

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

**SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY**

CONNIE L. HOOKER,

Plaintiff,

v.

BANK OF AMERICA, N.A., WELLS FARGO
BANK, N.A., QUALITY LOAN SERVICE
CORPORATION OF WASHINGTON, INC. and
Doe Defendants 1 through 20, inclusive,

Defendants.

BANK OF AMERICA, N.A.,

Counterclaimant,

v.

CONNIE L. HOOKER, CITIMORTGAGE, INC.,
and UNITED STATES INTERNAL REVENUE
SERVICE,

Counterclaim
Defendants

NO. 14-2-11009-0 SEA

MEMORANDUM OPINION

1
2 This matter was tried to the court without a jury on November 30, 2015; December 1, 2015;
3 December 2, 2015; and December 15, 2015.

4 Plaintiff Connie L. Hooker was represented by Melissa A. Huelsman of the Law Offices of
5 Melissa A. Huelsman, P.S. Defendant Quality Loan Service of Washington, Inc. (“**Quality**”) was
6 represented by Christopher Luhrs and Joseph McCormick of McCarthy Holthus, LLP.

7 **Introduction**

8 The principal questions presented in this case are whether Defendant Quality committed at
9 least two violations of the Washington Deeds of Trust Act when it commenced the nonjudicial
10 foreclosure of the Plaintiff’s Deed of Trust: (1) a violation RCW 61.24.010(1)(a), which requires a
11 corporate Trustee to have at least one corporate officer who is a Washington resident; and/or (2) a
12 violation RCW 61.24.010(2), which requires a Trustee of a deed of trust to have been appointed by
the beneficiary of the deed of trust.

13 If Quality violated either or both of these statutory provisions, then the court must decide
14 whether the evidence presented by the Plaintiff with respect to either violation sustains the
15 Plaintiff’s claim for damages against Quality pursuant the Consumer Protection Act, Chapter 19.86
RCW.

16 The court has carefully reviewed the witnesses’ testimony, the exhibits that were admitted
17 into evidence, and the arguments by counsel. For the reasons explained below, the court
18 determines that the answer to all three questions is yes; and the court will enter a judgment in favor
19 of the Plaintiff and against Defendant Quality.

20 **Facts and Procedural History**

21 **Parties**

22 Plaintiff Connie L. Hooker is the signer of a promissory note payable to Wells Fargo Bank,
23 N.A., (“**Wells Fargo**”), and a related deed of trust, both of which are the subject of this lawsuit.

1 Defendant Quality is a Washington corporation whose principal business activity is serving
2 as a Trustee for deeds of trust and conducting nonjudicial foreclosure sales.

3 Bank of America, N.A. ("**Bank of America**") purchased Ms. Hooker's note from Wells
4 Fargo and took an assignment of the related deed of trust. Wells Fargo retained the servicing rights
5 with respect to the note. In the fall of 2013, when Ms. Hooker defaulted on the note and the deed
6 of trust, Wells Fargo appointed Defendant Quality to serve as Successor Trustee and caused a
7 nonjudicial foreclosure proceeding to be commenced against Ms. Hooker's property.

8 **Note and Deed of Trust**

9 On October 20, 2006, the Plaintiff took out a secured loan in the amount of \$438,000 from
10 Wells Fargo Bank, N.A. ("**Wells Fargo**"). The loan was evidenced by a promissory note ("**Note**")
11 (Tr. Ex. 1 and 25) that was secured by a deed of trust ("**DOT**") (Tr. Ex. 2) encumbering the
12 Plaintiff's home. The DOT was recorded in King County on October 26, 2006 under Auditor's
13 No. 20061026001955.

14 Wells Fargo retained the servicing rights and collected the Plaintiff's monthly payments
15 pursuant to a servicing agreement between Bank of America and Wells Fargo dated as of May 1,
16 2006 ("**Servicing Agreement**") (Tr. Ex. 17).

17 On or about December 3, 2010, Wells Fargo assigned the DOT to Bank of America,
18 National Association ("**Bank of America**") by an Assignment of Deed of Trust ("**Assignment of**
19 **DOT**"), which was recorded in King County under Auditor's No. 20101207000368 (Tr. Ex. 3).
20 The Assignment recites that Wells Fargo executed the Assignment through its Attorney in Fact,
21 Northwest Trustee Services, Inc., pursuant to a recorded power of attorney. The description below
22 the signature line identifies the signer as:

23 Wells Fargo Bank, N.A., By Heather Smith as Assistant Vice President
24 of Northwest Trustee Services, Inc., Attorney in Fact by Power of
Attorney recorded 1/4/10 under Auditor's File No. 20100104000781

December 2010 Assignment of DOT (Tr. Ex. 3).

1 **Nonjudicial Foreclosure Proceedings**

2 On September 11, 2013, following the Plaintiff’s default on the Note and the Deed of Trust,
3 Wells Fargo executed an Appointment of Successor Trustee (“AST”) (Tr. Ex. 13) recorded in King
4 County under Auditor’s File No. 20130919001086, appointing Quality to serve as Successor
5 Trustee for purposes of a nonjudicial foreclosure proceeding. The description below the signature
6 line identifies the signer as Jameka Young, Vice President Loan Documentation of “Wells Fargo
7 Bank, N.A., as servicer and attorney-in-fact for Bank of America, N.A.” Unlike Wells Fargo’s
8 earlier Assignment of DOT (Tr. Ex. 3), quoted above, Wells Fargo’s Assignment of Successor
Trustee does not identify a recorded power-of-attorney.

9 Also on September 11, 2013, on behalf of Bank of America, Wells Fargo executed and
10 provided to the Successor Trustee, Quality, a statutorily-required Beneficiary Declaration (Tr. Ex.
11 14), which declares that Bank of America is the “actual holder” of the Note;” and which also
12 declares, “The [Successor Trustee] may rely upon the truth and accuracy of the averments made in
13 this declaration.” The signature line of the Beneficiary Declaration states that the document is
14 signed by “Bank of America, N.A., by Wells Fargo Bank, N.A., its Attorney in Fact.” The
Beneficiary Declaration does not identify a recorded power-of-attorney.

15 On or about October 15, 2013, Quality, identifying itself as Trustee, executed and served a
16 Notice of Default (Tr. Ex. 15) that itemizes the amounts in arrears with respect to the Note. The
17 Notice of Default states that the owner of the Note secured by the Deed of Trust is “Bank of
18 America, N.A., c/o Wells Fargo Bank, N.A.,” at a Wells Fargo address in Iowa. Notice of Default,
19 at p. 1 (Tr. Ex. 15). The Notice of Default does not identify a recorded power of attorney.

20 On November 19, 2013, signing as “Trustee,” Quality executed a Notice of Trustee’s Sale
21 (“NOTS”) (Tr. Ex. 16). Quality recorded the NOTS under King County Auditor’s File No.
22 20131121000949.

1 On July 3, 2014, after having continued the sale date several times, Quality recorded a
2 Notice of Discontinuance of Nonjudicial Foreclosure Sale (Tr. Ex. 19). Quality has not
3 commenced another nonjudicial foreclosure proceeding against the Plaintiff's home.

4 **Plaintiff's Consumer Protection Act Suit for Damages**

5 On April 21, 2014, the Plaintiff filed her complaint (Dkt. 1) and her amended complaint
6 (Dkt. 9), naming as Defendants Bank of America, Wells Fargo and Quality. She alleges that the
7 Defendants violated the Deeds of Trust Act, Chapter 61.24 RCW; and she seeks damages pursuant
8 to the Consumer Protection Act, Chapter 19.86 RCW.

9 On April 24, 2014, a commissioner issued a Temporary Restraining Order (Dkt. 15), which
10 restrained the sale and set a hearing on the Plaintiff's Motion for Preliminary Injunction for May
11 23, 2014, but required that the Plaintiff was required to deposit her regular monthly Note payments
12 of \$2,901.24 into the registry of the court.

13 On May 23, 2014, the court issued a Preliminary Injunction (Dkt. 23A) restraining the sale
14 on basically the same terms and conditions as the Temporary Restraining Order.

15 On October 6, 2015, the court signed a Stipulation and Order of Dismissal of Claims
16 Against Bank of America, N.A. and Wells Fargo Bank, N.A. and for Disbursal of Funds in the
17 Court Registry (Dkt. 127). The order of dismissal recites that it does not affect the Plaintiff's
18 claims against Quality.

19 **Deeds of Trust Act Violations**

20 **Deeds of Trust Act**

21 The Deeds of Trust Act (Chapter 61.24 RCW) ("**DTA**") creates a three-party mortgage
22 system allowing lenders, when payment default occurs, to nonjudicially foreclose by trustee's sale.
23 The act furthers three goals: (1) that the nonjudicial foreclosure process should be efficient and
24 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.

1 *Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 94, 285 P.3d 34 (2012); *Cox v.*
2 *Helenius*, 103 Wash.2d 383, 387, 693 P.2d 683 (1985); *Albice v. Premier Mortg. Servs., Inc.*, 174
3 Wn.2d 560, 567, 276 P.3d 1277 (2012).

4 Because the Act dispenses with many protections commonly enjoyed by borrowers under
5 judicial foreclosures, lenders must strictly comply with the statutes and courts must strictly
6 construe the statutes in the borrower's favor. *Bain v Metropolitan Mortgage Group, Inc.*, 175
7 Wn.2d at 93-94, 285 P.3d 34; *Albice v. Premier Mortg. Servs., Inc.*, 174 Wn.2d at 567, 276 P.3d
8 1277 (2012); *Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915–16, 154 P.3d 882 (2007);
9 *Koegel v. Prudential Mut. Sav. Bank*, 51 Wn.App. 108, 111–12, 752 P.2d 385 (1988). The
10 procedural requirements for conducting a trustee sale are extensively spelled out in RCW
11 61.24.030 and RCW 61.24.040. Procedural irregularities, such as those divesting a trustee of its
12 statutory authority to sell the property, can invalidate the sale. *Udall*, 159 Wash.2d at 911, 154 P.3d
13 882; *Albice v. Premier Mortg. Servs., Inc.*, 174 Wn.2d at 567, 276 P.3d 1277 (2012).

13 **Plaintiff's Claim Based on RCW 61.24.010(1)(a)**

14 RCW 61.24.010(1) provides:

15 (1) The trustee of a deed of trust under this chapter shall be:

16 (a) Any domestic corporation or domestic limited liability
17 corporation incorporated under Title 23B, 25, *30, 31, 32, or 33
18 RCW of which at least one officer is a Washington resident; ...

19 The Plaintiff's complaint alleges that Quality violated the DTA because:

20 ... there is no officer of Defendant [Quality] who is a resident of this
21 state and ... Defendant [Quality] has falsely represented that a low level
22 employee who is not an actual officer has been named as an officer in
23 order to try to meet the requirements of the Deed of Trust Act.

24 Amended Complaint, at ¶ 2.16, p. 10 (Dkt. 9). The Defendant denies the Plaintiff's claim
and asserts that it satisfied the "Washington-resident-officer" requirement because "from not later

1 than 2012,” one of its Washington-based employees, Sierra Herbert-West, “served as either a
2 Secretary or Assistant Secretary” of Quality. Quality’s Trial Brief, p. 5.

3 Pursuant to the Washington Business Corporation Act, “officers” and “assistant
4 officers” are two distinct categories of persons. An “officer” is appointed by a corporation’s board
5 of directors. RCW 23B.08.400(1). By contrast, an “assistant officer” is appointed by a “duly
6 appointed officer.” RCW 23B.08.400(2). “Assistant officers” answer to “officers” and they
7 necessarily have a lower rank than officers in the corporate hierarchy. From this the court
8 concludes that the terms “officer” and “assistant officer” are not interchangeable terms.

9 This statutory distinction is important for purposes of the DTA and the court is not at
10 liberty to ignore it. RCW 61.24.010(1)(a) requires at least one “officer” to be a Washington
11 resident. It does not state that at least one officer “or assistant officer” must be a state resident. A
12 person with the rank of “assistant officer” does not satisfy the “officer” requirement of
13 RCW 61.24.010(1)(a).

14 In a declaration filed in March 2015 (Tr. Ex. 31) Ms. Herbert-West described herself as a
15 “Trustee Sales Officer” in Quality’s Seattle office. At trial Ms. Herbert-West testified that in
16 March 2013, she was appointed to serve as an “assistant secretary” of the corporation. This
17 testimony is corroborated by Tr. Ex. 46, a corporate consent form dated April 25, 2013, which
18 shows Ms. Herbert-West to be an “Assistant Secretary;” and Tr Ex. 23, a corporate consent in lieu
19 of a corporate directors’ meeting dated as of July 30, 2013, which lists Ms. Herbert-West as being
20 one of 20 “Assistant Secretaries” of the corporation.

21 Ms. Herbert-West also testified that in March 2014, she was appointed to be the “secretary”
22 of Quality. Her testimony is corroborated by Tr. Ex. 23, which includes a corporate consent in lieu
23 of a corporate directors’ meeting dated as of March 19, 2014, which lists Ms. Herbert-West as one
24 of three “Secretaries” of the corporation. However, her testimony and this corporate consent
appear to be inconsistent with an April 18, 2014, corporate report filed with the Secretary of State

1 (included in Tr. Ex. 46), which identifies John Valkus as the only person with the rank of
2 “Secretary” as of that date. Ms. Herbert-West’s name is not included on the corporate report. That
3 same corporate report states that as of April 18, 2014, all of Quality’s corporate officers, including
4 Mr. Valkus, are California residents.

5 Regardless of whether this apparent inconsistency can be reconciled, the fact remains, and
6 the court finds that Ms. Herbert-West was only an “assistant officer,” not an “officer” of Quality
7 during most if not all of the period September 19, 2013 – July 3, 2014, when Quality was acting as
8 the Successor Trustee for the nonjudicial foreclosure against the Plaintiff’s home.

9 Based on this, the court is constrained to conclude that Quality was not legally qualified
10 under Washington law to act as the Successor Trustee of the Plaintiff’s Deed of Trust; and that
11 Quality therefore violated the DTA when it recorded and served the Notice of Trustee Sale.

12 **Claim Based on RCW 61.24.010(2)**

13 Pursuant to RCW 61.24.010(2), a beneficiary of a deed of trust may appoint a Successor
14 Trustee to replace the original Trustee named in the deed of trust. Absent a proper appointment by
15 the beneficiary, however, the Successor Trustee lacks the authority to conduct a nonjudicial
16 foreclosure sale. *Walker v. Quality Loan Serv. Corp.*, 176 Wn.App. 294, 306, 308 P.3d 716
17 (2013); *Rucker v. NovaStar Mortgage, Inc.*, 177 Wn.App. 1, 14-15, 311 P.3d 31 (2013); *Bavand v.*
18 *OneWest Bank, F.S.B.*, 176 Wn.App. 475, 501, 309 P.3d 636 (2013).

19 A beneficiary of a deed of trust may act through an agent in appointing a Successor Trustee.
20 *See Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 106, 285 P.3d 34, 45 (2012);
21 *Rucker v. NovaStar Mortgage, Inc.*, 177 Wn.App. 1, 15, 311 P.3d 31 (2013); *Bavand v. OneWest*
22 *Bank, F.S.B.*, 176 Wn.App. 475, 500-501, 309 P.3d 636 (2013); *see also In re Agard*, 444 B.R.
23 231, 250 (E.D.N.Y. 2011).

24 The person claiming to be an agent has the burden to prove not only its alleged agency
relationship with the principal, but also its specific authority to do the particular act in question.

1 *Bavand v. OneWest Bank, F.S.B.*, 176 Wn.App. at 500, 309 P.3d 636 [finding that the alleged
2 agent failed to establish the “scope and nature of the authority” of the alleged agent to act as
3 nominee for the alleged beneficiary]; *see also In re Agard*, 444 B.R.at 250-251, and the cases cited
4 therein.

5 The person claiming to be an agent also must prove that the purported principal actually
6 controls the agent and that the purported agent is accountable to the principal. *Bain v.*
7 *Metropolitan Mortgage Group, Inc.*, 175 Wn.2d at 106-107, 285 P.3d 34 (2012); *Rucker v.*
8 *NovaStar Mortgage, Inc.*, 177 Wn.App. at 15-16, 311 P.3d 31 (2013).

9 If the scope and nature of the alleged agency relationship between the
10 beneficiary/noteholder/principal and alleged agent is not proved, then the alleged agent has no
11 authority to appoint a Successor Trustee; and any actions taken by the improperly appointed
12 Trustee constitute material violations of the DTA. *Walker v. Quality Loan Serv. Corp.*, 176
13 Wn.App. at 308-310, 308 P.3d 716; *Bavand v. OneWest Bank, F.S.B.*, 176 Wn.App. at 500-501,
14 309 P.3d 636.

15 Based on the record at trial, the court concludes that the relationship between Wells Fargo
16 and Bank of America was an independent-contractor relationship, not a principal-agent
17 relationship, because Quality failed to prove by a preponderance of the evidence that Bank of
18 America appointed Wells Fargo to serve as its attorney in fact. As a consequence, Wells Fargo did
19 not act as Bank of America’s attorney in fact when Wells Fargo appointed Quality to serve as the
20 Successor Trustee of the Plaintiff’s DOT; and Quality was not a duly appointed Successor Trustee
21 when it commenced the foreclosure sale of the Plaintiff’s Deed of Trust.

22 **Wells Fargo’s Independent-Contractor Status**

23 The servicing agreement between the two banks precludes Bank of America from being a
24 “principal” and Wells Fargo from being an “agent.” Wells Fargo carefully preserved its
independence in the servicing agreement. The two banks defined their relationship as an

1 independent-contractor relationship, and not as a principal-agent relationship. The Second
2 Amended and Restated Master Seller’s Warranties and Servicing Agreement, Dated as of May 1,
3 2006 (“**Servicing Agreement**”) states, in relevant part:

4 “The Company [Wells Fargo] as an independent contractor, shall service
5 and administer the Mortgage Loans on behalf of the Purchaser [Bank of
6 America] and shall have full power and authority, acting alone or through
7 the utilization of a Subservicer or a Subcontractor, to do any and all
8 things in connection with such servicing and administration which the
9 Company may deem necessary or desirable, consistent with the terms of
10 this Agreement and with Accepted Servicing Practices.

11 Consistent with the terms of this Agreement, the Company [Wells Fargo]
12 may waive, modify or vary any term of any Mortgage Loan or consent to
13 the Postponement of strict compliance with any such term or in any
14 manner grant indulgence to any Mortgagor if in the Company’s
15 reasonable and prudent determination such waiver, modification,
16 postponement or indulgence is not materially adverse to the Purchaser,
17 provided, however, the Company shall not make any future advances,
18 other than Servicing Advances, with respect to a Mortgage Loan. ...”
19 [Emphasis added]

20 Servicing Agreement, at Par. 4.01, p. 42 (Tr. Ex. 17). Consistent with Wells Fargo’s
21 independent-contractor status, the Servicing Agreement defines Wells Fargo’s Subservicers and
22 Subcontractors as agents of Wells Fargo only, and not agents of Bank of America:

23 All actions of each **Subservicer** performed pursuant to the related
24 Subservicing Agreement shall be performed as **agent** of the Company
[Wells Fargo] with the same force and effect as if performed directly by
the Company.” [Emphasis added]

Servicing Agreement, at Par. 4.01, p. 44. (Tr. Ex. 17).

The Servicing Agreement contemplates the possibility of using written powers of attorney
in unspecified situations:

If reasonably required by the Company [Wells Fargo], the Purchaser
[Bank of America] shall furnish the Company with any **powers of
attorney** and other **documents** necessary or appropriate to enable the

1 Company to carry out its servicing and administrative duties under this
2 Agreement. [Emphasis added]

3 Servicing Agreement, at Par. 4.01, p. 43. (Tr. Ex. 17). The language quoted immediately
4 above makes clear that if any power of attorney were to be furnished, it necessarily would be a
5 written document. No written power of attorney was introduced into evidence.

6 The two banks having taken care to preserve Wells Fargo's independent-contractor status in
7 the written servicing agreement, and Quality having failed to introduce into evidence any written
8 power of attorney that might establish a principal-agent relationship between the banks, the court
9 must conclude that Bank of America lacked the control over Wells Fargo that is necessary in order
10 to establish a principal-agent relationship. *See Bain v. Metropolitan Mortgage Group, Inc.*, 175
11 Wn.2d at 106-107, 285 P.3d 34 (2012); *Rucker v. NovaStar Mortgage, Inc.*, 177 Wn.App. at 15-16,
311 P.3d 31 (2013).

12 **Wells Fargo's Sophistication Regarding Powers of Attorney**

13 The evidence establishes that Wells Fargo was fully aware of the importance of
14 documenting any attorney-in-fact relationship. As noted above, when Wells Fargo assigned the
15 Plaintiff's Deed of Trust to Bank of America in 2010, it did so through an attorney in fact. Wells
16 Fargo specifically included the recording number of the power of attorney as part of the
17 Assignment of Deed of Trust (Tr. Ex. 3). The signature line of the Assignment of Deed of Trust
identifies the signer as:

18 Wells Fargo Bank, N.A., By Heather Smith as Assistant Vice President
19 of Northwest Trustee Services, Inc., Attorney in Fact by Power of
Attorney recorded 1/4/10 under Auditor's File No. 20100104000781

20 December 2010 Assignment (Tr. Ex. 3).

21 By contrast, in Wells Fargo's 2013 Appointment of Successor Trustee (Tr. Ex. 5) and the
22 related Beneficiary Declaration (Tr. Ex. 7), Wells Fargo omitted to identify any power of attorney

1 under which Wells Fargo might have been authorized to act as an attorney in fact in executing
2 those documents.

3 No power of attorney having been introduced as a trial exhibit, and in the absence of any
4 reference to a specifically applicable power of attorney in any other trial exhibits, the court has no
5 substantial factual basis to find that: (1) Wells Fargo was Bank of America's attorney in fact; (2)
6 Wells Fargo had any specific authority to execute the Appointment of Successor Trustee
7 (Tr. Ex. 5) or the Beneficiary Declaration (Tr. Ex. 7); or (3) Quality had any authority to act as a
8 Successor Trustee with respect to the nonjudicial foreclosure against the Plaintiff's home.

9 **Banks' Failure to Identify Power of Attorney**

10 The banks' corporate representatives were unaware of and unable to identify any particular
11 power of attorney that might be applicable to the facts of this case.

12 Although the CR 30(b)(6) corporate representative of Wells Fargo testified that from time
13 to time Bank of America had executed "several" powers of attorney appointing Wells Fargo to act
14 as its attorney in fact, he was unable to identify which, if any power of attorney governed Wells
15 Fargo with respect to the nonjudicial foreclosure of the Plaintiff's DOT. Tr. Ex. 42 (Excerpt from
16 transcript of CR 30(b)(6) deposition of Wells Fargo representative Robert Ferguson).

17 Similarly, the CR 30(b)(6) corporate representative of Bank of America was unable to
18 testify to anything more than that he "assumed" that Bank of America had executed a power of
19 attorney that would have authorized Wells Fargo to commence a nonjudicial foreclosure of the
20 Plaintiff's DOT:

21 Q. Where is the power of attorney document that authorized ... Wells
22 Fargo to act as attorney in fact for Bank of America? ...

23 A. I don't know. ...

24 Q. Does one exist?

A. I don't know. I would assume so. ...

Q. Where is the document?

1 A. I don't know.

2 Q. Have you seen it?

3 A. No.

4 Tr. Ex. 43 (Excerpt from transcript of CR 30(b)(6) deposition of Bank of America
5 representative Chris James).

6 To summarize, based on the terms of the servicing agreement, and in the absence of a
7 written power of attorney that specifically defines the scope and nature of Wells Fargo's alleged
8 powers as an agent, the court is constrained to conclude that Quality presented insufficient
9 evidence to prove that Bank of America appointed Wells Fargo to act as its attorney in fact to act
10 as the beneficiary with respect to the foreclosure of the Plaintiff's DOT, and Bank of America had
11 the requisite control over Wells Fargo for there to be a principal-agent relationship between the
12 two banks. Based on the evidence presented, the court concludes that Wells Fargo was an
13 independent contractor, not an agent of Bank of America; Wells Fargo acted as an unlawful
14 beneficiary in appointing Quality to serve as Successor Trustee; and Quality lacked any legal
15 authority to record and serve the Notice of Trustee's Sale that it served on the Plaintiff. As the
16 court stated in the *Walker* case:

17 [W]hen an unlawful beneficiary appoints a Successor Trustee, the
18 putative trustee lacks the legal authority to record and serve a notice of
19 trustee's sale.

20 *Walker v. Quality Loan Serv. Corp.*, 176 Wn.App. at 306, 309, 308 P.3d 716.

21 For these reasons, the court further concludes that Quality violated the Deed of Trust Act
22 when it recorded and served the Notice of Trustee Sale.

23 **Quality Is Not Entitled to Rely on the Beneficiary Declaration**

24 Quality asserts in its trial brief and argued at trial that Quality reasonably assumed – and
that RCW 61.24.030(7) permitted Quality to rely upon its assumption – that Wells Fargo was Bank
of America's duly-appointed attorney in fact, because the signature line in the Beneficiary

1 Declaration (Tr. Ex. 7) indicates that Wells Fargo was signing as an “attorney in fact” for Bank of
2 America.

3 RCW 61.24.030(7) provides, in relevant part:

4 It shall be requisite to a trustee’s sale:

5 (7)(a) That, for residential real property, before the notice of trustee's sale
6 is recorded, transmitted, or served, the trustee shall have ***proof that the***
7 ***beneficiary is the owner of any promissory note*** or other obligation
8 secured by the deed of trust. A declaration by the beneficiary made
9 under the penalty of perjury ***stating that the beneficiary is the actual***
10 ***holder of the promissory note*** or other obligation secured by the deed of
11 trust shall be sufficient proof as required under this subsection.

12 (b) ***Unless the trustee has violated his or her duty under RCW***
13 ***61.24.010(4)***, the trustee is entitled to rely on the beneficiary's
14 declaration as evidence of proof required under this subsection.
15 [Emphasis added]

16 This statute does not provide a safe haven that is so broad as Quality urges. The statute
17 does create a limited conditional presumption that permits a Trustee to rely on the beneficiary’s
18 declaration, but only to the extent that the declaration “stat[es] that the beneficiary is the actual
19 holder of the promissory note...” The statute does not permit a Trustee to rely on the declaration
20 as proof of any other fact.

21 Here, RCW 61.24.070(7)(a) does not permit Quality to use the statute as a basis to justify
22 Quality’s assumption, based merely on the signature line in the beneficiary’s declaration, that Bank
23 of America had signed a power of attorney or that Wells Fargo was acting as Bank of America’s
24 duly-appointed attorney in fact.

Moreover, RCW 61.24.030(7)(b) denies the limited presumption altogether where a Trustee
has violated its RCW 61.24.010(4) duty of good faith to the borrower/grantor. Here, Quality
violated RCW 61.24.010(1)(a) by initiating the nonjudicial foreclosure without being qualified to
act as a Trustee; and also violated RCW 61.24.010(2) by failing to be appointed by the beneficiary

1 or a validly-appointed attorney-in-fact of the beneficiary. Having violated these statutes, Quality
2 has violated its duty of good faith to the Plaintiff, and so Quality cannot claim to have satisfied its
3 duty of good faith to the Plaintiff.

4 The court concludes that Quality had a duty to require Wells Fargo to produce adequate
5 proof that Bank of America actually had appointed Wells Fargo to act as an attorney in fact; that
6 Quality acted at its peril when it initiated the nonjudicial foreclosure without having procured that
7 proof; and that Quality may not invoke the protection of RCW 61.24.030(7) to excuse its
8 violations of the DTA.

9 **Plaintiff's Claim Based on RCW 61.24.030(6)**

10 Paragraph 2.16 of the Plaintiff's Amended Complaint alleges that Quality violated
11 61.24.030(6), which provides:

12 (6) That prior to the date of the notice of trustee's sale and continuing
13 thereafter through the date of the trustee's sale, the trustee must maintain
14 a street address in this state where personal service of process may be
15 made, and the trustee must maintain a physical presence and have
16 telephone service at such address.

17 The Amended Complaint asserts that the address of Quality listed on the Notice of
18 Trustee's Sale is a "sham address" and that "all of the work and information" regarding Quality's
19 foreclosure work in Washington "is actually housed in California." *Id.*

20 The evidence presented at trial was insufficient to sustain the Plaintiff's allegations. In
21 particular, based on the testimony by Ms. Herbert-West, including a declaration of Ms. Herbert-
22 West that the Plaintiff herself introduced into evidence as Tr. Ex. 31, the court finds that prior to
23 the date of the Notice of Trustee's Sale and continuing thereafter through the date of the recording
24 of the Notice of Discontinuance of Trustee's Sale, Quality maintained a street address in this state
where personal service of process could be made; and that continuously during that period Quality
maintained a physical presence and had telephone service at such address. It is true that Quality

1 moved its physical address from Poulsbo to Seattle during that period, but the evidence presented
2 is insufficient to sustain the Plaintiff’s allegation that Quality was not actually doing business
3 continuously during that time or that either address was a “sham address.”

4 **Plaintiff’s Claim Based on RCW 61.24.030(8)(I)**

5 In her Amended Complaint, the Plaintiff asserts that Quality violated RCW 61.24.030(8)(I),
6 which requires a Notice of Default involving residential real property to state certain contact
7 information for the note owner and also for the servicer of the note. Amended Complaint, at ¶
8 2.15.

9 The court concludes that the Notice of Default (Tr.Ex. 15) does include sufficient
10 information to satisfy the requirements of RCW 61.24.030(8)(I). The court does not believe that
11 the statute prohibits Wells Fargo, the servicer, from stating its own address as a “c/o” address for
12 the note holder, Bank of America; and the Plaintiff cites no legal authority to the contrary.

13 **Quality’s Violation of Consumer Protection Act**

14 **Consumer Protection Act**

15 Violations of the Deeds of Trust Act may be actionable under the Consumer Protection Act,
16 Chapter 19.86 RCW, even where no foreclosure sale has been completed. Such claims are
17 governed by the ordinary principles applicable to all CPA claims. *Frias v. Asset Foreclosure*
18 *Services, Inc.*, 181 Wn.2d 412, 433, 334 P.3d 529 (2014); *Lyons v. U.S. Bank National*
19 *Association*, 181 Wn.2d 775, 784, 336 P.3d 1142 (2014); *Klem v. Wash. Mut. Bank*, 176 Wn.2d
20 771, 795, 295 P.3d 1179 (2013); *Walker v. Quality Loan Service Corp. of Washington*, 176
21 Wn.App. 294, 313, 318-320, 308 P.3d 716 (2013).

22 The CPA declares unlawful unfair methods of competition and unfair or deceptive acts or
23 practices in the conduct of any trade or commerce. RCW 19.86.020. Generally, to prevail in a
24 private CPA claim, the plaintiff must prove (1) an unfair or deceptive act or practice (2) occurring
in trade or commerce (3) affecting the public interest, (4) injury to a person’s business or property,

1 and (5) causation. *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d
2 778, 784–85, 719 P.2d 531 (1986).

3 **First and Second Elements:**
4 **Unfair or Deceptive Act or Practice in Trade or Commerce**

5 In *Klem v Wash Mut. Bank*, the Supreme Court held:

6 [A] claim under the Washington CPA may be predicated upon a per se
7 violation of statute, an act or practice that has the capacity to deceive
substantial portions of the public, or an unfair or deceptive act or practice
not regulated by statute but in violation of public interest.

8 *Klem v Wash Mut. Bank*, 176 Wn.2d at 787, 295 P.3d 1179.

9 In *State v. Kaiser*, 161 Wn.App. 705, 719, 254 P.3d 850 (2011), the Court of Appeals
10 explained:

11 To prove that an act or practice is deceptive, neither intent nor actual
12 deception is required. The question is whether the conduct has “the
13 capacity to deceive a substantial portion of the public.” [quoting
Hangman Ridge, 105 Wn.2d at 785, 719 p.2d 531] ... Whether particular
actions are deceptive is a question of law...

14 Here, the Plaintiff has proved by a preponderance of the evidence that Quality committed
15 acts in the course of its business that had the capacity to deceive when it executed, recorded and
16 served the Notice of Trustee’s Sale:

- 17 1. Without having satisfied the legal residency requirements to operate as a Trustee in
Washington under RCW 61.24.010(1)(c); and
- 18 2. Without having been appointed to serve as a Trustee by the beneficiary or the
19 beneficiary’s duly-appointed agent, as required by RCW 61.24.010(2). *See Walker v.*
20 *Quality Loan Service Corp.*, 176 Wn.App. at 319, 308 P.3d 716 [Plaintiff held to have
21 pleaded a “deceptive act” for purposes of the CPA by alleging that defendant “sent a
22 notice of default ... ‘despite not meeting the requirements of a Successor Trustee
23 under RW 61.24.010(2)...’”]; *see also Bain v. Metropolitan Mortg. Group, Inc.*, 175

1 Wn.2d at 117, 285 P.3d 34 [held, “[Falsely] characterizing MERS as the beneficiary
2 has the capacity to deceive and thus ... presumptively the first element is met.”].

3 **Third Element: Public Interest**

4 With respect to the public interest element, RCW 19.86.093(a) provides:

5 In a private action in which an unfair or deceptive act or practice is
6 alleged under RCW 19.86.020, a claimant may establish that the act or
practice is injurious to the public interest because it: ...

7 (3)(a) Injured other persons; (b) had the capacity to injure other persons;
8 or (c) has the capacity to injure other persons.

9 The Plaintiff introduced into evidence findings and conclusions from a Snohomish County
10 Superior Court case, *FNMA v. Brevick*, No. 12-2-05605-4 (Tr. Ex. 40), in which that court found
11 that Quality wrongfully had failed to determine what entity actually had authority to appoint
12 Quality to serve as the Successor Trustee (Findings 13 & 15); that Quality was not lawfully
13 appointed to serve as Successor Trustee (Finding 20); and that quality therefore lacked authority to
14 exercise the power of sale in the debtor’s deed of trust, resulting in a void nonjudicial foreclosure
sale (*Id.*).

15 This evidence is sufficient to satisfy the public interest element because it shows that in at
16 least one other case Quality has engaged in acts or practices that are similar to its conduct in this
17 case; that such acts and practices injured at least one other person; and that its acts and practices
18 have the capacity to injure other persons.

19 **Fourth and Fifth Elements: Causation of Injury**

20 Compensable injuries under the CPA are limited to “injury to [the] plaintiff in his or her
21 business or property.” *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wash.2d
778, 780, 719 P.2d 531 (1986).

22 Even where there is no completed foreclosure sale and no allegation that a plaintiff has paid
23 any foreclosure fees, it is possible for the plaintiff to suffer injury to business or property caused by

1 alleged DTA violations that could be compensable under the CPA. *Frias v. Asset Foreclosure*
2 *Services, Inc.*, 181 Wn.2d 412, 430, 334 P.3d 529 (2014)

3 The range of business and property injuries compensable under the CPA is relatively
4 expansive. *Frias v. Asset Foreclosure Services, Inc.*, 181 Wn.2d at 431, 334 P.3d 529 (2014)
5 [held, plaintiff was entitled to prove and recover expenses incurred in investigating the legality of a
6 nonjudicial foreclosure, and expenses incurred in participating in an unnecessary mediation
7 session]; *Walker v. Quality Loan Service Corp.*, 176 Wn.App. at 320, 308 P.3d 716 [“Investigative
8 expenses, taking time off from work, travel expenses, and attorney fees are sufficient to establish
9 injury under the CPA”]; *Panag v. Farmers Ins. Co. of Washington*, 166 Wn.2d 27, 57, 62, 204
10 P.3d 885 (2009) [Expenses incurred in “consulting an attorney to dispel uncertainty regarding an
11 alleged debt” held to be “injury to business or property”].

12 Based on the evidence presented, the court finds that Quality’s wrongful foreclosure
13 activities proximately caused the Plaintiff to sustain the following injury to her property:

13	Legal Fees Incurred by Plaintiff to Obtain Temporary Restraining Order	\$4,000.00
14	Fees Paid by Plaintiff to Superior Court Clerk (April 2014 – June 2015 (15 months))	\$ 150.00
15	<hr/>	
16	Total Injury	\$4,150.00

17 **Plaintiff’s Claim for Treble Damages**

18 The Plaintiff’s Amended Complaint requests an award of treble damages. Pursuant to
19 RCW 19.86.090, the court may, in its discretion, increase the award of damages up to an amount
20 not to exceed three times the actual damages sustained, provided that the increased damage award
21 for a violation of RCW 19.86.020 may not exceed twenty-five thousand dollars. Based on the
22 evidence presented at trial, the court believes that it is appropriate to treble the \$4,150.00 damage
23 award, resulting in a total award in the amount of \$12,450.00.

1 **Plaintiff’s Request for Attorneys’ Fees and Costs**

2 As the prevailing party, and pursuant to RCW 19.86.090, the Plaintiff is entitled to recover
3 and the court will award the Plaintiff her reasonable costs of suit, including a reasonable attorneys’
4 fee.

5 **Conclusion**

6 For the reasons stated above, the court concludes that Defendant Quality committed two
7 violations of the Washington Deeds of Trust Act when it commenced the nonjudicial foreclosure
8 of the Plaintiff’s Deed of Trust: (1) Quality violated RCW 61.24.010(1)(a), which requires a
9 corporate Trustee to have at least one corporate officer who is a Washington resident; and/or
10 (2) Quality violated RCW 61.24.010(2), which requires a Trustee of a deed of trust to have been
appointed by the beneficiary of the deed of trust.

11 Quality’s violations of the Deeds of Trust Act are grounds to sustain Plaintiff’s claim for
12 damages against Quality pursuant the Consumer Protection Act, Chapter 19.86 RCW. The
13 Plaintiff is entitled to a judgment in her favor and against Quality for treble the amount of her
14 injury, along with her costs of suit, including her reasonable attorneys’ fees.

15 **Further Proceedings**

16 Separately the court is providing or will provide to the parties’ counsel proposed findings of
17 fact and conclusions of law.

18 The Plaintiff’s counsel may file and serve a motion for attorneys’ fees and costs no later
19 than Friday, February 12, 2016.

20 The Plaintiff’s counsel is requested to file and serve a proposed judgment no later than
21 Friday, February 12, 2016.

22 Either party may file and serve any objections to the proposed findings and conclusions by
23 Friday, Friday, February 19, 2016.

1 The Defendant's counsel may file and serve a response to the Plaintiff's motion for
2 attorneys' fees and costs, along with any objections to the Plaintiff's proposed judgment, by
3 Friday, February 19, 2016.

4 There will be a hearing on Thursday, February 25, 2016, at 3:30 p.m., for presentation of
5 the findings of fact and conclusions of law, and for presentation of the judgment.

6 If the February 25, 2016 hearing date is inconvenient for either party or their counsel,
7 please coordinate with the court's bailiff to schedule a mutually convenient later date.

8 DATE: January 29, 2016.

9 /s/ John R. Ruhl

John R. Ruhl, Judge

King County Superior Court
Judicial Electronic Signature Page

Case Number: 14-2-11009-0
Case Title: HOOKER VS BANK OF AMERICA ET AL

Document Title: ORDER - MEMORANDUM OPINION

Signed by: John Ruhl
Date: 2/1/2016 9:00:00 AM

A rectangular box containing a handwritten signature in black ink that reads "John R Ruhl".

Judge/Commissioner: John Ruhl

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 935BEE50439EAED14D7E164B302050F344EAA480
Certificate effective date: 3/13/2014 2:24:05 PM
Certificate expiry date: 3/13/2019 2:24:05 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="John Ruhl:
bAJ9MXn44hGkPOM2YYhwmw=="