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Deutsche Bank Nat. Trust Co. v. Breinholt Appellant's Reply Brief Dckt. 40748

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IN THE SUPREME COURT OF THE STATE OF IDAHO

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DEUTSCHE BANK NATIONAL TRUST COMPANY, as, "Trustee for the residential securitization trust 2005 A-15, mortgage pass-through certificates, series O under the Pooling and servicing agreement dated December 1, 2005"

Plaintiff(s),

vs.

RICHARD WILLIAM BREINHOLT, SUSAN LYN BREINHOLT,

Defendants,

RICHARD W. BREINHOLT and SUSAN BREINHOLT,

Counterclaimants.

v.

DEUTSCHE BANK NATIONAL TRUST COMPANY, as, "Trustee for the residential securitization trust 2005 A-15, mortgage pass-through certificates, series O under the Pooling and servicing agreement dated December 1, 2005"

Counterdefendant.

Supreme Court case no. 40748

INFORMAL BRIEF ON APPEAL

TABLE OF CONTENT Pages

I. TABLE OF AUTHORITIES

- Goldin v. Bartholow, 166 F.3d 710 (5th Cir. 1999)

- Grant ex rel. Family Eldercare v. Gilbert, 324 F.3d 383, 386 (5th Cir. 2003) *citing* Ford v. Nylcare Health Plans, Inc., 301 F.3d 329, 333 (5th Cir.2002).

- In re Hwang, 396 B.R. at 762.

-,*IndyMac Bank v. Miguel*, 117 Haw. 506, 513, 184 P.3d 821, 828 (Haw. App. 2008)

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-*Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 971 (9th Cir. 2009).

-Pershing Park Villas, 219 F.3d at 899-900

-*Bergenfield v. Bank of Am.*, 302 P.3d 1141 (Nev. 2013)

- Meyer, et al. v. U.S. BANK N.A.et al., Case No. 10-23914, Adv. No. 12-01630, United States Bankr. Ct., W.D. Washington, Seattle, February 18, 2014

-*Moss v. Vadman*, 77 Wash.2d 396, 402–03, 463 P.2d 159 (1970) (MOSS)

- Norwood v. Chase Home Finance, LLC, A-09-CA-940-JRN, January 19th, 2011, Report & Recommendation at page 9,

-Pelayo v. Pelayo, Idaho 154, 2013

-Rodney v. Arizona Bank, 836 P.2d 434 (1992)

- The United States District Court of Idaho, in In re Sheridan, 2009 Bankr. LEXIS 552 at Headnote #9,

-State v. Jones 140 Idaho 2004

-St. lukes Reg'l Med. Ctr. V. Bd. Of Comm'rs of Ada Cnty., 146 Idaho 2009

-Thomas v. Board of Trustees, 195 U.S., at 210,

-United States Of America–Vs- Bank Of America, N.A.,

-*Wilhelm*, 407 B.R. 392, 404 (Bankr. D. Idaho 2009)

-Western Life Indem. Co. v. Rupp (1914), 235 U.S. 261, 273, 35 S. Ct. 37, 40-41, 59 L. Ed. 220, 224

-Warth v. Seldin, 422 U.S. 490, 498, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975).

Warth v. Seldin, 422 U.S. at 498-99; In re Jacobson, 402 B.R. 359, 366-67 (Bankr. W.D. Wash. 2009).

-IC 45-1502. Definitions

-IC 45-1505

-IC 45-1506(5)(6)(7)(8)(9)(10)(11), (Right to purchase at the Sale at the time and Place advertised, Acceptance of payment, proper recordation of valid title, ETC.)

-I.C. § 28-9-607, 203

-I.C. 48-603 (2) (3) (12) (17)

-ITDA

-(FDCPA): *§ 807, 808, 809. Validation of debts [15 USC § 1692g]*

-15 USC § 1692e(2)(A)(6) (9) (14)

-15 USC § 1639(j)

UCC ARTICLE 3-104, 201, 203, 301 (Endorsement's, negotiations, Enforcement, Transfers, Right to cure)

UCC ARTICLES 8, 9-109

IRCP 12, 17A, 56

INFORMAL REPLY BRIEF

INTRODUCTION:

Appellant gives notice that the following reply to the Respondent's Response, are specifically challenging the Respondent's issues raised in their response. The Court can follow the arguments by referring the following with the response brief.

FACTS

1. If Plaintiff had standing they would have shown it to the court in the 3 years.

a. There is not a credible note and deed in record.

b. By the nature of the claimed PSA (Plaintiff) there is not a DOT which is viable.

c. The PSA suspended trade and was disembodied 3 years before fabrication of the alleged chain of title. PERJURY!

d. If Indymac/onewest had sent the documents to the approved modification the Breinholts would have been blissfully paying on it and the foreclosure would not have happened.

e. If there had been a sale of the property at the time and place advertised the Breinholts would have bought it. 45-1506(8); This Law action would not have happened.

2. Res Judicata is not valid as there was not a "Final Judgment" to toll. Res Judicata is just another legal dodge of having to prove standing.

3. The Standard of Review Requires this Court to Affirm or Dismiss this case.

a. Standing/Jurisdiction has been raised from the beginning.

b. Plaintiff has used every legal and illegal ploy known, including Default, to delay and avoid the standing issue.

c. Plaintiff is not a "Purchaser in good faith at the sale".

d. UNLESS STANDING IS FIRST ESTABLISHED, The unlawful Detainer Act Violates the

Constitutional Rights of the Homeowners and the foundational question of Due Process-

ISSUES ON APPEAL

1. The court errors by not establishing standing/Jurisdiction before hearing Plaintiff's pleadings.

2. Plaintiff has filed fabricated documents and obtained Judgments through Perjury and Fraud.

A, Plaintiff is the PSA RAST 2005-A15 DATED DECEMBER 1, 2005. Duetsche Bank is only the trustee of the PSA plaintiff.

The Plaintiff was Dis-embodied March of 2006. The alleged Plaintiff has not existed for 8 years. This is Fraud on the court and Appellants.

B. Because of the nature of the Plaintiff it is a physical and legal impossibility that Plaintiff or the trustee could have interest in the subject property. The alleged DOT is securitized and is void. The assets of a PSA are governed under Securities Law and no longer have any claim to real estate or real estate law.

3. In the face of evidence to the contrary, the court abused its discretion in taking as true, the Averments, false statements, and claims of Plaintiff's counsel. Counsel has knowingly continued to assert these lies to the court and to Appellants. Perjury!

4. The court abused its discretion by ruling the claims are undisputed.

5. The points of the Counterclaim and affirmative defenses, along with all of the previous filings, **have not been heard by the Court**, and are restated as plead herein.

6. RES JUDICATA; The court abused its discretion in judging that the three points of Res Judicata are met. See discussion of Res Judicata in the Response Motion for Summary Judgment p.9 and herein.

7. The court abused its discretion by holding Appellant to the "same standards and as those represented by counsel".

a. The court errors in ruling that Appellant is a Tenant in Suffrage.

b. Plaintiff is not a "Purchaser in good faith at the sale".

c. Deutsche Bank Illegally filed themselves on title while under stay in order to obtain position to file an Unlawful Detainer.

d. Plaintiff is fictitious.

e. The evidence show that Plaintiff does not have standing.

f. There is no evidence to show otherwise.

Respondents omitted the following;

1. Breinholts entered into what was not a mortgage agreement but concealed as a Table-funded Mortgage backed security agreement.

2. Breinholts applied for and received approval for a loan modification. The documents were never received or this case would never have happened.

3. Indymac/Onewest bank dual processed the subject property by fabricating chain of title and the related documents at the same time.

4. Breinholts, and two associates, went to the alleged foreclosure sale to purchase the property and no sale was held. Neither party was presented and opportunity to purchase the property at a sale. Deutsche Bank claims to have purchased the property at the alleged sale is Perjury!

5. Respondent reversed the order of the filings of the Federal case 1;10 CV 00466, on the question of Standing/Jurisdiction in the Federal law, and the case on the sale CV OC 11351on the improper sale under state law. The 466 case was file, before dismissing the 11351 case, litigating the real issue of standing which had now come out.

6. Breinholts did not agree to dismissal with prejudice, but it ended up being dismissed with prejudice.

7. The cases are on different subject material. The county case 11351 on a fraudulent sale. The Court did not issue a, "Final judgment" to toll res Judicata. None of the three standards are met as discussed and restated herein.

8. The federal case is still ongoing in the 9th circuit of appeals. Deutsche Bank filed themselves on title between appeals even though there was injunction in place.

9. Respondents claim that Appellants made the same allegations in the federal court could not be true since the subjects are on two different subjects, and a final judgment has not been reached on either. Res Judicata is not tolled.

10. Breinholts have challenged Standing in this case and the one before the 9th circuit of appeals. At no time in either case, has the court held a hearing in which to determine the standing of Deutsche bank or the previous IndyMac/ Onewest Banks. Breinholts have raised this question from the very first and the court has not follow procedure to arrive at the judgments rendered.

RESPONDENTS ARGUMENT

A. **STANDARD OF REVIEW:**

When this Court reviews the decision of a district court sitting in its capacity as an appellate court, the standard of review is as follows:

The Supreme Court reviews the trial court (magistrate) record to determine whether there is substantial and competent evidence to support the magistrate's findings of fact and whether the magistrate's conclusions of law follow from those findings. If those findings are supported and the conclusions follow therefrom and if the district court affirmed the magistrate's decision. We affirm the district court's decision as a matter of procedure.

Bailey v. Bailey, 153 Idaho Thus, this Court does not review the decision of the magistrate court. Id. Rather, we are "procedurally bound to affirm or reverse the decisions of the district court." Id. (quoting

State v. Korn, 148 Idaho 413, 415, 224, P. 3d 480 n.l (2009))

Prior to Losser, when this court reviewed a district court acting in its appellate capacity the standard of review was: "when reviewing a decision of the district court acting in its appellate capacity, this court will review the record and the magistrate court's decision independently of, but with due regard for, the district court's decision." Losser, 145 Idaho at 672, 183 P.3d at 760. After Losser, this court does not directly review a magistrate courts decision. Id. Rather, it is bound to affirm or reverse the district court's decision. See Bailey, 13 Idaho at 529,284 P.3d at 973: Korn, 148 Idaho at 415, 224 P.3d at 482 n.l. Pelayo v. Pelayo, 14 Idaho 855,858-59, 303 P. 3d 214,217-18 2013.

Additionally, "(t)his Court freely reviews the interpretation of a statue and its application to the facts." St. Lukes Reg'l Med. Ctr., Ltd v. Bd. Of Comm'rs of Ada Cnty., 146 Idaho 753, 755, 203 P.3d 683,685 (2009) (citing Yzaguirre, 144 Idaho 471,474, 163 P.3d 1183,1186 (2007)). Whether a court lacks Jurisdiction is a question of law...over which appellate courts exercises free review." State v. Jones 140 Idaho 755, 757, 101 P.3d 699, 701 (2004) (Citation Omitted).

CONSTITUTIONAL CLAIMS: STANDING

To establish Article III standing, a plaintiff must show: (1)

"an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical"; (2) "a causal connection between the injury and the conduct complained of—the injury has to be fairly . . . traceable to the challenged action of the defendant, and not . . . the result of the independent action of some third party not before the court"; and (3)"it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (omissions in original) (internal quotation marks and citations omitted). Moreover, a litigant's interest cannot be based on the "generalized interest of

all citizens in constitutional governance." Schlesinger v. Reservists Comm. to Stop the War, 418U.S. 208, 217 (1974); see also United States v. Richardson, 418 U.S. 166, 173-78 (1974) (taxpayer's generalized grievance insufficient for standing).

B. Respondent Claims that Appellants are raising new issues.

1. From the Filing of this Unlawful detainer Complaint, Breinholts have been defending against Standing. See Appellants Initial Brief, 2nd affirmative defenses and counterclaims, Motion for In Rem hearing to show..., Response to Motion for Summary Judgment.

2. A discussion of the legal issue of standing as a "purchaser in Good faith at the sale"/unlawful detainer is not new and has been the essence of the legal actions of this and the action now in the 9th Circuit of appeals. See Initial Brief P. 19, In Rem P. 4-5, Response to motion for Summary... P 14-44, ETC.

Mrs. Tait asserts that Breinholts are raising new Claims by discussing the mis-use of the unlawful detainer Law.

1. Appellant's pleadings are in response an Unlawful Detainer Complaint and have been responding to it from the onset. To allow the Plaintiff to move forward under the veil of and unlawful Detainer action, without first establishing Standing is a violation of the Article II Constitutional Rights, the Idaho codes and Rules of the court. These cannot be considered new arguments. The very foundation of the affirmative defenses and counter claims are based on a Lack of standing to bring this Unlawful detainer see Appellants Initial Brief- HISTORY OF LOAN p. 2-13, 2 answers...AFFIMATIVE DEFENCES #1-5, Petition for In Rem hearing, etc.

C. The Court Did abuse it's discretion on the "issue Spot" was granted.

1. There is no evidence in record that can survive the rules of evidence that Plaintiff has standing. Standing is a threshold issue and must be determined before the Action can proceed to a judgment.

2. Appellants file as an informal brief and it was litigated as such.

3. This is a side issue and not a central issue to the arguments.

4. It is not Dicta as Respondents claim.

D. The evidence support the findings and further arguments are barred by Res Judicata;

E. As a matter of Law Appellant cannot raise new issues outside the right of possession of unlawful detainer.

1. The Threshold Procedural issue of Standing has not been established in Behalf of Deutsche Bank to argue Res Judicata.

2. Deutsche Bank Illegally file themselves on title to gain position of an unlawful detainer.

3. Plaintiff has filed fraudulent documents and committed fraud and perjury to obtain the judgments.

4. There is not a "Final Judgment" rendered in the case CV OC 09 11351 on which to toll Res Judicata.

5. The court abused its discretion by using the Plaintiffs Statements as true. It is well documented that Counsel has Sworn Two affidavits and multiple briefs and memorandums which contain omission of fact, false statements, and perjury. Counsel has also made numerous false statements in court which have been corrected in the hearings. Plaintiff's counsel including the information in the resultant briefs cannot be relied on as true.

6. Mrs Tait seems to be confused or deny that the federal case 1;10 CV 00466 was filed and that she was a party to it but the docket will show that she was served with a the complaint and thereafter.

7. The OMNIBUS MOTION stated that it relies on her affidavit swearing that this case had been dismissed while she had previously been, and currently is being served by the Idaho Supreme Court with the ongoing case documents and docket.

8. Furthermore, as a member of the Bar, Mrs Tait as counsel for Deutsche Bank as Trustee of the

RAST 2005 A-15 Trust, represents to the court that the claims in the complaint are true and correct. Perjury!

9. The truth is that the alleged trust has not existed since March of 2006 and there is no evidence before the court that the subject Note and Deed were ever in the necrotic Pooling and Servicing agreement or that there is a legitimate claim by virtue of a securitized DOT. Appellants would have purchased the property at the sale if it had been held; Plaintiff is not the "purchaser in good faith at the sale. Appellants have submitted evidence otherwise.

Aegis Wholesale is the lender on the DOT. The Trustee is Transnation. All recorded assignments from this time forward are false, fabricated documents and shown in the Initial Brief, and discussed herein.

10. Breinholts believe that Deutsche Bank as Trustee for the RAST 5005 A-15 is attempting to Judicially take Breinholts property in Ada County without any proof that they are the mortgagee or a properly assignee in violation of USC Article III, Rule 17 a, 12 b (1).

11. **Standing is a requirement grounded in Article III of the United States Constitution**, and a **defect in standing cannot be waived by the parties**. *Chapman v. Pier 1 Imports (U.S.) Inc.*, 631 F.3d 939,954 (9th Cir. 2011). A **litigant must have both constitutional standing and prudential standing** for a federal court to exercise jurisdiction over the case. *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 11 (2004). Constitutional standing requires the plaintiff to "**show that the conduct of which he complains has caused him to suffer an 'injury in fact' that a favorable judgment will redress.**" Id. at 12. In comparison, "prudential standing encompasses the general prohibition on a litigant's raising another person's legal rights." Id. (citation and quotation signals omitted); see also *Oregon v. Legal Servs. Corp.*, 552 F.3d 965, 971 (9th Cir. 2009)."

12. "Deutsche Bank asserts affirmative claims against the Breinholts seeking to enforce the Mortgage and Note, and therefore must establish its legal right (i.e., standing) to do so. See, e.g.,*IndyMac*

Bank v. Miguel, 117 Haw. 506, 513, 184 P.3d 821, 828 (Haw. App. 2008) (explaining that for standing, a mortgagee must have "a sufficient interest in the Mortgage **to have suffered an injury** from [the mortgagor's] default")."

13. All previous Judgments are fatally on their face because the court has not established standing or held the required and requested hearing for finding of fact. There is not one credible piece of paper before the court which would establish Plaintiff's standing and Appellants have provided evidence to show the lack there of.

14. Breinholt's pleadings have not been heard and the court has not made any effort to listen to the evidence to give instructions on pleading or preserve their constitutional rights of Due process.

15. Appellants refute that the evidence supports the findings of Res Judicata. The court has abused its discretion in finding in favor of Res Judicata. Appellants have in detail shown the errors as follows;

"The prerequisite elements for Res Judicata are applying the doctrine to either an entire cause of action or one or more issues are the same: (1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding; (2) *the prior proceeding resulted in a final judgment on the merits*; and (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding. [Citations.]" (*Brinton v. Bankers Pension Services, Inc.* (1999) 76 Cal.App.4th 550, 556.)

The #1 element is not met.

(1) A claim or issue raised in the present action is identical to a claim or issue litigated in a prior proceeding;

#1 The first case CV OC 2011 11351 was on an improper sale in the County Court. The new case 10-00466 is on Standing as one entitled to enforce the note/Jurisdiction. These are two separate and different claims. The court errors in Judging them to be the same claims raised. Furthermore, this case is

on eviction and the counterclaims. This is a new subject again.

The #2 element is not met as follows:

(2) *the prior proceeding resulted in a final judgment on the merits*;

There was not a judgment rendered on which to toll same merits and different Parties are named. The case was not litigated.

IN ORDER FOR RES JUDICATA TO BE VALID in this case (2011 10414), the following elements would have to been Adjudged in the 2009 113511 case:

a. In the case C V OC 2009 11351, The Court did not establish/ fulfill the requirement of jurisdiction, rule 12b, 17a; Who is the real party in interest?

b. After the alleged DOT has been securitized, is it contrary to law and recent case law that MERS can hold and transfer beneficial interest? Are the resultant fabricated documents such as the Notice of Default, Assignment of Successor Trustee and Assignment of Trustees Deed a nullity and void? (MERS was not a defendant in the first case)

c. Was the alleged note and deed securitized in the PSA?

d. Note: When Deutsche bank came forward, as Trustee **FOR THE RESIDENTIAL ASSET SECURITIZATION TRUST 2005-A15 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-O UNDER THE POOLING AND SERVICING AGREEMENT DATED DECEMBER 1, 2005,** the fact that the mortgage had been securitized was new information that had been concealed until that time.

e. Was The Deed of Trust and Promissory Note singed in blank, in essence making them a, "Bearer Bond" to be placed into a Pooling and Servicing Agreement? This is an issue which was not in the first case.

f. Was the fact that the Mortgage documents were going to be signed in blank and placed into A

Pooling and Servicing Agreement was concealed?

g. Did the Securitization of the mortgage Deed of Trust render it void and no longer enforceable?

h. Is there a recorded chain of authority for Plaintiff Et al to assign and record documents? Are the documents generated and recorded Fraud, Perjury, and Subterfuge?

i. Is there a viable chain of Title on which to show standing?

j. Did One west Bank, et al, violate ICPA laws by knowingly filing a voided Deed of Trust and note into court and arguing under that fraudulent pretense; all the time knowing that the alleged Mortgage documents had been securitized and placed into a Pooling and servicing agreement?

k. Are the resulting Stocks and bonds no longer governed under mortgage law but under Securities law and not having beneficial interest in the Breinholt's house?

l. Is the banks' claim to be the creditor double dipping?

m. Does a banks claim to be a creditor violate their tax exempt status?

n. Does the claim that the Mortgage exists as a security against the house now violate the Pooling and Servicing agreement?

o. Is the claim that the Mortgage exists as a security against the house FRAUD, AND DOES FRAUD VIOLATE ALL CONTRACTS AND JUDGMENTS?

p. Has the, Plaintiff, (Pooling and Servicing agreement) been,"dis-embodied" since 3/2006? Have the resultant Stocks and Bonds been converted to other securities and is the claim that this PSA is viable unsupported by SEC filings and a sham?

q. Is there credible evidence that Indymac Bank, Onewest Bank and MERS ever were the holders of the note and therefore are the real parties in interest? Therefore, they are not the Holders of the Note?

r. Since the Mortgage Documents were securitized is there a marketable title to be transferred?

s. Are all previous Judgments, Ruled incorrectly because of the illusion created by Fabricated

documents file into court and recorded with the County?

t. All of these questions were unknown and/or were not raised in the case on an improper Sale.

The second point of Res Judicata Is not met as shown above:

The third point of Res Judicata: (3) the party against whom the doctrine is being asserted was a party or in privity with a party to the prior proceeding.

a. MERS AND DEUTSCHE BANK were not parties in the 11351 case and are the central figures in the fraudulent filings related to standing and securitization and fraud.

b. Deutsche Bank is the Moving party in this case and was not a party.

The #3 standard for Res Judicata is not met as shown above.

ACTIVITY IN THIS CASE:

a. A false and fraudulent Deed of Trust has been filed into court along with other false and fraudulent filings. Fraud on the Court.

b. The mortgage had been Securitized and placed into a PSA?

c. You cannot have it both ways. Is Deutsche Bank claiming authority by virtue of the DOT or the PSA? Neither one is valid.

d. The alleged securitization event would rendered the "Marketable Title" a Nullity and voided. There was no further beneficial interest to transfer and no credible evidence to show otherwise.

e. Any Beneficial interest, which might have remained after the Securitization, could not be transferred to Indymac Et. Al. but belonged to the bankruptcy trustee for Aegis and later the FDIC as discussed.

f. According to MERS' record, Indymac, Onewest and MERS never held a, "marketable title" except by their own self-serving, fabricated documents. False Statements, subterfuge and Perjury. They

were done fraudulently, without any apparent authority, constituting unfair business practices, to create the illusion of standing as discussed in previous pleadings and this brief.

1. As documented, Breinholts did stipulate without prejudice to dismiss the case CV OC 2009 13511 concerning the fraudulent sale. MERS and Deutsche Bank were not listed in the complaint. The securitization has now come to be known. There was not a Judgment made on the case, only an order to dismiss the case. The new complaint in the United States District Court to include MERS, et al is now before the 9th circuit of appeals. Case 12-35667. A final judgment on either case has not been rendered.

The 3 points of Res Judicata are not met by the Respondent and the Court:

Preclusion Doctrine standard

A. The party against who the decision was asserted had full and fair opportunity to litigate the issues.

1. The issues were not litigated. The only document entered into the record was the Affidavit of Counsel stating that after review of the surveillance tapes with the court deputy and the Breinholts it showed that there was no one but Mr. Breinholt and two associates who were obviously looking for the sale. #1 is not met.

2. The issues decided in the prior litigation were Identical. No issues were not litigated nor were they argued. No Final judgment was rendered. #2 is not met.

3. The issues sought to be precluded were actually decided in the prior litigation. No issues were decided. #3 is not met.

4. There was a Final Judgment rendered. There was not a Final Judgment rendered. Only a Order of dismissal on the stipulation to dismiss. Breinholts signed a document W/o prejudice but w/o their knowledge was changed to with prejudice. #4 is not met.

5. The issues against who the issues were asserted were the same or in privity. The case was on

the question of a fraudulent sale and the assertions relating to it. The Federal case is on the question of standing to hold a foreclosure. A threshold question which must be answered before a sale could be held; not on the sale. This case is essentially the same question of standing but on the question of is Deutsche bank as trustee to the Plaintiff/PSA a "purchaser in good faith at the sale in order to bring a unlawful detainer action? In this case the question of Privity is questioned more from the stand point of Constructive Fraud. In short, Breinholts and their associate went to the sale to Purchase the Property but there was not a sale. There is not a "purchaser in good faith at the sale" and no value was received. #5 is still a question.

THE STANDARD OF PRECLUSION IS NOT MET

F. Respondents state that there is substantial evidence supporting magistrate's findings.

1. There is no evidence in support of the standing of Deutsche Bank.

The only evidence in record is a photo-shopped copy of the DOT and the additional fabricated assignments.

2. These documents were created after the alleged PSA/ plaintiff suspended trade.

5. The record has multiple pieces of evidence which show the lack of Standing and Jurisdiction of the court to hear the case.

6. Counsel does not have firsthand knowledge which the Breinholts et. Al. do. Counsel cannot aver as to the actual truth. The Counsel's averment is hearsay. The Breinholts and the two other witnesses have firsthand knowledge and their averment is accurate.

7. The court abused its discretion in finding that Appellants/Defendants "fails to comply with the Idaho Rules... content and arrangement; that Pro se litigant are held to the same standards and rules as those represented by an attorney." That the Appellant fails to denote any issues on appeal.

MORTGAGE ELECTRONIC REGISTRATION SYSTEM (MERS):

1. In this case MERS lists the Min # as inactive at the time of MERS' fabrication of the documents.

2. There is no recorded assignment From Aegis and if there were any remaining interest it would have belonged to the bankruptcy Trustee.

3. The nature of the Plaintiff is a Pooling and servicing agreement which is dis-embodied. There is not a Plaintiff.

4. The fabricated Chain of title documents which clearly cannot stand the test of the rule of evidence.

According to the Deed of trust,

5. The **Lender** is Aegis Wholesale and by definition the **Beneficiary**.

6. The **Trustee** is Transnation Title.

The Deed of trust clearly instructs the Trustee, Transnation, to mail the Documents to them at 3010 BRIARPARK DRIVE, #700, HUSTON TX 77042.

There are no further recorded assignments or transfers from either Aegis or Transnation. Whether the Mortgage was lost at sea, or placed in some Pooling and Servicing agreement is unknown. This chain of title is fatally broken at this point and several times more.

Aegis then filed Bankruptcy. Any remaining assets were held by Aegis' Trustee of the bankruptcy.

There is no assignment of Trustee from Transnation to any other trustee. Transnation has since gone out of business. Only the lender can assign a new trustee.

Three years later, (Three years after the allege Plaintiff (PSA) had finished trade and become dis-embodied according to the SEC filings and Exhibit #12 MERS' records, (in record evidence)) Breinholts applied for a loan modification and we immediately see the fabrication of documents

attempting to create a chain of title, without any knowledge or authority to do so. At the time the documents were filed the FDIC would have held any remaining assets of Indymac and the assignments were then made to Onewest which had not yet been formed. The modification was approved. Indymac (Onewest) bank never sent the loan package. MERS' Min # shows inactive which means that no member of MERS held title at this point of time that the transfers were being fabricated.

The Mirage Called "MERS:"

The Appellees state that Mortgage Electronic Registration Systems, Inc. (Hereinafter MERSInc) is a settled area of law. However, Appellants state that the only thing settled about this area of law is the mass of confusion. The Appellants have identified the root cause is that the Parties and Courts identify two different Corporations by the same Acronym, e.g., "MERS."

The same thing happens in families where a parent and child have the same given name. For example if a Father is named John and the son is named John soon everyone in the family is frustrated by always asking others which John are they are talking about.

In the case of MERSCORP, Inc. and its subsidiary MERS Inc., it was obviously planned to have the acronym be exactly the same. Rhetorically why would they do this? Appellants claim it was done to blur the distinction between MERSCORP, Inc. and MERS Inc. This confusion causes the consumers, land records and courts to believe they are really the same when they are different. **For and on the record,** ***MERSCORP INC. IS NOT NAMED ON THE DEED OF TRUST AND IS NOT AUTHORIZED TO ACT IN BEHALF OF THE LENDER/BENIFICIARY.***

Shouldn't the court and parties immediately recognize this? The key information that the Appellants discovered that brings this to light is that MERSORP, Inc. has a system with "Members" governed by Membership Rules

Compare this to the wording on page 1 of Appellant's Deed of Trust. See Exhibit #1

(E) "MERS" is Mortgage Electronic Registration Systems, Inc. MERS is a separate corporation that is acting solely as a nominee for Lender and Lenders successors and assigns. MERS is the beneficiary under this Security Instrument, MERS is organized and existing under the laws of Delaware

Now in **MERSCORP, Inc.** Membership Rules - Rule 1 Section 1 of **Rules** states:

RULE 1 MEMBERSHIP Section 1. MERSCORP, Inc. ("MERS") shall make the services of its mortgage electronic registration system (the "MERS® System") available to any Member of MERS. A Member is defined as an organization or natural person who has signed a Membership Agreement and is not more than 60 days past due as to the payment of any fees due and owing to MERS.

Every mention of MERS in the **Rules** needs to be replaced by the definition for MERS "MERSORP, Inc" to understand the entity being referred thereto.

The MERSCORP, INC. *RULES OF MEMBERSHIP* show that: in the Rules the acronym MERS stands for MERSCORP, Inc (Rule 1); MERSCORP, Inc. has a Membership System called the mortgage electronic registration system or MERS® System (Rule 1); MERSCORP, Inc has members who pay fees to it (Rule 1, Rule 5); MERSCORP, Inc has a computer system with a data base used by its members (Rule 2); the MERSCORP, Inc Member decides when and how to conduct foreclosures not MERS Inc (Rule 8); MERSCORP, Inc has no ownership rights whatsoever to any information contained in the MERS® System (Rule 9); Note that MERSCORP, Inc has employees (Rule 12). However, MERS Inc. has no Members, receives no membership fees, has no computers or database (All Rules). But MERSCORP, Inc. gives itself the acronym MERS to confuse borrowers, litigants and the courts.

Pleadings after pleadings and court decision after court decision use the MERS acronym for both corporations and quickly become unintelligible. The courts apparently think they are referring to the same thing but they aren't. Because of the above clarification regarding **MERSInc** and **MERSCORP, Inc.** the Appellees use of ***Cervantes v. Countrywide Home Loans, Inc. 656 F.3d 1034 (9th Cir. 2011)*** (**Cervantes**) as a precedent is misplaced and should be ignored.

Looking at ***Cervantes*** on page 5 in the judges opening statement: *"This is a putative class action challenging origination and foreclosure procedures for home loans maintained within the Mortgage Electronic Registration System (MERS)."*

The court has now defined the acronym MERS to refer to the mortgage electronic registration system (the "MERSORP, Inc System")(See Section 1 quote above). The court has now defined MERS to represent a totally differently corporation than the one on the DOT in this case, which means **Cervantes** can't apply to this case. *Why would the court define the very same acronym for*

a different corporation than on the DOT and thus enter massive confusion into the case? Appellants believe that it was because the Court lacked the MERSCORP, Inc Membership Rules which would have made it clear that multiple entities were using the same acronym.

It gets worse. On page 6 of the Cervantes decision it states: "The focus of this lawsuit—and many others around the country—is the MERS system. 1. How MERS works…"

Later in that same paragraph the court refers to another case in Minnesota stating,

"Many of the companies that participate in the mortgage industry—by originating loans, buying or investing in the beneficial interest in loans, or servicing loans—are members of MERS and pay a fee to use the tracking system. ***See Jackson v. Mortg. Elec. Registration Sys., Inc., 770 N.W.2d 487, 490 (Minn. 2009)*** *(Jackson)."*

But MERSInc has no members, so the confusion increases. The Jackson case defines MERS as the defendant, Mortgage Electronic Registration Systems, Inc. (MERS)."'

Then in the next paragraph of the **Jackson** decision states:

MERS does not originate, lend, service, or invest in home mortgage loans. Instead, MERS acts as the nominal mortgagee for the loans owned by its members. The MERS system is designed to allow its members, which include originators, lenders, servicers, and investors, to assign home mortgage loans without having to record each transfer in the local land recording offices where the real estate securing the mortgage is located. MERS members pay subscriber fees to register on the MERS system, as well as other fees on each loan registered and each transaction conducted.

The first part of the first sentence in the above quote refers to MERS as the mortgagee and is referring to MERS Inc, but the second portion of the first sentence and the second sentence refer to MERS members and only MERSCORP, Inc has members. The next two references to MERS are also to MERSCORP, Inc not to MERSInc. In both the Cervantes and Jackson cases the same MERS acronym is often used for two different entities in the same paragraph sometimes in the same sentence. All of the cases Appellees refer to about MERS have this MERS acronym confusion.

How can the Cervantes decision have force on the present case when the documents submitted to the court by the Appellants in this case now clearly show the flaw in the multiple uses of a single acronym to refer to multiple entities and confuse any understanding of these separate entities?

The two depositions that help remove the confusion and get down to what does MERS Inc actually have and actually do: The

Deposition of R.K. Arnold, on September 25, 2009, and the Deposition of William Hultman taken on April 7, 2010, both officers of MERS Inc. See Declaration of Sterling Mortensen in Support of Motion to take Judicial Notice Attachment – 1 and 2 also attached to DKT 19, see full references to court cases of the depositions on pg 27 and 28 of Appellant's initial brief). Appellants had referred to each of these depositions in their 2nd Amended Complaint Factual Allegations 3.50.

As shown in the Appellants opening brief the above referenced depositions show that MERSCORP, Inc. officers and officers of MERS Inc declare that MERS Inc: has no employees; has no entitlement to money paid under any note; has no beneficial interest in any Note; it does not make loans; it has no right to sell a Note and cannot receive value or consideration to sell a note; it has no first-hand knowledge as to whether a borrower is delinquent on a Note; MERSCORP members not MERSInc decide when to foreclose. (See pg 28 in Appellants Initial Brief for pages in depositions that state these facts.)

The Phantom MERS Agent:

Can MERS Inc act as an agent? Agents act as servants to masters. In the DOT in the present case it states that MERS Inc is a nominee of the Lender, it is also listed as the Beneficiary although it is not the Lender, both of these imply that it acts as an agent for the Lender. The **Rules** and officer depositions show that MERSInc has no employees, has no assets, has no income and pays no money to anyone else. So MERSInc can't receive correspondence from the party having beneficial interest, can't take actions like creating documents or paying filing fees, can't send documents to recorders offices. So there are no actions in the present case that were taken by MERSInc.

In ***Moss v. Vadman***, 77 Wash.2d 396, 402–03, 463 P.2d 159 (1970) (**MOSS**) it was observed that "[w]e have repeatedly held that a prerequisite of an agency is control of the agent by the principal." Id. at 402, 463 P.2d 159. A Principal can't control MERS Inc because there is no one to correspond with and no one to take actions. It is in fact impossible for MERSInc to fulfill a role as an agent. Also, the **MOSS** case shows that even with documents claiming an agent relationship if there aren't signatures of the principle and the agent showing their agreement then there is no agent relationship. This matches with **I.C. 9-505** which states that certain agreements must be in writing and subscribed. A borrower can't create an agent relationship between two companies; the companies must sign to be binding. The DOT has no signatures by MERSInc, the Lender, all successors and assigns so there

is no binding proof of any principles or any agent.

IDAHO TRUST DEED ACT (ITDA):

Next are the violations of the Idaho Trust Deed **Act, Idaho Code Title 45 Chapter 15. I.C.**

45-1502. Definitions – Trustee's charge. As used in this act:

(1) "Beneficiary" means the person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be the trustee.

(3) "Trust deed" means a deed executed in conformity with this act and conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or other person named in the deed to a beneficiary.

(4) "Trustee" means a person to whom the legal title to real property is conveyed by trust deed, or his successor in interest.

The definition in item (4) that a person who is given legal title is a Trustee. In the Appellants DOT it states: "Borrower understands and agrees that MERS holds only legal title" (page 2 DOT), by the definitions in **I.C. § 45-1502** MERSInc is a trustee. The Legislature is extremely specific in its wording that if legal title is transferred to an entity that entity is called a trustee. Earlier on Page 2 of the Appellants DOT it states "The beneficiary of this Security Instrument is MERS" this statement says MERSInc is the beneficiary but now it is both a trustee and a beneficiary but **I.C. § 45-1502(1)** states that the beneficiary cannot be the trustee. The definitions are clear if you get legal title you are a Trustee and you can't be a beneficiary.

Definition **I.C. § 45-1502(3)** states a "Trust deed" means a deed executed in conformity with this act. How can the DOT written by Countrywide possibly be in conformance with this act when there are two trustees and one of was made the beneficiary which is strictly forbidden by (1)! The document is not written in conformity to the ITDA and therefore it is not a valid Trust Deed as according to **I.C. § 45-1502(3)**. This was explained in Appellants pleadings but the Idaho District Court misused its discretion and never addressed this portion of Appellants' claims.

APPLICABLE LAWS -On page 3 of the Appellants DOT in Definitions it states:

(j) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable opinions.

It can be seen from the above quote that the applicable law for this DOT is all controlling federal, state and local statures, regulations, ordinances and administrative rules. **THE FAIR DEBT COLLECTION PRACTICES ACT** (FDCPA) is

clearly applicable; since the Note and DOT are both negotiable instruments the Idaho Title 28 is also a controlling statue and the laws of agency are also applicable. The **ISC** decisions in **Trotter** and **Edwards** and the Ninth Circuit Courts decision in **Cervantes** didn't consider all Applicable Law as required in this DOT.

THE FAIR DEBT COLLECTION PRACTICES ACT (FDCPA):

§ 809. Validation of debts [15 USC § 1692g] (a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing -- (1) the amount of the debt; (2) the name of the creditor to whom the debt is owed;

The Appellants requested through multiple letters the name of the actual Creditor for the Note, the Person Entitled to Enforce the Note. The non-responding violated 1692g(a).

This is also a clear example of not responding to a RESPA written request. The failure to respond to the letter is also a violation of the Federal Correspondence Act.

DECEPTIVE PRACTICES, FALSE AND MISLEADING STATEMENTS:

§ 812. Furnishing certain deceptive forms [15 USC 1692j]

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

15 USC 1692j(a) was violated by the Assignment of DOT (See Exhibit #3, 2nd Amended Complaint). MERSInc can't take actions so didn't participate in the Assignment. The Assignment of the DOT says MERSInc received consideration but testimony of its officers say it can't receive consideration, so it didn't participate again. See **Supra**.

The **FDCPA § 807**, under False or misleading representations 15 USC 1692e(2)(a) was violated because Appellants have never received a proper Default Notice from the Lender (Person Entitled to Enforce the Note) as specified in the DOT.

The **FDCPA § 807 15 USC 1692e(5) and § 807 15 USC 1692e(14)** were violated because a non-beneficiary created and filed the Assignment providing a false name and the actual Member of the MERSCORP, Inc system wasn't listed on the DOT so had no legal right to file the document.

The **FDCPA § 807 15 USC 1692e(6)(A&B)** were violated with the false representation that a real agent had actually made a valid assignment of the DOT and Note when it hadn't.

The **FDCPA § 807 15 USC 1692e(10)** was violated because the DOT had a premeditated plan by listing a non-agent as an agent and planning to hide MERSCORP, Inc Members identities with false representations and deceptive means.

§ 808. Unfair practices [15 USC § 1692f]

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if –

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest; See ***Meyer*** attached and *Infra*.

The **FDCPA § 807 15 USC 1692e(9)** was violated because Appellants took nonjudicial action when the Person Entitled to Enforce the Note according to Idaho Title 28 had never been identified and there was deception by the Appellants on the DOT and Assignment document for parties who had no right to possession of the property.

The next applicable law to the DOT is Idaho Title 28 as there is a negotiable instrument involved. The ***REPORT OF THE PERMANENT EDITORIAL BOARD FOR THE UNIFORM COMMERCIAL CODE APPLICATION OF THE UNIFORM COMMERCIAL CODE TO SELECTED ISSUES RELATING TO MORTGAGE NOTES***" dated NOVEMBER 14, 2011 (Hereafter referred to as "PEB UCC Report")) The UCC Article 3 covers enforcing obligations and Article 9 covers transfers of Note ownership and recording assignments in the recorder's office. . . .parties may not avoid the application of UCC Article 9 to a transaction that falls within its scope. See id., and Official Comment 2 to UCC § 9-109.

The filing in the recorder's office of an assignment comes from **I.C. § 28-9-607** Collection and enforcement by secured party.

(a) If so agreed, and in any event after default, a secured party:

(b) If necessary to enable a secured party to exercise, under subsection (a)(3) of this section, the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage;

The PEB UCC REPORT on page 9 explains the steps to transfer ownership of a note. For Idaho this is governed by **I.C. § 28-9-203**. Attachment and enforceability of security interest:

(b) … a security interest is enforceable against the debtor and third parties with respect to the collateral only if:
(1) Value has been given;
(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

A transfer only happens if value is given and the person selling the security interest has rights to the property.

The PEB UCC Report on page 9, first paragraphs "for purposes of Article 9, the buyer of a promissory note is a "secured party" that has acquired a "security interest" in the note." Thus we see that in order to record security interest for a nonjudicial mortgage the secured party who has bought the note has to record the security agreement that shows a transfer in a security interest.

FRAUDULENT NOTARIZATION AND VOID DEED

Idaho Statutes as well as Idaho Courts agree that Notaries Public must conform their conduct to a defined statutory duty of care which requires, first, that the person whose signature is being acknowledged have *appeared before the notary* to executed the instrument, and, second, that the notary must either have known the person whose signature is being acknowledged or the notary must have had satisfactory evidence that the person acknowledging was the person described in the instrument and was the person who executed the instrument. *See Cf.* ***City Consumer Services, Inc. v. Metcalf,*** 775 P.2d 1065 (1989).

Thus, Notaries are required to 1) be in the physical presence of the person who is signing the document and/or 2) know the person personally or have satisfactory evidence proving the person's identity. In the case cited above, the court found that the Notary Public was negligent in being present when the document was signed and allowing a signature without proof of identification.

Under the UCC (Uniform Commercial Code) documents involving real estate (including documents needed for foreclosure) are referred to as "realty paper". See Cf. **Rodney v. Arizona Bank,** 836 P.2d 434 (1992). The UCC is not kind to those who commit fraud with "realty paper". Under the UCC those guilty of fraud cannot enforce their rights to a contract and can lose their rights to foreclose, or in this case, Appellants had a fraudulent Assignment filed after the Notary Public signed with an 6-days difference in the signature and notary dates.

Appellants have pointed out numerous examples of false signature on the qualifying documents recorded by respondents in

the *Affirmative defenses and counter Claims* and in the *In Rem* pleadings which were never heard.

In **United States Of America–Vs- Bank Of America, N.A., Bac Home Loans Servicing, LP; Countrywide Bank, FSB, Et Al., 1:12-Bk-00361-RMC, District Of Columbia**, the Court held that numerous Banks and Lending organizations/institutes, as well as actions of third party providers, committed numerous willful and knowing fraudulent acts relating to false and deceptive preparation and use of affidavits and other documents, ie., Deeds. The Order states, in part, that the defendants are sanctioned for violating,

2. As described in the allegations below, Defendants' misconduct resulted in the issuance of improper mortgages, premature and unauthorized foreclosures, violation of service members' and other homeowners' rights and protections, the use of ***false and deceptive affidavits and other documents.*** *(Emphasis added).*

In another relevant case from the Washington Supreme Court, **Klem vs. Washington Mutual Bank, et al.,** No. 87105-1, Washington Supreme Court, February 28, 2013, Slip Opinion at 23, the Court held that Respondent,

….suggests these falsely notarized documents are immaterial because the owner received the minimum notice required by law. This no-harm, no-foul argument again reveals a misunderstanding of Washington law and the purpose and importance of the notary's acknowledgment under the law. ***A signed notarization is the ultimate assurance upon which the whole world is entitled to rely that the proper person signed a document on the stated day and place. Local, interstate, and international transactions involving individuals, banks, and corporations proceed smoothly because all may rely upon the sanctity of the notary's seal. This court does not take lightly the importance of a notary's obligation to verify the signor's identity and the date of signing by having the signature performed in the notary's presence.*** *Werner v. Werner, 84 Wn.2d 360, 526 P.2d 370 (1974). (Emphasis Added).*

The **Klem** court went on to state that,

A notary jurat is a public trust and allowing them to be deployed to validate false information strikes at the bedrock of our system. *We note that Washington state asserts criminal jurisdiction over any person "who commits in the state any crime, in whole or in part" or "commits an act without the state which affects persons or property within the state, which, if committed within the state, would be a crime," among many other things. RCW 9A.04.030(1), (5). (Emphasis Added).*

THE NINE POINTS OF FRAUD AS APPLIED TO APPELLEES:

The Appellees have been involved in committing fraud on the Appellants, on the recorder's office and on the courts. They have been making willful misrepresentations.

The nine points of Fraud are now listed for the DOT in this present case:

1. Representation: Aegis Wholesale/Transnation/MERS et al (Respondents) willfully misrepresented on the DOT that MERSInc had the capability to act as an agent and that the DOT conformed to **I.C. § 45-1502** See *Supra*.

2. Its falsity: The Phantom MERS Agent section earlier showed that MERSInc couldn't take any actions as an agent. The DOT filed by Respondents does not follow the definitions of **I.C. § 45-1502.** No signatures means no agent relationships and FDCPA violations See *Supra*.

3. Its materiality: If MERSInc isn't a real agent and/or the DOT doesn't conform to the **ITDA** then the DOT is Fraud.

4. Speakers knowledge of falsity: Respondents knew that MERSInc couldn't act as an agent. MERSInc. didn't sign the DOT, Respondents didn't sign it and all future successors and assigns didn't sign it so there is no agent relationships created. Respondents knew it was doing this so that parties would do actions later hiding behind MERSInc's name because it was following MERSCORP, Inc. instructions in Rule 2 section 5 and therefore knew the **Rules**. Respondents knew it was violating the **ITDA** definitions and did not disclose MERSCORP, Inc. or the MERSCORP, Inc Member system. The FDPCA violations were also known by Respondents. See *Supra* for detailed explanations on all violations. The DOT violates **I.C. 48-603 (12)** obtaining the signature of the buyer to a contract when it contains blank spaces to be filled in after it has been signed. Essentially, the DOT had blank spaces where the Members paying money to MERSCORP, Inc. claim to add themselves to be the named Beneficiary without the Appellants knowing in advance that this deceptive practice is taking place. (See Cf, Slip Opinion, **In re Meyer, et al. v. U.S. BANK N.A.et al.,** Case No. 10-23914, Adv. No. 12-01630, United States Bankr. Ct., W.D. Washington, Seattle, February 18, 2014-Exhibit-A, page 5, paragraphs 2 & 3, page 6, paragraphs 1,2, & 3, page 11, paragraph 3, page 12, all 5 paragraphs, page 13, first paragraph, hereto) DOT violates **I.C. 48-603(3)** causing misunderstanding as to affiliation, connection, or association because MERSInc connections or associations with MERSCORP, Inc and its members are not disclosed **I.C. 48-603(2)** and **I.C. 48-603(17)** engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer; is demonstrated by the plan for other entities to falsely use the name of MERSInc.

5. The speaker's intent that it be acted upon by the recipient in the manner reasonably contemplated: Respondents intended that the Appellants, the recorder's office and the courts would accept that MERSInc was a valid agent and beneficiary

and that it would be listed as the beneficiary in the recorders index system. Respondents did not disclose MESCORP, Inc or its Members and that they would deceptively use the name of MERSInc to hide their identity.

6. The hearers were ignorant of the of the fact that MERSInc couldn't act as an agent and that there was a Scheme by the undisclosed MERSCORP, Inc and its Members which encourage entities not named on the DOT to deceptively create and file documents under the name of MERSInc. The court case documents mentioned earlier are filled with references to MERS and obviously think that MERSInc is a self-operating agent with employees and money to take actions and that it has on its own taken actions. The courts also clearly believe that the only entity using the acronym MERS is MERSInc and never refer to the fact that in the MERSCORP, Inc. Membership system uses acronym MERS to refer to MERSCORP, Inc. MERSCORP, Inc. and its members were not disclosed on the DOT and have no authority to take actions with regards to the DOT.

a. Hearers' reliance on its truth – The Appellants, recorder's office and courts relied on Countrywide that listing a different Beneficiary than the Lender was legal and that it was an operating agent that did work for Respondents. The recorder's office recorded the DOT and believed that a valid Beneficiary had been named and that it was written in conformance to the **ITDA** and indexed the document with MERSInc as the beneficiary. The Idaho District court believed MERSInc was a valid agent and accepted it on the DOT as an agent in its decision and relied on the DOT to be written in conformance to the **ITDA**. Appellants signed the DOT. See ***Meyer*** attached and above, and *Supra*.

b. The Appellants had the right to expect Respondents to represent true facts on the DOT and was written it in conformance with the **ITDA**. The Appellants had the right to expect Respondents to give full disclosure as required on all contracts and that unnamed parties would not have any power to act with the DOT. The recorder's office and courts had the right to expect the DOT document to be true and in conformance with the **ITDA** and that full disclosure had taken place since the document would be considered self-authenticating, and they had the right to assume that no premeditated plan of deception had been included in the DOT. See ***Meyer*** attached and above, and *Supra*.

7. Injuries caused by Respondents and the other Appellees:

a. Appellees attempted a wrongful foreclosure on Appellants property with the intent of unjust enrichment. The Idaho

State Court and the Idaho District Court discharged the Appellants Claims but they wouldn't have allowed a a non-judicial foreclosure if the hidden parties had used their own names in filing the Assignment document and not falsely used the name of MERSInc.

b. Appellees violated the Fair Debt and Collections Protection Act. See ***Meyer*** attached and above, and *Supra*.

c. Appellees violated Appellants rights under Idaho Title 28 by not following the law on negotiable instruments which would have protected Appellants property rights. See ***Meyer*** attached and above, and *Supra*.

d. Appellees have not answered Appellants correspondence to identify the hidden parties involved in a violation of Federal Correspondence Act. Appellants needed this information to expose the other parties' actions to the court by adding them to the lawsuit and showing how their actions damaged the Appellants. They have thus purposely delayed the court process and tried to hide guilty parties and limited Appellants from getting damages from these hidden parties.

e. It caused Appellants hundreds of hours of work over several years to discover the web of secrecy and confusion created by using a common acronym for an entity not disclosed on the DOT and Appellees have hidden their scheme by using false names on the assignment document.

f. Appellees caused intentional infliction of emotional distress and negligent infliction of emotional distress contributing to cancer in Appellant Richard and Susan Breinholt by possibly losing their property to hidden parties who don't have rights through the scheme of deception. See ***Meyer*** attached and above, and *Supra*.

The nine points of Fraud are now listed for the Assignment of DOT in this present case:

1. Representation is made that MERSInc sold its interest in the note to Indymac Bank, et al., making it the new secured party. See Ex #3

2. Its falsity: From the depositions MERSInc never buys a note nor has any interest in a note, it can't sell a note and can't receive consideration for selling a note See, *Supra*. Thus Indymac didn't become a secured party because MERSInc has no ownership of the note and can never receive consideration or value, it violates **I.C. § 28-9-607** an invalid security transfer document and **I.C. § 28-9-203** no value received and not from a party who can transfer its interest in the note. No consideration no

transfer. MERSInc never creates documents so this document was not made by it SEE, *Supra*. The notarization was invalid. See *Chain of title anyalisis- Affimative defences and Counter Claims, 2nd amended complaint, Motion for In Rem hearing to verify. ...Show cause.*

Its materiality: If the document was not valid a nonjudicial foreclosure cannot be done.

3. Speakers knowledge of falsity: BACHLS knew that MERSInc was not the secured party on the note and that no value or consideration was given to it and that it didn't create this document and that hidden parties are involved violating FDCPA sections **15 USC § 1692e(2)(A)(6)** "The false representation or implication that a sale, referral, or other transfer of any interest in a debt", **15 USC § 1692e(9)** was violated because the real entity creating the Assignment document uses another entities name causing a false impression as to its source, **15 USC § 1692e (14)** was violated - use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization. Appellees knew that MERSInc wasn't a valid agent that could take actions and yet made representations that it had taken actions which are physically impossible. See *Supra*

4. The speakers intent that it be acted upon by the recipient in the manner reasonably contemplated: The Respondent wanted the Appellants, recorder's office and courts to accept this document as a valid document and a self-authenticating document to proceed with a nonjudicial foreclosure.

5. Hearer's ignorance of its falsity: The recorder's office was ignorant of the falsity and filed the document as an assignment. The Idaho District Court was ignorant of its falsity as demonstrated by their decision. Appellants were ignorant of the Falsities at signing, of the concealments and omissions and failures to disclose.

6. Hearer's reliance on its truth – The recorder's office filed the document as an assignment from MERSInc to INDYMAC. The Idaho District Court relied on its truth as demonstrated by their decision. Appellants relied on its truth until they began investigating the parties.

7. The right to rely - The document was filed as a self-authenticating document which the recorder's office, courts and Appellants had a right to rely on it as truth.

8. His consequent and proximate injury – Appellants include all the injuries shown under section 9 of the 9 points of fraud for the DOT in this section for the Assignment of the DOT. Appellants were also damaged by Appellees' instructions that Appellants had to miss payments in order to qualify for the Home Affordable Modification Program (HAMP) which was a direct violation of **15 USC § 1639(j)** which hold that no servicer or loan holding can "Recommend Default."[1] and MERSCORP, Inc.

There is no credible evidence to support the claims and judgments in favor of the Plaintiff.

G. Is Deutsche Bank a purchaser in good faith?

Although the complaint against the alleged sale was stipulated dismissed, Appellants and two other witnesses were at the location of the sale at the time it was to be held to cure the alleged default.

Breinholts are not herein trying to litigate a wrongful sale (case 11351) as follows but stating facts as they are.

If the opportunity to be a purchaser in good faith had been presented, The Breinholts and their investors would have purchased it at the alleged sale. Neither, Breinholts or Deutsche Bank were presented an opportunity to purchase as there was not a sale held. If the opportunity to purchase the property at the sale had been presented Deutsche Bank would not have been the purchaser in good faith; The Breinholts would have been.

Deutsche Banks claim to have purchased the property at the sale is purgery. The alleged Purchase at the sale in good faith is in violation of UCC 3-104, 201, 203, 301 (Endorsement's, negotiations, Enforcement, Transfers, Right to cure) and IC 45-1506(5)(6)(7)(8)(10)(11), (Right to purchase at the Sale at the time and Place advertised, proper recordation of valid title,)

The Breinholts and the 2 witnessed, have knowledge of the non-sale and dispute that the sale was held in accordance to IC @45-1506. These are facts are supported by evidence of the surveillance tapes of the sale location at the time of the sale.

The chain of title is fatally flawed multiple times before the alleged sale was held. Therefore, even if

[1] The Appellants stand on their argument in the initial Brief on Appeal for the other arguments raised therein.

there had been a sale it was a nullity.

Deutsche Bank had foreknowledge of the Defects and of the fabricated title as they were the original Trustee of the alleged PSA Securitization process in 2005. IC 45-1505

3. They knew that they were not at the alleged sale. IC45-1506(8)

4. As the Trustee of the original PSA, they also knew the alleged Trustee of the sale never had a marketable title to bring to the sale. IC 45-1505

5. They knew that there was not a sale for the Trustee to accept a bid at. 45-1506(8)

1. They knew that there was not a Trustee at the sale to accept a good faith payment.45-1506(9)

2. In violation to IC 45-1506A and the Lis Pends, Deutsche Bank illegally recorded themselves on title so as to now proceed with this unlawful detainer.

3. Respondent Claims they are entitled to possession as purchaser at the sale.

It is clear that Deutsche Bank is not a valid title holder of a note or DOT and does not have standing as a purchaser in good faith. A filed assignment of title is not valid. Such a claim is clearly disputed. Deutsche Bank is not entitled to an order of ejectment until the court holds a hearing to determine the threshold question of standing and the court's Jurisdiction to hear the claims of the Respondent the Judgments are on their face.

The standing of Deutsche Bank as a purchaser in good faith is unsupported and is disputed.

STANDING HAS NOT BEEN ESTABLISHED: The court has abused its discretion as follows;

H. Respondents claim that Breinholts never challenged the Motion for summary Judgment and had plenty of time for a hearing.

Breinholts have scheduled a hearing for Rule to Show Cause however the court, on its own initiative, changed to a hearing on res Judicata at the hearing.

Breinholts did file Affirmative answers and counterclaims to the original complaint. Plaintiff Defaulted and Breinholts filed numerous motion for default and for hearings to show cause and for Judgments which the court ignored. After all of the default pleadings were not heard, Plaintiff filed for an expedited summary Judgment WITH OUT RESPONDING TO THE DEFENCES AND Counterclaims. Breinholts file the response to the Motion for summary Judgment Titled "Verified Petition for In Rem Action to Validate Plaintiff's Interest and Standing to file a Motion to Dismiss for Lack of Jurisdiction" which the court again refused to hear. Plaintiff did eventually file a response to the defences and counterclaims.

The court, again, has Ignored the Counter Claims, and the Default and then heard the Expedited Summary Judgment Motion. The court has shown prejudice by not allowing the Breinholts pleading to be heard while at the same time hearing the Plaintiff's motions. See Court docket @6-3-12, Thru 12-1-2011.

JURISDICTION OF THE COURT TO HEAR *IN REM ACTION* REGARDING PROPERTY DISPUTES

The Fourteenth Amendment declares that no State shall "deprive any person of life, liberty, or property, without due process of law." This prohibition has regard not to matters of form, but to substance of right. Since its adoption, whatever was the rule before, a non-resident party against whom a personal action is instituted in a state court without service of process upon him may, if he please, ignore the proceeding as wholly ineffective, and set up its invalidity if and when an attempt is made to take his property thereunder, or when he issued upon it in the same or another jurisdiction. Western Life Indem. Co. v. Rupp (1914), 235 U.S. 261, 273, 35 S. Ct. 37, 40-41, 59 L. Ed. 220, 224 (emphases added) (citing Pennoyer v. Neff (1877), 95 U.S. 714, 732-33, 24 L. Ed. 565, 572) (overruled on other grounds by Shaffer v. Heitner (1977), 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683).

Whether the Court has jurisdiction over this case is a question of Constitutional Law and must be addressed immediately upon demand by the Appellant. See **CBM Collections, Inc.**, Id. at 212.

The issue of standing involves both "constitutional limitations on federal court jurisdiction and prudential limitations on its exercise." **Warth v. Seldin,** 422 U.S. 490, 498, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975). Constitutional standing concerns whether the plaintiff's personal stake in the lawsuit is sufficient to have a "case or controversy" to which the federal judicial power may extend under the

Constitution's Article III. Id. at 498-99; **Pershing Park Villas,** 219 F.3d at 899; **Lujan v. Defenders of Wildlife**, 504 U.S. 555, 559-60 (1992).

Additionally, the prudential doctrine of standing "is comprised of both judicially-created limitations, such as the prohibition on third-party standing . . . and statutorily-imposed limitations, such as the Rule 17(a) requirement" that suits be maintained by the real party in interest. **Gilmartin v. City of Tucson**, 2006 U.S. Dist. LEXIS 97641, 2006 WL 5917165 *4 (D. Ariz. 2006), citing **Lee v. Deloitte & Touche LLP,** 428 F.Supp.2d 825, 831 (N.D. Ill. 2006).

Also, the **Lujin** Court held that "The 'irreducible constitutional minimum of standing" requires a showing that the plaintiff has suffered an actual, concrete and particularized injury in fact, caused by the defendant's conduct, which a favorable judgment will likely redress.'" **Lujan v. Defenders of Wildlife,** 504 U.S. 555, 560. (1992).

Constitutional standing is a "threshold jurisdictional requirement, and cannot be waived." **Pershing Park Villas**, 219 F.3d at 899-900; **Warth v. Seldin,** 422 U.S. at 498-99; **In re Jacobson,** 402 B.R. 359, 366-67 (Bankr. W.D. Wash. 2009).

PLAINTIFF/RESPONDENT INITIATED THE UNLAWFUL DETAINER COMPLAINT WITHOUT AUTHORITY, AND THE QUESTION ABOUT WHETHER PLAINTIFF HAD THE AUTHORITY IS A FACTUAL QUESTION

As stated above, Idaho law also requires that the moving party have standing to obtain foreclosure and eviction. I.R.C.P. 17(a) requires that "Every action shall be prosecuted in the name of the real party in interest." A real party in interest is "one who has a real, actual, material, or substantial interest in the subject matter of the action." The owner of legal title is usually considered the real party in interest. **Caughey v. George Jensen & Sons**, 74 Idaho 132, 134-35, 258 P.2d 357, 359 (1953). Questions of standing must be decided before reaching the merits of the case. **Citibank (South Dakota), N.A. v. Carroll,** 220 P.3d 1073, 1077 (Idaho, 2009). This requirement is upheld in all states.

In **Ryker v. Current (In re Ryker),** 301 B.R. 156 (2003) the Court held that:

Standing is subject to review at all stages of litigation because a lack of standing undermines the jurisdiction of not only the bankruptcy court, but also the district court acting as an appellate tribunal. See In re Dionisio, 2003 U.S. App. LEXIS 12432, No. 02-3020 (3RD Cir. Apr. 17, 2003)(citing Bender v. Williamsport Area Sch. Dist., 475 U.S. 534, 546-7, 89 L. Ed. 2d 501, 106 S. Ct. 1326 (1986)). In In re Dionisio, neither this Court nor the Bankruptcy Court considered the issue of standing and, on appeal, the Third Circuit held that, in the context of a Chapter 7 proceeding, the debtor lacked standing because the trustee alone had standing to raise certain issues before the bankruptcy court and to prosecute appeals. The result was a waste of judicial resources. The Court therefore hopes to avoid a possible similar outcome by affording the Bankruptcy Court the opportunity to consider whether the Debtor had standing to exercise the trustee's avoidance powers and thereby commence the fraudulent transfer action pursuant to § 548.

In **Bender v. Williamsport Area Sch. Dist.,** 475 U.S. 534, 546-47 (1986) the Court held that:

"...showing the existence of a justiciable "case" or "controversy" under Article III, must affirmatively appear in the record. [8] As the first Justice Harlan observed, "the presumption . . . is that the court below was without jurisdiction" unless "the contrary appears affirmatively from the record." King Bridge Co. v. Otoe County, 120 U.S. 225, 226 (1887). Accord, Thomas v. Board of Trustees, 195 U.S. 207, 210 (1904); Minnesota v. Northern Securities Co., 194 U.S. 48, 62-63 (1904). That lack of standing was not noticed by either party matters not, for as we said in Mansfield C. & L.M.R. Co. v. Swan, 111 U.S. 379, 382 (1884):

"[The] rule, springing from the nature and limits of the judicial power of the United States, is inflexible and without exception, which requires this court, of its own motion, to deny its own jurisdiction, and, in the exercise of its appellate power, that of all other courts of the United States, in all cases where such jurisdiction does not affirmatively appear in the record on which, in the exercise of that power, it is called to act. On every writ of error or appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes. This question the court is bound to ask and answer for itself, even when not otherwise suggested, and without respect to the relation of the parties to it."(Emphasis Added)

Accord, Chicago, B. & Q.R. Co. v. Willard, 220 U.S. 413, 419 (1911); Kentucky v. Powers, 201 U.S. 1, 35-36 (1906); Great Southern Fire Proof Hotel Co. v. Jones, 177 U.S. 449, 453 (1900). See Thomas v. Gaskill, 315 U.S. 442, 446 (1942). Moreover, because it is not "sufficient that jurisdiction may be inferred argumentatively from averments in the pleadings," Grace v. American Central Ins. Co., 109 U.S. 278, 284 (1883); Thomas v. Board of Trustees, 195 U.S., at 210, it follows that the necessary factual predicate may not be gleaned from the briefs and arguments themselves. This "first principle of federal jurisdiction" applies "whether the case is at the trial stage or the appellate stage." P. Bator, P. Mishkin, D. Shapiro, & H. Wechsler, Hart and Wechsler's The Federal Courts and the Federal System 835-836 (2d ed. 1973).

8 "The rules of standing, whether as aspects of the Art. III case-or-controversy requirement or as reflections of prudential considerations defining and limiting the role of the courts, are threshold determinants of the propriety of judicial intervention. It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." Warth v. Seldin, 422 U.S. 490, 517-518 (1975). See McNutt v. General Motors Acceptance Corp., 298 U.S. 178, 190 (1936) ("Here, the allegation in the bill of complaint

as to jurisdictional amount was traversed by the answer. The court made no adequate finding upon that issue of fact, and the record contains no evidence to support the allegation of the bill. There was thus no showing that the District Court had jurisdiction and the bill should have been dismissed upon that ground"); Jackson v. Ashton, 8 Pet. 148, 149 (1834); Bingham v. Cabot, 3 Dall. 382, 383-384 (1798).

It is well settled that unless a moving party has standing, both federal state district courts lacks subject matter jurisdiction to address the merits of the case. In the absence of standing, there is no "case or controversy" between the moving party and Petitioner which serves as the basis for the exercise of judicial power under Article III of the constitution. **Warth v. Seldin**, 422 U.S. 490, 498-499, 95 S.Ct. 2197, 2206, 45 L. Ed. 2d 343 (1975). "'In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.' **Warth,** 422 U.S. at 498, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975). Thus, standing must be inquired into as part of the court's determination of whether it has subject matter jurisdiction. **Goldin v. Bartholow**, 166 F.3d 710 (5th Cir. 1999). If the court finds that it lacks subject matter jurisdiction, it has a duty to dismiss the case. Fed.R.Civ.P. 12(b) (1). Standing, therefore, determines the courts' "fundamental power even to hear the suit." **Grant ex rel. Family Eldercare v. Gilbert,** 324 F.3d 383, 386 (5th Cir. 2003) *citing* **Ford v. Nylcare Health Plans, Inc.**, 301 F.3d 329, 333 (5th Cir.2002).

In addition to the constitutional requirements, a plaintiff must also satisfy three prudential standing restrictions. *See ibid.* First, a plaintiff must "assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." **Warth**, 422 U.S. at 499 (citations omitted). Second, a plaintiff's claim must be more than a "generalized grievance" that is pervasively shared by a large class of citizens. **Coal Operators,** 291 F.3d at 916 (citing **Valley Forge**, 454 U.S. at 474-75). Third, in statutory cases, the plaintiff's claim must fall within the "zone of interests" regulated by the statute in question. *Ibid.* "These additional restrictions enforce the principle that, 'as a prudential matter, the plaintiff must be a proper proponent, and the action a proper vehicle, to vindicate the rights asserted.'" **Coal Operators,** 291 F.3d at 916 (quoting **Pestrak v. Ohio Elections Comm'n,** 926 F.2d 573, 576 (6th

Cir.1991).

"A plaintiff bears the burden of demonstrating standing and must plead its components with specificity." **Coal Operators,** 291 F.3d at 916.

The United States District Court of Idaho, in **In re Sheridan, 2009 Bankr. LEXIS 552** at Headnote #9, the Court held that,

"a motion must be brought by a party in interest, with standing. This means the motion must be brought by one who has a pecuniary interest in the case and, in connection with secured debts, by the entity that is entitled to payment from the debtor and to enforce security for such payment. That entity is the real party in interest. It must bring the motion or, if the motion is filed by a servicer or nominee or other agent with claimed authority to bring the motion, the motion must identify and be prosecuted in the name of the real party in interest."

In **Norwood v. Chase Home Finance, LLC**, A-09-CA-940-JRN, January 19th, 2011, Report & Recommendation at page 9, the Court held,

"Because [Defendant] has not produced evidence when, if ever, it had possession of the Note, or that the instrument was lost, destroyed, or stolen, or that any other recognized exception to the requirement of possession exists, it has failed to carry its burden in demonstrating an entitlement to [dismissal]. [Defendant] denied Norwood's contention that a physical transfer was not made from Chase Bank to [Defendant], but it does not affirmatively demonstrate that the Note was in fact transferred. [Defendant, as movant, bears the burden of demonstrating its entitlement to [dismissal]. It has failed to carry this burden."

Courts across the country have applied this standard to Mortgage Notes and Deed of Trusts.

Mere possession of the Note does not make Respondent a "holder" of the Note. Under Idaho law, to qualify as a holder, one must be in possession of the instrument, and the instrument must be properly endorsed. This is generally the same as California law. See **In re Hwang,** 396 B.R. at 762. Although the payee of an instrument may negotiate it, the payee must indorse it as well as deliver it to another person, who then can become its holder. See the Idaho Deed of Trust Act and definitions thereunder. There is no evidence in the record that the original holder indorsed the Note and timely transferred it to Respondent. Thus, mere possession of the Note and Deed of Trust does not provide Respondent with standing.

Since the filing of this case in May 2011, Breinholts/Appellants and this court have asked Plaintiff to Show how they have standing. That is over three years they have had to prove up standing. The best deception they answered with is as "the purchaser in good faith at the sale".

There are no credible documents in evidence which support a claim.

According to Rule 12(b) the Court has to have jurisdiction over the subject otherwise the Court has to dismiss the case for lack of jurisdiction.

Additionally, Breinholts have plead at length the application of Rule 17a but again the court has ignored the rule.

Rule 8(b)(6) which holds "An allegation ...is admitted if a responsive pleading is required and the allegation is not denied...."

According to Rule 12 (b) and 56 The Court needs to dismiss the case for lack of standing which renders the court without Jurisdiction to hear the case.

CONCLUSION

WHEREFORE, based upon the record in this case and evidence presented, Appellants herein seeks a remand to the lower court to dismiss this case for (1) lack of jurisdiction over the subject matter due to Respondent's lack of standing, (2) lack of jurisdiction over the person, (3) for abuse of discretion with instructions, and/or (4) remand for an evidentiary on the Appellants' claims in this case.

Respectfully submitted, this 17th day of June, 2014

RICHARD BREINHOLT

SUSAN BREINHOLT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of June, 2014, a true and correct copy of the foregoing **INFORMAL REPLY BRIEF ON APPEAL** was served by placing same into the U.S. Postal Service to:

JENNIFER TAIT
ROBINSON TAIT
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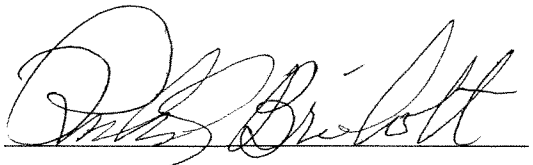

RICHARD BREINHOLT