

8-24-2012

Edwards v. Mortgage Electronic Registration Appellant's Reply Brief 1 Dckt. 38604

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IN THE SUPREME COURT OF THE STATE OF IDAHO

LESLIE JENSEN-EDWARDS,

APPELLANT

Vs.

MERS, INC. a foreign corporation, QUALITY LOAN SERVICES CORP. Of WASHINGTON, a foreign corporation And PIONEER LENDER TRUSTEE SERVICES, LLC, an Idaho limited liability company

RESPONDENTS

Appellant's Reply Brief

Case Number 38604-2-11

Appeal from the district Court of the First Judicial District for Kootenai County. Appeal from the honorable Lansing Haynes, District Judge presiding

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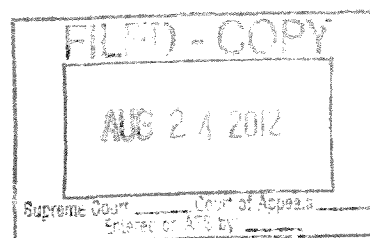
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TRUE COPY #1

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IN THE SUPREME COURT STATE OF IDAHO

LESLIE JENSEN EDWARDS
Appellant

v.

MERS, INC. a foreign corporation,
QUALITY LOAN SERVICES CORP.
Of WASHINGTON, a foreign corporation
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APPELLANT'S REPLY BRIEF

IN THE SUPREME COURT OF THE STATE OF IDAHO

APPELLANT'S REPLY BRIEF

Appeal from the District Court of the First Judicial District for Kootenai County the Honorable
Lansing Haynes, District Judge presiding.

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Case Citations:

Trotter v. Bank of New York Mellon, 275 P.3d 857 (Idaho 2012)

Golay v. Loomis, 118 Idaho 387, 797 P.2d 1990 (Idaho 1990)

Soria v. Sierra Pacific Airlines Inc. 111 Idaho 594, 726 P.2d 706 (Idaho 1986)

Statement of Facts

1) On or about May 18, 2005, Appellant executed a Note and Deed of Trust (hereinafter DOT) in favor of Appellee Lehman Brothers Bank which listed Appellee MERS as nominee for Lehman Brothers Bank.

2) On or about December 3, 2009, Appellee Quality Loan Services mailed a “Notice of Default and Election to Sell under Deed of Trust” to Appellant (Record at 15-16). The Notice further alleged that MERS was the beneficiary and Nominee for Lehman Brothers Bank under the DOT and further purported to designate Pioneer Lender Trustee Services as Trustee and Pioneer Loan Services as Successor Trustee and Attorney in Fact.

3) In response, Appellant filed an action seeking Declaratory and Injunctive Relief with the First Judicial District Court, Kootenai County on April 1, 2010. (Record at 1-28).

4) The request for a Temporary Injunction was denied by the District Judge on April 7, 2010, however the parties submitted a stipulation for cancellation of the sale pending suit on May 6, 2010 which remained in full force and effect until the Court’s decision on November 16, 2010.

5) In her Complaint, Appellant alleged that the actual owner of the note had not been established, and that MERS lacked standing to foreclose. Thereafter, Appellant was given leave

to amend her Complaint. On June 10, 2010, she filed an amended Complaint adding allegation of fraud.

6) All defendants joined in the filing of a Motion to Dismiss filed on April 27, 2010. The motion was granted by the District Court pursuant to a Ruling on November 16, 2010, and a final judgment dated February 18, 2011. The granting of that motion is the subject of the instant appeal.

Issues Presented On Appeal

- 1) Whether the District Court erred in converting the Motion to Dismiss to a Motion for Summary Judgment before discovery enabled Appellant to acquire information to resist the Motion.
- 2) Whether the District Court erred in finding that Appellees had standing to foreclose.
- 3) Whether the District Court erred in concluding there were no genuine issues of disputed fact?
- 4) Whether Appellant is entitled to attorney fees and costs?

Argument

Insofar as there are overlapping issues and arguments addressed in MERS Opening Brief and the Brief of Respondents Quality Loan Service Corporation and Pioneer Lender Trustee Services LLC (hereinafter Quality and Pioneer) Appellant's Reply Brief to MERS Opening Brief is hereby adopted by reference and incorporated herein.

At the outset, Appellant disputes the manner in which Respondents Quality and Pioneer have characterized the facts in their Opening Brief. The Court has the record and need not resort to counsel's derogatory representations of the facts of this case.

Similarly, Respondents brief is replete with citations to cases from other jurisdictions which have no bearing on Idaho law; are not binding on this court, and should be ignored by this Court.

At the time of preparation of her Original Brief, the decision in *Trotter v. Bank of New York Mellon*, 275 P.3d 857 (Idaho 2012) had not yet been rendered. Many of the issues in her original brief were similar to those in *Trotter*, and to the extent that *Trotter* governs the issue of Respondent's standing, Appellant leaves it to the discretion of this Court to ascertain the extent to which that case applies here.

Without regard to the admissibility of the Horner Report , surely that report was adequate to have raised genuine issues of material fact to warrant the dismissal of a summary judgment motion, as noted in her Original Brief

Respondents Quality and Pioneer argue extensively that scheduling matters and continuances are left to the sound discretion of the trial court, it is clear that the court should act to do justice to the rights of the parties in exercising that discretion, *Golay v. Loomis*, 118 Idaho 387, 797 P.2d 1990 (Idaho 1990)

Respondents argue at length that the Court must rely on documents filed with the County Recorder and no other. This argument overlooks Appellant's contention that those records must be true, accurate and correct, and not false, fraudulent or deficient for their intended purpose, as noted in her Original Brief. Indeed, if it is permissible for false records to be used to deprive citizens of their property, then Idaho becomes a state that is without law.

Indeed, to accept Respondents' arguments would require the Court to rule that no citizen has the right to seek redress from the Court to test the validity of documents to be used to affect substantial rights, a result never intended by the Legislature.

Respondents make the ingenuous argument that there is no requirement in the Idaho Deed of Trust Act, compels the use of truthful documents. While on its face that statute does not specifically state the required documents must be valid and not false, surely those requirements are replete in the case law of Idaho, as cited in Appellant's Original Brief. It is difficult to imagine how this Court could accept an argument that flies in the face of the tradition notions of Due Process, or would literally undermine the entire system of fairness on which our legal system is supposed to be based. *Soria v. Sierra Pacific Airlines Inc.* 111 Idaho 594, 726 P.2d 706 (Idaho 1986) As noted in her Original Brief, there is ample evidence that the signatures and titles of the signatories were highly questionable, and at least in other jurisdictions, robo-signing is considered inadequate and an illegal practice. Otherwise, the Attorney General of the State of Idaho would not have joined the remaining Attorneys General in settling a lawsuit based upon these kinds of false and fraudulent documents,

http://www.ag.idaho.gov/media/newsReleases/2012/nr_02092012.html

How is it possible for this type of conduct to be impermissible enough to justify a settlement for the Attorney General and not be similarly prohibited merely because an individual citizen is the party plaintiff? This proposition could only be correct if there were a platinum category of litigant.

Respondents mistake Appellants contention insofar as it relates to the Uhl Affidavit. The issue is not whether it was hearsay, nor whether the court may take judicial notice of public

records, the issue is that counsel submitted evidence to the court when he was precluded from being a witness in a matter where he represented a party. See *Sornia, supra*.

Finally, Appellant asks for attorney fees in the event she is able to retain counsel for oral argument. She is still actively pursuing her search to retain counsel and hopes to have counsel at oral argument. Rather than lose her right by not making a timely claim, it was requested in her original brief. Should she not obtain counsel, the request would be withdrawn, and limited only to costs.

In summary, Appellant contends that she should have been granted proper discovery, and that a full blown trial on the merits is the only means of resolving important issues relating to the illicit transfer of property currently affecting her rights.

CONCLUSION

Appellant asks this court to overturn the ruling of the district court, and grant a remand for a trial on the merits.

RELIEF SOUGHT

- 1) Appellant prays the court overrule the District Court and grant her a declaratory judgment on the issue of lack of standing.
- 2) In the alternative, Appellant prays that this court overrule the District Court's decision and remand with an order that the matter proceed to trial.
- 3) Further in the alternative, Appellant prays this Court for an order remanding this case back to District Court with an order requiring Appellees comply with all present and future discovery requests so the case may move forward to trial and proper resolution.
- 4) For all other general and equitable relief to which Appellant may be entitled.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 21st day of August, 2012, caused a true and correct copy of the attached MOTION TO SET BRIEFING DEADLINE postage prepaid, to the following parties: MERS, Inc.; Quality Loan Service Corporation of Washington; Pioneer Lender Trustee Services, LLC by and through counsel of record.

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