

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 339386-III

COURT OF APPEALS, DIVISION III OF THE STATE OF
WASHINGTON

SAMUEL SALMON and ROXY SALMON,
Appellant,

v.

MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.,
Respondent,

On Appeal from the Superior Court Of The
State Of Washington for Stevens County

REPLY BRIEF OF APPELLANT

Samuel Salmon and Roxy Salmon
Pro Se representative for
SAMUEL SALMON and ROXY SALMON, as
Appellant

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Salmons' Reply Brief

MERS Falsified Information in their response brief

The Respondent MERS is either grossly negligent or committing perjury. In MERS response, they stated "Fake MERS" has the same UBI No. as a company called "Mortgage Electronic Registry System." **This is false information and MERS is misleading the court again and quite boldly this time.** MERS entity's name matches the UBI number of the "Real MERS" registered with the Washington Department of Revenue which is "**Mortgage Electronic Registration Services, Inc.**" not the Fake name of "**Mortgage Electronic Registry**" that MERS purports; (see CP 173-180). MERS counsel deceptively falsified MERS name on the record evidenced by their Washington Department of Revenue and Secretary of State accounts.

MERS opened two accounts with the Department of Revenue registered on the same day in 2004.¹ These state records provide substantial evidence that MERS is the entity that opened these accounts in 2004, because

¹ MERS account name registered with the Department of Revenue is:
Mortgage Electronic Registration Services, Inc. UBI No. 602929654
MERS account name registered with the Secretary of State is the same:
Mortgage Electronic Registration Services, Inc. UBI No. 602929654
MERS second account name registered with the Department of Revenue:
Mortgage Electronic Registry UBI No. 603076593
MERS second Department of Revenue account name of "Mortgage Electronic Registry"
is not registered with the Secretary of State as MERS purports in their Response Brief.

MERS Department of Revenue records show MERS correct principle place of business listed with the Department of Revenue at 1818 Liberty ST STE 300 Reston, VA. This is substantial evidence that MERS is the account holder. MERS same correct name and UBI No. is also registered with the Secretary of State (see CP 174 and 177). This kind of blatant lying has been “par for the course” with MERS from the beginning.

Only MERS could authorize use of their Department of Revenue accounts in order to officially open an account with the Secretary of State. This is good reason for further fact finding and why the Salmons discovery motion should be granted.

ARGUMENT

The “Fake MERS” Defense is Fake

MERS again and again alleges that the Secretary of State served the incorrect MERS entity in this case but has not at any time provided evidence with factual documents for the record with evidence that the Washington Secretary of State records are incorrect. Washington State agency’s records show that the real MERS was served properly (see CP 173-182). MERS is a Delaware entity with their principle place of business in Reston VA. Records show MERS true and correct entity has registered two accounts at Washington Department of Revenue in 2004. One of MERS Department of Revenue entities with the true and correct

name is registered with the Secretary of State. MERS other Department of Revenue account is registered by MERS Financial Reporting Manager Indre Conners (see CP 265, and 267)

MERS was Registered at the Secretary of State by Incorp Services, Inc., Not Robert Jacobsen

The record shows that Incorp Services, Inc. opened the account with the Secretary of State, not Robert Jacobsen (see CP 178). Incorp Services, Inc. is a legitimate and licensed Washington state business with the UBI 602267112. According to their website, Incorp Services, Inc. provides services as a registered agent for foreign corporations. Incorp services served as MERS registered agent from June 3rd of 2009 to July 2nd of 2009 as recorded with the Washington Secretary of State. Incorp Services, Inc. registered MERS Department of Revenue account with the Secretary of State, which could only take place with proper authorization from the defendant MERS. This fact is substantial evidence, which has been entered in this case but repeatedly overlooked. This kind of evidence is a good indication of why there were no charges brought against Robert Jacobsen in the Northern District of California, Case No.4:09-03600-SBA. If Robert Jacobsen were illegally using MERS accounts in California, the Federal Judge would not have DISMISSED the Case with PREJUDICE in Robert Jacobsen's favor (see CP 257). Furthermore, the following

injunction in the case was only part of a “settlement agreement” between the parties, not a Judgment against Mr. Jacobsen. Not at any time was Robert Jacobsen charged with any crime or wrong doing.

If Incorp Services, Inc. and Robert Jacobsen were indeed unlawfully using MERS Department of Revenue account to register with the Washington Secretary of State, as MERS claims, Incorp Services, and Robert Jacobsen would be facing serious criminal charges in Washington State. The fact that MERS has not pursued any legal action in charging Incorp Services, and Robert Jacobsen for the illegal use of their Washington Department of Revenue accounts furthers substantiates evidence that MERS Secretary of State account is legitimate and MERS was properly served in this case, and the trial court’s default order is correct.

Discovery should be granted

The Salmons did not cite specific court rules when moving the trial court for discovery, but the discovery request falls under CR 26 because the Salmons sent MERS a qualified written request (QWR) before the court case was opened (see CP 50). The Salmons attached the QWR in the initial complaint, again requesting the information in the form of a discovery motion with Exhibit C (see CP131-147). The Salmons also motioned for discovery in their complaint (see CP55 and 56).

The Salmons are asking for discovery regarding MERS Department of Revenue accounts, because MERS is claiming they were not served in this case. Both Department of Revenue accounts are facially evident that they were opened by MERS, because their correct principal place of business is listed and MERS employee Indre Connors is shown as the account manager. If MERS did open the above listed Department of Revenue accounts, then InCorp Services, and Robert Jacobsen would have required MERS approval to register the account with the Secretary of State. The Salmons have requested MERS Department of Revenue account financial information (see CP 268-277), because it is pertinent in finding the facts regarding proper service of process; this information would also reveal if MERS is a monopoly and legally domiciled in Washington State at the time they conducted business at each county.

Salmon seek protection from MERS unfair, deceptive acts under RCW 19.86, *et al*

The Salmons are not trying to avoid foreclosure from an interested party, but seeking justice from MERS unlawful acts outlined and pertaining to this CPA cause.

Over time, the Salmons have found many illegal activities perpetrated by MERS. The longer MERS is observed, the more unfair deceptive actions are found. MERS actions have been found deceptive and unfair in that

MERS records at the county recorder's office are facially deficient and MERS "robo-signers" are a legal sham, and the list goes on. But more recent is the finding that MERS appears to be conducting business as a monopoly, and now the issue with MERS registered agent recorded at the Secretary of State which MERS brought forth in order to vacate the order of default. The Salmons intend to not allow deceptive, unfair parties without interest, such as MERS to steal their life savings and are afforded protection from MERS unfair deceptive acts under Washington state consumer protection laws.

MERS may qualify as a Monopoly under the CPA cause

MERS alleges the Salmons did not bring up the monopoly issue in the complaint. However, the lawsuit is filed under the RCW 19.86 consumer protection act which covers monopolies. MERS is not denying they acted as a monopoly, only that it was not articulated specifically in the initial pleading.

An RCW 19.86 CPA lawsuit covers monopolies as a reason for actionable cause in this case, and it is within the scope to claim under the CPA cause for this case. MERS arcane business practices are highly irregular, and hence, difficult to discover. Therefore The Salmon's seek protection under RCW 19.86, *et al* which is not limited to one specific part of the law.

Monopolies, as an actionable cause against MERS is covered in this CPA cause.

MERS again misleads the court regarding Salmons' Reconsideration Motion.

The reconsideration motion was properly filed on October 30, 2015, 10 days after the final Judgment Order on October 20, 2015. MERS counted the days from a previous ruling.

Salmons' Motion to recuse was correct

Judge Neilson improperly addressed issues of res judicata at the hearing to vacate the order of default. Res judicata issue does not pertain to vacating the default order for non-service. Res judicata is irrelevant prior to establishing the facts about the Secretary of State's proper service of process upon MERS (see RP 6 and 7). In Judge Neilson's ruling MERS also incorrectly presumed that Washington Secretary of State could not perform service of process upon a dissolved entity (see RP 24). The Washington Secretary of State serves dissolved entities as a rule.

Judge Neilson further showed unfair bias in name calling, when referring to MERS registered agent "Robert Jacobsen" as a "fly-by-night scam artist" (see RP 26 line 24 and 39 line 18).

Res Judicata Does NOT Apply

The Original Default Orders Filed with The Trial Court Were Unavailable On Appeal.

The Stevens County Clerk's Office could not produce the original 2013 Default Orders filed and recorded in this case. If the Salmons had not retained copies of these orders the record would have been forever changed. The Salmons retained and resubmitted the orders by motion to supplement the record. The motion was granted by the appeal court. These lost or deleted orders are evidence of faulty handling of court records (see CP 40-46.) The letter Judge Neilson sent was in lieu of properly addressing the proposed orders stating "I'm unable to grant your request for a default judgment as the default judgment is not in the proper form" (see CP 16, and RP 26 lines 4 and 5).

Identity in the thing sued for is different.

The Salmon's 2010 suit was seeking to stop an illegal foreclosure. Stopping foreclosure is not the object being pursued in this CPA case. MERS could not legally foreclose, nor is MERS trying to foreclose on the Salmon's property. MERS continues to mislead the court with the statement that Salmons are trying to stop a foreclosure in this case. This is simply a misleading statement. Salmons are suing MERS for doing business in Washington State in an unfair and deceptive manner. MERS

position as “Beneficiary”, or foreclosure is **not** the argument in this case. Instead the Salmons seek protection from MERS unfair and deceptive transactions outlined in this case which have injured the Salmons.

Identity of the cause of action is different;

Cause of action is not the same. The Salmons’ suit is against MERS, as the “unfair and deceptive” business entity pursuant the CPA laws, not MERS the “Beneficiary” pursuant the DOTA laws. This case also inherently covers the different subject matter of MERS correct account information registered with Washington State agencies, because MERS claims the Washington State agencies have faltered in their duties, and claim their records are incorrect in the service of process. This subject brings into view the connected Department of Revenue records evidencing MERS authority or lack thereof to transact business in Washington State and whether MERS is a veritable monopoly. This cause was not covered in a DOTA case and was not a cause in the Salmon v. Bank of America, *et al* 2010 case.

Identity of persons and of parties to the action is different;

The Salmons pursued MERS in the 2010 DOTA case as a “Beneficiary” MERS person and standing was forever changed by the Washington Supreme Court decision in Bain v. MERS, *et al* in Conclusion (see CP

100, and 101).² The Salmons argue that MERS does not identify as the same person after the Supreme Court's ruling. MERS as a person is ruled not a Beneficiary, and in this CPA case, MERS presumptive act as "Beneficiary" has already been decided by the Supreme Court, and is not an actionable argument in this case. The Salmons are addressing MERS person as an "unfair business" in Washington under the CPA cause; not as a "beneficiary" under the DOTA cause and therein is a "different person" than the MERS in the previous case. The status of MERS person no longer qualifies as the same person after our Supreme Court's ruling in 2012.

Identity of the quality in the persons against whom the claim is made is different;

MERS is forever a different person in Washington State

No longer is MERS person a "Beneficiary". Pursuant the 2012 Supreme Court decision in *Bain v. MERS, et al* MERS quality of person is no longer the same, and for this reason, the res judicata, and collateral estoppel should not apply. MERS foundation was false in its creation. The standard for loan ownership and authority to convey interest in the note or its security was completely disregarded in the creation of MERS. Finally, in 2012, the Washington Supreme Court brought forth the ruling, which

² The Washington Supreme Court ruling on the first certified question "Simply put, if MERS does not hold the note, it is not a lawful beneficiary." And in the conclusion stated "Under the deed of trust act, the beneficiary must hold the promissory note and we answer the first certified question "no."

stripped MERS of their unlawful title. Regardless, MERS has continued in the position of Beneficiary, because the Supreme Court ruling was not widely broadcast and rarely implemented.

Again, the Supreme Court's ruling has changed the Identity of the quality of the person MERS by showing MERS the Beneficiary no longer exists and therefore wrong in their standing (see CP 101).³

MERS used false robo-signers who purported to be officers of MERS, but were actually employees of RECONTRUST, to convey the interest in the Salmons mortgage (see CP 115). This caused injury to the Salmons' records and clouded the Salmons' property title rights.

The Salmons argue that the Federal Court dismissed the Salmons' first Superior Court Case No. 10-2-00596-8 with prejudice, but without proper venue. The venue was improper, because the case was removed to Federal Court inappropriately pursuant diversity. Diversity would not properly apply when all parties were operating and domiciled in the state of Washington.

³ Identity of the quality in the persons for or against whom the claim is made; for example, an action by Peter to recover a horse, and a final judgment against him, is no bar to an action by Peter, administrator of Paul, to recover the same horse.

MERS wrongly claims to be a foreign corporation in Washington State when domiciled in the same state. The Salmons allege that MERS qualifies as a registered and domiciled entity with the Washington Department of Revenue. Also MERS registered their Department of Revenue business name and UBI number with the Secretary of State.

And to further the matter, the Salmons allege MERS enormous volume of business generated by the business of mortgage assignments would qualify MERS as an entity domiciled in Washington State under the Department of Revenue nexus example 2.⁴ MERS has transacted business in Washington State evident in the uniform position taken up on each security instrument inappropriately as “Beneficiary” and recorded in each county recorder’s office. Hence, MERS is domiciled in Washington State if it meets the Department of Revenue requirements pursuant RCW 82.04.067, which is further reason to grant The Salmons’ Motion for Discovery with the forms in the record (see CP 268-277).

⁴ Department of Revenue website under nexus example number 2 “Company B is domiciled in state Y. In the previous calendar year it has \$45,000 in property, \$45,000 in payroll, and \$240,000 in gross apportionable income attributed to Washington. Its total property is valued at \$200,000; its world-wide payroll is \$200,000; and its total gross income is \$2,000,000. Company B does not have substantial nexus with Washington during the calendar year based on the minimum nexus standards.”

Conclusion

Further Fact finding is necessary, because MERS official records filed with the Washington agencies Secretary of State and Department of Revenue are presumed not correct (see CP 175-180, and 264-267).

MERS allegations of improper service should be overruled, if state agency records are presumed correct and MERS allegations against their registered agent are not upheld by the dismissed California case (see CP 257) where MERS and Robert Jacobsen reached a settlement agreement. No judgment for wrongdoing was found against Robert Jacobsen at any time. Robert Jacobsen did not register MERS with the Secretary of State as MERS purports, but it was in fact Incorp Services, Inc. who registered MERS with the Washington Secretary of State, which would further render MERS claims of non-service void (see CP 178). The Salmons requested discovery in the initial brief (see CP 13) and are again requesting discovery for proof of MERS allegations of non-service, by the review of MERS Department of Revenue records with the forms provided in this case (see CP 268-277) with the discovery motion.

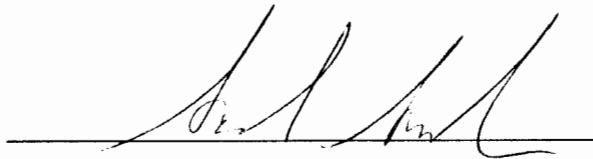
If MERS is found to be served incorrectly after discovery, and res judicata doctrine does not apply, the Salmons request the case may proceed on its merit.

Apologies are offered for any redundancy. However the trial court would not require MERS to provide substantial evidence of MERS allegations of incorrect records at our Washington State agencies, which should be the standard, not MERS hearsay, or the "Dismissed with Prejudice" California case.

Thank you for your consideration.

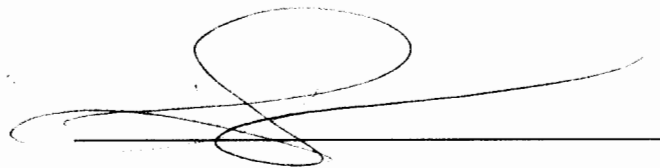
Respectfully submitted,

Wednesday, August 31, 2016

A handwritten signature in black ink, appearing to be 'S. Salmon', written over a horizontal line.

Samuel Salmon

Pro Se litigant for *SAMUEL SALMON*,

A handwritten signature in black ink, appearing to be 'R. Salmon', written over a horizontal line.

Roxy Salmon

Pro Se litigant for *ROXY SALMON*

FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION III

Samuel and Roxy Salmon ,)	Appeal Case No.: 339386
)	
v)	Certificate of Service for Salmons'
)	Reply Brief
)	
MORTGAGE ELECTRONIC)	
REGISTRATION SERVICES, INC.,)	
)	
Respondent)	

Certificate of Service for Salmons' Reply Brief

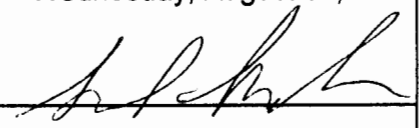
I Samuel Salmon, hereby certify that on Wednesday, August 31, 2016, I mailed the foregoing document to the Clerk of the Court:

Darnell L. Zundel
DIVISION III COURT OF APPEALS
500 N Cedar Street
Spokane, WA 99201-1905

I, Samuel Salmon certify that a copy of this document has been mailed or hand delivered to the parties as listed below:

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Wednesday, August 31, 2016



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