

Case No. 68878-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

REPUBLIC CREDIT ONE, LP, a limited partnership,

Petitioner/Plaintiff/Appellant,

v.

QUEEN ANNE BUILDERS, LLC, a Washington limited
liability company, *et al.*,

Respondents/Defendants.

**BRIEF OF PLAINTIFF/APPELLANT
REPUBLIC CREDIT ONE, LP**

Arnold M. Willig, WSBA #20104
Elizabeth H. Shea, WSBA #27189
Charles L. Butler, III, WSBA #36893
Attorneys for Plaintiff/Appellant
Republic Credit One, LP
HACKER & WILLIG, INC., P.S.
1501 Fourth Avenue, Suite 2150
Seattle, Washington 98101
T: (206) 340-1935
F: (206) 340-1936

FILED
APR 11 2011
CLERK OF COURT
K

ORIGINAL

KHN

TABLE OF CONTENTS

I. TABLE OF AUTHORITIES.....iv

II. INTRODUCTION1

III. ASSIGNMENTS OF ERROR.....3

IV. STATEMENT OF THE CASE4

A. The Relevant Loan History4

B. The Prior Lawsuit Against the Defendants.....7

**C. A Twelve-Member Jury Found the Defendants
 Liable Under the 2545 Note8**

D. The Present Case in the Lower Court.....9

V. ISSUES PRESENTED11

VI. STANDARD OF REVIEW.....11

VII. LEGAL AUTHORITY & ARGUMENT.....12

A. The Defendants’ Motion Should Have Been Denied.....12

**B. The Prior Trial on a Separate Loan is Not Preclusive
 of the Present Action.....13**

**C. Shoreline Bank was Statutorily Entitled to Separate
 the Two Loans19**

**D. The Defendants Are Bound by Their Personal
 Guaranties21**

**E. The Marital Communities Are Also Bound by the
 Personal Guaranties.....23**

**F. All Defendants Provided Extensive Financial
 Documents to Support the Loan Application.....28**

G. Parol Evidence Limits the Court's Consideration
to the Documents.....29

H. Plaintiff is Entitled to its Attorneys' Fees and Costs
in this Appeal.....33

VIII. CONCLUSION.....33

I. TABLE OF AUTHORITIES

A. Table of Cases

<i>Auernheimer v. Gardner</i> , 177 Wash. 158, 31 P.2d 515 (1934)	25
<i>Bank of Am., NA v. Owens</i> , 173 Wn.2d 40, 48-49 (2011)	12
<i>Bellingham Sec. Syndicate, Inc. v. Bellingham Coal Mines, Inc.</i> , 13 Wn.2d 370, 384, 125 P.2d 668 (1942).....	30
<i>Berg v. Hudesman</i> , 115 Wn.2d 657, 663-664 (1990)	30
<i>Beyers v. Moore</i> , 45 Wn.2d 68, 272 P.2d 626 (1954).....	25
<i>Boeing Airplane Co. v. Firemen’s Fund Indem. Co.</i> , 44 Wn.2d 488, 496, 268 P.2d 654, 45 A.L.R.2d 984 (1954).....	30
<i>Brogan & Anensen, LLC v. Lamphiear</i> , 165 Wn.2d 773, 775-776 (2009).....	29
<i>Brubaker v. Hovde</i> , 45 Wn. App. 44, 47 (1986)	24
<i>Buyken v. Ertner</i> , 33 Wn.2d 334, 341, 205 P.2d 628 (1949)	31, 32
<i>City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.</i> , 164 Wn.2d 768, 791-92, 193 P.3d 1077 (2008)	14
<i>DePhillips v. Zolt Constr. Co.</i> , 136 Wn.2d 26, 32, 959 P.2d 1104 (1998).....	29
<i>Emrich v. Connell</i> , 105 Wn.2d 551, 555-56, 716 P.2d 863 (1986).....	31
<i>Federal Way Sch. Dist. No. 210 v. State</i> , 167 Wn.2d 514, 523, 219 P.3d 941 (2009)	11, 12
<i>Fies v. Storey</i> , 37 Wn.2d 105, 221 P.2d 1031 (1950)	25, 32

<i>Gold Star Resorts, Inc. v. Futurewise</i> , 167 Wn.2d 723, 737-738 (2009).....	14
<i>Hayes v. City of Seattle</i> , 131 Wn.2d 706, 711-12, 934 P.2d 1179, 943 P.2d 265 (1997)	4, 18
<i>Hearst Commc'ns, Inc. v. Seattle Times Co.</i> , 154 Wn.2d 493, 504, 115 P.3d 262 (2005)	29
<i>Hemingway v. Miller</i> , 116 Wn.2d 725, 731, 807 P .2d 863 (1991).....	13
<i>Hollis v. Garwall, Inc.</i> , 137 Wn.2d 683, 695, 974 P.2d 836 (1999).....	29
<i>In re Pers. Restraint of Cruze</i> , 169 Wn.2d 422, 426, 237 P.3d 274 (2010)	12
<i>J.W. Seavey Hop Corp. v. Pollock</i> , 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944)	31
<i>Kuhlman v. Thomas</i> , 78 Wn. App. 115, 120, 897 P.2d 365 (1995)	4
<i>Kyreacos v. Smith</i> , 89 Wn.2d 425, 427, 572 P.2d 723 (1977)	15
<i>Lake Air, Inc. v. Duffy</i> , 42 Wn.2d 478, 480, 256 P.2d 301 (1953).....	22
<i>Landry v. Luscher</i> , 95 Wn. App. 779, 783, 976 P.2d 1274 (1999).....	3, 4, 11
<i>National Bank of Commerce v. Green</i> , 1 Wn. App. 713, 463 P.2d 187 (1969)	25
<i>National Bank v. Equity Investors</i> , 81 Wn.2d 886, 912-13, 506	

P.2d 20 (1973)	21, 22
<i>Nielson v. Spanaway Gen. Med. Clinic, Inc.</i> , 135 Wn.2d 255, 264-65, 956 P.2d 312 (1998)	16
<i>Oil Heat Co. v. Sweeney</i> , 26 Wn. App. 351, 353-354 (Wash. Ct. App. 1980)	25
<i>Olsen v. Nichols</i> , 86 Wash. 185, 149 P. 668 [(1915)]	30
<i>Olympic Fish Products, Inc. v. Lloyd</i> , 93 Wn.2d 596, 611 P.2d 737 (1980)	12
<i>Oregon Improvement Co. v. Sagmeister</i> , 4 Wash. 710, 30 P. 1058 (1892)	25
<i>Owens v. Kaiser Found. Health Plan, Inc.</i> , 244 F.3d 708, 713 (9th Cir. 2001).....	17
<i>Perry v. Continental Ins. Co.</i> , 178 Wash. 24, 33 P.2d 661 (1934).....	22
<i>Rains v. State</i> , 100 Wn.2d 660, 665, 674 P.2d 165 (1983)	15
<i>Rein v. Providian Fin. Corp.</i> , 270 F.3d 895, 899 (9th Cir. 2001).....	17
<i>Reninger</i> , 134 Wn.2d at 449	16
<i>Robertson v. Isomedix, Inc. (In re Int'l Nutronics)</i> , 28 F.3d 965, 969 (9th Cir. 1994).....	17
<i>Seattle-First Nat'l Bank v. Kawachi</i> , 91 Wn.2d 223, 228, 588 P.2d 725 (1978)	14, 15
<i>Shell Oil Co. v. Livingston Fertilizer & Chem. Co.</i> , 9 Wn. App. 596, 601 (1973).....	26

<i>Shoemaker v. City of Bremerton</i> , 109 Wn.2d 504, 507, 745 P.2d 858 (1987)	15, 16
<i>Siegel v. Federal Home Loan Mortgage Corp.</i> , 143 F.3d 525, 528 (9th Cir. 1998).....	17
<i>Skagit State Bank v. Rasmussen</i> , 109 Wn.2d 377, 380 (Wash. 1987)	21
<i>St. Yves v. Mid State Bank</i> , 111 Wn.2d 374, 378, 757 P.2d 1384 (1988).....	30, 31
<i>State Farm General Insurance Co. v. Emerson</i> , 102 Wn.2d 477, 687 P.2d 1139 (1984)	12
<i>State v. Williams</i> , 132 Wn.2d 248, 254, 937 P.2d 1052 (1997).....	16
<i>Va. Lee Homes v. Schneider & Felix Constr. Co.</i> , 64 Wn.2d 897, 899 (1964).....	26
<i>Wells Trust v. Grand Cent. Sauna & Hot Tub Co.</i> , 62 Wn. App. 593, 604 (1991).....	24
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434,437,656 P.2d 1030 (1982)	13
 B. Statutes	
RCW 4.84.330.....	33
RCW 26.16.010.....	27
RCW 26.16.020.....	27

RCW 26.16.030.....	25, 26
RCW 61.24.030.....	20
RCW 61.24.030(4)	19, 20
RCW 61.24.100.....	2

C. Other Authorities / Treatises

Philip A. Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 WASH. L. REV. 805, 805, 813-14, 829 (1985)	15, 16
TEGLAND, CIVIL PROCEDURE § 35.32, at 475	12
CR 54(d)(2)	10
CR 56(c)	12

D. Rules of Appellate Procedure

RAP 18.1	33
-----------------------	-----------

II. INTRODUCTION

Republic Credit One, LP (“Republic Credit”), by and through its attorneys, Hacker & Willig, Inc., P.S., respectfully presents this Brief of Appellant and appeals the Order Granting Motion for Summary Judgment (the “Order”) in favor of Defendants Crown Development, Inc. (“Crown Development” or “Defendant”); Cory J. Burke and Geneanne G. Burke, and the marital community composed thereof (the “Burkes” or “Defendants”); Greg H. Blunt, an individual and his marital community with Jill Blunt (the “Blunts” or “Defendants”) (collectively, the “Defendants”).

Despite the straightforward nature of this collection action against the Defendants on a promissory note they guaranteed, the lower court erred in granting the Defendants’ Motion for Summary Judgment by not correctly applying the controlling case law, and by misunderstanding the applicable facts at issue herein when it blended two loans into one. The Defendants knowingly, willingly, and voluntarily took the loan at issue herein from Shoreline Bank in the amount of \$1,117,316.14, which loan was secured by real property (the loan at issue here).

The Defendants had a separate, unsecured loan with Shoreline Bank in the amount of \$500,000.00. The Defendants defaulted on this loan by not paying it when it came due. They then made the baseless

arguments at trial that the loan was obtained through either fraud or misrepresentation. A 12-member jury unanimously found against the Defendants and ordered that they pay the full amount due on that loan.¹

The Defendants also defaulted on the \$1.2 million loan. Because that loan was secured by real property, a foreclosure sale needed to occur to determine if there would be a deficiency/shortfall on that loan. The real property securing the loan at issue herein was sold at Trustee's sale for \$900,000.00, and given the total outstanding balance owed by the Defendants on the loan of \$1,117,316.00 at the time of the sale, leaves a deficiency of **\$217,316.00**, plus interest thereon from the date of the Trustee's sale under RCW 61.24.100. The Defendants have refused to pay this deficiency.

There is no dispute that all of the Defendants knowingly, willingly, and voluntarily executed two sets of loan documents, two sets of personal guaranties, and therefore took two separate loans from Shoreline Bank, the predecessor to Republic Credit, that the Defendants jointly pursued their real estate development project that eventually failed, and that they are now liable on the loan documents they signed. The Defendants, and all of

¹ Had the Defendants prevailed on their fraud and/or misrepresentation theories presented at trial, the Defendants most certainly would have raised these defenses in response to the deficiency action (the present case), and Republic Credit would likely have been barred from asserting an estoppel defense.

them, are unquestionably bound by the loan documents they signed, and owe the outstanding loan balance to Republic Credit (the Federal Deposit Insurance Corporation (“FDIC”) designated holder of the claim against the Defendants).

The Order of the lower court should be reversed and this case remanded for further proceedings or for entry of summary judgment in favor of Republic Credit. In addition, Republic Credit is entitled to all of its attorneys’ fees and costs in this appeal pursuant to the explicit terms of the loan documents.

III. ASSIGNMENTS OF ERROR

The trial court erred in entering the Order and granting summary judgment in favor of the Defendants in this matter. Though Shoreline Bank previously sued the Defendants on a related, unsecured loan – and was successful in that lawsuit following a jury trial on the merits, the deficiency owing to Republic Credit and resulting from the related secured loan at issue herein is not precluded as Defendants argued below.

In reaching this erroneous decision, the trial court relied heavily on the case of *Landry v. Luscher*, 95 Wn. App. 779, 976 P.2d 1274 (1999). Though cited by both sides, *Landry* was relied upon incorrectly by the trial court. The issue of impermissible claim splitting is seen quietly clearly in the case of two lawsuits following the same car accident. *See, Landry*, at

780. Here, the loan documents for the two separate loans were signed at different times, all of the Defendants knowingly, willingly, and voluntarily executed two sets of loan documents, two sets of personal guaranties, and therefore took two separate loans from Shoreline Bank, the default on one resulting in a trial on the merits, and the deficiency on the other having been raise in the present case. Before *Landry* may be used to preclude, the subsequent action must be identical with a prior action in four respects: (1) persons and parties; (2) cause of action; (3) subject matter; and (4) the quality of the persons for or against whom the claim is made. *Hayes v. City of Seattle*, 131 Wn.2d 706, 711-12, 934 P.2d 1179, 943 P.2d 265 (1997); *Kuhlman v. Thomas*, 78 Wn. App. 115, 120, 897 P.2d 365 (1995). Here, the two actions have different parties (Republic Credit as opposed to GBC International Bank), causes of action (secured loan was separate from unsecured), and subject matter (two separate loans). As such, considering the legal authority and argument outlined below, the Order should be vacated and this matter remanded to the trial court for further proceedings, including entry of summary judgment in favor of Republic Credit.

IV. STATEMENT OF THE CASE

A. The Relevant Loan History.

On or about March 7, 2007, Queen Anne Builders, LLC (“Queen

Anne Builders”) executed a promissory note in favor of Shoreline Bank in the original principal amount of \$1,515,000.00 under loan number ending 4190 (the “4190 Note”). *See*, Clerk’s Papers (“CP”) 582-670. This loan was evidenced by a business loan agreement executed the same day (the “First 4190 Agreement”). *See*, CP 582-670. Defendant Andy Ryssel (“Ryssel”), in his capacity as President of Seattle Signature, the Manager of Queen Anne Builders, executed the 4190 Note and the First 4190 Agreement on behalf of Queen Anne Builders. *See*, CP 582-670.

As collateral for the 4190 Note, Queen Anne Builders granted a deed of trust to Shoreline Bank (the “Deed of Trust”) in real property commonly known as 2554 - 2556 14th Avenue West, Seattle, Washington 98103 (the “Property”). The Deed of Trust was recorded in King County on or about March 8, 2007 under Auditor’s No. 20070308002203. *See*, CP 582-670.

Queen Anne Builders, through Defendant Ryssel, executed two change in terms agreements (the “Change in Terms Agreements”), which extended the maturity date of the 4190 Note to November 8, 2008, and then to May 8, 2010. *See*, CP 582-670. To memorialize the final Change in Terms Agreement and the May 8, 2010 maturity date, Queen Anne Builders executed a final business loan agreement (“Second 4190 Agreement”). *See*, CP 582-670.

To secure the obligations under the 4190 Note, some on or about March 7, 2007 and others on or about November 8, 2008, commercial guaranties were executed by various parties, including: (1) Seattle Signature Homes, Inc. (“Seattle Signature”), by Mr. Ryssel, its President; (2) Crown Development, by Mr. Blunt, its President, and by Mr. Burke, its Secretary; (3) Mr. Ryssel, individually, with spousal consent by Renee Ryssel; (4) Mr. Burke, individually; (5) Mrs. Burke, individually; (6) Mr. Blunt, individually, with spousal consent by Mrs. Blunt; and (7) Defendant John Bargreen (“Bargreen”), individually (collectively, the “4190 Guaranties”). *See*, CP 582-670. The Note, Deed of Trust, Business Loan Agreements, Change in Terms Agreements, and Commercial Guaranties, along with all other applicable loan documents, will hereinafter be referred to as the “Loan Documents.”

Queen Anne Builders defaulted on the 4190 Loan in May of 2010, and on September 24, 2010, Shoreline Bank nonjudicially foreclosed its Deed of Trust against the Property (the “Sale”). *See*, CP 582-670. The outstanding balance owed to Shoreline Bank at the time of the Sale was **\$1,117,316.00**. Shoreline Bank credit bid **\$900,000.00**, took the property back at the Sale, and later sold the Property for \$490,000.00. *See*, Notice of Trustee’s Sale and Trustee’s Deed, CP 582-670.

Thus, there was a deficiency of **\$217,316.00** (the “Deficiency”)

owing following the Sale, which is the difference between the outstanding loan balance of \$1,117,316 and the \$900,000.00 bid amount at the Sale. All of the Defendants are responsible for the Deficiency, plus all accrued interest, fees, and costs, which Republic Credit now owns. *See*, CP 671-673.

On or about October 1, 2010, certain assets of Shoreline Bank – including the claim raised in the present case – were assumed by Republic Credit as successor in interest to the FDIC as Receiver of Shoreline Bank. *See*, CP 671-673.

B. The Prior Lawsuit Against the Defendants.

On December 19, 2008, Defendant Queen Anne Builders executed an unsecured \$500,000.00 promissory note in favor of Shoreline Bank under loan number ending 2545 (the “2545 Loan”). *See*, CP 582-670. This loan was evidenced by a business loan agreement executed the same day (the “2545 Agreement”). *See*, CP 582-670. The 2545 Loan was used to pay down the 4190 Loan and extend the due date of both loans for an additional year so the Defendants could complete their real estate development project. The 2545 Loan was a separate, unsecured loan. *See*, CP 582-670.

On December 19, 2008, separate commercial guaranties were executed by all of the above-referenced Defendants for the 2545 Loan: (1)

Seattle Signature, by Mr. Ryssel, its President; (2) Crown Development, by Mr. Blunt, its President, and by Mr. Burke, its Secretary; (3) Mr. Ryssel, individually, with spousal consent by Mrs. Ryssel; (4) Mr. Burke, individually; (5) Mrs. Burke, individually; (6) Mr. Blunt, individually, with spousal consent by Mrs. Blunt; and (7) Mr. Bargreen, individually (collectively, the “2545 Guaranties”). *See*, CP 582-670.

On April 28, 2010 under King County Superior Court Case No. 10-2-15811-1 SEA (the “First King County Lawsuit”), Shoreline Bank filed a Complaint against the Defendants to collect the \$500,000.00 balance due on the 2545 Loan. The Defendants asserted counterclaims of fraud, negligent misrepresentation, acting in concert, and equitable estoppel. *See*, CP 674-676.

C. A Twelve-Member Jury Found the Defendants Liable Under the 2545 Note.

The trial in the First King County Lawsuit commenced on Monday, November 7, 2011, and concluded on Monday, November 14, 2011. On November 16, 2011, the jury found the Defendants liable for the \$500,000.00 due under the 2545 Loan (plus interest and fees) and denied each and every one of Defendants’ counterclaims. In its verdict form, the jury found that Queen Anne Builders and the Defendants were liable, that each of the respective Defendants guaranteed in writing the 2545 Loan,

found no fraud when the loan was made, found no estoppel from enforcing the loan against the Defendants, and found no misrepresentation. *See*, Special Verdict Form, CP 674-676.

On December 5, 2011, the Court heard argument on the matter and entered judgment against the Defendants in the full amount due on the 2545 Loan – \$578,465.18. *See*, Order Granting GBC’s Motion for Entry of Judgment Upon Jury Verdict, and Judgment Upon Jury Verdict, CP 674-676. The Supplemental Judgment for GBC’s attorneys’ fees and costs was entered on February 1, 2012. *See*, CP 674-676.

D. The Present Case in the Lower Court.

By virtue of the FDIC acquisition and sale of the Deficiency to Republic Credit, the underlying Complaint was filed on September 23, 2011 (the “Second King County Lawsuit”). *See*, CP 671-673.

The Defendants, without taking any discovery whatsoever, moved for summary judgment in the Second King County Lawsuit on or about April 18, 2012, to which Republic Credit responded and opposed. The hearing on same occurred on or about May 11, 2012. The Court heard oral argument and thereafter the Defendants noted their proposed order for presentation, and the Order was entered thereafter. As an aside, the Defendants waited nearly two (2) months to bring their motion for award of attorneys’ fees and costs, and the trial court denied same as untimely

under Washington Superior Court Civil Rule (“CR”) 54(d)(2).

The Defendant argued in the lower court that the 4190 Loan and the 2545 Loan are one in the same. They clearly are not. The 4190 Loan was to allow the Defendants more time to seek replacement financing with another lender so that the Defendants could complete their townhome project on Queen Anne Hill. *See*, CP 582-670.

The 2545 Loan, on the other hand, was an unsecured line of credit, guaranteed by each and every one of the Defendants, to be used for purposes agreed upon by the Defendants. *See*, CP 582-670. The obligation resulting from the defaulted 2545 Loan was fully adjudicated in the First King County Lawsuit. In fact, the holder of the claim grounded in the 4190 that was raised in the later Second King County Lawsuit could not have been raised in the First King County Lawsuit as the Trustee’s Sale had not yet occurred. The loans were separate, the obligations secured were separate, and thus the collection actions were/are separate.

As clearly provided by the terms of the Loan Documents, Republic Credit is entitled to all of its attorneys’ fees, costs, and all related expenses. The Loan Documents are enforceable against the Defendants and cannot be negated or modified by Defendants’ oral statements. The Defendants all admit they signed the Loan Documents at issue, which created the resulting Deficiency. Accordingly, the Order of the lower

court should be reversed and this case remanded for further proceedings or for entry of summary judgment in favor of Republic Credit.

V. ISSUES PRESENTED

1. Whether the lower court erred in entering the Order and granting the Defendants' Motion for Summary Judgment where the 4190 Loan (and the resulting Deficiency) was separate and distinct from the 2545 Loan?

2. Whether the lower court erred in entering the Order and finding that the trial involving only the 2545 Loan was preclusive of the separate, later Deficiency involving the 4190 Loan? By extension, whether *Landry* was incorrectly applied by the lower court?

3. Whether the lower court erred in entering the Order where it is contrary to applicable law to raise in the same action the unsecured obligation evidenced by the 2545 Loan and the Deficiency resulting from the 4190 Loan?

In short, the lower court erred in granting Defendants' Motion for Summary Judgment and entering the Order. The present case should be reversed and remanded for further proceedings in the lower court or for entry of summary judgment in favor of Republic Credit.

VI. STANDARD OF REVIEW

“A grant of summary judgment is reviewed *de novo*.” *Federal Way*

Sch. Dist. No. 210 v. State, 167 Wn.2d 514, 523, 219 P.3d 941 (2009).

“We view the facts and all reasonable inferences in the light most favorable to the nonmoving parties.” *Id.* The proper interpretation of a statute is a question of law, which we review *de novo*. *In re Pers.*

Restraint of Cruze, 169 Wn.2d 422, 426, 237 P.3d 274 (2010). Before a court may grant a motion for summary judgment, there must be “no genuine issue as to any material fact” and the moving party must be “entitled to a judgment as a matter of law.” CR 56(c); *Federal Way Sch. Dist.*, 167 Wn.2d at 523; *Bank of Am., NA v. Owens*, 173 Wn.2d 40, 48-49 (2011).

VII. LEGAL AUTHORITY & ARGUMENT

A. Defendants’ Motion Should Have Been Denied.

The purpose of summary judgment is to avoid useless trials when there is no issue of any material fact. *Olympic Fish Products, Inc. v. Lloyd*, 93 Wn.2d 596, 611 P.2d 737 (1980). If there is no issue as to any material fact, the Court may grant summary judgment as a matter of law. *State Farm General Insurance Co. v. Emerson*, 102 Wn.2d 477, 687 P.2d 1139 (1984). Summary judgment is appropriate **only** if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c) (West 2012 ed.) (emphasis added).

All reasonable inferences from the facts must be interpreted in the light most favorable to the nonmoving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982); *Hemingway v. Miller*, 116 Wn.2d 725, 731, 807 P.2d 863 (1991). Here, the trial court did not do so; in fact, no reasonable inferences were drawn in the light most favorable to Republic Credit and the lower court accepted all inferences as offered by Defendants. Defendants' motions should have been denied. Accordingly, the Order of the lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

B. The Prior Trial on a Separate Loan is Not Preclusive of the Present Action.

The general term "res judicata" encompasses "claim preclusion," and "issue preclusion" is also known as "collateral estoppel." Under the former, a plaintiff is not allowed to recast his or her claim under a different theory and sue again. Where a plaintiff's second claim clearly is a new, distinct claim, it is still possible that an individual issue will be precluded in the second action under the doctrine of collateral estoppel or issue preclusion. In an instance of **claim preclusion, all issues which might have been raised and determined are precluded**. In the case of **issue preclusion, only those issues actually litigated and necessarily**

determined are precluded. *Seattle-First Nat'l Bank v. Kawachi*, 91 Wn.2d 223, 228, 588 P.2d 725 (1978).

1. Collateral Estoppel / Issue Preclusion.

Generally speaking, under Washington law, collateral estoppel, or issue preclusion, requires: “(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. . . . In addition, the issue to be precluded must have been actually litigated and necessarily determined in the prior action.” *See, City of Arlington v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 164 Wn.2d 768, 791-92, 193 P.3d 1077 (2008) (citations omitted). **The doctrine of collateral estoppel (issue preclusion) is inapplicable to the present case because the 4190 Loan was not actually litigated, nor was any issue related thereto necessarily determined on the merits in the prior action.** The First King County Lawsuit was brought entirely within the scope of the 2545 Loan.

However, even where a subsequent action is on a different *claim*, yet depends on *issues* which were determined in a prior action, the re-litigation of those issues is barred by collateral estoppel. *See, Gold Star Resorts, Inc. v. Futurewise*, 167 Wn.2d 723, 737-738 (2009) (emphasis

added). Here, **Republic Credit is not seeking to re-litigate any issues that were determined in a prior action**; the First King County Lawsuit related only to the 2545 Loan, upon which the Verdict was based. Though the 4190 Loan was discussed at trial because it involves the same borrower/guarantors, such discussion occurred at the insistence of the Defendants: the Defendants cannot now claim that their baseless argument at trial create a situation where a separate, later action against them is precluded.

Collateral estoppel is distinguished from claim preclusion “in that, instead of preventing a second assertion of the same claim or cause of action, it prevents a second litigation of issues between the parties, even though a different claim or cause of action is asserted.” *Rains v. State*, 100 Wn.2d 660, 665, 674 P.2d 165 (1983) (quoting, *Seattle-First Nat’l Bank v. Kawachi*, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978)); *Kyreacos v. Smith*, 89 Wn.2d 425, 427, 572 P.2d 723 (1977); see, *Shoemaker v. City of Bremerton*, 109 Wn.2d 504, 507, 745 P.2d 858 (1987); Philip A. Trautman, Claim and Issue Preclusion in Civil Litigation in Washington, 60 WASH. L. REV. 805, 805, 813-14, 829 (1985) (hereafter Trautman, Claim and Issue Preclusion); TEGLAND, CIVIL PROCEDURE § 35.32, at 475.

Collateral estoppel may be applied to preclude only those issues

that have actually been litigated and necessarily and finally determined in the earlier proceeding. *Shoemaker*, 109 Wn.2d at 507. Further, the party against whom the doctrine is asserted must have had a full and fair opportunity to litigate the issue in the earlier proceeding. *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 264-65, 956 P.2d 312 (1998). For collateral estoppel to apply, as restated from above, the party seeking application of the doctrine must establish that (1) the issue decided in the earlier proceeding was identical to the issue presented in the later proceeding; (2) the earlier proceeding ended in a judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to, or in privity with a party to, the earlier proceeding; and (4) application of collateral estoppel does not work an injustice on the party against whom it is applied. *Reninger*, 134 Wn.2d at 449; *State v. Williams*, 132 Wn.2d 248, 254, 937 P.2d 1052 (1997); Trautman, Claim and Issue Preclusion, 60 WASH. L. REV. at 831.

Here, again the doctrine of collateral estoppel (issue preclusion) does not apply because the First and Second King County Lawsuits involve separate issues, the Verdict relates only to the 2545 Loan, and the application of collateral estoppel to Republic Credit would most certain work a significant injustice. The First King County Lawsuit was brought entirely within the scope of the 2545 Loan. Accordingly, the Order of the

lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

2. Res Judicata / Claim Preclusion.

Further, under Washington law, res judicata, or claim preclusion, bars a claim “if a court of competent jurisdiction has rendered a final judgment on the merits of the claim in a previous action involving the same parties or their privies.” *Siegel v. Federal Home Loan Mortgage Corp.*, 143 F.3d 525, 528 (9th Cir. 1998) (quoting, *Robertson v. Isomedix, Inc. (In re Int’l Nutronics)*, 28 F.3d 965, 969 (9th Cir. 1994)). Claim preclusion applies “where: (1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) there was a final judgment on the merits; and (4) the same claim or cause of action was involved in both suits.” *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 899 (9th Cir. 2001) (citing, *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir. 2001)); *Siegel*, 143 F.3d at 528-29.

In other words, res judicata, or claim preclusion, is intended to prevent piecemeal litigation and ensure the finality of judgments. *Landry v. Luscher*, 95 Wn. App. 779, 783, 976 P.2d 1274 (1999). Thus, a subsequent action should be dismissed if it is identical with the first action in the following respects: (1) persons and parties, (2) cause of action, (3)

subject matter, and (4) the quality of the persons for or against whom the claim is made. *Id.* (citing, *Hayes v. City of Seattle*, 131 Wn.2d 706, 711-12, 934 P.2d 1179, 943 P.2d 265 (1997)).

As stated above, *Landry* involved two lawsuits by the injured party, one filed after judgment was entered in the other, following a single automobile accident. *Id.* at 780. The same parties were involved in both lawsuits wherein the same causes of action were asserted, and where the relief requested was identical. *Id.* at 782. Though the general principles and authority as stated in *Landry* are instructive, hence why Republic Credit cited the case for general principles, the case is clearly factually distinguishable from the present matter and it was error for the lower court to base its factual decision by way of analogy to *Landry*.

Quite obviously, a different loan, involving altogether different loan documents, consisting of a different loan amount, and identified under a separate loan number, was at issue in the First King County Lawsuit. The 4190 Loan, at issue herein, was a separate loan secured by real property collateral, the Property. The Defendants knowingly and willingly executed separate sets of loan documents for each loan, which loans were separately collateralized, and the focus of the two loans was quite different. Therefore, the present case **does not** involve the same persons or parties (Republic Credit, not Shoreline Bank or GBC, owns the

Deficiency), causes of action (a cursory view of the two Complaints reveals different causes of action), subject matter (the \$500,000.00 - 2545 Loan versus the \$1,117,316.00 - 4190 Loan), or persons for/against whom the claim is made (here, Republic Credit, not GBC or Shoreline Bank).

Also, the jury trial, culminating in a near unanimous verdict against the Defendants, was only as to the unsecured 2545 Loan. The 4190 Loan, at issue here, was not plead, asserted, or claimed in any way in the First King County Lawsuit. Therein, the Court considered the two loans separate, the verdict only referenced the 2545 Loan, and the Judgment and Supplemental Judgment were entered accordingly. Though the parties are identical, the loans and issues presented thereby are different. And again, any discussion of the 4190 Loan during the First King County Lawsuit was at the insistence of the Defendants, and was meant to confuse the trial court and/or the jury, which they both saw right through. Accordingly, the Order of the lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

C. Shoreline Bank was Statutorily Entitled to Separate the Two Loans.

Washington's "One Action Rule" emanates from state statute under RCW 61.24.030(4), which provides:

It shall be requisite to a trustee's sale . . . [t]hat no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured[.] . . . If the deed of trust was granted to secure a commercial loan, this subsection shall not apply to actions brought to enforce any other lien or security interest granted to secure the obligation secured by the deed of trust being foreclosed[.]

See, RCW 61.24.030(4).

Such provision is similarly confirmed by the statutory language of the Notice of Foreclosure (or Notice of Sale), which is mailed, via certified and regular mail, to each and every guarantor, as it was in this case to the present Defendants. *See*, RCW 61.24.030, *et seq.* None of the Defendants objected at the point they received the Notice of Sale, and none of the Defendants raised this issue in the First King County Lawsuit. The Defendants have apparently created this argument out of whole cloth following their adverse jury verdict and outright loss in the First King County Lawsuit.

Under RCW 61.24.030(4), at the point the nonjudicial foreclosure process was commenced by Shoreline Bank to remedy the Defendants' default under the 4190 Loan, it could not have had any other action pending to "seek satisfaction of an obligation secured by the deed of trust[.]" No such action was pending, and, when Shoreline Bank filed the First King County Lawsuit, it took care to delineate the causes of action

adjudicated therein from the deficiency litigation that would no-doubt follow the Trustee's sale of the Property securing the 4190 Loan. The 2545 (unsecured) Loan was kept separate from the 4190 (secured) Loan for that reason, and the two could not have been combined in the First King County Lawsuit.

Similarly, it is logical to conclude that there would not have been any deficiency until *after* the Trustee's Sale of the Property securing the 4190 Loan, and nothing in the 2545 Loan documents prevented Shoreline Bank from proceeding with the First King County Lawsuit at any time upon the occurrence of an event of default. *See*, CP 671-673.

Accordingly, the Order of the lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

D. The Defendants Are Bound by Their Personal Guaranties.

The Defendants' arguments, distilled to their essence, is that they should not be bound by the contractual terms of their written contracts. However, in Washington, a party is responsible for knowing the contents of the documents they sign. *Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 380 (Wash. 1987).²

² The relevant principles are neatly summarized in *National Bank v. Equity*

Further, the Defendants' Personal Guaranties state:

This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and all of Guarantors obligations under this Guarantee have been performed in full. If Guarantor elects to revoke this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address listed above or such other place as Lender may designate in writing.

Investors, 81 Wn.2d 886, 912-13, 506 P.2d 20 (1973):

It is a general rule that a party to a contract which he has voluntarily signed will not be heard to declare that he did not read it, or was ignorant of its contents. *Perry v. Continental Ins. Co.*, 178 Wash. 2d, 33 P.2d 661 (1934). One cannot, in the absence of fraud, deceit or coercion be heard to repudiate his own signature voluntarily and knowingly fixed to an instrument whose contents he was in law bound to understand. [The plaintiff], being not only a person of ordinary understanding but one with more than ordinary experience in land transactions and instruments of conveyance and security, and with time and opportunity both to consult with an attorney and to inspect the instruments before signing, cannot now be heard in law to repudiate his signature. The whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signs. As we said in *Lake Air, Inc. v. Duffy*, 42 Wn.2d 478, 480, 256 P.2d 301 (1953):

Appellant had ample opportunity to examine the contract in as great a detail as he cared, and he failed to do so for his own personal reasons. Under these circumstances, he cannot be heard to deny that he executed the contract, and he is bound by it.

Id. at 913.

See, CP 582-670.

Despite the Defendants' obvious default of their own loan accounts, this is a very straight-forward collection matter. The fact remains that the Defendants obtained loans for their speculative real estate venture. They defaulted on the loans despite having an additional year and a half to pursue their development plans.

The Loan Documents are very clear. The Defendants unequivocally, contractually obligated themselves and their marital communities to personally guaranty the 4190 Loan, including any resulting Deficiency, and all interest and attorney's fees. All the Defendants failed to make any payment as required, which are clear events of default. Accordingly, the Order of the lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

E. The Marital Communities Are Also Bound by the Personal Guaranties.

While the Defendants do not dispute the validity of their signatures on the Loan Documents, they must acknowledge the contractual acknowledgments that appear directly above their signature on the Guaranties:

**EACH UNDERSIGNED GUARANTOR
ACKNOWLEDGES HAVING READ ALL THE
PROVISIONS OF THIS GUARANTY AND AGREES
TO ITS TERMS. IN ADDITION, EACH
GUARANTOR UNDERSTANDS THAT THIS
GUARANTY IS EFFECTIVE UPON GUARANTOR'S
EXECUTION AND DELIVERY OF THIS
GUARANTY TO LENDER AND THAT THE
GUARANTY WILL CONTINUE UNTIL
TERMINATED[.] . . . NO FORMAL ACCEPTANCE
BY LENDER IS NECESSARY TO MAKE THIS
GUARANTY EFFECTIVE. . . .**

See, CP 582-670.

Further, each personal guaranty is dated and signed. No Defendant has denied that they voluntarily signed the Loan Documents, including the personal guaranties. Moreover, the Defendants provided information to GBC that they have similarly collaborated on other real estate development projects in the past, with similarly structured loans. *See*, CP 582-670.

Washington is a community-property state; alternatively, Washington is a *community-debt* state. *See, e.g., Wells Trust v. Grand Cent. Sauna & Hot Tub Co.*, 62 Wn. App. 593, 604 (1991). Washington follows the strong presumption that “an obligation incurred . . . by either spouse during marriage is for the benefit of the community.” *Wells*, 62 Wn. App. at 604; *citing, Brubaker v. Hovde*, 45 Wn. App. 44, 47 (1986). The Defendants attempt to ignore this long-standing Washington

community property law – one spouse can contractually bind the marital community so that a debt incurred by either spouse during marriage is presumed to be a community debt. *E.g., Fies v. Storey*, 37 Wn.2d 105, 221 P.2d 1031 (1950); *Oregon Improvement Co. v. Sagmeister*, 4 Wash. 710, 30 P. 1058 (1892); *National Bank of Commerce v. Green*, 1 Wn. App. 713, 463 P.2d 187 (1969). It is well settled that this presumption may be overcome only by clear and convincing evidence. *Beyers v. Moore*, 45 Wn.2d 68, 272 P.2d 626 (1954); *Auernheimer v. Gardner*, 177 Wash. 158, 31 P.2d 515 (1934); *Oil Heat Co. v. Sweeney*, 26 Wn. App. 351, 353-354 (Wash. Ct. App. 1980).

With limited exceptions, RCW 26.16.030 extends management authority of community property to both spouses. Joinder (i.e., signature of both spouses to a contract) is required only in the following limited circumstances: (1) the purchase of community real property; (2) a gift of community property; (3) the sale, conveyance, or encumbrance of community household goods, furnishings, or appliances; or (4) the sale, conveyance, or encumbrance of community business assets where both spouses participate in the management of the business. *See*, RCW 26.16.030. Joinder is *not* required to guaranty an obligation using community property assets. *Id.*

Whether a particular transaction of a husband is a benefit to the

community is not tested by whether or not a particular transaction results in a profit; rather, the test is whether it was within the husband's powers as manager of the community and was done for the community's benefit.

See, Shell Oil Co. v. Livingston Fertilizer & Chem. Co., 9 Wn. App. 596, 601 (1973). As previously stated, RCW 26.16.030 establishes that "either spouse[,] acting alone, may manage and control community property[.]"

Id.

Applying that test, "[a] husband's acts performed for the benefit of the community are binding upon the community." *Va. Lee Homes v. Schneider & Felix Constr. Co.*, 64 Wn.2d 897, 899 (1964). Much like this case, *Va. Lee Homes* involved a construction company that purchased a home whereby the officers of the company endorsed a promissory note given for the home in which they personally guaranteed repayment. *See, id.* The construction company failed to repay the loan. *Id.* The *Va. Lee Homes* court affirmed the lower court's judgment against the construction company, the husband-guarantors (i.e., the company officers), and based on the guaranties, against their respective marital communities. *Id.* at 900. The Defendants' Guaranties are no different than that of the guaranties in *Va. Lee Homes*. The Defendants agreed to personally guaranty the construction project by signing the Guaranties. Assuming profitability, the construction project was for the benefit of the marital community.

Thus, the Defendants' marital community is liable under the Guaranties.

Moreover, the relevant part of the personal guaranty provides:

OBLIGATIONS OF MARRIED PERSONS. If Guarantor is married, Guarantor hereby expressly agrees that recourse under this Guaranty may be had against both Guarantor's separate and community property.

See, CP 582-670.

Further, even if the Defendants' spouses refused to sign the spousal consent to the Guaranties, RCW 26.16.030 specifically vests each spouse with separate management authority. Certainly, if the Defendants' real estate venture would have been successful, the spouses would have an absolute claim to the profits under the same statute, which states:

"Property not acquired or owned, as prescribed in RCW 26.16.010 and 26.16.020, acquired after marriage . . . by . . . either husband or wife or both, is community property." *See*, RCW 26.16.030.

Unquestionably, the Defendants' marital communities would have received the benefit of the real estate venture had it been successful. The Defendants cannot now pick and choose between the profits their marital communities would have received if this development project would have been successful and the obligations of the loss. The Defendants and their marital communities are clearly bound by the Personal Guaranties and are therefore fully liable for the Deficiency. Accordingly, the Order of the

lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

F. All Defendants Provided Extensive Financial Documents to Support the Loan Application.

During the loan transaction at issue herein, the Defendants convinced the Bank that they were creditworthy, pledged their personal guaranties for a loan that they, themselves, requested, and effectively and fully demonstrated to the Bank that they were very well qualified for such a large real estate loan. In doing so, all of the Defendants provided significant financial documentation and information to the Bank to be used to support the Defendants' loan application. *See*, CP 582-670.

Specifically, all Defendants supplied personal tax returns and tax returns of their corporation, Crown Development, to Shoreline Bank. The Defendants also supplied detailed personal financial statements, which, combined with the tax returns, amount to hundreds and hundreds of pages of financial documents supplied to Shoreline Bank. The Defendants approached the Bank for the extension of the 4190 Loan, convinced the Bank to extend the loan based solely upon their financial strength, and the Bank relied upon the financial information supplied. *See*, CP 582-670.

The financial information provided by the Defendants to Shoreline Bank was voluminous, and was specifically tailored by the Defendants to

demonstrate their financial viability and ultimate strength to the Bank. The Defendants sought out these loans from Shoreline Bank, and are obligated to repay same upon default. Accordingly, the Order of the lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

G. Parol Evidence Limits the Court's Consideration to the Documents.

The parol evidence rule precludes the use of extrinsic evidence to add to, subtract from, modify, or contradict the terms of a fully integrated written contract; that is, a contract intended as a final expression of the terms of the agreement. *See, DePhillips v. Zolt Constr. Co.*, 136 Wn.2d 26, 32, 959 P.2d 1104 (1998). Extrinsic evidence is not admissible to show intention independent of the contract. *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695, 974 P.2d 836 (1999). Washington courts focus on objective manifestations of the contract rather than the subjective intent of the parties; thus, the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used. *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 504, 115 P.3d 262 (2005); *see also, Brogan & Anensen, LLC v. Lamphiear*, 165 Wn.2d 773, 775-776 (2009). Here, the Personal Guaranties were final/integrated expressions of the terms of the Defendants' agreement with GBC, which

claim is now owned by Republic Credit.

In the oft-cited case of *Berg v. Hudesman*, 115 Wn.2d 657, 663-664 (1990), the Supreme Court has held that **only if a contract is ambiguous on its face will the court look to evidence of the parties' intent** as shown by the contract as a whole, its subject matter and objective, the circumstances of its making, the subsequent conduct of the parties, and the reasonableness of their interpretations [emphasis added]. *E.g.*, *St. Yves v. Mid State Bank*, 111 Wn.2d 374, 378, 757 P.2d 1384 (1988); *Boeing Airplane Co. v. Firemen's Fund Indem. Co.*, 44 Wn.2d 488, 496, 268 P.2d 654, 45 A.L.R.2d 984 (1954); *Bellingham Sec. Syndicate, Inc. v. Bellingham Coal Mines, Inc.*, 13 Wn.2d 370, 384, 125 P.2d 668 (1942).

The *Berg* court noted with approval, and expressly affirmed the following general statement of the context rule:

May we say here that we are mindful of the general rule that **parol evidence is not admissible for the purpose of adding to, modifying, or contradicting the terms of a written contract, in the absence of fraud, accident, or mistake.** But, as stated in *Olsen v. Nichols*, 86 Wash. 185, 149 P. 668 [(1915)], **parol evidence is admissible to show the situation of the parties and the circumstances under which a written instrument was executed,** for the purpose of ascertaining the intention of the parties and properly construing the writing. **Such evidence, however, is admitted, not for the purpose of importing into a writing an intention not expressed therein, but with the view of elucidating the meaning of the words employed.**

Evidence of this character is admitted for the purpose of aiding in the interpretation of what is in the instrument, and not for the purpose of showing intention independent of the instrument. It is the duty of the court to declare the meaning of what is written, and not what was intended to be written. **If the evidence goes no further than to show the situation of the parties and the circumstances under which the instrument was executed, then it is admissible.**

See, J.W. Seavey Hop Corp. v. Pollock, 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944) (emphasis added).

Here, the Defendants hope that this Court will take their evidence presented further, beyond the plain meaning of the words and/or the context of those words and into the claimed current subjective intent of the Defendants. The admissibility of such evidence is prohibited under the authority as stated above.

Given that parol or extrinsic evidence is not admissible to add to, subtract from, vary, or contradict written instruments which are contractual in nature and which are valid, complete, unambiguous, and not affected by accident, fraud, or mistake, and that are intended by the parties as an “integration” or final expression of their agreement, the question then becomes whether the Personal Guaranties were such integrated or final agreements. *See, St. Yves v. Mid State Bank*, 111 Wn.2d 374, 377, 757 P.2d 1384 (1988) (quoting, *Emrich v. Connell*, 105 Wn.2d 551, 555-56, 716 P.2d 863 (1986) (quoting, *Buyken v. Ertner*, 33 Wn.2d 334, 341,

205 P.2d 628 (1949)). Though the Defendants may wish they were not, they clearly were so.

The Guaranties themselves, on pg. 2, provide:

Integration. Guarantor further agrees that **Guarantor has read and fully understands the terms of this Guaranty;** Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; **the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty.** **Guarantor hereby indemnifies and holds Lender harmless** from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations, and agreements of this paragraph.

See, CP 582-670.

Therefore, the Defendants, by the very terms of the documents they signed, previously agreed to limit the Court's consideration of parol evidence, framing the Court's view of the contract according to the four corners of the document. Further, the Defendants have in fact indemnified Republic Credit, as successor to GBC, against all losses, claims, damages, and costs (including attorneys' fees) incurred by Republic Credit as a result of the Defendants' breach of the terms of the documents.

Accordingly, the Order of the lower court should be reversed and this case remanded for further proceeding or for entry of summary judgment in favor of Republic Credit.

H. Plaintiff is Entitled to its Attorneys' Fees and Costs in this Appeal.

Pursuant to the clear terms of the loan documents, as Plaintiff was the prevailing party at trial, and pursuant to RCW 4.84.330, Plaintiff is entitled to all of its attorneys' fees and costs incurred in this appeal.

Pursuant to Rule of Appellate Procedure ("RAP") 18.1, Plaintiff hereby requests such fees and costs incurred in this appeal. Regarding attorneys' fees and costs, the 4190 Note provides as follows:

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes, subject to any limits under applicable law, Lender's attorneys' fees and Lender's legal expenses, whether or not there is a lawsuit, including attorneys' fees, expenses for bankruptcy proceedings[,]and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

See, CP 582-670.

Each of the Commercial Guaranties contains a similar provision; each of the Commercial Guaranties are admittedly signed and properly executed by the Defendant Guarantors. *See*, CP 582-670. Plaintiff is entitled to all of its attorneys' fees and costs in this proceeding.

VIII. CONCLUSION

For all the reasons stated above, the entry of summary judgment in favor of the Defendants should be reversed, fees awarded to Republic

Credit in this appeal, and this case remanded for entry of summary judgment in favor of Republic Credit. The trial court committed obvious error of law, both in consideration and in application, and therefore its decision must be reversed.

DATED this 15th day of October, 2012.

Respectfully submitted,

HACKER & WILLIG, INC., P.S.



Arnold M. Willig, WSBA #20104
Elizabeth H. Shea, WSBA #27189
Charles L. Butler, III, WSBA #36893
Attorneys for Plaintiff/Appellant,
Republic Credit One, LP

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

REPUBLIC CREDIT ONE, LP, a limited partnership,

Petitioner/Plaintiff/Appellant,

v.

QUEEN ANNE BUILDERS, LLC, a Washington limited
liability company, *et al.*,

Respondents/Defendants.

DECLARATION OF SERVICE

Arnold M. Willig, WSBA #20104
Elizabeth H. Shea, WSBA #27189
Charles L. Butler, III, WSBA #36893
Attorneys for Plaintiff/Appellant
Republic Credit One, LP
HACKER & WILLIG, INC., P.S.
1501 Fourth Avenue, Suite 2150
Seattle, Washington 98101
T: (206) 340-1935
F: (206) 340-1936

2012 OCT 15 PM 4:51
STATE OF WASHINGTON
COURT OF APPEALS, DIVISION I
CLERK OF COURT
K. J. ...

ORIGINAL

I, Devorah R. Joslin, declare as follows:

1. I am an employee of the firm of Hacker & Willig, Inc., P.S. I am over the age of 18, and I am not a party to the above-entitled action.
2. On October 15, 2012, I caused to be served via Legal Messenger, true and correct copies of the **Brief of Appellant/Plaintiff Republic Credit One, LP** and this **Declaration of Service**, to the parties listed below:

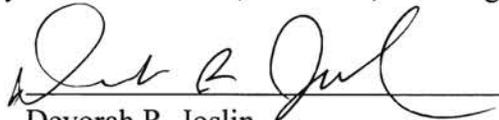
Washington State Court of Appeals
Division One
One Union Square
600 University Street
Seattle, WA 98101-1176

3. On October 15, 2012, I caused to be served via email and facsimile, true and correct copies of the **Brief of Appellant/Plaintiff Republic Credit One, LP** and this **Declaration of Service**, to the parties listed below:

C. Chip Goss, Esq.
TACEY GOSS, P.S.
330 112th Ave NE, Suite 301
Bellevue, WA 98004

4. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 15th day of October 2012, at Seattle, Washington.


Devorah R. Joslin

HACKER & WILLIG, INC., P.S.
1501 Fourth Avenue, Suite 2150
Seattle, WA 98101
Telephone: (206) 340-1935
Facsimile: (206) 340-1935

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

REPUBLIC CREDIT ONE, LP, a limited partnership,

Petitioner/Plaintiff/Appellant,

v.

QUEEN ANNE BUILDERS, LLC, a Washington limited
liability company, *et al.*,

Respondents/Defendants.

219 OCT 16 PM 4:30
SPT
K

DECLARATION OF SERVICE

Arnold M. Willig, WSBA #20104
Elizabeth H. Shea, WSBA #27189
Charles L. Butler, III, WSBA #36893
Attorneys for Plaintiff/Appellant
Republic Credit One, LP
HACKER & WILLIG, INC., P.S.
1501 Fourth Avenue, Suite 2150
Seattle, Washington 98101
T: (206) 340-1935
F: (206) 340-1936

ORIGINAL

I, Devorah R. Joslin, declare as follows:

1. I am an employee of the firm of Hacker & Willig, Inc., P.S. I am over the age of 18, and I am not a party to the above-entitled action.

2. On October 15, 2012, I caused to be served via Legal Messenger, true and correct copies of the **Brief of Appellant/Plaintiff Republic Credit One, LP** and this **Declaration of Service**, to the parties listed below:

Washington State Court of Appeals
Division One
One Union Square
600 University Street
Seattle, WA 98101-1176

3. On October 15, 2012, I caused to be served via email only (by agreement), true and correct copies of the **Brief of Appellant/Plaintiff Republic Credit One, LP** and this **Declaration of Service**, to the parties listed below:

C. Chip Goss, Esq.
TACEY GOSS, P.S.
330 112th Ave NE, Suite 301
Bellevue, WA 98004

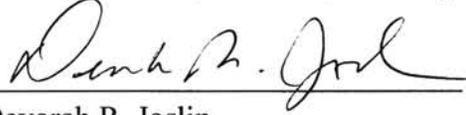
4. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

///

///

///

DATED this 16th day of October 2012, at Seattle, Washington.

A handwritten signature in black ink, appearing to read "Devorah R. Joslin", written over a horizontal line.

Devorah R. Joslin
HACKER & WILLIG, INC., P.S.
1501 Fourth Avenue, Suite 2150
Seattle, WA 98101
Telephone: (206) 340-1935
Facsimile: (206) 340-1935