73190-4

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No. 73190-4-I

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

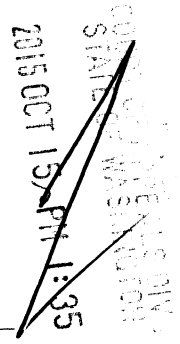
Charles V. McClain, III, *Pro se*

Plaintiff/Appellant

vs.

1st SECURITY BANK OF WASHINGTON,

Defendant/Respondent.



REPLY BRIEF OF APPELLANT

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COMES NOW, Appellant respectfully requests oral arguments. Appellant adopts, incorporates by reference, and restates the facts contained within all pleadings, Declarations and transcript. For the Court's convenience Appellant will follow the outline of Respondent

I. INTRODUCTION

Appellant will only address the misstated, misrepresented, misleading and frivolous statements of Respondent throughout their response.Appellant is trying to apply the law to recoup monies stolen by Respondent. Respondent continually claims a fraud occurred but is not pleading fraud. Respondent's Declarations of both Mike Lippert and Correen King claim fraud occurred. Respondent uses the word fraud or variation of over 30 time in its Brief. Respondent continues to assert only the Declarations and pleadings filed by their attorneys are evidence. This is spurious on its face. Again and again Respondents claim the money was returned to the rightful or legal owners while stating in discovery no determination was made by Respondent as to ownership of the funds or Appellant's right to the funds. Respondent stated in sworn interrogatories that ownership of the funds were never determined, (CP 231 at No: 59) yet Respondent continues this claim in pleadings to the court and letters to the FDIC and Department of Financial Institutions. Appellant denied same thus creating an issue of material fact. "Defendant did not make a decision as to the ownership of funds." (CP 231 at No: 59) And "In addition, defendant made no determination regarding plaintiff's property

interest or lack thereof in the fraudulent deposits." (CP 259 at No: 62) The evidence does not lie. This is perjury and a fraud upon the Court plain and simple.

All pleadings filed in the record are now public records and admissible in Court. Respondent claims Appellant cannot establish even one of the required elements of conversion. This is incorrect. Respondent was liable to Appellant for the amount shown on Appellant's bank statement. (CP 316 at Item 4, Ex. 1, CP 321, Total Deposits) The evidence proves the funds were in Appellant's account. Half the funds were given to Appellant thus, transferring title to Appellant. Appellant's Agreement with Respondent clearly shows Appellant can withdraw up to all funds in the account at any time. The funds were available for withdrawal at any time pursuant to Appellant's Account Agreement. (CP 365 at Item 16, Ex. O, at CP 521 under Withdrawals) Respondent illegally froze the account of Appellant and denied Appellant access to his funds. (CP 317 at Item 10, 343, Ex. 7, lns. 2-4) This was a violation of Appellant's Deposit Agreement (CP 365 at Item 16, Ex. O, at CP 521) Respondent's actions were not justified, violated Appellant's Account Agreement and illegal.

Appellant has not abandoned his claim for violation of due process. Appellant is entitled to the following: Due Process provides that the "rights of sui juris litigants are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if a court can reasonably

read pleadings to state valid claims on which a litigant could prevail, it should do so despite the failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements." Haines v. Kerner, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972); Hoag v. MacDougall, 454 U.S. 364, 70 L. Ed. 2d 551, 102 S. Ct. 700 (1982). The Court should have recognized this is an action on contract allowed the amending of the complaint and afforded Appellant his day in Court. The Trial Court erred in granting Summary Judgment, concluding without explanation that that there were no material facts disputed in the Appellant's lawsuit against the Respondent. Agreement as to material facts is a key component of entitlement to Summary Judgment. However, Appellant asserted at least ten disputed facts in his Statement of Disputed Facts. (CP 88)

Respondent contacted the FBI and Secret Service December 14 and 15, 2009, respectively and provided them with Appellant's private financial information with no warrant, subpoena or court order including the wire of $475,000.00 to the Philippines. Respondent then proceeded to seize the wire sent to another bank in the Philippines through the illegal acts of wire and bank fraud. Not to mention theft from Appellant's Sister-in-Law's bank account. There is no doubt that this could not have occurred without the assistance of a government agency and the granting of immunity from prosecution. Respondent would not return the funds until it was issued Letters

of Indemnity from J.P. Morgan Chase, Wachovia Bank now Wells Fargo Bank, (CP 582 at Item 12, Ex. A, CP 585-586) Cox Communications and Comcast to absolve Respondent from any liability from Appellant. This is a *De Facto* admission of said liability to Appellant. This action does violate Appellant's Constitutional Rights, as the Respondent is and was acting as an agent of the government. This is a fact for a jury to decide. The Court should take Judicial Notice that Respondent admits to monitoring of private bank transactions and activity of its accountholders (CP 365, Item 19, Ex. R, CP 542, lns. 15-17) then contacts government agencies providing private financial information without any subpoena, warrant or Court Order thereby acting as an agent of the government.

The $475,000.00 wired by Harrison was actual funds removed from the joint account of Appellant and Harrison Hanover the afternoon of December 11, 2009, after Appellant was added to the account not before as Respondent claims. Respondent stated in their pleading to the Court all right, title and interest were vested in Hanover after withdrawal. This makes the wired funds chattel the Respondent had no right to seize or exercise control over those funds. Respondent cannot have it both ways. Appellant denied same thus creating an issue of material fact. The evidence shows the Respondent did take affirmative action to gain control of funds under the control of another bank. This is Bank Fraud. The fact that misleading messages were sent by wire to the intermediary bank is wire fraud.

Respondent stated: "As co-owner of the Account, Hanover was authorized to make withdrawals. Upon removal of the funds, all right title and interest thereto were vested in Hanover not McClain." This statement applies equally to Appellant. Hanover in his sworn Declaration CP 94-118, which was not stricken by the Trial Court, stated that; "... I gave McClain half my money because he had saved my life two times." (CP 97 lns. 16-18) Using Defendant's own logic half of the $475.000.00 Respondent recovered through wire and bank fraud belonged to Appellant. Appellant had legal right to the funds stolen or seized by Respondent.

II. STATEMENT OF FACTS

Respondent again pleads fraud as to the funds in Appellant's account. The fraud has not been proven under Washington law. Appellant has no knowledge of any fraud and if Harrison obtained the funds by some fraud, which he did not, after transfer of half the funds to Appellant, as Owner of the account, Appellant had the right to withdraw all funds in said account as a "Holder in Due Course" and joint account owner. The money recovered or seized by Respondent from the wire was cash that Respondent itself stated belonged to Hanover. But half those funds also belonged to Appellant and as such were chattel and subject to conversion by Respondent. Appellant has met the first element of conversion. This precludes summary judgment.

The center of this dispute only involves the Respondent's actions after the funds were deposited into Appellant's account. Respondent verified the

correctness of Appellant's December 2009, bank statement in both discovery and by submission to the Court in Declarations that over $9 Million Dollars was deposited. (CP 316 at Item 4, Ex. 1, CP 321, Total Deposits) Respondents are desperately attempting to misdirect this Court by claiming no additional deposits were made.

A. Background of McClain

The lower court decided that Appellant's and Hanover's backgrounds were irrelevant and this is stated at pg. 6, lns. 10-11, of the RP. However, Respondent appears to try and make that an issue here also. Respondent is Judicially Estopped from doing so and should suffer sanctions. Appellant would like to address the misstatements of Respondent regarding Appellant's past litigation history but there is no need to do so as it is judicially estopped.

B. Background of 1st Security Account

Harrison Hanover legally changed his name. Appellant was unaware of some of Harrison's background but in no way knew it all as Respondent claims in their pleading. Funds were first deposited on December 10, 2009. As to Harrison's death, had his appeal continued he would have been completely exonerated as was all his co-conspirators. Again Respondent is Judicially Estopped from citing past history. Respondent continues to refer to the deposits as fraudulent and claims just because the deposits were higher than normal it caught their attention. This is yet another misdirection and perjury by Respondent. The evidence shows that it was Appellant that drew

attention to the account when Appellant attempted to withdraw about 20% of the balance when Appellant could have withdrawn the entire balance of the account according to the Account Agreement. Respondent apparently has no problem with committing perjury once again. Appellant attempting to make a withdrawal is not a Security Procedure, as Respondent claims in the answer to interrogatories. Respondent states the following: *"When Plaintiff brought the account to Defendant's attention by initiating a large withdrawal of on December 14, 2009..."* (CP 365 at Item 19, Ex. R at CP 542, lns. 15-17) Also at pg. 7, lns. 15-18 of the RP Respondent again misleads the Court concerning security and authorization for its actions. Appellant's financial matters are private, protected by not only privacy laws but the Respondent's Account Agreement, Washington State Constitution Article I Section 7, the Right to Financial Privacy Act, Electronic Communications Privacy Act and the Washington State Consumer Protection Act. Appellant received the funds from Harrison Hanover in good faith, for valuable consideration and with no knowledge of any wrongdoing. (CP 98 at Item 13, lns. 19-23) This is contained in Appellant's Declarations (CP 207 Item 16, CP 239 Item 5, Ex. 11) and also stated in the RP at pg. 22, ln 3-6. This made Appellant "Holder in Due Course" which will as a third person give ownership rights to the funds to Appellant. How can this Court or any Court much less a Jury have any confidence in Respondent's filings when their attorneys so readily commit and allow perjury?

C. The Deposit of Fraudulently Misdirected Funds

Respondent has again attempted to mislead this Court as to how the funds or credits wound up in Appellant's account.

First, there were no deposits on December 11, 2009, as Respondent claims. Second, Respondent accepted the Payment Orders to credit Appellant's account. When Respondent accepts the Payment Orders, title of the funds transfer to Respondent. Respondent can then do what they will with the funds as they own them. Respondent then credits Appellant's bank account with a like amount free of any claim. This makes Respondent a Debtor to the Creditor, the Appellant. Respondent froze the account of Appellant the morning of December 14, 2009, prior to any **actual knowledge** of any claims by others. Respondent has stated in discovery that: *"Defendant is unaware of any document, Contract, ACH or NACHA policy that required it to return the ACH deposits to the ODFI's."* Respondent cannot have it both ways. It is well settled that a contract cannot circumvent the laws of Washington State. Respondent cannot argue that they acted within any document or pursuant to Appellant's contract, ACH and NACHA Policies unless Respondent has committed perjury for the third time. Since the entire argument of the Respondent hinges on their ability to act pursuant to Appellant's contract, ACH, NACH Policies or any other document Respondent's argument must by law fail as Respondent has sworn under penalty of perjury that the discovery answers are truthful.

Since there was no authority for Respondent to act by their own admission. Respondents admitted their liability *de facto* to Appellant and the Court within their discovery by refusing to return the funds until they received Letters of Indemnification from the parties involved to absolve the Respondent from liability. Appellant's funds have to be returned with judgment interest from funds December 14, 2009.

D. How the Fraudulent Scheme Worked

While Appellant has submitted evidence challenging both the believability and accuracy of the Declarations of both Michael Lippert and Correen King it is irrelevant as are the Declarations to the issues herein.

Appellant was not indicted or even called to testify in the Grand Jury proceedings. The Secret Service and FBI interviewed Appellant and Appellant was cleared. Appellant had no information or evidence to support any of the accusations of Respondent. Nor do the FBI or Secret Service know who committed fraud if fraud actually occurred.

To believe that in this day and time you could commit a fraud of this magnitude based solely on only e-mails by having employees of two fortune five hundred companies Comcast (2014, Ranking 44) and Cox Communications (Cox Enterprises 2014, Ranking 18, of Largest Privately Owned) transfer millions of dollars without even making a phone call is absurd and unbelievable on its face. Appellant has submitted evidence showing his entitlement to the funds by law, but Respondent continues to

dispute those facts. Another reason summary judgment was improper.

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

Again Respondent refers to the deposits as fraudulent a fact not proven. Respondent is not a law enforcement agency, jury or judge and has no authority to determine fraud or the true, legal owners of the funds. The pleading proves Respondent took action before having **actual knowledge** of any dispute as to the funds in Appellant's account in violation of statute. Appellant must address Respondent's footnote as again Respondent misleads the Court. The reversals mentioned did not occur, as in order to do a reversal the Account Holder (i.e. Beneficiary) must be notified, which Appellant was not. Additionally, Respondent repeats they determined the true owners, this again is perjury.

Respondent attempts to confuse the Court by stating the duplicate entries do not mean additional monies were deposited. The problem is twofold one, Respondent has previously verified the accuracy of Appellant's December 2009, Bank Statement and two, had no additional funds been deposited the statement in the Total Deposits column would reflect only $4,275,220.40. (Using Respondent's Figure) However, the Total Deposits on the Statement show $9,323,583.08. Not only that the Total Withdrawals also verify that $9,323,583.08 was withdrawn not $4,275,220.40. The Court should also take Judicial Notice that two times Respondent's figure ($8,550,440.80) does not equal the amount withdrawn. Even if you add the

$475,000.00 Respondent seized illegally ($9,025,440.80) and the amount Respondent claims Appellant spent ($58,785.57) it still fails to equal the total withdrawals. ($9,084,226.37) This leaves $239,356.71 unaccounted for by Respondent. The evidence and math does not lie but Respondent's credibility is in question. The evidence has established that there was no document, Contract, ACH or NACHA policy that required or allowed it to return the ACH deposits to Appellant's account. Respondent had no right to freeze or seize Appellant's account. Respondent took action to seize the $475,000.00 wire sent to Appellant's Sister-in-Law on December 11, 2009, by claiming fraud. However, Respondent had previously stated in their Reply to Plaintiff's Motion for Partial Summary Judgment the following: *"Upon removal of the funds, all right title and interest were vested in Hanover not McClain."* Respondent lied to the Intermediary bank by claiming the wire was fraud CP 582 and is attempting to shift the liability to the intermediary bank as the entity that actually committed bank fraud and wire fraud. The attempt is futile.

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

Again Respondent misdirects the Court. There was no deposit from Comcast and Cox deposited into Appellant's account. Respondent credited Appellant's account in a like amount but the actual funds were deposited in the Respondent's account. Respondent had no document, contract, ACH or NACH Policy that required Respondent to return the funds. The evidence is

commission of Bank and Wire Fraud with assistance from a governmental agency could Respondent seize funds from the account of a foreign national ay a bank in another country. None of the provisions described by Respondent apply to the set of facts regarding Appellant's claims.

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

Respondent fails to inform the Court that Appellant attempted to amend his complaint to include other actions such as Breach of Contract, a claim that the Respondent admitted exist. RP at pg. 22 lns. 7-11. A claim the Court should and did recognize but failed to follow under the indisputable U.S. Supreme Court ruling in *Haines*: Due Process provides that the "rights of sui juris litigants are to be construed liberally and held to less stringent standard than formal pleadings drafted by lawyers; if a court can reasonably read pleadings to state valid claims on which a litigant could prevail, it should do so despite the failure to cite proper legal authority, confusion of legal theories, poor syntax and sentence construction, or litigants unfamiliarity with pleading requirements." *Haines v. Kerner*, 404 U.S. 519, 520, 30 L. Ed. 2d 652, 92 S. Ct. 594 (1972); *Hoag v. MacDougall*, 454 U.S. 364, 70 L. Ed. 2d 551, 102 S. Ct. 700 (1982). The Court should have recognized this is an action on contract allowed the amending of the complaint and afforded Appellant his day in Court. The Trial Court erred in granting Summary Judgment, concluding without explanation that that there were no material facts disputed in the Appellant's lawsuit against the Respondent. Agreement

as to material facts is a key component of entitlement to Summary Judgment. However, Appellant asserted at least ten disputed facts in his Statement of Disputed Facts. (CP 88) The Court itself acknowledged disputes as to facts. RP pg. 11, lns. 16-22. This precludes summary judgment.

III. RESPONDENT'S ISSUES PERTAINING TO ASSIGNMENT OF ERROR

Appellant sees no need to repeat each of Respondent's Assignments of error as it seems Respondent is also appealing the ruling pursuant to RAP 10.3 (b). Appellant will address the Argument of these issues.

IV. ARGUMENT

A. Standard on Appeal is *De novo*

Appellant agrees the Standard of Review is *De novo*. The Appellant asserts that the trial court incorrectly granted Respondent's summary judgment. The evidence indisputably shows Respondent has committed perjury on more than one occasion and has continued to perpetuate a fraud upon the Court. The evidence has indisputably demonstrated that Respondent acted without authorization and Respondent has admitted that there was no document, Contract, ACH or NACHA policy that required it to return the ACH deposits to Appellant's account. As such no argument can be made that Respondent acted according to ACH Policies, or Appellant's Account Agreement (i.e. Contract). However, Respondent continues to do so.

B. THE TRIAL COURT ERRED IN DISMISSING APPELLANT'S CONVERSION CLAIM

Respondent's argument claims Appellant cannot show funds in the account were chattel. The $475,000.00 seized illegally by Respondent was chattel and not in Appellant's account. Secondly, Respondent claims its actions were justified by Appellant's Contract. Again has admitted that there was no document, Contract, ACH or NACHA policy that required it to return the ACH deposits to Appellant's account. As such no argument can be made that Respondent acted according to ACH Policies, or Appellant's Account Agreement (i.e. Contract). However, Respondent continues to do so.

Appellant does not have to demonstrate he is entitled to the funds in his account. *Transamerica Ins. Co. v. Long*, 318 F. Supp. 156, 160 (W.D. Pa. 1970) **("after stolen money has been negotiated, the victim-owner . . . cannot recover a like amount from a third-party recipient unless it can be proved that the recipient had prior knowledge that the money was stolen"; "It is absolutely necessary for commerce . . . that one who receives money . . . is not put on inquiry as to the source [thereof] . . . . It is generally . . . impractical to discover the source of money, and for this reason one who receives money in good faith for valuable consideration prevails over the victim");** *James Talcott, Inc. v. Roy D. Warren Commercial, Inc.*, 171 S.E.2d 907, 909 (Ga. Ct. App. 1969) Courts have consistently held that a bank account represents a depositor's right to payment in an amount equal to the account balance. See, e.g., *Barnhill v. Johnson*, 503 U.S. 393, 112 S. Ct. 1386, 1389 (1992) ("[a] person with an

account at a bank enjoys a claim against the bank for funds in an amount equal to the account balance."). The intangible nature of the asset does not preclude the depositor from having a property interest in the account. See, e.g., *United States v. Overman*, 424 F.2d 1142 (9th Cir. 1970)(interest of spouses in marital property is intangible asset constituting property right). (Emphasis Added) Appellant had such a property interest. This precludes summary judgment of Appellant's conversion claim.

NACHA rules require only the "Originator" to enter into a contract with the ODFI to be bound by the NACHA rules, NACHA Operating Rule § 2.1.1, and there is no such requirement for the Receiver. *Security First Network Bank v. C. A.P. S* No. O1-C-342 (N.D. lit. March 29, 2002) Therefore, Respondent's statements about the ACH Rules applying to Appellant in this situation, as a "Receiver", was again an intentional, knowingly, deceitful and dishonest misrepresentation of the facts of the case in order for Respondent to obtain an unjust and unfair judgment. Respondent's and their attorney's misconduct prevented a full and fair presentation of Appellant's case. *Estate of Freitag v. Frontier Bank* 118 Wn. App. 222, (2003) The rules embodied in Article 4A are the "exclusive means of determining the rights, duties and liabilities of the affected parties in any situation covered by particular provisions of the Article."

A. A Claim for Conversion will lie to Funds Outside a Bank Account

Appellant averts that the $475,000.00 Respondent seized through

bank and wire fraud was property of Appellant and his wife. Appellant has a property interest in the funds in his account pursuant to *Barnhill* which was withheld illegally from Appellant. Appellant's claim was for both funds on deposit and the $475,000.00 seized by Respondent. Summary judgment on Conversion was improper.

2. Appellant Does Not Have to Prove 1st Security Acted Without Lawful Justification

Again Respondent claims its actions were authorized by Appellant's Contract as discussed previously Respondent has stated there was no document (i.e. Law), contract, ACH or NACHA Policy that required Respondent to return the funds or seize Appellant's account.

a. The Contract and ACH Rules Did Not Authorize 1st Security's Actions.

Again Respondent perpetuates the fraud upon the Court by claiming that Appellant's Contract (Account Agreement) authorized its actions. This dead horse has been beaten enough. Respondent's argument does not disclose that once the payment orders are accepted the actions the Respondent is describing cannot occur. The reversing entry requires notice to the Appellant (Beneficiary) of which there was none. Additionally, the reversing entry has to happen prior to Respondent acceptance of the Payment Order. (Notice the words intended to be credited or debited) Respondent's Brief pg. 22 ln. 14. The five day limit is prior to settlement date not after the settlement date. Here again the Respondent misleads the Court by knowingly

misrepresentation of the time limit which was a key determination of the Trial Court. (RP at pg. 40, lns. 6-10)

b. Appellant's UCC Arguments Were Improperly Rejected

Here again Respondent hangs its argument on Appellant's Contract (Account Agreement) to justify all its actions. Respondent continues its fraud upon the Court in its argument that the account agreement allows changes to the UCC. While it does allow certain changes it does not allow total disregard of the UCC. Respondent has admitted that there is no document, contract, ACH or NACH Policies that allowed their actions on Appellant's account. Even the portion cited by Respondent in their Brief at pg. 24, ¶ (b) lns. 11-13 states the agreement to modify **is between the banks using the system**, not the account holders.

Respondent's argument that the ACH Rules were adopted by the parties in the account agreement is of no consequence and totally irrelevant as Respondent has admitted that no ACH or NACH Policies allowed their actions. This is yet another spurious attempt by Respondent to avoid their liability to Appellant.

Respondent cites that RCW 62A.4A.-211 allows the sender to cancel the payment order when it orders payment to a beneficiary not entitled to receive the payment. However, this is Respondent's first attempt at this argument and therefore it cannot be made on Appeal. Additionally, there was no cancellation by the Original Depository Financial Institutions. (ODFI)

Respondent has claimed that the ODFI's requested the return of the funds, had the transfers been cancelled there would be no reason for the ODFI's to request the return.

Appellant now claims it had reasonable doubt. This too is a new argument and not admissible on appeal. Reasonable doubt is a criminal standard and is hard to meet. The point here is at 9:00am when Appellant tried to access funds in his account Respondent had no "Actual Knowledge" as defined and required by statute but still denied that access. That action violated Appellant's Account Agreement. (CP 365 at Item 16, Ex. O, at CP 521 under Withdrawals)

Respondent's security procedures have previously been addressed. Respondent's actions were not authorized by statute and this too is a new argument on appeal thus making it inadmissible.

3. The Trial Court Improperly Concluded Appellant Had No Right to the Funds

The Trial Court failed to apply Federal Caselaw as it is mandated to do. Appellant did in fact demonstrate that he was entitled to the funds in question even though he is not required to do so. The Trial Court ignored the law and allowed the Respondent to commit perjury again and again.

The law is clear once Appellant became "Holder in Due Course" he was the legal owner and entitled to the funds in his account. There were no funds from Cox and Comcast deposited into Appellant's account. The general rule, as evidenced by the great weight of authority, is that **only bad faith on**

the part of a third person receiving stolen money, or his failure to pay valuable consideration therefore, will defeat his title thereto as against the true owner. Annotation (1958), *62 A.L.R. 2d 537.*

a. Appellant Does Not Have to Produce Evidence from Where the Funds Came From.

The claims of the Appellant involve the actions of Respondent after the credits were deposited into Appellant's account. Previous actions by Respondent or Appellant are inconsequential and have no bearing on Appellant's claims. If Appellant claims Respondent is in debt to him and Respondent claims it is not then there is a material fact in dispute which precludes summary judgment.

Hanover had several websites which are in the public domain therefore, if Respondent had attempted to contact Hanover they could have done so. Appellant was under no obligation to disclose Hanover's whereabouts especially when at the time asked Appellant had no knowledge where Hanover was. The Declaration submitted to the Appellate Court was not stricken by the Trial Court. It is part of the record and in the public domain. The fact the Trial Court failed to take into account the unstricken Declaration of Hanover demonstrates the abuse and prejudice of the Trial Court against the Appellant.

To the Respondent's claims citing fraud, but at the same time claiming it's not pleading fraud, if a fraud occurred Appellant had nothing to do with fraud and no knowledge of fraud. Appellant accepted Hanover's

payment in good faith, for valuable consideration and with no knowledge of any wrongdoing. *Transamerica Ins. Co. v. Long*, 318 F. Supp. 156, 160 (W.D. Pa. 1970) **("after stolen money has been negotiated, the victim-owner . . . cannot recover a like amount from a third-party recipient unless it can be proved that the recipient had prior knowledge that the money was stolen"; "It is absolutely necessary for commerce . . . that one who receives money . . . is not put on inquiry as to the source [thereof] . . . . It is generally . . . impractical to discover the source of money, and for this reason one who receives money in good faith for valuable consideration prevails over the victim");** *James Talcott, Inc. v. Roy D. Warren Commercial, Inc.*, 171 S.E.2d 907, 909 (Ga. Ct. App. 1969) Courts have consistently held that a bank account represents a depositor's right to payment in an amount equal to the account balance. See, e.g., *Barnhill v. Johnson*, 503 U.S. 393, 112 S. Ct. 1386, 1389 (1992) ("[a] person with an account at a bank enjoys a claim against the bank for funds in an amount equal to the account balance."). The intangible nature of the asset does not preclude the depositor from having a property interest in the account. See, e.g., *United States v. Overman*, 424 F.2d 1142 (9th Cir. 1970)(interest of spouses in marital property is intangible asset constituting property right). (Emphasis Added) Appellant had such a property interest. This precludes summary judgment of Appellant's conversion claim.

b. Appellant's Arguments Are Legally Correct

Appellant has legal right and title to the funds given to him by Hanover. As long as Appellant received those funds in good faith, for valuable consideration and with no knowledge of any wrongdoing which has been established in Declarations, open Court and due to the failure of Respondent to dispute the fact. The law is the law. Even, if Respondent was able to and had standing to claim fraud. Appellant would still receive the funds and have a claim against Respondent for damages. In the case *United States v. Redcorn*, 528 F.3d 727 (10th Cir.2008) Again, for the Court's convenience Appellant has identified the players in this case as above within the *Redcorn* statement (Bolded). The case stated: **Reluctantly, we are forced to agree**. (The Court) **Once the defendants** (Appellant) **deposited the funds into their personal bank accounts**, (Appellant's Accounts held by Respondent) **they had accomplished their crime and the funds were available for their personal use. That they chose to transfer part of their stolen money to their broker in Florida for the purpose of investments is purely incidental to the fraud; they could just as easily have decided to blow it on a luxury trip to the Ozarks.** The point is Respondent had no legal or contractual authority to take Appellant's funds. Regulation J provides the legal foundation for settlement finality in Fedwire. Payment to the receiving participant over Fedwire is **final and irrevocable upon the crediting of the receiving participant's account**, or when the payment order is sent to the receiving participant, whichever is earlier. Payment orders generally are

processed immediately following the Reserve Bank's receipt of a transfer message.

The Ninth Circuit case *Powderly v. Schweiker*, 704 F. 2d. 1092, 1097(9th Cir. 1983) is not on point and involves a benefit check. There was no good faith, valuable consideration and the wife knew it was wrong.

The Respondent's argument about the wired funds is ludicrous. Once the funds were withdrawn (wired) all title and interest was Hanover's Respondent's own words. The money came from a joint account that Hanover authorized. Respondent knew half of all monies deposited were given to Appellant. It stands to reason half of all withdraw are also Appellant's. There is simply no authorization anywhere for Respondent's actions in retrieving a wire transfer from the account of a foreign national, in a foreign bank without assistance of the government.

Respondent has no standing to take Appellant's funds from his account as Respondent was acting as an agent on behalf of Cox and Comcast. Respondent has by *de facto* admitted liability by not taking any action in transferring the funds until it was provided Letters of Indemnification from the real parties in interest. The case should have been brought by Cox and Comcast to retrieve their funds not having Respondent act as their agent and steal, seize or transfer the funds. The wire transfer was received over six weeks after it was sent well after any authorized time period for retrieval if there was one.

C. Respondent Owed No Fiduciary Duty to Appellant.

Respondent had the duty to abide by its Account Agreement.

D. Appellant Presented a Conspiracy Theory of Governmental Assistance.

Appellant raised the legal theory of a conspiracy between the government parties (FBI, Secret Service) acting with Respondent in seizing $475,000.00 from the account of a foreign national in another country. The level of proof is not the same as Respondent claims. A jury should decide the facts.

In reference to the remaining arguments of Respondents, Appellant has an education and knows how to read, therefore Respondent's arguments to the contrary are misguided. All of Appellant's arguments are supported by the cited authorities. Respondent has no authority to determine what the Court means. Respondent fails to address other parties as cited in RCW 30.22.210 thus making this statute applicable. Appellant therefore denies all further claims of Respondent within Respondent's Brief.

A material fact is defined *as "A material fact is a fact that would be to a reasonable person germane to the decision to be made as distinguished from an insignificant, trivial or unimportant detail. In other words, it is a fact which expression (concealment) would reasonably result in a different decision. "*

Here Appellant has stated Respondent took his funds without authorization Respondent claims to have authorization. This is a material fact

in dispute. Respondent's while claiming there is no fraud claim and it is not necessary to their claim is absolutely absurd. Respondent's entire argument hinges on fraud. The only Declarations presented by Respondent claim fraud.

Appellant asserts that he has a right to public information and to use it as evidence. If Respondent was honest and had done nothing wrong they would not be complaining to the Court of Appellant's Clerk's Papers.

Respondent request award of attorney's fees when those fees are not being paid by Respondent, further evidence that Respondent was and is acting as an agent of Cox and Comcast. Appellant's claim is not frivolous.

V. CONCLUSION

The Trial Court did err in granting summary judgment. Appellant has shown, and the evidence proves, that Respondent has committed perjury in reference to discovery issues and Court pleadings both at the Trial Court and here. Respondent has stated there was no document, contract, ACH or NACHA Policies that authorized its actions while pleading the opposite to the Court. Appellant has also shown that the Trial Court disregarded admissible evidence submitted by Appellant. (CP 111) Even Respondent has shown that evidence submitted by Appellant was not considered by the Court (Respondent's Brief pg. 45, at CP 133-141, CP 153-160, CP 203-204, CP 294-299) Thus prejudicing Appellant.

RESPECTFULLY SUBMITTED this 12th day of October, 2015

Charles V. McClain III, Pro se

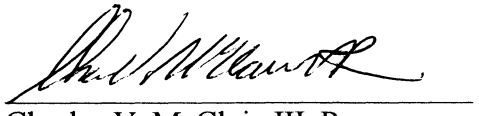
CERTIFICATE OF SERVICE

I hereby certify on 12th day of October, 2015, Appellant caused to be mailed a copy of the Reply Brief of Appellant using Priority U.S. Mail to the Respondent as follows:

McKay Huffington & Tyler, PLLC.
14205 SE 36th St., Suite 325
Bellevue, WA 98006
Attn: William McKay
Jean Huffington

And the Court as Follows:

Office of the Clerk
The Court Of Appeals
Division I
600 University St.
Seattle, WA 98101-4170



Charles V. McClain III, Pro se
Appellant