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NO. 71148-2--I

**COURT OF APPEALS, DIVISION ONE  
OF THE STATE OF WASHINGTON**

PENNY ARNESON f/k/a PENNY ARNESON SWEET, on behalf of  
herself personally and on behalf of the 6708 Tolt Highlands Personal  
Residence Trust

Appellant

v.

GARY NORDLUND and ALDENTE, LLC

Respondents,

And

Defendants,

MFE, LLC; COLUMBIA NORTH WEST MORTGAGE; MARK D.  
FLYNN; L80 COLLECTIONS, LLC; and DOE DEFENDANTS 1  
through 20, inclusive

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**APPELLANT'S OPENING BRIEF**

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## I. INTRODUCTION

How many legs does a dog have if you call the tail a leg?

Four. Calling a tail a leg doesn't make it a leg.

Abe Lincoln must have had this case in mind. Calling a consumer loan a business loan doesn't make it one.

We here consider two loans made by Respondents, ALDENTE, LLC (hereinafter "Aldente") and GARY NORDLUND (hereinafter "Nordlund") to pay personal expenses of a couple in the throes of a traumatic dissolution proceeding. Nominally the borrowers are Appellant, PENNY ARNESON, f/k/a PENNY ARNESON SWEET (hereinafter "Ms. Arneson") and her former husband, Kenneth Sweet (hereinafter "Mr. Sweet") as trustees of their testamentary trust, the "6708 Tolt Highlands Personal Residence Trust" (hereinafter "the Trust"). CP 241-243, 348-349, 487. The beneficiary of the Trust is an entity named the Rose Adorer Family Limited Partnership in which Mr. Sweet and Ms. Arneson were the sole partners (hereinafter "Rose Adorer LP"). CP 125. The Trust held nominal title to Ms. Arneson's and Mr. Sweet's personal residence, the residence identified in the very name of the trust. CP 286. We know these loans were personal or consumer in nature because the King County Superior Court Family Law Department orders directed the parties to obtain the loans, secured by the "family home", to pay for a number of "living expenses," a

“parenting evaluator”, and “attorney fees.” CP 251-253, 255-256, 258-262, 439-441, 449-455, 515, 524-530. Moreover, the loan proceeds were disbursed directly to the Mr. Sweet and Ms. Arneson from the escrow, rather than through the Trust, or were disbursed directly to the family law service providers, such as the parenting evaluator and Mr. Sweet’s criminal and divorce lawyers. CP 50-52, 220-222, 249, 253.

Both loans were usurious in violation of *RCW 19.52 et seq.* However the statute exempts commercial loans, as opposed to consumer loans, from its reach. *RCW 19.52.080.* Without citation to authority, and contrary to the statutory language, both lenders successfully argued to the trial court on summary judgment that since the “borrower” and the entity offering the security was nominally a trust and its trustees, the loans must be commercial as a matter of law and exempt from the Usury Statute (*RCW 19.52, et seq.*) and the Consumer loan Act (*RCW 31.04, et seq.*) (hereinafter CLA). But, the lenders and the trial court ignored provisions within the CLA that specifically includes limited partnerships and testamentary trusts in the definition of “persons” to whom consumer loans can be obtained. *RCW 31.04.015.* In substance, the loans from Aldente and Nordlund were really to Mr. Sweet and Ms. Arneson individually and for personal/consumer uses – not to the Trust for any

commercial or business purpose. See CP 251-253, 255-256, 258-262, 439-441, 449-455, 487, 515, 524-530.

The trial court's summary judgments must be reversed for the following reasons: (1) contrary to the position taken by the lenders and the trial court, a Trust is a "person" within the terms of the CLA which may negotiate, receive and enjoy the benefits of consumer loans within the terms of *RCW 31.04.015(3)* and *(18)*; (2) there is substantial, if not overwhelming, evidence in the record that these were in fact consumer loans; (3) Mr. Sweet and Ms. Arneson were the actual borrowers and, finally, (4) case law directing trial courts to look beyond the form of the transaction to its substance, which this trial court did not.

## **II. ASSIGNMENTS OF ERROR**

No.1. The trial court erred in concluding that Ms. Arneson had no standing in her individual capacity to bring this action against Aldente and Nordlund.

No.2. The trial court erred when it granted Aldente's motion for summary judgment dismissing Appellants' claims.

No. 3 The trial court erred when it granted Nordlund's motion for summary judgment dismissing Appellants' claims.

No. 4. The trial court erred by entering judgment against the Trust for principal, usurious default interest, costs and reasonable attorney fees.

### **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Does Ms. Arneson have standing to bring this action against Aldente and Nordlund when she was awarded in her Divorce Decree all rights and interest in the subject real property and the beneficiary of the Trust as her “separate property” and she is the borrower in fact?

2. Is a loan to a testamentary trust and its trustees exempt from application of the usury statute, *RCW 19.52.080*, as a matter of law?

3. Have the lenders carried their burden to demonstrate there are no genuine issues of material fact regarding the commercial character of the subject loans?

4. Is a loan to a testamentary trust and its trustees exempt from the CLA, *RCW 31.04.025(2)(e)*, as a matter of law?

5. Have the lenders carried their burden of proof to demonstrate there are no genuine issues of material fact regarding whether the subject loans were both (1) commercial and (2) not secured by the borrowers’ residence?

6. Are there material issues of fact in dispute within the record that support Appellants' assertion that Ms. Arneson and Mr. Sweet were the real borrowers, rather than the Trust or its beneficiary?

7. Should the judgment against the Trust be reversed, attorney fees to abide the final results of a trial on the merits and interest reduced to the non-default rate?

#### **IV. STATEMENT OF THE CASE**

As noted above, Ms. Arneson was previously married to Mr. Sweet. CP 19.

On or about October 31, 2006 Ms. Arneson and Mr. Sweet created the Trust. CP 124-140. This Trust was essentially a tax motivated testamentary trust for the benefit of Ms. Arneson and her family, who would enjoy the benefits of the trust while it existed and to whom the assets would ultimately be conveyed upon its dissolution. As noted above, the named beneficiary of this Trust was Rose Adorer LP. CP 125.

On or about November 2, 2006, Ms. Arneson and Mr. Sweet, through the Trust, purchased that certain real property, commonly known as 6708 Tolt Highlands Rd. N.E., Carnation, Washington 98014 (hereinafter "subject Property"), for which the Trust was named. The property was purchased for the sum of \$1,865,000.00. CP 286.

Ms. Arneson's marriage to Mr. Sweet was quite troubled, she being the victim of domestic violence and one of her daughters being the victim of sexual abuse and assault by Mr. Sweet. CP 19-20. Ms. Arneson filed for divorce in 2009.<sup>1</sup> While the divorce proceedings were pending, Mr. Sweet was charged with "10 felony sex crime charges, including those related to his videotaping of the child rape incidents."<sup>2</sup> CP 20. It is with this back-drop of domestic turmoil that the subject loans were sought by Mr. Sweet in 2009 and 2010.

In May of 2009, Mr. Sweet arranged for a loan through Aldente in the amount of \$200,000.00. The loan was approved by the Family Law Department of the King County Superior Court and was to be secured by a Deed of Trust against the subject Property. CP 439-441, 449-455, 515, 524-530. It is significant to note that the court Order, dated March 9, 2009, characterizes the subject Property as "the parties' home" and authorized Ms. Arneson and Mr. Sweet, rather than the Trust, to borrow the funds. CP 452-455. The proceeds of the loan were not to be used for a business purpose, but were to be used to fund the living expenses, spousal maintenance, child support, paying taxes, paying divorce and criminal lawyers and other family expenses. CP 452-455.

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<sup>1</sup> *In re Sweet*, King County Superior Court Case No. 09-3-01590-6 SEA.

<sup>2</sup> *State v. Sweet*, King County Superior Court Case No. 09-1-06102-1 SEA.

On May 14, 2009, Ms. Arneson and Mr. Sweet entered into a Loan Agreement with Aldente. CP 457-462.

On May 19, 2009, the loan with Aldente closed. The loan was evidenced by a Promissory Note, which obligated the Trust, with Ms. Arneson and Mr. Sweet as guarantors, to repay the sum of \$200,000.00 at the rate of 10% per annum and to be paid in full on or before November 1, 2010. CP 462, 464-466. A copy of this Promissory Note is attached hereto as *Appendix "1"*. The Aldente Note contains at least one material falsehood. The Promissory Note falsely names the Trust as the "Maker". Aldente actually knew or should have known that none of the loan proceeds would be paid to the Trust for any commercial purpose. CP 452-455.

Aldente has acknowledged and admits at the time this loan was made, it was not licensed under *RCW 31.04* to issue consumer loans by the Washington State Department of Financial Institutions (hereinafter "DFI"). CP 106.

The closing of the Aldente loan is evidenced by a HUD-1 Settlement Statement. CP 220-222. A copy of this HUD-1 Settlement Statement is attached hereto as *Appendix "2"*. This document is relevant for several reasons. First, in addition to the 10% interest rate called for in the Promissory Note, Aldente received an additional "loan

fee” of 3%, thus making the effective interest rate 13%. CP 220-222. Second, no funds were actually paid to the Trust. In fact, the “borrower” is ambiguously identified as “Exhibit ‘A’, Attached Hereto”, although no such attachment has ever been produced. Indeed, based upon the disbursements, the borrowers were Mr. Sweet and Ms. Arneson. Of the \$115,257.90 in funds paid to the “borrower”, Ms. Arneson personally received \$59,799.62 from the loan proceeds in accordance with the Family Law Court’s Order of March 9, 2009. CP 249. A copy of the check to Ms. Arneson is attached hereto as *Appendix “3”*. The balance of the loan proceeds were paid out to Mr. Sweet or were held back in escrow. Third, although the Note required the borrowers to pay \$1,666.66 per month in loan payments on a Note that was due in one year, for a total of \$20,712.25 in total payments as prorated, \$56,500.00 was actually held back for “loan payments” or \$35,787.75 more than was due in loan payments for the term of the loan. No accounting for these funds has ever been made. The balance of the funds borrowed, not otherwise paid out or withheld, was paid directly to Mr. Sweet.

In January of 2010, Mr. Sweet arranged for a second loan through Nordlund in the amount of \$375,000.00 to satisfy the Aldente loan and to fund a number of personal uses, including Mr. Sweet’s living expenses, paying divorce and criminal lawyers, parenting evaluators and

other personal expenses of Mr. Sweet. CP 251-253, 255-256, 258-262. This loan was also approved by the Family Law Court, in orders dated October 15, 2009, November 17, 2009 and January 13, 2010. CP 251-253, 255-256, 258-262. Repayment of this loan was to be secured by a Deed of Trust against the subject Property, which the King County Superior Court Family Law Department consistently referred to as the "family home." CP 253, 255. Moreover, the Family Law Court ordered those portions of the Aldente loan that had been previously "held back" in escrow be released to pay real property taxes on the subject Property. CP 221, 261.

On January 15, 2010, the Nordlund loan closed. The loan was evidenced by a Promissory Note, whereby the Trust, and Mr. Sweet and Ms. Arneson as trustees, were obligated to repay the sum of \$375,000.00 at the rate of 12% per annum and to be paid in full on or before January 15, 2011. CP 490-491. A copy of this Promissory Note is attached hereto as *Appendix "4"*. This Promissory Note includes at least two material falsehoods. First, the Promissory Note falsely names the Trust as the "Maker". Nordlund had actual knowledge that the real borrowers were not the Trust, but Mr. Sweet and Ms. Arneson, as evidenced by his signature on the Private Money Term Sheet. CP 487. A copy of this Private Money Term Sheet is attached hereto as *Appendix "5"*. Second,

despite the express personal/consumer purposes for the loan outlined in the Family Law Department of the King County Superior Court orders of October 15, 2009, November 17, 2009 and January 13, 2010, and actual knowledge of the intended use of the loan proceeds through his loan broker, the Promissory Note prepared by Nordlund falsely states that the “sums represented by [the] Note are being used for business, investment or commercial proposes, and not for personal, family or household purposes.” CP 445, 491.

Nordlund has acknowledged and admits that at the time this loan was made, he was not licensed under *RCW 31.04* to issue consumer loans by the Washington State Department of Financial Institutions (hereinafter “DFI”). CP 98.

The closing of the Nordlund loan is evidenced by a HUD-1 Settlement Statement. CP 50-52. A copy of this HUD-1 Settlement Statement is attached hereto as *Appendix “6”*. This document is relevant for several reasons. First, in addition to the 12% interest rate called for in the Promissory Note, charges for making the loan add an additional “loan fee” of 16%, thus making the interest rate effectively 28%.<sup>3</sup> Second, no funds were paid to the Trust and no funds were paid to Ms. Arneson. CP 445. Indeed, Mr. Sweet was the real borrower as

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<sup>3</sup> Included in this figure is a Mortgage Broker Fee of \$45,000.00 (12%), a loan processing fee of \$7,995.00 (2%) and another broker fee, described as “other processing”, of \$8,742.83 (2%). See CP 3, 51, and 487.

he personally received all of the loan proceeds in accordance with the Family Law Court's Orders of October 15, 2009, November 17, 2009 and January 13, 2010. CP 51, 251-253, 255-256, 258-262, 445 Mr. Sweet's divorce lawyer, Jeffrey Barth, and his criminal defense lawyer, Lee Jacobson, were paid \$15,000.00 and \$20,000.00 respectively, directly from escrow, as was the "parenting evaluator" Marsha Hedrick, who was paid \$5,000.00. CP 51. The balance of the funds to the "borrower", in the amount of \$20,000.00 was paid directly to Mr. Sweet. CP 498-500. Nordlund would have had to approve these disbursements through escrow instructions.

It is significant to note that the charges for making the Nordlund loan reflected in the HUD-1 Settlement Statement (CP 50-52) are much higher than those reflected in the Private Money Term Sheet (CP 487). Specifically, the Private Money Term Sheet indicates a "broker (MFE LLC) - 10 points/\$37,000.00", whereas the HUD-1 Settlement Statement indicates that \$45,000.00 was actually paid to MFE, LLC in broker fees, a difference of \$8,000.00. Moreover the Private Money Term Sheet indicates an "other-Processing - L80 Collections LLC-\$2,550.00", whereas the HUD-1 Settlement Statement indicates that \$8,742.83 was actually paid to L80 Collections in "collections", a

difference of \$6,192.83. No accounting for these discrepancies has ever been provided.

Although Ms. Arneson was not provided a Notice of Right to Rescind, required under both state and federal law, she created her own and submitted the same to the escrow agent on January 20, 2010 in a vain attempt to undo the transaction. CP 23. This request to rescind the transaction was ignored by the escrow and Nordlund and the funds were disbursed in accordance with the HUD-1 Settlement Statement. CP 23, 50-52.

On January 19, 2011, Ms. Arneson's divorce from Mr. Sweet was concluded with the filing of a Decree of Dissolution. CP 545-554. It is significant to note that the trial court awarded the subject Property to Ms. Arneson, together with all rights and interest in the Rose Adorer LP, the "beneficiary" of the Trust as her "separate property". CP 125, 547.

On August 12, 2011, Nordlund initiated a non-judicial foreclosure of the Deed of Trust of January 15, 2010, pursuant to *RCW 61.24, et seq.* CP 32-34. A Notice of Trustee's Sale was filed and served on or about October 20, 2011, setting a date for sale of Ms. Arneson's home for February 3, 2012, pursuant to *RCW 61.24.040*. CP 44-48.

On January 5, 2012, Ms. Arneson filed suit against the Respondents for damages and statutory relief as provided under *RCW 31.04, et seq.*, and *RCW 19.86, et seq.*<sup>4</sup> In connection with this suit, Ms. Arneson requested and received a Preliminary Injunction, restraining the trustee from continuing with its foreclosure efforts and ordering the subject Property be sold and the proceeds of the sale deposited into the Court Registry. CP 95-96.

On March 29, 2013, the subject Property was sold and the net proceeds of the sale deposited into the King County Superior Court Registry, in accordance with the terms of the Preliminary Injunction Order of January 5, 2012. CP 95-96, 839.

On May 3, 2013, Aldente moved for summary judgment pursuant to *CR 56*. CP 109-117. This motion was granted by the trial court on May 31, 2013. CP 306-307. The Order on Summary Judgment specifically dismisses all of the Trust's and Ms. Arneson's claims against Aldente and finds, notwithstanding the terms of the Decree of Dissolution of January 19, 2011 that provided Ms. Arneson all right and interest in Rose Adorer LP, that "Penny Arneson has no standing to

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<sup>4</sup> Defendants, MFE, LLC, COLUMBIA NORTH WEST MORTGAGE, MARK D. FLYNN AND L80 COLLECTIONS, are either non-existent entities or were otherwise not served with the Summons and Complaint and did not participate in these proceedings. It is believed that MARK D. FLYNN is a resident of the State of Washington and keeps himself concealed with the intent to avoid service of Ms. Arneson's summons.

bring this action against Aldente LLC and she is dismissed as a party plaintiff as to the cause against Aldente, LLC only.” CP 307.

On June 10, 2013, Nordlund moved to dismiss the Trust’s and Ms. Arneson’s claims pursuant to *CR 12(b)(6)* and *CR 56*. CP 323-335. This motion was granted by the trial court on November 8, 2013. CP 797-799. The Order Granting Summary Judgment dismisses all of Ms. Arneson’s claims against Nordlund and finds, notwithstanding the terms of the Decree of Dissolution of January 19, 2011 that provided Ms. Arneson all right and interest in Rose Adorer LP, that “Plaintiff Penny Arneson has no standing to bring this action against Gary Nordlund and is dismissed as a party to this action.” CP 799.

On or about November 15, 2013, Ms. Arneson sought appellate review of the trial court’s orders on summary judgment of May 31, 2013 and November 8, 2013. CP 800-808.

On November 26, 2013, a Judgment was entered in Nordlund’s favor, granting Nordlund \$604,371.72 in loan principal, accrued interest at the default rate of 18% per annum, taxable costs and reasonable attorney’s fees. Although Ms. Arneson requested the funds deposited in the Court Registry be held during the pendency of the appeal, the trial court disbursed \$604,371.72 to Nordlund and disbursed the balance to Ms. Arneson. CP 920-921.

## V. SUMMARY OF ARGUMENT

Ms. Arneson and her family testamentary trust asserted a number of causes of action against Aldente and Nordlund for usurious loans secured by her family residence. The purpose of the loans was to pay the personal expenses of her former husband, Mr. Sweet, such as attorney fees, living expenses and child custody evaluation, during their contentious marital dissolution, as ordered by the trial court's Family Law Department. CP 251-253, 255-256, 258-262, 439-441, 449-455, 515, 524-530.

In the face of these virtually undisputed facts, the lenders argued that simply because the trust was nominally the borrower, and nominally held title to the family home, the loan transactions were, as a matter of law, exempt from the usury statute, *RCW 19.52.080*, which exempts commercial loans from application of the statute, and the CLA, *RCW 31.04.025(2)(e)*, which exempts loans (1) made for primarily business purposes, **and** (2) *not* secured by the borrower's primary residence. The two summary judgments were granted on this basis notwithstanding substantial evidence in the record that the true purpose of the loan was personal in nature, not commercial, and that the collateral was a single family residence occupied as the family home of the parents who set up the Trust to benefit their children for estate planning purposes.

Moreover, the lenders and the trial court completely ignored the fact that at the time the summary judgments were considered, Ms. Arneson owned the beneficial interest in the Trust as her “separate property” through the Decree of Dissolution of January 19, 2011, which awarded to her all right and interest in the Rose Adorer LP. CP 547.

But to the moving parties and the trial court the actual facts didn’t matter, their sole focus was on the involvement of the Trust. The trial court should be reversed because there are substantial disputed facts in the record that establish that the subject transactions were consumer loans secured by a family residence and that, under the statutes, trusts, just as individuals, have a statutory remedy for usurious consumer lending and for violation of the CLA.

## **VI. ARGUMENT**

### **A. Burden of Proof on Summary Judgment.**

A trial court’s summary dismissal of claims under *CR 56* is reviewed *de novo*, taking all inferences in the record in favor of the non-moving party. *Hayden v. Mutual of Enumclaw Insurance Co.*, 141 Wn.2d 55, 1 P.3d 1167 (2000); *Hauber v. Yakima County*, 147 Wn.2d 655, 56 P.3d 559 (2002). Summary judgment is only appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Balise v. Underwood*, 62 Wn.2d 195, 381

P2d 966 (1963); *Schroeder; Herring v. Texaco, Inc.*, 161 Wn.2d 189, 165 P.3d 4 (2007).

The initial burden on summary judgment is on the moving party to prove that no material issue is genuinely in dispute. *CR 56*. Sworn statements on summary judgment must be (1) made on personal knowledge, (2) setting forth facts as would be admissible in evidence and (3) showing affirmatively that the affiant is competent to testify to the matter stated in the sworn statement. *Snohomish County v. Rugg*, 115 Wn.App. 218, 61 P.3d 1184 (2002); *Blomster v. Nordstrom*, 103 Wn.App. 252, 11 P.3d 883 (2000); *Lilly v. Lynch*, 88 Wn.App. 306, 945 P.2d 727 (1997).

In reviewing the evidence submitted on summary judgment, facts asserted by the non-moving party and supported by affidavits or other appropriate evidentiary material must be taken as true. *State ex rel Bond v. State*, 62 Wn.2d 487, 383 P.2d 288 (1963).

Summary judgment is appropriate if reasonable persons can reach only one conclusion from all of the evidence, viewed in a light most favorable to the non-moving party. *Shows v. Pemperton*, 73 Wn.App. 107, 868 P.2d 164 (1994); *Doherty v. Municipality of Metro*, 83 Wn.App. 464, 921 P.2d 1098 (1996); *Goad v. Hambridge*, 85 Wn.App. 98, 931 P.2d 200 (1997). When there is contradictory evidence, or the

moving parties' evidence is impeached, an issue of credibility is presented and the Court should not resolve issues of credibility on summary judgment, but should reserve the issue of credibility for trial.

*Balise v. Underwood, supra.*

Based upon the foregoing and the documentary evidence before Court, there are at least genuine issues of material fact in dispute (if not undisputed in Appellants' favor) requiring the two summary judgments be reversed and the matter remanded to the trial court for further proceeding or trial.

**B. Application of RCW 31.04.**

At the outset it is important to note that a number of statutes have been promulgated by the Washington State Legislature to protect consumers of this State from unscrupulous lenders, including *RCW 19.52, et seq.*, and *RCW 31.04, et seq.* When applying these statutes, trial courts are encouraged to look beyond the form of the transaction to its substance. *Clausing v. Virginia Lee Homes, Inc.*, 62 Wn.2d 771, 384 P.2d 644 (1963); *Busk v. Hoard*, 65 Wn.2d 126, 396 P.2d 171 (1964); *Atlas Credit of California, Inc. v Hill*, 15 Wn.App. 146, 547 P.2d 894 (1976). See also *Easter v. Am. West Financial*, 381 F.3d 948 (2004). Indeed, Washington courts must be vigilant to protect consumers from unscrupulous lenders and brokers who are known to “rig” written

agreements to evade usury laws and the CLA. See *Brown v. Giger*, 111 Wn.2d 76, 83, 757 P.2d 523 (1988).

*RCW 31.04.015* provides in pertinent part:

The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

\* \* \*

(3) "Borrower" means **any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan**, regardless of whether that person actually obtains such a loan.

\* \* \*

(18) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(Emphasis added)

Clearly, Ms. Arneson as well as the Trust are "persons", within the terms of *RCW 31.04.015(18)*, and "borrowers", within the terms of *RCW 31.04.015(3)*, for purposes of applying the provisions of the CLA. If the Trust can be a "person" and a "borrower" within the terms of the CLA, it follows that the Trust could negotiate a loan for personal or consumer purposes.

Certainly, Aldente's assertions, cited above, and Nordlund's assertion so central to his Motion, that "there could have been no violation of the CLA when the loan was for commercial purposes, the borrower was the Trust, and the Trust did not have a primary residence"

(CP 330), are neither supported by *RCW 31.04.015(3)* and (18) nor the facts.

“The business or personal nature of the loan is a factual question to be answered after evaluating the circumstances surrounding the transaction.” *McGovern v. Smith*, 59 Wn. App. 721, 731, 801 P.2d 250 (1990). Such is the rule even when the borrower is a for profit corporation: the purpose of the loan must still be examined. *Paulman v. Filtercorp, Inc.*, 127 Wn.2d 387, 394, 899 P.2d 1259 (1995). “[*RCW 19.52.080*] deprives a corporate debtor of the right to either maintain a usury action or invoke the defense of usury, *if it borrowed money for a business purpose.*” (italics added) Here the nominal borrower was not a business, but a testamentary trust. No authority was cited by the lenders that a trust may not obtain a consumer loan and none is known. In fact, *RCW 31.04.015(3)* and (18) state otherwise. As in any case where the lender has the burden to establish the business purpose of the loan the question is a factual one to be decided by the trier of fact, not as a matter of law by the court as was done here.

Moreover as argued below, and discussed in the Section D, the real borrower was not the trust but the Ms. Arneson and her former husband, Mr. Sweet.

*RCW 31.04.035* provides:

(1) No person may make secured or unsecured loans of money or things in action, or extend credit, or service or modify the terms or conditions of residential mortgage loans, without first obtaining and maintaining a license in accordance with this chapter, except those exempt under *RCW 31.04.025*.

(2) If a transaction violates subsection (1) of this section, any:

(a) Nonthird-party fees charged in connection with the origination of the residential mortgage loan must be refunded to the borrower, excluding interest charges; and

(b) Fees or interest charged in the making of a nonresidential loan must be refunded to the borrower.

It is undisputed and admitted that neither lender ever obtained or held the license required under *RCW 31.04.035* at any time relevant to this cause of action. CP 98, 106. Rather the lenders argue the subject transaction was exempt from the CLA as *a matter of law* because the nominal borrower was a testamentary trust and its trustees.

*RCW 31.04.025(2)(e)* provides in pertinent part:

(2) This chapter does not apply to the following:

\* \* \*

(e) Any person making a loan primarily for business, commercial, or agricultural purposes unless the loan is secured by a lien on the borrower's primary residence;

(Emphasis added)

Note by the plain language of the exception it only applies if the transaction involves **both** a commercial loan **and** it *not* secured by the

borrower's personal residence. Here both prongs are absent. And:

(4) The burden of proving the application for an exemption or exception from a definition, or a preemption of a provision of this chapter, is upon the person claiming the exemption, exception, or preemption.

*RCW 34.04.025.*

Since the burden of persuasion was on Aldente and Nordlund to prove each and every element of the commercial purpose element under the under the CLA, absence of such proof must defeat their motions for summary judgment as a matter of law.

**C. Interest-Usury Statute (*RCW 19.52, et seq.*)**

Violation of the usury statute is a *per se* violation of the Consumer Protection Act, *RCW 19.86, et seq. RCW 19.52.036*

Loans that exceed 12% per annum are usurious. *RCW 19.52.020.* However, the calculation of interest for purposes of compliance with *RCW 19.52* has been the focus of several celebrated cases.

In *Jupiter Finance Corporation v. Hess*, 157 Wash. 29, 30-31, 288 Pac. 226 (1930), the Washington Supreme Court, citing *Ridgway v. Davenport*, 37 Wash. 134, 79 Pac. 606 (1905), held interest and commissions in excess of the usury limits deducted by agents loaning money for a principal constitutes usury.

In *Sparkman & McLean Income Fund v. Wald*, 10 Wn.App. 765, 520 P.2d 173 (1974), this Court distinguished between fees for which reasonable services were provided and those charged “for the use of the money.” As the court notes at pages 768-769:

Sparkman Fund argues secondly that the trial court incorrectly characterized as interest the \$4,000 fee which the Walds paid to Sparkman & McLean Company. Services performed for a borrower reasonably worth the amount the borrower agreed to and did pay are not to be characterized as interest. *Testera v. Richardson*, 77 Wash. 377, 379, 137 P. 998 (1914). However, the trial court here found that the \$4,000 fee was not compensation for any services performed other than for making the loan and for the use of the money. Though evidence on the issue was disputed, the record includes testimony of C. O. Causey, an expert in the field of mortgage lending, that Sparkman & McLean Company performed no services other than those for the benefit of the lender which are normally incident to such a transaction. In addition, there was no evidence that the Walds authorized Sparkman & McLean Company to engage in any of the activities for which the \$4,000 fee was charged. The trial court's characterization as interest of the \$4,000 fee is therefore supported by substantial evidence; we will not disturb it on appeal. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wash.2d 570, 343 P.2d 183 (1959).

(Emphasis added)

Finally, in *Aetna Finance Co. v. Darwin*, 38 Wn.App. 921, 691 P.2d 581 (1984), Division II of the Court of Appeals held that determining which portion of a loan is principal, fees or interest, the court should look to the substance of the transaction rather than its form.

*Aetna* at pages 925-927. Citing *Sparkman & McLean Co., supra*, and *Testra v. Richardson, supra.*, the court held “[a] charge for interest is not part of the loan transaction, regardless of what the parties may call the charge. . . . [c]harges for making a loan and for the use of money are interest; charges are not interest if they are for services actually provided by the lender, *reasonably worth the price* charged, and for which the borrower agrees to pay.” *Aetna Finance Co. v. Darwin, supra.*, at page 926. (Emphasis added) The court identified services such as preparing the loan documents, arranging and paying off the underlying liens, recording fees and loan disbursement – escrow sorts of services – to be legitimate costs. *Aetna Finance Co. v. Darwin, supra.*, at page 926. Charges “incidental to making a loan” must be characterized as interest. *Aetna Finance Co. v. Darwin, supra.*, at page 926.

Applying the foregoing to the facts of the present transactions, both loans at issue violate the Usury Statute because the state interest rate, plus “charges for making the loans”, for each loan exceed 12%. *RCW 19.52.010* and *RCW 19.52.020*.

With regard to the Aldente loan, while the interest agreed to on the face of the Promissory Note stated a rate of 10%, Aldente received an additional “loan fee” of 3%, thus making the effective interest rate 13%. CP 220-222, 241-243.

With regard to the Nordlund loan, while the interest agreed to on the face of the Promissory Note stated a rate of 12%, additional charges for a Mortgage Broker Fee of \$45,000.00 (12%), a loan processing fee of \$7,995.00 (2%) and another broker fee, described as “collections”, of \$8,742.83 (2%) were essentially charges for making the loan and added additional “loan fees” of 16%.<sup>5</sup> Thus, the effective interest rate of the Nordlund loan was 28%.

Neither Aldente nor Nordlund disputed the fact that the effective rate of interest on their Notes exceeded the rate permitted under *RCW 19.52.010* and *RCW 19.52.020*. Rather, they rely on the business loan exemption found in both the Usury Statute and the CLA. *RCW 19.52.080* and *RCW 31.04.025(2)(e)*. However, the exemption is applicable only:

[i]f the transaction was primarily for agricultural, commercial, investment, or business purposes: PROVIDED HOWEVER, that this section shall not apply to a consumer transaction of any amount.

Consumer transactions, as used in this section, shall mean transactions primarily for personal, family, or household purposes.

(Emphasis added) *RCW 19.52.080*. See also *RCW 31.04.025(2)(e)*, which utilizes similar language.

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<sup>5</sup> The payment to L80 Collections LLC is also described as a processing fee. See CP 487.

Exemptions to the Usury Statute are strictly construed against the lender and lenders bear the burden of proof to demonstrate these loans fit within the exception for commercial loans. *Sparkman and McLean v. Wald, supra.*, at page 768; 520 P.2d 173 (1974), *Jansen v. Nu-West, Inc.*, 102 Wn. App. 432, 439, 6 P.3d 98 (2000) *rev. denied* 143 Wn.2d 1006. When a loan is usurious on its face, the lender has the burden to prove it fits within the narrow transaction exception. *Aetna Finance Co. v. Darwin, supra.*, at pages 924-25.

The subject loans were consumer transactions under the Usury Statute for the same reason the loans were consumer transactions under the CLA: the funds were used to pay dissolution and criminal attorney fees, expert fees and living expenses of Mr. Sweet. Neither Aldente nor Nordlund offer any proof of any other purpose. Were this contested it would at least be a “factual question to be answered after evaluating the circumstances surrounding the transaction.” *McGovern v. Smith*, 59 Wn. App. 721, 731, 801 P.2d 250 (1990), citing *Conrad v. Smith*, 42 Wn. App. 559, 563, 712 P.2d 866, *review denied*, 105 Wn.2d 1017 (1986). “In characterizing the purpose of the loan, we look for evidence of the use to which the borrower intended to put the loan proceeds at the inception of the loan contract.” *Aetna Finance Co. v. Darwin, supra.*, at page 927. “A jury decides the factual question of what the parties

understood the funds were going to be spent on.” *Jansen v. Nu-West, Inc., supra.*, at page 441.

Again, where there is a conflict of evidence on the loan’s purpose this is a question of fact for the jury, not subject to summary judgment, even where the loan documents on their face plainly attest the purpose of the loan is commercial or business. *McGovern v. Smith, supra.*, at page 731. Thus in *McGovern* the Court of Appeals reversed a summary judgment of dismissal obtained by the lender on the strength of a certificate signed by the borrower that the loan was for business purposes, and remanded for trial. Moreover *McGovern* didn’t even sign the note but received all the proceeds. Here the trust and its trustees signed both notes, but the proceeds went to Mr. Sweet individually for purely consumer expenses. *McGovern* is on point.

**D. Penny Arneson Individually is the True Borrower and has Standing**

An additional important and relevant point is demonstrated by *McGovern*: one can sign a note and *not* be the borrower for the purpose of the statute; and one need not sign the note to be *actual borrower*. In *McGovern*, the Marinos signed the promissory notes, not McGovern, although McGovern received the proceeds of the loan. Thus, reasoned the court, the Marinos were not the borrowers, but merely sureties to the

extent of the value of the pledged real property, McGovern was the true borrower. *McGovern* at 735-736. Here Ms. Arneson is the real borrower, whereas the trust is a surety to the value of the real estate. In his answer, Nordlund admits “he made a loan to Kenneth William Sweet and Penny Arneson Sweet in the amount of \$375,000.” CP 99, Paragraph 14. At the very least this is a question of fact.

Nevertheless the trial court on summary judgment dismissed Ms. Arneson individually concluding she lacked standing simply because the trust and its trustees, Ms. Arneson and Mr. Sweet, signed the notes. As *McGovern* illustrates, however, in a usury case, courts put substance before form when determining the identity of the true borrower. In both loan transactions the proceeds went directly to Mr. Sweet and Ms. Arneson, not the trust. This and other facts and inferences support her claim that she individually is the true party in interest with the requisite standing to pursue her claim. At the least it is a factual question.

The claim she lacks standing also ignores the plain language of the Decree of Dissolution of January 19, 2011, which provided, in pertinent part, as follows:

### 3.3 Property to be Awarded to the Wife

The wife is awarded as her separate property the property set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

Other:

The real properties awarded to wife are held in the 6708 Tolt Highlands Personal Residence Trust for Property 1 and in Deer Haven Properties, LLC (WA) for Property 2. In addition to the properties set forth in Exhibit A, the following other entities are also awarded to wife: Rose Adorer Family Limited Partnership (NV), Cadet Rose Jardin Irrevocable Trust (APT), and The Kenneth and Penny Sweet Living Trust.

Based on the foregoing, Ms. Arneson was awarded the subject Property, as her “separate property”. Moreover, she was also awarded all rights and interest in the Trust and Rose Adorer LP, as her “separate property”. How Aldente and Nordlund could argue and the trial court conclude that Ms. Arneson had no standing to bring suit against Aldente and Nordlund defies logic. At the very least, the quality of Ms. Arneson’s title to the Property, the Trust and Rose Adorer LP was never considered by the trial court and remains a material issue of fact in dispute.

**E. Disputed Issues of Fact regarding the True Borrowers and Loan Purposes.**

While it is clear that Ms. Arneson and the Trust are both “persons” and “borrowers” within the terms of *RCW 31.04* and *RCW 19.52*, the provisions of *RCW 31.04.025(2)(e)* specifically exempt business or commercial transactions from application of the CLA and the Usury Statute.

To determine whether the purpose of a given loan is primarily business or consumer, trial courts must focus on the purpose the borrower actually represented at the time of the loan, not what was written on the loan agreement or note. *Jansen v. Nu-West, Inc., supra*. Moreover, courts should give “persuasive significance” to whether the funds were actually used for personal or business purposes. *Jansen v. Nu-West, Inc., supra*. (citing *Pacesetter Real Estate, Inc. v. Fasules*, 53 Wn.App. 463, 767 P.2d 961 (1989)).

While Ms. Arneson concedes the promissory note prepared by Nordlund recites the loan to be for business purposes, the overwhelming body of evidence before the trial court suggested otherwise.<sup>6</sup> The court orders that authorized the subject loan made the personal/consumer purpose of the subject loan clear. As Arneson states in her Declaration of June 13, 2013, CP 438, 442-443:

5. On October 15, 2009, Commissioner, *Pro Tem*, Marilyn Sellers entered another Temporary Order, a copy of which is attached hereto and incorporated herein by this reference as *Exhibit “F”*. This Order provides, in pertinent part, as follows:

Each party may borrow \$150,000 against the family home. Upon receipt of funds, each party shall pay Dr. Marsha Hedrick \$5,000 each for evaluation. [a personal obligation]

Home shall be listed for sale w/in 45 days. The wife has a current realtor license she may be the realtor.

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<sup>6</sup> It is significant to note that the Aldente Promissory Note did not contain language regarding a business or commercial loan purpose.

Any necessary repairs shall be jointly agreed upon, and the cost of same equally shared b/t the parties. Any costs advanced by a party for an agreed upon repair shall be reimbursed for sale proceeds.

(Emphasis added)

It was this Order that authorized the loan funded by Defendant, GARY NORDLUND. Again, the Court understood that the real borrowers were my ex-husband and I, not the Trust, that the collateral to be pledged was my personal residence, that the existence of the Trust was merely an estate planning devise and that the proceeds of the loan were to be used for personal purposes. Moreover, this Order makes clear that the loan proceeds were to be paid over to my ex-husband and I, rather than to the Trust.

6. On November 17, 2009, Court Commissioner, Leonid Ponomarchuk, entered an Order on Motion to Amend Temporary Order, that amended the Order entered October 15, 2009, as follows:

Petitioner's motion is granted. The October 15, 2009 temporary order is amended to provide that the husband may access an additional \$65,000 from the family home equity via loan in lieu of the \$300,000 total or \$150,000 to each party provided on page three of that order. The additional equity to be accessed from the family home is the \$65,000 from the husband for \$20,000 in living expenses (\$5,000 for four months), [a personal use] \$5,000 for payment the parenting evaluator, [a personal use] and \$35,000 for attorney fees. [for personal use]

(Emphasis added)

A copy of Commissioner Ponomarchuk's Order of November 17, 2009 is attached hereto and incorporated herein by this reference as *Exhibit "G"*. Again, the Court acknowledged and understood that the real borrowers were my ex-husband and I, that subject property was my personal residence, that the existence of the Trust was merely an estate planning devise and that the proceeds of the loan were to be used for personal purposes and provided to my ex-husband and I directly and not to the Trust.

7. On January 13, 2010, Court Commissioner, Jacqueline Jeske, entered an Order Clarifying Temporary Order. This Order provides, in pertinent part, as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECEED that the Respondent, KEN SWEET, receive the sum of \$60,000 from the proceeds of a loan on the family home; [personal uses]

\* \* \*

The funds remaining in Michael DuBeau Trust acc./@ \$16,665 from prior loan on residence shall be just used to pay any unpaid property taxes. . . .

Additional funds borrowed by husband and loan cost, interest, fess on the new loan will be an advance against husband's ultimate share of property that may be reviewed by the trial court.

A copy of Commissioner Jeske's Order of January 13, 2010 is attached hereto and incorporated herein by this reference as *Exhibit "H"*. Again, the Court acknowledged and understood that the real borrowers were my ex-husband and I, that the subject property was my personal residence, that the existence of the Trust was merely an estate planning devise and that the proceeds of the loan were to be used for personal purposes and were to be paid over to my ex-husband and I directly and not to the Trust for any commercial or business purpose.

See also the Declaration of Richard Jones of June 13, 2013 and attachments thereto. CP 514-726. It is noteworthy that in none of these Orders were funds to be paid out to the Trust, as one would expect if the loan proceeds were to be used for a business or commercial purpose.

Ms. Arneson's representations as to the purposes of the subject loans at the time they were funded are clearly described in the Orders of the Family Law Department of the King County Superior Court. See Declaration of Richard Jones of June 13, 2013. CP 514-726.

Whether Nordlund and Aldente were actually aware of the Family Law Department court orders and the parties' declarations at the time they funded the subject loans is a matter of conjecture, however

irrelevant. Neither the CLA nor the Usury Statute requires knowledge of the lender as an element to be proved to demonstrate a statutory violation, rather these statutes focus on the true purpose of the loan.

But neither lender claims actual ignorance and the lenders bear the burden of proof of demonstrating these were business loans, not personal or consumer loans. In his Declaration of June 10, 2013, Nordlund merely states that he “never spoke to or made any representations to Mr. or Mrs. Sweet prior to or after the money was loaned. . . .” CP 345. But that begs the question: was he actually aware of the Court orders that authorized the loan and the parties’ declarations that detailed who the real borrowers were and how the funds were to be used? Whatever Nordlund’s actual knowledge of the true identity of the borrowers and use of the loan proceeds was, we can impute such knowledge through his agent, Mark Flynn. Mr. Flynn knew the true identity of the borrowers and intended use of the loan proceeds because he actually submitted a declaration to the Family Law Court in support of Mr. Sweet’s efforts to obtain court approval for the Nordlund loan. CP 514, 665

In Washington the law imputes to the principal and charges him or her with notice and knowledge of all information provided his or her agent acting in the course of the agent’s representation. *Gaskill V.*

*Northern Assurance Co.*, 73 Wash 668, 669, 132 Pac. 643 (1913); *American Fidelity and Casualty Co., v. Backstrom*, 47 Wn.2d 77, 287 P.2d 124 (1955); *Sparkman & McLean Income Fund, supra*, at page 770; *Goodman v. Boeing Co.*, 75 Wn.App. 60, 877 P.2d 703 (1994); *Kelsey Lane Homeowners Association v. Kelsey Lane Co.*, 125 Wn.App. 227, 103 P.3d 1256 (2007); Restatement (Second) of Agency, Sec 268, Comment c (1958). Where information is imputed, the principal is estopped from denying knowledge.

As to what Mr. Flynn knew at the time of the transaction, the record is clear: he knew the real borrowers were Ms. Arneson and her ex-husband, not the Trust; he knew the proceeds of the loan were to be used for personal, not business purposes; and he knew the collateral was Ms. Arneson's personal "family home." As counsel of Appellants states in his Declaration of June 13, 2013, CP 519:

Declaration of Mark Flynn of December 23, 2009. (*Exhibit "M"*) In this declaration, Mr. Flynn, loan broker and agent for Defendant, GARY NORDLUND, states that he has "obtained a 'hard money' loan for KEN SWEET using the family home as collateral." Clearly, Defendant, MARK FLYNN acknowledges that the proposed loan was not for the Trust, but for Plaintiff's ex-husband personally, and the collateral was a family residence, not Trust property. The plain inference from this statement is that Plaintiff and her ex-husband were the true borrowers – not the Trust, as Defendant, GARY NORDLUND alleges. It is Plaintiff's belief that the true identity of the borrowers, the personal nature of the loan and the character of the collateral were communicated to Defendant, GARY NORDLUND, at the time the loan was made.

By making a declaration in support of the proposed loan, Mr. Flynn was obviously aware of the Family Law Court's involvement in approving the subject loan and was aware of the true borrowers, and the purposes for which the loan was to be used. Indeed, Mr. Flynn acknowledges that the true borrower and the person to whom the loan proceeds are to be paid out was Mr. Sweet and nothing in his Declaration suggests the loan was being made to the Trust or that the proceeds would be used for a business purpose. CP 665-667. As Nordlund's agent, the information Mr. Flynn had regarding the identity of the true borrower and the anticipated use of the loan proceeds must be imputed to Nordlund for purposes of this proceeding. *Sparkman & McLean Income Fund, supra*, at page 770.

Finally, there is strong evidence that Nordlund actually knew who the real borrowers were, which is evidenced by his signature on the Private Money Term Sheet identifying the "Borrowers: Kenneth Sweet and Penny Sweet. CP 487. See *Appendix "4"*.

On the issue of the true identity of the borrowers and the true purpose of the funds, it is also significant to note that no portion of the loan proceeds of any kind, were paid to the Trust or any commercial entity. As Arneson states in her Declaration of June 13, 2013:

. . . . At closing, I did not receive any funds, but my ex-husband did. True and correct copies of documents evidencing payment of loan proceeds to my ex-husband, personally, are attached hereto as *Exhibit*

**“L”**. Notably, not a single disbursement was made to the Trust, providing proof that the Trust was not the real borrower. Please see the escrow agents’ Disbursement Worksheet, attached hereto and incorporated herein by this reference as **Exhibit “M”**. Simply put, my ex-husband and I were the real borrowers, the loan proceeds were for personal proposes and the collateral was my personal residence, and Defendant, GARY NORDLUND’s assertions to the contrary are false and an attempt to defraud this Court. CP 445

Based upon the foregoing, there were genuine issues of material fact in dispute before the trial court as to who the identity of the real borrowers of the loan were, the personal use of the loan proceeds and the extent of lenders knowledge of the identity of the true borrowers and the intended use of the funds borrowed. Accordingly, the trial court erred in granting summary judgment.

**F. Disputed Facts regarding the Character of the Collateral.**

The lenders argued to the trial court that the property pledged to secure the subject loans belonged to the Trust and was not the “borrower’s primary residence,” based largely on an error of law and a misinterpretation of Plaintiff’s Trust Agreement (CP 124) and thoroughly ignores all of the various Orders of the King County Superior Court Family Law Department that clearly establish the community/personal character of the subject Property as Ms. Arneson’s primary residence. CP 124-140. This however is only relevant if the loan was commercial rather than consumer because under the CLA

statutory exception the character of the collateral is only relevant if the loan is commercial. *RCW 31.04.025(2)(e)*.

It should be noted that the community or personal character of the residence as a community asset (purchased with community funds at the outset) was specifically preserved by the Trust Agreement.

Paragraph 1.3 of the Trust Agreement provides:

All property to be held by the Trustees pursuant to this Agreement, whether transferred a the date of or subsequent to the execution of this Trust Agreement, which was, at the date of such transfer, the community property of the Trustors or the separate property of either of the Trustors, shall retain such original character while in the trust and on any subsequent withdrawal or distribution of any such property from the trust estate. CP 124

See also Paragraphs 1.5 and 1.7 of the Trust Agreement. CP 125. It is undisputed that the trustors were Ms. Arneson and Mr. Sweet. CP 124.

Moreover, Paragraph 2.19 R of the Trust Agreement grants the trustees great latitude to handle the assets of the Trust, e.g. “in all ways in which a natural person could deal with his or her property.”

Paragraph 2.19 R provides:

The Trustees may sell, lease transfer, exchange, grant option with respect to, or otherwise dispose of the trust property.

The Trustees may deal with the trust property at such time or times, for such purposes, for such considerations and upon such terms, credits, and conditions, and for such period s of time, whether ending before or after the term of any trust created under this agreement as it deems advisable.

The Trustees may make such contracts, deeds, leases, and any other instruments it deems proper under the immediate circumstances, and

may deal with the trust property in all other ways in which a natural person could deal with his or her property.

(Emphasis added) CP 137

Although Aldente has no standing to claim any breach of the trust agreement, based upon the foregoing terms, there was no breach of the Trust Agreement by Ms. Arneson or Mr. Sweet in receiving loan proceeds personally or in pledging the “family residence” as collateral. Moreover, the trial court’s Family Law Department properly characterized the subject real property as an asset of the marital estate, subject to the Family Law Department’s jurisdiction, recognizing that the trust only held nominal title, and awarded the subject property to Ms. Arneson in the final decree as her “separate property”. CP 504-513

Finally, each of the Orders attached to the Ms. Arneson Declarations of May 18, 2013 (CP 212-273) and, June 13, 2013 (CP 438-513), refer to the subject property as the couple’s “family home”, “family residence” or “residence.” To the extent that the subject loans were authorized by the Family Law Department of the King County Superior Court in its various Orders, the lenders should be estopped from denying the character of the subject real Property.

Clearly, the property offered to secure the subject loan was the Ms. Arneson’s personal residence, thus excluding the loan transactions from the provisions of *RCW 31.04.025(2)(e)*, even if the loans were

issued for commercial purposes – which they were not. At the very least, there were genuine issues of material fact before the trial court as to the subject real Property's character that justify reversal of the trial court's summary judgments and reserving the issues for trial.

**G. Judgment for Principal, Usurious Interest, Attorney Fees, etc. Should be Reversed**

As prevailing party, Nordlund received a money judgment against the trust for principal, usurious interest at the default rate of 18% per annum, reasonable attorney fees and costs. CP 884-886. If the summary judgments are reversed, so must this judgment be reversed to abide the final outcome of the case. *RAP 18.1*. A lender that sues to enforce a usurious loan may not recover its taxable costs and reasonable attorney's fees. *Aetna Finance Co. v. Darwin, supra.*, at page 929; *Dempolis v. Galvin*, 57 Wn.App. 47, 786 P.2d 804 (1990). But, a borrower who prevails on a usury claim is entitled to recover her taxable costs and reasonable attorney fees. *RCW 19.52.040*.

More galling is the fact that the trial court's judgment against the Trust included interest at the default rate of 18% during the period of time the trustee was stayed by the trial court pursuant to *RCW 61.24.130*. CP 95-96, 884-886. Moreover, funds in excess of the total amount allegedly due were actually held in the Court Registry pursuant to that Order upon the sale of the home on April 8, 2013 until paid out by the

trial court's order. CP 856. The trial court's assessment of default interest at the rate of 18% per annum violated the provisions of *RCW 61.24.130(1)(b)*, which require the principal due be subject to interest at the non-default rate, which here is 12% per annum. CP 844, 887. Should the trial court's judgment not be reversed in its entirety, it should at least be modified and amended to reduce the amount of prejudgment interest charged from the date Ms. Arneson obtained her Preliminary Injunction in January of 2012 to the date Nordlund was entitled to funds from the Court Registry pursuant to the trial court's Judgment of November 13, 2013, a sum that amounts to approximately \$43,125.00.<sup>7</sup>

## VII. CONCLUSION

There were genuine issues of material fact in dispute before the trial court that rendered the trial court's summary judgments of dismissal improper. Moreover the lenders are not entitled to prevail as a matter of law under those facts which were undisputed.

The relevant King County Superior Court Family Law Department Orders that authorized the subject loan and the declarations filed with the trial court at the time the loan was negotiated establish that (1) the real borrowers were Ms. Arneson and her former husband, Mr.

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<sup>7</sup> This sum is calculated as follows: 18% of \$375,000.00 is \$5,625 per month. 12% of \$375,000.00 is \$3,750 per month. \$5,625 - \$3,750 = \$1,875. There are 23 months between January of 2012 and November of 2013. \$1,875 x 23 = \$43,125.00.

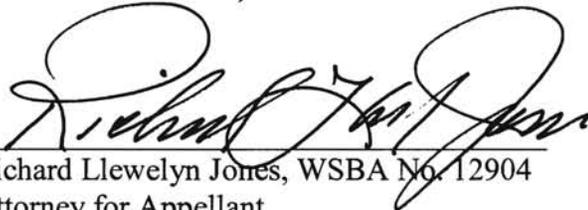
Sweet, (2) that the loan proceeds were to be used for consumer/personal rather than business purposes and (3) that the subject real Property was Ms. Arneson's "family home." This information was known to Nordlund and Aldente at the time the loans were made. Certainly they do not claim otherwise. Moreover, knowledge of the identity of the real borrowers, the purpose of the loan and character of the collateral can be imputed to Nordlund through the knowledge of his broker and agent Mr. Flynn, who had actual knowledge and through the signed Private Money Term Sheet. CP 487. In any event, neither Aldente nor Nordlund can rely on the recitations of the subject Notes as to the identity of the borrower, anticipated use of the funds and character of the collateral, in view of (1) Court Orders authorizing the loan and the parties Declarations, specifying Ms. Arneson and Mr. Sweet to be the true borrowers, (2) the personal/consumer purpose of the loan and the "family home" character of the collateral; (3) the lender's acknowledgement that Ms. Arneson and Mr. Sweet were the real borrowers set out in the Term Sheet, attached as *Appendix "4"*; and (4) the fact that not one dime was paid out to the Trust, but went directly to the husband. See Ms. Arneson's Declaration of June 13, 2013. CP 438-447.

Even if the Court determines that the real borrower is, indeed, the Trust, the provisions of *RCW 31.04, et seq. and RCW 19.52*, apply to defeat the trial court's summary judgments. As noted above, trusts are also protected by the Usury Statute and the CLA and are not necessarily business entities which can only obtain business loans.

Accordingly, these summary judgments must be reversed and the case remanded for further proceeding or trial.

**REPECTFULLY SUBMITTED** this 13<sup>th</sup> day of March, 2014.

**KOVAC & JONES, PLLC.**



Richard Llewelyn Jones, WSBA No. 12904  
Attorney for Appellant

**GOODSTEIN LAW GROUP, PLLC**



Richard B Sanders, WSBA No. 2813  
Attorney for Appellant

## **TABLE OF APPENDICES**

1. Aldente Promissory Note of May 19, 2009.
2. Aldente HUD-1 Settlement Statement
3. Check to Ms. Arneson of May 19, 2009 (\$59,799.62)
4. Nordlund Promissory Note of January 14, 2010.
5. Private Money Term Sheet.
6. Nordlund HUD-1 Settlement Statement.

## **APPENDIX “1”**

PROMISSORY NOTE

\$200,000.00 (U.S.)

Bellevue, Washington  
May 19, 2009

FOR VALUE RECEIVED, the undersigned, **6708 TOLT HIGHLANDS PERSONAL RESIDENCE TRUST, KENNETH WILLIAM SWEET and PENNY ARNESON SWEET, Co-Trustees**, whose address is 6708 Tolt Highlands Road NE, Carnation, Washington 98014 (collectively "Maker"), promise to pay to the order of **ALDENTE, LLC**, a Washington limited liability company ("Holder"), at 17837 1<sup>st</sup> Avenue South, PMB 310, Normandy Park, WA 98148, or such other place as Holder may from time to time designate in writing, the sum of **TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00)** in lawful money of the United States, plus additional amount which may be added thereto from time to time, with interest thereon from the date of this Note until paid at the rate set forth below computed on monthly balances (the "Loan Amount"). Interest for each full calendar month during the term of this Note shall be calculated on the basis of a 360-day year and twelve 30-day months. Interest for any partial calendar month at the beginning or end of the term of this Note shall be calculated on the basis of a 365 or 366-day year and the actual number of days in that month.

1. **Nature of Indebtedness.** The principal amount due under this Note is for a cash-out refinance of the real property owned by Maker.
2. **Interest Rate.** This Note shall bear interest at the rate of ten percent (10.00%) per annum.
3. **Monthly Interest Only Payments.** Maker shall make equal monthly payments of interest only to Holder in the amount of **ONE THOUSAND SIX HUNDRED SIXTY-SIX AND 66/100 DOLLARS (\$1,666.66)** (the "Monthly Payments"). Interest shall start accruing on May 19, 2009 and a partial Monthly Payment shall be due on June 1, 2009 in the amount of **SEVEN HUNDRED TWELVE AND 33/100 DOLLARS (\$712.33)**. Thereafter, Monthly Payments shall be due and payable on the 1<sup>st</sup> day of each succeeding month during the term of this Note.
4. **Late Payment Charge.** In the event Maker is more than five (5) days late on making an installment payment when due, Maker shall be assessed a late charge equal to fifteen percent (15%) of the late installment amount.
5. **Maturity.** Unless sooner repaid by Maker, the entire unpaid principal balance of this Note and all other amounts accrued or payable hereunder, shall be due and payable in full no later than **November 1, 2010** (the "Maturity Date").
6. **Prepayment.** Maker may, without notice to Holder, prepay its obligations under this Note in full or in part without premium or penalty.
7. **Security.** This Note is secured by a first position deed of trust (the "Deed of Trust") of even date herewith and executed by Maker, encumbering that certain real property located at **6708 Tolt Highlands Road NE, Carnation, Washington 98014** (the "Property"), along with a Guaranty Agreement of even date herewith executed by the trustees of Maker.

8. **Due on Sale.** In the event Maker's interest in the Property is ever sold, conveyed or transferred, the entire unpaid principal balance of this Note and all other amounts accrued or payable hereunder, shall be due and payable in full.

9. **Default and Remedies.**

9.1 **Default.** Maker shall be in default under the terms of this Note if: 1) Maker fails to make any payment referenced herein in full within thirty (30) days when due; and/or 2) Maker is in breach of any provision of this Note and/or the Deed of Trust and fails to cure said breach within thirty (30) days of said breach, regardless of when notice is given.

9.2 **Remedies.** In the event that Maker is in default as that term is defined in Paragraph 9.1 above, Holder may take any one or more of the following steps:

9.2.1 **Acceleration.** Declare the entire unpaid principal balance of the debt evidenced hereby, all accrued interest thereon, and all costs and expenses that may become due hereunder, to be immediately due and payable. Such amounts shall then accrue interest at the rate of eighteen percent (18%) per annum or the maximum rate allowed by law (the "Default Rate").

9.2.2 **Other Remedies.** Pursue any other right or remedy provided herein, in the Deed of Trust, the Guaranty Agreement, and/or otherwise allowed by law. Holder may pursue any such rights or remedies singly, together or successively. Exercise of any such right or remedy shall not be deemed an election of remedies. Failure to exercise any right or remedy shall not be deemed a waiver of any existing or subsequent default nor a waiver of any such right or remedy.

10. **Miscellaneous.**

10.1 Every person or entity at any time liable for the payment of the indebtedness evidenced hereby waives presentment for payment, demand and notice of nonpayment of this Note. Every such person or entity further hereby consents to any extension of the time of payment hereof or other modification of the terms of payment of this Note, the release of all or any part of the security herefor or the release of any party liable for the payment of the indebtedness evidenced hereby at any time and from time to time at the request of anyone now or hereafter liable therefor. Any such extension or release may be made without notice to any of such persons or entities and without discharging their liability.

10.2 Each person or entity who signs this Note is jointly and severally liable for the full repayment of the entire indebtedness evidenced hereby and the full performance of each and every obligation of the Deed of Trust.

10.3 This Note has been executed under and shall be construed and enforced in accordance with the laws of the State of Washington. If there is any litigation or other proceeding to enforce or interpret any provision of this Note, jurisdiction shall be in the courts of the State of Washington and venue shall be in King County, Washington.

10.4 If any provision of this Note is found by a court of competent jurisdiction to be invalid or unenforceable as written, then the parties intend and desire that such provision be enforceable to the full extent permitted by law, and that the invalidity or unenforceability of such provision shall not affect the validity or enforceability of the remainder of this Note.

10.5 This Note may not be amended, modified or changed, nor shall any provision hereof be deemed waived, except by an instrument in writing signed by the party against who enforcement of any such waiver, amendment, change or modification is sought.

10.6 This Note shall be binding upon the heirs, successors and assigns of Maker, jointly and severally.

10.7 This Note constitutes the entire understanding between Maker and Holder with respect to the payment and indebtedness evidenced by this Note. All prior or contemporaneous oral statements or agreements are merged and superseded by the terms of this Note. Maker acknowledges and understands that:

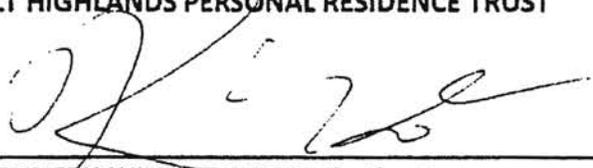
**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY,  
EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT  
OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

DATED as of the day and year first above written.

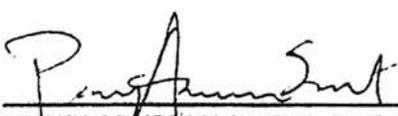
MAKER:

6708 TOLT HIGHLANDS PERSONAL RESIDENCE TRUST

By:

  
KENNETH WILLIAM SWEET, Co-Trustee

By:

  
PENNY ARNESON SWEET, Co-Trustee

## **APPENDIX “2”**

D. NAME & ADDRESS OF BORROWER:

Exhibit "A" Attached Hereto

E. NAME & ADDRESS OF SELLER:

F. NAME & ADDRESS OF LENDER:

Aldente, LLC  
17837 1st Avenue South, PMB 310, Normandy Park, WA 98148

G. PROPERTY LOCATION: 6708 Tolt Highlands Road NE, Carnation, WA 98014

H. SETTLEMENT AGENT: Michael DuBeau & Associates, PS  
PLACE OF SETTLEMENT: 2135 112th Avenue NE, Suite 200, Bellevue, WA 98004

I. SETTLEMENT DATE: 5/19/2009 Final

DISBURSEMENT DATE: 5/19/2009

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
<b>100. Gross Amount Due From Borrower:</b>		<b>400. Gross Amount Due To Seller:</b>	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower: (line 1400)	84,742.10	403.	
104.		404.	
105.		405.	
<b>Adjustments For Items Paid By Seller In Advance:</b>		<b>Adjustments For Items Paid By Seller In Advance:</b>	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
<b>120. Gross Amount Due From Borrower:</b>	<b>84,742.10</b>	<b>420. Gross Amount Due To Seller:</b>	
<b>200. Amounts Paid By Or In Behalf Of Borrower:</b>		<b>500. Reductions In Amount Due To Seller:</b>	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	200,000.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff 1st Mtg. Ln.	
205.		505. Payoff 2nd Mtg. Ln.	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
<b>Adjustments For Items Unpaid By Seller:</b>		<b>Adjustments For Items Unpaid By Seller:</b>	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
<b>220. Total Paid By/For Borrower:</b>	<b>200,000.00</b>	<b>520. Total Reductions In Amount Due Seller:</b>	
<b>300. Cash At Settlement From/To Borrower:</b>		<b>600. Cash At Settlement From/To Seller:</b>	
301. Gross amount due from borrower (line 120)	84,742.10	601. Gross amount due to seller (line 420)	
302. Less amount paid by/for borrower (line 220)	200,000.00	602. Less reductions in amount due seller (line 520)	
<b>303. Cash (<input type="checkbox"/> FROM) (<input checked="" type="checkbox"/> TO) Borrower:</b>	<b>115,257.90</b>	<b>603. Cash (<input type="checkbox"/> TO) (<input type="checkbox"/> FROM) Seller:</b>	<b>0.00</b>

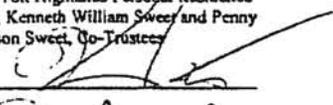
803. Appraisal fee to:		
804. Credit report to:		
805. Lender's inspection fee		
806. Mortgage insurance application fee to		
807. Assumption fee		
808. 3.0000% Loan Fee To: Aldente, LLC		6,000.00
809.		
810.		
811.		
812.		
813.		
814.		
815.		
816.		
<b>900. Items Required By Lender To Be Paid In Advance:</b>		
901. Interest from 5/19/2009 to 6/01/2009 @ \$ 54.7945 /day		712.33
902. Mortgage insurance premium for mo. to		
903. Hazard insurance premium for yrs. to		
904. Flood insurance premium for yrs. to		
905.		
906.		
<b>1000. Reserves Deposited With Lender:</b>		
1001. Hazard insurance 0 months @ \$ 0.00 per month		
1002. Mortgage insurance 0 months @ \$ 0.00 per month		
1003. City property taxes 0 months @ \$ 0.00 per month		
1004. County property taxes 0 months @ \$ 0.00 per month		
1005. Annual assessments 0 months @ \$ 0.00 per month		
1006. Flood insurance 0 months @ \$ 0.00 per month		
1007. 0 months @ \$ 0.00 per month		
1008. Aggregate Adjustment		
1009.		
<b>1100. Title Charges</b>		
1101. Settlement or closing fee to Michael DuBeau & Associates, PS		3,000.00
1102. Escrow Fee: \$3,000.00		
1103. Title examination to		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's fees to (includes above item Numbers: )		
1108. Title insurance to First American Title (includes above item Numbers: )		423.77
1109. Lender's coverage \$ 200,000.00 Premium: \$387.00 Tax: \$36.77		
1110. Owner's coverage \$		
1111. Wire/Express to Michael DuBeau & Associates, PS		60.00
1112. County Mortgage to First American Title		46.00
1113.		
1114.		
<b>1200. Government Recording and Transfer Charges:</b>		
1201. Recording fees: Deed \$ 0.00 ;Mortgage \$ 0.00 ;Releases \$ 0.00		
1202. City/county tax/stamps: Deed \$ 0.00 ;Mortgage \$ 0.00		
1203. State tax/Stamps: Deed \$ 0.00 ;Mortgage \$ 0.00		
1204.		
1205.		
<b>1300. Additional Settlement Charges:</b>		
1301. Survey to		
1302. Pest inspection to		
1303. Attorney Fee to Michael DuBeau & Associates, PS		
1304. Hold Back For Loan Payments to Michael DuBeau & Associates, PS		56,500.00
1305. Hold Back For Property Taxes to Michael DuBeau & Associates, PS		18,000.00
1306.		
1307.		
1308.		
1309.		
1310.		
1311.		
1312.		
1313.		
<b>1400. Total Settlement Charge (Enter on line 103, Section J - and - line 502, Section K)</b>		<b>84,742.10</b>

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrowers/Purchasers

Sellers

6708 Tolt Highlands Personal Residence  
Trust, Kenneth William Sweet and Penny  
Arneson Sweet, Co-Trustees

By: By: 

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent: \_\_\_\_\_

Date: \_\_\_\_\_

, Michael DuBeau &amp; Associates, PS

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include a fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

000222

## **APPENDIX “3”**

# Banner Bank

MICHAEL DUBEAU & ASSOCIATES, P.S. Iola Trust 2135 - 112TH AVE., N.E. #200 BELLEVUE, WA 98004 (425) 455-9787		COLUMBIA STATE BANK 777 - NORTH AVE., NE., SUITE 100 18 BELLEVUE, WA 98004 94-822/1251		8343
		May 19, 2009	\$59,799.62	
		DATE	AMOUNT	
*** Fifty Nine Thousand Seven Hundred Ninety Nine ***** & 62/100 Dollars				
Penny Arneson Swoot				
1/2 Net Loan Proceeds to Borrower				
<i>Michael DuBeau</i>				
*009343* ⑆ 125108272⑆ 7000289764⑆				

Check: 8343 Amount: \$59,799.62 Date: 5/21/2009  
This request submitted via Web Research.  
Run: 198, Batch: 5, Seq: 33

9800850033-05-21-2009->125108191<	<i>Penny Arneson Swoot</i>
-----------------------------------	----------------------------

Check: 9343 Amount: \$59,799.62 Date: 5/21/2009  
Run: 198, Batch: 5, Seq: 33

## **APPENDIX “4”**

PROMISSORY NOTE

\$375,000.00  
Principal

January 14, 2010  
Date

Tacoma, WA  
City, State

FOR VALUE RECEIVED, Kenneth William Sweet and Penny Aracsen Sweet, Co-Trustees of The 6708 Tolt Highlands Personal Residence Trust, "hereinafter Maker" promises to pay to Gary Nordlund, As His Separate Estate, hereinafter "Holder" or order at 1915 Parkview Dr. N.E. Tacoma, WA 98422 or other such place as may be designated by the Holder from time to time, the principal sum of THREE HUNDRED SEVENTY FIVE THOUSAND AND NO/100 dollars (\$375,000.00), with interest thereon from 15th day of January, 2010, on the unpaid principal at the rate of TWELVE percent (12.0000%) per annum as follows:

- 1. INSTALLMENT PAYMENTS: Maker shall pay, (check one)
a. NO INSTALLMENTS. No installment payments are required.
b. PRINCIPAL and INTEREST INSTALLMENTS of ZERO AND NO/100 Dollars (\$)
c. INTEREST ONLY PAYMENTS on the outstanding principal balance.

(The following must be completed if "b" or "c" is checked)

The installment payments shall begin on the Fifteenth day of February, 2010, and shall continue on the Fifteenth day of each succeeding (check one)
- [x] calendar month
- [ ] third calendar month
- [ ] sixth calendar month
- [ ] twelfth calendar month
- [ ] other

- 2. DUE DATE: The entire balance of this Note together with any and all interest accrued thereon shall be due and payable in full on January 15, 2011.
3. DEFAULT INTEREST: After maturity, or failure to make any payment, any unpaid principal shall accrue interest at the rate of percent (%) per annum (18% if not filled in) OR the maximum rate allowed by law, whichever is less, during such period of Maker's default under this Note.
4. ALLOCATION OF PAYMENTS: Each payment shall be credited first to any late charge due, second to interest, and the remainder to principal.
5. PREPAYMENT: Maker may prepay all or part of the balance owed under this Note at any time without penalty.
6. CURRENCY: All principal and interest payments shall be made in lawful money of the United States.
7. LATE CHARGE: If Holder receives any installment payment more than Fifteen days (15 days if not filled in) after its due date, then a late payment charge of \$ , or percent (%) of the installment payment (5% of the installment payment if neither is filled in) shall be added to the scheduled payment.
8. DUE ON SALE: (OPTIONAL-Not applicable unless initialed by Holder and Maker to this Note) If this Note is secured by a Deed of Trust or any other instrument securing repayment of this Note, the property described in such security instruments may not be sold or transferred without the Holder's consent. Upon breach of this provision, Holder may declare all sums due under this Note immediately due and payable, unless prohibited by applicable law.

[Signature]
Maker (Initials)

[Signature]
Holder (Initials)

- 9. ACCELERATION: If Maker fails to make any payment owed under this Note, or if Maker defaults under any Deed of Trust or any other instruments securing repayment of this Note, and such default is not cured within days (30 days if not filled in) after written notice of such default, then Holder may, at its option, declare all outstanding sums owed on this Note to be immediately due and payable, in addition to any other rights or remedies that Holder may have under the Deed of Trust or other instruments securing repayment of this Note.
10. ATTORNEYS' FEES AND COSTS: Maker shall pay all costs incurred by Holder in collecting sums due under this Note after a default, including reasonable attorneys' fees, whether or not suit is brought. If Maker or Holder sues to enforce this Note or obtain a declaration of its rights hereunder, the prevailing party in any such proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred in the proceeding (including those incurred in any bankruptcy proceeding or appeal) from the non-prevailing party.
11. WAIVER OF PRESENTMENTS: Maker waives presentment for payment, notice of dishonor, protest and notice of protest.



**APPENDIX "5"**

# Private Money Term Sheet

Borrower: Kenneth Sweet and Penny Sweet

Property address: 6708 Tolt Highlands Rd NE Carnation, WA 98014

Lender: Gary Nordlund

Loan amount: \$375,000

Interest rate: 12%

Terms: 12 months

Payments: interest only-12 months collected in advance from proceeds

## Fees:

Credit

Appraisal/Property review-

Lender-0 points

Broker(MFE LLC)-10 points /\$37,500

Other-Processing-L80 Collections LLC-\$2,550

Trustee: Waldron and Orlandini

Title: Talon

Escrow: Fircrest

Due on Sale Clause- Yes

Commercial loan/business purpose-Yes

  
253-606-5057

000487

Insurance-Paid from proceeds- shopping for insurance company

Payoff -Michael Dubeau and Associates 425-455-9787

Other Items-Mr. Sweet is allowed to pull \$65,000 in cash to him. Mrs Sweet is required by court order to sign the loan documents or the court will sign for her.

Back taxes of approximately \$19,900 will be paid from proceeds.

000488

## **APPENDIX “6”**

A. U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
SETTLEMENT STATEMENT

B. TYPE OF LOAN

1.  FHA 2.  FHMA 3.  CONV. UNINS.  
 4.  VA 5.  CONV. INS.

6. FILE NUMBER: 2917900 7. LOAN NUMBER  
 8. MORTGAGE INS. CASE NO.:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME & ADDRESS OF BORROWER: The 6708 Tolt Highlands Personal Residence Trust  
6708 Tolt Highlands Road N.E., Carnation, WA 98014

E. NAME & ADDRESS OF SELLER:

F. NAME & ADDRESS OF LENDER: Gary Nordlund  
1915 Parkview Dr. N.E., Tacoma, WA 98422

G. PROPERTY LOCATION: 6708 Tolt Highlands Road N.E., Carnation, WA 98014

H. SETTLEMENT AGENT: Fircrest Escrow, Inc.  
PLACE OF SETTLEMENT: 6721 Regents Blvd., Tacoma, WA 98466 (253) 564-4994

I. SETTLEMENT DATE: 1/15/2010 Estimated DISBURSEMENT DATE: 1/15/2010

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
<b>100. Gross Amount Due From Borrower:</b>		<b>400. Gross Amount Due To Seller:</b>	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower: (line 1400)	154,850.00	403.	
104. Payoff To Aidents, LLC	200,150.00	404.	
105.		405.	
<b>Adjustments For Items Paid By Seller In Advance:</b>		<b>Adjustments For Items Paid By Seller In Advance:</b>	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
113.		413.	
114.		414.	
115.		415.	
116.		416.	
<b>120. Gross Amount Due From Borrower:</b>	<b>355,000.00</b>	<b>420. Gross Amount Due To Seller:</b>	
<b>200. Amounts Paid By Or In Behalf Of Borrower:</b>		<b>500. Reductions In Amount Due To Seller:</b>	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	375,000.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff 1st Mtg. Ln.	
205.		505. Payoff 2nd Mtg. Ln.	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
<b>Adjustments For Items Unpaid By Seller:</b>		<b>Adjustments For Items Unpaid By Seller:</b>	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
<b>220. Total Paid By/For Borrower:</b>	<b>375,000.00</b>	<b>520. Total Reductions In Amount Due To Seller:</b>	
<b>300. Cash At Settlement From/To Borrower:</b>		<b>600. Cash At Settlement From/To Seller:</b>	
301. Gross amount due from borrower (line 120)	355,000.00	601. Gross amount due to seller (line 420)	
302. Less amount paid by/for borrower (line 220)	375,000.00	602. Less reductions in amount due seller (line 520)	
303. Cash <input type="checkbox"/> FROM <input checked="" type="checkbox"/> TO Borrower:	20,000.00	603. Cash <input type="checkbox"/> TO <input type="checkbox"/> FROM Seller:	0.00

L		SETTLEMENT	CHARGES	Escrow: 2917900	
700. Total Sales/Broker's Commission: Based On Price \$		@	% =		
Division of Commission (line 700) As Follows:					
701 \$	to			Paid From Borrower's Funds At Settlement	Paid From Seller's Funds At Settlement
702 \$	to				
703. Commission paid at settlement					
704.					
800. Items Payable In Connection With Loan:					
801. Loan Origination fee %					
802. Loan Discount %					
803. Appraisal fee to:					
804. Credit report to:					
805. Lender's inspection fee					
806. Mortgage insurance application fee to:					
807. Assumption fee					
808. 12 Months Interest To: Gary Nordlund 45,000.00					
809. Mortgage Broker Fee To: MFE LLC 45,000.00					
810. Processing Fee To: Columbia North West Mortgage 7,995.00					
811.					
812.					
813.					
814.					
815.					
816.					
817.					
818.					
819.					
820.					
821.					
900. Items Required By Lender To Be Paid In Advance:					
901. Interest from 12/18/2009 to 1/15/2010 @\$ 123.2877/day (28 days) 3,452.06					
902. Mortgage insurance premium for mo. to					
903. Hazard insurance premium for 1 yrs. to Farmers Insurance 2,485.43					
904. Flood insurance premium for yrs. to					
905.					
906.					
1000. Reserves Deposited With Lender:					
1001. Hazard insurance 0 months @ \$ 0.00 per month					
1002. Mortgage insurance 0 months @ \$ 0.00 per month					
1003. City property taxes 0 months @ \$ 0.00 per month					
1004. County property taxes 0 months @ \$ 0.00 per month					
1005. Annual assessments 0 months @ \$ 0.00 per month					
1006. Flood insurance 0 months @ \$ 0.00 per month					
1007. 0 months @ \$ 0.00 per month					
1008. Aggregate Adjustment					
1009.					
1100. Title Charges					
1101. Settlement or closing fee to Fircrest Escrow, Inc. 983.70					
1102. Escrow Fee: \$900.00 Sales Tax: \$83.70					
1103. Title examination to					
1104. Title insurance binder to					
1105. Document preparation to					
1106. Notary fees to					
1107. Attorney's fees to (includes above item Numbers: )					
1108. Title insurance to TALON GROUP (includes above item Numbers: ) 596.78					
1109. Lender's coverage \$ 375,000.00 Premium: \$545.00 Tax: \$51.78					
1110. Owner's coverage \$					
1111. Substitution of Trustee & Full Reconveyance to TALON GROUP 82.00					
1112.					
1113.					
1114.					
1200. Government Recording and Transfer Charges:					
1201. Recording fees: Deed \$ 0.00 Mortgage \$ 75.00 Releases \$ 0.00 75.00					
1202. City/county tax/stamps: Deed \$ 0.00 Mortgage \$ 0.00					
1203. State tax/stamps: Deed \$ 0.00 Mortgage \$ 0.00					
1204.					
1205.					
1300. Additional Settlement Charges:					
1301. Survey to					
1302. Pest inspection to					
1303. Mobile Signing/Notary to Fircrest Escrow, Inc. 437.20					
1304. Parenting Evaluator to Marsha Hedrick 5,000.00					
1305. Attorney Fee to Jeffrey L. Barth 15,000.00					
1306. Attorney Fee to Lee Jacobson 20,000.00					
1307. Collections to L80 Collections, LLC 8,742.83					
1308.					
1400. Total Settlement Charge (Enter on line 103, Section J - and - line 502, Section F) 154,850.00					

000051

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

Borrowers/Purchasers

Sellers

The 6708 Tolt Highlands Personal Residence Trust

By: [Signature]  
Kenneth William Sweet, Co Trustee

By: [Signature]  
Penny Ann Sweet, Co Trustee

The HUD-1 Settlement Statement which I have prepared is a true and accurate account of this transaction. I have caused or will cause the funds to be disbursed in accordance with this statement.

Settlement Agent: Barbara J. Koval, Fircrest Escrow, Inc. Date: \_\_\_\_\_

WARNING: It is a crime to knowingly make false statements to the United States on this or any other similar form. Penalties upon conviction can include fine or imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

SELLER'S TAX INFORMATION

SELLER'S CERTIFICATION OF TAXPAYER IDENTIFICATION NUMBER (substitute W-9)

You are required by law to provide the Settlement Agent (see block H) with your correct taxpayer identification number. If you do not provide your Settlement Agent with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law in the Tax Reform Act of 1986, under Internal Revenue Code Sections 6045(e), 6676, 6722, 6723 and 7203.

Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

TIN: \_\_\_\_\_ Signed: \_\_\_\_\_

TIN: \_\_\_\_\_ Signed: \_\_\_\_\_

TIN: \_\_\_\_\_ Signed: \_\_\_\_\_

TIN: \_\_\_\_\_ Signed: \_\_\_\_\_

Seller's Forwarding Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PROCEEDS FROM REAL ESTATE TRANSACTIONS (substitute form 1099-S)

The information contained below and in blocks E, G, H and I is important tax information and is being supplied to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it

## CERTIFICATE OF MAILING

The undersigned declares under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on March 14, 2014, I arranged for service of the foregoing Initial Brief of Appellant on the following parties in the manner(s) indicated:

Brian M. King	<input type="checkbox"/>	Facsimile
Ingrid L.D. McLeod	<input type="checkbox"/>	Electronic
Davies Pearson, P.C.	<input type="checkbox"/>	Messenger
920 Fawcett	<input checked="" type="checkbox"/>	U.S. Mail
PO Box 1657	<input type="checkbox"/>	Overnight Mail
Tacoma, WA 98401		
<i>Attorneys for Defendant, Gary Nordlund</i>		

Gary M. Abolofia	<input type="checkbox"/>	Facsimile
Attorney-at-Law	<input type="checkbox"/>	Electronic
2135 – 112 <sup>th</sup> Avenue NE, Suite 240	<input type="checkbox"/>	Messenger
Bellevue, WA 98004	<input checked="" type="checkbox"/>	U.S. Mail
<i>Attorney for Defendant Aldente, LLC</i>	<input type="checkbox"/>	Overnight Mail

Brian L. Green	<input type="checkbox"/>	Facsimile
Lori M. Bemis	<input type="checkbox"/>	Electronic
McGavick Graves	<input type="checkbox"/>	Messenger
1102 Broadway, Suite 500	<input checked="" type="checkbox"/>	U.S. Mail
Tacoma, WA 98402	<input type="checkbox"/>	Overnight Mail
<i>Attorneys for Defendant McGavick Graves, P.S.</i>		

**DATED** this 14<sup>th</sup> day of March, 2014, at Bellevue, Washington.

  
\_\_\_\_\_  
Paralegal