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COURT OF APPEALS DIV I
STATE OF WASHINGTON

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King County #11-2-09592-4 SEA
Court of Appeals # 67440-4-1

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION 1

AMERICAN EXPRESS CENTURION BANK,
Respondent

v.

ZAAKERA R STRATMAN,
Appellant

APPEAL FROM THE DISTRICT COURT FOR KING COUNTY
THE HONORABLE THERESA B. DOYLE, WSBA # 12966

RESPONSE OF PETITIONER TO RESPONDENTS BRIEF

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Court Rule 56	4
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INTRODUCTION

Petitioner disputes the statement of case as put forward by respondent. Multiple areas are in dispute based on the Respondent's Brief. There remains an issue of due process which occurred when petitioner objected to the declaration of the person presenting the counterfeit records (Paul Levarta) as they were not present in court to testify to anything. Petitioner asserted in court that there were facts in dispute. In addition improper service of summons occurred on 10/27/2010 by King County Sherriff Russell White.

ARGUMENT

Petitioner disputes the statement of case as put forward by respondent. The record of the lower court does not support the statement. There is no record of Stratman's daughter being an adult at the time of service, as a matter of fact that issue was disputed at trial and was not overcome. There was also no evidence or live testimony before the court that the Sheriff discussed anything with the petitioner.

Power of Attorney or assignment from Suttell & Hammer showing authority to try this case on behalf of American Express was never provided. RCW 7.08.030
RP5, June 17, 2011

Petitioner does not dispute that the court rules allow for an exception to the business records hearsay rule, what this issue is about is due process. The main issue here is that the petitioner objected to the declaration of the person presenting the counterfeit records (Paul Levarta) as they were not present in court to testify to anything. ER 904(c) No-one testified to anything in court and the defendant was unable to cross examine the witness as the plaintiff had not made the witness available. If a statement is testimonial, the person making the statement must

generally be available for cross examination. An exception to this rule is if the witness is unavailable. But even where the witness is unavailable, the defendant must have had a prior opportunity to confront the witness via cross-examination. The petitioner was not afforded that opportunity in the lower court.

In a judicial investigation, the right of cross-examination is absolute and not a mere privilege of the one against whom a witness may be called. In a civil action, a party has the right to cross-examine witnesses against him/her whether the evidence is given ore tenus or by deposition.

Thus it is the general rule that refusal to allow any cross-examination upon matters tending to affect the credibility of a witness is error. Cross-examination of a witness for purpose of eliciting facts to show bias, prejudice, or friendship always is considered competent.

The card member agreement, the billing statements and what is alleged to have occurred are all moot issues as no-one testified in court to anything and the record of the lower court will show that the petitioner objected to this very issue. ER 904(c) CP 145-155. Cross-examination of a witness for purpose of eliciting facts to show bias, prejudice, or friendship always is considered competent. See *Davis v. Arkansas Best Freight System, Inc.*, 239 Ark. 632, 634-635 (Ark. 1965). *United States v. Harris*, 501 F.2d 1 (9th Cir. Cal. 1974). *Frierson V. Hines*, 1967 OK 60 (Okla. 1967). *Heinz v. Heinz*, 653 N.W.2d 334 (Iowa 2002). *Floyd v. Fruit Industries, Inc.*, 144 Conn. 659 (Conn. 1957). *Frierson V. Hines*, 1967 OK 60 (Okla. 1967). *Davis v. Arkansas Best Freight System, Inc.*, 239 Ark. 632, 634-635 (Ark. 1965). USCS Const. Amend. 6. *United States v. Carty*, 993 F.2d 1005 (1st Cir. R.I. 1993). *Frierson V. Hines*, 1967 OK 60 (Okla. 1967). *Hungate v. Hudson*, 353 Mo. 944 (Mo. 1945).

A summary judgment can only be made when there are no facts in dispute. CR 56(c) The issue here is whether there were any facts at all from the respondent (Plaintiff) before the trial court upon which the court could base a decision, or even grant the trial court subject-matter jurisdiction. If the court finds that an

unsworn statement without notarization made outside of the court and objected to by the defendant qualifies as testimony to base a case on, then essentially, there is no need for a witness in court any more. The case can apparently be prosecuted without any witnesses testifying to anything in court, which is what happened in the trial court.

CONCLUSION

Judge Theresa B. Doyle misconduct is typical of the arrogated nonsense infesting America's courts fomenting a Constitutional crisis and should have denied the motions for summary judgment due to the plaintiff having no facts before the court. Judge Theresa B. Doyle should have denied the motions for summary judgment because there were no witnesses in court testifying to anything, therefore there were no facts to base a decision on and the court was deprived of subject matter jurisdiction. Also statements of counsel in briefs or arguments although enlightening are not a basis for granting a summary judgment. Judge Theresa B. Doyle, in allowing the declarant's statement without allowing the defendant to cross-examine the witness was in error. It is the general rule that refusal to allow any cross-examination upon matters tending to affect the credibility of a witness is error.

Ideals of substantial justice and fair play, as well as proper administration of the rules of court, justly require reversing the decision of the Superior Court decision be overturned.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

AMERICAN EXPRESS CENTURION BANK
Plaintiffs(s)

King County No. 11-2-09592-4 SEA
Court of Appeals # 67440-4-1

vs.

CERTIFICATE OF SERVICE

ZAAKERA STRATMAN
Defendant(s)

I certify under penalty of perjury under the laws of the State of Washington that, on the date(s) stated below, I did the following:

On the 6th day of January, 2012, I mailed by regular U.S. Mail, postage prepaid; a true copy of the RESPONSE OF PETITIONER TO RESPONDENTS BRIEF to SUTTELL & HAMMER at the following address: P.O. Box C-90006 Bellevue, WA 98009.

Dated this 6 day of January 2012 in Seattle (City), Washington (State).


Signature

ZAAKERA STRATMAN
Print or Type Name