

**FILED**

APR 11 2011

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 29541-9-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

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Capital One Bank (USA), N.A.  
Respondent / Plaintiff,

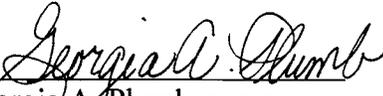
v.

Georgia A. Plumb, *pro se*  
Appellant / Defendant.

---

**APPELLANT OPENING BRIEF**  
Appeal No. 29541-9-III  
Yakima County Case Number 10-2-01247-7

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By   
Georgia A. Plumb, *pro se*  
Appellant / Defendant

4902 Richey Rd  
Yakima, WA 98908  
(509) 965-4304

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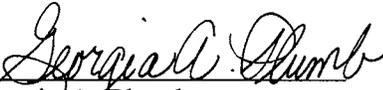
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## INTRODUCTION

This case pertains to an alleged credit card debt claimed by respondent, Capital One Bank, (USA), N.A. (herein referred to as "Capital One") as owed by the *Pro Se* appellant, Georgia A. Plumb (herein referred to as "Plumb"). The trial court ruled in favor of Capital One's Motion for Summary Judgment. Plumb moved for reconsideration which was denied. Plumb appealed the court's decisions to this court.

## ASSIGNMENTS OF ERROR

**Assignment of Error No. 1:** The trial court erred when it granted Capital One's Motion for Summary Judgment because there is a genuine issue of material fact.

**Issues on Appeal Pertaining to Assignment of Error No. 1:** Did the court properly conclude that there were no material issues of fact preventing summary judgment?

**Assignment of Error No. 2:** The trial court erred in admitting Capital One's affidavit and other evidence because they are contrary to law, the Rules of Civil Procedure and are without a competent fact witness.

**Issues on Appeal Pertaining to Assignment of Error No. 2:** Did the court properly admit Capital One's evidence without finding that the evidence was admissible under existing law and the Rules of Civil Procedure?

**Assignment of Error No. 3:** The trial court erred in ruling in favor of Capital One without making an informed ruling based on evidence from both parties and in denying Plumb's other due process rights.

**Issues on Appeal Pertaining to Assignment of Error No. 3:** Did presiding Judge C. James Lust rule improperly and deprive Plumb of her rights?

### **STATEMENT OF THE CASE**

On March 15, 2010 Plumb was served a Summons and Complaint for alleged monies owed Capital One (CP 1-5). No sworn, certified records were attached to the Complaint. On April 9, 2010 Plumb served Capital One a Sworn Denial of the Alleged Debt and Demand that Plaintiff File This Lawsuit With The Court (CP 6-7). Plumb and Capital One's counsel exchanged discovery requests in the form of Request for Admissions and Request for Production of Documents. On April 21, 2010 Capital One filed a Summons and Complaint with the court (CP 1-5). On April 23, 2010 Plumb, proceeding *pro se*, filed with the court a Sworn Denial Of The Alleged Debt and Demand that Plaintiff File This Lawsuit With The Court (CP 6-7). On June 22, 2010, Capital One filed a Motion for Summary Judgment (CP 9-11). In support of its motion, Capital One submitted Jamie Williams' affidavit (CP 12-13). The affiant did not declare that she attached to her affidavit any sworn, certified copy of any business paper, record or document referenced in her affidavit (CP 12-13). Also, in support of its motion, Capital One's attorney submitted seven (7) unidentified,

unsworn-to documents (CP 14-20). On July 9, 2010 Plumb filed Defendant's Motion To Strike Plaintiff's Evidence and sworn Affidavit In Support of the motion (CP 29-35). On July 19, 2010 Plumb filed a sworn Additional Facts In Support Of Motion To Strike (CP 36-40). On July 20, 2010 Capital One's counsel filed Plaintiff's Response To Defendant's Motion To Strike Plaintiff's Evidence (CP 41-63). On July 23, 2010 there was a hearing on Plumb's Motion To Strike Capital One's Evidence before Judge Schwab, who deferred all matters to an August 13, 2010 scheduled summary judgment hearing (RP 07/23/2010 p 15, lines 23-25, p 16, line 1). On July 29, 2010 Plumb filed Defendant's Opposition To and Motion To Strike Plaintiff's Motion For Summary Judgment (CP 64-93). On August 3, 2010 Plumb filed a sworn Defendant's Response to Plaintiff's Response To Defendant's Motion to Strike Plaintiff's Evidence (CP 94-103). A hearing was held on August 13, 2010 before Judge Lust to hear Capital One's Motion for Summary Judgment and Plumb's Motions To Strike Plaintiff's Evidence and Motion To Strike Plaintiff's Motion For Summary Judgment (RP 7/13/2010 pp 1-26). At the hearing, the judge struck the blank copy of Capital One's Requests for Admissions to Plumb that Capital One's counsel had wrongly claimed Plumb had not answered (RP 08/13/2010 p 5, lines 11-12). In the hearing, Plumb disputed all of Capital One's documents (RP 08/13/2010 p 5, lines 13-25 through p 14, lines 1-3). During the hearing, both the court and Capital One's attorney, Miss Whitsitt,

mischaracterized Plumb's dispute of the debt as was clearly seen in Plumb's court documents, sworn affidavits and legal arguments. Miss Whitsitt said, "There is no factual information provided by the defendant that disputes what it is we are setting forward." The Court: "That's the thing that puzzles me." (RP 08/13/2010, p 15, line 24; p 16, lines 1-3). The Court: "...I don't see any disputed facts here." Mrs. Plumb: "You don't see a dispute of the debt? Is that what you're saying?" "The Court: "Right..." (RP 08/13/2010, p 16, lines 15-18). Carl Plumb: "Now, Your Honor...there are documents that are contested and we have all the way through. Each of these documents they provided." (RP 08/13/2010, p 18, lines 1-3). The Court: "Those are business records..." (RP 08/13/2010, p 18, line 4). The court then rejected Plumb's disputes and contesting of Capital One's documents, stating that they were "business records." (RP 08/13/2010, p 18, lines 8-10). Judge Lust accepted all of Capital One's documents as "evidence" and "facts" (RP 08/13/2010, p 24, lines 19-25). The court instructed Capital One's attorney, Miss Wittsitt, to provide Plumb, not the court, (RP 08/13/2010, p 25, lines 2-3) the "original unredacted records" (RP 08/13/2010, p 20, lines 1-23); "the whole ledger" (RP 08/13/2010, p 17, lines 1-14); the "requested documentation to the defendant" (RP 08/13/2010, p 24, lines 14-17); and "zero balance and bring them forward from there" (RP 08-13-2010, p 17, lines 8-12). The hearing was continued until 09/17/10 (RP 08/13/2010, p 24, lines 4-6). On August 18, 2010 Plumb filed a Mandatory

Judicial Notice of Claim of Rights (CP 104-108). On September 10, 2010, along with a sworn affidavit, Plumb filed Defendant's Motion To Strike Plaintiff's Evidence, Motion For Sanctions, Motion To Dismiss With Prejudice, and Motion For Damages (CP 109-126). Once again, Plumb pointed out genuine issues of material fact that precluded summary judgment (CP 111, lines 12-17 & CP 112, lines 2-19). Capital One's attorney filed Plaintiff's Response To Defendant's Motion To Strike Plaintiff's Evidence, Motion For Sanctions, Motion To Dismiss With Prejudice, and Motion For Damages on September 14, 2010 (CP 129-132). Attorney Wittsitt declared under penalty of perjury, "The defendant has had months to assert some alleged material issue of fact but the defendant has made no attempt to do so as any material fact as of today's date." (CP 131, lines 19-20). On September 17, 2010 Plumb filed a sworn Affidavit In Support of Motion and Defendant's Motion To Strike Plaintiff's Response To Defendant's Motion To Strike Plaintiff's Evidence, Motion For Sanctions, Motion To Dismiss With Prejudice and Motion For Damages (CP 133-138). On September 17, 2010 a continuance hearing on these matters was held before Judge Lust (RP 09-17-2010, p 1-13). Plumb testified that Capital One's attorney had not provided all of the requested documents the judge had instructed them to provide (RP 09/17/2010, p 2-7) (RP 09/17/2010, p 10, lines 22-25, p 11 lines 1-23). Plumb pointed out material issues of facts in dispute (RP 09-17-2010, p 1, lines 19-25 through p 9, lines 1-2). Capital One's counsel, Miss Wittsitt, in a

statement, making it appear that she had provided Plumb with billing statements from 2005 onward, said, "...we got billing statements for the past seven years, including moving from 2005 onward, which was also a point when there was a zero balance." (RP 09-17-2010, p 9, lines 16-18). Plumb disagreed with the attorney's misrepresentations, also pointing out a clear three (3) years discrepancy between the unidentified, disputed and defaced 1999 check (CP 15) and the uncertified 2002 copyrighted "Welcome to Capital One" agreement (CP 190). (RP 09-17-2010, p 10, lines 22-25; p 11, lines 1-23). At the end of the hearing Judge Lust informed both parties that he would make a determination and advise the parties of his decision (RP 09-17-2010, p 12, lines 10-14). On November 2, 2010 Judge Lust filed his Letter Opinion of the court granting Plaintiff's Motion for Summary Judgment (CP 139). The judge said he had reviewed all of the documents "submitted by Plaintiff" and found that there were "no disputed facts." (CP 139). On November 10, 2010 Plumb filed Defendant's Motion For Reconsideration and For Findings of Fact and Conclusions of Law (CP 140-142). On November 18, 2010 Judge Lust filed his Order For Motion For Reconsideration denying Plumb's Motion for Reconsideration (CP 143). On December 2, 2010 Plumb filed an Amended Notice of Appeal to Court of Appeals (CP 144).

## ARGUMENT

### STANDARD OF REVIEW

This appeal deals with the court's granting Capital One's Motion for Summary Judgment (CP 139) and denial of Plumb's Motion for Reconsideration (CP 143). In reviewing a summary judgment order, an appellate court evaluates the matter de novo, performing the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wash.2d 853, 860, 93 P.3d 108 (2004) (citing *Kruse v. Hemp*, 121 Wash.2d 715, 722, 853 P.2d 1373 (1993)).

In conducting this inquiry, this court must view all facts and reasonable inferences in the light most favorable to the nonmoving party. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000), *Herron v. Tribune Publ'g Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987). Summary judgment is proper where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(e). "A material fact is one upon which the outcome of the litigation depends, in whole or in part." *Barrie v. Hosts of Am., Inc.*, 94 Wash.2d 640, 642, 618 P.2d 96 (1980). "[T]he moving party bears the burden of showing the absence of a material issue of fact." *Swinehart v. City of Spokane*, 145 Wn. App. 836, 844, 187 P.3d 345 (2008) (citing *Redding v. Virginia Mason Med. Ctr.*, 75 Wn. App. 424, 426, 878 P.2d 483 (1994)). After the moving party submits adequate affidavits, the nonmoving party must set forth specific facts rebutting the moving party's

contentions and disclose that a genuine issue of material fact exists. *Seven Gables Corp. v. MGM/UA Ent. Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

**1. The trial court erred when it granted Capital One's Motion for Summary Judgment because there is a genuine issue of material fact.**

Plumb's filings and sworn statements clearly deny any and all allegations stated in Capital One's Complaint (CP 3-5) (CP 6, 33, 39-40, 56-58, 67-70, 98-99, 110-119, 136), (RP 08/13/2010, pp 5-13 and p 14 lines 1-3), (RP 08/13/2010, p 18, lines 1-18), (RP 08/13/2010, p 20, lines 10-11), (RP 09/17/2010, pp 1-6). Capital One should be required to prove its claims and to provide Plumb with all original documents relative to the account that is the subject of this lawsuit, or certified copies thereof, as required by the laws of the State of Washington. CR 56(e), RCW 5.45.020, ER 602 and ER 1002. Capital One did not do so. Also, Capital One offered no specific law or legal basis in its Complaint (CP 3-4) or Motion for Summary Judgment (CP 9-11), per CR 11.

The first requisite element of debt under Fair Debt Collection Practices Act (FDCPA) is existence of obligation. *Ernst v. Jesse L. Riddle, P.C., M.D.La.1997, 964 F.Supp. 213*. Without the existence of an original or sworn, certified, signed agreement or a contract and supporting documents there is no obligation. The uncertified alleged agreement (CP 19-20) does not reference any particular account type, class of agreement, Plumb's alleged account number, or any information that proves the agreement corresponds with the

alleged account or pertains to Plumb (CP 19-20). The agreement submitted by Capital One also does not prove actual terms of the agreement with the particular alleged debtor. *Portfolio Acquisitions LLC v Feltman*, 391 Ill., App. 3d 642, 6651, 652 (2009). Capital One failed to produce any signed agreement or contract. Capital One has not been able to produce a certified detailed, itemized proof of the alleged card usage, as required in *Bridges*.

"Summary judgment is improper if the creditor's pleadings do not disclose either a signed agreement by the alleged debtor or detailed itemized proof of the alleged debtor's card usage and the creditor does not show that the alleged debtor acknowledged the debt with, for example, cancelled checks or online payment documentation. Monthly statements summarizing alleged account balances and payments purportedly made thereon and the affidavits of collection employees who claim to be familiar with the alleged debtor's purported account records will not suffice. *Discover Bank v. Bridges*, 154 Wn. App. 722 (2010).

Capital One failed to supply proof that Plumb received, entered into, assented to the terms of, or accepted, the unsigned two page ""customer agreement" (CP 19-20) that begins with the words "Welcome to Capital One" and shows a copyright date of 2002. That is three years after the account was allegedly opened. Capital One did not and could not certify that the disputed, defaced 1999 check and "Cardholder Information" form (CP 14-15) applied to the alleged account. The affiant never declared that the alleged account was opened in either 1999 or in 2002 (CP 12-13). Capital One failed to supply certified proof that Plumb had personally acknowledged the subject account or

the debt. Plumb from the beginning made statements in documents, in testimony and sworn affidavits, showing and declaring that there was a genuine dispute of the debt, the account, Capital One's evidence, the alleged amount owing and proving that there are genuine issues of material fact in dispute. (CP 6, 33, 39-40, 56-58, 67-70, 98-99, 110-119, 136), (RP 08/13/2010, pp 5-13 and p 14 lines 1-3), (RP 08/13/2010, p 18, lines 1-18), (RP 08/13/2010, p 20, lines 10-11), (RP 09/17/2010, pp 1-6).

**2. The trial court erred in admitting Capital One's affidavit and other evidence contrary to law, the Rules of Civil Procedure and without a competent fact witness.**

Capital One's affidavit was the only sworn document it entered into evidence. All other Capital One evidence is unsworn, uncertified and inadmissible. There are no original documents offered by a competent fact witness who can testify from personal knowledge. Therefore, they do not comply with CR 56(e), RCW 5.45.020, and ER 602.

This case differs from *Bridges* where there were three affiants who each swore under penalty of perjury that they had access to the Bridges' account records in the course of their employment and that their statements were made, based upon personal knowledge and review of the Bridges' records. In Jamie Williams' affidavit, she did not swear under penalty of perjury that she worked for Capital One, that she had access to Plumb's account records in the course of her employment, that her statements were based upon personal knowledge of

and review of Plumb's records, or even that Williams had reviewed any records at all (CP 12-13). CR 56(e) provides in relevant part:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. CR 56(e).

In this case no evidence has been introduced showing affirmatively that affiant is competent to testify concerning matters regarding Plumb. Capital One's affidavit fails CR 56(e) in each aspect and therefore ER 602 applies. ER 602 states:

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. ER 602.

Williams is not an expert. The hearsay testimony she provides in her affidavit consists of conclusions of law and personal opinions.

“[N]either the trial court nor the appellate court can consider conclusions of law contained in an affidavit.” *Parkin v Colocousis* 53 Wn. App. 649, 653, 769, P.2d 326 (1989).

“Legal opinions on the ultimate legal issue before the court are not properly considered under the guise of expert testimony, and it was error for the court to consider legal opinions expressed in affidavits.” *Washington State Physicians Ins. Assn's v Fisions Corp*, 122 Wn. 2d 299, 344, 858 P.2d 1054 (1993).

Jamie Williams' affidavit fails to establish her authority, or capacity within any authority, to testify on the matters stated within the affidavit (CP 12-

13). Rather than personal knowledge of Plumb's documents, Williams only refers to being "familiar with the manner and method" and having a "personal knowledge of the processes by which Capital One maintains its business books and records." (CP 12). Furthermore, Williams does not identify what records she reviewed nor which records she attached (CP 12-13). This is not affirmative proof per CR 56(e) of personal knowledge or competency but indicates the lack thereof. Without identifying the specific records she reviewed and attached, it is difficult to determine what records she is referring to or what she is swearing to. Williams provides no facts establishing a basis for her personal knowledge.

“Where bank officer’s affidavit essentially consisted of a summary of unnamed records at the bank, unaccompanied by records themselves and unsupported by facts establishing basis of officer’s knowledge, foundation was lacking for admission of officer’s opinion regarding amount due on loan.” *Cole Taylor Bank v Corrigan*, 230 Ill. App. 3d 122, 129, 595, N.E. 2d 177, 181-82 (2nd Dist. 1992).

In addition to being unsupported hearsay, the affidavit was made by someone lacking personal knowledge, does not set forth admissible evidentiary facts, lacks sworn certified copies of all papers or parts thereof referred to in the body of the affidavit, and is ambiguous containing undefined or unspecified terms. The court in *Meadows* addressed requirements for affidavits in summary judgment proceedings:

"[I]t is at once apparent from the rule that affidavits submitted in a summary judgment proceeding must (1) be made on personal knowledge, (2) set forth admissible evidentiary facts, (3)

affirmatively show that the affiant is competent to testify as to his or her averments, and (4) have appended or served therewith sworn or certified copies of all papers or parts thereof referred to in the body of the affidavit." *Meadows v. Grant's Auto Brokers*, 71 Wn.2d 874 (1967).

The court stated further,

"[O]ne of the reasons for the requirements of the rule is that an affidavit -- not being subject to cross-examination -- is a poor substitute for a live witness -- whose tone or inflection of voice, movement of head, hand or eye, and general conduct or demeanor are discernible and sometimes determinative -- coupled with the proposition that the summary judgment procedure was not designed to deprive a litigant of a trial on disputed issues of fact. Thus it is that affidavits submitted should comply with the requirements of the rule and conform, as nearly as possible, to what the affiant would be permitted to testify to in court. Although the rule, in this respect, makes no distinction between affidavits of the moving and nonmoving party it is almost the universal practice -- because of the drastic potentials of the motion -- to scrutinize with care and particularity the affidavits of the moving party while indulging in some leniency with respect to the affidavits presented by the opposing party." *Meadows v. Grant's Auto Brokers*, 71 Wn.2d 874 (1967).

Williams states, "I am a Litigation Support Representative and an authorized agent of Plaintiff CAPITAL ONE BANK (USA), N.A. ("Capital One") for purposes of this affidavit." (CP 12). Simply stating the above is not proof and does not explain what she was authorized to do, what the nature of her duties consisted of, nor provide proof of authorization. There is also no title under her signature and no indication to whom, where or how long she has been employed, what her training, experience and job tasks were at the time the affidavit was written, where she is presently located or employed and the nature

of her alleged knowledge (CP 12-13). Since the affidavit consists of hearsay, Williams could not testify as to the subject matter of the hearsay statements, since she has no personal knowledge of the facts within the hearsay statements.

### **Business Records Exception**

The court asserted that Capital One's evidence should be admitted under the business records exception (CP 44, lines 19-20). (RP 08/13/2010, p 18, lines 4, 8-10) (RP 08/13/2010, p 19, line 1)

This court reviews a trial court's decision to admit or exclude business records for a manifest abuse of discretion. *State v. Garrett*, 76 Wn. App. 719, 722, 887 P.2d 488 (1995). A trial court abuses its discretion when it bases its decision on unreasonable or untenable grounds. *Dix v. ICT Group, Inc.*, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007). *Discover Bank v. Bridges*, 154 Wn. App. 722, 226 P.3d 191 (2010). The Washington law on business records states:

A record of an act, condition or event, shall in so far as relevant, be competent evidence if the custodian or other qualified witness testifies to its identity and the mode of its preparation, and if it was made in the regular course of business, at or near the time of the act, condition or event, and if, in the opinion of the court, the sources of information, method and time of preparation were such as to justify its admission. **RCW 5.45.020**

There is no testimony by Williams, from her personal knowledge, as to the identity and mode of preparation of those records (CP 12-13). There is no

evidence in the affidavit or record that Williams had custody of Plumb's records as a regular part of her work or had supervision of their creation.

"Testimony by one who has custody of the record as a regular part of his work or who has supervision of its creation will be sufficient to properly introduce the record." *State v. Iverson*, 126 Wn. App. 329 (2005)

Williams' affidavit fails to comply with CR 56(e), RCW 5.45.020 and ER 602 in that there is no authenticated, certified copy of the alleged "Customer Agreement" and other documents, or a certified copy of the ledger proving the specific facts referenced and that they apply to Plumb. Williams' affidavit does not meet the requirements to qualify for the ER 803 business records exception. Williams' testimony therefore falls under ER 602, requiring personal knowledge, ER 901 requiring evidence to be properly authenticated or identified prior to being admitted and ER 1002 requiring original documents be filed.

Despite the fact the judge admitted Capital One's records, which were shown to be unreliable, and in conflict with themselves, that does not guarantee that the hearsay affidavit and the other records themselves, or the content within them, is reliable, true, complete and accurate. The opposing party must have the right to inspect the originals, cross examine the witnesses at trial and present opposing evidence. The business records exception on summary judgment actions should not be used like a "magic wand" to enable an inadmissible

affidavit and inadmissible evidence to be entered, thereby enabling Capital One to avoid having to prove a legal and factual basis for its claims.

**3. Plumb was denied her due process right to a fair hearing.**

Plumb was deprived of due process and a fair hearing in several ways. In the first instance, Judge Lust did not make an informed ruling based on evidence from both sides. Judge Lust stated in his 11/2/2010 Letter Opinion of the court, which granted Capital One's Motion for Summary Judgment, that he had reviewed all of the documents "submitted by Plaintiff" and found that there were no disputed facts (CP 139). The order did not state that Plumb's testimony, documents and affidavits were also reviewed or considered in the opinion. Considering that Plumb provided many instances from the record of a dispute of material facts, the judge's statement that "there were no disputed facts" is evidence that Plumb's documents had not been reviewed and that Plumb was denied her due process rights and a fair hearing under law. (CP 6, 33, 39-40, 56-58, 67-70, 98-99, 110-119, 136), (RP 08/13/2010, pp 5-13 and p 14 lines 1-3), (RP 08/13/2010, p 18, lines 1-18), (RP 08/13/2010, p 20, lines 10-11), (RP 09/17/2010, pp 1-6).

Plumb filed Defendant's Motion For Reconsideration and For Findings of Fact and Conclusions of Law on November 10, 2010 (CP 140-141). On November 18, 2010 the judge filed an Order for Motion For Reconsideration showing "The motion for reconsideration is denied." (CP 143). The fact that

the court did not acknowledge or grant Plumb's Motion for Findings of Fact and Conclusions of Law per CR 52(a)(1), is evidence that Plumb was denied a fair hearing and her rights under the law (CP 143). The court further prevented Plumb from receiving a fair hearing by ignoring her challenges to the legal basis for Capital One's claims (CP 32, lines 4-8) (CP 33, lines 3-4) (CP 64, line 12) (CP 96, lines 15-16) ( CP 110, lines 2-9) (CP 117, lines 26-27) (CP 118, lines 14-15) (CP 136, lines 5-6). Capital One offered no specific law as the basis for its Complaint (CP 3-4) or Motion for Summary Judgment (CP 9-11), as required by CR 11.

Furthermore, the court's granting of summary judgment was unfair, premature and denied Plumb's rights under the law, since discovery was not yet completed. Capital One had not answered all of Plumb's requests for production of documents (CP 118-119) nor Plumb's request for a date to depose Capital One's witness (CP 141) (RP 08/13/2010, p 13, lines 6-25 and p 14 lines 1-3). This deprived Plumb of the ability to obtain additional facts to assist in preparing a defense and preparing a counterclaim.

### **CONCLUSION**

The court erred in granting Summary Judgment for Capital One, in denying Plumb's Motion for Reconsideration and in denying Plumb's rights. Appellant respectfully requests that this Court vacate the trial court's order granting summary judgment and remand with instructions to enter an order

dismissing the case with prejudice. Appellant declares the foregoing is true, correct and complete, to the best of her knowledge, under penalty of perjury under the laws of the State of Washington.

Submitted on April 8, 2010

*Georgia A. Plumb*

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Georgia A. Plumb, *Pro Se* Appellant / Defendant

## CERTIFICATE OF SERVICE

I, GEORGIA A. PLUMB, Appellant / Defendant am over 21 years of age and competent to testify, do hereby certify to be true and correct subject to the penalty of perjury under the laws of the State of Washington that at Yakima, Washington I served the foregoing **Appellant Brief Appeal No. 29541-9-III, Cause No. 12-2-01247-7** and a copy of this **Certificate of Service** by the method, on the date, and on the Attorney for Respondent and Clerk of the Court of Appeals identified below as indicated. In addition, at the same time and in the same envelope, addressed to the Attorney for Respondent, I served **Verbatim Report of Proceedings for July 23, 2010, August 13, 2010, and September 17, 2010.**

Attorney for Respondent / Plaintiff Capital One Bank (USA), N.A.

Kimberly A. Whitsitt, WSBA #42513  
Suttell & Hammer, P.S.  
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Dated this **8<sup>th</sup> day of April 2011**

  
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GEORGIA A. PLUMB *Pro-Se*  
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