

1 THE HONORABLE GEORGE N. BOWDEN, JUDGE

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
9 IN AND FOR THE COUNTY OF SNOHOMISH

10 Federal National Mortgage Association,

11 Plaintiff,

12 vs.

13 Dale A. Brevick; All Occupants and  
14 Persons in Possession,

15 Defendants.

NO. 12-2-05605-4

Findings of Fact and Conclusions of Law

16 THIS MATTER having come before the court on trial, Plaintiff Federal National Mortgage  
17 Association (hereafter FNMA), appearing through its attorney of record Robert William McDonald, the  
18 defendant(s) Dale A. Brevick; All Occupants and Persons in Possession (Hereafter Brevick), appearing  
19 through his attorneys of record John Long and Brett Masch and the court having examined the parties,  
20 witnesses present, considered the evidence, and being fully advised in the premises, now makes the  
21 following:

22 **FINDINGS OF FACT**

- 23 1. This is an unlawful detainer action brought by Plaintiff following a non-judicial foreclosure sale  
24 pursuant to RCW 61.24 et. seq.
- 25 2. The sale was conducted on held on May 11, 2012 by Quality Loan Service Corporation of

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1 Washington (hereafter QLS).

2 3. QLS prepared and caused a Trustee's Deed to be recorded in the Snohomish County Recorder  
3 Office on May 18, 2012 through which QLS as Grantor conveyed the home of Brevick (hereafter Home),  
4 to FHMA who made a credit bid.

5 4. The witness from QLS testified that it was the practice of QLS when it received a request to  
6 initiate a nonjudicial foreclosure to prepare all the documents necessary to do so and submit them to the  
7 company making the request for signature.

8 5. In this case, QLS prepared and presented the following documents to the party named therein for  
9 signature and upon their return recorded them in the Snohomish County Recorder's office.

10 a. November 24, 2010— Assignment of the Deed of Trust securing the Home to Wells Fargo  
11 Bank, N.A. This Assignment was by MERS, acting as Nominee for Homecomings Financial, LLC  
12 (F/K/A Homecomings Financial Network, Inc.) (hereafter Homecomings), its successors and Assigns. It  
13 was signed by Rodney McCumsey, acting in the capacity of Assistant Secretary of MERS.

14 b. November 30, 2010— Assignment of Deed of Trust securing the Home to Nationstar  
15 Mortgage LLC. This Assignment was by MERS, acting as Nominee for Homecomings, its successors  
16 and assigns. It was signed by Rodney McCumsey, acting in the capacity of Assistant Secretary of MERS.

17 c. November 30, 2010—Appointment of Successor Trustee by Nationstar naming QLS as the  
18 Successor Trustee. This document was signed on behalf of Nationstar by QLS acting as Nationstar's  
19 attorney in fact. Rodney McCumsey, in the capacity of Assistant Secretary of QLS executed the  
20 instrument.

21 d. October 14, 2011—Notice of Trustee Sale setting a sale date of the Home for January 20,  
22 2012 executed by QLS as Trustee.

23 e. January 31, 2012—Assignment of Deed of Trust securing the Home to Nationstar by  
24 Wells Fargo Bank N.A. This instrument states that Wells Fargo Bank N.A. "does not have any interest in  
25 the underlying loan".

1 f. February 9, 2012—Notice of Trustee’s Sale setting a sale date of the Home for May 11,  
2 2012 executed by QLS as Trustee.

3 g. February 22, 2012—Assignment of Deed of Trust to FHMA signed by QLS as Attorney in  
4 Fact for Nationstar.

5 h. May 18, 2012—Trustee’s Deed to FHMA signed by QLS as Trustee.

6 6. No evidence was submitted showing that MERS ever held the note secured by the Deed of Trust  
7 and therefore did not meet the requisite qualification required by RCW 61.24.005(2) to exercise the  
8 powers of ~~a Trustee~~ <sup>the Beneficiary.</sup> *EMH*

9 7. Wells Fargo lacked the capacity to exercise the powers of the beneficiary under the Deed of Trust  
10 Act because it did not hold the note as required by RCW 61.24.005(2).

11 8. Neither MERS nor Wells Fargo was a beneficiary of record and therefore lacked the authority to  
12 exercise the power of a beneficiary under the Deed of Trust Act to appoint QLS as substitute trustee.

13 9. QLS acting as the trustee pursuant to the Deed of Trust Act had a duty of good faith and fair  
14 dealing to the borrower, beneficiary and grantor. This duty is consistent with fiduciary obligations of the  
15 trustee in acting independently to protect the interest of the borrower and lender.

16 10. QLS had knowledge of the apparent interest of Wells Fargo at the time Quality prepared and  
17 recorded a second assignment of the beneficiary by MERS to Nationstar.

18 11. Rodney McCumsey, acting as the Assistant Secretary of MERS executed the Assignment of  
19 Beneficiary from MERS to Wells and the assignment from MERS to Nationstar. He also executed an  
20 Assignment of Beneficiary from Nationstar to FHMA on behalf of QLS as the attorney in fact for  
21 Nationstar.

22 12. The only evidence produced by Quality that Nationstar held the note was a self-serving declaration  
23 prepared and presented by QLS to Nationstar dated October 3, 2011 which preceded the conveyance by  
24 Wells to Nationstar.

25 13. No evidence was presented that Quality undertook any inquiry to determine the actual holder of

1 the note despite the declaration it prepared and filed pre-date the conveyance by Wells to Nationstar and  
2 the conflicting MERS appointments.

3 14. The QLS witness testified she could find no record of a declaration being prepared for or received  
4 from FHMA indicating it was the holder of the promissory note secured by the Deed of Trust; nor did she  
5 find any other record of documentation that FHMA was asked by QLS if it held the note or otherwise has  
6 proof it did.

7 15. QLS did not produce evidence establishing it acted independently from Nationstar to determine if  
8 it was the holder of the note.

9 16. QLS gave no notice to Brevick or anyone that the deed of trust had been assigned to FHMA.

10 17. QLS re-filed the notice of trustee sale after Wells Fargo assigned the beneficial interest to  
11 Nationstar without investigating to determine who held the note.

12 18. QLS did not act in good faith and fairly deal with Brevick by failing to act independently to  
13 protect the interest of Brevick in light of the confusion surrounding who was the rightful note holder.

14 19. QLS did not provide evidence that it acted in good faith and fairly deal with Brevick consistent  
15 with its fiduciary responsibility to act independently to protect the borrower's interest and is not entitled  
16 to rely on the declaration of the beneficiary that it was the holder of the promissory note.

17 20. QLS was not lawfully appointed Trustee and failed to comply with the material requirements of  
18 the Act and therefore lack authority to excise the power of sale resulting in a void sale.

19 21. QLS failed to materially comply with the requirements of the Deed of Trust Act and the waiver  
20 provisions of the Deed of Trust Act do not apply rendering the Trustee Deed void.

21 22. RCW 61.24.127 does not establish a waiver by Brevick of his defense that Plaintiff is not the  
22 lawful owner of the property both because of the departure by QLS from the material requirements of the  
23 Deed of Trust Act and because strict compliance with the DTA is required.

24 23. The Plaintiff is not entitled to a Writ of restitution.

25 **CONCLUSIONS OF LAW**

1 1. MERS assignment of the Deed of Trust was invalid as there was no evidence it was the holder of  
2 the note secured by the Deed of Trust.

3 2. MERS assignment of the Deed of Trust to Nationstar was invalid if it held the note from  
4 Homecomings (the original lender) because it conveyed all of its interest to Wells Fargo prior to its  
5 conveyance to Nationstar.

6 3. Nationstar's appointment of QLS as successor trustee was invalid because it was not the  
7 beneficiary of the Deed of Trust at the time of appointment by reason that the MERS assignment to  
8 Nationstar was invalid.

9 4. Wells Fargo assignment of the deed of trust to Nationstar was invalid because it never had any  
10 interest in the note or deed of trust.

11 5. A Trustee must strictly comply with the requirements of the Deed of Trust Act and the Act must  
12 be construed in favor of borrowers (*Walker v Quality Loan Serv. Corp* 176 Wn. App 294, 306 (2013)).

13 6. QLS violated its duty of good faith and fair dealing with regard to Brevick required by RCW  
14 61.24.010(4). *Cox v. Helenius*, 103 Wn2d 383, 388-89 (1985); *Albice v. Premier Mortgage Servs. of*  
15 *Washington, Inc.* 174 Wn2d 560, 572 (2012); *Klem v. Washington Mutual Bank*, 176 Wn2d 771, 788-92  
16 (2013); *Schroeder v. Excelsior Mgmt, LLC*, 177 Wn.2d 94, 111-12 (2013); *Walker v. Quality Loan Serv.*  
17 *Corp.*, 176 Wn. App, 294, 310 (2013); and, therefore was not entitled to rely upon the Declaration of  
18 Nationstar that it was the note holder. (RCW 61.24.030(7)(b)).

19 7. QLS failed to comply with RCW 61.24.005(16); 61.24.010(2); 61.24.030(7)(a) and (b) which are  
20 material and requisite to exercise powers of a trustee and invocation of the Deed of Trust Act.

21 8. QLS is not a lawful beneficiary and therefore it's conducting of a non-judicial sale is invalid.

22 9. The Trustee's Deed issued by QLS is invalid and unenforceable.

23 10. As a result of the material failure to comply with requisite requirements of the Deed of Trust Act,  
24 the waiver provisions of the Deed of Trust Act were inapplicable to the transaction.

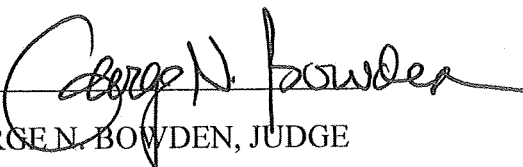
25 **ORDER**

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It is therefore order, adjudged and decreed that:

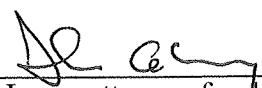
1. The Deed recorded by QLS conveying the property to Plaintiff is null and void;
2. Plaintiff is denied a writ of possession.
3. Statutory Costs and Attorney fees are awarded to Defendant.

Dated: June 13, 2014

  
GEORGEN BOWDEN, JUDGE

Copy Received:

  
Robert McDonald, attorney for plaintiff

  
John Long, attorney for defendant