shall hold the same on behalf of Trustee and the Issuing Entity in accordance with this agreement.

CP 644.

In a foreclosure conducted under the deed of trust act, there are two means by which the sale could be conducted in such a manner as to insure that the property passed to the Trust. The first would be to identify the Trust as the beneficiary of the loan secured by the deed of trust. This would allow the property to pass to the Trust in the event it submitted a credit bid. Alternately, the Trust could appear independently at the auction and bid for the property. Neither approach was followed in this case.

All of the foreclosure documents executed by the trustee identified Novastar Mortgage Inc., as the beneficiary of the loan secured by the Rucker deed of trust. These included the Notice of Default (CP 560 - identifying Quality Loan Service Corporation of Washington as an Agent for Novastar Mortgage Inc.); the Appointment of Successor Trustee (CP 562); the Assignment of the Deed of Trust (CP 565); and, the Notice of Trustee Sale (CP 567). Ultimately, at the purported sale, the trustee, Quality Loan Service of Washington signed a trustee deed transferring the property to Novastar Mortgage Inc., as beneficiary.

Novastar Mortgage caused Quality to do this despite the clear instruction in the servicing and pooling agreement that any foreclosure proceedings should be conducted in such a manner as to cause the property to be deeded to the Trust.

Novastar Mortgage acknowledged that it exceeded its authority approximately three years later when they asked Quality to sign a revised trustee deed, back-dated to July 2, 2007 providing that the beneficiary was the Trust and providing that the property was deeded to the trust instead of Novastar Mortgage Inc., CP 574.

The Restatement (Third) of Agency (2006) provides that

An agent acts with actual authority when at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act.

In this case, the Servicing and Pooling Agreement executed between Novastar Mortgage Inc., and the Trust provided that any foreclosure would be conducted to insure that the deed to the property went to the Trust. CP 644. Novastar Mortgage Inc., acted outside of the scope of this agency when it identified itself as the beneficiary of note secured by the Rucker deed of trust in the Notice of Default and related foreclosure documents.

The servicing and pooling agreement established that for purposes of conducted a foreclosure in the State of Washington, Novastar Mortgage Inc., was not permitted to act under its own name but to designate the Trust as the appropriate beneficiary of the note secured by the deed of trust. Thus, the appointment of Quality Loan Service of Washington is void and any subsequent sale was void because it provided for the property to revert to Novastar Mortgage Inc., at auction which was a right that Novastar simply did not have.

The sale should be set aside because Novastar Mortgage Inc., was not the beneficiary of the note secured by the Rucker deed of trust for purposes of conducting a trustee sale. The subsequent attempt to correct the trustee deed three years after the sale is simply an admission that Novastar acted in error.

3. The Deed of Trust in Question was Void Since it Was Signed Pursuant to a Defective Power of Attorney.

The Deed of Trust allegedly foreclosed by Novastar Mortgage Inc., was signed by Micaela Rucker on March 23, 2006 pursuant to a power of attorney. However, this power of attorney was not executed until March 24, 2006, after the documents were signed.

A deed of trust or similar document executed by an attorney in fact is void if the power of attorney did not authorize the attorney-in-fact to

enter into the transaction. *Dimick v. Sprinkel*, 59 Wash 329 (Wash 1910). Powers of attorney are strictly construed. *In re Estate of Springer*, 97 Wash 546, 551 (1942). The rule of strict construction is particularly applicable to powers of attorney relating to real property. *Id.* An attorney in fact is powerless to encumber a piece of real property if the power of attorney document does not grant that power. *Id.*

Novastar Mortgage Inc., argued that the defective power of attorney should be disregarded because Mr. Rucker subsequently ratified the signing of the deeds of trust. There is a factual dispute regarding whether Mr. Rucker in fact ratified the signing of the deed of trust. Mr. Rucker stated in his declaration that he did not ratify any power of attorney on March 23, 2006 when the documents were signed. CP 128-129.

4. The Corrected Trustee Deed Established that Novastar Mortgage Inc., Was Not Entitled to the Rucker Property.

The trial court erred when it failed to enter an order quieting title in favor of Marion Rucker and April Miller against Novastar Mortgage Inc., after the Trustee, Quality Loan Servicing Corporation of Washington issued a corrected Trustee Deed transferring the property to Bank of Melon as trustee for Novastar Mortgage Funding Trust Series 2006-2. CP 574-577. The formal transfer of property is made pursuant to the issuance

of a trustee deed. RCW 61.24.050. The key in this case is that the trustee deed from Quality Loan Service Corporation of Washington to the Trust was intended to replace the incorrect trustee deed to Novastar Mortgage Inc.,. This clear on the face of the document which states that the trustee deed is corrected to correct the vesting. CP 574-577. This means that the trustee deed in question was corrected to provide that Novastar Mortgage Inc., was not the purchaser at the trustee sale. Since the deed was corrected to provide that the purchaser was the Trust it logically follows that Novastar Mortgage Inc., does not have an interest in the Rucker property and that it was proper to issue a restraining order restraining Novastar Mortgage Inc., from enforcing a writ of restitution to take possession of the property.

Novastar offered two arguments to the trial court to state that it still had an interest in the property. It argued (1) that the corrected trustee deed represented a subsequent transfer from Novastar Mortgage Inc., to the Trust, or (2) that Novastar Mortgage Inc., was acting as an agent for the Trust. Both arguments are incorrect.

Novastar has never provided any evidence that the revised trustee deed was intended to represent a subsequent transfer of the Rucker property to the Trust after the trustee sale. However, the plain language of the revised Trustee Deed demonstrates that it represented a correction of

the original deed to provide that the property was never intended to be deeded to Novastar but was intended to be deeded to the Trust. For example title page to the corrected trustee deed states that the purpose of the deed is to Re-record Trustee's Upon Sale to Correct the Vesting." *Id.* This indicates the deed filed July 16, 2010 is filed to correct an error in the trustee deed filed July 9, 2007. The corrected deed crosses out Novastar Mortgage Inc., as the beneficiary and the grantee and replaces it with the Trust as both the beneficiary and the grantee of the Trustee Deed. *Id.* The plain meaning of this document is that it is meant to correct an error made in July of 2007, not to record a subsequent change in ownership after the trustee sale purportedly occurred.

The other argument made by Novastar is that it acted as an agent for the Trust. However, this evidence is also suspect. Novastar was commissioned to act as the servicer for the Trust following the transfer of the Rucker loan to the Trust in 2006. However, this agency status was limited in scope and in time.

Novastar's role as a servicer was governed by a servicing and pooling agreement between itself and the Trust. Section 3.13 of the Servicing and Pooling agreement provided that any foreclosure should be conducted in such a manner as to insure that the property was deeded to

the Trust pursuant to the foreclosure. CP 644. Thus, to the extent Novastar was acting in its own name it was exceeding the scope of its agency.

Novastar's role was further limited because Novastar lost its servicing contract in November of 2007. CP 1300 (Page 7 line5-7). Thus, by the time it filed the related unlawful detainer action it was no longer acting as a servicer for the Trust.

Novastar's role was even further limited as a matter of Washington law when it entered into a consent order with the State of Washington that it would not do business in the State of Washington. Under this consent order, Novastar surrendered its Consumer Loan license effective August 13, 2007. CP 1276-1277 (§ 1.1); CP 1291. This consent order was approved by the Director of the Division of Consumer Services of the Washington Department of Financial Institutions on May 16, 2008. CP 1288.

Novastar could not rightfully execute on a writ of restitution if it was not the owner of the Rucker property following the correction of the trustee deed. Further, Novastar was no longer the agent for the Trust after it terminated its servicing contract in 2007.

5. Marion Rucker and April Rucker Were Entitled to a Permanent Restraining Order to Restrain Novastar Mortgage Inc., from Executing on its Writ of Restitution.

In the event the trial court should not have directly reversed the trustee sale, it at a minimum should have entered an order permanently restraining Novastar Mortgage Inc., from executing on its writ of restitution. Under Washington Superior Court Rule of Civil Procedure 17 every action shall be prosecuted in the name of the real property in interest. The full text of this rule provides:

Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

The court entered an injunction at the commencement of this case restraining Novastar from exercising its writ of restitution to take possession of the Rucker property. CP __.

Novastar Mortgage Inc., has never been the real party in interest in the related unlawful detainer action. The relationships between servicers, note holders and other parties connected with the handling of residential

mortgage loans is typically handled outside of the view of regular citizens. Thus the courts depend on these institutions to be honest and truthful in their filings with this court. That has not occurred in this case. Since Novastar Mortgage has effectively conceded it has no interest in the Rucker property, an order should be entered quieting title in the name of the Ruckers as to Novastar Mortgage Int.,. If the Funding Trust believes it has a claim on the Rucker property it may bring such a claim or the Ruckers may bring a claim against the Funding Trust in a separate proceeding. This case was about Novastar. After Novastar caused the revised trustee deed to be recorded indicating that it was not the beneficiary it should have withdrawn from any actions against the Ruckers and let the Funding Trust and the Ruckers settle this matter without Novastar.

6. The Ruckers Did Not Waive their Claims in This Action

Novastar argued before the trial court that it was too late for the Rucker's to challenge the validity of the sale because the plaintiff's did not file an action to enjoin the sale in King County Superior Court prior to the purported sale. Under the facts in this case, it would be improper to apply the doctrine of waiver to the Rucker claims. The Washington Supreme Court in recently clarified how the doctrine of waiver applies when the borrower fails to restrain the sale prior to its occurrence. *Albice v. Premier*

Mortg. Servs. of Wash., Inc., 174 Wn.2d 560 (2012). The court began its analysis by noting that "Waiver. . . cannot apply to all circumstances or types of postsale challenges." *Id.* at 570. The courts should only apply waiver where it is equitable under the circumstances and where it serves the goals of the act. *Id.* The court further stated:

The act furthers three goals: (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. *Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985). Because the act dispenses with many protections commonly enjoyed by borrowers under judicial foreclosures, lenders must strictly comply with the statutes and courts must strictly construe the statutes in the borrower's favor. *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007)

In this case, the general goals of the deed of trust act weigh against waiver by the Ruckers. Ms. Miller testified that Quality had stated that it would postpone the sale. CP 179-180. Ms. Miller went to the location of the sale and it was not announced. CP 179-180. This is not a defect that could be addressed in a motion to restrain the sale. Finally, the issue related to the whether Novastar had authority to act as the beneficiary in this case was not discovered until three years after litigation commenced when Novastar recorded its corrected trustee deed. Unlike the claims raised in *Plein v. Lackey*, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003) where

the parties had commenced litigating the underlying issue prior to the sale being held, or *Brown v. Household Realty Corp.*, 146 Wn. App 157. 189 P.3d 233 (2008) where the claims in question were known well before the trustee sale was held.

In order to reverse the trustee sale that purportedly occurred on June 29, 2007, the plaintiff must show a procedural irregularity that defeated the trustee's authority to sell the property. The Plaintiff has set out at great length the repeated irregularities that occurred in this foreclosure process. A sampling of these irregularities included: (1) sending a notice of default that failed to identify the correct beneficiary of the loan, (2) a non-beneficiary appointed the purported successor trustee, (3) the notice of default was never served on the Ruckers by the trustee or the beneficiary, and (4) the beneficiary could not have submitted a credit bid at the auction because Quality Loan Service Corporation of Washington had no idea that Novastar Mortgage Inc., was not the beneficiary of the Rucker Loan. etc. The most glaring procedural error is the factual issue regarding whether the Trustee or its agents announced the trustee sale on June 29, 2007. The record is so full of procedural errors that go straight to the heart of whether the trustee had the authority to sell the property. The trustee had failed to comply with the requisites to a trustee sale, the trustee did not have the power to conduct the sale and the

trustee received no bids from anyone at the purported auction. Thus, no sale occurred or any sale that occurred is void because the requisites to a trustee sale were not met.

It is significant in this case that the purported winning bidder was not a third party that would have no knowledge of the many irregularities and deceptions conducted throughout the nonjudicial foreclosure. Instead, the purported bidder is the party that engaged in the continuous pattern of deceptions during the course of the nonjudicial foreclosure process. The principles of efficiency in the conduct of a trustee sale will not be offended where a sale is challenged based on fraud and wrongdoing that could not be known before the sale in question occurs. In this case, there are so many procedural irregularities that occurred during the course of the sale that it would be inequitable to find that the Ruckers waived their rights to have the sale reversed.

Ironically, this is a case where reversing the trustee sale will actually promote the stability of land titles. In this case the Trustee revised its trustee deed three years after initially issuing the deed demonstrating the problems that arise when deeds are issued to the wrong parties. An order reversing the trustee sale in this case would put trustees and beneficiaries on notice that trustees should conduct procedurally sound sales. See *Albice* at 572.

Clarification of Relief Requested

While outlining the various legal issues arising in this case, the Appellants may not have clearly spelled out the relief they are seeking from this court. This section is meant to spell out the relief requested in this Appeal.

a. *An Order Reversing the Trial Court's Denial of the Plaintiff's Motion for Summary Judgment.*

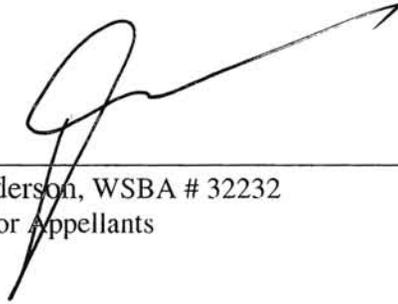
The Appellants first and foremost seek an order reversing the trial court on the basis that it should have granted the Appellant's motion for summary judgment on the issue of whether the trustee sale should be reversed and a permanent injunction be imposed restraining Novastar Mortgage Inc., from exercising a writ of restitution to obtain possession of the Rucker property with the remainder of the case issues remanded back to the Trial court for further proceedings.

b. *An Order Reversing the Summary Judgment in Favor of the Respondent.*

In the event this court is not willing to grant the above relief, the appellants ask the court of appeals to enter an order reversing the trial court's entry of summary judgment in favor of Novastar Mortgage Inc., on the basis that there are issues of material fact that should be addressed at trial.

c. An Order Restraining Novastar Mortgage Inc., from Evicting the Ruckers.

In the event the court of appeals denies the above relief, the court of appeals at a minimum should hold that it was error on the part of the trial court to issue an order for summary judgment allowing Novastar Mortgage Inc., to exercise a writ of restitution to take control of the Rucker property where there is a revised trustee deed establishing that Novastar Mortgage does not have title to the Rucker property and Novastar Mortgage is no longer acting as a servicing agent for the Funding Trust. If the Funding Trust wishes to take possession of the Rucker property it should file an action in its own behalf.



Jason Anderson, WSBA # 32232
Attorney for Appellants

2012 JUL -7 PM 5:09
STATE COURT OF WASHINGTON

Certificate of Mailing

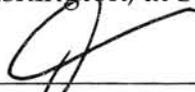
I hereby certify that on this date I mailed, emailed and/or faxed a copy of the document to which this is appended to the appellant, as follows;

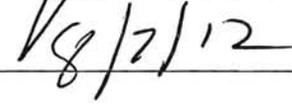
Copies sent to:

--	--

Annette Cook Annette Cook [ACook@bwmlegal.com]	
--	--

Signed under penalty of perjury, under the laws of the State of Washington, at Seattle, Washington, on the date set forth below;


_____ (signature)


_____ (date)

A-1 SUMMARY JUDGMENT ORDER

FILED
KING COUNTY, WASHINGTON

SEP 22 2011

SUPERIOR COURT CLERK

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

MARION RUCKER and APRIL
MILLER and CARL MILLER, as
husband and wife and the marital
community thereof,

Plaintiff,

v.

NOVASTAR MORTGAGE, INC. and
QUALITY LOAN SERVICING OF
WASHINGTON,

Defendants.

No. 08-2-34769-9SEA

ORDER GRANTING DEFENDANT
NOVASTAR MORTGAGE, INC.'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING

PLAINTIFFS' MOTION FOR
~~PROTOCOL~~ SUMMARY
JUDGMENT

CLERK'S ACTION REQUIRED

THIS MATTER came before the Court on Defendant NovaStar Mortgage Inc.'s Motion for Summary Judgment. Annette Cook appeared for NovaStar Mortgage, Inc., and Jason Anderson appeared for Plaintiffs April and Carl Miller, Marja Starczewski for Plaintiff, Marion Rucker. The Court reviewed the court file, heard oral argument from the parties, and considered the following:

- (1) Defendant NovaStar Mortgage Inc.'s Second Motion for Summary Judgment;
- (2) Affidavit of Micaela Rucker and Exhibits thereto;
- (3) Affidavit of John A. Holtmann and Exhibits thereto;
- (4) Affidavit of Sierra West and Exhibits thereto;
- (5) Declaration of Annette Cook and Exhibits thereto;
- (6) Plaintiffs' Response;
- (7) Plaintiffs' Motion for Summary Judgment;

SMW
9-22-11

ORDER GRANTING DEFENDANT
NOVASTAR'S SECOND MOTION
FOR SUMMARY JUDGMENT - 1

~~COPY~~

BISHOP, WHITE, MARSHALL & WEIBEL, P.S.
720 OLIVE WAY, SUITE 1201
SEATTLE, WASHINGTON 98101-1801
206/622-5306 FAX: 206/622-0354

ORIGINAL
Page 1722

- (8) Declaraton of Jim Anderson ~~_____~~
- (9) Second Declaraton of Jim Anderson ~~_____~~

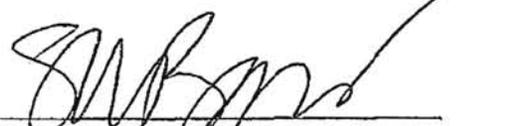
The Court otherwise being fully informed, it is hereby

ORDERED ADJUDGED AND DECREED that Defendant NovaStar's Mortgage Inc.'s Motion for Summary Judgment is **GRANTED**. Plaintiffs' claims against Defendant NovaStar Mortgage Inc. are dismissed with prejudice, ^{and Plaintiffs' Motion for Summary Judgment} It is hereby further **IS DENIED**.

ORDERED ADJUDGED AND DECREED the injunction is dissolved and Defendant NovaStar Mortgage Inc. is entitled to disbursement of the funds from the bond deposited into the Court's registry by Plaintiffs, in the amount of \$15,000.00 to compensate NovaStar Mortgage Inc. costs and damages which NovaStar Mortgage Inc. has sustained due to the Writ of Restitution being wrongfully sued out. It is hereby further

ORDERED ADJUDGED AND DECREED that NovaStar Mortgage Inc. is entitled to (1) immediate possession of the property commonly known as 14647 124th Place NE, Woodinville, WA 98072; and (2) to the issuance of a Writ of Restitution.

DONE IN OPEN COURT this 22 ^{September} day of May, 2011.



 JUDGE SUZANNE BARNETT

- ~~10)~~ Declaraton of Carl Miller;
- 11) Declaraton of April Miller;
- 12) Second Declaraton of April Miller;
- 13) Third Declaraton of April Miller;

SMB
9-22-11

1 Presented by:

2 BISHOP, WHITE, MARSHALL
3 & WEIBEL, P.S.

4
5 Annette Cook, WSBA #31450
6 Attorneys for Defendant
7 NovaStar Mortgage, Inc.
8 Approved as to form;
9 Notice of Presentation waived:

10 Jason Anderson, WSBA #32232
11 Attorney for Plaintiffs
12 April and Carl Miller

13 Approved as to form;
14 Notice of Presentation waived:

15 MCCARTHY HOLTHUS, LLP

16 Mary Stearns, WSBA #42543
17 Attorneys for Defendant
18 Quality Loan Services

19 Approved as to form;
20 Notice of Presentation waived:

21 Marja Starczewski, WSBA #26111
22 Attorneys for Plaintiff
23 Marion Rucker

24
25 ORDER GRANTING DEFENDANT
NOVASTAR'S SECOND MOTION
FOR SUMMARY JUDGMENT - 3

BISHOP, WHITE, MARSHALL & WEIBEL, P.S.
720 OLIVE WAY, SUITE 1201
SEATTLE, WASHINGTON 98101-1801
206/622-5306 FAX: 206/622-0354

A-2 CORRECTED SUMMARY JUDGMENT ORDER

FILED
KING COUNTY, WASHINGTON

OCT 04 2011
SUPERIOR COURT CLERK
BY JOSEPH MASON
DEPUTY

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1 SUPERIOR COURT OF WASHINGTON
for King County

RUCKER,

Plaintiffs,

Cause No. 08-2-34769-9 SEA

vs.

AMENDED SUMMARY
JUDGMENT

NOVASTAR MORTGAGE, INC., *et al.*,
Defendants.

ON ITS OWN REVIEW, the court determined that its Order on Summary Judgment entered September 22, 2011, contained a misstatement in the penultimate paragraph. To correct that error, the court hereby

ORDERS that the penultimate paragraph is amended to read

to compensate NovaStar Mortgage Inc. costs and damages which NovaStar Mortgage Inc. costs and damages which NovaStar Mortgage Inc. has sustained due to the Writ of Restitution being wrongfully stayed.

SIGNED this 3 day of October, 2011.


Suzanne M. Barnett, Judge

A-3 TRUSTEE DEED

RECORDING REQUESTED BY:



20070709001375

FIDELITY NATIONAL TITLE
PAGE 001 OF 002
07/09/2007 14:08
KING COUNTY, WA

AND WHEN RECORDED MAIL TO:

Novastar Mortgage Inc.
8140 Ward Parkway, Ste. 200
Kansas City, MO 64114

6503670
Forward Tax Statements to the address given above

E2296928

07/09/2007 14:08
KING COUNTY, WA
TAX
SALE

\$10.00
\$0.00

PAGE 001 OF 001

TS #: WA-06-69581-CM

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Loan #: 0002273985

TITLE ORDER #: 6503670

FIDELITY NATIONAL TITLE

6503670 2134

TRUSTEE'S DEED UPON SALE

A.P.N.: 387631-2480-03

TRANSFER TAX:

The Grantee Herein Is The Foreclosing Beneficiary.
The Amount Of The Unpaid Debt was \$106,852.95
The Amount Paid By The Grantee Was \$106,852.95
Said Property Is In The City Of WOODINVILLE, County of KING

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

NOVASTAR MORTGAGE, INC.

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of KING, State of Washington, described as follows:

LOT 866, KINGSGATE HIGHLANDS DIVISION NO. 5, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 88 OF PLATS, PAGE(S) 1 THROUGH 5, INCLUSIVE, IN KING COUNTY, WASHINGTON

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by MARION RUCKER, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY as Trustor, dated 3/22/2006 of the Official Records in the office of the Recorder of KING, Washington under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on 3/24/2006, instrument number 20060324002749, Book XXX, Page XXX of Official records. Trustee having complied with all applicable statutory requirements of the State of Washington and performed all duties required by the Deed of Trust including sending a Notice of Sale by certified mail, postage pre-paid to each person entitled to notice, as provided in Chapter 61.24 RCW.

TRUSTEE'S DEED UPON SALE

TS #: WA-06-69581-CM
Loan #: 0002273985
Order #: 6503670

All requirements per Washington Statutes regarding the mailing, personal delivery and publication of copies of Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 6/29/2007. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$106,852.95, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, **QUALITY LOAN SERVICE CORPORATION OF WASHINGTON**, as Trustee, has this day, caused its nameto be hereunto affixed by its officer thereunto duly authorized by its corporation by-laws

Date: 7/2/2007

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON

By: _____

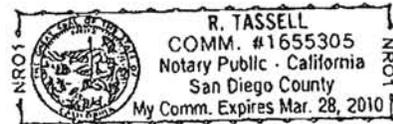
Tony Rodriguez

State of California) ss.
County of San Diego }

On 7/2/2007 before me, R. Tassell, personally appeared **Tony Rodriguez** personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature *R. Tassell* (Seal)
R. Tassell



A-4 CORRECTED TRUSTEE DEED

AFTER RECORDING MAIL TO:

Bishop White, Marshall & Weibel
Attention: Foreclosure Dept
700 Olive Way, Suite 1301
Seattle, Washington 98101



20100716000979

FIRST AMERICAN TD
PAGE-001 OF 004
07/16/2010 14:22
KING COUNTY, WA

65.00

Document Title:

RE RECORD TRUSTEE'S DEED UPON SALE TO CORRECT THE VESTING

Reference number of document:

20070709001375

4494232
1ST AM
④165

Grantor:

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON

Grantee:

THE BANK OF MELLON, AS SUCCESSOR TRUSTEE UNDER NOVASTAR
MORTGAGE FUNDING TRUST SERIES 2006-2

Borrowers:

MARION RUCKER

Legal:

LOT 866, KINGSGATE HIGHLANDS DIVISION NO.05, ACCORDING TO THE
PLAT THEREOF, RECORDED IN VOLUME 88 OF PLATS, PAGES(S) 1
THROUGH 5, INCLUSIVE IN KING COUNTY, WASHINGTON

Tax Parcel Number: 387631-2480-03

E2450570

07/16/2010 14:19
KING COUNTY, WA
TAX
SALE

\$10.00
\$0.00

PAGE-001 OF 001

RECORDING REQUESTED BY:

20070709001375

FIDELITY NATIO TD
PAGE001 OF 082
07/09/2007 14:08
KING COUNTY, WA

35.00

AND WHEN RECORDED MAIL TO:

Novastar Mortgage Inc.
8140 Ward Parkway, Ste. 200
Kansas City, MO 64114

Forward Tax Statements to the address given above

E2296928

07/09/2007 14:08
KING COUNTY, WA
TAX
SALE

\$10.00
\$0.00

PAGE001 OF 001

TS #: WA-06-69581-CM
Loan #: 0002273985
TITLE ORDER #: 6503670

SPACE ABOVE THIS LINE FOR RECORDER'S USE

FIDELITY NATIONAL TITLE
6503670 2/34
TRUSTEE'S DEED UPON SALE

*Re-record to correct grantee

A.P.N.: 387631-2480-03

TRANSFER TAX:

The Grantee Herein Is The Foreclosing Beneficiary.
The Amount Of The Unpaid Debt was \$106,852.95
The Amount Paid By The Grantor Was \$106,852.95
Said Property Is In The City Of WOODINVILLE, County of KING

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, as Trustee, (whereas so designated in the Deed of Trust hereunder more particularly described or as duly appointed Trustee) does hereby GRANT and CONVEY to

~~NOVASTAR MORTGAGE, INC.~~ *The Bank of New York Mellon, as Successor Trustee under Novastar Mortgage Funding Trust, Series: 2006-2

(herein called Grantee) but without covenant or warranty, expressed or implied, all right title and interest conveyed to and now held by it as Trustee under the Deed of Trust in and to the property situated in the county of KING, State of Washington, described as follows:

LOT 866, KINGSGATE HIGHLANDS DIVISION NO. 5, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 88 OF PLATS, PAGE(S) 1 THROUGH 5, INCLUSIVE, IN KING COUNTY, WASHINGTON

This conveyance is made in compliance with the terms and provisions of the Deed of Trust executed by MARJON RUCKER, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY as Trustor, dated 3/22/2006 of the Official Records in the office of the Recorder of KING, Washington under the authority and powers vested in the Trustee designated in the Deed of Trust or as the duly appointed Trustee, default having occurred under the Deed of Trust pursuant to the Notice of Default and Election to Sell under the Deed of Trust recorded on 3/24/2006, instrument number 20060324002749, Book XXX, Page XXX of Official records. Trustee having complied with all applicable statutory requirements of the State of Washington and performed all duties required by the Deed of Trust including sending a Notice of Sale by certified mail, postage pre-paid to each person entitled to notice, as provided in Chapter 61.24 RCW.

TRUSTEE'S DEED UPON SALE

TS #: WA-06-69581-CM
Loan #: 0002273985
Order #: 6503670

All requirements per Washington Statutes regarding the mailing, personal delivery and publication of copies of Notice of Trustee's Sale, and the posting of copies of Notice of Trustee's Sale have been complied with. Trustee, in compliance with said Notice of Trustee's sale and in exercise of its powers under said Deed of Trust sold said real property at public auction on 6/29/2007. Grantee, being the highest bidder at said sale became the purchaser of said property for the amount bid, being \$106,852.95, in lawful money of the United States, in pro per, receipt there of is hereby acknowledged in full/partial satisfaction of the debt secured by said Deed of Trust.

In witness thereof, QUALITY LOAN SERVICE CORPORATION OF WASHINGTON, as Trustee, has this day, caused its nameto be hereunto affixed by its officer thereunto duly authorized by its corporation by-laws

Date: 7/2/2007

QUALITY LOAN SERVICE CORPORATION OF WASHINGTON

By:

Tony Rodriguez

State of California } ss.
County of San Diego }

On 7/2/2007 before me, R. Tassell, personally appeared Tony Rodriguez personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

[Handwritten signature of R. Tassell]

R. Tassell

(Seal)

