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**Supreme Court No. 93291-3
Court of Appeals No. Case No. 328163**

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

JAMES BLAIR

Plaintiff/Appellant,

v.

NORTHWEST TRUSTEE SERVICES, INC.; BANK OF AMERICA,
N.A., MORTGAGE ELECTRONIC REGISTRATION SYSTEM, INC.;
FEDERAL HOME LOAN MORTGAGE CORPORATION; and DOE
DEFENDANTS 1 through 20

Defendants/Appellees.

**REPLY IN SUPPORT OF APPELLANT'S PETITION FOR
REVIEW**

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 ORIGINAL

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I. REPLY

RAP 13.4(d) permits the filing of a Reply by a Petitioner “if the answering party seeks review of issues not raised in the petition for review.” Here, NWTS makes new assertions about the alleged basis for the Court of Appeals Opinion which are not supported by a close review of the record and it seeks to offer new “evidence” that is unsupported by the court record. Thus, NWTS is raising issues that were not raised in the Petition for Review.

In its briefing, NWTS has asserted that Mr. Blair did not challenge its role as the trustee and to foreclose in the complaint and did not properly challenge its right to foreclose during motion practice as it relates to the Beneficiary Declaration. Response, p. 5. NWTS does so even though it cites to portions of Mr. Blair’s Complaint which specifically challenged whether it had truthfully identified and was taking direction from the noteholder. *Id.*

The Beneficiary Declaration (CP 515) was provided to the Court in support of NWTS’ Summary Judgment Motion (CP 518-538) and by its Declarant Jeff Stenman (CP 513-515), who also testified that NWTS “relied on such declaration prior to recording a Notice of Trustee’s Sale on April 27, 2012 for the nonjudicial foreclosure of the Deed of Trust executed by Plaintiff.” CP 514. In its briefing, NWTS also argued to the

trial court that it was entitled to rely upon that Declaration. CP 529, fn. 8. Mr. Blair responded to that argument and assertions about the Beneficiary Declaration in his responsive summary judgment briefing. CP 1078-1085. His argument was focused on the totality of the circumstances around the execution of the Beneficiary Declaration and that it was not accurate nor in compliance with the requirements of the Deed of Trust Act. *Id.* Further, the defendants in the case were permitted by the trial court to submit additional documentation in support of their position about noteholder status after oral argument and Mr. Blair was not permitted to respond. CP 1098-1105; 1106-1115. Most importantly, the trial court held that the Beneficiary Declaration on its own was “insufficient” precisely because of the ambiguous language in that document. CP 1149.

NWTS’ citation to *Camp. Fin., LLC v. Brazington*, 133 Wn.App. 156, 135 P.3d 946 (2006) does not support its position. The *Brazington* case relates to the addition of completely new legal theories (the constitutionality of the subject statute) on motion practice. That did not happen here. Mr. Blair made numerous arguments about the validity of the Beneficiary Declaration and its compliance with the DTA requirements in briefing and at oral argument, related to his assertions about the invalidity of the nonjudicial foreclosure process. That is not a new legal theory – it is support for arguments based upon the facts available.

Further, all of this was briefed to the Court of Appeals, including in Mr. Blair's Reply, to which NWTS did not cite. Blair Reply, 1-4. The Court of Appeals rendered a decision based upon those arguments and it is a published decision. NWTS' position is apparently that the Court of Appeals can render a decision based upon what it contends were improper arguments and Mr. Blair is precluded from asking this Court to review a published decision because it won. There is no foundation in the law for such a proposition.

NWTS now also asserts that the issues relating to the Beneficiary Declaration, including the ambiguous language regarding holder status, were not briefed and argued below even though the trial court made findings specifically about the Beneficiary Declaration language. CP 1149. NWTS also argues that Mr. Blair "assumes that NWTS exclusively and strictly relied on a beneficiary declaration before recording a trustee's sale notice, but *reliance is not the standard for compliance* under the governing statute." Response, p. 1. NWTS does not cite to any authority in support of its argument because there is none, but more importantly, NWTS expressly stated that it **did** rely upon the declaration. CP 514; 529.

NWTS also asserts for the first time in its Response to this Court that it had "other evidence in its possession establishing its *accurate* knowledge that Bank of America was the beneficiary." Response, p. 6.

None of this was ever mentioned to the trial court nor at the Court of Appeals, and there is no evidence whatsoever in the court records that such evidence exists.

Finally, NWTS cites to the case of *Bakhchinyan v. Countrywide Bank, N.A.*, 2014 WL 1273810 (W.D. Wash., Mar. 27, 2014) in support of its alleged decision not to provide the trial court with all of the purported additional evidence of its knowledge of the identity of the noteholder. The problem for NWTS is that this decision was entered months after it filed its briefing (October 31, 2013). CP 518-538. Further, the decisions of the federal courts upon which NWTS relied were demonstrably wrong, as evidenced by this Court's decision in *Lyons v. U.S. Bank*, 181 Wn.2d 775, 336 P.3d 1142 (2014).

II. CONCLUSION

Mr. Blair respectfully requests that this Court agree to accept review of this case. He has identified the narrow issue that should be addressed by the Court and the new arguments presented by NWTS in its Response Brief should be rejected, as they are not founded upon the provision of accurate information to this Court.

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Respectfully submitted this 12th day of July, 2016.

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CERTIFICATE OF SERVICE

I, Tony Dondero, declare under penalty of perjury as follows:

1. I am over the age of eighteen years, a citizen of the United States, not a party herein, and am competent to testify to the facts set forth in this Declaration.

2. That on the Tuesday, July 12, 2016, I caused the attached document with any exhibits and supporting pleadings to be served upon the following individuals via the methods outlined below:

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

Dated this Tuesday, July 12, 2016, at Seattle, Washington.

/s/ Tony Dondero
Tony Dondero, Paralegal

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To the Court:

Please see attached Amended Petition for Review as approved for submittal by the clerk and the Reply in Support of Petition for Review.

James Blair, Appellant v. Northwest Trustee Services, Inc.; Bank of America N.A., Mortgage Electronic Registration Systems, Inc.; Federal Home Loan Mortgage Corporation; and Doe Defendants 1 through 20. Respondents.

Supreme Court Case No. 92391-3
Court of Appeals No. 32816-3-III

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