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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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AMENDMENT II

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Prosecuting Attorney
Civil Division.

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

OPENING BRIEF ON COLLATERAL ATTACK ON SUMMARY
JUDGMENT

AND MOTION TO VACATE SUMMARY JUDGMENT

David Arthur Darby, Appellant Petitioner, Pro Se

v.

Clark County, a political subdivision of the
State of Washington and Individuals Acting
in their official capacity for the County of
Clark are the Following:

Greg Kimsey d.b.a. Clark County Auditor
Doug Lasher d.b.a. Clark County Treasurer
Peter Van Nortwick d.b.a. Clark County assessor
David Madore d.b.a. Clark County Commissioner
Edward L. Barnes d.b.a. Clark County Commissioner
Anthony Golick d.b.a. Clark County Prosecutor
Taylor R. Hallvik d.b.a. Clark County Deputy Pros.

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Statutes

This is a constitutional Equity case and Statutes cannot be used.

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Only the precedence of constitutional cases and Constitutional law applies.

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Constitutional Provisions

The constitutional provisions are listed in the order that they appear in the constitution with page numbers where each is referred to in this brief.

Pursuant to the 1878 Constitution of the State of Washington, which is a contract or trust agreement with the people of Washington State, and has never been terminated by the people. Therefore, the 1878 Constitution of the State of Washington is in full force and can be used by the private sovereign free men of the organic Washington State. The following constitutional articles were ignored by the CLARK COUNTY SUPERIOR COURT JUDGE:

1. **Article 2, Section 3.** “The people of the state, in their right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the state, and all lands,”
2. **Article V, Section 3.** “All persons are by nature free, and equally entitled to certain natural rights; among which are, those of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and seeking and obtaining happiness. To secure these rights, governments are instituted, deriving their just powers from the consent of the governed.”
3. **Article V, Section 14.** “No bill of attainder, ex post facto law, or any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the legislature.”

4. **Article V, Section 15.** “Private property shall not be taken or damaged for public use without just compensation; and no persons particular service shall be required without just payment therefor.”
5. **Article V, Section 23.** “All lands within the state are declared to be allodial, and feudal tenures, with all their incidents, are prohibited”.....
6. **Article XII, Section 17.** “Private property, shall not be taken or sold for the payment of the corporate debt of municipal corporations.”
7. **Article XV, Section 10.** “All patents or grants of land, made by the United States to settlers and purchasers of tide lands shall be ratified and confirmed by the state.”
8. **Article XV, Section 14.** “The common law of England - applicable to our conditions and circumstances, and not repugnant to, or inconsistent with, the constitution of the United States, or the constitution or laws of this state - shall be in full force, and the rule of decision in all courts in this state; but in the event of laws being passed, conferring rights or impairing

obligations growing out of or founded upon principles of the civil and not the common law, then the rules of the civil law may be resorted to for the purpose of interpretation and decision.”

Pursuant to the 1787 Constitution for the United States, the following articles are relevant.

9. **1787 Constitution for the United States, Article 1, Section 10:** “ **No state shall enter** into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the Treasury of the United States; and all such laws shall be subject to the revision and control of the Congress. No state shall, without the consent

of Congress, lay any duty of tonnage, keep troops, or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.”

I. Introduction

Introduction of Plaintiff and the Law of the Private

Sovereign Free Man

This case, due to my private sovereign status, cannot be heard by an administrative executive. I have provided the court with the necessary proof that I am a private sovereign natural born free man. So far WASHINGTON Courts have disregarded my true status. Therefore this case can only be heard by an actual judge in Equity and Common Law. I, David Arthur Darby, a private sovereign free man am a party to the 1787 Constitution for the United States of America and the lawful 1878 Constitution of the State of Washington. This court must recuse itself if it can only operate in statutes and codes. **This case must be heard in Equity law.**

I, David Arthur Darby, Declare that this court must hear this case in Equity and to a lesser extent Common Law and not Admiralty or any other law. This case is not about statutes or codes. This case is strictly constitutional in nature and therefore should be conducted in Constitutional law. I am a party to the Constitution. I am not a Corporate Citizen of the Corporate UNITED STATES or a Corporate Citizen of the Corporate STATE OF WASHINGTON. Therefore this court must adhere to the 1943 Clearfield Doctrine (See Page 29 for text). I, therefore have the right to demand the law of the 1787 Constitution for the United States of America and the 1878 Constitution of the State of Washington. I, David Arthur Darby, have terminated the fraudulent contracts with The CORPORATIONS OF THE UNITED STATES and STATE OF WASHINGTON pursuant to Washington State and Clark County Superior Court Document case # 08 2 02745 1 (Sub 1 & 6) (See Affidavit of Declaration Status submitted to this court as a separate Document). I am now and have always considered myself a private sovereign free man of the State of Washington, with a lawful land patent duly declared, documented, publicly presented and witnessed. I am also a constitutional citizen to the organic de jure Continental United States of America and its 1787 Constitution for the United States and the attached Bill of Rights 1

thru original 13th. I am not now nor have ever been a resident of WASHINGTON D.C., which is the only place in this county that the CORPORATION OF THE UNITED STATES has jurisdiction. Only though contract can the CORPORATION OF THE UNITED STATES have jurisdiction over the people outside of Washington D.C.

This case is completely embedded in the Precedence of Constitutional Law both Equity and to a lesser degree Common Law. Therefore, when we study Cohens v. Virginia, 19 U.S. 264 (1821), the U.S. Supreme Court case in which the court reaffirmed its right to review all state court judgments in cases arising under the federal Constitution or a law of the United States of America. The Judge or the Attorney commits treason to the Constitution when he goes against Precedence.

Equity Jurisprudence had its origin solely in the fact that law (at law/common law) and Equity were originally two distinct jurisdictions and was administered by separate tribunals. That original intent is not adapted to the current condition of the municipal law unless the case is brought before a constitutional Chancery Judge, which due to the Judicature Act has obliterated the external distinctions between Equity and the law.

Since the inception of the Judicature Act of 1873/1875, the principles of Equity have, over time, taken a back seat to the at law jurisdiction. As Justice Pomeroy stated in the preface to his Treatise on Equity Jurisprudence 1881:

"There has not, of course, been any conscious intentional abrogation or rejection of equity on the part of the courts. The tendency, however, has plainly and steadily been towards the giving an undue prominence and superiority to purely legal rules, and the ignoring, forgetting, or suppression of equitable notions."

"Even a partial loss of equity would be a fatal injury to the jurisprudence of a State. So far as equitable rules differ from those of the law, they are confessedly more just and righteous, and their disappearance would be a long step backward in the progress of civilization."

The Exclusive Jurisdiction of Equity has the far reaching and broad powers to grant a ruling that is fair, just and right no matter the situation at hand, whereas the law is narrow in its scope and limited in this ability. It is this major difference that creates the conflict between the two jurisdictions being administered in one court.

Mr. Bouvier, the author of the Bouvier's Law Dictionary, knew and understood Equity. In his book, "Institutes of American Law"¹ he had this to say:

"Law is nothing without equity, and equity is everything, even without Law. Those who perceive what is just and what is unjust only through the eyes of the law, never see it as well as those who behold it with the eyes of equity. Law may be looked upon, in some manner, as assistance for those who have a weak perception of right and wrong, in the same way that optical glasses, are useful for those who are shortsighted, or those whose visual organs are deficient. Equity, in its true and genuine meaning, is the soul and spirit of the law; positive law is construed, and rational law is made by it."

The Utah Supreme Court also recognizes that *"when there is a conflict between the rules of equity and the rules of common law (at law) in reference to the same matter, the rules of equity prevail."*²

BE IT RESOLVED, I, David Arthur Darby, do hereby by my Deed of a purely equitable nature grant to this case and court subject matter and in personam jurisdiction under the rules, principles and

¹ Institutes of American Law - 1882, Vol. 2, §. 3724, Para. 4

² Stoker v. Stoker, 616 P. 2d 590 - Utah: Supreme Court 1980; Union Ski Company v. Union Plastics Corporation, 548 P. 2d 1257 - Utah: Supreme Court 1976; Union Pacific Railroad Company v. Trustees, Inc., 329 P. 2d 398 - Utah: Supreme Court 1958; Utah Code 68-3-2(4)

body of jurisprudence of equity, and do withdraw from the general misconstrued venue of martial, public policy, being at Law, and do re-deposit into special confidence/Equity Jurisdiction as a special deposit, which reflects the true intent of the Plaintiff, the Grantor and Third Party Intervener only real party in interest in relation to Defendant in this cause.

Therefore, this Court is granted the broad, substantive, equitable power and authority to adjudicate this instant case based on Equitable Principles and ancient Equity Jurisprudence, not purely legal in the enlarged, at law jurisdiction.

This case is to be adjudicated cognizing the equities between the parties, decreeing only that which is fair, just, right and in good conscience. Any non-martial law—statute, or case cites—used in this case are to be broadly interpreted to include the equitable spirit of the law/statute/case cite, not limited to the letter only. If any law, statute or case cite is presented to this court that is legal in both nature and character, it is to be ignored by the court due to the conflict between law and equity that would be created.

I, David A Darby, In summary restate that I am a Private Sovereign freeman domiciled in State of Washington, and the continental The United States of America, within a nonmilitary occupied private estate not subject to the jurisdiction of the corporation of the “UNITED STATES, nor its corporate subsidiaries referred to as the STATE OF WASHINGTON AND THE COUNTY OF CLARK” but instead, I, David Arthur Darby, am subject to the jurisdictions of “The *de jure* The United States of America *and* Sovereign State Private freeman, Pursuant to Article 2, Section 3 of 1878 Constitution of the State of Washington. *Without Prejudice Expressly Reserving All Liberties and All Rights. Without recourse.* I declare under penalty of perjury and on my own commercial liability, under the laws of the State of Washington, that the foregoing is true, correct, complete, and not misleading, to the best of my knowledge, So Help Me GOD. (See Affidavit to the Appeals court of the Declaration of Termination for David Arthur Darby)

II. Assignments of Error

Judgment was signed on January 30, 2015 with the following errors.

This is a very convoluted case. I have done my best to bring all of the facets of the case into view. On one hand we have the collateral attack on

the original judge's ruling that was completely in error according to the precedence of cases stated in the Statement of Case and on the other hand both judges completely ignored both the 1878 Constitution of the State of Washington and the 1787 Constitution for the United States of America. The cases that are stated in the Statement of Case shows the case law of why the Judge erred in her decision. But, the bigger question is why she (the Judge) completely ignored the Mandatary Judicial that must be followed when making a lawful ruling in this case. The Judge completely ignored all briefs and motions that the Plaintiff brought to the attention of the court and ruled on technicalities. Therefore, I have restated the whole case again as best that I can. In each error the judge did not mention the brief that I served the court with. The only thing that the judge was interested in was technical and procedural problems. I have done the best I can do to follow RAP 10a(4). I was told that in her court I have to follow the rules of the Bar attorneys. She was not going to help

1. The trial court erred in entering the order on January 30, 2015 of Statements of opposing Counsel, in briefs or oral arguments and are not sufficient for motion for summary judgment, *Trinsey Vs. Pagliaro, D.C.* Pa.1964, 229 F. Supp. 647. The Judge ignored all

cases cited such as this one. The precedence of cases cited are ignored. See Statement of Case for other cases that were ignored.

2. The trial court judge erred in not following the constitution even though the superior is an inferior court.Pursuant to 1787

Constitution for the United States. Article III, Section 1 States:

“The Judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”....

3. The Judge erred by not following the 1787 Constitution for the United States of America Article 1, Section 10: “No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make any thing but gold and silver coin a tender in payment of debts; **pass any bill** of attainder, ex post facto law, or **law impairing the obligation of contracts**, or grant any title of nobility”.....

The Superior Court of CLARK COUNTY WASHINGTON is an administrative court under Martial law and Admiralty law and as such is not a constitutional court according to Article III, Section 1.

Therefore, according to the **1943 Clearfield Doctrine**, the court must have a contract with anyone that comes before it that is not a

corporate US Citizen. (See Page 29 for Full Text) In the Superior Court of CLARK COUNTY the court assumes that there is a contract between all that come into the court willingly or unwillingly through the birth certificates. I did not come into this court willingly. My property was stolen from me by the county officials and the courts seem to back these unconstitutional thefts. Anyone that does not have a contract real or implied has the burden to prove that they are not contracted to the Corporation. (See Affidavit of Declaration of Status submitted to this court) I, David Arthur Darby, do not have any contracts with the government corporations of the national, state or county. Therefore, the Judge in this matter has ignored the constitutional status of myself, David Arthur Darby, and did not consider the law of my case. She, the Judge, sidestepped the issue and ruled on a technicalities. I did not receive the findings of fact and considerations in law.

4. The Judge erred Pursuant to the 1878 Constitution of the State of Washington, which is a lawful contract or trust agreement with the people of Washington State, which has never been terminated by

the people. I, David A. Darby, claim that the Elected Officials of Clark County have no right to force taxes nor steal property and sell at its discretion. Therefore, the 1878 Constitution of the State of Washington is in full force and can be used by the private sovereign free men of Washington State. The Judge Erred when she did not follow the following Articles of the 1878 Constitution of the State of Washington: **Article 2, Section 3**. The Judge did not acknowledge my sovereign status nor rights to possess clear title to the land. **‘The people of the state, in their right of sovereignty, are declared to possess the ultimate property in and to all lands within the jurisdiction of the state, and all lands,’**

5. **Article V, Section 3**. The Judge erred in not following this article that outlines the rights of the private sovereign people of Washington State. **“All persons are by nature free, and equally entitled to certain natural rights; among which are, those of enjoying and defending their lives and liberties; of acquiring, possessing and protecting property; and seeking and obtaining**

happiness. To secure these rights, governments are instituted, deriving their just powers from the consent of the governed.”

6. **Article V, Section 14.** The Judge erred in not recognizing my rights to have all Contracts, including the Land Patent, which is a federal contract, recognized. **“No bill of attainder, ex post facto law, or any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises or immunities, shall be passed by the legislature.”**

7. **Article V, Section 15.** The Judge erred in not considering my rights to titled Private property and that taking my land unconstitutionally by the elected officials is unconstitutional. **“Private property shall not be taken or damaged for public use without just compensation; and no persons particular service shall be required without just payment therefor.”**

Article V, Section 23. The Judge erred in not considering this article, which says in part: **“All lands within the state are declared to be allodial, and feudal tenures, with all their incidents, are prohibited”.....**

8. **Article XII, Section 17.** The Judge Erred in not considering this Article concerning Private Property. This article explicitly states

the government cannot take Private property to pay corporate debt. This is exactly what the elected officials have been doing for almost 100 years. **“Private property, shall not be taken or sold for the payment of the corporate debt of municipal corporations.”**

9. **Article XV, Section 10.** The Judge erred in not recognizing my lawfully recorded land patent. I am one of the assigns that is expressly mentioned in the codicil of the Certified Land Patent document that I updated into my private sovereign name. **“All patents or grants of land, made by the United States to settlers and purchasers of tide lands shall be ratified and confirmed by the state.”**

10. **Article XV, Section 14.** The Judge erred in not following this article that refers to the Constitution of the United States. The Common Law of England uses both the Equity and Common law, therefore this court must recognize Equity and Common Law. “The common law of England - applicable to our conditions and circumstances, and not repugnant to, or inconsistent with, the constitution of the United States, or the constitution or laws of this state - shall be in full force, and the rule of decision in all courts in

this state; but in the event of laws being passed, conferring rights or impairing obligations growing out of or founded upon principles of the civil and not the common law, then the rules of the civil law may be resorted to for the purpose of interpretation and decision.”

If the CLARK COUNTY SUPERIOR COURT JUDGE that heard this case had followed the Mandatory Judicial notice and ruled on the law and not technicalities we would not be here today.

Therefore the Judge acted unconstitutionally towards myself and this case.

The Judge erred by not following the Mandatory Judicial Notice that was filed with the court. If the CLARK COUNTY SUPERIOR COURT JUDGE that heard this case had followed the Mandatory Judicial notice and ruled on the law and not technicalities we would not be here today. Therefore the Judge acted unconstitutionally towards myself and this case.

The Judge erred in not following the 1943 Clearfield Doctrine that is quoted on Page 29.

The Judge erred by not considering my lawful arguments. She was only interested in a technical way to dismiss my case without considering the facts that were before the court. She did not adjudicate the case in law. She dismissed the case on technicalities. The case that I paid for to be heard in Superior Court was not heard. Therefore the judge acted dishonorably unlawfully towards this private sovereign free man.

III. STATEMENT OF THE CASE

Plaintiff followed the Appeals court requests for the dismissal documents that were written by the Deputy Prosecutor. Appeals court will notice that none of the documents requested by the appeals court reflected the reason for the Plaintiff's case before the Clark County Superior court. The Judge dismissed the Plaintiff's case without discussing any of the law brought forth by myself the Plaintiff, David Arthur Darby. The opposition counsel did not mention the reason for the case and the judge signed the order dismissing the case without ruling in law or writing the findings of facts and conclusions in law. In fact the judge ignored all lawful argument and

ruled only on technicalities. Since, the County's Attorney wrote the dismissal orders and did not mention anything that I served upon the court, the Appeals Court had no way to know what this case is about. This is how the Superior Court essentially railroads the Pro Se litigant. A Pro Se litigant is not allowed to speak about his case in court, as I was not allowed, therefore I could not put what I wanted put into the court record. I, the Pro Se Litigant was told by the judge that I must follow the rules of the court just as any Bar Attorney in her court would do. That is not following the rules of the Pro Se litigant. The case was dismissed on a technicality and no law brought forth by myself was mentioned in Court nor in the dismissal documents. This Case is actually a Complaint for a Collateral Attack to Vacate a Void Order and Judgement of Foreclosure. Dismissal Documents do not show what the case was about. The Documents in question have been ordered and should be in the hands of the Appeals court by now.

Washington State Court of Appeals Division Two is hereby placed on notice under the authority of the *supremacy and equal protection clauses of the United states Constitution and equity and common law authorities* of **Haines Vs. Kerner**, 404 U.S. 519, **Platsky Vs. C.I.A.**, 953 F.2d 25, and

Anastasoff Vs. United States, 223 F.3d 898(8th Cir.07/25/ 2001). The following Cases studies support the Plaintiff's case.

1. In Re Haines: Pro Se Litigants (Plaintiff is a Pro Se Litigant) are held to less Stringent pleadings standards than BAR Registered Attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims.
2. In re Platsky: court errs if court dismisses the pro se litigant (Plaintiff is a Pro Se Litigant) with instruction of how pleadings are deficient and how to repair the pleadings.
3. In re Anastasoff: litigants' Constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See **Anastasoff Vs. United States**, 223 F.3d 898(8th Cir. 2000). Statements of Counsel, in briefs or oral arguments are not sufficient for motion to dismiss or for summary judgment, **Trinsey Vs. Pagliaro, D.C.** Pa.1964, 229 F. Supp. 647. **In re Stac Elecs. Sec. Litig.**, 89 F.3d

1399,1403(9th Cir.1996) ;Jones Vs. General Elec. Co.,87 F.3d

209, 211 (7th Cir. 1996)

4. Under no possible view, however, of the findings we are considering can they be held to constitute a compliance with the statute, since they merely embody conflicting *statements of counsel* concerning the facts as they suppose them to be and their appreciation of the law which they deem applicable, there being, therefore, no attempt whatever to state the ultimate facts by a consideration of which we would be able to conclude whether or not the judgment was warranted. Gonzales v. Buist. (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463. No instruction was asked, but, as we have said, the judge told the jury that they were to regard only the evidence admitted by him, not *statements of counsel*, Holt v. United States, (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2, licable (“[a]n action must be prosecuted in the real party in interest.”) The standing doctrine “involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise. Kowalski v. Tesmer,543 U.S. 125,128-29,125 S.Ct.564,160 L.Ed.2d 519(2004)(quoting Warth v. Seldin,422 U.S.490,498, 95 S.Ct 2197, 45 L.Ed.2d 343

(1975). Constitution Standing under Article III requires, at a minimum, that a party must have suffered some action or threatened injury as a result of the defendant's conduct, that the injury be traced to the challenged action, and that it is likely to be redressed by favorable decision.

5. *Valley Forge Christian Coll. V. Am. United for Separation of church and state*, 454 U.S. 464, 472, 102 S.Ct 752, 70 L.Ed 700 (1982) (citations and internal quotations omitted). Beyond the Article III requirements of injury in fact, causation, and redressibility, the creditor must also have prudential standing, which is a judicially-created set of principles that places limits on the class of persons who may invoke the courts' powers. *Warth v. Seldin*, 422 U.S. 490, 499, 95 S. Ct 2197, 45 L.ed. 2d 343 (1975)). As a prudential matter, a plaintiff must assert "his own legal interests as the real party in interest". (*Dunmore v. Unites States*, 358 F.3d 1107, 1112 (9th Cir. 2004), as found in Fed. R. Civ. P. 17, which provides "[a]n action must be prosecuted in the name of real party in interest.").
6. The court of appeal cited *Alejandre Vs. Deutsche Bank Trust Co. Ams.*, 44 So. 3d 1288, 1289 (Fla 4th DCA 2010., (*The movant*

must disprove the affirmative defenses or show they are legally insufficient) The court of appeal found the homeowners sufficiently pled the bank's failure to satisfy condition precedent regarding pre-acceleration notice requirements of the mortgage, and court rejected the bank's argument to the contrary.

7. ***Defendants did not provide any sworn statement only un-sworn statements based on evidence produced. Attorneys can't testify.*** Statements of counsel in brief or in oral argument are not facts before the court. This finding of a continuing investigation, which forms the foundation of the majority opinion, ***comes from statements of counsel made during the appellate process. As we have said of other un-sworn statements which were not part of the record and therefore could not have been considered by the trial court:*** "Manifestly, [such statements] ***cannot be properly considered by us in the disposition of [a] case.***" ***United States v. Lovasco.*** 431 U.S. 783, 97 S. Ct. Statements of Counsel, in briefs or oral arguments are not sufficient for motion to dismiss or for summary judgment, ***Trinsey Vs. Pagliaro***, D.C. Pa.1964, 229 F. Supp. 647.

8. Plaintiff has provided sworn statements which is part of the record and therefore can be considered by the trial court: "Manifestly, [such statements] can be properly considered by us in the disposition of [a] case." *United States v. Lovasco.* 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752 (06/09/77).
9. The Clearfield Doctrine, as set forth in *Clearfield Trust Co. v. United States*, 318 U.S. 363-371, states:" Governments descend to the level of mere private corporations, and take on the characteristics of a mere private citizen where private corporate commercial paper [i.e. Federal Reserve Notes] and securities i.e.[checks, etc.] is concerned. ...For purposes of suit, such corporations and individuals are regarded as entities entirely separate from government." *Bank of United States v. Planter's Bank*, 9 Wheaton (22 U.S.) 904, 6 L. Ed. 24; U.S. v. Burr, 309 U.S. 242; In re *King - Porter Co.*, CA 5th, 1971, 446 F.2d 722,732. And; See also 22 U.S.C.A. 286(e), the real party in interest is not the de jure "United States of America" or "State", but "The Bank" and "The Fund." (22 U.S.C.A. 286, et seq., C.R.S. 11-60-103)."Governments lose their immunity and descend to level of private corporations when involved in commercial

activity enforcing negotiable instruments, as in fines, penalties, assessments, bails, taxes, the remedy lies in the hand of the state and its municipalities seeking remedy." Rio Grande v. Darke, 167 P. 241. And; "Governments are corporations." Penhallow v. Doane, 3Dallas 55. And; Private corporations and their officers are not immune from civil damage.

"... the government descended to the level of a mere private corporation and takes on the character of a mere private citizen . . . For the purposes of suit, such corporations and individuals are regarded as an entity entirely separate from government." Bank of U.S. v. Planters Bank, 9 Wheat. 22 U.S. 904, U.S. v. Erie Ry Co., 106 U.S. 327; Clearfield Trust Co. v. U.S. 318 U.S. 363 (1943).

"When governments enter the world of commerce, they are subject to the same burdens as any private firm or corporation." U.S. v. Burr. 309 U.S. 22; See 22 U.S.C.A. 286e. Bank of U.S. v. Planters Bank of Georgia. 6 L. Ed. (9 Wheat) 244; 22 U.S.C.A. 286 et. Seq.,C.R.S. 11-60-103.

10. Plaintiff has provided sworn statements and verification of and his documents. I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true, correct,

complete, and not misleading. (*which are sworn testimony and are part of the court record*)

11. Defendant's in this case have provided no competent fact witnesses in brief or oral arguments to bring forth any of the evidence that they have submitted in the record. There is no constitutional evidence or Testimony to support Defendants claims.

IV. SUMMARY OF ARGUMENT
[This is optional.]

V. ARGUMENT

Referring to the Statements of Case the following are true. According to precedence of the

ANASTASOFF: PLAINTIFFS' CONSTITUTIONAL RIGHTS ARE VIOLATED WHEN THE COURTS DEPART FROM PRECEDENT WHERE PARTIES ARE SIMILARLY SITUATED. ALL Litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See Anastasoff v. United States, 223 F.3d 898 (8th Cir. 2000) Statements of counsel, in their briefs or their argument are not sufficient for a motion to dismiss or for summary judgment, Trinsey v, Pagliaro,

D.C.PA.1964,229,F.SUPP.647. SEE ALSO, this court is also noticed on the following point of law: prevail party on default judgment of liability must still prove damages, **American red Cross Community Blood Center of the Ozarks**,257 F.3d 859 (8TH Cir.07/25 /2001).

Federal rules of civil Procedure Courts and Civil Proceedings Rule 12B6. Validity of the Judgment Jurisdiction of parties and the subject – matter is essential to valid jurisdiction to enter the particular Judgment. **Wall v. Superior court of Yavapai County** (1939) 53 Ariz. 344,89 P.2d 624; **Hill v.Favour** (1938) 52 Ariz.561,84 P2d 575; **Varnes V. white** (1932), 40 Ariz 427, 12 P2d 870; **Latham V. McClenny** (1930) 36 Arizona 337,285 P.648; **Western land &Cattle Co. v. National Bank of Arizona at Phoenix** (1925) 29 Ariz 51,239 P.299. No court may acquire complete jurisdiction to hear and determine any cause until it has obtained though Due process, prescribed by law, jurisdiction over both the subject – matter and the parties, and the power to render the particular judgment that was rendered. **O`Leary V. Waterbury title Co.**,117 Conn 39,43,166 A.673. **Bowen V. Olson** 122 Utah 66 (1952) 246 P.2d 602: at any rate, the mind of the affiant was such as to be as reckless in its statement. In the affidavit as to be equivalent to deceit. Long ago in the case of **Derry V. Peck**(1889)14 A.C.337, THE HOUSE OF LORDS HELD that a

statement made with the knowledge of the maker that he was ignorant of whether it was false or true was equivalent to conscious deceit **Liebhart V. Lawrence**,⁴⁰ Utah 243,120 P215.

CLARK COUNTY Prosecutor Taylor Hallvik located at 1300 Franklin Ave, Third Floor, Vancouver has presented documents that are not in affidavit form nor are they certified by Notary to be true, correct, complete and not misleading therefore cannot be recognized by the court as witnessed documents, therefore they are not admissible as testimony. On the other hand David Arthur Darby (Pro Se) presents evidence on the record, statements in brief and in oral argument are facts before the court, because they are all certified by Notary. **United States V. Lovasco** (06 / 09 / 77) 431 U.S. 783,97 S. Ct. 2044,52 L.Ed.2d 752. Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties **Wahl V. Round Valley Bank** 38 Ariz.411,300 P.955 (1931); **Tube City Mining & Milling Co.V. Otterson**,16 Ariz.305,146 P.203 (1914); and **Milliken V. Meyer**,311 U.S. 457,61 S Ct.339,85 L.Ed.2d 278 (1940).

Therefore, The Superior Court of Clark County in Case No. 14-2-02637-8 did not have subject matter Jurisdiction. They did not have witnesses and they did not present certified evidence of constitutional authority to proceed to steal property from the David Arthur Darby. The County did not bring forward competent factual witnesses and the case was not heard and adjudicated on the merits of the case law brought forth in court. Therefore the Void order should be granted. The Judgement should be voided and vacated. Judgment in favor of the Plaintiff the Appeals Court should reverse the decision and vacate the judgement and void the judgment.

VI. CONCLUSION

July 31, 2015

Wherefore the Judgment entered in favour of CLARK COUNTY, This court has a non –discretionary duty to vacate the void judgment.

Plaintiff moves this court for an order to grant the motion of Plaintiff for a Motion to vacate and void the Order and Judgment of Foreclosure. The Plaintiff has submitted to the appeals court the unconstitutionality of the Superior Court and the Superior court's disregarding of Constitutional rights of private sovereign free men.

I pray that the judge(s) will see the constitutionality of my arguments and rule according to the law and do one of the following:

1. An order granting the motion to vacate a void Order and Judgment of Foreclosure.
2. David Arthur Darby should be made whole again due to the unconstitutional practices of Clark County officials. This of course should be left up to the court to decide what is fair and proper. All losses will have to be submitted to the court for review.

OR

3. If the court rules against me, please provide findings of fact and conclusions of law, competent fact witness's, authenticated evidence and/or Sworn Testimony to support Defendant's claims and their names. Please provide the Constitutional arguments that the court feels is in the interests of the defendants in equity.

Respectfully submitted,

VERIFICATION

I, **David Arthur Darby Private** Sovereign State Citizen pursuant to Article 2, Section 3 of 1878 Constitution of the State of Washington, am the defendant in the above-entitled action and I have read the above **Appeals Court Cause # 47285-6-II**. I am competent to testify to the matters stated herein and I have personal knowledge of the matters stated herein except as to those matters stated upon belief or information and, as to those matters, I believe them to be true. I declare under penalty of perjury under the laws of the State of Washington, that the foregoing is true, correct, complete, and not misleading.

Executed this 31st day of July 2015, in County of Clark, State of Washington.

David Arthur Darby

David Arthur Darby, Private
Private Sovereign State Citizen, Pursuant to Article 2, Section 3
of 1878 Constitution of the State of Washington
P.O. Box 772 Amboy, Washington
Zip exempt (Not Federal District)

NOTARY
SEAL

[STATE] Washington s.s.:

[COUNTY] Clark)

On this 31st day of July, 2015,

The above signatory appears before me personally with picture ID and executes the forgoing instrument and acknowledges this to be their free act and deed.

[Signature] My Commission

Expires: May 02, 2018
Notary Public



PROOF OF PERSONAL SERVICE

Case name(s): David A. Darby vs Clark County

Case Number(s): 14-2-02637-8 Appeals Court Cause # 47285-6-II Reformatted Version 2

1. At the time of service I was at least 18 years of age and not a party to this legal action.
My mail location is: PO Box 1681; Portland, Oregon 97207

2. I personally delivered the following document(s) as identified here: Notice of Appeal

3. I personally delivered the document(s) identified above as follows:

Person served: Taylor Hallvik Prosecuting Attorney of record

Address where delivered: 1300 Franklin St. Suite 380

Date: July 31st 2015 @ 12:57 pm

Person served: Taylor Hallvik for the County

Address where delivered: 1300 Franklin St. Second floor

Date: July 31st 2015 @ 12:57 pm

[] Names and addresses of additional persons served and delivery dates and times are listed on attached page (identifying attachment at the top of the page).

I declare under the penalty of perjury, under the laws of the state of Washington, under penalty of bearing false witness pursuant to the Common Law and our God-Source Creator, that the foregoing is true, correct and not misleading.

Dated: July 31st 2015

DOLORES AQUINO
Print name

[Signature]
Signature