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NO. 68545-7-1
COURT OF APPEALS STATE OF WASHINGTON
DIVISION I

Bank of America NA, as successor by merger to Lasalle Bank NA, as trustee to Wamu Mortgage Pass-Through Certificates Series 2006 AR11 Trust, Respondent

v.

Christopher L. Short et al., Appellant

Reply Brief

Christopher L. Short, Pro se
P.O. Box 1080
Republic, Washington 99166
(509) 775-2521

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I. INTRODUCTION

Appellant believes that the court may shorten their analysis of Respondent's Brief regarding the material facts describing the chain of title by asking Respondent's attorney Ms. Barbara Bollero in accordance with RPC 3.3 if the allegation at ¶6 of Respondent's Complaint [CP 304, ¶6.] is a true statement of fact. Ms. Bollero knows ¶6 of Trust's Complaint to be a false statement and therefore the mirrored statements in the declarations supporting Trust's Motion for Summary Judgment to also be false statements as well as all allegations and statements predicated on the truth of ¶6 of the allegations in Trust's Complaint.

> At page 18 of Respondent's Brief we find the statement:
>
> "Mr. Short argues that because his Note was "not part of the [WaMu] asset pool seized by the FDIC … [it] could not have been assigned to [Chase] …, and therefore … subsequent assignments of the [Note and Deed of Trust] … would be of necessity a nullity[.]" (Appellant's Brief pp. 21-22.)

The factuality of the Appellant's statement is not disputed

II. ARGUMENT

A. Allegations 6 & 7

In the event the short analysis remedy above is insufficient, the story the allegations in Trust's Complaint tell is not a factually accurate

story and therefore the declarations supporting Trust's Motion for Summary Judgment which mirror said story, are also factually inaccurate.

Trust states that on 09/25/2008 a Note and Deed of Trust (Loan) executed by Mr. Short was assigned to JP Morgan Chase Bank NA by means of an FDIC seizure and assignment of WAMU assets [CP 304, ¶6]. The Note and the Deed of Trust (Loan) were thus the sole property of JP Morgan Chase Bank NA.

Trust states that on 02/01/2009 and subsequent months Mr. Short failed to make monthly installment payments on the Note. [CP 305, ¶10.]

Then fully a year later on 03/23/2010 JP Morgan Chase Bank, NA sells Mr. Short's Note and Deed of Trust (Loan) which is in default to Plaintiff, Trust [CP305, ¶7.].

Trust's story would have us believe that JP Morgan Chase Bank, NA, with the complicity of several attorneys including Trust's current attorneys, conspired with JP Morgan Chase Bank, NA to defraud the investors in Trust by selling the investors in Trust a "Loan" that was in default and then defending the assets of the investors in Trust [Respondents Brief page 18 item 1] by charging the investors to foreclose on the defaulting "Loan" JP Morgan Chase Bank NA had not only sold to Trust but as "Gatekeeper" for Trust had approved for purchase.

To give the court some background Mr. Short has extensive experience in banking and real estate and he understands the rudiments of mortgage backed securities, so to him the above scenario did not seem plausible, even though Mr. Short had read and heard of a lot of corruption and fraud in the banking industry, this story just seemed over the top. Not only would it be prima facie evidence and an admission of securities fraud, but the special IRS tax status of the trust could be compromised by the failure to comply with the trusts charter.

Therefore Mr. Short initiated discovery, i.e. First Set of Interrogatories and Request for Production of Documents[1] to get to the bottom of the matter.

What Mr. Short learned from Trust's responses to his discovery requests is that indeed the story told in Trust's complaint was not true. The pivotal event described at allegation ¶6 of Trust's Complaint [CP 304, ¶6.] that JP Morgan Chase Bank, NA had acquired Mr. Shorts Note and Deed of Trust ("Loan") from Washington Mutual FA ("WAMU") by means of

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[1] Trust failed to respond to the discovery requests and instead filed a motion for summary judgment. Now the odd thing about this first motion for summary judgment was that the person making the declaration in support of the motion was Trust's attorney Mr. Albert Lin [CP 299]. So not only was there the RPC 3.1 violation of lawyer as witness, but the fact it seemed completely un-plausible that Mr. Lin would have the personal knowledge of events or employment history he swore under penalty of perjury to have. Mr. Short checked Mr. Lin's resume on the company website and other sources and found no evidence Mr. Lin had ever worked for any of the plaintiff's as stated.
Mr. Short suspicious, sent Mr. Lin a letter informing Mr. Lin he intended to take his deposition and requested Mr. Lin supply him dates he could available for such inquiry. Mr. Lin did not respond.
Meanwhile the interrogatories remain unanswered and Mr. Short moved the court to compel Trust to respond, which the court so ordered and Trust complied.
Ms. Urquidi was substituted for Mr. Lin on Trust's second motion for summary judgment.

an FDIC seizure and assignment of WAMU assets, in fact did not happen. The reason it did not and could not happen was WAMU did not own Mr. Short's Note ("Loan") at the time the FDIC seized WAMU.

INTERROGATORY NO. 1.4: **Was the subject loan owned by WAMU at the time the FDIC sold certain WAMU assets to JP Morgan Chase? Yes or No?** If the answer is yes, provide all documents relating to the transfer of the subject loan to JP Morgan Chase.

RESPONSE TO INTERROGATORY NO. 1.4:

No ... [CP 248, ¶1.4]

Trust in their response to Interrogatory 1.4 goes on to provide an alternative scenario of events, however Trust did not amend their Complaint to conform to facts as now alleged.

In Respondent's Brief Trust at page 18 ¶2 appears to be arguing this alternate un-plead theory by first tacitly admitting that ¶6 of Trust's Complaint is false and then claiming "Chase" has some right, again up-plead and unsubstantiated, to "foreclose irrespective of what entity owned the Note"

Again Trust has not amended their original Complaint nor is there any evidence to support a claim based solely on the unsubstantiated answer to Interrogatory 1.4. This statement may be false as well.

The only thing we know for sure is that the response to Interrogatory 1.4 directly contradicts the allegation at ¶6 of Trust's complaint [CP 304, ¶6.]. And further because each statement describes the same event happening at different times, each statement mutually excludes the other from being true. It is possible however that both statements are false.

Again, Appellant is not saddled with the burden of sorting out the disparate statements made by Respondent or defending some un-plead theory, but the Appellant's burden is to show that the allegations, the material facts of the Complaint are in dispute, and here the evidence of a dispute in the material facts, comes directly from Respondent.

B. WCCR 54(c)

Appellant also believes the matter regarding the rules of evidence at issue here, WCCR 54 (c) which Respondent argues does not apply because Trust is not suing on a negotiable instrument i.e. a Note can similarly be dispatched by the court by simply reading the clear language at ¶1, ¶2, and stated even more straightforwardly at ¶7 of Trust's prayer for judgment of the Complaint [CP 307 ¶¶1,2, CP 308, ¶7.].

B. COMPLAINT-PRAYER JUDDGMENT (WCCR 54(c))

> Paragraph 1, 2 & 7 of Trust's payer for judgment are inserted here for ease of access. [CP 307 ¶¶1,2, CP 308, ¶7.]

1. **For judgment against the borrower in the sum of $320,058.96**, together with interest at the rate of 7.032% per annum, late charges, and for such other sums advanced under the terms of the Note and Deed of Trust, for taxes, assessments, municipal charges, and other items which may constitute liens on the Property, together with insurance and repairs necessary to prevent impairment of the security, together with the costs of the title report, attorneys fees of $6,500.00 if this matter is uncontested, or as submitted by counsel, and such other amounts as the Court shall deem reasonable in case this action is contested, together with the costs and disbursements herein.

2. It be adjudged, **in the event of non-payment of the judgment** forthwith upon its entry, that the Deed of Trust be declared a valid first lien upon the land and premises described herein; **that the Deed of Trust be foreclosed** and that the Property covered thereby sold at a foreclosure sale in the manner provided by law, and the proceeds thereof be applied on said judgment and increased interest and such additional amounts as the plaintiff may advance for taxes, assessments, municipal charges, and such other items as may constitute lien upon the Property, together with insurance and repairs necessary to prevent impairment of the security, together with interest thereon from the date of payment.

7. **Adjudging Borrower personally liable for payment of the obligation secured** by the Deed of Trust and that a deficiency judgment be ordered following proceedings prescribed by law" [CP 307,308, ¶¶ 1,2 & 7.]

Trust in Respondent's Brief at page 14 ¶2 agrees that the pleadings of the Complaint should be authoritative in determining this issue. Trust then outside of rather obviously and ridiculously "cherry picking" paragraphs from Trust's prayer for judgment, "photoshops" the allegations of Paragraph 13 of Trust's Complaint to appear to be relevant. Said allegation ¶13 is not even directed at Mr. Short, but to Unknown Parties of several varieties and Does 1-10 and it appears to be in the form of an order rather than an allegation or prayer. [CP 306,¶13.]

Trust argues at page 12 ¶B. of Respondent's Brief that the trial court did not err by holding WCCR 54(c) did not apply.

WCCR 54(c) states:

> No Judgment shall be taken upon a negotiable instrument until the original instrument has been filed.

> Trust continues. "However, Mr. Short fails to understand that Plaintiff sued for judgment foreclosing the Deed of Trust, not for a money judgment on the note; accordingly WCCR 54(c) does not apply to this action."

Mr. Short's state of mind or what he understands or doesn't understand is not at issue here and seems to be injected into Trust's argument to demean Mr. Short's Pro Se status. What is at issue is what does Plaintiff's complaint at their prayer for judgment say.

Paragraph 1 specifically prays for **judgment against Mr. Short in the sum of $320,058.96**, plus the laundry list of add ons.

Paragraph 2 specifically prays that "**in the event of non-payment of the judgment... that the Deed of Trust be foreclosed....**"

Trust states at page 14 of Respondent's Brief:

"There can be no real dispute that the Complaint here was for judicial foreclosure, removing it from the scope of the cited rule. The Complaint asserted the "interest of...Defendants in the Property shall be eliminated at the time of the foreclosure sale by Plaintiff" (CP 306,¶13.)"

Again, Paragraph 13 of Plaintiff's Complaint is part of Trust's allegations and not even directed at Mr. Short but to Unknown Parties of several varieties and Does 1-10 and it appears to be in the form of an order rather than an allegation or prayer. [CP 306,¶13.]

Contrast this with paragraph 7 of Plaintiff's Complaint at the prayer for judgment:[CP 308, ¶ 7.]

"7. **Adjudging Borrower personally liable for payment of the obligation secured by the Deed of Trust** and that a deficiency judgment be ordered following proceedings prescribed by law."

THE COURT: If they're suing on the note, you're correct. They're not suing on the note. They're not seeking a judgment against you personally. They're seeking to foreclose on the security which secures the note. There's not a judgment against you personally.

At page 15 of Respondent's Brief, and further at page 15 the following:

"BOA did not seek "judgment on a negotiable instrument" under WCCR 54(c), *i.e.*, its action was *not* a suit on the Note."

Please.

Of Course a review of the outcome, the judgment of foreclosure, show the trial court specifically grants a personal money judgment against Mr. Short.

Notwithstanding that Trust in Respondent's Brief page 14 ¶2, (last sentence) and ¶3

"Thus, BOA chose to foreclose the Deed of Trust, not file suit on a negotiable instrument."

"Judge Mura granted Plaintiff the Judgment of Foreclosure that it sought – no more no less. Indeed, the form of Judgment which was entered is titled "Judgment of Foreclosure" (CP 414, 418.)"

Appellant directs the courts attention to said Judgment of Foreclosure and it will notice the first order of business is a MONEY AWARD wherein it is specifically stated at ¶ 1

"1. **A money judgment is granted against defendant, Christopher L. Short, borrower as listed above."**

C. "Chase".

Appellant draws the courts attention to Trust's complaint filed April 28, 2010 to the Caption header [CP 303, lines 9-10.] and [CP 303, ¶1.] the identification of Plaintiff. Nowhere to be found is the name JP Morgan Chase Bank NA or "Chase". No agency relationship of any sort is mentioned nor has "Chase" alleged any rights or requests for relief in the body of the Complaint.

Now JP Morgan Chase Bank NA does appear in two different forms in subsequent documents filed by Trust. In one form they are an agent and in the second form as evidenced on the declarations of Mr. Albert Lin And Ms. Araceli Urquidi they are a full fledged co-plaintiff.[CP 111, lines 11-12, CP 111, ¶2.]

There has been a lot of posturing and speculation with regard to"Chase" and what "Chase" can do with or without Trust, e.g. Respondent's Brief page 18 where it is stated "Chase" ....had the authority to foreclose irrespective of what entity owned the Note". The simple fact which Mr. Short pointed out is that Trust has not amended the original complaint nor has the court granted Trust any relief to amend or join any parties to Trust's original complaint, nor was Mr. Short been given notice in any manner that would account for the sudden appearance of "Chase" on court pleadings, to which Mr. Short has objected.[CP 304, lines 22-26.] Further alterations occur on the declarations of Mr. Lin and Ms.Urquidi. [CP 311, ¶2, CP 312, ¶3.]

Mr. Short requested and does request that all documents misidentifying plaintiff be rejected.

Trust goes on stating at Respondent's Brief page 23, ¶2:

"Similarly here, the *only* evidence before the trial court was that Chase was in possession of the Note, holding the instrument at Chase's secure warehouse (CP 115, ¶16; CP 249-250.)"

This is directly contradicted by Trust's Complaint, which at ¶8 states:

"Plaintiff is the sole owner and holder of the Note and Deed of Trust"

Again, "Chase" is not a plaintiff and is not identified as an agent for Plaintiff in the Complaint.

Trust again at Respondent's Brief page 23,24 ¶2:

> "There was also uncontroverted evidence that Chase is the servicing agent for the Note Owner,...Although given the opportunity to do so, Mr. Short *never* disputed that information by providing controverting evidence"

There is no statement, nor any evidence in Trust's Complaint that Chase is the servicing agent for the Note owner .The assumption the "red herring" is Respondent's use of the term "Note Owner", Mr. Short does not dispute nor is it material that Chase may or may not be the servicing agent for the WaMu Pass-Through Certificate Series 2006 AR11 Trust. Mr. Short disputes whether this Trust owns his loan. As Mr. Short has shown and as Respondent well knows the allegation at ¶6 of Trust's Complaint [CP 304, ¶6.] is false. What is left for Respondent to "hang their hat on" is the un-plead, unsubstantiated statement by an unidentified party in response to Interrogatory 1.4. This new theory is then parroted by Ms. Urquidi in her 2nd declaration, which destroys her credibility because she first mirrors the statement made in ¶6 of Trust's Complaint [CP 304, ¶6] and then makes a statement that excludes the possibility of that event.

Again, if Trust intends to argue a new allegation it needs to amend its Complaint. It is unfair and unreasonable for Mr. Short to be required to defeat every new chimera that Trust introduces when the allegations in Trust's Complaint are shown to be false.

Now this is not to say Mr. Short did not do due diligence to determine if the un-plead allegations may have some truth. Mr. Short read the Pooling and Servicing Agreement supplied by Trust and in said agreement the schedule identified as an inventory of loans was blank. Undeterred Mr. Short contacted the current office of the Trustee of the Trust, US Bank and was informed by them they had no information regarding Mr. Short's loan. Mr. Short also contacted the previous office of the Trustee of the Trust, Bank of America and was informed they had no record of his loan.

Again, Mr. Short has no burden to defend against un-plead allegations.

C. RESPONDENT'S STATEMENT OF CASE §B.

Trust's attorney Ms. Bollero at page 4 §B of Respondent's Brief under the heading Statement of the Case puts on a textbook demonstration on how to deceive the court while maintaining some plausible deniability for doing so. The information is presented in such a way so as to camouflage the fact that Trust's Complaint at ¶6 & ¶7 of the allegations

and repeated word for word in the declaration of Ms. Araceli Urquidi at ¶ 9 & ¶10 [CP 113, ¶¶9 &10.] are false statements, which as previously stated is known to Trust's attorneys.

§ B is a recounting of the chain of title of Mr. Short's Loan.

"B. Mr. Short's Loan is Securitized, Beneficial Interest in the Deed of Trust is Assigned to the Loan Owner's Trustee, and Servicing Rights to Mr. Short's Loan are Acquired by Chase"

Let's first look at how Trust's Complaint at ¶7 of the allegations [CP 305, ¶7.] and repeated word for word in the declarations of Ms Araceli Urquidi at ¶10 [CP 113, ¶10] which describe part of the events described at page 4 §B of Respondent's Brief.

"On 3/23/2010, the Note and Deed of Trust was assigned by JP Morgan Chase Bank, NA to Plaintiff. A copy of the assignment is attached as Exhibit D."

Clear and straightforward, contrasted with Respondent's Brief at page 4 §B where the first sentence provides this description of the event:

"The ownership interest in Mr. Short's loan was assigned[2] to a securtized mortgage loan trust named "WaMu Mortgage Pass-

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[2] Trust in Respondent's Brief at page 28 footnote 7 takes umbrage with Mr. Short for using the term assignment of the Note:

"Further no "assignment" of the Note – as demanded by Appellant – exists. See, n 6 *supra*

[Due to the length of this footnote, the full footnote is in the Appendix]

Through Certificates Series 2006-AR11 Trust" (the WaMu Trust"). (CP 245-46)"

In unpacking the terms used above we find that "WaMu Trust is the plaintiff, so that's a match. The term "loan" means the Note and Deed of Trust, so that's a match. The new information is the qualifying term "ownership interest". The term "ownership interest" bifurcates the Note and the Deed of Trust. One has a beneficial interest in a Deed of Trust due to ones ownership of the obligation secured by the Deed of Trust i.e. the Note. This means the Note was sold separately and not on 3/23/2010, the date alleged by Trust in their Complaint and in the declarations of Ms. Urquidi.

In order to further analyze what is being said here we need to notice that we are only told to whom Mr. Short's loan was assigned and not who assigned it. Why would this important piece of information be left out when it is so simply and clearly stated at ¶7 of the allegations of Trust's Complaint and the declarations of Ms. Urquiti, that JP Morgan Chase Bank, NA assigned it. The reason for this is the simple fact that JP Morgan Chase Bank, NA did not ever own Mr. Short's loan. JP Morgan Chase Bank NA has never owned Mr. Short's loan and therefore would not have ever had any right to assign Mr. Short's loan (Note) to any person or entity.

Another point to take note of is, that unlike every other event described in §B, for the event "the ownership interest in Mr. Short's loan was assigned", no date is given. This oversight is disguised by what appears to be such meticulous attention to detail in this mundane looking section, surely all the details must be there.

In sentence 3 of §B an attempt is made to falsely link the securitization at sentence one and the assignment of the Deed of Trust together without being definitive enough to compromise the dual connotations. The inference implied and the inference one might take from a preliminary reading by someone unfamiliar with the facts of this rather bland appearing paragraph is that it matches the statements of Trust's Complaint and the declaration of Ms. Urquidi, and not that it would conceal in it a devious plot, to "muddy the water" to obfuscate §B's direct contradiction of essential material facts stated in Trust's Complaint and the declarations of Ms. Urquidi.

Sentence 3:

> "An assignment reflecting the transfer of interest to BOA as then-Trustee of the WaMu Trust, dated March 23, 2010, was recorded on March 26, 2010 – prior to commencement of the judicial foreclosure action – under Whatcom County Auditor's Instrument No. 2100303059 (the Assignment). (CP 295-98)"

Referring back to the heading at §B it becomes clear that the alleged securitization of Mr. Short's loan and the "Beneficial Interest in the Deed of Trust is Assigned to the Loan Owner's Trustee", are definitely separate events. This means that the allegation in Trust's Complaint at ¶7 [CP 305, ¶7] of the allegations and repeated word for word in the declarations of Ms Araceli Urquidi at ¶10[CP113, ¶10.] is a false statement.

~~"On 3/23/2010, the Note and Deed of Trust was assigned by JP Morgan Chase Bank, NA to Plaintiff. A copy of the assignment is attached as Exhibit D."~~ [CP 305, ¶7.] This, as well ¶6 are false allegations of fact.

As Appellant states elsewhere in this Reply Brief, if Trust's has an alternate set of facts to plead, let them do so in the appropriate manner. To not disclose the facts as known to them is simply unacceptable.

Sentences 4 & 5:

Sentences 4 & 5 of §B, page 5 of Respondent's Brief under the heading Statement of Case, completes the ruse. The statements there are: "In September of 2008 all WaMu assets, including all loans debts due to Wamu and its servicing rights, were acquired by Chase under the terms of a Purchase and Assumption Agreement between the Federal Deposit Insurance Corporation a Receiver for WaMu and Chase (the "WaMu Agreement"). (CP 167-210.)

Accordingly, on September 25, 2008, Chase became the servicing agent for Mr. Short's loan in place of WaMu. (CP 246.)"

Neither Trust's Complaint at ¶6 of the allegations [CP 304 ¶6.], nor Ms. Urquidi's declarations at ¶9 [CP 113, ¶9.] speak of Chase becoming "the servicing agent for Mr. Short's loan"

Trust and Ms. Urquidi specifically and clearly state:

"On 9/25/2008, the Note and Deed of Trust was assigned by Washington Mutual, FA, to JP Morgan Chase Bank, National Association…"

Rather than disclose to the Tribunals the known facts that the allegation made in Trust's Complaint at ¶¶6 & 7 [CP 304¶6, CP 305, ¶7.] and the declaration of Ms. Urquidi [CP113, ¶¶9 &10.] are false statements, Trust's attorney, Ms. Bollero has woven a serpentine narrative at §B to conceal the truth of the matter.

Although, Ms. Bollero can with a straight face say the facts are there if one has paid close attention, she has failed in her duty of Candor Toward the Tribunal and has wasted a significant amount of the Tribunals and Appellants time and effort. This goes well beyond advocacy.

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D. ALLEGED NEWLY OBTAINED PROMISSORY NOTE

It is with some reluctance that Appellant addresses this subject, as this subject was originally brought to the court's attention in a rather "off handed" unfair and inappropriate way. Appellant's understanding is that this new alleged unsubstantiated evidence should have been presented to the trial court where a fair examination by Appellant and his experts could have been had. Appellant does find it odd that after having repeatedly argued that WCCR 54(c) required the filing of the original Note with the court and the seemingly ease with which that could be done, that just days before Trust's Response Brief is due, the original Note suddenly appears and is announced to this court in a most irresponsible way.

With this in mind Appellant will address the issue, not regarding the substance of the alleged evidence, but its implications regarding the honesty of Trust's attorneys and their duty to this Tribunal.

Trust's attorney Ms. Bollero in her letter to the court dated 12/06/2012 asserted that her law firm was in possession of Mr. Short's original Promissory Note. Ignoring the inappropriateness of the presentation of alleged new evidence, what may be of value to this tribunal is that Ms. Bollero's duty under RPC 3.3 Candor Toward the Tribunal requires her to disclose to this tribunal as well as the trial court the fact that the documents submitted to the trial court sworn to be true

and correct copies of the original Promissory Note are in fact not copies of the original Promissory Note according to her newly acquired knowledge and belief.

On 11/28/2012 Ms. Bollero sent via email to Mr. Short a copy of a Promissory Note she described as a copy of Mr. Short's original Promissory Note, which she said she had recently obtained. Mr. Short examined the copy of the Promissory Note sent by Ms. Bollero and compared it to the Promissory Note copies attached to Trust's Complaint, the declaration of Mr. Albert Lin, and the Declarations of Ms. Araceli Urquidi. Mr. Short discovered major and visually obvious differences between them, as well as a functional difference.

Mr. Short alerted Ms. Bollero to these visually obvious and functional differences, which she acknowledged.

Ms. Bollero not only failed to reveal this newly acquired information, that false evidence may have been presented in Trust's Complaint and the declarations of Mr. Lin and Ms. Urquidi, but she continued to on by defending the challenged declarations of Ms. Urquidi with statements like that at page 28 of Respondent's Brief

> "... Ms. Urquidi *swore* that they were true and correct copies of the original documents" (italics in original)

and further at page 29-30 under heading "c. The Note was appropriately authenticated, and has not been disputed".

> "As to the fourth exhibit, the Note, Mr. Short's objections are similarly unavailing. First, foundation was laid for Ms. Urquidi's knowledge[3] of the loan documents, and the Note is obviously one such document."

Ms. Bollero submitted the above statements in Respondent's Brief after becoming aware that the Promissory Note she had asserted not only to Mr. Short but to this tribunal was the original and in her law firms possession, which was acknowledged to be by a simple visual examination, immediately, obviously and functionally different than the copy of the Promissory Notes submitted with Ms. Urquidi's declarations.

Ms. Bollero must know that the Promissory Notes submitted to the trial court in Trust's Complaint and the declarations of Mr. Lin and Ms Urquidi are not copies of the alleged original Promissory Note she recently obtained.

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[3] Ms. Urquidi who is listed as person who participated in the preparation of Trust's Response to Mr. Short's discovery requests. At Interrogatory 1.11 [CP 250, ¶1.11] the question is asked who had actual knowledge of Mr. Short's Promissory Note. No one is identified as having such knowledge including Ms. Urquidi. Trust's attorney Ms. Bollero was informed that Mr. Short had requested Trust's previous attorney's to update Trust's discovery responses if indeed they intended to claim now that Ms. Urquidi had such knowledge. In September 2012 Mr. Short by letter requested that Ms. Bollero being new to the case interview Ms. Urquidi and update the answer to Interrogatory 1.11 if warranted. Mr. Short has not received and update therefore it must be presumed the original answer was correct, that no one was identified as having actual knowledge of Mr. Short's Promissory Note including Ms. Urquidi, who as has been stated elsewhere herein participated the formulation of Trust's answer to Mr. Short's interrogatories. [CP 246, lines 17-18.]

If Ms. Bollero has new evidence to present, the proper place is at the trial court. The proper course of action then is to join Mr. Short in requesting this case be remanded back to the trial court.

Ms. Bollero by her decision to forge ahead, considering the expediency of her clients cause and their witnesses possible subjection to prosecution for perjury more important than the integrity of this system, has cooperated in deceiving the court, thereby subverting the truth-finding process, which the adversary system is designed to implement.

III. CONCLUSION

RPC 3.3

(a) A lawyer shall not knowingly:

(4) offer evidence that the lawyer knows to be false.

[11] The disclosure of a client's false testimony can result in grave consequences to the client, including not only a sense of betrayal but also loss of the case and perhaps a prosecution for perjury. But the alternative is that the lawyer cooperate in deceiving the court, thereby subverting the truth-finding process which the adversary system is designed to implement. See Rule 1.2(d). **Furthermore, unless it is clearly understood that the lawyer will act upon the duty to disclose the existence of false evidence, the client can simply reject the lawyer's**

advice to reveal the false evidence and insist that the lawyer keep silent. Thus the client could in effect coerce the lawyer into being a party to fraud on the court.

Duration of Obligation

[13] A practical time limit on the obligation to rectify false evidence or false statements of law and fact has to be established. The conclusion of the proceeding is a reasonably definite point for the termination of the obligation. A proceeding has concluded within the meaning of this Rule when a final judgment in the proceeding has been affirmed on appeal or the time for review has passed.

Although Trust's attorney Ms. Bollero was not Trust's attorney until relatively recently, Mr. Short over the past few months informed and sought to resolve the aforementioned breaches with Ms. Bollero. Obviously to no avail.

The allegations at ¶¶ 6 & 7 of Trust's Complaint [CP 304 ¶6, 305¶7.], and their word for word counterpart in the declarations of Ms. Urquidi [CP113, ¶ 9 &10] are false statements. Trust's Complaint clearly and specifically is a suit that prays for judgment on the Note thereby necessarily activating compliance with WCCR 54(c), which as acknowledged by Trust, they have failed to do.

Mr. Short requests the court:

1. Remand the case back to the Whatcom County Superior Court with instruction that that the allegations at ¶¶6 & 7 of Trust's Complaint are false statements, that ¶¶ 9 &10 of the declarations of Ms. Urquidi are false statements, that Trust's Complaint is indeed a suit on the Note;
2. Award Mr. Short $12,000.00 for his fees and expenses in bringing this appeal.
3. Such other and further relief the court deems fair and just.

Dated 01-14-2013

Respectfully submitted:

Christopher L. Short
Appellant

APPENDIX

Footnote 2:

Trust in Respondent's Brief at page 28 footnote 7 takes umbrage with Mr. Short for using the term assignment of the Note.

> "Further no "assignment" of the Note – as demanded by Appellant – exists. See, n 6 *supra*

Please note "assignment" is the term Trust introduced in Trust's Complaint and supporting declarations. Now to the referral of footnote 7, footnote 6 on page 19 of Respondent's Brief, which states:

> "Despite recognizing that the Note holder is authorized to foreclose, Mr. Short claims as error that "[n]o document assigning the Note was submitted as evidence." (CP 101.) As recognized elsewhere in Appellant's brief, a note is transferred by negotiation, if payable to order, or by possession, if endorsed in blank – not by assignment. RCW 62A.3-201(b); Appellant's Brief, p.13."

Again "assignment" is the term used by Trust, that being said by whatever term one wishes to describe this event, it is a contract entered into by parties, one a willing buyer the other a willing seller and the willing seller in this case was selling a promissory note, and the what willing buyer was offering in exchange for the promissory note is not revealed and remains unknown.

Then back to page 4 of Respondent's Brief, here again in spite of their chastisement of Mr. Short, Trust uses the term "assigned" to describe the transaction:

> "The ownership interest in Mr. Short's loan was assigned to a securitized mortgage loan trust named "WaMu Mortgage Pass-Through Certificates Series 2006-AR11 Trust"

What Mr. Short is referring to in his statement, "[n]o document assigning the Note was submitted as evidence." (CP 101.) is the fact that copies of the Promissory Notes submitted in Trust's Complaint and the declarations of Ms. Urquidi show no endorsement.

A Promissory Note like a check is negotiated by endorsement. Again, examination of the Promissory Notes submitted by Trust to the trial court reveal no endorsement, nor was there a document annexed to the promissory note known as an "Allonge" on which endorsements may be placed if there is no room on the instrument itself.

Further as Mr. Short pointed out in his Response to Motion for Summary Judgment [CP 223, ¶2 line 19] if this transaction took place, there must be some evidence e.g. a written contract, record of money or it's equivalent changing hands. No document showing evidence of this transaction has been submitted to the trial court.

This contention that the transaction of 3/23/2010 never took place is supported by Trust's own acknowledgment in response to Mr. Short's discovery requests [CP 248 ¶ 1.4.] that a transaction upon which the transaction of 3/23/2010 is predicated i.e. the transaction described at Trust's Complaint ¶ 6 of the allegations and mirrored in the supporting declarations never took place because WAMU did not own Mr. Short's "Loan" (Note) on 09/25/2008 when the FDIC seized and transferred WAMU's assets to JP Morgan Chase Bank, NA. JP Morgan Chase Bank NA has never owned Mr. Short's loan. No amount of ink on paper can obscure this simple fact.

COURT OF APPEALS DIVISION I OF THE STATE OF WASHINGTON

Bank of America, NA as successor by Merger of LaSalle Bank NA, as Trustee to WaMu Mortgage Pass-Through Certificates Series 2006-AR 11 Trust Respondents, vs Christopher L. Short; Washington Mutual Bank; Unknown Parties in Possession; or Claiming Right to Possession; and Unknown Occupants And Does 1-10 inclusive Appellants.	)	Case No: 68545-7-1 DECLARATION OF SERVICE

I certify that on or about January 14 , 2013, I sent by United States Mail a copy of the attached Court of Appeals Division I Appellant's Reply Brief, dated January 14, 2013 to:

Ann T. Marshall and Barbara L. Bollero (individually)
Bishop, White, Marshall & Weibel, P.S.
720 Olive Way, Suite 1201
Seattle, WA 98101-1801

I declare under penalty of perjury and the laws of the State of Washington that the foregoing is true and correct and that this Declaration was executed in Republic, WA. on January 14, 2013

Christopher L. Short
PO Box 1080
Republic, WA 99166
509 775 2521