

No. 19-1329

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IN THE  
SUPREME COURT OF THE STATE OF THE UNITED STATES

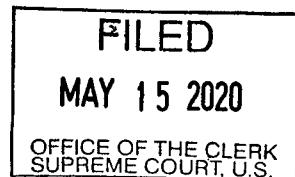
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Mary Strong,

Petitioner, pro se

**ORIGINAL**

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U.S. BANK TRUST, N.A., AS TRUSTEE  
FOR LSF9 MASTER PARTICIPATION TRUST

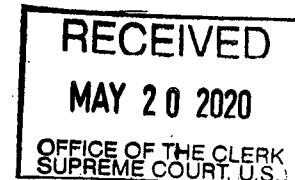
Respondents



On Petition For Writ of Certiorari  
To The Oregon Supreme Court

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**PETITION FOR WRIT OF CERTIORARI**

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Mary Strong, Petitioner pro se  
2559 NW Monterey Pines Drive  
Bend, Oregon 97703  
541-728-7905  
marystrong@bendbroadband.com



**QUESTIONS PRESENTED**  
**Did The Trial And Appellate Courts Err:**

1. Fundamentally ruling that Plaintiff(s) can fabricate, forge and for all intents and purposes “steal” a mortgage “Note” and “Deed of Trust” with no evidence of payment or possession of the original mortgage Note and Deed of Trust, and still be entitled to foreclose.
2. Failure and refusal to acknowledge, accept, permit, record and document testimony and evidence presented by Mary Strong and witnesses for Mary Strong of the cumulative rejection of over \$197,000.00 in mortgage payments made by Mary Strong, and that US Bank Trust et al does not possess the original Note, nor does US Bank Trust, N.A. et al have evidence of any amount paid for the Mortgage Note and Deed of trust or legal standing whatsoever regarding the subject property at 2559 NW Monterey Pines Drive, Bend, Oregon, as required by law.
3. Failure to recognize, acknowledge, document and record for the record the ongoing illegal chain of fraudulent, “robo-signed” and forged “assignments” of the subject Mortgage Note prior to and including the alleged “assignment” to U.S. Bank Trust, N.A. et al for the property at 2559 NW Monterey Pines Drive, Bend, Oregon and documented by Mary Strong in this matter.

4. Failure to recognize and properly rule that Plaintiff and “assignee” US Bank Trust, N.A., et al, their predecessors, “assignors” and related parties are in violation of the Oregon Trust Deed Act which, among other elements, requires demonstration of the possession of the original mortgage note, and demonstration of evidence of payment for that note.
5. Failure and refusal of the Deschutes County Circuit Court to accept and admit into evidence the forensic examination and proof that Plaintiff's U.S. Bank Trust et al do not have possession of the original Mortgage Note, with legal (not fraudulent “robo signed”) allonges demonstrating unbroken and legal chain of title, and documented evidence of payment by U.S. Bank Trust, N.A., et al. for the Mortgage Note and Deed of Trust for the property at 2559 NW Monterey Pines Drive, Bend, Oregon as required by law.
6. Is it lawful for various “servicers” (Nationstar and Caliber Home Loans) to repeatedly **reject mortgage payments exceeding \$197,377.00** from August 22, 2013 to April 18, 2018?
7. Is it lawful for a mortgage “holder” claiming rights to the mortgage loan to make such claim without holding the original Note?
8. Is it lawful for a party claiming to be the mortgage “holder” to foreclose on a mortgage without demonstration of clean and clear chain of title and legal standing regarding the mortgage

note? (See *ORS 92.465 re Fraud and deceit, and Brandrup v. Recontrust Company Bac Lp 2006 2CB*)

9. Is it lawful that Mary Strong was required to pay over \$10,000.00 in “costs” and Plaintiff U.S. BANK TRUST, N.A. “attorney fees” in order to redeem her property pursuant to the Sheriff’s Sale following the unlawful foreclosure and eviction in this matter?

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## **PARTIES TO THE PROCEEDING**

Plaintiff U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST v. Mary Strong, Defendant-Appellant, pro se, Deschutes County Circuit Court No. 16CV32768, Oregon Court of Appeals No. A170560, and Supreme Court of The State of Oregon # S067444.

## **RELATED CASES**

- **SUPREME COURT OF THE STATE OF OREGON** Case No. **S067444**, and **Oregon Court of Appeals** Case No. **A170560** Re U.S. BANK TRUST N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST v. MARY STRONG. See APP.8 attached here.
- **DESCHUTES COUNTY CIRCUIT COURT** Case No. **16CV31768** Re U.S. BANK TRUST N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST v. MARY STRONG. See APP. 4, APP. 5 and APP.6 attached here.
- **NINTH CIRCUIT COURT OF APPEALS FOR THE NINTH DISTRICT**, Case No. **16-35862**, D.C. Nos. **6:16-cv-01498-MC**

and 6:16-cv-01499-MC RE MARY STRONG v. FEDERAL HOME LOAN MORTGAGE CORPORATION, AKA Freddie Mac, as trustee for securitized trust Freddie Mac Multiclass certificates series 2998, et al. See APP.2 attached here.

- "We vacate the judgment as to Strong's "lack of standing to foreclose," quiet title, slander of title, and related declaratory relief claims and remand for further proceedings in light of *Brandrup*."
- **NINTH CIRCUIT COURT OF APPEALS** Case No 18-35086, Related Case Number: 16-35862, United States District Court Consolidated Case Nos. 6:16-cv-01498-MC and 6:16-cv-01499-MC, MARY STRONG Plaintiff-Appellant vs LEHMAN BROTHERS BANK, FSB; NATIONSTAR MORTGAGE LLC.; FEDERAL HOME LOAN MORTGAGE CORPORATION AS TRUSTEE FOR SECURITIZED TRUST FREDDIE MAC MULTICLASS CERTIFICATES, SERIES 2998; FREDDIE MAC; AURORA COMMERCIAL CORP.; NATIONSTAR MORTGAGE LLC; CALIBER HOME LOANS; MORTGAGE ELECTRONIC REGISTRATION SYSTEM, AKA "MERS" AND DOES 1 THROUGH 100, INCLUSIVE, Defendants.

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## CONCLUSION

## APPENDIX

- App. 1. MARY STRONG'S QUALIFIED WRITTEN REQUEST 3/29/15**
- App. 2. MEMORANDUM RE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT 8/17/17**

App. 3. DOCUMENTED REFUSAL OF \$197,377.00 MORTGAGE PAYMENTS

App. 4. MARY STRONG'S OBJECTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT 2/15/19

App. 5. GENERAL JUDGMENT OF FORECLOSURE 3/4/19

App. 6. WRIT OF EXECUTION IN FORECLOSURE 3/26/19

App. 7. \$333,228.63 "REDEMPTION" PAID TO DESCHUTES COUNTY SHERIFF 9/3/19

App. 8. OREGON SUPREME COURT ORDER DENYING REVIEW 4/23/20

v.

**TABLE OF AUTHORITIES**

| <u>CASES</u> | <b>Page</b> |
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**Brandrup V. Recontrust Company Bac Lp 2006 2CB.....page 10**

Reference the following cases citing points of law regarding mortgagesecuritization fraud as applies to this present case:

- Deutsche Bank National Trust Company et al v. Scott J. Heinrich;
- Glaski v. Bank of America, 218 Cal. App. 4th 107;
- Hooker v. Northwest Trustee Services Inc;
- Bank Of America, et al ; McCoy, 2011 WL 477820, at \*3;
- Yvanova v. New Century Mortgage Corp

**Statutes**

**ORS 92.465** re Fraud and deceit states in part "No person shall, in connection with the offer, sale or lease of any lot, parcel or interest in a real estate subdivision or series partition, directly or indirectly:" and "Engage in any act, practice or course of business which operates

|  |       |             |
|--|-------|-------------|
| or would operate as a fraud or deception upon any person;"   | ..... | pages 4, 8  |
| <b>The Oregon Trust Deed Act</b> requires the recording of all assignments by the beneficiary, and Oregon's recording requirement provides that the trust deed or mortgage follows the note..... | ..... | pages 6, 11 |
| <b>ORS 86.735(1)</b> requiring the recording all the intervening assignments, was intentionally ignored.....   | ..... | page 11     |

### Regulations

|   |       |         |
|---|-------|---------|
| <b>ORS 79.0203<sup>1</sup> UCC 9-203</b> (Attachment and enforceability of security interest - cannot hypothecate)..... | ..... | page 9  |
| <b>UCC 3-420</b> CONVERSION OF INSTRUMENT.....  | ..... | page 9  |
| <b>UCC 7-501(5)</b> Form of Negotiation and Requirements of Due Negotiation.....  | ..... | page 9  |
| <b>UCC 9-315</b> : Secured party's rights on disposition of collateral & in proceeds.....                               | ..... | page 10 |
| <b>UCC 9-109</b> (SCOPE).....   | ..... | page 9  |

## PETITION FOR A WRIT OF CERTIORARI

Mary Strong petitions for a writ of certiorari to review the judgment of the Oregon Supreme Court in this case.

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## OPINIONS BELOW

- Included here as App. 2, the **MEMORANDUM** dated August 17, 2017 re United States Court of Appeals For The Ninth Circuit No. 16-35862 (D.C. Nos. 6:16-cv-01498-MC and 6:16-cv-01499-MC, VACATE AND REMAND states:
  - “The district court dismissed Strong’s lack of standing to foreclose, quiet title, slander of title, and related declaratory relief claims after finding that Strong could not bring a cognizable claim based on her loan’s securitization. However, the district court did not expressly consider plaintiff’s allegation that Mortgage Electronic Registration Systems, Inc. (“MERS”) could not act on its own authority as the beneficiary under the deed of trust. *See Brandrup v. ReconTrust Co., N.A.*, 303 P.3d 301, 304, 309-12 (Or. 2013) (en banc) (“For the purposes of [the Oregon Trust Deed Act] . . . an entity like MERS, which is not a lender, may not be a trust deed’s ‘beneficiary,’ unless it is a lender’s successor in interest.”); *see also Niday v. GMAC Mortg., LLC*, 302 P.3d 444, 453 (Or. 2013) (determining that summary judgment was improper where MERS was designated as “nominee” in the deed of trust but there was no additional evidence in the record of an agency relationship between MERS and the original lender). We vacate the judgment as to Strong’s “lack of standing to foreclose,” quiet title, slander of title, and related declaratory relief claims and remand for further proceedings in light of *Brandrup*. Case: 16-

- **MARY STRONG'S OBJECTION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** dated 2/15/19, Deschutes County Circuit Court Case No. **16CV32768** is included here as [App. 4](#).
- The **GENERAL JUDGMENT OF FORECLOSURE**, Deschutes County Circuit Court Case No. **16CV32768** dated March 4, 2019 is included here at [App. 5](#).
- The **WRIT OF EXECUTION IN FORECLOSURE**, dated March 26, 2019, Deschutes County Circuit Court Case No. **16CV32768** is included here as [App. 6](#).
- The **ORDER DENYING REVIEW** dated April 23, 2020, Supreme Court of Oregon Court of Appeals # **A170560** and **S067444** is included here at [App. 8](#).

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## **JURISDICTION**

The Supreme Court of Oregon entered an **ORDER DENYING REVIEW** dated April 23, 2020 re # **A170560** and **S067444**, included here at [App. 8](#). Petition for review of the decision of the Court of Appeals on appeal from a judgment of the Circuit Court for Deschutes County, Honorable A. Michael Adler, Judge. Filed: January 29, 2020 affirmed without opinion before Lagesen, Presiding Judge, and Egan, Chief Judge, and Powers, Judge.

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## **STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED**

This case does not involve interpretation of statutory or constitutional provisions

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## INTRODUCTION AND STATEMENT OF THE CASE

This is a foreclosure action against pro se Appellant Mary Strong by an alleged Lehman Brothers “assignee”, **U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST**. The Deschutes County Circuit Court, Case No. **16CV32768** granted and entered Plaintiff’s General Judgment of Foreclosure on March 4, 2019. Appellant-Defendant Mary Strong seeks reversal of the General Judgment of Foreclosure entered March 4, 2019, financial damages, and that Plaintiff **U.S. BANK TRUST, N.A., AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST** has not and cannot demonstrate legal chain of title, does not possess legal standing, as required by law, nor any rights whatsoever to the subject property located at 2559 NW Monterey Pines Drive, Bend, Oregon. See ORS 92.465 re Fraud and deceit, and Brandrup v. Recontrust Company Bac Lp 2006 2CB.

## REASONS FOR GRANTING THE PETITION

The nature of the judgment is the dismissal, refusal and failure by the Deschutes County Circuit Court, The Oregon Court of Appeals, and the Oregon Supreme Court to accept Mary Strong’s documented evidence of lack of standing and legal chain of title, slander of title, violation of RICO laws, and declaratory judgment and quiet title claims as to the unlawful multiple “assignments”, “transfers” and alleged and undocumented “sales” of the Mortgage Note and Deed of Trust, without

evidence of legal tender or payment as REQUIRED BY LAW, and without evidence of possession of the original Note and Mortgage Deed, as required by law for 2559 NW Monterey Pines Drive, Bend, Oregon, purchased by Mary Strong in 2003 with a conforming, 30-year mortgage loan.

**The following elements are required according to law:**

1. A holder must possess the original note.
2. Transfer of possession must be “authenticated by an affidavit or certification based upon personal knowledge.”
3. A party relying upon power of attorney or other document must produce the authenticated original of that document.
4. Using the words “as attorney in fact” means nothing unless the party is able to produce a witness who, in their own personal knowledge, knows and states that the POA is in writing and has not been revoked.
5. That witness must be able to lay the factual foundation and authentication for introduction of the Power of Attorney or any other such document.
6. Without such foundation and authentication, any testimony or documents proffered by virtue of the POA cannot be admitted into evidence and for purposes of the case then, such statements or documents do not exist.

7. A party who claims a legal relationship with another party and who relies upon it for proffering evidence must provide evidence of the legal relationship.
8. A Power of Attorney must be in writing, duly signed and acknowledged as set forth in state statutes. Oral Powers of Attorney cannot be used to circumvent the requirement that interests in real property (including mortgages) must be in writing.
9. A party seeking to enforce a note must be able to establish, through competent evidence, the location and the previous locations of the note in order to
10. establish possession and the right to enforce, respectively.
11. Certifications must be based upon personal knowledge and not general familiarity.
12. If testimony is offered based upon a “review” of records, the records must be present, or the witness must identify those records and how the witness acquired personal knowledge of their content.
13. Assignments of mortgage must be authenticated by a
14. person who has personal knowledge of the assignment (and the circumstances in which the assignment occurred).
15. Otherwise the assignment is hearsay and must be excluded from evidence unless otherwise admitted for different reasons. Hearsay statements in assignments cannot be admitted into evidence and for purposes of the

case then, such statements do not exist.

16. The fact that an assignment or other document exists as an original or a copy does not mean that what is written on it can be admitted into evidence.
17. A document signed by an agent or “nominee” like MERS after the demise of the principal is void because the power of attorney expires upon expiration of the principal. If the originator no longer exists, MERS is not authorized to act on behalf of the originator.

These elements of proof of standing, required by law, have not and never have been met by Plaintiffs US Bank Trust, N.A. et al in this present matter.

### **STATEMENT OF THE CASE**

#### **Nature of The Action and Relief Sought**

#### **Nature of The Judgment**

The nature of the judgment is the dismissal, refusal and failure by the Deschutes County Circuit Court, Oregon Court of Appeals and Oregon Supreme Court to accept Mary Strong’s documented evidence of lack of standing and legal chain of title, slander of title, violation of RICO laws, and declaratory judgment and quiet title claims as to the unlawful multiple “assignments”, “transfers” and alleged and undocumented “sales” of the Mortgage Note and Deed of Trust, without evidence of legal tender or payment as **REQUIRED BY LAW**, and

**without evidence of possession of the original Note and Mortgage Deed, as required by law** for 2559 NW Monterey Pines Drive, Bend, Oregon, purchased by Mary Strong in 2003 with a conforming, 30-year mortgage loan.

Regarding the subject property at 2559 NW Monterey Pines Drive, Bend, Oregon, Mary Strong filed a lawsuit against Lehman Brothers et al, the alleged and documented “originator” of the Mortgage Note and Deed of Trust for the subject property at 2559 NW Monterey Pines Drive, Bend, Oregon, and the alleged mortgage “assignor”, Case No. 6:16-cv-01498-MC (lead case) and Case No. 6:16-cv-01499-MC (trailing case) re Mary Strong, Plaintiff v. Lehman Brothers Bank FSB, et al. This action was filed prior to any supportable claim to the subject property by alleged “assignee” U.S. BANK TRUST, N.A. AS TRUSTEE FOR LSF9 MASTER PARTICIPATION TRUST et al. In this prior and related Case No. 6:16-cv-01498-MC filed by Mary Strong as Plaintiff, Mary Strong was denied and prevented from presentation and documentation of evidence “on the record”, was denied a jury trial, and Mary Strong’s case was summarily dismissed by the District Court Judge in Eugene, Oregon without any supportable basis in law.

#### **Basis of Appellate Jurisdiction**

This Deschutes County Circuit Court No. 16CV32768 appellate jurisdiction is based on ORS 19.240, ORS 19.250, ORS 19.255, and ORS 19.270

### **Effective Date for Appellate Purposes**

Summary Judgment of Foreclosure, Deschutes County Circuit Court Case No. 16CV32768 was entered March 4, 2019. The Notice of Appeal and Opening Brief in this case was initially filed by Mary Strong and docketed on March 26, 2019 and documented by the Oregon Judicial Department “File & Serve” website, Envelope ID 4364120, and was served by mail with tracking and proof of delivery on attorney for respondent Jeremy Clifford, McCarthy & Holthus LLP, 920 W 3<sup>rd</sup> Avenue, 1<sup>st</sup> Floor, Portland, Oregon. The 2<sup>nd</sup> Amended Notice of Appeal was filed August 23, 2019 by Mary Strong by USPS with tracking and proof of delivery, and was served by mail on attorney for respondent Jeremy Clifford, McCarthy & Holthus LLP, 920 W 3<sup>rd</sup> Avenue, 1<sup>st</sup> Floor, Portland, Oregon August 23, 2019 also with tracking and proof of delivery.

### **Questions Presented on Appeal - Did The Trial Court Err**

- a) Fundamentally ruling that Plaintiff(s) can fabricate, forge and for all intents and purposes “steal” a mortgage “Note” and “Deed of Trust” with no evidence of payment or possession of the original mortgage Note and Deed of Trust, and still be entitled to foreclose. The answer is no.
- b) Failure and refusal to acknowledge, accept, permit, record and document testimony and evidence presented by Mary Strong and witnesses for Mary Strong of the cumulative rejection of over \$197,000.00 in mortgage payments made by Mary Strong (see

APP. 3 included here), and that US Bank Trust et al does not possess the original Note, nor does US Bank Trust, N.A. et al have evidence of any amount paid for the Mortgage Note and Deed of trust or legal standing whatsoever regarding the subject property at 2559 NW Monterey Pines Drive, Bend, Oregon, as required by law.

- c) Failure to recognize, acknowledge, document and record for the record the ongoing **illegal** chain of **fraudulent**, "**robo-signed**" and **forged** "**assignments**" of the subject Mortgage Note prior to and including the alleged "**assignment**" to U.S. Bank Trust, N.A. et al for the property at 2559 NW Monterey Pines Drive, Bend, Oregon and documented by Mary Strong in this matter.
- d) Failing to recognize and properly rule that Plaintiff and "**assignee**" US Bank Trust, N.A., et al, their predecessors, "**assignors**" and related parties are in violation of the **Oregon Trust Deed Act** which, among other elements, requires demonstration of the possession of the **original mortgage note**, and **demonstration of evidence of payment** for that note.
- e) Failure and refusal of the Deschutes County Circuit Court to accept and admit into evidence the forensic examination and proof that Plaintiff's U.S. Bank Trust et al do not have possession of the original Mortgage Note, with legal (*not fraudulent "robo-signed"*) allonges **demonstrating unbroken and legal chain of title, and documented evidence of payment** by U.S. Bank Trust, N.A., et al.

for the Mortgage Note and Deed of Trust for the property at 2559 NW Monterey Pines Drive, Bend, Oregon as required by law.

**Summary of Argument**

Plaintiff(s) US Bank Trust, N.A. et al **have not and cannot demonstrate clear and legal chain of title** granting any rights whatsoever to the subject property at 2559 NW Monterey Pines Drive, Bend, Oregon.

I, Mary Strong, have suffered ongoing and extreme damage following my **Making Home Affordable HAMP** application for modification of the 3% adjustable interest rate to a then-current market fixed rate of interest, including **financial damages exceeding \$150,000.00 beyond the balance due on my mortgage** plus legal, court costs, and over \$2,500.00 expense for a motel room following forced eviction from my property on August 27, 2019 without prior notice with legal service of process by the Deschutes County Sheriff's Office, barring access to and constructive use of my (Mary Strong's) property, my furnishings and my personal possessions, and thereby providing access to my (Mary Strong's) personal property and possessions by persons unknown to Mary Strong by virtue of the lock changes conducted on the subject property upon my (Mary Strong's) forced eviction.

### Statement of Facts

- I, Mary Strong, was never given legal notice in any form of the "Sheriff's Auction" of my property at 2559 NW Monterey Pines Drive, Bend.
- I, Mary Strong, was never served with any legally filed and stamped notice of any "eviction" order issued by the Deschutes County Court, Case #16CV32768, but was presented, with no advance notice, an unfiled and unstamped document by the Deschutes County Sheriff while forcibly removing me from my property.
- I, Mary Strong, without any advance notice or service of process, was given 20 minutes to gather belongings before being forcibly removed from my property August 27, 2019 by three Deschutes County Sheriff officers.
- While I, Mary Strong, was gathering some personal belongings I, Mary Strong, was repeatedly and aggressively lectured and threatened with arrest and jail by one of the three Deschutes County Sheriff officers who forcibly removed me from my property on August 27, 2019.
- The Deschutes County Circuit Court issued a "summary judgement" and cancelled the jury trial scheduled for February 7, 2019 in this matter, with no opportunity for Mary Strong to present evidence and expert witness testimony demonstrating the securitization fraud conducted by Plaintiff US Bank Trust, N.A., et al, and any and all "transfer" parties from whom Plaintiff's US Bank Trust, N.A. claim

to have obtained rights and/or ownership in any form or manner to the mortgage note and deed of trust for the subject property located at 2559 NW Monterey Pines Drive, Bend, Oregon.

- Following the 2008/2008 economic “crash” the notorious **HAMP** program, was the **ONLY** vehicle available for Mary Strong to refinance a 3.6% 30-year adjustable interest rate to the current market fixed rate following a 50% drop in all mortgage interest rates. A homeowner could no longer apply to their originating lender to refinance a mortgage loan, as that lender, nor any other single lender or party, legally owned the loan and Note, as it was, without the homeowner’s knowledge or permission divided into multiple bits and pieces called Collateralized Mortgage Obligations and Credit Default Swaps and “transferred”, “sold” and “assigned” with fraudulent, forged signatures, and no evidence of payment by “assignors” to “assignees”. The notorious Federal Fannie Mae Making Home Affordable **HAMP** program required the homeowner to stop making payments in order to apply for and be considered for refinance and modification of a mortgage loan rate of interest.
- Mary Strong was denied the **HAMP** program refinance of her conforming interest rate to convert the subject mortgage to a fixed rate of interest following the long, delayed, protracted **HAMP** modification process requiring repeated/duplicate submissions of requested documents by Mary Strong.
- Following the refusal and denial of Mary Strong’s Fannie Mae

Making Home Affordable **HAMP** application for interest rate modification various mortgage “servicers” **refused and rejected** **\$197,377.00** cumulative mortgage payments made by Mary Strong. See APP.3 attached here.

Plaintiff US Bank Trust, N.A., et al has not and cannot produce the original mortgage and Note showing legal transfer and assignment of the mortgage note on 2559 NW Monterey Pines Drive, Bend, Oregon as required by law. Plaintiffs US Bank Trust, N.A. have not and cannot produce evidence of payment, in any amount or form, for the subject mortgage and Note relating to the property at 2559 NW Monterey Pines Drive, Bend, Oregon, as required by law.

See ORS 92.465 re fraud and deceit.

The property 2559 NW Monterey Pines Drive, Bend, Oregon is the subject of a lawsuit previously filed by Mary Strong, Case No. 6:16-cv-01498-MC (Lead Case) Case No. 6:16-cv-01499-MC (Trailing Case) MARY STRONG, PLAINTIFF v. LEHMAN BROTHERS BANK FSB, NATIONSTAR HOME LOANS, FEDERAL HOME LOAN CORP AS TRUSTEE FOR SECURITIZED TRUST FREDDIE MAC MULTICLASS CERTIFICATES, SERIES 2998, FREDDIE MAC, AURORA COMMERCIAL CORP., ELECTRONIC REGISTRATION SYSTEM, AKA “MERS”, AND DOES 1 THROUGH 100, INCLUSIVE, DEFENDANTS.

In this related case I, Mary Strong document ongoing attempts at communication with named Defendants in that matter (Lehman

Brothers, Nationstar et al), including the repetitive refusal of payments made by Mary Strong to Nationstar Home Loans and Caliber Home Loans on the mortgage for the property at 2559 NW Monterey Pines Drive, Bend, Oregon through April 18, 2019.

I, Mary Strong, ask: what **LAWFUL** motive exists for the refusal of \$197,377.04 in payments made and documented by Mary Strong for this mortgage debt following the denial of Mary Strong's HAMP application to change the mortgage interest to a fixed rate? The answer: **THERE IS NO LAWFUL MOTIVE!**

Attached here as APP. 1 and previously presented in related Oregon Court of Appeals Case No. A170560 is Mary Strong's Qualified Written Request dated March 29, 2015 and submitted to Caliber Home Loans, Inc. There has never been any coherent response to my (Mary Strong's) numerous requests for explanation of billing disparities documented in this Qualified Written Request regarding the subject property 2559 NW Monterey Pines Drive, Bend, Oregon. There is no legal defense for these actions.

#### **TABLE OF AUTHORITIES**

**FRCP Rule 26** "requires the Plaintiff to initiate a conference between the parties to plan the discovery process". In the present matter Plaintiffs US Bank Trust, NA made no attempt to confer with Mary Strong. I, Mary Strong had no knowledge of, contract with, or communication in any form or manner with Plaintiffs US Bank Trust, NA et all prior to service of this Complaint and Summons on August

12, 2018 by US Bank Trust, NA, nor any subsequent communication from Plaintiffs US Bank Trust, NA.

Under 2015 ORS 79.0203<sup>1</sup> UCC 9-203 ATTACHMENT AND ENFORCEABILITY OF SECURITY INTEREST and UCC 9-109 SCOPE, holder in due course cannot hypothecate, meaning to pledge as security without delivery of title or possession, real property.

Under UCC 3-420 CONVERSION OF INSTRUMENT an action for conversion of an instrument may not be brought by (i) the issuer or acceptor of the instrument or (ii) a payee or indorsee who did not receive delivery of the instrument either directly or through delivery to an agent or a co-payee.”. There must be proof of delivery of tangible instrument.

This has not been documented by Plaintiff US Bank Trust, N.A et al in this matter.

Under UCC 7-501(5) FORM OF NEGOTIATION AND REQUIREMENTS OF DUE NEGOTIATION a document is duly negotiated if it is negotiated in the manner stated in this subsection to a holder that purchases it in good faith, without notice of any defense against or claim to it on the part of any person, and for value, and (c) Indorsement of a nonnegotiable document of title neither makes it negotiable nor adds to the transferee's rights. These requirements regarding Form of Negotiation and Due Negotiation

were not met.

Under UCC 9 – 315: SECURED PARTY'S RIGHTS ON DISPOSITION

OF COLLATERAL AND IN PROCEEDS, MERS cannot transfer beneficial rights to debt. This requirement regarding party's rights on disposition of collateral and in proceeds were and are not met.

In the Supreme Court of Oregon re Bandrup v. Recontrust et al see the following excerpts regarding the definition and meaning of the word "beneficiary", which "*is determined by statute... and cannot be altered by the party's agreement*"

- On page 16: "Indeed, we find plaintiffs (Bandrup) reading of the definition to be more compelling, on a purely textual level, than defendants'. If defendant's reading were correct, then anyone -- even a person with no connection to or interest in the transaction at all -- could be designated in the agreement. If the legislature had intended "beneficiary" to have the circular meaning that defendants suggest -- that "beneficiary" means whomever the trust deed names as the "beneficiary" it would have had no reason to include any description of the beneficiary's functional role in the trust arrangement. The fact that the statute does include such a description ("the person for whose benefit the trust deed is given") strongly suggests that the legislature intended to define "beneficiaries" by their functional role, not their designation. Stated differently, by including such a functional description, it is apparent that the

legislature intended that the beneficiary of the trust deed be the person to whom the obligation that the trust deed secures is owed.”

- On page 17: “Defendants assert that the emphasized text shows that the legislature understood that the "beneficiary" need not be the lender or the lender's successor in interest. We do not agree that the statutory text necessarily-- or even probably -- bears such a construction”
- On Page 19 :“ the premise is implicit -- the core of defendants' "freedom of contract" argument appears to be that, although MERS has no right to repayment of the notes in these cases, it nevertheless may be designated by contract as the beneficiary for other functions, in particular those functions relating to the control of the foreclosure process. We disagree. The resolution of this question does not hinge on the parties' intent; rather, it depends on legislative intent. That is, the OTDA authorizes nonjudicial foreclosure only when certain statutory requirements are met. In these circumstances, the meaning of "beneficiary," as used in ORS 86.735(1), is determined by statute, and that meaning is incorporated into, and cannot be altered by, the party's agreement.”

In fact, a mortgage note is not a negotiable instrument. If a “transferor” purports to transfer less than the entire instrument, negotiation of the instrument does not occur. When a servicer comes to

court acting on behalf of any owner, they have necessarily been transferred less than the entire instrument. They take then no rights of a holder, and whatever rights they may have must be demonstrated and proven.

**The following elements are required according to law:**

- A holder must possess the original note.
- Transfer of possession must be “authenticated by an affidavit or certification based upon personal knowledge.”
- A party relying upon power of attorney or other document must produce the authenticated original of that document.
- Using the words “as attorney in fact” means nothing unless the party is able to produce a witness who, in their own personal knowledge, knows and states that the POA is in writing and has not been revoked.
- That witness must be able to lay the factual foundation and authentication for introduction of the Power of Attorney or any other such document.
- Without such foundation and authentication, any testimony or documents proffered by virtue of the POA cannot be admitted into evidence and for purposes of the case then, such statements or documents do not exist.
- A party who claims a legal relationship with another party and who relies upon it for proffering evidence must provide evidence of the legal relationship.

- A Power of Attorney must be in writing, duly signed and acknowledged as set forth in state statutes. Oral Powers of Attorney cannot be used to circumvent the requirement that interests in real property (including mortgages) must be in writing.
- A party seeking to enforce a note must be able to establish, through competent evidence, the location and the previous locations of the note in order to establish possession and the right to enforce, respectively.
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- Certifications must be based upon personal knowledge and not general familiarity.
- If testimony is offered based upon a “review” of records, the records must be present, or the witness must identify those records and how the witness acquired personal knowledge of their content.
- Assignments of mortgage must be authenticated by a person who has personal knowledge of the assignment (and the circumstances in which the assignment occurred). Otherwise the assignment is hearsay and must be excluded from evidence unless otherwise admitted for different reasons. Hearsay

statements in assignments cannot be admitted into evidence and for purposes of the case then, such statements do not exist.

- The fact that an assignment or other document exists as an original or a copy does not mean that what is written on it can be admitted into evidence.
- A document signed by an agent or “nominee” like MERS after the demise of the principal is void because the power of attorney expires upon expiration of the principal. If the originator no longer exists, MERS is not authorized to act on behalf of the originator.

These elements of proof of standing, required by law, have not and never have been met by Plaintiffs US Bank Trust, N.A. et al in this present matter.

I, Mary Strong, declare:

- That all information provided in this Petition For Writ of Certiorari is true, documented and supported with evidence
- That I, Mary Strong, was never given notice in any form of the "Sheriff's Auction" of my property at 2559 NW Monterey Pines Drive, Bend, Oregon
- That I, Mary Strong, was never served with notice of any "eviction" order issued filed and stamped by the Deschutes County Circuit Court (Case #16CV32768).
- That in spite of the legally filed and served Notice of Redemption submitted to the Deschutes County Sheriff's Office by Mary

Strong, in the form and manner required by law, Mary Strong, was, without notice, forcibly removed from the property at 2559 NW Monterey Pines Drive, Bend, Oregon by three Deschutes County Sheriff's Officers on the morning of Tuesday, August 27, 2019 and allowed twenty minutes, with repetitive and aggressive threats of arrest and placement in jail by the Sheriff's Deputy, to gather belongings and vacate my (Mary Strong) home.

- The subject property at 2559 NW Monterey Pines, Bend, Oregon was locked with new/changed locks and keys barring Mary Strong's access, giving access to Mary Strong's personal property and belongings within that property by parties unknown to Mary Strong. Following repeated and ongoing refusal, rejection and return of a total of \$197,377.00 in sequential, increasing and collective mortgage payments made by Mary Strong on this property with a \$181,000.00 mortgage balance (See APP. 3), the required "Redemption" cost paid to the Deschutes County Sheriff's Office was **\$333,435.75, including over \$10,000.00 in "costs and fees" charged by Plaintiff**. See APP. 7 Deschutes County Sheriff's Payment Receipt attached here.

### **CONCLUSION**

For the foregoing reasons, the Court should grant a writ of certiorari.

Respectfully submitted,

**Mary Strong**