93104-6
NO. ~~91304-6~~

(Court of Appeals Division I No. 73190-4-I)

SUPREME COURT OF THE STATE OF WASHINGTON

CHARLES V. MCCLAIN III,

Appellant,

v.

1ST SECURITY BANK OF WASHINGTON,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Charles McClain's Request for Discretionary Review is a further dogged pursuit of an unwarranted and improper goal; his shameless attempt to profit from the fraudulent transfer of money into his account at 1st Security Bank of Washington. In 2009, McClain briefly became a customer of 1st Security Bank. Within less than a month, his account was closed after it became the receptacle for criminal proceeds. At best, Mr. McClain is an opportunist seeking to benefit from a fraud perpetrated against innocent victims. At worst, he is party to a criminal enterprise who, having evaded prosecution, still has the audacity to ask a court to award him the fruits of a thwarted fraudulent scheme.

It is incredible that seven years later, 1st Security Bank is still forced to resist McClain's efforts to obtain money that clearly belonged to others. McClain's claims lack any legal foundation. His briefing is difficult to comprehend, consisting entirely of quoted material from inapplicable cases and statutes; quotes selected because they contain words and phrases that sound like they would help his cause. The Court of Appeals accurately identified McClain's penchant for "nonsensical arguments containing little legal analysis [relying on] cherry-picked dicta from unrelated cases." Opinion p. 3, fn. 2. The Court of Appeals rejected McClain's claims in their entirety and imposed sanctions for a frivolous

appeal. Despite this rejection, he presents the same claims here and Respondent 1st Security is again required to defend itself against McClain's vexatious quest – in State and federal courts.[1] His petition lacks any of the required citations to the record, further complicating the process of reading and responding.

This Court should deny McClain's petition for review and should award 1st Security its reasonable attorney's fees and costs incurred in having to answer the frivolous petition.

II. STATEMENT OF FACTS

In June 2009, 1st Security Bank of Washington ("1st Security") opened a consumer checking account at the request of Harrison Hanover. Hanover's background included serving 10 years in prison for attempted murder and admittedly operating as a scam artist who conspired to commit a fraud on the Snohomish County Superior Court. CP 500-506. During the latter period, Hanover befriended Appellant Charles McClain. Six months after the 1st Security account was opened, McClain was added to

[1] Two years after the dismissal of his claims on summary judgment in this state case, McClain initiated two federal court lawsuits against 1st Security and others, based upon the same facts. Both federal cases were dismissed. Upon dismissal of the second federal lawsuit, the court wrote "McClain is strongly advised that he will not prevail in relitigating the events of December 2009. He has already brought these claims twice before. It is time they were laid to rest." Appellant's Informal Request for Discretional Review, Appendix 3 at P. 10. To no one's surprise, McClain has appealed that dismissal to the Ninth Circuit.

the account on the eve of the account receiving deposits of fraudulently diverted funds exceeding $4.6 million.

McClain is an experienced pro se plaintiff with a long and unseemly history of filing lawsuits, all invariably dismissed. McClain has twice been ordered to limit his court filings. He has been ordered to cease the unlicensed practice of law. He has been implicated in the forgery of a Snohomish County judge's signature. CP 367-409, 415-438.

A. The Deposits of Fraudulently Misdirected Funds.

Before December 2009, Hanover's checking account ("the Account") was scarcely used. On December 10 and 11, the Account received electronic deposits from Cox Communications ("Cox") totaling $530,111.56 through the Automated Clearinghouse System ("ACH"). CP 216, 536, 537, 542. On December 11, Hanover signed a wire transfer order sending $475,000.00 from the Account to McClain's sister-in-law in the Philippines. He then added McClain as a signer to the Account and fled to Miami, his ultimate destination being Costa Rica. CP 216-217, 440-444[2] and 471-472. McClain made immediate withdrawals totaling $52,000.00. CP 533-534.

[2] The Court of Appeals confirmed that Hanover is now deceased. It notes that Hanover died in a Nicaraguan prison in April 2013, while serving a 24 year sentence for possession of child pornography and rape of a child. http://www.laprensa.com.ni/tag/penal/page/3. Opinion, Pg 3, Fn. 1

More huge deposits took place on December 14 and 15, $1,102,593.62 from Cox and $3,024,836.36 from Comcast Corporation ("Comcast"). CP 536-537. Cox and Comcast deposited a combined total of $4,657,541.54 into the Account. Fortunately for them, 1st Security quickly discovered the fraud and froze the Account. CP 539, 542, 546.

B. How the Fraudulent Scheme Worked.

The deposits into the Account were the fruits of an internet scam launched against Cox and Comcast. CP 589-601. Each company buys goods from a single vendor Arris Solutions, Inc. ("Arris"), which they pay electronically over the ACH system. In November 2009, Cox and Comcast had each received emails from a person claiming to be "Robert Willox, Senior VP" from Arris. "Robert Willox" emailed new bank routing information for use in paying Arris. CP 589-601. The information actually directed payments not to any Arris bank account, but to Hanover's personal checking account at 1st Security Bank. CP 597, 601.

The emails did not come from Arris, which had no employee named Robert Willox. Arris had made no change to its bank routing information. CP 582, 588.

Both Cox and Comcast fell prey to the fake emails, amending their payment instructions so that payments intended for Arris instead went to the personal checking account of Hanover and McClain. CP 597, 601.

C. 1st Security's Detection of the Fraud and Return of the Money to its True Owners.

First thing Monday morning, December 14, 2009, McClain tried to make an additional withdrawal. By that time, he and Hanover had already withdrawn, spent, and/or wire transferred, $533,785.57 out of the Account. CP 473, 581. 1st Security became aware of the transactions because deposits and withdrawals of this size were unprecedented in the Account. 1st Security quickly learned that the deposit from Comcast was not legitimate and froze the Account. Further investigation confirmed that the Cox deposits were also fraudulently diverted. CP 580-583.

Comcast and Cox each requested return of the deposits. CP 217-218, 589-597. 1st Security Bank honored those requests, returning $3,024,836.36 to Comcast and to Cox, those funds not already spent or withdrawn by Hanover and McClain before the fraud was detected. CP 217-218, 582. Also at Cox's request, 1st Security asked an intermediary bank to retrieve the funds wire transferred to the Philippines. CP 582. Eventually that request was honored and the funds were returned to 1st Security which remitted them to Cox. CP 543-544.

D. McClain Offered No Evidence Disputing the Fact that Comcast and Cox Deposited the Funds.

There is overwhelming and irrefutable evidence that the deposits all came from Cox and Comcast, in the form of bank statements and sworn

testimony of Cox and Comcast employees. That fact has not stopped McClain from telling farfetched tales about some other source of the funds. McClain said that Harrison Hanover brokered diesel fuel by "private contract" and received $4.65M. CP 517-518. McClain justified his own involvement by claiming that Hanover had promised him one-half of his life-time earnings in gratitude for McClain having saved Hanover's life. CP 445-448. McClain claims that the only person with knowledge of the "private" diesel fuel contract was Hanover. However, McClain refused to disclose Hanover's location or any means of contacting him (although he claimed to be in regular contact). CP 440-444, 468-469, 550.

In the face of overwhelming admissible evidence that the funds were fraudulently diverted from Cox and Comcast, McClain offered no admissible evidence in support of his fanciful yarn about his partner, the admitted scam artist and attempted murderer, being a broker of diesel fuel oil earning millions of dollars.

E. 1st Security's Account Agreement Provided for the Measures it Took.

The Account Agreement has several provisions addressing the eventuality of improper transactions in its accounts, including the following language:

- "[I]f any of the deposited funds or funds transfers are suspected to be in violation of state or federal law they may not be available for immediate withdrawal." CP 525;

- "We will not be liable, for instance, if: . . . Any of your deposited funds or funds transfers are suspected to be in violation of state or federal law they may not be available for immediate withdrawal." CP 526;

- "[Y]ou agree that those funds transfers are governed by federal Regulation J, rules of the National Automated Clearing House Association (NACHA) and the Northwest Automated Clearing House Association (NWACHA)." CP 531. The foregoing incorporated ACH Rules authorized 1st Security to return erroneous entries at the request of the party originating the deposit, including where the payment went to a receiver not intended to be credited by the originator of the payment. ACH Rule §8.2. CP 250.

1st Security complied with the Account Agreement and incorporated ACH Rules in returning the funds to Cox and Comcast.

F. McClain Sued 1st Security for Conversion, Breach of Fiduciary Duty and Violation of Due Process.

McClain sued 1st Security for conversion, breach of fiduciary duty and violation of Fifth Amendment due process rights. CP 611-626. All claims were dismissed on summary judgment.

III. ARGUMENT

A. None of McClain's Arguments Seeking Discretionary Review Meet the Criteria of RAP 13.4(b).

A petition for review will be accepted by the Supreme Court only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Discretionary review is a procedure typically reserved to cases involving important and unsettled issues of law.[3] It is not simply another level of appeal. McClain's petition identifies the correct Rule of Appellate Procedure, but any analysis regarding RAP 13.4(b) ends there. Other than making a blanket statement, McClain does not indicate why his claims fall into the categories established in RAP 13.4(b).

1. No Conflict with This Court's Decisions or Another COA Decision Under RAP 13.4(b)(1) and (2).

McClain has identified no conflict in the unpublished opinion with any prior decision of this Court or of the Court of Appeals. He claims the Court of Appeals abused its discretion; of course, the court did not exercise discretion, it conducted a *de novo* review. The legal principles on which the Court's opinion is based are not novel or controversial. They

[3] A prime example of a case properly decided on discretionary review is whether a real estate broker can be liable for innocent misrepresentations of material fact where the Restatement of Torts, Court of Appeals decisions and other states' laws reflect differing standards of liability. See *Hoffman v. Connall*, 108 Wn.2d, 736 P.2d 242(1987).

are well-settled law regarding the elements of conversion and due process, the nature of fiduciary duty and standards on summary judgment. No conflict with Washington court precedent exists.

2. **No Constitutional Issue is Presented Under RAP 13.4(b)(3).**

Although McClain included a claim in his complaint for due process violation under the 5th Amendment, he abandoned it at summary judgment and in the Court of Appeals. He cannot now contend that a claim he scarcely mentioned throughout the life of this lawsuit is of sufficient importance to justify discretionary review by this Court.

The Court does not generally address issues abandoned on appeal. *Cox v. Funk*, 59 Wn.2d 489, 368 P.2d 694 (1962); *Gronquist v. Department of Corrections*, 177 Wn.App. 389, 401, 313 P.3d 416 (2013) review denied, 180 Wn.2d 1004 (2014). Even arguments that are stated but which lack citation to the record or to authority will not be considered. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992). McClain's abandoned issues do not warrant review.

Even had McClain not abandoned his claim of due process, it was groundless. There are very limited circumstances where a Fifth Amendment violation can be found where property is taken by an intermediate third party – not the government. In order to prevail on such

a claim, McClain must show "direct and substantial" government involvement. *Nat'l Bd. of YMCA v. United States*, 395 U.S. 85, 93, 89 S.Ct. 1511, 23 L.Ed.2d 117 (1969); *Casa De Cambio Comdiv v. U.S.*, 291 F.3d 1356, 1361 (Fed. Cir. 2002).

McClain presents no evidence showing government involvement in removing funds from his bank account, let alone "direct and substantial" government involvement triggering Fifth Amendment protections. McClain provides nothing more than wild speculation and unfounded legal conclusions in support of this claim.

Moreover, McClain offered no evidence that he had a property interest in the funds deposited by Cox and Comcast. A court must be convinced that the plaintiff has a property or liberty interest protected by due process before it can evaluate whether the process afforded that interest was adequate. *Powderly v. Schweiker*, 704 F.2d 1092, 1097 (9th Cir. 1983); *Richardson v. Koshiba*, 696 F.2d 911, 916 (9th Cir. 1982). Without such evidence McClain's claim was properly dismissed.

3. There is no Issue of Substantial Public Interest Under RAP 13.4(b)(4).

Although McClain mentions the Consumer Protection Act as a means of invoking the "substantial public interest" element of RAP 13.4(b), he has not established any CPA violation or other item of public

interest.[4] More important, McClain did not allege a CPA claim against 1st Security, therefore his argument regarding the CPA is irrelevant.

4. McClain's Fiduciary Duty Claim Also Merits no Serious Consideration.

McClain's claim for breach of fiduciary duty was also abandoned below.[5] He tries to revive it now, suggesting for the first time that a $25 wire transfer fee paid by Hanover gave rise to a fiduciary duty on the part of 1st Security. That argument is specious.

A fiduciary duty does not arise merely by reason of an account relationship between bank and customer. "As a general rule, the relationship between a bank and a depositor or customer does not ordinarily impose a fiduciary duty of disclosure upon a bank. They deal at arm's length." *Tokarz v. Federal Frontier Savings & Loan Ass'n*, 33 Wn. App. 456, 458-59, 656 P.2d 1089 (1982).

There are certain limited circumstances under which a bank may be held to a duty greater than that imposed in contract, where it provides an "extra service," or there exist "special circumstances" resulting in a relationship of trust and confidence with a customer. *See Annechino v.*

[4] *Marriage of Ortiz*, 108 Wn.2d 643, 740 P.2d 843 (1987) is a case with substantial public interest implications, where retroactive application of a child support calculation ruling would inappropriately impact support calculations and spur modification actions state-wide.

[5] In his Reply Brief in the Court of Appeals, McClain wrote one sentence under the fiduciary duty heading: "Respondent had the duty to abide by its Account Agreement." Appellant's Reply at 24.

Worthy, 162 Wn. App. 138, 143-44, 252 P.3d 415 (2011); *Hutson v. Savings and Loan*, 22 Wn. App. 91, 102-103, 588 P.2d 1192 (1978); *Tokarz*, 33 Wn. App. at 462. Payment of a wire transfer fee is not a special circumstance resulting in a relationship of trust and confidence. 1st Security simply performed a minor service for small fee.

B. The Trial Court did not Err in Dismissing McClain's Conversion Claim.

A conversion is the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it. *Reliance Insurance Co. v. U.S. Bank, WA., N.A.*, 143 F.3d 502, 506 (9th Cir. 1998), *citing Public Utility District v. Washington Public Power Supply System*, 104 Wn.2d 353, 705 P.2d 1195, 1211 (1985). McClain could not establish conversion for three reasons, any of which warranted dismissal of the claim: First, the funds in the Account were not "chattel" for purposes of conversion. Second, 1st Security's actions were lawfully justified under its contract with McClain. Third, McClain could not demonstrate that he was entitled to possession of the funds in the Account.

Funds on deposit in a checking account are not chattel, for purposes of conversion. *See Allied Sheet Metal Fabricators, Inc. v. Peoples National Bank*, 10 Wn. App. 530, 537, 518 P.2d 734, *aff'd*, 83

Wn.2d 1013, *cert. denied*, 419 U.S. 967, 95 S.Ct. 231, (1974); *Reliance*, 143 F.3d at 506. "Except for special kinds of accounts in some jurisdictions, bank accounts generally cannot be the subject of conversion, because they are not specific money, but only an acknowledgement by the bank of a debt to its depositor." *Reliance,* 143 F.3d at 506.

The second reason conversion was properly dismissed is that 1st Security's actions were not unjustified. 1st Security's actions were authorized by its written contract with McClain and the incorporated ACH rules. Included within the ACH rules are provisions designed to remedy the type of erroneous or fraudulent fund transfer that took place here. "An ODFI (originating bank) may, orally or in writing, request an RDFI (receiving bank) to return or adjust an erroneous entry initiated by the ODFI." CP 250. Erroneous entries include an entry that "orders payment to or from a Receiver different than the Receiver intended to be credited or debited by the Originator." CP 250, 521, 531.

The ACH Rules provide that where it is discovered that an electronic funds transfer is erroneously made to a Receiver other than the intended Receiver, ODFI's may ask for return of the funds and RDFI's may return them.[6] Therefore, when 1st Security returned the funds to Cox

[6] McClain continues to attempt to muddy the water by emphasizing that Respondent "admits it was not required" to return Cox's and Comcast's property. That "admission" was the truthful answer to the question McClain posed in discovery. However, the issue

and Comcast at the request of their ODFI's, 1st Security's actions were in conformity with the Account Agreement and the ACH rules. As a matter of law, McClain failed to prove the second element of conversion that 1st Security acted without lawful justification.

Finally, McClain failed to establish his entitlement to the property in question. He claimed that the funds were the proceeds of Hanover's business dealings but presented no admissible evidence in support of the diesel fuel story or how it related to the Cox and Comcast deposits. McClain had no personal knowledge about the transaction, claiming all details were confidential, including who was buying, who was selling, when and where the transactions occurred and how much money changed hands. McClain claimed that only Hanover knew those details. CP 449-453, 457-458, 475-479. McClain denied 1st Security all contact information for Hanover.

Facing summary judgment dismissal, McClain suddenly produced a declaration from Hanover in support of the diesel fuel story, but it was stricken by the trial court and is therefore not properly part of the record on appeal. CP 81-82. McClain's claim that the declaration submitted as CP 94-118 was not the one that was stricken is misleading. The

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has never been whether 1st Security was required to return the funds; it was authorized by its contract with McClain to do so. 1st Security chose not to permit its deposit account to be used to perpetrate a fraud. It chose to return the misdirected funds to its lawful owners, as any good corporate citizen would do.

declaration at CP 94-118 was an untimely attempt by McClain to cure facial deficiencies in the Hanover declaration which was nonetheless rejected by the trial court. McClain did not appeal the Order Granting Defendant's Motion to Strike.

McClain's final argument for his entitlement to the funds was simply that they were his because they were in his account. The Ninth Circuit has rejected this argument in a case where a widow received her deceased husband's social security check, endorsed it improperly, and deposited it into her account. *Powderly v. Schweiker*, 704 F.2d at 1097. Applying Washington law, the Ninth Circuit wrote:

> [A]n individual must have a legitimate claim of entitlement to the benefit created and defined by an independent source, such as state or federal law. *Roth, supra*, 408 U.S. at 577, 92 S.Ct. at 2709; *Erdelyi v. O'Brien*, 680 F.2d 61, 63 (CA9 1982); *Golden State Transit v. City of Los Angeles*, supra, 686 F.2d at 760.
>
> . . .
>
> Appellant's attempt to claim a property interest by reason of her own bank account is groundless. In reality, she is attempting to claim a property interest in the funds erroneously sent to her deceased husband, but cannot escape the fact that she has no entitlement to these funds.

Powderly, 704 F.2d at 1097. Thus, a property interest – which McClain must establish to prove conversion – does not arise from the mere fact funds were erroneously deposited into the Account.

Failure by McClain to establish any element of conversion would have been fatal to his claim. McClain failed in all three elements.

C. McClain is Not a Holder in Due Course and Did Not Receive the Funds in Good Faith.

McClain makes a confusing last-ditch effort to establish some right to the funds by describing himself as a "holder in due course;" again invoking a legal doctrine with no understanding of its application. He provides no explanation as to how and why he could be a holder in due course and requires the Court to speculate how this may occur.

This claim appears to be based upon Hanover allegedly granting McClain an interest in all future income.[7] McClain's claimed entitlement does not make him a holder in due course.

A "holder in due course" is a holder who takes an instrument for value, in good faith, and without notice that it is overdue or subject to any defense or claim on the part of any person. RCW 62A.3-302(1). "Holder" means a person who is in possession of . . . an instrument . . . issued or indorsed to him or to his order or to bearer or in blank. RCW 62A.1-201(20). "Instrument" means a negotiable instrument. RCW 62A.3-104(e). In this case, McClain did not possess a negotiable instrument at any time. Funds in an account are not a negotiable instrument. They are

[7] Respondent is forced to grasp at straws even to discern McClain's theory and respond to it. The quandary of litigating with Charles McClain is that it is difficult or impossible to refute an unarticulated argument.

the property of the Bank and the account owner is merely a creditor. *See Allied,* 10 Wn. App. at 537.

None of the cases cited by McClain support his claim that he is a holder in due course. Where money and negotiable instruments are involved, the *bona fide* nature of the transaction becomes pivotal. *Hinkle v. Cornwell Quality Tool Co.*, 532 N.E.2d 772, 776, 40 Ohio App.3d 162 (Ohio App. 9 Dist. 1987). In each of the cases cited by McClain, a wrongdoer procures money by a wrong (theft, embezzlement, fraud) then undertakes a separate transaction in the normal course of business by which an innocent third party is paid for a valid preexisting debt. See, *Rankin v. Chase National Bank*, 188 U.S. 557, 23 S. Ct. 37247 L. Ed. 594 (1903) (fraudulent note and stolen funds used to pay bank note); *Knapp* 154 F.2d 394 (embezzled funds used to pay restitution under court order); *Holly v. Domestic Foreign Missionary Society*, 180 U.S. 284, 21 S. Ct. 395, 45 L. Ed. 531 (1901) (embezzled money used to pay obligation of estate); *State National Bank of Boston v. United States*, 114 U.S. 401, 5 S. Ct. 888, 29 L. Ed. 149 (1885) (stolen funds and securities used to pay back taxes); *In re Brainard Hotel Co.*, 75 F.2d 481 (2nd Cir. 1935) (stolen funds used to pay personal debt to 3rd party); *Transamerica Insurance Company v. Long*, 318 F. Supp. 156 (W.D. Pa. 1970) (stolen funds used to pay federal taxes).

None of those limited circumstances is present here. First, there was never a separate transaction in which a third party was paid for a valid preexisting debt. Second, this transaction was far from the normal course of business, it was a fraudulent scheme perpetrated upon innocent businesses. Most important, McClain cannot be deemed to have taken these funds in good faith. "Good faith" is defined as "a state of mind indicating honesty and lawfulness of purpose." *Morris v. Swedish Health Services*, 148 Wn. App. 771, 777, 200 P.3d 261 (2009). McClain does not meet that definition. He lived with Hanover at the time of the transaction. He knew Hanover was a convicted felon, scam artist and fraudster. The suspicious timing of McClain signing on to the Account on the eve of the fraudulent deposits and the absconding of Hanover from the country negates any credible claim by McClain of "good faith."

D. RCW 30.22.210 Does Not Apply.

Another argument McClain first advanced on appeal was that 1st Security may not take any action regarding the fraudulent and erroneously deposited funds without "actual knowledge" of the fraud. He cites to RCW 30.22.210 for this proposition. McClain again demonstrates a lack of understanding of the purpose of the statute and simply latches on to a phrase that suits his purpose – "actual knowledge" — without any regard for whether the statute even applies. It does not.

The purpose of the Financial Institution Individual Account Deposit Act, RCW 30.22 *et seq.*[8] is to qualify and simplify the law concerning ownership interest disputes between depositors and beneficiaries on accounts and succession of funds on deposit with financial institutions. RCW 30.22.020. It does not establish rights and interests in funds in an account. Indeed, RCW 30.22.210 has "no bearing" on the actual rights of ownership to funds in an account. RCW 30.22.130.

RCW 30.22.210 is not a prohibition on a bank's actions; it is a protection for a bank's decision not to act.

The statute reads:

> (1) Nothing contained in this chapter shall be deemed to require any financial institution to make any payment from an account to a depositor, or any trust or P.O.D. account beneficiary, or any other person claiming an interest in any funds deposited in the account, if the financial institution has actual knowledge of the existence of a dispute between the depositors, beneficiaries, or other persons concerning their respective rights of ownership to the funds contained in, or proposed to be withdrawn, or previously withdrawn from the account, or in the event the financial institution is otherwise uncertain as to who is entitled to the funds pursuant to the contract of deposit. . .

RCW 30.22.210 is intended to protect a bank from incurring liability in a dispute between persons claiming interest in a bank account.

[8] RCW 30.22 *et seq.* has been recodified as RCW 30A.22 *et seq.*, effective January 5, 2015. In an effort to remain consistent with the prior briefing, we will refer to the statute as originally codified.

A bank is not required to make a payment where it knows of such a dispute. A bank is not prohibited from making any payment, nor does the statute establish a prerequisite level of knowledge for a bank's decision to make a payment. Significantly, in this case 1st Security was not uncertain as to the true owner of the funds by the time reimbursement was made to Cox and Comcast. RCW 30.22.210 does not apply to the facts of this case and McClain's reliance upon it is entirely misplaced.

E. 1st Security Requests its Attorney's Fees and Costs Incurred Answering his Petition for Review.

1st Security also requests an award of attorney's fees and expenses under RAP 18.9 for McClain's filing of a frivolous petition for review not grounded in fact or law and lacking compliance with RAP 13.4(c)(6) and RAP 10.3(a)(5). Such an award is justified by the course of litigation in this case. Without it, McClain is unlikely to cease his vexatious conduct.

V. CONCLUSION

1st Security respectfully requests the Court to deny McClain's petition for review and to award 1st Security its fees and costs incurred herein.

RESPECTFULLY SUBMITTED this 7th day of July, 2016.

McKAY HUFFINGTON, PLLC

BMcKay

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DECLARATION OF SERVICE

On July 7, 2016, I caused to be transmitted via U.S. Mail, postage pre-paid, a copy of the attached RESPONDENT'S ANSWER TO PETITION FOR REVIEW on the following:

Charles V. McClain
18012 – 31st Ave. NE, Unit A
Arlington, WA 98223

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 7th day of July 2016, at Seattle, Washington.

Alison Kruse
Legal Assistant

OFFICE RECEPTIONIST, CLERK

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1. Case name:

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v.
1st Security Bank of Washington, Respondent

2. Case number: NO. 91304-6

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