STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

WELLS FARGO BANK, N.A.,)
)
Plaintiff,)
vs.)
)
LYNN R. SEAGREN and WENDY M. SEAGREN, individually and as trustees of the SEAGREN FAMILY TRUST,)
)
Defendants.)
)

Case No. **CV 2013 5845**

MEMORANDUM DECISION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DIMSMISS (MOTION FOR SUMMARY JUDGMENT)

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the Motion to Dismiss filed on September 27, 2013, by defendants Lynn R. Seagren, Wendy M. Seagren, individually and as trustees of the Seagren Family Trust. Oral argument on the Motion to Dismiss was held on February 27, 2014.

In March 2008, the defendants Lynn R. Seagren and Wendy M. Seagren (collectivey "the Seagrens") executed a note and deed of trust upon certain real property in Kootenai County, Idaho, to secure indebtedness from the plaintiff Wells Fargo Bank, N.A. ("Wells Fargo") in the amount of $271,500.00 plus interest. Complaint, Exhibit A and B. After the note and deed of trust were executed, Wells Fargo alleges the Seagrens defaulted on the loan by failing to pay the monthly installments due on the note. Complaint, p. 2 ¶ 6. It is unclear from the pleadings *when* the default actually occurred. As a result of the default, Wells Fargo effected a

nonjudicial foreclosure of the deed of trust, and held a trustee's sale on June 27, 2011. *Id.*, p. 2 ¶ 7. At the time of the sale, Wells Fargo alleged $237,813.00 was due on the note for principal, interest, late fees and foreclosure fees. *Id.*, p. 2 ¶ 8. Wells Fargo alleged at the time of the sale, the fair market value of the property was $100,000.00. *Id.*, p. 2 ¶ 9. Consequently, Wells Fargo claims the Seagrens still owe $137,813.00 plus interest. *Id.*, p. 2 ¶ 10.

The Seagrens are residents of Washington. *Id.*, p.1 ¶ 2. On August 12, 2013, Wells Fargo commenced the instant action against the Seagrens individually and in their capacity as trustees of the Seagren Family Trust (collectively "the defendants") when it filed a Complaint against the defendants in the District Court of the First Judicial District of the State of Idaho to recover the balance owing following the nonjudicial foreclosure of the deed of trust. *See* Complaint. Rather than filing an Answer, on September 27, 2013, defendants moved to dismiss this case pursuant to Idaho Rules of Civil Procedure 12(b)(1), (2), and (6). "Defendant Lynn R. Seagren and Wendy M. Seagren Family Trust's Motion to Dismiss", p. 1. This Court notes that while the defendants in their Motion to Dismiss errantly caption the parties ""Lynn R. Seagren and Wendy M. Seagren Family Trust" (*Id.*), Wells Fargo's Complaint makes it clear Wells Fargo is not suing the "Seagren Family Trust" as its own entity; rather, the Seagrens are sued individually and in their capacities as trustees of the Seagren Family Trust.

On November 8, 2013, Wells Fargo filed a Memorandum in Opposition to Motion to Dismiss. It was accompanied by the Affidavit of Jeffrey M. Wilson. Attached to the Affidavit of Jeffrey M. Wilson is an order for Clark County Washington Superior Court case number 11-2-03850-9. According to this document, on September 26, 2011, Wells Fargo filed a Complaint to recover the balance owing following the nonjudicial

foreclosure of the deed of trust against Lynn and Wendy Seagren only (not the Seagren Family Trust), and that Complaint was filed in Clark County, Washington, Washington Superior Court case number 11-2-03850-9. Affidavit of Paul W. Daugharty, Exhibit A. That Complaint was filed just within the three-month deadline after the nonjudicial foreclosure on the deed of trust, established by I.C. § 45-1512. *Id*. An Amended Complaint was subsequently filed in that case on November 21, 2011. Affidavit of Paul W. Daugharty, Exhibit B. The Seagren Family Trust was not a named party to that Washington action. *Id.,* Exhibits A and B. The Seagrens moved to dismiss the action in Clark County, Washington on the grounds of Forum Non Conveniens and because they alleged the court lacked subject matter jurisdiction over the action. Affidavit of Jeffrey M. Wilson, Exhibit A, p. 1. On March 8, 2012, following a hearing on the matter, the Washington Superior Court judge dismissed the action without prejudice, making the following findings:

> 1. The difficulties of litigation in Washington militate for dismissal of the action on the grounds of Forum Non Conveniens[.]
> 2. Defendants have stipulated to jurisdiction in Idaho.
> 3. Defendants have authorized Attorney Albert F. Schlotfeldt to accept service on their behalf in Idaho.
> 4. The Court does not wish to prejudice Plaintiff with regard to a Statute of Limitations defense, and thus conditions the dismissal on Defendants' stipulation not to raise this defense. Defendants have therefore so stipulated.

Id., p. 2. Based on those findings, the Washington Superior Court Ordered:

> 1. Defendants' motion is granted on the basis of Forum Non Conveniens.
> 2. The action will be dismissed without prejudice for Forum Non Conveniens upon the filing of an action in Idaho.
> 3. Defendants waive any State of Limitations defense.

Id. There has been no transcript of that hearing provided to this Court. The Washington Superior Court did not address whether it had subject matter jurisdiction over the case. *Id*.

Hearing on defendants' Motion to Dismiss in the instant case before this Court was initially scheduled for January 7, 2014. Prior to that date, the parties requested a continuance. The Court held a hearing on January 7, 2014, and informed the parties that because Wells Fargo had filed an affidavit, this Court would treat the defendants' Motion to Dismiss as a Motion for Summary Judgment, and rescheduled the hearing on that Motion for Summary Judgment for February 27, 2014. Up to the date of the January 7, 2014, hearing, defendants had failed to file a memorandum in support of their motion to dismiss. On January 30, 2014, the defendants filed a Memorandum in Support of Motion to Dismiss. It was accompanied by the Affidavit of Paul W. Daugharty. Attached to the Affidavit of Paul W. Daugharty are copies of the Complaint and First Amended Complaint filed in Clark County Washington case number 11-2-03850-9, and a copy of the Trustee's Deed dated June 29, 2011, which was recorded in the Kootenai County Recorder's Office on July 6, 2011. Affidavit of Paul W. Daugharty, Exhibits A, B and C. Wells Fargo filed a response brief entitled Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss (Summary Judgment) on February 11, 2014. Defendants did not file a reply memorandum.

For the reasons set forth below, the Court grants defendants' motion for summary judgment in part and denies the defendants' motion for summary judgment in part.

II. STANDARD OF REVIEW.

In considering a motion to dismiss under Idaho Rule of Civil Procedure 12(b), the court may examine only those facts that appear in the complaint and any facts that are

appropriate for the court to take judicial notice of. *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990). Where matters outside the pleadings are considered by the court, the court must treat the motion to dismiss as a motion for summary judgment. *See Masi v. Seale*, 106 Idaho 561, 562, 682 P.2d 102, 103 (1984); *Hellickson*, 118 Idaho at 276, 796 P.2d at 153. This is because the nature of a motion to dismiss changes when the Court considers matters that are outside the pleadings:

> If, on a motion asserting a defense numbered (6) to dismiss for failure to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

I.R.C.P. 12(b)(6). Affidavits are considered matters outside the pleadings. Similarly, taking judicial notice is considered to be outside the pleadings, as it is a substitute for taking evidence. *Hellickson v. Jenkins*, 118 Idaho 273, 276, 796 P.2d 150, 153 (Ct. App. 1990). In this case, the Court has been asked to consider matters outside the pleadings, and the Court informed the parties it would treat the motion to dismiss as a motion for summary judgment.

Summary judgment is appropriate "if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c). The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Yoakum v. Hartford Fire Ins. Co.*, 129 Idaho 171, 923 P.2d 416 (1996). To withstand a motion for summary judgment, the non-moving party's case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Zimmerman v. Volkswagen of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 69 (1996).

Liberal construction of the facts in favor of the non-moving party requires the court to draw all reasonable factual inferences in favor of the non-moving party. *See Williams v. Blakley*, 114 Idaho 323, 324, 757 P.2d 186, 187 (1988); *Blake v. Cruz*, 108 Idaho 253, 255, 698 P.2d 315, 317 (1985). An adverse party may not simply rely upon mere allegations in the pleadings, but must set forth in affidavits specific facts showing there is a genuine issue for trial. *Id*.; *see Rhodehouse v. Stutts*, 125 Idaho 208, 211, 868 P.2d 1224, 1227 (1994). If reasonable people can reach different conclusions as to the facts, then the motion must be denied. *Ashby v. Hubbard*, 100 Idaho 67, 593 P.2d 402 (1979).

III. ANALYSIS.

A. This Court has Subject Matter Jurisdiction Over This Action Pursuant to I.R.C.P. 12(b)(1).

Subject matter jurisdiction is "the power to determine cases over a general type or class of dispute." *Bach v. Miller,* 144 Idaho 142, 145, 158 P.3d 305, 308 (2007). The Idaho Constitution grants Idaho district courts original jurisdiction over all matters at law and in equity. Idaho Const. art. V, § 20. "[S]ubject matter jurisdiction can never be waived or consented to, and a court has a *sua sponte* duty to ensure that it has subject matter jurisdiction over a case." *State v. Urrabazo*, 150 Idaho 158, 163, 244 P.3d 1244, 1249 (2010) (*overruled on other grounds*, *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 265 P.3d 502 (2011)). If this Court lacks subject matter jurisdiction, it must dismiss this case. I.R.C.P. 12(g)(4). The Idaho Supreme Court has cautioned the consequences of rendering a decision where a court does not have subject matter jurisdiction: "[J]udgments and orders made without subject matter jurisdiction are void and 'are subject to collateral attack, and are not entitled to recognition in other states under the full faith and credit clause of the United States

Constitution.'" *Urrabazo*, 150 Idaho at 163, 244 P.3d at 1249 (citing *Sierra Life Ins. Co. v. Granata*, 99 Idaho 624, 626-27, 586 P.2d 1068, 1070-71 (1978)). Moreover, whether a district court has subject matter jurisdiction is not dependent upon the merits of the action. *Bagley v. Thomason*, 155 Idaho 193, 307 P.3d 1219, 1222 (2013).

Idaho Code § 5-401 governs causes of action over real property disputes, and it provides:

> Actions for the following causes must be tried in the county in which the subject of the action or some part thereof is situated, subject to the power of the court to change the place of trial, as provided in this code:
>
> 1. For the recovery of real property, or of an estate or interest therein, or for the determination in any form of such right or interest and for injuries to real property.
> 2. For the partition of real property.
> 3. For the foreclosure of a mortgage of real property. Where the real property is situated partly in one county and partly in another, the plaintiff may select either of the counties, and the county so selected is the proper county for the trial of such action.

Similarly, I.C. § 5-514(c) requires that any person who owns, uses or possesses real property situated within this state submit himself "to the jurisdiction of the courts of this state as to any cause of action arising from" said ownership, use or possession.

The defendants' Motion to Dismiss cites I.R.C.P. 12(b)(1) as a basis for dismissal of this action. Defendant Lynn R. Seagren and Wendy M. Seagren Family Trust's Motion to Dismiss, p. 1. However, there is simply no dispute that the property that is the underlying basis of this dispute is located in Coeur d'Alene, Idaho. Complaint, Exhibit A, p. 1. The Trustee's Deed was recorded in the Kootenai County Recorder's Office. Memorandum in Support of Motion to Dismiss, p. 2; Affidavit of Paul W. Daugharty, Exhibit C. As stated above, I.C. §§ 5-401 and 5-514 grant district courts of the county where real property is situated the power to adjudicate disputes over said property. Accordingly, this Court has subject matter jurisdiction over this matter.

Since the Court told the parties on January 7, 2014, that it would consider matters outside the pleadings and treat this matter as a motion for summary judgment, it is unnecessary to discuss plaintiff's analysis regarding facial versus factual challenges to an I.R.C.P 12(b)(1) jurisdictional challenge.

B. This Court Has Personal Jurisdiction Over Defendants Pursuant to I.R.C.P. 12(b)(2).

For this Court to have personal jurisdiction over the defendants, the Court must find that: (1) the defendants' conduct falls within the scope of Idaho's long-arm statute, Idaho Code § 5-514; and (2) the contacts with the State of Idaho were sufficient under the Due Process Clause of the U.S. Constitution to permit the exercise of personal jurisdiction by the Court. *See Blimka v. My Web Wholesaler, LLC,* 143 Idaho 723, 726, 152 P.3d 594, 597 (2007). However, this defense can be waived. *See Gage v. Harris,* 119 Idaho 451, 453, 807 P.2d 1289 (Ct. App. 1991). "[T]here are a 'variety of legal arrangements' by which a litigant may give 'express or implied consent to the personal jurisdiction of the court.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473, 105 S. Ct. 2174, 2182, 85 L. Ed. 2d 528 (1985) (citing *Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee,* 456 U.S. 694, 703, 102 S. Ct. 2099, 2105, 72 L. Ed. 2d 492 (1982).

"The district court has no personal jurisdiction outside of the state boundaries except as provided by the Idaho long-arm statute." *Brannon v. City of Coeur* d'Alene, 153 Idaho 843, 851, 292 P.3d 234, 242 (2012). Among other things, Idaho's long-arm statute, Idaho Code § 5-514, grants the courts of Idaho jurisdiction over a defendant "as to any cause of action arising from the . . . ownership, use or possession of any real property situate within this state." I.C. § 5–514(c). "The concept of 'arising from' is broad. It is not restricted solely to actions challenging the ownership. Rather, it suffices

if there is a 'substantial connection' between the ownership of land in Idaho and the cause of action." *Tandy & Wood,* Inc., *v. Munnell,* 97 Idaho 142, 144, 540 P.2d 804, 806 (1975). "The intent of the Legislature when enacting [Idaho Code § 5–514] was to grant state courts all personal jurisdiction available under the Due Process Clause of the United States Constitution." *Donaldson v. Donaldson*, 111 Idaho 951, 955, 729 P.2d 426, 430 (Ct.App. 1986) (citing *Baker v. Baker,* 100 Idaho 635, 603 P.2d 590 (1979); *Doggett v. Electronics Corp. of America,* 93 Idaho 26, 454 P.2d 63 (1969)). As such, personal jurisdiction may be properly exercised over a non-resident defendant when the constitutional standards of the Due Process Clause are also met. The Due Process Clause allows for the exercise of personal jurisdiction over a non-resident defendant when (1) "the defendant has certain minimum contacts with the forum state such that maintenance of the suit does not offend traditional notions of fair play and substantial justice;" and (2) the non-resident defendant "purposefully avails itself of the privilege of conducting activities in the forum State, thus invoking the benefits and protections of its laws." *Schneider v. Sverdsten Logging Co., Inc.*, 104 Idaho 210 212, 657 P.2d 1078, 1080 (1983) (internal quotations omitted). "[T]he defendant's conduct and connection with the forum state are such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagon Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

Despite the fact that the defendants are residents of Washington, this Court has personal jurisdiction over them under both the two-part personal jurisdiction analysis and because they waived their right to contest personal jurisdiction in Idaho. Each is discussed in turn below.

Idaho has jurisdiction over this action pursuant to Idaho Code § 5-514(c). The cause of action, although for the recovery of monetary damages, arises from the Seagrens' ownership of real property located in Kootenai County, Idaho. There is a substantial connection between the ownership of land by the Seagrens here in Idaho and Wells Fargo's request for money damages following the nonjudicial foreclosure of the deed of trust for that same property. If the Seagrens did not execute a note and deed of trust for the property, there would be no cause of action in this case.

Moreover, the Seagrens' contacts with Idaho are sufficient under the Due Process Clause of the United States Constitution to allow for personal jurisdiction in this case. The Seagrens "purposefully avail[ed themselves] of the privilege of conducting activities in the forum State, thus invoking the benefits and protections of its laws". *Schneider* , 104 Idaho at 212, 657 P.2d at 1080. By owning land in Idaho, they have been afforded the benefits and protections of Idaho's real property laws and they should have reasonably anticipated being haled into court here, if a dispute arose surrounding the property. As such, they are required to defend this suit here in Idaho.

Since this Court finds personal jurisdiction is established through the analysis provided above, it is unnecessary to discuss Wells Fargo's argument that the Washington Superior Court judge found that the Seagrens had stipulated to jurisdiction in Idaho, and thus, Seagrens have waived their right to challenge personal jurisdiction in Idaho when they moved to dismiss the action in Washington. Apart from Seagrens' stipulation to jurisdiction by this Court, this Court specifically finds it has personal jurisdiction over the Seagrens. The stipulation by the Seagrens in the Washington case, to jurisdiction in this Idaho Court, only makes Seagrens' claims that this Court lacks jurisdiction all the more untenable.

C. The Washington Superior Court Had Subject Matter Jurisdiction Over the Seagrens; Wells Fargo is Entitled to Offer Evidence in this Idaho Case to Support its Claims Against the Seagrens, but not Against the Seagren Family Trust.

The court should make "every reasonable intendment . . . to sustain a complaint against a motion to dismiss for failure to state a claim." *Idaho Comm'n on Human Rights v. Campbell*, 95 Idaho 215, 217, 506 P.2d 112, 114 (1973) (citing *Wackerli v. Martindale*, 82 Idaho 400, 353 P.2d 782 (1960); *Stewart v. Arrington Constr. Co.*, 92 Idaho 526, 446 P.2d 895 (1968)). "[T]he nonmoving party is entitled to have all inferences from the record and pleadings viewed in its favor, and only then may the question be asked whether a claim for relief has been stated." *Coghlan v. Beta Theta Pi Fraternity,* 133 Idaho 388, 398, 987 P.2d 300, 310. Dismissal is appropriate only if it "appear[s] beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Ernst v. Hemenway & Moser, Co., Inc.,* 120 Idaho 941, 946, 821 P.2d 996, 1001 (Ct.App. 1991). "The issue is not whether the plaintiff will ultimately prevail, but whether the party is entitled to offer evidence to support the claims." *Orthman v. Idaho Power Co.,* 126 Idaho 960, 962, 895 P.2d 561, 563 (1995) (quoting *Greenfield v. Suzuki Motor Co. Ltd.,* 776 F.Supp. 698, 701 (E.D.N.Y.1991)).

Idaho Code § 45-1512 permits the beneficiary of a deed of trust to seek a deficiency judgment following a trustee's sale under a deed of trust. It provides:

> At any time within 3 months after any sale under a deed of trust, as hereinbefore provided, a money judgment may be sought for the balance due upon the obligation for which such deed of trust was given as security, and in such action the plaintiff shall set forth in his complaint the entire amount of indebtedness which was secured by such deed of trust and the amount for which the same was sold and the fair market value at the date of sale, together with interest from such date of sale, costs of sale and attorney's fees. Before rendering judgment the court shall find the fair market value of the real property sold at the time of sale. The court may not render judgment for more than the amount by which the entire amount of indebtedness due at the time of sale exceeds the fair market

> value at that time, with interest from date of sale, but in no event may the judgment exceed the difference between the amount for which such property was sold and the entire amount of the indebtedness secured by the deed of trust.

I.C. § 45-1512.

In their Memorandum in Support of Motion to Dismiss, the defendants allege Wells Fargo failed to comply with the three-month statutory requirements set forth above and, as such, is precluded from asserting the right to seek a deficiency judgment under Idaho Code § 45-1512. Memorandum in Support of Motion to Dismiss, p. 3. Wells Fargo concedes the Complaint in this Idaho case was not filed within three months of the sale, as required by Idaho Code § 45-1512. Memorandum in Opposition to Motion to Dismiss, p. 6. However, Wells Fargo maintains the Seagrens are barred from asserting a statute of limitations defense because the Complaint filed in Washington Superior Court case number 11-2-03850-9 was timely filed within the three months of the nonjudicial foreclosure of the deed of trust and the presiding Washington Superior Court judge conditioned the dismissal of the Washington case upon "Defendants waiv[ing] any Statute of Limitations defense." *Id.*; Affidavit of Jeffrey M. Wilson, p. 2, Exhibit A; Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, p. 9. In response, the Seagrens argue that since the Washington Superior Court did not have subject matter jurisdiction, the order issued in Washington Superior Court case number 11-2-03850-9 is void and as such, that court could not have required the defendants to waive their statute of limitations defense. Memorandum In Support of Motion to Dismiss, p. 4. The defendants also note that the Seagren Family Trust was not a party to the Washington action. *Id.* While that is true, the "Seagren Family Trust" is not a party to this Idaho action either. Wells Fargo accurately states the actual situation in this Idaho case:

> The Seagren Defendants also raised another issue that Washington action was jurisdictionally defective because the "trust" itself was not made a party in that action. A deficiency action under I.C. § 45-1512 is to be brought upon the underlying obligation, as is clarly stated on the face of the statute itself:
>
> > At any time within 3 months after any sale under a deed of trust, as hereinbefore provided, a money judgment may be sought for the balance due **upon the obligation for which such deed of trust was given as security**….
>
> (Emphasis added). Only the Seagren Defendants, individually, were obligated as borrowers on the underlying "Fixed Rate Loan Note" upon which a deficiency action could be brought under I.C. § 45-1512. Consequently, only the Seagrens individually—and not the trust—were the proper parties defendant in the deficiency action. Furthermore, under Idaho law, a trust is not itself a separate legal entity. Instead it is the trustees who are the parties against whom an action involving the trust is brought. Again, this would be the Seagren Defendants individually—not the trust.

Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, pp. 7-8. This Court agrees. This Court also notes that in the Washington Superior Court case the Seagrens were not named in their capacity as trustees. This Court also finds that because the Seagrens were not named in their capacity as trustees in that Washington Superior Court case, they cannot be named in that same capacity in this Idaho case.

In its order, the Washington Superior Court failed to address whether it had subject matter jurisdiction over this cause of action. This Idaho Court must now make the determination whether the Washington Superior Court had subject matter jurisdiction. If this Court finds that the Washington Superior Court had subject matter jurisdiction, then the Washington Superior Court order for case number 11-2-03850-9 is binding on the Seagrens and the Seagrens will be barred from now asserting a statute of limitations defense.

The Seagrens' argument is centered around the fact that "Washington is a non-recourse state and no deficiency is available after the non-judicial foreclosure of the

Deed of Trust." Memorandum in Support of Motion to Dismiss, p. 3. Counsel for Seagrens continues:

> Wells Fargo should have filed for the deficiency in Idaho. It failed to do so and the Washington Court did not have subject matter jurisdiction to hear the matter.

Id. Seagrens' argument is far too simplistic. The fact that Washington is a "non-recourse" state has nothing to do with whether or not the Washington Superior Court had subject matter jurisdiction over the case. Even if the Washington Superior Court could not grant a deficiency, that fact would not deprive the Washington Superior Court of subject matter jurisdiction. "Subject matter jurisdiction governs the court's authority to hear a particular type of controversy, not a particular case." *Ralph v. State Dep't of Natural Res.*, 171 Wash.App. 262, 267, 286 P.3d 992, 994 (Wash.App.Wash.Div.1 2012) *review granted*, 176 Wash.2d 1024, 301 P.3d 1047 (Wash. 2013). As discussed below, even if Washington law were to have been applied, the Washington Superior Court would still have subject matter jurisdiction over the case, even though it could not have granted a deficiency had it applied Washington law.

However, as Wells Fargo points out, the Washington Superior Court had every ability to apply Idaho law to this dispute, had the Washington case continued on. Plaintiff's Memorandum in Opposition to Defendants' Motion to Dismiss, p. 5. Wells Fargo correctly notes: "Washington Courts can apply Idaho law under applicable choice of law rules according to the parties' contract, and then award the requested deficiency judgment under Idaho law." *Id.,* citing *Parrott Mechanical, Inc. v.Rude,* 118 Wash.App. 859, 863-64, 78 P.3d 1026, 1029 (Wash.App. 2003). Wells Fargo correctly notes that the "Fixed Rate Loan Note" which the Seagrens entered into, provides the Note and all related documents would be governed by "the laws of the state in which

the Property is located." *Id.,* citing Affidavit of Paul W. Daugherty, Exhibit A and B, Section 17. There is no dispute the property is in Idaho; thus, I.C. § 45-1512 would have applied in the Washington case.

Thus, Seagrens' argument that the Washington Superior Court lacked subject matter jurisdiction because "Washington is a non-recourse state and no deficiency is available after the non-judicial foreclosure of the Deed of Trust" (Memorandum in Support of Motion to Dismiss, p. 3) is misplaced for two reasons. First, because the ability or inability to grant a deficiency has nothing to do with an analysis of subject matter jurisdiction. As mentioned above, "Subject matter jurisdiction governs the court's authority to hear a particular type of controversy, not a particular case." *Ralph v. State Dep't of Natural Res.*, 171 Wash.App. 262, 267, 286 P.3d 992, 994 (Wash.App.Wash.Div.1 2012). This Court finds the Washington Superior Court had subject matter jurisdiction to hear this case. Second, Seagrens' argument is factually misplaced because Washington's non-deficiency statute would likely not have been applied by the Washington Superior Court. Instead, as discussed above, the Idaho statute allowing for a deficiency would likely have been applied by the Washington Superior Court, given the choice of law language in the note which applied to all related documents. As discussed below, Seagrens' factual error and the fact that Idaho law would have been applied by the Washington Superior Court is not what convinces this Idaho Court that the Washington Superior Court had subject matter jurisdiction.

Just as in Idaho (I.R.C.P. 12(g)(4)) , a "[l]ack of subject matter jurisdiction renders a [Washington] trial court powerless to decide the merits of the case." *Angelo Prop. Co., LP v. Hafiz*, 167 Wash.App. 789, 808, 274 P.3d 1075, 1085 (Wash.App.Div.2 2012) *review denied*, 175 Wash. 2d 1012, 287 P.3d 594 (Wash.

2012) (citing *Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County,* 135 Wash.2d 542, 556, 958 P.2d 962 (Wash. 1998 *en banc*)). A case must be dismissed if a court lacks subject matter jurisdiction. *Ralph*, 171 Wash. App. at 268, 286 P.3d at 994 (citing *Young v. Clark,* 149 Wash.2d 130, 133, 65 P.3d 1192 (Wash. 2003 *en banc*)).

Section 4.12.010(1) of the Revised Code of Washington requires that actions "for the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property" must be commenced in the county where the subject of the action is situated. RCW 4.12.010(1). On the other hand, actions for monetary recovery are governed by Section 4.12.025 of the Revised Code of Washington and "may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action." RCW 4.12.025; *see also Washington State Bank v. Medalia Healthcare LLC*, 96 Wash.App. 547, 555, 984 P.2d 1041, 1045 (Wash.App.Div. 1 1999). Such actions are in personam and transitory in nature. *Id.*

If the "basis of the action is transitory and one over which the court has jurisdiction, the court may hear and determine the action even though a question of title to foreign land may be involved, and even though question of title may constitute the essential point on which the case depends." *Silver Surprize, Inc. v. Sunshine Min. Co.*, 74 Wash.2d 519, 526, 445 P.2d 334, 338 (Wash. 1968 *en banc*). This is consistent with the tendency that "'courts wherever possible have consistently construed actions concerning real estate to be transitory rather than local' and that trend is toward making all money damage actions transitory." *Washington State Bank*, 96 Wash.App. at 558, 984 P.2d at 1047 (citing *Muller v. Brunn*, 105 Wis.2d 171, 185, 313 N.W.2d 790, 796

(Wis. 1982) *abrogated by Vill. of Trempealeau v. Mikrut*, 273 Wis.2d 76, 681 N.W.2d 190 (Wis. 2004)).

In the instant action, Wells Fargo seeks money damages for a balance owing following a nonjudicial foreclosure of a deed of trust. Complaint, p. 3. Thus, it is a transitory action for monetary recovery, not subject to the local requirement of RCW 4.12.010, and within the jurisdiction of the Washington Superior Court. *Washington State Bank v. Medalia Healthcare LLC*, 96 Wash. App. 547, 557, 984 P.2d 1041, 1046 (Wash.App.Div.1 1999). As such, the order issued by the Washington Superior Court judge finding that "Defendants waive any Statute of Limitations defense" is binding on the Seagrens. Exh. A to Affidavit of Jeffrey M. Wilson, p. 2. Accordingly, this Court finds that the Seagrens waived any defenses they had for Wells Fargo failing to comply with the three-month statute of limitations requirement set forth in Idaho Code § 45-1512 when the action in Washington was dismissed.

However, in the Clark County, Washington Superior Court case number 11-2-03850-9, the Seagrens were not named in their capacities as trustees of the Seagren Family Trust. Wells Fargo argues that the trust is not a separate legal entity but appears to concede that the Seagrens were not named in their capacities as trustees of the Seagren Family Trust in that Washington Superior Court case. Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss, p. 8. The trial court "has no authority to adjudicate the rights of parties not before [it]." *In re Marriage of Estep*, 172 Wash.App. 1003 (Wash.App.Div.1 2012) (citing *In re Marriage of McKean,* 110 Wash.App. 191, 194-95, 38 P.3d 1053, 1054-55 (Wash.App.Div.2 2002)). Accordingly, if an action is not " initiated . . . against the trust by suing a party in his or her

representative capacity as trustee, the trial court lack[s] in personam jurisdiction over the trust . . . ." *Id*. (citing *McKean,* 110 Wash.App. 191, 196, 38 P.3d 1053, 1055).

In the Washington Superior Court case, Wells Fargo failed to sue the Seagrens in their capacity as Trustees of the Seagren Family Trust. As such, the Washington Superior Court order is not binding upon the Seagrens in their capacity as Trustees of the Seagren Family Trust. Having raised the statute of limitations affirmative defense in its Memorandum in Support of Motion to Dismiss, and Wells Fargo being unable to establish that the three-month requirement set forth in Idaho Code § 45-1512 was complied with, Wells Fargo's claims must be dismissed against the Seagrens in their capacity as trustees of the Seagren Family Trust.

The Court must now determine whether the Complaint filed by Wells Fargo complies with the remaining requirements set forth above in I.C. § 45-1512 as they pertain to the Seagrens in their individual capacities. The Complaint contains: provisions for the amount of indebtedness that was secured by the deed of trust, $237,813.00; the fair market value at the date of sale, $100,000.00; interest from the date of sale, $20,313.00; and attorney's fees, $2,500.00 if the matter was uncontested and additional fees pursuant to Idaho Code § 12-120 if contested.

While the Complaint does not specifically provide a paragraph that contains the amount for which the property was sold, a reasonable inference can be made in favor of Wells Fargo that the sale price was $100,000.00 since the Complaint contains the amount of indebtedness prior to the sale, $237,813.00 and the amount of indebtedness following the sale, $137.813.00. The Complaint also fails to contain a paragraph regarding the costs of sale. However, the Court could make the inference that the cost to Wells Fargo was $0.00, since they do not appear to be requesting any amount for the sale.

As stated above, under I.R.C.P. 12(b)(6), the Complaint should not be dismissed unless it appears beyond doubt that the plaintiff Wells Fargo can prove no set of facts supporting its claim that would entitle it to relief. It is not beyond doubt that Wells Fargo can prove no set of facts in support of its claim which would entitle it to relief. Accordingly, defendants' motion to dismiss for failure to state a claim upon which relief can be granted is denied as it relates to the Seagrens, but is granted as it relates to their capacities as trustees for the Seagren Family Trust.

IV. CONCLUSION AND ORDER.

For the reasons set forth above, the Court denies defendants' motion to dismiss (motion for summary judgment) in part as it pertains to defendant Lynn R. Seagren and Wendy M. Seagren, and grants defendants' motion to dismiss (motion for summary judgment) in part as it pertains to the Seagrens in their capacity as trustees of the Seagren Family Trust.

IT IS HEREBY ORDERED defendants' motion to dismiss (motion for summary judgment) as it pertains to defendant Lynn R. Seagren and Wendy M. Seagren in their individual capacity is DENIED.

IT IS FURTHER ORDERED defendants' motion to dismiss (motion for summary judgment) as it pertains to the Seagrens in their capacity as trustees of the Seagren Family Trust is GRANTED.

Entered this 4th day of March, 2014.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of March, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
Jeffrey M. Wilson	208-384-0442	Paul W. Daugharty	666-0550

_____
Jeanne Clausen, Deputy Clerk