

**FILED**

OCT 18 2011

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

**WASHINGTON STATE COURT OF APPEALS  
DIVISION III**

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No. 299716

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M. STANLEY SLOAN,

Appellants,

v.

HORIZON CREDIT UNION,

Respondent

---

APPELLANTS' OPENING BRIEF

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A. **ASSIGNMENTS OF ERROR AND ISSUES RAISED**

1. The trial court's conclusion that Dennis Clayton did not satisfy the CR 11 judgment is not supported by substantial evidence.
2. The trial court's conclusion that Dennis Clayton lacked standing to pursue relief pursuant to RAP 12.8 constituted an error of law.
3. The trial court's finding of fact No. 2, stating that Attorney Dennis Clayton did not seek relief pursuant to RAP 12.8 is not supported by substantial evidence.
4. The trial court's finding No. 5 stating the legal conclusion that "Horizon Credit Union is no longer a judgment creditor as of September 16, 2009," constitutes an error of law.
5. Finding of fact No. 7, stating that "Attorney Dennis Clayton and Howard Herman did not intend that the judgment of August 18, 2009 be satisfied in any way..." is not supported by substantial evidence.

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

1. Was the trial court's finding that neither Appellant satisfied the CR 11 judgment supported by substantial evidence?

(Assignment of Error No. 1)

2. Did the trial court's ruling that both Appellants lacked standing to pursue relief pursuant to RAP 12.8 constitute an error of law?

(Assignment of Error No. 2)

3. Was the trial court's finding of fact No. 2, stating that Attorney Dennis Clayton did not seek restitution pursuant to RAP 12.8, supported by substantial evidence?

(Assignment of Error No. 3)

4. Did the trial court's finding No. 5, stating the legal conclusion that "Horizon Credit Union is no longer a judgment creditor as of September 16, 2009," constitute an error of law?

(Assignment of Error No. 4)

5. Was the trial court's finding No. 7, stating that "Attorney Dennis Clayton and Howard Herman did not intend that the judgment of August 18, 2009 be satisfied in any way..." supported by substantial evidence?

(Assignment of Error No. 5)

B. STATEMENT OF THE CASE

In March, 2009, a lawsuit was filed on behalf of M. Stanley Sloan against Horizon Credit Union, alleging that the credit union had breached its loan contract with Mr. Sloan by failing to comply with the contractual notice provision.

Both parties moved for summary judgment. Horizon contended that the 2009 lawsuit was barred by res judicata and was therefore frivolous, in that Mr. Sloan had filed a lawsuit against Horizon in 2005 in which the breach of contract claim either was, or could have been, fully adjudicated. Horizon moved for a CR 11 sanction.

On July 17, 2009, the trial court denied Mr. Sloan's motion for summary judgment and granted Horizon's. CP 24-26. At a separate hearing on August 18, 2009, the trial court granted Horizon's CR 11 motion, entering judgment against Mr. Sloan and Mr. Clayton, jointly and severally, based on Horizon's attorney fees of \$14,950.00. CP 2-7; CP 199, ¶ 1.

On September 3, 2009, Horizon initiated supplemental debt collection proceedings against Mr. Sloan and Mr. Clayton, requiring that they appear on September 17, 2009, for judgment debtor examination. CP 11.

On September 15, 2009, Mr. Clayton met with attorney Howard Herman to discuss the CR 11 sanction and related supplemental proceedings initiated by Horizon. CP 68, ¶ 6. In order to immediately abate the judgment debtor supplemental proceedings scheduled for September 17, 2009, Mr. Herman agreed to satisfy the CR 11 judgment, on the condition that Mr. Clayton would himself personally repay Mr. Herman if the judgment was not reversed on appeal. CP 68, ¶ 8. If the CR 11 judgment was reversed on appeal, Horizon would be required to refund the money pursuant to RAP 12.8, enabling Mr. Clayton to repay the loan from Mr. Herman. *Id.*

On September 16, 2009, Mr. Clayton and Mr. Herman went to the office of Horizon's attorney, Stanley Perdue, and Mr. Herman gave Mr. Perdue a check for \$15,097.32. CP 68, ¶ 6. In return, Mr. Perdue executed a satisfaction of judgment. CP 97. Immediately thereafter, Mr. Herman requested and received an assignment of the CR 11 judgment from Mr. Perdue. CP 68, ¶ 10; CP 166. Mr. Herman's purpose in obtaining an assignment of the CR 11 judgment was to provide security with which he could execute against the property of Mr. Sloan and/or Mr. Clayton in the event the CR 11 judgment was *not* reversed on appeal. CP 68, ¶ 11.

On September 16, 2009, a notice of appeal was filed, seeking review of the trial court's dismissal of the 2009 lawsuit and the CR 11 judgment. CP 15.

On July 29, 2010, this Court filed its decision affirming the trial court's ruling regarding res judicata, but reversing the CR 11 judgment, ruling that filing of the 2009 lawsuit did not violate CR 11. CP 59-61, as amended by order entered November 2, 2010, at CP 63. This Court issued its Mandate March 14, 2011. CP 44.

Because reversal of the CR 11 judgment rendered it unenforceable and worthless, and because Horizon refused to refund the CR 11 judgment monies, Mr. Herman requested and received a promissory note from Mr. Clayton in the principal amount of \$15,097.32. CP 69, ¶ 12; CP 126.

A motion and supporting memorandum was filed seeking an order requiring Horizon to refund the CR 11 judgment monies pursuant to RAP 12.8. CP 65; CP 70.

On June 3, 2011, following oral argument, the trial court entered an order denying restitution. As discussed in more detail below, the court reasoned that: (1) because Horizon assigned the CR 11 judgment to Mr. Herman, it was no longer a "judgment creditor" within the meaning of RAP 12.8; (2) neither Mr. Clayton nor Mr. Herman intended to satisfy the CR 11 judgment but, rather, Mr. Herman was merely making a risky

investment; (3) because the CR 11 judgment was paid by Mr. Herman he, not Mr. Sloan or Mr. Clayton, had standing to seek relief pursuant to RAP 12.8. The order denying RAP 12.8 relief was preceded by seven “FINDINGS.” CP 198-201. Five of those findings are discussed below.

Finding No. 2 states, in relevant part, that “... only M. Stanley Sloan has made a motion pursuant to RAP 12.8. Neither Attorney Dennis Clayton or Attorney Howard Herman, a non-party, have requested relief pursuant to RAP 12.8.” CP 199, ¶ 2. In support of the foregoing assertion, Horizon cited the “Memorandum In Support Of Plaintiff’s Motion For Restitution” which stated: “Plaintiff has moved for an order requiring that, pursuant to RAP 12.8, Defendant Horizon Credit Union... remit to Plaintiff the full principal amount of the CR 11 sanction paid to Defendant on September 16, 2009, plus 12% per cent interest thereon.” *Id.* Appellants contend that Mr. Clayton did, in fact, seek RAP 12.8 relief.

Finding No. 3 states that M. Stanley Sloan did not pay sums in satisfaction of the CR 11 judgment and therefore is not a judgment debtor for purposes of RAP 12.8. While Mr. Sloan did not pay sums toward or become directly indebted for satisfaction of the CR 11 judgment, he may nonetheless be liable at some point for contribution, as discussed below.

Finding No. 4 states that Howard Herman paid the CR 11 judgment, but was not before the court requesting restitution, and therefore

the court lacked jurisdiction to grant him relief pursuant to RAP 12.8. CP 199-200, ¶ 4. It is not disputed that Howard Herman was not and is not a party to the underlying lawsuit or present appeal. Appellants contend Dennis Clayton satisfied the CR 11 judgment with money borrowed from Howard Herman.

Finding No. 5 correctly states that Horizon's assignment of the CR 11 judgment transferred all of its right, title and interest in that judgment to Howard Herman. CP 200, ¶ 5. Finding No. 5 further states as a conclusion of law that "As a result Horizon Credit Union is no longer a judgment creditor in this case as of September 16, 2009." *Id.* Appellants contend that Horizon received and continues to retain the CR 11 judgment proceeds, and therefore Horizon remains a judgment creditor for purposes of RAP 12.8.

Finding No. 6 correctly states that "RAP 12.8 requires that a 'judgment debtor' who has satisfied a judgment seek restitution from a 'judgment creditor' who received the satisfaction monies, upon appellate reversal of a monetary judgment." CP 200. Appellants contend that Dennis Clayton is a judgment debtor who satisfied the CR 11 judgment, and Horizon is a judgment creditor who received money pursuant to a judgment that has been reversed — and is therefore subject to an order of restitution pursuant to RAP 12.8.

Finding No. 7 states that Dennis Clayton and Howard Herman “...did not intend that the judgment of August 18, 2009 be satisfied in any way because Attorney Howard Herman asked for and received a full assignment of the judgment from Horizon Credit Union. Therefore, pursuant to RAP 12.8 the judgment of August 18, 2009 stands unsatisfied in the hands of Attorney Howard Herman.” CP 200, ¶ 7. Appellants contend that: (1) the *sole* reason for satisfying the CR 11 judgment was to abate Horizon’s supplemental judgment debtor proceedings it had scheduled for September 17, 2009, and (2) the status of the CR 11 judgment in the hands of Howard Herman is irrelevant to any aspect of RAP 12.8 relief, inasmuch as the CR 11 judgment is a legal nullity and Horizon, not Mr. Herman, is retaining the CR 11 judgment proceeds.

The trial court’s reasoning underlying its denial of relief pursuant to RAP 12.8 is reflected in several comments made in the course of oral argument on June 3, 2011.

First, the court viewed Mr. Herman as merely making a risky investment, wanting to step into the shoes of Horizon “win or lose, collect or no collect.” VRP 9, line 21; VRP 11, line 3; VRP 12, line 15; VRP 12, lines 16-20. Further, the court determined that Horizon’s assignment of the judgment to Mr. Herman rendered the issue of unjust enrichment “procedurally” irrelevant, based upon its conclusion of law that the

assignment divested Horizon of its status as a judgment creditor for purposes of RAP 12.8 analysis:

**THE COURT:** So Horizon said you [Herman] can buy the judgment for the full amount obviously, and they stepped out and assigned that judgment. So Mr. Herman gets to step into the shoes of Horizon. *Forget the unjust enrichment* because I'm just talking procedurally he stepped in totally says I want this.

Now, whether it's worth anything or not, that's a risk Herman takes when he steps into the shoes of the creditor. So he steps into the shoes and pays them off. So procedurally how that works is now Horizon is out, and Mr. Herman is standing there as the judgment creditor.

VRP 9. [Emphasis added.]

Second, the trial court determined that Mr. Clayton lacked standing to seek relief pursuant to RAP 12.8:

**THE COURT:** Now, the Supreme Court or Court of Appeals says that's not a good judgment anymore. So it's worthless, Mr. Herman. So Mr. Herman is not here. He's not asking that they're unjustly enriched or that he paid him for worthless paper or otherwise.

Procedurally, what Mr. Perdue is arguing something you [Clayton] don't have any standing against them [Horizon] because Mr. Herman paid them. So this is between Herman and them, but you have to go back to Mr. Herman. He's the one who holds that judgment, and it was replaced with Mr. Herman's name as an assignment.

So I guess I'm confused on how you think Horizon is on the hook anymore since they sold it out.

**MR. CLAYTON:** Okay. Here I guess is my point. Number one is that I'm not here enforcing a judgment. If I was, I'd be out of luck as the judgment is [a] nullity. So that's not an issue.

The second point is that RAP 12.8 simply raises the point of whether somebody has been unjustly enriched. That's the issue, not what happened to the judgment afterwards, what Mr. Herman's rights are or anything else. The issue is has somebody been unjustly enriched, and they have been unjustly enriched because Horizon is holding that money pursuant to a judgment that was reversed. The judgment doesn't exist anymore. Herman is holding something that doesn't exist anymore, has no legal effect whatsoever, but that's not the issue.

The issue is whether or not Horizon has been unjustly enriched. Horizon has \$15,093.32 that it received pursuant to judgment that, in essence, I am now liable for. So should they hold the money and continue to hold the money pursuant to a judgment that's now been reversed while I have no recourse then?

VRP 10-12.

Continuing, the court seemed to briefly acknowledge that if Mr. Clayton had borrowed the money and paid the judgment, he would be entitled to restitution from Horizon, but also appeared to reason that Mr. Herman actually satisfied the judgment, and due to assignment of the CR 11 judgment to Mr. Herman, Horizon could no longer be “on the hook” for restitution. VRP 10. The court concluded that only Mr. Herman

would have standing to seek reimbursement from Horizon pursuant to RAP 12.8:

**THE COURT:** [RAP] 12.8 says undue what was done, and what was done was a judgment against you, and that judgment which purchased by a third-party, Mr. Herman, bought it out and says I'm going to stand in the shoes of Horizon, okay? When he bought that judgment, now he holds it.

I agree the Court [of Appeals] told me to reverse the judgment. I'll reverse the judgment when at such time you bring in Mr. Herman and ask to reverse the judgment.

VRP 12-13. The court did not mention — and apparently found it to be irrelevant — that as a pre-condition to Mr. Herman's payment to Horizon of \$15,097.32 to satisfy the CR 11 judgment, Mr. Clayton obligated himself on September 15, 2009 to repay Mr. Herman. CP 68, ¶ 8; ¶ 12.

In March, 2011, following this Court's transmittal of its Mandate to the superior court, Horizon refused to refund the CR 11 judgment monies, at which point Mr. Herman requested and received from Mr. Clayton a promissory note, reflecting their agreement of September 15, 2009. CP 126.

The trial court denied relief pursuant to RAP 12.8 on June 3, 2011. CP 198. A notice of appeal was timely filed June 6, 2011. CP 203.

**C. ARGUMENT**

**(1) Summary Of Argument**

Horizon argued that Mr. Clayton must be denied relief pursuant to RAP 12.8, based on three primary points that were adopted by the trial court.

Point No. 1 was the allegation that Mr. Clayton did not move for relief pursuant to RAP 12.8. CP 199, ¶ 2.

Point No. 2 was the allegation that Mr. Herman paid the CR 11 judgment, and therefore Mr. Clayton could not be a party who “partially or wholly satisfied a trial court decision which is modified by the appellate court....” Consequently, in the trial court’s view, Mr. Herman, not Mr. Clayton, has standing to seek relief pursuant to RAP 12.8.<sup>1</sup> VRP 13, lines 5-8.

Point No. 3 was the allegation that Horizon is “no longer” a judgment creditor for purposes of RAP 12.8 because, after executing the Satisfaction of Judgment, Horizon assigned the CR 11 judgment to Mr.

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<sup>1</sup> Horizon submitted no evidence controverting the fact that the CR 11 judgment was satisfied pursuant to an arrangement between Howard Herman and Dennis Clayton, resulting in Dennis Clayton’s indebtedness therefor. Horizon’s primary claim — that the nature of that arrangement was such that Dennis Clayton did not pay the CR 11 judgment and therefore lacked standing under RAP 12.8 — is unsupported by any evidence in the record. Again, Howard Herman’s statement is uncontroverted that on the day before the

Herman. Therefore, according to Horizon and the trial court, Mr. Herman is now the judgment creditor for purposes of RAP 12.8. VRP 9, lines 23-25; CP 200, ¶ 5.

The Appellants contend that Mr. Clayton did seek relief pursuant to RAP 12.8, that Mr. Clayton did satisfy the CR 11 judgment by virtue of borrowing money from Mr. Herman to do so, and that regardless of what Horizon did with the CR 11 judgment *after* it was satisfied, Horizon continues to retain the money paid to satisfy the CR 11 judgment and therefore remains a judgment creditor for purposes of RAP 12.8.

**(2) Standard of Review**

A trial court's determination whether to award restitution under RAP 12.8 is reviewed for abuse of discretion. *Ehsani v. McCullough Family Partnership*, 160 Wn.2d 586, 159 P.3d 407 (2007). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. Additionally, it is an abuse of discretion for a trial court to make a reasonable decision but apply the wrong legal standard or base its ruling on an erroneous view of the law. *State v. Dixon*, 159 Wn.2d 65, 75-76, 147 P.3d 991 (2006). Otherwise stated, a discretionary ruling based on an error of law is an abuse of discretion. *Wash. State*

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judgment was paid in full, Dennis Clayton obligated himself to repay Herman the amount paid to satisfy the CR 11 judgment. CP 68, ¶ 8.

*Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

A trial court's choice of law, its interpretation, and its application to the facts of the case will be reviewed de novo. *State v. Welchel*, 97 Wn. App. 813, 817, 988 P.2d 20 (1999), *review denied*, 140 Wn.2d 1024 (2000); *State v. Carlyle*, 84 Wn. App. 33, 35-36, 925 P.2d 635 (1996). Whether a trial court applied an incorrect legal standard is reviewed de novo, examining the trial court's choice of law and its application of that law to the facts in the case. *State v. Haney*, 125 Wn. App. 118, 123, 104 P.3d 36 (2005); *State v. Welchel*, 97 Wn. App. at 817.

A conclusion of law erroneously denominated a finding of fact will be subject to de novo review. *Local Union 1296, Int'l Ass'n of Firefighters v. City of Kennewick*, 86 Wn.2d 156, 161-62, 542 P.2d 1252 (1975).

The interpretation of court rules is a matter of law reviewed de novo. *State v. Robinson*, 153 Wn.2d 689, 693, 107 P.3d 90 (2005).

Both questions of law and conclusions of law are reviewed de novo. *Sunnyside Valley Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

Substantial evidence exists to support a finding when there is a sufficient quantity of evidence to persuade a fair-minded, rational person

that a finding is true. *Id.* at 555-56. Unchallenged findings of fact are verities on appeal. When a trial court has weighed the evidence in a bench trial, appellate review is limited to determining whether substantial evidence supports its findings of fact and, if so, whether the findings support the trial court's conclusions of law. *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 555, 132 P.3d 789 (2006). *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002).

Finally, the issue of whether a party has standing raises a question of law that is reviewed de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

### **(3) CR 11 Judgment Void**

A judgment vacated by a valid order is entirely destroyed and the rights of the parties are left as though no such judgment had ever been entered. *In re Estate of Couch*, 45 Wn. App. 631, 634, 726 P.2d 1007 (1986): (adoption of pretermitted child vacated, rendering original adoption of no force or effect and the rights of the parties left as though no adoption had occurred); *Weber v. Biddle*, 72 Wn.2d 22, 28, 431 P.2d 705 (1967): (motor vehicle collision litigation — vacated default judgment of no force and the rights of the parties left as though no such judgment had ever been entered); *cf.*, language of CR 12(b)(6).

The CR 11 judgment entered by the trial court August 18, 2009 was reversed by this Court, and that reversal became final when the Supreme Court denied review March 2, 2011. Thus, the legal basis upon which Horizon obtained \$14,950.00, plus interest, no longer exists.

(4) **Horizon Credit Union Has Been Unjustly Enriched**

In *Bailie Communications, Ltd. v. Trend Business Systems, Inc.*, 61 Wn. App. 151, 159-160, 810 P.2d 12 (1991), the Court was faced with the issue of whether defendant Trend College had been unjustly enriched by a fraudulent mortgage transaction involving plaintiffs' assignment of their one-third interest in a condominium. In ruling that the defendant had in fact been unjustly enriched, the Court defined unjust enrichment as follows:

*Black's Law Dictionary* 1535-36 (6th ed. 1990) defines the doctrine of unjust enrichment as:

General principle that one person should not be permitted unjustly to enrich himself at expense of another, but should be required to make restitution of or for property or benefits received, retained or appropriated, where it is just and equitable that such restitution be made, and where such action involves no violation or frustration of law or opposition to public policy, either directly or indirectly. *Tulalip*

*Shores, Inc. v. Mortland*, 9 Wn. App. 271, 511 P.2d 1402, 1404. Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. *L & A Drywall, Inc. v. Whitmore Const. Co., Inc.*, Utah, 608 P.2d 626, 630.

Three elements must be established in order to sustain a claim based on unjust enrichment: A benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value. *Everhart v. Miles*, 47 Md.App. 131, 136, 422 A.2d 28. *See also* Quantum meruit.

Unjust enrichment occurs when one retains money *or* benefits which in justice and equity belong to another. *L & A Drywall, Inc. v. Whitmore Constr. Co., Inc.*, 608 P.2d 626, 630 (Utah 1980).

Our Supreme Court has stated that *Restatement of Restitution* § 74 is the appropriate source to be used in construing RAP 12.8. *A.N.W. Seed Corp.*, 116 Wn.2d 39, 45-46, 802 P.2d 1353 (1991): (using § 74 and related comment to determine whether restitution warranted under RAP 12.8).

*Restatement of Restitution* § 74, titled “Judgments Subsequently Reversed,” states the general common law rule of restitution under circumstances such as now before the court, as follows:

A person who has conferred a benefit upon another in compliance with a judgment... is entitled to restitution if the judgment is reversed or set aside, unless restitution would be inequitable or the parties contract that payment is to be final; if the judgment is modified, there is a right to restitution of the excess.

The *practical* meaning of this principle was explained in terms of the application of RAP 12.8 by the court in *Davenport v. Washington Educ. Ass'n*, 147 Wn. App. 704, 732-733, 197 P.3d 686 (2008). There, the question was whether the Washington Education Association (WEA) had been unjustly enriched by an unauthorized use of members’ dues, as to which the Court stated, in relevant part, as follows:

RAP 12.8 provides that if a judgment debtor pays rather than supersedes all or part of a judgment pending appeal, but the judgment is later reversed or modified Before becoming final, the trial court must "restore to the [judgment debtor] any property taken from [the judgment debtor], the value of the property, or in appropriate circumstances, provide restitution." Both Restatements provide likewise. [Citations omitted.] In effect, these authorities recognize that a judgment debtor initially pays not because he wants to, but because of the judgment's *lawful* coercive effect-an effect that is entirely justifiable while the judgment is presumed valid and enforceable pending appeal, but which ceases to be justifiable once the judgment has been reversed or

modified. In alternative terms, these authorities recognize that even though the initial transfer (the judgment debtor's payment of the judgment pending appeal) was *lawfully* [emphasis the court's] coerced when first made, it was subject to a condition subsequent (the judgment being affirmed on appeal) that later failed (when the judgment was reversed or modified on appeal). This failure strips the transfer of its initial justification and renders " unjust" the transferee's (the judgment creditor's) present retention of the judgment debtor's property. Hence, restitution is warranted.

"Unjustified enrichment is enrichment that lacks an adequate legal basis: it results from a transfer that the law treats as ineffective to work a conclusive alteration in ownership rights." *Davenport, supra*, at 727. Quite clearly, Horizon's retention of the CR 11 judgment monies "lacks and adequate legal basis," inasmuch as the CR 11 judgment was reversed.

The foregoing description is clearly applicable to the circumstances surrounding Horizon's acquisition and retention of the CR 11 sanction monies. The CR 11 judgment was satisfied because of its coercive effect. Horizon chose to initiate collection proceedings rather than await the outcome of an appeal regarding the CR 11 sanction, and promptly set supplemental proceedings for September 17, 2009, requiring the Plaintiff's attorney, Dennis Clayton, to appear in court and produce, disclose and be interrogated regarding his and his wife's personal finances. CP 11. In order to avoid the intrusion and inconvenience of supplemental

proceedings, an arrangement was made whereby Dennis Clayton borrowed from Howard Herman the funds to immediately satisfy the CR 11 judgment. CP 68, ¶ 8. All three elements of unjust enrichment exist in the present case.

First, a benefit has been conferred upon Horizon by a judgment debtor: On September 15, 2009, Dennis Clayton arranged and took responsibility for satisfaction of the CR 11 judgment that was paid in full on September 16, 2009 in the amount of \$15,097.32. The manner in which the CR 11 judgment was satisfied is not a *legitimate* concern of Horizon, nor should it provide Horizon a mechanism to escape the application of RAP 12.8 and thereby retain proceeds obtained through a judgment that has been vacated.

Second, Horizon has knowledge that it has received the benefit.

Third, Horizon is retaining the CR 11 judgment proceeds under such circumstances as to make it inequitable to do so, simply because the CR 11 judgment has been vacated. And, it is clearly not inequitable for Horizon to disgorge money it obtained pursuant to a judgment that is now a nullity.

Black's Law Dictionary defines a loan as follows: "The four elements of a loan are, a principal sum, a placing of the sum with a safe borrower, and agreement that interest is to be paid, and a recognition by

receiver of the money of his liability for return of the principal amount with accrued interest. *Black's Law Dictionary* 1085 (4th ed. 1968).

The arrangement between Howard Herman and Dennis Clayton comports with the foregoing definition. Horizon's argument and the trial court's conclusion that Dennis Clayton did not satisfy the CR 11 judgment, and therefore lacks standing to seek relief pursuant to RAP 12.8, is erroneous and not supported by the evidence. The transaction between Mr. Herman and Mr. Clayton constitutes a loan transaction — no different than if Mr. Clayton had borrowed the money from a commercial bank. The trial court's conclusion to the contrary was erroneous.

In summary, unjust enrichment occurs when money is retained by one under circumstances where, in justice and equity, such money belongs to another. Horizon has had the use of \$14,950.00, plus interest, for more than two years, and retains that money today by virtue of a judgment that is now void. As matters presently stand under Horizon's theory of this case, it is entitled to retain the benefits of the vacated CR 11 judgment, while Dennis Clayton is obligated to pay the amount of the CR 11 judgment and, according to the trial court and Horizon, has no recourse pursuant to RAP 12.8. This Court must reject Horizon's position. Restitution is warranted.

**(5) Unsupported Findings Of Fact**

Findings of fact relied upon by the trial court that are not supported by substantial evidence constitute an abuse of discretion. *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003): (discretionary decision rests on "untenable grounds" or is based on "untenable reasons" if trial court relies on unsupported facts or applies the wrong legal standard.)

In Finding No. 2 the trial court adopted Horizon's claim that "Procedurally, only M. Stanley Sloan has made a motion pursuant to RAP 12.8. Neither Attorney Dennis Clayton or [sic] Attorney Howard Herman, a non-party, have requested relief pursuant to RAP 12.8." CP 199, ¶ 2. The foregoing finding is unsupported by the record.

In support of the foregoing assertion, Horizon cited the "Memorandum In Support Of Plaintiff's Motion For Restitution" which stated: "Plaintiff has moved for an order requiring that, pursuant to RAP 12.8, Defendant Horizon Credit Union... remit to Plaintiff the full principal amount of the CR 11 sanction paid to Defendant on September 16, 2009, plus 12% per cent interest thereon." *Id.*

Horizon omitted, however, any mention of the Memorandum's concluding request for relief, which stated as follows:

The court should order that Horizon prepare and deliver to Dennis W. Clayton a check in the amount of \$15,097.32, plus interest from September 16, 2009,

made payable jointly to M. Stanley Sloan, Dennis W. Clayton, and Howard Herman. The check should bear an endorsement of release, to be effective upon negotiation of the instrument.

Alternatively, Horizon must pay full restitution, including principle and interest, by delivering a check to Dennis W. Clayton, in return for which Dennis W. Clayton, M. Stanley Sloan and Howard H. Herman will execute and deliver to Horizon a Release of All Claims and Agreed Order of Dismissal, with prejudice.

CP 85-86. Based on the foregoing content, it is clear that Mr. Clayton sought relief pursuant to RAP 12.8.

Moreover, Horizon cannot claim that it did not clearly recognize and address the fact that Mr. Clayton was seeking relief by way of the RAP 12.8 motion. Thus, Horizon asserted that “Mr. Clayton is the only party seeking relief under RAP 12.8 and he paid no funds to Horizon and cannot be restored to property that was not taken from him. As such this court does not have jurisdiction to make a ruling in his favor, *as requested by Mr. Clayton.*” CP 143, lines 8-11. [Emphasis added.]

Finally, the nature and extent of relief sought by Mr. Clayton pursuant to the RAP 12.8 motion is clear from the evidence and argument submitted to the trial court by both parties, none of which was objected to by Horizon. Such evidence included: (1) Mr. Clayton’s status as a judgment debtor, (2) Horizon’s initiation of supplemental judgment debtor

proceedings against Mr. Clayton, (3) Mr. Herman's payment to Horizon, in reliance on Mr. Clayton's agreement to repay the money, (4) the fact that the judgment was satisfied in order to abate the supplemental collection proceedings, (5) this Court's reversal of the CR 11 judgment, and (6) the existence of RAP 12.8 relief that expressly provides a remedy where, as here, a judgment creditor is retaining funds paid to satisfy a judgment that has been subsequently reversed and vacated.

There was obviously no question on the part of Horizon or the trial court as to whether Mr. Clayton was seeking relief, notwithstanding the fact that the trial court concluded that he did not have standing. The record does not support Finding No. 2.

Finding No. 3 correctly states that M. Stanley Sloan did not pay any sums in satisfaction of the CR 11 judgment — at least not directly. Very arguably, Mr. Sloan could yet be liable for one-half of the judgment based on unjust enrichment, such as discussed in *Bailie Communications, Ltd. v. Trend Business Systems, Inc.*, 61 Wn. App. 151, 159-160, 810 P.2d 12 (1991).

Finding No. 4 states that Howard Herman paid the CR 11 judgment, but was not before the court requesting restitution, and therefore the court lacked jurisdiction to grant him relief pursuant to RAP 12.8. CP 199-200, ¶ 4.

It is not disputed that Howard Herman was not and is not a party to the underlying lawsuit or present appeal. It is irrelevant, however, that Mr. Herman provided the funds to satisfy the CR 11 judgment, or that he *handed* his personal check to Horizon's attorney. This is so, simply because Mr. Clayton *is* a party to these proceedings and, as a judgment debtor, wished to abate supplemental debt collection proceedings. Mr. Clayton therefore borrowed the funds from Mr. Herman to pay the CR 11 judgment, rather than borrow from a commercial bank, and Mr. Clayton remains obligated to repay Mr. Herman. Again, the fact that Mr. Herman provided the funds and handed the check to Horizon's attorney is irrelevant to issues raised by the RAP 12.8 motion, i.e., has the reversal of a judgment that has been satisfied resulted in a party being unjustly enriched?

The contention that Mr. Clayton paid no funds to Horizon appears also to be based on the following fact: "On September 9, 2009, the day of the judgment assignment to Howard Herman, there existed no written loan agreement between Howard Herman and Mr. Clayton nor any written agreement between them that Howard Herman would satisfy the CR 11 sanctions judgment."<sup>2</sup> CP 182.

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<sup>2</sup> The assignment from Horizon to Herman actually occurred September 16, 2009.

Horizon offered no argument and cited no legal authority for the proposition that the absence of a written agreement between Mr. Clayton and Mr. Herman on the day the CR 11 judgment was satisfied might somehow controvert the fact that Mr. Clayton obligated himself to repay funds advanced by Mr. Herman to satisfy the CR 11 judgment. Inasmuch as there *was* such an oral agreement, as testified to by Mr. Herman (CP 68, ¶ 8), he is entitled to repayment by Mr. Clayton even in the absence of a written contract based, at the very least, on the same unjust enrichment analysis discussed extensively elsewhere in this brief. As the Court stated in *Bailie Communications v. Trend Business Systems, Inc., supra*, an obligation to repay money may very well arise in the absence of a written agreement:

Three elements must be established in order to sustain a claim based on unjust enrichment: A benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

*Bailie, supra*, at 159. The circumstances rendering it inequitable for Mr. Clayton not to repay Mr. Herman are, quite simply, that Mr. Herman conferred a benefit on Mr. Clayton with the latter's knowledge, and

advancement of that benefit was conditioned upon repayment by Mr. Clayton. CP 68, ¶ 8.

Finding No. 5 correctly states that Horizon's assignment of the CR 11 judgment transferred all of its right, title and interest in that judgment to Howard Herman. CP 200, ¶ 5. Finding No. 5 further states as an erroneous conclusion of law that "As a result Horizon Credit Union is no longer a judgment creditor in this case as of September 16, 2009." *Id.* Finding No. 5 does not differentiate between Horizon's legal status as a judgment creditor when it accepted the \$15,097.32, and its status as merely a judgment assignor *after* the judgment was satisfied.<sup>3</sup> The assertion that "Horizon Credit Union is no longer a judgment creditor in this case as of September 16, 2009" is deceptive and, additionally, irrelevant to the primary issue raised by a RAP 12.8 motion, that is: Has Horizon been unjustly enriched at the expense of Dennis Clayton?

The foregoing assertion is deceptive in that it fails to differentiate between, on the one hand, that *moment* on September 16, 2009 when Horizon received and accepted satisfaction of the CR 11 judgment and, on the other hand, what it did with the judgment after it was satisfied. Thus, at the *moment* Horizon received and accepted monies satisfying the CR 11

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<sup>3</sup> Horizon certainly was a judgment creditor *at that moment* when it accepted \$15,097.32 in full payment of the CR 11 judgment and, accordingly, executed the Satisfaction of

judgment, it was, as a matter of law, a judgment creditor for purposes of RAP 12.8.

The assertion that Horizon is no longer a judgment creditor as of September 16, 2009 is irrelevant, because it does not matter, with respect to RAP 12.8 relief, what disposition Horizon made of the judgment *after* it was satisfied. RAP 12.8 states that “If a party... has...satisfied a trial court decision which is modified by the appellate court, the trial court shall... restore to the party any property taken...” The very wording of the rule denotes a particular act that necessarily occurs at a particular time, and the wording does not create or permit an exception arising by virtue of what a judgment creditor might do with the judgment *after* it has been satisfied. The critical points regarding RAP 12.8 are that a judgment creditor was paid in full and the judgment was later reversed.

Horizon claims that its disposition of the CR 11 judgment *after* it was satisfied “relieved” it of liability under RAP 12.8. CP 183. That claim constitutes nothing less than an attempt to engraft an exception upon RAP 12.8, to the following effect characterized by the italicized portion: “If a party... has...satisfied a trial court decision which is modified by the appellate court, the trial court shall... restore to the party any property taken... *PROVIDED, however, if the judgment reflecting the trial court*

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Judgment. Horizon’s status *after* its receipt of full payment of the CR 11 judgment is

*decision is reversed but has been assigned to a third party, then the judgment creditor whose judgment has been satisfied shall not be obligated to restore property to the judgment debtor who satisfied the judgment.*” Such an exception is totally inconsistent with the wording of RAP 12.8 itself, or any reasonable application of the Restatement of Restitution Section 74, by which RAP 12.8 is to be interpreted.

Finding No. 6 correctly states that “RAP 12.8 requires that a ‘judgment debtor’ who has satisfied a judgment seek restitution from a ‘judgment creditor’ who received the satisfaction monies, upon appellate reversal of a monetary judgment.” CP 200. Dennis Clayton was a judgment debtor and Horizon was a judgment creditor at the moment the CR 11 judgment was satisfied. The CR 11 judgment was satisfied by means of Mr. Clayton obligating himself to reimburse Mr. Herman, either by obtaining reversal of the CR 11 judgment or payment from his own pocket. CP 68, ¶ 8.

Again, what a judgment creditor does with a judgment *after* it has been satisfied by the judgment debtor is utterly irrelevant to a proper analysis under RAP 12.8. The three primary questions raised by RAP 12.8 are:

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irrelevant to proper RAP 12.8 analysis.

- (2) Was Horizon's judgment satisfied by Dennis Clayton borrowing funds to pay the judgment?
- (3) Was the satisfied judgment subsequently reversed by an appellate court's final ruling?
- (4) Does Horizon's retention of the judgment monies after the judgment has been reversed constitute unjust enrichment that must be remedied by the application of RAP 12.8?

The manner and/or means whereby Horizon disposed of the CR 11 judgment after it had been satisfied has no bearing on the application of RAP 12.8, which application requires addressing the preceding three questions.

Finding No. 7 states that Dennis Clayton and Howard Herman "...did not intend that the judgment of August 18, 2009 be satisfied in any way because Attorney Howard Herman asked for and received a full assignment of the judgment from Horizon Credit Union. Therefore, pursuant to RAP 12.8 the judgment of August 18, 2009 stands unsatisfied in the hands of Attorney Howard Herman." CP 200, ¶ 7.

While the CR 11 judgment may be "unsatisfied in the hands of Attorney Howard Herman," this assertion is irrelevant regarding the critical issues raised by RAP 12.8, i.e., was the judgment satisfied by

Dennis Clayton borrowing money and paying it to Horizon, was the judgment subsequently reversed, and does Horizon's retention of that money constitute unjust enrichment? The judgment was certainly not "unsatisfied" in the hands of Horizon and, accordingly, Horizon executed a Satisfaction of Judgment. CP 42. Finding No. 7 contributes nothing to the proper application of RAP 12.8 to the facts presented here. Horizon's continued retention of the CR 11 judgment monies constitutes unjust enrichment that must be remedied by the disgorgement pursuant to RAP 12.8.

**(6) Trial Court Erred Regarding Standing**

Whether a party has standing raises an issue of law that is reviewed de novo. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003). Standing is a "party's right to make a legal claim or seek judicial enforcement of a duty or right." *State v. Link*, 136 Wn. App. 685, 692, 150 P.3d 610 (quoting Black's Law Dictionary 1442 (8th ed.2004)), *review denied*, 160 Wn.2d 1025, 163 P.3d 794 (2007).

The traditional doctrine of standing limits the justiciability determination and prohibits a litigant from raising another person's legal right. *Grant County Fire Prot. Dist. No. 5 v. City of Moses Lake*, 150 Wn.2d 791, 802, 83 P.3d 419 (2004) (*Grant County II*). The doctrine of

standing requires that a plaintiff must have a personal stake in the outcome of the case in order to bring suit.

Our Supreme Court has described this requirement as "one seeking relief must show a clear legal or equitable right and a well-grounded fear of immediate invasion of that right." *DeFunis v. Odegaard*, 82 Wn.2d 11, 24, 507 P.2d 1169, vacated and remanded on other grounds, 416 U.S. 312, 94 S.Ct. 1704, 40 L.Ed.2d 164 (1974): (law school applicant had to show clear legal or equitable right and likelihood of invasion of that right); *State ex rel. Hays v. Wilson*, 17 Wn.2d 670, 673, 137 P.2d 105 (1943): (patrolmen seeking to enjoin civil service hiring process failed to show requisite clear, legal or equitable right and a well grounded fear of immediate invasion of that right.) The facts reflect that Mr. Clayton has standing to seek relief under RAP 12.8.

First, RAP 12.8 expressly addresses the circumstances surrounding this dispute, that is, the CR 11 judgment has been satisfied and thereafter reversed. The rule provides a right to seek restitution under these circumstances. Second, Mr. Clayton remains indebted as a result of the CR 11 judgment having been satisfied and, as such, his property and wealth have been immediately, continuously and negatively affected by Horizon's retention of the CR 11 judgment monies.

The trial court appears to have acknowledged that if Mr. Clayton had borrowed the money to pay the CR 11 judgment, he would be able to recover pursuant to RAP 12.8. VRP 10, lines 19-23. Apparently relying purely on legal principles pertaining to assignments of judgments — and therefore never reaching RAP 12.8 issues, including unjust enrichment — the trial court concluded that assignment of the CR 11 judgment to Mr. Herman *after* the judgment had been satisfied somehow “intervened” to retroactively divest Horizon of its status as a judgment creditor as of the moment it received the CR 11 judgment payoff.

The trial court apparently reasoned that because Mr. Herman handed his own check to Horizon’s attorney and got an assignment of the judgment *after* it had been satisfied, only Mr. Herman could have standing to seek RAP 12.8 relief:

**THE COURT:** That's how the Court looks at it. I agree the Court told me to reverse the judgment. I'll reverse the judgment when at such time you bring in Mr. Herman and ask to reverse the judgment.

VRP 12-13. In essence, the trial court stated that *only if* Mr. Herman were brought before the court (presumably upon his own motion to intervene or a motion to join him as an indispensable party) would the CR 11 judgment be “reversed.” This does not appear to be a workable solution, however, for at least two reasons.

First, this Court already reversed the CR 11 judgment by its decision of July 29, 2010 — ruling that CR 11 was not violated. CP 45, as modified November 2, 2010, at CP 63.

Second, the trial court also held that Horizon is *no longer* a judgment creditor. CP 200, ¶ 5. If this is so, it would do no good to “bring in Mr. Herman,” because Mr. Herman cannot get any money from Horizon anyway *if* Horizon is “*no longer*” a judgment creditor: Only an unjustly enriched “judgment creditor” is subject to an order of restitution under RAP 12.8.

From the Appellants’ standpoint, the simple answer to the foregoing confusing quandary is that Horizon *was* a judgment creditor at the moment it received the CR 11 monies and it *remains* a judgment creditor forever for purposes of RAP 12.8. What Horizon did with the CR 11 judgment *after* it was satisfied is legally irrelevant for purposes of RAP 12.8. Mr. Herman is not a party to the underlying lawsuit or to this appeal, nor should he be: He is as foreign to these proceedings as would be a commercial bank from whom Mr. Clayton may otherwise have chosen to borrow money to satisfy the CR 11 judgment.

In order to determine whether Mr. Clayton had standing to seek RAP 12.8 relief, the trial court should have engaged in the two-part inquiry stated by the Court in *DeFunis*, that is, (1) could Mr. Clayton

demonstrate a clear legal or equitable right and (2) a well-grounded fear of immediate invasion of that right. *DeFunis v. Odegaard*, 82 Wn.2d 11, at 24.

The interest Mr. Clayton asserted before the trial court was within the zone of interests protected by RAP 12.8. Mr. Clayton remains a judgment debtor whose economic and property rights have been invaded, inasmuch as he has indebted himself in order to satisfy the CR 11 judgment. Horizon unlawfully retains the money needed to pay such indebtedness.

Another relevant inquiry is whether a party can show that he/she will be benefited if the relief sought is granted? *State ex rel. Hays v. Wilson*, 17 Wn.2d 670, at 672, 137 P.2d 105 (1943). Relief granted pursuant to RAP 12.8 would clearly benefit Mr. Clayton, in that it would provide immediate satisfaction of the debt incurred with Mr. Herman in order to satisfy the CR 11 judgment.

The record in this case lacks substantial evidence to support the finding that Mr. Clayton did not pay the CR 11 judgment, and therefore that finding constitutes an abuse of discretion. The foregoing finding led the trial court to erroneously conclude that Mr. Clayton lacked standing to seek relief pursuant to RAP 12.8. Mr. Herman testified by sworn declaration, uncontroverted by Horizon, that he advanced the money to

satisfy the CR 11 judgment based on Mr. Clayton's obligation to recover and repay that money.

In summary, the trial court erred in determining that Mr. Clayton lacked standing to seek relief pursuant to RAP 12.8. This Court should reverse the trial court's ruling. Horizon is retaining funds pursuant to a judgment that has been reversed and vacated. Consequently, Horizon is an appropriate target for RAP 12.8 relief requiring that it disgorge the CR 11 monies.

(7) **Horizon's Contentions Eviscerate RAP 12.8**

Horizon contends that by assigning the CR 11 judgment to Mr. Herman after it had been satisfied, it thereby divested itself of all judgment creditor status for purposes of RAP 12.8. CP 141-142. Such a position is untenable, for at least two reasons.

First, if such a proposition is valid, then any judgment creditor who receives satisfaction of a judgment pending appeal can, in anticipation of possible reversal on appeal, escape RAP 12.8 liability by assigning the judgment to a third party.

For example, under the theory advanced by Horizon, if a judgment debtor borrows money from a commercial bank to fully satisfy a judgment, and the bank thereupon transmits a certified check to the

judgment creditor, the latter (such as Horizon) may assign the judgment to the bank to hold as secondary security for the loan advanced to pay the judgment. In such an event, according to Horizon's theory, the commercial bank, not the judgment debtor, has paid the judgment, and the judgment debtor does not have standing to pursue relief under RAP 12.8. This makes no sense, however, because the judgment debtor has become indebted in order to pay the judgment.

Second, under Horizon's theory, the hypothetical commercial bank in the example — materially equivalent to Mr. Herman in the present case — replaces the original judgment creditor for purposes of RAP 12.8, because it has taken an assignment of the judgment. Horizon's contention is that if there is a reversal of the judgment, the original judgment creditor will not be subject to RAP 12.8 restitution because it is "no longer" the judgment creditor, despite the fact that, as a judgment creditor, it has been paid in full. Under these circumstances, in Horizon's view, the original judgment creditor can retain the judgment proceeds, completely free of any liability under RAP 12.8. In turn, this results in the anomalous situation of the judgment debtor paying the judgment — even though the judgment has been reversed and become a nullity — because he must repay the bank that loaned him the money to pay the judgment.

In summary, under Horizon’s theory the purpose and function of RAP 12.8 is easily avoided by the following process. The original judgment creditor gets its judgment paid in full by a commercial bank, pursuant to a loan taken out by the judgment debtor. Next, the *original* judgment creditor assigns the fully paid judgment to the commercial bank. The judgment debtor ultimately has no RAP 12.8 recourse against the *original* judgment creditor — again, under Horizon’s theory — because the commercial bank, not the judgment debtor, purportedly satisfied the judgment, and the commercial bank has now become the “judgment creditor” by virtue of taking an assignment of the judgment from the *original* judgment creditor. The *original* judgment creditor is thus insulated from the reach of RAP 12.8 relief and thereby retains the judgment proceeds, despite the fact that the appellate court reversed the judgment.

This Court should clearly and forcefully reject Horizon’s position.

(8) **RAP 12.8 Requires Horizon’s Disgorgement Of CR 11 Judgment Proceeds**

RAP 12.8 provides a remedy for judgment debtors who have satisfied a judgment that is ultimately reversed by the final decision of an appellate court. Horizon’s argument is that, for purposes of RAP 12.8, it

is no longer a judgment creditor and Mr. Clayton is not a judgment debtor “who has satisfied a judgment.” Horizon’s points are without merit.

Our Supreme Court has made it clear that RAP 12.8 is to be interpreted under principles articulated in Restatement of Restitution, Section 74, and its definition of unjust enrichment, not general principles pertaining to the assignment of judgments. The application of RAP 12.8 must focus on the status of the parties as of that moment in time when a judgment is satisfied, not when and if the satisfied judgment is subsequently dispatched by the judgment creditor to a third party.

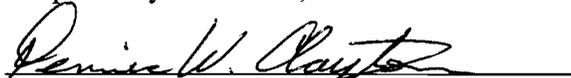
Horizon is wrongfully holding money pursuant to a judgment that has been reversed. As described by the Court in *Davenport v. Washington Educ. Ass'n*, 147 Wn. App. 704, 732-733, 197 P.3d 686 (2008), money paid to satisfy a judgment that is appealed may be lawfully received by a judgment creditor, but retention of the money is subject to a condition subsequent, i.e., affirmance of the judgment on appeal. If the judgment is reversed by a final decision of an appellate court, the condition subsequent thereby fails, and “renders ‘unjust’ the transferee's [Horizon’s] present retention of the judgment debtor's property.” In the present case, the condition subsequent failed, rendering Horizon’s retention of the judgment monies unjust.

**D. CONCLUSION**

It is respectfully submitted that the trial court's ruling should be reversed. The record in this case is more than sufficient to support this Court's order that, without further delay, Horizon pay restitution to Dennis Clayton and/or M. Stanley Sloan in the principal sum of \$15,097.32, plus interest at 12 per cent per annum, accruing since September 16, 2009. Howard Herman is not a party to these proceedings, and his remedy for payment of the loan used to pay the CR 11 judgment lies against Dennis Clayton. Horizon has been unjustly enriched, and an order of restitution will remedy that unjust enrichment.

DATED this 7<sup>th</sup> day of October, 2011.

Respectfully submitted,



DENNIS W. CLAYTON, WSBA #7464  
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421 West Riverside Avenue, Suite 911  
Spokane, Washington 99201  
(509) 838-4044

**DECLARATION OF SERVICE**

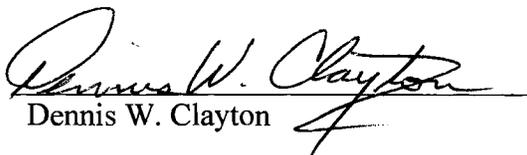
Dennis W. Clayton declares as follows, under penalty of perjury of the State of Washington:

1. I am over the age of 18 years, competent to testify herein, and do so based upon personal knowledge of the matters stated.

2. On October 7, 2011, I personally served a copy of this Appellants' Opening Brief by emailing a copy to Stanley Perdue at the following email address:

perduelaw@me.com

DATED this 7th day of October, 2011.

  
Dennis W. Clayton

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**Sloan v Horizon -- RAP 12.8 Opening Brief**

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**From :** claytonlawfirm@comcast.net

Fri, Oct 07, 2011 11:12 PM

**Subject :** Sloan v Horizon -- RAP 12.8 Opening Brief 2 attachments**To :** Stanley Perdue <perduelaw@me.com>

Stanley:

Attached is the opening brief and motion for extension. I will send conformed copies of the front page of each document later. Please confirm receipt of this email.

Hope all is well with you.

Thanks,

Dennis

509-838-4044 (Office)

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**DECLARATION OF SERVICE**

Dennis W. Clayton declares as follows, under penalty of perjury of the State of Washington:

1. I am over the age of 18 years, competent to testify herein, and do so based upon personal knowledge of the matters stated.

2. On October 7, 2011, I personally served a copy of this Appellants' Opening Brief by emailing a copy to Stanley Perdue at the following email address, pursuant to agreement and as Mr. Perdue's preferred method of service:

perduelaw@me.com

DATED this <sup>17<sup>th</sup></sup>~~7<sup>th</sup>~~ day of October, 2011.

  
Dennis W. Clayton