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SUPERIOR COURT OF WA.
SHARON K. FOGO
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18-2-00464-23
MT 24
Motion
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SUPERIOR COURT OF WASHINGTON
COUNTY OF MASON

10 WILMINGTON SAVINGS FUND SOCIETY,
11 FSB, AS TRUSTEE OF STANWICH
MORTGAGE LOAN TRUST A,

12 Plaintiff,

13 v.

14 THE ESTATE OF BARRY MORRIS; THE
15 UNKNOWN HEIRS, DEVISEES AND
16 ASSIGNEES OF BARRY MORRIS;
17 MAUREEN ROSAS; LOUIS L. MORRIS;
18 JENNIFER SEACHRIST; REBECCA L.
19 GUY; TIMBERLAKE COMMUNITY CLUB,
20 INC.; DYNAMIC COLLECTORS, INC.;
AND OTHER PERSONS OR PARTIES
UNKNOWN CLAIMING ANY RIGHT,
TITLE, LIEN, OR INTEREST IN THE REAL
PROPERTY COMMONLY KNOWN AS 230
E. STAVIS RD., SHELTON, WA 98584,

21 Defendants.

Case No. 18-2-00464-23

MOTION FOR SERVICE BY
PUBLICATION; AND MEMORANDUM OF
POINTS AND AUTHORITIES

[4.28.140 and RCW 4.28.100(6)-(7)]

22 Plaintiff WILMINGTON SAVINGS FUND SOCIETY, FSB, AS TRUSTEE OF
23 STANWICH MORTGAGE LOAN TRUST A, ("Plaintiff") moves the Court for an order
24 granting service by publication as to Defendants THE ESTATE OF BARRY MORRIS; THE
25 UNKNOWN HEIRS, DEVISEES AND ASSIGNEES OF BARRY MORRIS AND OTHER
26 PERSONS OR PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, LIEN, OR
27 INTEREST IN THE REAL PROPERTY COMMONLY KNOWN AS 230 E. STAVIS RD.
28 SHELTON, WA 98584 (Collectively "Defendants").

I.

MEMORANDUM OF POINTS AND AUTHORITIES

As shown by the Declaration in support, good cause exists for an order granting service by publication on Defendants. Although Plaintiff has exercised reasonable diligence to ascertain the names and residences Defendants, Plaintiff has been unable to do so.

As Defendants are persons who may claim an interest in the subject property, through lien, intestacy, devise, or otherwise, Defendants are proper parties to this foreclosure action. Accordingly, the Court should grant an order that service of the Summons be made on such Defendants by publication thereof.

Statute requires that in order to publish on unknown heirs, Plaintiff must satisfy the Court that 1) the heirs or devisees of the deceased would be a proper party if known, and 2) that reasonable due diligence has not revealed their names and residences. RCW 4.28.140.

The heirs or devisees of the deceased are a proper party. This is an action for foreclosure of real property. One or more owners of the property are deceased. No probate has been opened and no personal representative, executor, or administrator of the estate or estates has been appointed. Therefore the current owner of the Subject Property cannot be conclusively established (Although it may possible to establish without probate who the *likely but not certain* heirs or devisees might be). Thus, where there is no probate, the “unknown heirs or devisees of the deceased” as well as any known likely heirs or devisees—but not every conceivable relative or charitable organization—are proper and necessary parties to a lawsuit involving the Subject Property.

Further, reasonable due diligence has not revealed further parties reasonably likely to be heirs or devisees. As shown by the Declaration of Shannon K. Calt, reasonable due diligence has revealed some likely heirs already named as defendants in this action but due to lack of probate, the possibility that the property was left to someone else cannot be ruled out.

Moreover, even if Plaintiff named in this lawsuit every conceivable potential heir, assignee, or devisee of the owner or owners, Plaintiff would still not be able to establish to the satisfaction of a title insurer that all possible heirs, assigns, devisees, or other persons who may

1 claim an interest in the Subject Property have been ascertained by name and residence so that the
2 sheriff's sale will convey insurable title to the Subject Property. Accordingly, there is good
3 cause to allow Plaintiff to serve Unknown Defendants by publication, pursuant to RCW 4.28.140
4 and 4.28.100(6)-(7).

5 **II.**

6 **CONCLUSION**

7 As the potential heirs, assigns, or devisees of Borrower are persons who may claim an
8 interest in the Subject Property, through intestacy or otherwise, Defendants are proper parties to
9 this foreclosure action. Accordingly, the Court is authorized to grant an order that service of the
10 Summons be made on such Unknown Defendants by publication thereof.

11
12 ALDRIDGE PITE, LLP

13
14 Dated: 12/18/18

By: 

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Attorneys for Plaintiff

WILMINGTON SAVINGS FUND SOCIETY,

FSB, AS TRUSTEE OF STANWICH

MORTGAGE LOAN TRUST A