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STATE OF WASHINGTON

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No. 44336-8-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

Amas Canzoni, a natural person
Tanana Canzoni, Estate of

Appellants

v.

COLUMBIA STATE BANK

Respondent

APPELLANTS' OPENING BRIEF

Amas Canzoni, natural person
Appellant, sui juris
general post-office [box 1073]
Rainier Washington [98576-9998]
Phone 360-888-4730 (leave msg.)

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1 **I. INTRODUCTION**

2 This is an appeal from a Complaint for Specific Performance, listed under
3 'Property Fairness (PFA2)' 'Complaint involving the regulation of private
4 property or restraint of land use by a government entity brought forth by
5 title 64 RCW.' A first look at the Title 64; 64.12.020, unlikely applying to
6 this action; 64.12.050, 'Injunction to prevent waste on public land', but
7 nobody was 'threatening to commit upon such land waste which tends
8 materially to lessen the value...'; Chapter 64.44 which appears to apply
9 mainly to production of illegal drugs, however, no indication was ever
10 given to justify seeking access under this provision.

11 Columbia State Bank (hereinafter Respondent) is claiming to be the
12 Holder in due Course of a Promissary Note (a copy of a recorded
13 document was introduced as Exhibit C (**CP p. 32-34**) to the Trial Court).
14 Respondent claimed right to access the property in question under the
15 Deed, however, nobody ever requested access under the provisions of the
16 Deed prior to this action. Respondent, as the servicer of the alleged loan
17 claims that the alleged loan status is 'currently in default' and that the
18 alleged non-judicial foreclosure of the Deed of Trust was initiated
19 pursuant to Chapter 61.24 RCW. This action as being sought in connection
20 with the non-judicial foreclosure procedures.

21 In its Complaint, Respondent listed the Deed of Trust as Exhibit A (**CP p.**
22 **11-30**) and the Promissory Note as Exhibit C (**CP, p. 32-34**), thereby using
23 these Exhibits as foundation and justification for the Complaint.

24 The ORIGINAL Note is of vital importance not only to this Complaint but
25 especially to any claims of alleged property ownership by the Respondent,

1 allegedly secured by the Deed of Trust.
2 The main questions in connection to the Promissory Note are i) has the
3 Note already been satisfied (the debt discharged), voiding Respondent's
4 claims to ownership? ii) did the contractual agreement fulfil all required
5 elements of a lawful and legally binding contract? iii) who actually funded
6 the Note in the first place? iv) Is the Respondent the Holder in due
7 Course? Answers to any of these questions will also shed light on the
8 legality of any foreclosure action with the Complaint filed in the Trial
9 Court. The Note and Deed were signed prior to any disbursement of an
10 alleged loan. Contract law does apply to any form of contractual
11 agreement, as Promissory Note and the Deed of Trust, subject to RCW
12 62A and other regulations.

13 Note: Black's Law Dictionary, 5th edition, defines "**Contract**".
14 The free dictionary by Farlex states: "an agreement with specific terms
15 between two or more persons or entities in which there is a promise to do
16 something in return for a valuable benefit known as **consideration**. (..)
17 The existence of a contract requires finding the following factual elements:
18 a) an offer; b) an acceptance of that offer which results in a *meeting of the
19 minds*; c) a promise to perform; d) a *valuable* consideration (which can be
20 a promise or payment in some form); e) a time or event when performance
21 must be made (meet commitments); f) terms and conditions for
22 performance, including *fulfilling promises*; g) performance."

19 In addition, there is a false statement within the Note as to when the
20 original transaction occurred: was it before or after autographing of Note
21 and Deed by the Appellants? It is also questionable to any claimant to the
22 Note being an authorized 'Holder in due Course' rather than a mere
23 servicer of the loan.

24 The Promissory Note, Respondent claims it cannot find the original of,
25 has been satisfied in full as per EFT instruments rendered to Respondent.

1 Respondent's refusal to accept discharge does not make the discharge
2 invalid, as per UCC (RCW 62A, particularly 3-311; 3-114).

3 The Note and Deed, the non-judicial foreclosure, the Complaint in the
4 Trial Court are all inextricably combined and intertwined. When a Note is
5 altered in any way after it was autographed, the Note becomes void. This
6 alteration can only be detected if and when the original Note is produced
7 as evidence. Thus it is likely that the original Note cannot be found.

8 The Complaint is supported by questionable Exhibits. The declarations
9 supporting the Complaint have been rebutted (see **CP, p.44-45/p.282-**
10 **286**). [See 42 U.S.C. § 1983].

11 The Appellant has, to the best of his knowledge, attempted to not contract
12 with the Trial Court or its officers in order to protect his unalienable rights
13 according to the Constitution of the united States of America and the Bill
14 of Rights. The Appellant is not subject to mere administrative procedures
15 guided by statutes and regulations that ignore the rights of a living person.
16 The right to own property, or the pursuit of happiness, for example.
17 [Related to Respondent and its Counsel see 18 U.S.C. §241.]

18 Genuine issues of material fact remain as to this Complaint as well as to
19 the non-judicial foreclosure.

20 Respondent seeks to justify the Complaint to the Trial Court with the
21 copies of Promissory Note and Deed of Trust in evidence (Ex A to C, **CP**
22 **p. 10-35**), supported by declarations of Respondent's employees. None of
23 them qualifies as first hand material fact witness. Appellant is the only
24 such witness in this case. [Also see 18 U.S.C. §242]

25

1 **II ASSIGNMENTS OF ERROR**

2 ***A Assignment of Error 1***

3 The Trial Court accepted Counsel for Respondent to act as witness
4 for Respondent.

5 Issues Pertaining to Assignment of Error 1

- 6 a. Did allowing Counsel for Respondent to act as a witness
7 deprive the Appellants of due process?
8 b. Statements of Counsel as a witness are considered hearsay.
9 c. Declarations submitted by Respondent have been rebutted.

10 ***B Assignment of Error 2***

11 The trial Court accepted the mere
12 photocopy of a Promissory Note in lieu of the unaltered original.
13 For what we know, the original Note could have been altered,
14 exposing the recorded copy as well as the Note as a fraudulent
15 document.

16 Issues Pertaining to Assignment of Error

- 17 a. A note that is being altered after it is recorded must be
18 considered void ab initio.
19 b. Unless the original Promissory Note is produced together
20 with the Deed of Trust, there is no verified Holder in due
21 Course.
22 c. Allowing a bank to merely offer a publicly accessible copy
23 of a security instrument as proof of ownership of the
24 original, (*a copy that can be procured by anyone without
25 restriction*), is akin to inviting said bank to commit
'security fraud' with automatic amnesty.
d. Any defendant not ascertaining those copies as fraud, is
committing perjury, because he cannot possibly know
whether or not the original Note had been altered interim.
e. Allowed to *not* produce the original Note, but only the
Deed of Trust, will bind the Appellant to a possible forgery
of the Note, should it have been altered since its recording.

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f. The note may have been sold numerous times as it may be permitted by law, however, once fractionalized it is impossible to secure the status of 'Holder in due Course' without procuring the original Note as evidence.

C Assignment of Error 3

The Trial Court disregarded the EFT instruments as being lawful and legal means to discharge debt.

Issues Pertaining to Assignment of Error

- a. The Trial Court erred in not considering the fact that the EFT instruments as submitted are legitimate means of discharging debt, contrary to the bank's employee statement not supported by evidence.
- b. If an EFT instrument *does* discharge debt contrary to the Respondent's unsubstantiated presumption, the Trial Court erred to order judgment in favor of Columbia Bank.
- c. Refusing the EFT instrument as lawful and legal means to discharge debt indicates a breach of original contract by the Respondent as alleged Holder in due Course of the Promissory Note.
- d. Checkbook money issued as a loan, but only legal tender accepted as payments, voids the Note and Deed ab initio.

D Assignment of Error 4

If the original note has been altered, and/or the EFT instrument is proven to be lawful and legal means to discharge debt regardless of Respondent's refusal to accept it as such, does that create sufficient grounds to dismiss not only the Complaint as submitted into the Trial Court, but also the non-judicial foreclosure under the Deed of Trust initiating this Complaint, as void ab initio?

Issues Pertaining to Assignment of Error

- a. Exhibit C, the mere time-stamped copy of a Promissory Note must be disregarded as evidence of authenticity for the original of today.
- b. Ongoing discovery would have encouraged the Respondent to come forward with substantial proof of facts (or disclose its endeavor to hide pertinent facts).

1 ***E Assignment of Error 5***

2 A Promissory Note, a Deed of Trust, signed unilaterally, is a
3 contractual agreement between two parties, and as such subjugated
4 to applicable law, particularly RCW 62A (UCC).

4 Issues Pertaining to Assignment of Error

- 5 a. Respondent's predecessors disclosed its definition of
6 'money' neither in the Promissory Note nor in the Deed of
7 Trust, thereby misleading the Appellants inadvertently or
8 intentionally.
- 9 b. The Note claims that a loan had been issued prior to signing
10 said Note, which did not happen as per date on alleged
11 funds' transfer (escrow).
- 12 c. No lawful consideration was given, yet legal tender is
13 required from the Appellants to 'repay' the alleged loan.
- 14 d. A breach of contract renders the Note void ab initio and
15 therefore also the Complaint based on Note and Deed.

16 ***F Assignment of Error 6***

17 Did the Trial Court err in making the procedures that of
18 administrative nature, thus indicating that the Appellant is subject
19 to the court (as corporate person) and thus the Trial Court's actions
20 are not subject to Constitutions and Amendments?

21 Issues Pertaining to Assignment of Error

- 22 a. Case law supporting the rights of the People appears not to
23 apply to this case.

24 ***G Assignment of Error 7***

25 A trustee is considered to be a neutral party between two parties of
a contract (Note and Deed). Counsel's employer is also named
trustee in said non-judicial foreclosure procedures and is likely to
have a vested interest in a successful foreclosure.

Issues Pertaining to Assignment of Error

- a. Inherent conflict of interest with likely profit agreement
between the parties unless proven otherwise (disclosure of
contractual agreement between the parties).
- b. No purpose for court action besides maximizing
of financial gains for trustee and bank.

1 **III STATEMENT OF THE CASE**

2 **A. Factual Background**

3 This case is directly linked to the photocopy of a Promissory Note, (CP
4 **p.32-34**) [autographed 7/26/02]. The Note says in its introductory text ‘for
5 a loan that I (Appellants) have received’. No loan whatsoever had been
6 received prior to autographing that Promissory Note. Nothing in the
7 verbiage of the adhesion contracts was under control of the Appellants and
8 all was taken in good faith, with no suspicion of foul play or deception as
9 part of the deal.

10 [See **RCW 62A.2-302**]
11 [**Christensen v. Beebe**, 91 P 133, 32 Utah 406 (1907)] [**Carr v. Weiser**
State Bank of Weiser, Idaho 1937, 66 P.2d 1116, 57 Idaho 599]

12 At the time of signing said Note and Deed, Appellants were unaware of
13 the ambiguity of the term ‘Money’ and what ‘fractional reserve banking’
14 is, or the concept of ‘securing of the funds’ with the autographed Note in a
15 state of ongoing bankruptcy of the United States. (**RP p.35/14-35/7**)

16 [**Lewis v. United States**, 680 F 20 1239 (1982)]
17 [**Goff v. Indian Lake Estates Inc.** (1965 Fla App D2) 178 So. 2d 910;
Car v. Duvall (1840) 39 US 77, 10 L. Ed 361]

18 Appellants’ recent knowledge consists of how fractional banking works.

19 See: **HJR (House Joint Resolution) 192**, June 5, 1933, the **Federal**
20 **Reserve Act of 1913**, the statement Congressman Louis T. McFadden,
21 Chairman of the House Banking and Currency Committee, addressed the
22 House on June 10,1932 (**75 Congressional Record 12595-12603**), statutes
23 listed under **UCC (RCW 62A)**, and various publications by the Regional
24 **Federal Reserve Banks** (further referenced in note p.27f, 36 in this brief).

25 The Note has been sold, from Community Mortgage Company,
respectively Evergreen Bank Seattle, to American Marine Bank (Ex.B, CP
p. 29). Respondent’s alleged evidence, or declarations, as submitted into

1 the Trial Court *never* indicate the source of the funds, neither WHO
2 (corporate entity or Appellants) ‘paid for’, ‘came up with’ the funds nor
3 WHAT (checkbook money, fractional reserve banking money) money of
4 account; or (Promissory Note, legal tender) money of exchange was used
5 (*CP p.545*).

6 “‘The law of the land,’ as used in the constitution, has long had an interpretation, which is
7 well understood and practically adhered to. It does not mean an Act of the Legislature; if
8 such was the true interpretation, this branch of the government could at any time take
9 away life, liberty, property and privilege, without a trial by jury.”
10 [**Saco v. Wentworth**, 37 Maine 165, 171 (1852)]

11 Learning of all that after many years of timely ‘paying’ legal tender as
12 monthly payments towards principal plus interest, Appellants felt entitled
13 to stop legal tender payments and to discharge the debt according to the
14 newly discovered lawful and legal means. (*CP p.240-280*)

15 There is no indication that valuable consideration had been given, or that
16 funds other than money of account (‘checkbook money’, ‘fractional
17 reserve banking money’, ‘money created from nothing’) had been issued to
18 the Appellants AFTER THE NOTE WAS VALIDATED. (*CP p.545*)

19 [See *RCW 62A.3-305*]

20 [**Touche Ross Limited v. Filipek**, 778 P.2d 721 (Haw. 1989)]
21 [**Barnsdall Refining Corn. v. Birnam Wood Oil Co.**, 92 F 26 817
22 (1937)]

23 “Banking Associations from the very nature of their business are
24 prohibited from lending credit.” [**St. Louis Savings Bank vs. Shawnee
25 County Bank** 95 U. S. 557 (1877)]

26 No indication is given as to what person, corporate or natural identity,
27 issued the alleged original loan, if any. A bank account allegedly
28 disbursing funds bears no indication to whom initially funded the account
29 and where the original funds came from, or what kind of ‘money’ it is.
30 (*CP p.543-549 EXB*)

1 "A check is merely an order on a bank to pay money." [**Young v. Hembree**, 181 Okla. 202 73 P2d 393 (1937)]

2 "...checks, drafts, money orders, and bank notes are not lawful money of the United States..." [**State v. Neilon**, 73 Pac 324, 43 Ore 168]

3 [**Christensen v. Beebe**, 91 P 133, 32 Utah 406 (1907)]

4 "A bank is not the holder in due course upon merely crediting the depositors account."

5 [**Bankers Trust v. Nagler**, 229 NYS 2d 142, 143 (1962)]

6 The following case also substantiates that it is a Fact of law that the person asserting jurisdiction must, when challenged, PROVE that jurisdiction exists: [**Basso v. U.P.L.**, 495 F. 2d 906 (1974)]

7 [**Central Transp. Co. v. Pullman**, 139 U.S. 60, 11 S. Ct. 478, 35 L. Ed. 55, (1891)]

8 The origin of the loan has not been disclosed; the original bookkeeping entries have not been disclosed. The FDIC is obligated to keep those entries of a failed bank, as for American Marine Bank and also Evergreen Bank Seattle.

9 [See p.25f of **Purchase and Assumption Agreement** between FDIC and COLUMBIA STATE BANK, January 10, 2010; art. 6.1 (a), (ii), (C); 6.2, 6.3, 6.4]

10 Whoever funded the original loan must be presumed the original Holder in due Course. However, that party cannot be identified with the Exhibits the Bank (as servicer of the alleged loan) elected to file with the Trial Court.

11 [**Parsons v. Fox** 179 Ga 605, 176 SE 644 (1934). Also see **Kirkland v. Bailey**, 155 SE 2d 701 (1967) and **United States v. Neifert White Co.**, 247 Fed Supp 878, 879 (1968)] [**Webster Lumber Co v. Lincoln** (1927) 94 Fla1097, 115 So. 498, **Minsky's Follies of Florida, Inc. v. Sennes** (1953) 206 F2d 1;

12 [**O'Neill v. Corporate Trustees, Inc.** (1967) 376 F2d 818]

13 "The word 'money' in its usual and ordinary acceptance means gold, silver, or paper money used as a circulating medium of exchange..." [**Lane v. Railey** 280 Ky 319, 133 SW 2d 75 (1939)]

14 The verbiage of the Promissory Note falsely states that a loan was disbursed prior to signing of the Promissory Note. This only came to the attention of Appellants after paying legal tender to the servicer of the loan, at this time to the Respondent, approximately 8+ years after accepting the

1 agreements as being truthful and under full disclosure of the facts - which,
2 as it turns out after all these years - they are not at all. It turned out that the
3 adhesion contract does not conform to RCW 62A (*RP p.71/15-21*).

4 [**James Edgar v. Mite Corporation and Mite Holdings, Inc.**, No, 80-
5 1188. Argued Nov. 30, 1981 - Decided June 23, 1982. See **Chicago and**
6 **North Western Transportation Company v. Kalo Brick and Tile**
7 **Company**, 450 US 311 (1981); **State of Maryland et al., v. State of**
8 **Louisiana**, 451 US 725 (1981)]

9 **B. Procedural Background**

10 2012 the Respondent, loan servicer claiming to be the Holder in due
11 Course, has initiated a ‘non-judicial foreclosure of the Deed of Trust
12 pursuant to Chapter 61.24 RCW’, and directly related to this process a
13 Complaint for specific performance with the Trial Court under ‘Property
14 Fairness (PFA2)’ (*CP p.7-9*) (also see Introduction, p.). [*RCW 62A.3-*
15 *306*]

16 “Jurisdiction is essential to give validity to the determinations of administrative agencies
17 and where jurisdictional requirements are not satisfied, the action of the agency is a
18 nullity..” [**City Street Improv. Co. v. Pearson** 181 C 640, 185 P. 962
19 (1919). **O’Neill v. Dept. of Professional & Vocational Standards**, 7 Cal
20 App. 2d 393, 46 P2d 234 (1935)]

21 Appellant showed for the record that he is a living being and not a
22 corporation, since only a living being can maintain a property or occupy a
23 house, thereby also accruing a financial interest in said property(ies). (See
24 *RP, p.62/14 to 63/18*); (also *CP p. 332-359*) [*RCW 62A.1-308*]

25 “A corporation cannot sue or otherwise contend with a living natural man
or woman.” [**Rundle v. Delaware & Raritan Canal Company**, 55 U.s.
80 (1852)]

The Respondent was seeking forced entry upon the property under
entitlement by the Deed of Trust. Respondent cited the need for an
appraisal and an environmental site assessment (*CP, p.44*; lines 22-24).

1 Appellant did not see any reason for either to be done for a pending trustee
2 sale: An appraisal was done just recently by the County, the non-judicial
3 foreclosure sale was already indicating a sales price that was below the
4 appraisal of a five acre property with the dwellings as they were in place:
5 Approximately \$ 183,200.00 (*CP p.430*). The only difference was, that the
6 non-judicial foreclosure indicated the sale of 20 acres instead of five, in
7 which case the appraisal as later confirmed, was \$ 225,000.00. An
8 environmental study was not called for, since the property in question was
9 not giving any concerns regarding environmental safety.

10 Updating of accounting records - what records? - to accurately reflect the
11 value of the subject collateral was not submitted to Trial Court. (*CP p.44*,
12 lines 24-26). Furthermore the debt was discharged (*CP p.240-280-EX5,6*)
13 and therefore no reason for (iii) to be able to knowledgeably negotiate any
14 possible settlement (*CP p.45*, lines 1-2). [*RCW 62A.3-305*]

15 “..The right to enjoy property without unlawful deprivation, is...a
16 ‘personal’ right, whether the ‘property’ in question is a welfare check, a
17 home, or a savings account. In fact a fundamental interdependence exists
18 between the person’s right to liberty and the personal right in property.
19 Neither could have meaning without the other.”
20 [*Lynch v. Household finance Corp.*, 405 U.S. 538 (1970)]

21 Respondent was seeking access via court order. Court order was given by
22 Preliminary Injunction, and access acquired without the consent of
23 Appellant.

24 In *Lugar v. Edmondson Oil Co.*, the Supreme Court held that a creditor who used a state
25 prejudgment statute had acted under color of law because, in attaching the debtor’s
property, with help from the court clerk and sheriff, the creditor had further used state
power. The assistance from state officials made the creditor a joint participant in state
action. [*Lugar v. Edmondson Oil Co.*, 457 U.S. 922 (1982)]

The high Courts have further decreed, that Want of Jurisdiction makes “..all acts of
judges, magistrates, U.S. Marshals, sheriffs, local police, all void and not just voidable.”
[*Nestor v. Hershey*, 425 F2d 504 (1969)]

1 **Wichita Council No. 120 of Security Ben. Ass'n v. Security Ben.**
2 **Assn.**, 138 Kan. 841, 28 P.2d 976, 980, 94 A.L.R. 629 (1934); **J. B.**
3 **Barnes Drilling Co. v. Phillips**, 166 Okla. 154, 26 P.2d 766 (1933)]

4 The property was auctioned off at \$162,001.00, even though the appraisal
5 came out at \$225,000.00. (*CP p.503*)

6 “Void judgment is one entered by court without jurisdiction of parties or subject matter or
7 that lacks inherent power to make or enter particular order involved and such a judgment
8 may be attacked at any time, either directly or collaterally.” [**People v. Wade**, 506
9 N.W.2d 954 (Ill. 1987)]

10 “A court may also abuse its discretion when the record contains no evidence to support its
11 decision.” [**MDIC v. Moore**, 952 F.2d 1120, 1122 (9th Cir. 1991)]
12 [**Downes v. Bidwell**, 182 U.S.244 (1901)]

13 Appellant had discharged the debt with EFT instruments which were
14 repeatedly refused to be accepted by the Respondent. [*RCW 62A.3-305*
15 *(2), (3); 3-601*], He also filed affidavits into the Trial Court Docket (*CP*
16 *p.240-280*) confirming the EFT instruments rendered, (ibid. *EX5,6*),
17 confirming the financial interest accrued within the properties in
18 question(ibid. *EX3*), and confirming with affidavit of status (ibid. *EX2*)
19 the Appellant’s reason d’etre. None of those affidavits have been rebutted
20 point by point and thus stand as truth. [*RCW 62A.2-609*]

21 [**United States v. Kis**, 658 F. 2nd, 526, 536. (7th Cir. 1981) Cert. Denied.
22 50 U.S. LW 2169 S.Ct. (March 22, 1982)]

23 [**Embury v. Conner**, 3 N.Y. 511, 517, 53 Am.Dec. 325 (1850). And see,
24 generally, **Davidson v. New Orleans**, 96 U.S. 104, 24 L.Ed. 616 (1877)]

25 NOTE: For a summary of recording quotes, see verbatim recordings, in sequence, as
follows (page/line): **RP5**/1-8; [11/21 PI; 12/1-2, 13-16; 13/12-15; 18/1-10; 19/18-20;
23/5-6; 21/21; 28f/15-2; 32/22-25 objections]; p.34/14-25 law quote; 35/5-11 birthright;
38/13-22 bankruptcy; 48/1-10 recordings; 49/19, 51/15-19 objection; 51/20-25, 52/2
discharge; 52/8-12 prelim. Injunction; 54/23-24 kangaroo court; 62/14to63/18 statement
Canzoni; 71/15-21 fraud; 75/12-15 frivolous matter; 76/12-19 no witnesses; 80/11-18 law
quote; 81/11 to 82/13 law quote; 83/4-13 no witness; 84/3-17 quote affidavit; 85/9-16
reimbursement; 88/6-8 hearsay; 89/13 to 90/6 statement;
91/12-17 quote judge; 93/2-5 judge argument; 93/23 to 94/7 judge’s argument; 94/8-13
judge’s argument; 97/16 to 98/7 defendant’s argument; 98/20-22 arg.; 99/6-12, 20-25
declaration; 100/1 to 101/14 defendant’s argument; 101/15-18 truth; 102/10 to 103/15
case quotes; 104/1-9 P. arg. and D. obj.; 105/14-19 motion denied; 106/2-3 D. stm.;

1 120/10-13 Quote P. hearsay; 120/15-16 hearsay; 121/11 D. Objection; 122/10-17 P.
argument; 123/9-10 P. argument; 125/25 to 126/3 D. reply; 125/14-25 D. reply; 126/1-6,
2 126/16-18, 128/7 to 129/11, 129/25 to 130/2, 130/18-19, 132/13-16 ; quotes D.; 134/19
to 136/22; 136/10-15 Quotes Counsel.

3 IV SUMMARY OF ARGUMENT

4 **1** Non-judicial foreclosure is the reason for the court proceedings (see
5 Declaration of Donna Sayre, *CP p. 44-45*).

6 **2** EFT instruments are legally discharging any alleged debt still
7 outstanding.

8 **3** Evidence entered by Respondent is not admissible in court - no first
9 hand material fact witnesses, no original documents (Promissory Note).

10 Under California law, perfection of a security interest in an instrument can only occur
11 with actual possession of the instrument by the secured party or by an agent or bailee on
his behalf. West's Ann.Cal.Com.Code, § 9304(1)

12 **[In re Staff Mortg. & Inv. Corp., 625 F.2d 281 (9th Cir. 1980)]**
13 **"Banking corporations cannot lend credit." [First National Bank of Amarillo v.**
14 **Slaton Independent School District, Tex Civ App 1933, 58 SW 2d 870]**
15 **"It is not within those statutory powers for a national bank, even though solvent, to lend**
16 **its credit to another in any of the various ways in which that might be done." [Federal**
17 **Intermediate Credit Bank v. L Herrison, 33 F 2d 841, 842 (1929).]**
18 **[First National Bank of Tallapoosa vs. Monroe, 135 Ga 614; 69 S.E.**
19 **1123 (1911)] [RCW 62A3-306]**

20 **4** Appellant does *not* 'voluntarily' surrender to the authority of the Trial
21 Court, 'voluntarily' understand (to) the Court, 'voluntarily' contract with
22 the Court. Appellant insists on the rights given by Constitution and Bill of
23 Rights.

24 "Congress exercises its confirmed powers subject to the limitations contained in the
25 Constitution. If a state ratifies or gives consent to any authority which is not specifically
granted by the Constitution of the United States, it is null and void. State officials cannot
consent to the enlargement of powers of Congress beyond those enumerated in the
Constitution." **[New York v. United States, (1992)]**

"It is not the function of our Government to keep the citizen from falling into error; it is
the function of the citizen to keep the Government from falling into
error." **[Communications Association v. Douds, 339 U.S., 382, 442**
(1950)]

1 "Public officers are merely the agents of the public, whose powers and authority are
2 defined and limited by law. Any act without the scope of the authority so defined does not
3 bind the principal, and all persons dealing with such agents are charged with knowledge
4 of the extent of their authority." [**Continental Casualty Co. v. United States**, 113 F.2d 284, 286
5 (5th Cir. 1940)]
6 [**Cooper v. Aaron**, 358 U.S. Ct. 1401, 3 L. Ed. 2d 5 (1958)][Ibid_358
7 U.S. 1, 78 S. Ct. 1401 (1958)]

8 **5** This process of foreclosure including this Complaint appears as legally
9 authorized extortion to further enrich the Respondent and its allies.

10 "Void judgment is one where court lacked personal or subject matter jurisdiction or entry
11 of order violated due process, U.S.C.A. Const. Amend. 5" [**Triad Energy Corp. v.**
12 **McNell** 110 F.R.D. 382 (S.D.N.Y. 1986)]

13 **6** People do not know how to fight these vultures in court. The statutes,
14 laws, rules and regulations being applied are not there for the People, but
15 rather for the incorporated entities of the same individual name, making
16 them subordinate to Congress and the District of Columbia. Thus the
17 rights of the People are vastly ignored.

18 "Because of what appears to be a lawful command on the surface, many Citizens, because
19 of respect for the law, are cunningly coerced into waving their rights, due to ignorance."
20 [**United States v. Minker**, 350 U.S. 179, 187 (1956)]

21 The courts are encouraged to charge them as subjects to the court,
22 therefore the judges appear to not even be bound to their oath of office
23 anymore, since the accused is treated as a corporation, an artificial entity,
24 not as a living being with guaranteed rights as per the Constitutions and its
25 Amendments.

"There is no such thing as a power of inherent Sovereignty in the government of the
United States. In this country sovereignty resides in the People, and Congress can
exercise no power which they [the sovereign People] have not, by their Constitution
entrusted to it: All else is withheld." [**Julliard v. Greenman**, 110 U.S. 421
(1884)]

"The idea prevails with some, indeed it has found expression in arguments at the bar, that
we have in that country substantially two national governments; one to be maintained

1 under the Constitution, with all of its restrictions; the other to be maintained by Congress
2 outside and independently of that instrument, by exercising such powers [of absolutism]
3 as other nations of the earth are accustomed to.. I take leave to say that, if the principles
4 thus announced should ever receive the sanction of a majority of this court, a radical and
5 mischievous change in our system of government will result. We will, in that event, pass
6 from the era of constitutional liberty guarded and protected by a written constitution into
7 an era of legislative absolutism.. It will be an evil day for American liberty if the theory of
8 a government outside the supreme law of the land finds lodgment in our constitutional
9 jurisprudence. No higher duty rests upon this court than to exert its full authority to
10 prevent all violation of the principles of the Constitution.” [**Downes v. Bidwell**, 182
11 U.S. 244 (1901)]

The oath of office is a quid pro quo contract (*U.S. Const. Art. 6, Clauses 2 and 3*),
12 **Daves v. Lawyers Surety Corporation**, 459 S.W. 2nd. 655, Tex. Civ. App.
13 (1970) In which clerks, officials, or officers of the government pledge to perform
14 (Support and uphold the United States and State Constitutions) in return for substance
15 (wages, perks, benefits). Proponents are subjected to the penalties and remedies or Breach
16 of Contract, conspiracy under Title 28 U.S.C., Sections 241, 242, treason under the
17 constitution at Article 3, Section 3, and intrinsic fraud as per [**Auerbach v.**
18 **Samuels**, 10 Utah 2nd, 152, 349 P. 2nd, 1112, 1114 (1960); **Alleghany**
19 **Corp. v. Kirby**, D.C.N.Y. 218 F. Supp. 164, 183 (1963); **Keeton Packing**
20 **Co. v. State**, 437 S.W. 20, 28 (1968)]

21 **7** Contractual agreements are the basis for the documents supporting the
22 Respondent’s Complaint - the Promissory Note and the Deed of Trust. (*CP*
23 *p. 11-27, 32-34*) There is reasonable doubt as to the validity of the
24 agreements under contract law (RCW 62A). Therefore this court action
25 (and any other actions related to the same documents) must be stopped
immediately, and the documents in question declared void ab initio, with
the necessary consequences for the parties involved.

“A bank has no right to loan the money of other persons.” [**Grow v. Cockrill**,
Ark.1897, 39 S.W. 60, 63 Ark. 418]

“It is not necessary for recession of a contract that the party making the misrepresentation
should have known that it was false, but recovery is allowed even though
misrepresentation is innocently made, because it would be unjust to allow one who made
false representations, even innocently, to retain the fruits of a bargain induced by such
representations.” [**Whipp v. Iverson**, 43 Wis 2d 166 (1969)]

8 The definition of money has not been given in any of the contractual
agreements, yet all depends on this definition of ‘money’ - ‘money of

1 exchange, or money of account' (Also see p.38-39 of this brief).
2 [see **Affidavit of Walker F. Todd** Case No. 03-047448-CZ State of
3 Michigan, Circuit Court for the County of Oakland (2003), quote on p.38].
4 "If any part of the consideration for a promise be illegal, or if there are several
5 considerations for an unseverable promise, one of which is illegal, the promise, whether
6 written or oral, is wholly void, as it is impossible to say what part or which one of the
7 considerations induced the promise." [**Menominee River Co. v. Augustus Spies**
8 **L and C Co.**, 147 Wis 559.572; 132 NW 1122 (1911)]
9
10 Consequently, lacking of full disclosure about the origin of the funds or
11 the nature of the funds is an arbitrary design by the Respondent,
12 respectively its predecessors, executing absolute control over the adhesion
13 contracts. As a result of such arrogance the Respondent is also refusing
14 discharge of the debt under equal terms.
15 "That the assent be to a certain and definite proposition." [**Fincher v. Belk-Sawyer**
16 **Co.**, (1961) Fla App D3 127 So. 2d 130; **Goff v. Indian Lake Estates,**
17 **Inv.** (1965 Fla. App D2) 178 So.2d 910; **Hewitt v. Price** (1969, Fla App
18 D3) 222 So. 2d 247]
19 "The contract is void if it is only in part connected with the illegal transaction and the
20 promise single or entire." [**Guardian Agency v. Guardian Mut. Savings**
21 **Bank**, 227 Wis 550, 279 NW 83 (1938)]
22
23 9 The origin of the alleged funds has never been disclosed. As per Note it
24 says 'in return for a loan that I have received, I promise to pay U.S. \$
25 200,000.00 to the order of the lender' (**CP p. 32**, EX C). While it may
appear as a technicality for the untrained eye, it is very significant that
there was factually no loan handed over prior to signing of said Promissory
Note. If there ever was a loan, the loan was initiated *after* the document
was signed. It was presumed, impressed upon the Appellants that the bank
would do / had done so as the originator of the funds, not merely as an
administrator of funds on behalf of the Appellants.

1 "A fact is material if proof of that fact would have the effect of establishing or refuting
2 one of the essential elements of a cause of action or defense asserted by the parties."
3 [**Hulsman v. Hemmeter Dev. Corp.**, 65 Haw. 58, 61, 70, 937 P. 2d 397,
4 406 (1997)] [Also see **Augusta Iron & Steel Works, Inc. v. Employers**
5 **Ins. of Wausau**, 835 F. 2d. 855,856 (11th Cir. 1988)] "The evidence must be
6 viewed in the light most favorable to the nonmoving party."

7
8 **10** Naturally, whoever is the original Lender of legal tender 'under' the
9 Note, is also the original Holder in due Course. Original bookkeeping
10 entries will confirm.

11 **11** While the Note is secured through the Deed of Trust, with the
12 property as collateral, the signor of the Note, now the owner of the real
13 estate property, is accruing financial interest in the property and home,
14 being the occupant of the premises and thus maintaining, even increasing
15 the value. The premises would, if occupied by an artificial entity, meaning
16 noone, eventually decay and become worthless.

17 **12** The original Promissory Note is a security instrument, not the copy as
18 shown in Exhibit C). Once autographed and given to the bank at Escrow it
19 becomes an asset to the bank, offset by a liability, per a bookkeeping
20 record as per GAAP (Generally Accepted Accounting Principles) and the
21 matching principle, the mandatory bookkeeping procedure for all bank
22 records per their charters and Federal mandate.

23 Defendants have a common law right to demand production of the alleged "note" prior to
24 making any payment on a note. "A promissory note is an 'instrument' as defined by the
25 Uniform Commercial Code." [**In re Kennedy Mortgage Co.** 17 B.R.957
(Bankr,D.N.J. 1982)]

The original bookkeeping entries are now held by the mandatory record
keeping through the FDIC, in receivership for failed banks.

13 Why does the Respondent as the servicing bank in regards to Note and

1 Deed not produce the original Note and/or bookkeeping entries? Answer,
2 they don't have to. The courts appear to readily accommodate corporations
3 to move against the People. Even though these officers of the state have
4 signed an oath of office to uphold the rights of the People, there are so
5 many rules and regulations in place that make it a matter of law to convict
6 these 'People' as mere 'Subjects'.

7 "The Fifth Amendment provision that the individual cannot be compelled to be a witness
8 against himself cannot be abridged." [**United States v. Sullivan**, 274 U.S. 259
(1927)]

9 "The laws of Congress in respect to those matters [outside of Constitutionally delegated
10 powers] do not extend into the territorial limits of the states, but have force ONLY in the
11 District of Columbia, and other places that are within the exclusive jurisdiction of the
12 national government." [**Caha v. United States**, 152 U.S. 211 (1894)]

13 "The United States adopted the Common Laws of England with the Constitution."
14 [**Caldwell v. Hill**, 176 S.E. 383 (1934)]

15 "The government of the state and its officers are constitutionally required, affirmed by
16 oaths taken, to uphold the Constitutions and to serve the Citizens, who are the Sovereign,
17 and not to defraud those Citizens." "There is no valid, Constitutionally compliant state
18 law, statute, rule or code that states an American Citizen and Citizen of the state under
19 duress, threat, and against his will: (a) obtain permission from the State to engage in
20 Rights guaranteed in the Constitution." [**In Re Sawyer**, 124 U.S. 200 (1888);
21 **U.S. v Will**, 449 U.S. 200, 216, 101 S. Ct. 471, 66 L. Ed. 2d 392, 406
22 (1980); **Cohens v. Virginia**, 19 U.S. (6 Wheat) 264, 404, 5L. Ed. 257
23 (1821)]

24 "Allegations such as those asserted by petitioner, however inartfully pleaded, are
25 sufficient"..."which we hold to less stringent standards than formal pleadings drafted by
lawyers." [**Jenkins v. McKeithen**, 395 U.S. 411, 421 (1959)]

V ARGUMENT

A. Assignment of Error 1

The Trial Court accepted Counsel for Respondent to act
as witness for Respondent.

Issues Pertaining to Assignment of Error 1

a. *Did allowing Counsel for Respondent to act as a witness
deprive the Appellants of due process?*

The statements of alleged first hand material fact witnesses have been

1 rebutted in several documents submitted into Trial Court. Counsel, in oral
2 statements referred to past events and to statements given in declarations.
3 He also, on several occasion offered his own interpretation of events (*RP*
4 *p. 49/11-19*). Should the Court accept those hearsay statements as truth, it
5 will 'create facts' and thus violate due process.

6 "Trier of fact is at liberty within bounds of reason to reject entirely the uncontradicted
7 testimony of a witness which does not produce conviction in his mind, particularly where
8 the testimony comes from an interested party." [*Joseph v. Donover Co.*, 261 F.2d
9 812 (1958)]

10 *b. Statements of Counsel as a witness are considered hearsay.*

11 Paraphrasing alleged events - as if counsel was a witness of these alleged
12 events having taken place - must be declared as hearsay.

13 Counsel, as proven by his own words, has a limited comprehension of the
14 facts regarding this case. (*RP. p.88/1-13*) Therefore all statements of his
15 that relate directly or indirectly to alleged events within this case, even
16 when repeating in his own words what was allegedly said by bank
17 employees must be considered hearsay.

18 "An attorney for the plaintiff cannot admit evidence into the court. He is either an
19 attorney or a witness", and, "Statements of counsel in brief or in argument are not facts
20 before the court." And "Statements of counsel in brief are not sufficient for motion to
21 dismiss or for summary judgment," [*Trinsey v. Pagliaro*, D.C.Pa. 1964, 229 F.
22 Supp.647]

23 *c. Declarations submitted for Respondent have been rebutted.*

24 Appellant has rebutted all of the alleged witnesses statements. Therefore
25 they should be dismissed [*CP p. 281-286, 448-449, 240-280, 326-359*].

Once rebutted and not challenged, the court ought to dismiss the case.

Without a first hand material fact witness the due process clause is not

1 upheld. There also is no subject matter jurisdiction.

2 [**Dupuy v. Tedora**, 15 So.2d 886, 890, 204 La. 560 (1943)] [**Thompson v**
3 **Tolmie**, 2 Pet. 157, 7 L. Ed. 381 (1829); and **Griffith v. Frazier**, 8 Cr. 9,
4 3 L. Ed. 471 (1814)] [**Loren v. Blue Cross & Blue Shield of Michigan**,
5 No. 06-2090, 2007 WL 2726704 at *7 (6th Cir. Sept. 20, 2007)] Id.(citing
6 **Central States Southeast & Southwest Areas Health and Welfare Fund v.**
7 **Merck-Medco Managed Care**, 433 F.3d 181, 199 (2nd Cir. 2005)]

8
9 **B. Assignment of Error 2**

10 The trial Court accepted the mere photocopy of a Promissory Note
11 in lieu of the unaltered original. For what we know, the original
12 Note could have been altered, exposing the recorded copy as well
13 as the Note as a fraudulent document.

14 *Issues Pertaining to Assignment of Error*

15 *a. A Note that is being altered after it is recorded*
16 *must be considered void ab initio.*

17 The truth to the adage ‘absolute power corrupts absolutely’ has been
18 confirmed times and again not only in a world of noted dictatorship but
19 also in countries such as the united States of America. It seems odd that a
20 mere timed photocopy of a document - the original of which is prone to
21 being altered for monetary gain - is still allowed to be represented in court
22 as sufficient evidence for a merely alleged fact. This is particularly
23 ‘strange’ when alleged Counsel for the Respondent blatantly states ‘*It is*
24 *only the note that was lost in the transition after American Marine Bank*
25 *was taken over by the FDIC*’ (**RP p.123/9-10**). Hard to believe that a
valuable instrument as such cannot be located. Given the circumstances it
is very unlikely that the Note has *not* been altered. Putting the burden of
proof onto the Appellant seems to be not only unjust, but outright
ridiculous. (Also see point d.) (Also see **RP, p. 120/10-13 and 15-16**,
statements by Counsel) -20-

1 As we have said of other un-sworn statements which were not part of the record and
2 therefore could not have been considered by the trial court: "Manifestly, [such statements]
3 cannot be properly considered by us in the disposition of [a] case." [United States v.
4 Lovasco (06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752; Under
5 no possible view, however, of the findings we are considering can they be held to
6 constitute a compliance with the statute, since they merely embody conflicting *statements*
7 of *counsel* concerning the facts as they suppose them to be and their appreciation of the
8 law which they deem applicable, there being, therefore, no attempt whatever to state the
9 ultimate facts by a consideration of which we would be able to conclude whether or not
10 the judgment was warranted. Gonzales v. Buist. (04/01/12) 224 U.S. 126, 56
11 L. Ed. 693, 32 S. Ct. 463]

12 *b. Unless the original Promissory Note is produced together*
13 *with the Deed of Trust, there is no verified Holder in due*
14 *Course.*

15 The Deed of Trust is securing a collateral to a Note. Oddly enough the
16 Deed securing the Note seems to be sufficient to allow any court to
17 guarantee foreclosure even though the Note has not been procured.

18 United States Court of Appeals, Ninth Circuit.: To have the legal power to foreclose
19 mortgage, trustee appointed to initiate foreclosure must have authority to act as holder, or
20 agent of holder, of both the deed of trust or mortgage that transfers legal title in the
21 property as collateral, and the promissory note to repay the loan, because a holder of the
22 note alone is only entitled to repayment, and does not have the right under the deed to use
23 the property as means of satisfying repayment, while a holder of the deed alone does not
24 have right to repayment and, thus, does not have interest in foreclosing on property to
25 satisfy repayment. [Cervantes v. Countrywide Home Loans, Inc.,
September 7, 2011 656 F.3d 1034; United States Court of Appeals, Ninth
Circuit]

This is especially strange given the fact that the mortgage crisis has been
caused by a derivative market out of control, caused by unbridled greed.

The original Notes had been bundled and sold repeatedly to the point that
financial institutions would not be able to locate them any longer. The
collapse was caused by same institutions that had then to be bailed out by
the People, allegedly being too big to fail, only to be allowed to get even
bigger and surely to fail again, as most recent history shows.

1 How much longer will the courts permit this charade to continue?

2 [**Grow v. Cockrill**, Ark.1897, 39 S.W. 60, 63 Ark. 418. See, also, **Keyser**
3 **v. Hitz**, Dist.Col.1883, 2 Mackey, 513]

4 *c. Allowing a bank to merely offer an old copy of a security*
5 *instrument as proof of ownership of the original, is akin to*
6 *inviting said bank to commit 'security fraud' with*
7 *automatic amnesty.*

8 [Also see b.) above.] The Promissory Note has an initial declaration that
9 cannot be supported by actual facts. It says “for a loan that I have
10 reveived” (Exhibit C of the Complaint, top of first page)(**CP p.32**).

11 A banking institution has the status of a ‘person’ but any action through
12 this ‘person’ is executed by ‘employees’ acting in behalf of a corporation.

13 “Under the deed of trust act, the beneficiary must hold the promissory note.” [**Bain v.**
14 **MERS**; No. 86206-1 40 9th Cir.(2012) [Bain v. Metropolitan Mortg.
15 Group, Inc. 175 Wash.2d 83 (August 16, 2012)]

16 The courts allow a mere copy as stand-in for the original, no questions
17 asked. In this particular case the original Note was signed on July 27,
18 2002. Thus the original Note has been around for over ten years and
19 conveniently cannot be found when it matters the most. Little Red Riding
20 Hood, open your eyes! Short of producing the original Note in any
21 proceedings related to a (non-judicial) foreclosure, fraud upon the People
22 is therewith sanctioned by the courts.

23 *d. Any defendandt not ascertaining those copies as fraud,*
24 *is committing perjury, because he cannot possibly know*
25 *whether or not the original Note had been altered interim.*

26 Generally, the original signor is tricked into admitting to an autograph on a
27 mere photocopy as his (which it is not, it is a photocopy of a signature,
28 hence a ‘forgery’). He is also tricked into admitting to the ‘old’ copy of the

1 Note as being identical to the original Note as it is of today. This is
2 perjury in fact. There is no way that the signor of the original Note (the
3 Appellant in this case) can confirm authenticity unless the *unaltered*
4 original Promissory Note is produced and examined for fraudulent
5 conversion and/or alterations. Counsel says it best, (*RP p.120/10-13*).
6 The autographs are to be authenticated as well. Is that too much asked for
7 a security instrument valued \$200,000.00?
8 Why is this admissions/perjury-trap going unpunished? Because the real
9 punishment of the Defendant is already much greater than any perjury
10 could indicate. 99 out of 100 times the Defendant does not know what to
11 do in court. He will inadvertently 'allow' the proceedings to get to
12 (Summary) Judgment. Not because it is justified, but because he is a Patsy
13 from the very beginning. The Respondent does not have a 'case'. The
14 action of non-judicial foreclosure paired with this 'Complaint for Special
15 Performance' is a ridiculous charade to uphold the status quo, which is to
16 deprive the People of their rights to property, fruits of their labor, and their
17 pursuit of happiness.
18 There is no interest for the adversary to implicate himself to possible
19 fraud. Thus the Note will be unavailable regardless its whereabouts.
20 As long as the Respondent in this case is not obligated to produce the
21 original (be it bookkeeping entries or Promissory Note), the doors to fraud
22 are not only wide open - there are no more doors at all.
23 Has any 'loan' been received? Prior to signing the Note definitely not, as
24 the only first hand material witness between the parties admittedly knows

1 and can also prove. How about afterwards? Had the Note been altered
2 without the Appellant's knowledge? There is no way of knowing short of
3 producing the original Note. Are the courts justly called Kangaroo courts?
4 And the few times it gets to an appeal, the cards are already stacked
5 against the Defendant, because this hole business is an inside job, executed
6 by members of the 'BAR' (professional body of lawyers), with the natural
7 person daring to go without 'representation' in court, sui juris, and as such
8 exposed to all the rules and obligations set into place, you guessed it, by
9 members of the BAR, the courts ruled by...

10 [**Haines v Kerner**, 404 U.S. 519, 520 reh'g denied, 405 U.S. 948 (1972)]

11 In order to 'understand' (meaning of comprehending) it requires
12 knowledge the Defendant just doesn't (yet) have. Oddly enough though,
13 as soon as he 'understands' in Trial Court, he has lost the case because he
14 has then stood underneath the authority of said court without even
15 knowing it.

16 [**Hale v. Henkel**, 201 U.S. 43 at 74 (1906)]

17 To reiterate, unless the original Promissory Note has been produced
18 together with the original bookkeeping entries disclosing the name of the
19 person actually funding said alleged loan, deception and fraud before the
20 Appellants and thus also before this court goes undetected.

21 "There is a clear distinction between an individual and a corporation, and the latter, being
22 a creature of the State, has not the constitutional right to refuse to submit its books and
23 papers for an examination at the suit of the State; and an officer of a corporation which is
24 charged with criminal violation of a statute cannot plead the criminality of the corporation
25 as refusal to produce his books." [**Hale v. Henkel**, 201 US 43 (1906)]

1 e. *Allowed to not produce the original Note, but only the*
2 *Deed of Trust, will bind the Appellant to a forgery of the*
3 *Note, should it have been altered since its recording.*

4 The Appellant wishes to state that nothing short of showing the original
5 Promissory Note together with the original bookkeeping entries (as per
6 GAAP matching principle) by the ‘alleged funding bank’ recording it as an
7 asset prior to funding an account in the Appellant’s name will allow actual
8 facts being introduced as evidence into court. Everything else are smoke
9 screens to not only thwart the Appellant, but also to pull the wool over the
10 judges’ eyes.

11 “Since no one is able to produce the “instrument” there is no competent evidence before
12 the Court that any party is the holder of the alleged note or the true holder in due course.
13 New Jersey common law dictates that the plaintiff prove the existence of the alleged note
14 in question, prove that the party sued signed the alleged note, prove that the plaintiff is the
15 owner and holder of the alleged note, and prove that certain balance is due and owing on
16 any alleged note. Federal Circuit Courts have ruled that the only way to prove the
17 perfection of any security is by actual possession of the security.” **Matter of Staff**
18 **Mortg. & Inv. Corp.**, 550 F.2d 1228 (9th Cir 1977)

19 Since the Appellant does not have control over the Note after it was
20 signed, he cannot be held responsible for the state or the whereabouts of
21 the Note. Considered lost or altered (stolen) opens the door to fraud.

22 Note: The question thus is never about the authenticity of a signature of the Note as
23 shown in a mere timed photocopy of such Note, but rather, how can the Defendant in such
24 a case be made responsible to hold the accuser harmless of any alterations after the fact?
25 This ‘fact’ cannot be proven at all without producing the original Note, regardless the
admission to having autographed said Note, or of the autograph being the fraud. That is
not really the question. It rather is, how can a copy of a document, made years in the past,
vouch for authenticity of the same document years in the future? Knowing that any
alteration equals fraud making that Note void ab initio, the proof of innocence to implied
fraud lies solely with the Respondent. How can it be shifted towards the Appellant? Only
by deception and attempts to influence the court - with a red herring.

26 f. *The Note may have been sold numerous times as it may be*
27 *permitted by law, however, once fractionalized it is*
28 *impossible to secure the status of ‘Holder in due Course’*
29 *without procuring the original Note as evidence.*

1 As it happened, many Promissory Notes secured by a Deed of Trust appear
2 to have been bundled, sold and fractionalized into the derivatives markets
3 by the servicing banks. Humpty Dumpty had a great fall...

4 The courts bound to uphold common law are the last bastion between that
5 'one world order' - dictated by a few with financial slavery put into place
6 at last - and the free nation as it was envisioned by the Founders when
7 they formulated the Declaration of Independence, supported by the
8 Constitution and its Bill of Rights, set in motion for a better future.

9 It is a Maxim {an established principle} of the Common Law that when an act of
10 Parliament is made for the public good, the advancement of religion and justice, and to
11 prevent injury and wrong, the King shall be bound by such an act, though not named; but
12 when a Statute is general, and any prerogative Right, title or interest would be divested or
13 taken from the King (or the People) in such case he shall not be bound. [**People v.**

14 **Herkimer**, 15 Am. Dec. 379, 4 Cowen 345 (N.Y. 1825)]
15 "It is true that at [English] common law the duty of the Attorney General was to represent
16 the King, he being the embodiment of the state. But under the democratic form of
17 government now prevailing the People are King, so the Attorney General's duties are to
18 that Sovereign rather than to the machinery of government." [**Hancock v. Terry**
19 **Elkhorn Mining Co. Inc.**, Ky., 503 S.W. 2d 710. Ky. Const. §4 (1973),
20 **Commonwealth Ex. Rel. Hancock v. Paxton**, Ky., 516 S.W. 2d. Pg867
21 [2] Cl 3 (1974)]
22 [**Harcourt v. Gaillard**, 25 U.S. (12 Wheat, 523, 526, 527) (1827)]

17 C *Assignment of Error 3*

18 The Trial Court disregarded the EFT instruments as being
19 lawful and legal means to discharge debt.

20 Issues Pertaining to Assignment of Error

21 a. *The Trial Court erred in not considering the fact that the*
22 *EFT instruments as submitted are legitimate means of*
23 *discharging debt, contrary to the bank's employee*
24 *statement not supported by evidence.*

25 As can be ascertained with the quotes given here, pointing out lawful
definitions and statutes that confirm that the Appellant is well within his

1 rights to issue a valid EFT instrument to discharge debt on a closed
2 account, as much as he is to sign a Promissory Note. Are two different
3 measuring sticks used in the trial court?

4 **Note:** See Amendments to the Constitution of the United States of America, particularly
5 Amendment 4 to the Constitution of the United States of America: "The right of the
6 people to be secure in their persons, houses, papers, and effects, against unreasonable
7 searches and seizures, shall not be violated," Amendment 5: "No person shall .. be
8 deprived of life, liberty, or property, without due process of law". Amendment 7: "In suits
9 at common law, where the value in controversy shall exceed twenty dollars, the right of
10 trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined
11 in any Court of the United States, than according to the rules of the common law."
12 Amendment 14, Section 1. The terms "Money" and "Tender" had their origins in Article
13 1, Sec. 8 and Article 1, Sec. 10 of the Constitution of the United States.
14 12 U.S.C. §152 refers to "gold and silver coin as lawful money of the United States"
15 (repealed). The term "**legal tender**" was originally cited in 31 U.S.C.A. §392 and is now
16 re-codified in 31 U.S.C.(A.) §5103.

17 Also see RCW 62A.3-603(b), 62A.2-609, 62A.3-305, 62A.1-201 (24), 62A.2-302; 62A.3-
18 114;

19 The term "checkbook money" is described in the book "I Bet You Thought", published
20 by Federal Reserve Bank of New York, as follows: "Commercial banks create checkbook
21 money whenever they grant a loan, simply by adding deposit dollars to accounts on their
22 books to exchange for the borrowers IOU..". And on page 5: "Money is any generally
23 accepted medium of exchange, not simply coin and currency. Money *doesn't* have to be
24 intrinsically valuable, *be issued by a government* or be in any special form." On page 7 it
25 states: Checks aren't money in themselves. They are simply order forms instructing
commercial banks (..) to move transactions balances, which are money, from one account
to another. Those checkbook deposits are bookkeeping entries on the ledgers and in the
computers of depository institutions. Banks don't keep cash in checking accounts and
don't transfer currency or coin when acting on a check's instructions. Checkbook balances
may be transferred between accounts as bookkeeping entries." (Emphasis added)

As per Modern Money Mechanics, published by Federal Reserve Bank of Chicago,
(page 3): "Changes in the quantity of money may originate with actions of the Federal
Reserve System (the central bank), depository institutions (principally commercial banks),
or the public. The major control, however, rests with the central bank." (page 3, second
paragraph second column:) "The actual process of money creation takes place primarily
in banks. As noted earlier, checkable liabilities of banks are money. These liabilities are
customers' accounts. They increase when customers deposit currency and checks and
when the proceeds of loans made by the banks are credited to borrowers' accounts." p.3:
"Transaction deposits are the modern counterpart of bank notes. It was a small step from
printing notes to making book entries crediting deposits of borrowers, which the
borrowers in turn could "spend" by writing checks, thereby "printing" their own money."
(And the footnote on the same page:) "In order to describe the money-creation process as
simply as possible, the term 'Bank' used in this booklet should be understood to
encompass all depository institutions. Since the Depository Institutions Deregulation and
Monetary Control Act of 1980, all depository institutions have been permitted to offer

1 interest-bearing transaction accounts to certain customers. .. Thus all such institutions, not
2 just commercial banks, have the potential for creating money." (Emphasis added) And:
3 "What Makes Money Valuable? In the United States neither paper currency nor deposits
4 have value as commodities. Intrinsically, a dollar bill is just a piece of paper, deposits
5 merely book entries." (Emphasis added). **According to Modern Money Mechanics, the**
6 **asset's offsetting liability could get issued as a 'loan' to somebody else, funding**
7 **another account with check-money and creating monthly payments in return..**
8 Also see: "Money", as per **Black's Law Dictionary, 9th edition**; Black's Law Dictionary,
9 **5th edition**: "Agreement, Bank, Banker, Borrower, Concealment, Consideration,
10 Contract, Loan, Credit, Federal Reserve Act, Lender, Person, Promissory note. Black's
11 Law Dictionary, **6th edition**: Bank credit, Colorable transaction.

12 *b. If an EFT instrument does discharge debt contrary to the*
13 *Respondent's unsubstantiated presumption, the Trial Court*
14 *erred in ordering judgment in favor of Columbia Bank.*

15 As per the quoted definitions and statutes, contract law, a case can be
16 made in behalf of the Appellant. Rather substantial 'genuine issues of fact'
17 are remaining, one, if not the most important of all, the fact that under
18 equal terms of a contract, like funds can be paid (discharged) with like
19 funds. Since the funds allegedly funding the loan are of 'checkbook
20 money' nature, it is illegal to *not* accept same kind to discharge debt. The
21 bank employees, not aware of the matter at hand, follow their supervisors'
22 directions without actually comprehending what they are doing. Thus the
23 UCC (RCW 62A) contract law and also the banking institution's bylaws
24 would need to be consulted. Ongoing discovery may also have shown the
25 bank's refusal to cooperate, if it not already has.

26 "An actual assent by the parties upon exactly the same matters is indispensable to the
27 formation of the contract." [**Bullock v. Hardwick** (1947) 158 Fla 834, 30 So.
28 2d 539. **Hettenbaugh v. Keyes Ozon-Fincher Ins. Inc.** 1962 Fla App
29 D3) 147 So. 2d 328. **General Finance Corp v. Stratton** 1963 Fla App
30 D1, 156 So. 2d 884]

31 *c. Refusing the EFT instrument as lawful and legal means to*
32 *discharge debt indicates a breach of original contract by*
33 *the Respondent as alleged Holder in due Course of the*
34 *Promissory Note.*

1 The EFT instrument, as authorized and submitted to the Respondent to
2 cancel a specific debt, did neither have a fatal flaw nor a defect, nor was it
3 returned in a timely manner to correct any such errors. Thus the debt has
4 been discharged [*RCW 62A.3-311*] Discharging a debt with like payment
5 is allowable means by any contract. This has been done appropriately by
6 the Appellants (multiple times) to discharge the debt associated with the
7 Promissory Note and Deed of Trust at issue. Refusal to honor the
8 discharge is a breach of contract. Thus the obligation has either been
9 satisfied, or the contract is now null and void.

10 *d. Checkbook money issued as a loan, but only legal tender*
11 *accepted as payments, voids the Note and Deed ab initio.*

12 It is now a fact that the term 'money' is open to wide interpretation. Since
13 there is no bank disclosure to the 'kind of money' issued as an alleged
14 loan, we need to consult the documents at hand. They tell us that money of
15 exchange or money of account could have been transmitted.

16 [see **Affidavit of Walker F. Todd** Case No. 03-047448-CZ State of
17 Michigan, Circuit Court for the County of Oakland (2003) quoted on p.38f].

18 Once we consult the specialists in regards to money, the Federal Reserve
19 Banks and its publications, we discover that money can officially be
20 created out of 'nothing', called 'fractional reserve banking'. If 'nothing'
21 can fund a loan, how can 'nothing' be lawful and legal consideration? If
22 'nothing' is at the base of an interest rate of, for example 6%, how much is
23 paid for a loan for 30 years repayment time with interest accrued?

24 [**Durante Bros. & Sons, Inc. v. Flushing Nat 'l Bank**, 755 F2d 239,
25 Cert. denied, 473 US 906 (1985).*Ibid* (25); **Sedima, SPRL v. Imrex Co.**,
473 US 479 (1985)]

1 Initial sum loaned by the bank: \$0 ('nothing', showing as a two with five
2 zero's on account). This, theoretically, would be fraud, under RICO to be
3 prosecuted immediately. Money laundering in comparison would be a
4 mild offense, since there is something used to become something else,
5 instead of 'nothing' to become 'something'.

6 That something from 'nothing' would then be without any lawful valuable
7 consideration by the entity allegedly supplying that 'something'.

8 [see Durante Bros. And Sons, Inc. v. Flushing Nat'l Bank, above.]

9 When we look at the monetary situation in this country, it appears that we
10 are in a permanent bankruptcy. We cannot pay off debt, we can only
11 discharge it. Given the current struggles to even balance a budget, given
12 the fact that the debt ceiling must be increased (inflated) faster and faster
13 in order to stay within borrowing range (backed with the full faith and
14 credit - the People's work force), thereby creating even more debt as we
15 speak. Has anybody ever asked why that has become to be a reality in this
16 world subject to finance? We, the People, are too busy to survive day by
17 day, it seems, to even ask this question. The courts are too busy to find
18 error in protocol and procedure, it seems, to recognize any errors in the
19 judicial system itself.

20 "In Europe, the executive is synonymous with the sovereign power of a state... where it is
21 too commonly acquired by force or fraud, or both... In America, however the case is
22 widely different. Our government is founded upon compact. Sovereignty was, and is, in
23 the people." [Glass v. The Sloop Betsey (The Betsey) 3 Dall 6 (1794)]

23 The defendants are treated as corporations rather than 'of the People' and
24 thus denied Constitution and Amendments, except that most government

1 employees or their supervisors have sworn an oath of office on the
2 Constitution of the united States of America in order to initially fill their
3 post.

4 “The powers of the legislature are defined, and limited; and that those limits may not be
5 mistaken, or forgotten, the constitution is written. To what purpose are powers limited and
6 to what purpose is that limitation committed to writing, if these limits may, at any time, be
7 passed by those intended to be restrained? The distinction between a government with
8 limited and unlimited powers, is abolished, if those limits do not confine the persons on
9 whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation. It
10 is a proposition too plain to be contested, that the constitution controls any legislative act
11 repugnant to it; or, that the legislature may alter the constitution by an ordinary act.” U.S.
12 Supreme Court in [**Marbury v. Madison**, 5 U.S. 368 (1803)]
13 “The District of Columbia is not a ‘state’ within the meaning of the constitution.”
14 [**Hepburn and Dundas v. Ellzy**, 2 Cranch 445 (1805).]

15 It has been established that the alleged funds issued through that account
16 are indeed money of account (checkbook money). (*CP p.545*)

17 Note: See (CP p.545 exB), loan disbursement statement, conveniently omitting the date of
18 the ‘Draw #1 - Closing Costs’ allegedly issued at closing, referring to loan #9098011077.
19 However, the initial date of this document is 9/13/02, more than five weeks after
20 ‘closing’. Thus this document is to be disregarded as proof of disbursing anything else but
21 checkbook money of unknown origin, via whom? The document does not say either.

22 Therefore by insisting on legal tender only as repayment of the loan the
23 contractual requirement of equal terms is disregarded altogether, from the
24 very beginning [See *RCW 62A.2-302*].

25 This ambiguous term of ‘money’ did not indicate the nature of the funds
issued, and ignorance of the Appellant at that time prevented him to
discover that lack of disclosure, but it does not protect the issuing bank
(adhesion contract) and its successors from its accountability for its own
omissions of facts. Hence the options are twofold: Accept the discharge of
the debt, or acknowledge that the contract is voidable, or rather, void ab
initio.

1 When deciding a motion for summary judgment, a court must resolve all ambiguities and
2 draw all reasonable inferences in the light most favorable to the party opposing the
3 motion. [**Twin laboratories. Inc. v. Weider Health & Fitness**, 900 F.2d
4 566,568 (2d Cir.1990); **Shockley v. Vermont State Colleges**, 793 F.2d
5 478,481 (2d Cir. 1986)]

4 **D Assignment of Error 4**

5 If the original note has been altered, and/or the EFT instrument is
6 proven to be lawful and legal means to discharge debt regardless of
7 Respondent's refusal to accept it as such, does that create sufficient
8 grounds to dismiss not only the Complaint as submitted into the
9 Trial Court, but also the non-judicial foreclosure under the Deed of
10 Trust initiating this Complaint, as void ab initio?

11 Issues Pertaining to Assignment of Error

12 a. *Exhibit C, the mere time-stamped copy of a Promissory
13 Note must be disregarded as evidence of authenticity for
14 the original of today.*

15 As has been argued previously, an original Promissory Note that is by
16 court order permitted to remain hidden will not disclose whether it was
17 altered or not. As a piece of paper it has become quite valuable. The bank
18 is allowed to sell said Note without disclosure of sales. However, once the
19 Note is called, respectively its collateral secured by the Deed, it should be
20 examined for authenticity. And a mere outdated copy will not do.

21 Additionally, only the amount paid for the Note when changing hands,
22 plus additional expenses accrued can be claimed (and again, checkbook
23 money with checkbook money!). With no disclosure of the transaction to
24 allegedly obtain the Note, with no disclosure of the Note itself, the
25 'holder' then must be presumed to be a 'loan servicer' or a 'third party
debt collector' not actually holding the original Note.

b. *Ongoing discovery would have encouraged the Respondent
to come forward with substantial proof of facts
(or disclose its endeavor to hide pertinent facts).*

1 Having no valid first hand material fact witness - as their statements have
2 been rebutted in the essential parts, and their employment history does not
3 include the prior holders in due course, namely Evergreen Bank Seattle
4 and Community Mortgage Company - the Complaint should have been
5 dismissed from the start for lack of due process and subject matter
6 jurisdiction. Why have accounts been opened and closed without the
7 Appellants' permission?

8 'This court has never attempted to define with precision the words 'due process of law.' .
9 . . It is sufficient to say that there are certain immutable principles of justice which inhere
10 in the very idea of free government which no member of the Union may disregard.'
11 Holden v. Hardy, 169 U. S. 366, 389, 42 L. ed. 780, 790, 18 Sup. Ct. Rep. 383, 387. 'The
12 same words refer to that law of the land in each state, which derives its authority from the
13 inherent and reserved powers of the state, exerted within the limits of those fundamental
14 principles of liberty and justice which lie at the base of all our civil and political
15 institutions.' Re Kemmler, 136 U. S. 436, 448, 34 L. ed. 519, 524, 10 Sup. Ct. Rep. 930,
16 934. 'The limit of the full control which the state has in the proceedings of its courts, both
17 in civil and criminal cases, is subject only to the qualification that such procedure must
18 not work a denial of fundamental rights or conflict with specific and applicable provisions
19 of the Federal Constitution.' West v. Louisiana, 194 U. S. 258, 263, 48 L. ed. 965, 969,
20 24 Sup. Ct. Rep. 650, 652. **Twining v. State of N.J.**, 211 U.S. 78, 101-02, 29 S. Ct.
21 14, 20-21, 53 L. Ed. 97 There are certain general principles, well settled, however, which
22 narrow the field of discussion, and may serve as helps to correct conclusions. These
23 principles grow out of the proposition universally accepted by American courts on the
24 authority of Coke, that the words 'due process of law' are equivalent in meaning to the
25 words 'law of the land,' contained in that chapter of Magna Charta which provides that
'no freeman shall be taken, or imprisoned, or disseised, or outlawed, or exiled, or any
wise destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment
of his peers or by the law of the land.' Den ex dem. Murray v. Hoboken Land & Improv.
Co. 18 How. 272, 15 L. ed. 372; Davidson v. New Orleans, 96 U. S. 97, 24 L. ed. 616;
Jones v. Robbins, 8 Gray, 329; Cooley, Const. Lim. 7th ed. 500; McGehee, Due Process
of Law, 16.' **Ibid.** 100, 29 S. Ct. 14, 20, 53 L. Ed. 97 (1908)]

"In this State as well as in all republics, it is not the Legislature, however transcendent its
powers, who are supreme - but the people - and to suppose that they may violate the
fundamental law, is, as has been most eloquently expressed, to affirm that the deputy is
greater than his principal; that the servant is above his master, that the representatives of
the people are superior to the people themselves; that men acting by virtue of delegated
power may do not only what their powers do not authorize, but what they forbid."

Waring vs. City of Savannah, 60 Georgia, Page 93, 1878 WL2560]

"We have in our political system [two governments] a government of the United States
and a government of each of the several [50] states. Each is distinct from the other and
each has a citizen of its own.." Also p.254. "There is in our Political System [two
governments], a government of the Several [50] States AND a government of the United

1 States. Each is distinct from the other and has citizens of its own.” [**United States v. Cruikshank**, 92 U.S. 542, 23 L. Ed 588 (2 Otto 542) (1875); p.254, *ibid.*]

2 “It is manifest it was not left to the legislative power to exact any process which might be
3 devised. The [due process] article is a restraint on the legislative as well as on the
4 executive and judicial powers of government, and cannot be so construed as to leave
5 congress free to make any process ‘due process of law,’ by its mere will.” [**Murray’s
6 Lessee v. Hoboken Imp. Co.**, 18 How. (59 U.S.) 272, 276 (1855);
7 **French v. Barber Asphalt**, 181 U.S. 324, 330 (1900)]

8 “Due process of law does not mean merely according to the will of the Legislature, or the
9 will of some judicial or quasi-judicial body upon whom it may confer authority. It means
10 according to the law of the land, including the Constitution with its guaranties and the
11 legislative enactments and rules duly made by its authority, so far as they are consistent
12 with constitutional limitations.” [**Ekern v. McGovern**, 154 Wis. 157, 142
13 N.W. 595, 620 (1913)]

14 CEO and President of Columbia Bank are the ones to summarily be held
15 responsible for the conduct of people (employees) within the artificial
16 person called Columbia State Bank (under the doctrine of ‘Respondent
17 Superior’).

18 [**Fiehe v. R.E. Householder Co.**, 125 So. 2, 7 (Fla. 1929)]

19 **E Assignment of Error 5**

20 A Promissory Note, a Deed of Trust, signed unilaterally, is a
21 contractual agreement between two parties, and as such subjugated
22 to applicable law, particularly RCW 62A(UCC).

23 Issues Pertaining to Assignment of Error

24 *a. Respondent’s predecessors neither disclosed its definition
25 of ‘money’ in the Promissory Note nor in the Deed of Trust,
thereby misleading the Appellants inadvertently or
intentionally.*

As formulated under C, 3d.) the term ‘money’ is ambiguous at best. As per
Federal Reserve Bank Publications money can be created out of nothing,
commonly termed ‘fractional reserve banking’.

[see notes with quote of ‘Modern Money Mechanics, p. xxx]

Proponent did not prove existence of enforceable contract under Washington law, where
proponent did not disclose any pertinent details of purported contract, including what
consideration supported parties’ agreement. Fed.Rules Civ.Proc.Rule 56, 28 U.S.C.A.;
Restatement (Second) of Contracts § 26. [**Goodstein v. Continental Cas. Co.**,
509 F.3d 1042 (2007)]

1 “Neither, as included in its power not incidental to them, it is a part of a bank's business to
2 lend it's credit. If a bank could lend its credit as well as its money, it might, if it received
3 compensation and was careful to put its name only to solid paper, make a great deal more
4 than any lawful interest on its money would amount to. If not careful, the power would be
5 the mother of panics,... Indeed, lending credit is the exact opposite of lending money
6 which is the real business of a bank, for while the latter creates a liability in favor of the
7 bank, the former gives rise to a liability of the bank to another. *I Morse. Banks and*
8 *Banking* 5th Ed. Sec. 65; *Magee, Banks and Banking, 3rd Ed. Sec 248.*” [**American**
9 **Express Co. v. Citizens State Bank**, 194 NW 429 (1923)]

10 “Party having superior knowledge who takes advantage of another's ignorance of the law
11 to deceive him by studied concealment or misrepresentation can be held responsible for
12 that conduct.” [**Fina Supply, Inc. v. Abilene Nat. Bank**, 726 S.W.2d 537,
13 1987]

14 “The assent of each party must be freely given; a contract entered into as a result of the
15 exercise of duress or undue influence by the other party, or procured by the fraud of one
16 of the parties, lacks the essential element of real assent and maybe avoided by the injured
17 party.” [**Wall v. Bureau of Lathing and Plastering**, (1960 Fla App D3)
18 117 So. 2d 767]

19 As shown in the Affidavit of Walker Todd (p.38f), any bank has to follow
20 GAAP (Generally Accepted Accounting Principles) with the matching
21 principle, thereby matching any asset with a liability, or rather every asset
22 is offset by a liability. It is shown that a Promissory Note is an asset to the
23 bank. It is also shown that any loan or credit by the bank is a liability.

24 “In the case of a special deposit, the bank assumes merely the charge or custody of
25 property, without authority to use it, and the depositor is entitled to receive back the
26 identical money or thing deposited. In such case, the right of property remains in the
27 depositor, and if the deposit is of money, the bank may not mingle it with its own funds.
28 The relation created is that of bailor and bailee, and not that of debtor and creditor.”
29 [**Tuckerman v. Mearns**, App.D.C.1919, 262 F. 607, 49 App.D.C. 153
30 (1919)]

31 “A bank may not lend its credit to another even though such a transaction turns out to
32 have been a benefit to the bank, and in support of this a list of cases might be cited,
33 which-would like a catalog of ships.” [**Norton Grocery Co. v. Peoples Nat.**
34 **Bank**, 144 SE 505. 151 Va 195 (1928)]

35 The Promissory Note's very text (as an adhesion contract) states that the
36 alleged loan was already given prior to signing the Note, which is factually
37 not the case. It must be presumed that the bank, as the specialist in
38 financial and money matters, knows what it is doing, and as such would be

1 obligated to disclose its intention within the contractual documents in
2 order to fulfil all essential elements of a valid contract.

3 “Its essentials are competent parties, subject matter, a legal consideration,
4 mutuality of agreement, and mutuality of obligation. (..) The writing which
5 contains the agreement of parties, with the terms and conditions, and
6 which serves as a proof of the obligation.” (See *Black’s Law Dictionary*,
7 *5th edition*).

8 A court “cannot confer jurisdiction where none existed and cannot make a void
9 proceeding valid.” [*People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*,
10 385 I ll.86,92,52 N.E. 2d 255 (1943)]

11 The following case also substantiate that it is a Fact of law that the person asserting
12 jurisdiction must, when challenged, PROVE that jurisdiction exists: [*Griffin v.*
13 *Matthews*, 310 Supp. 341, 423, F. 2d 272 (1969)]

14 [*American National Bank & Trust Company v. Hanson Construction*
15 *Co., Inc.*, 1991 WL 42668 (Ky. 1991)]

16 [*Blankenheim v. E.F. Hutton & Company, Inc.*, 217 Cal. App. 3d 1463
17 (1990)]

18 “Fraud vitiates everything.” [*Boyce’s Ex’rs v. Grundy*, 28 U.S. 210 (1830)]

19 For the purpose of definitions of the term ‘money’ Federal Reserve Bank

20 Publications are quoted in excerpts.

21 [See note on p. 27f and below.]

22 Note: For example, the Chicago Federal Reserves publication, “**Modern Money**
23 **Mechanics**” states: “Deposits are merely book entries ... Banks can build up deposits by
24 increasing loans ... Demand deposits are the modern counterpart of bank notes. It was a
25 small step from printing notes to making book entries to the credit of borrowers which the
26 borrowers, in turn, could ‘spend’ by writing checks.”

27 [Thus, it is demonstrated in “Modern Money Mechanics” how, under the practice of
28 *fractional reserve banking*, a deposit of \$5,000 in cash could result in a loan of credit/
29 checkbook money/demand deposits of \$100,000 if reserve ratios set by the Federal
30 Reserve are 5% (instead of 10%). In a practical application, here is how it works. If a
31 bank has ten people who each deposit \$5,000 (totaling \$50,000) in cash (legal money,
32 legal tender, FRN’s) and the bank’s reserve ratio is 5%, then the bank will lend twenty
33 times this amount, or \$1,000,000 in “credit” money. What the bank has actually done,
34 however, is to write a check or loan its credit with the intended purpose of circulating
35 credit as “money”.]

36 *b. The Note indicates a loan had been issued prior to signing*
37 *said Note, which did not happen as per dates on alleged*
38 *fund’s transfer (escrow).*

39 Given this information (see above) from the very source of modern

40 banking, it does shed some light onto the misleading statement (deceptive

1 and untrue 'statement of fact') of having been issued a loan prior to
2 signing that Promissory Note. Whether this deception is purposefully
3 constructed or just an innocent misrepresentation of facts is not of any
4 concern. There are very restraining rules set into place to prevent scrutiny
5 of these loan papers by the signors (Appellants): i) there is limited time,
6 barely enough to glance through the papers before signing, ii) there is
7 nobody available to explain the terms or the language used, iii) it is not
8 allowed to take the papers home to study them prior to signing, iv) once
9 the Note is signed, the signors are left to wait for some time before people
10 of the escrow/title company return to finalize the transaction.

11 [United States v. Throckmorton, 98 US 61, at pg.65 (1878)]

12 Under the light of affairs it becomes rather obvious that it is of crucial
13 importance whether or not that alleged loan was issued prior or past initial
14 autographing of documents.

15 A national bank receiving the proceeds of a customer's note and mortgage with authority
16 to pay out the same upon a first mortgage lien upon real estate is acting intra vires and
17 liable for breach of its duty. [Brandenburg v. First Nat. Bank of Casselton,
18 N.D.1921, 183 N.W. 643, 48 N.D. 176]

19 That initial statement 'for a loan that I have received' when proven
20 ambiguous, misleading, deceiving or purposefully wrong from the onset
21 indicates the deception of the Appellants, ab initio.

22 Note. Here is how other sources describe the situation with the Promissory Notes: "The
23 bank does not loan money. The bank merely switches the currency. The alleged borrower
24 created money or currency by simply signing the mortgage note (full faith and credit).
25 The bank does not sign the mortgage note because they know they will not loan you their
money. The mortgage note acts like money. To make it look like the bank loaned you
money the bank deposits your mortgage note (lien on property) as money from which to
issue a check. No money was loaned to legally fulfill the contract for the bank to own the
mortgage note. By doing this, the bank received the lien on the property without risking
or using one cent. The people lost the equity in their homes and farms to the bank and
now they must labor to pay interest on the property, which the bank got for free and they
lost."

1 It is giving the second party (bank) an unfair advantage; there is no
2 mutuality of agreement or mutuality of obligation, neither a lawful and
3 valuable consideration in return of Appellant's obligation to the original
4 Holder in Due Course, allegedly Community Mortgage Company [also see
5 point 8 under IV Summary of Argument, page 15f of this brief].

6 "Without a meeting of the minds of the parties on an essential element, there can be no
7 enforceable contract.." [**Hettenbaugh v. Keyes Ozon – Fincher Ins. Inc.**
8 1962 Fla App D3) 147 So. 2d 328; **Goff v. Indian Lake Estates, Inc.**
9 (1965 Fla App D2) 178 So. 2d 910]

10 "In order to form a contract, the parties must have a distinct understanding, common to
11 both, and without doubt or difference. Unless all understand alike, there can be no assent,
12 and therefore no contract." [**Webster Lumber Co v. Lincoln** (1927) 94
13 Fla1097, 115 So. 498; **Minsky's Follies of Florida, Inc. v. Sennes** (1953)
14 206 F2d 1; **O'Neill v. Corporate Trustees, Inc.** (1967) 376 F2d 818]

15 As per GAAP, the matching principle and the representational faithfulness
16 any entry within the bank's daily business must be recorded as asset and
17 offset by a liability (matching principle).

18 Note: **GAAP Matching Principle**: Definition by eHow .com "In order to comply with the
19 generally accepted accounting principles (GAAP), *companies must determine the exact*
20 *time when revenue and expenses occur.* This is the basis of the GAAP Matching
21 Principle, which recognizes exactly when the revenue and expenses are incurred and
22 allows companies to gain an accurate analysis of current accounts at any point during the
23 accounting period. *The principle is part of the accrual basis of accounting.*"

24 See **Affidavit of Walker F. Todd Case No. 03-047448-CZ State of**
25 **Michigan**, Circuit Court for the County of Oakland (2003) **about GAAP**:

"Banks are required to adhere to Generally Accepted Accounting Principles (GAAP).
GAAP follows an accounting convention that lies at the heart of the double-entry
bookkeeping system called the Matching Principle. This principle works as follows:
When a bank accepts bullion, coin, currency, checks, drafts, *promissory notes*, or any
other similar instruments *from customers* and *deposits or records the instruments as*
assets, it must record offsetting liabilities that match the assets that it accepted from
customers. In a fractional reserve banking system like the United States banking system,
most of the funds advanced to borrowers (assets of the banks) are created by the banks
themselves and are not merely transferred from one set of depositors to another set of
borrowers. (...) ..there are two types of money: *money of exchange and money of account.*
(...) ..in a fractional reserve banking system, a comparatively small amount of money of
exchange (e.g., gold, silver, and official currency notes) may support a vastly larger
quantity of business transactions denominated in money of account. *The sum of these*
transactions is the sum of credit extensions in the economy. With the exception of
customary stores of value like gold and silver, the monetary base of the economy largely

1 consists of *credit instruments*.” And “The most common form of legal tender today is
2 Federal Reserve notes, which by law cannot be redeemed for gold since 1934, or, since
1964, for silver.” (Emphasis added)

3 Also see: Accounting principle representational faithfulness means, GAAP (Generally
4 Accepted Accounting Principles) requires that the economic substance proves what event
5 occurred regardless of what the legal forms said. See the book, 1997 Miller GAAS Guide
6 by Larry P. Bailey (p. 3.05). This book is used for CPA continuing education
7 requirements of license renewal. The accountant recorded the economic event as a loan
8 from the alleged borrower to the bank and the value returned as a loan back to the same
9 alleged borrower. This was an exchange or deposit and a fee was charged as if there was a
10 loan. The legal form only discussed the loan from the bank to the alleged borrower.
11 GAAP (Generally Accepted Accounting Principles) requires the written agreement show
12 the authorization, permission and knowledge to record the bookkeeping entries of a loan
13 from the borrower to the bank. There was no knowledge so there is no authorization or
14 permission. Without written permission or knowledge the auditor and banker failed in the
15 accounting principle of representational faithfulness.

16 Thus these original bookkeeping entries will show immediately whether or
17 not the Promissory Note was entered as asset first, thereby being offset by
18 a liability in similar or same amount (here \$200,000.00). Should that be
19 the case, it is proof that the alleged loan was NOT issued as stated in the
20 Promissory Note and thereby a false statement was misleading / deceiving
21 the signors (Appellants) into believing that the Note was securing a loan
22 rather than creating a loan.

23 Moreover, the terms assented to must be sufficiently definite. Sandeman, 50 Wash.2d at
24 541, 314 P.2d 428 (observing if a term is so “indefinite that a court cannot decide just
25 what it means, and fix exactly the legal liability of the parties,” there cannot be an
enforceable agreement). Additionally, the contract must be supported by consideration to
be enforceable. King v. Riveland, 125 Wash.2d 500, 505, 886 P.2d 160 (1994).
[**Keystone Land & Development Co. v. Xerox Corp.**, 152 Wash.2d 171
(2004)]

Was the Promissory Note an asset to the bank before money of account
was issued to signors of the Note as an alleged loan by Evergreen Bank
Seattle affiliated with Community Mortgage Company? That very Note,
causing the Appellants to be the originators / guarantors of the funds
loaned to back to them without their knowledge. The original party to this

1 Note and Deed failed to disclose this elementary fact to the Appellants.

2 [**Basso v. Utah Power & Light Co.**, 495 F 2nd 906 at 910 (1974)]

3 “In order to form a contract, the parties must have a distinct understanding,
4 common to both, and without doubt or difference. Unless all understand alike, there can
5 be no assent, and therefore no contract.” [**Webster Lumber Co v. Lincoln**
6 (1927) 94 Fla1097, 115 So. 498; **Minsky’s Follies of Florida, Inc. v.**
7 **Sennes** (1953) 206 F2d 1; **O’Neill v. Corporate Trustees, Inc.** (1967)
8 376 F2d 818]

9 The Respondent, as alleged Holder in Due Course is also ‘holding’ all
10 responsibility under equal terms according to RCW 62A, contract law.

11 c. *No lawful consideration was given, yet legal tender
12 is required from the Appellants to ‘repay’ the alleged loan.*

13 In that context (Assignment of Error 5a and b) no lawful consideration was
14 given to the Appellants as the Note itself was releasing the alleged funds
15 to the Appellants.

16 “All laws which are repugnant to the Constitution are null and void.” “Again the
17 Constitutions do not authorize this fraud, deception and illegal and unlawful conversion
18 of rights for any reason.” “There exists no Constitutional authority for the government to
19 exempt itself and public officers from laws to which the private citizens are held.”

20 [**Marbury v. Madison**, 5 U.S., 137, 174, 176 (1803)]

21 “Respondent conceded at oral argument that the real defense of fraud in the factum - that
22 is, the sort of fraud that procures a party’s signature to an instrument without knowledge
23 of its true nature or contents, see U. C. C. § 3-305(2)(c), Comment 7, 2 U. L. A. 241
24 (1977) - would take the instrument out of § 1823(e), because it would render the
25 instrument entirely void, see Restatement (Second) of Contracts § 163 and Comments a,
c; Farnsworth § 4.10, at 235, thus leaving no “right, title or interest” that could be
“diminish[ed] or defeat[ed].” See Tr. of Oral Arg. 24-25, 27-30. [Quoted from
Langley et ux. v. FDIC 484 U.S. 86 (1987) regarding Promissory Note.]

Once this initial statement of that very Promissory Note in this particular
case has been proven false - and all it takes is the original bookkeeping
entries of Evergreen Bank Seattle kept in the archives of the FDIC in
receivership of the assets and liabilities of Evergreen Bank Seattle and
American Marine Bank by federal mandate allegedly insuring all accounts
held by those banks up to at that time \$250,000.00. If the Note was
deposited as an asset into either bank, it had to be put into an account in

1 Appellants' names of which the Appellants never had knowledge of.

2 [**Federal Deposit Insurance Corporation v. Turner**, 869 F. 2d 270 (6th
Cir. 1989)]

3 Thereby at least two essential conditions of a valid contract have been
4 violated, that of mutuality of agreement and mutuality of obligation.

5 "The essential elements necessary to transform an agreement into a legally enforceable
6 "contract" include competent parties, a subject matter, *legal consideration, mutuality of*
7 *agreement and mutuality of obligation.*" "A finding is "clearly erroneous" when although
8 there is evidence to support it, *reviewing court* on the entire evidence is left with definite
and firm conviction that a mistake has been committed." (Emphasis added) [**Joseph v.**
Donover Co., 261 F.2d 812 (1958)]

9 "An actual assent by the parties upon exactly the same matters is indispensable to the
10 formation of the contract." [**Bullock v. Hardwick** (1947) 158 Fla 834, 30 So.
2d 539. **Hettenbaugh v. Keyes Ozon-Fincher Ins. Inc.** 1962 Fla App D3)
147 So. 2d 328. **General Finance Corp v. Stratton** 1963 Fla App D1, 156
So. 2d 884]

11 *d. A breach of contract renders the Note void ab initio and*
12 *therefore also the Complaint based on Note and Deed.*

13 This again makes this Complaint null and void. As stated by Declaration of
14 Donna Sayre (**CP p.44**) under point 3. 'Plaintiff acquires immediate access
15 to (..)(“Property” (..) The appraisal and environmental site assessment are
16 necessary to (i) prepare for the pending trustee sale..'

17 When reviewing an order of summary judgment, the appellate court engages in the same
18 inquiry as the trial court, affirming the summary judgment when no genuine issue as to any
19 material fact exists, but the appellate court must consider the facts in the light most
favorable to the nonmoving party, and the motion should be granted only if reasonable
persons could reach only one conclusion. [**Labriola v. Pollard Group, Inc.**, 152
Wash.2d 828 (2004)]

20 Once the contract underlying and allegedly justifying the trustee sale
21 becomes void ab initio, this Complaint also becomes void ab initio. No
22 foreclosure, no Complaint. Are there genuine issues of fact remaining in
23 this case? You bet there are. And it appears that all in a sudden 'betting'
24 becomes much safer an activity than 'having money in the bank'!

1 “An activity constitutes an incidental power if it is closely related to an express power and
2 is useful in carrying out the business of banking. [**First Nat. Bank of Eastern**
3 **Arkansas v. Taylor**, 907 F.2d 775 (1990)]. But even with this latitude no
4 hint of lending credit is provided in 12 U.S.C. 24 that would give rise to an
5 incidental power to lend credit. The exercise of powers not expressly
6 granted to national banks is prohibited: [**First National Bank v. National**
7 **Exchange Bank** 29 U.S. 122, 128 (1875); **California Nat. Bank v.**
8 **Kennedy** 167 U.S. 362, 367 (1897); **Concord Bank v. Hawkins** 174 U.S.
9 364 (1899)]

10 Ironically, all it takes to clear this issue once and for all, is a simple
11 bookkeeping entry by the first bank holding said Note and Deed as
12 collateral for the alleged loan. In lieu of that it would be helpful to have
13 access to the original Note if the court could see that Humpty Dumpty’s
14 great fall did not really happen at all, it was corporate Humpty that fell, and
15 he cannot be physically harmed at all, since he doesn’t really exist - only
16 We the People can give it life, or take it away as we see fit.

17 Officers of national bank in handling its funds are acting in a fiduciary capacity, and
18 cannot make loans and furnish money contrary to law or in such improvident manner as to
19 imperil its funds. [**First Nat. Bank v. Humphreys**, Okla.1917, 168 P. 410, 66
20 Okla. 186]
21 [**First National Bank of Montgomery v. Jerome Daly** (ref. To 16 Am Jur
22 2d, Section 347)]
23 [**First National Bank of Tallapoosa vs. Monroe**, 135 Ga 614; 69 S.E.
24 1123 (1911)]

25 Whether or not malicious intent played a role is not relevant at this time. Is
there sufficient doubt (light thrown on this affair) to fairly assess that there
is sufficient evidence (or rather missing evidence on side of the
Respondent) to deny subject matter jurisdiction? Is there due process?

[**Dimke v. Finke**, 209 Minn. 29, 295 N.W. 75, 79 (1940)]

This appeal will only look at the matters at hand to render a verdict in
regards to the Summons and Complaint for Preliminary Injunction, whether
or not it was justified or legally enforceable under the light of the alleged

1 evidence rendered by the Respondent versus the evidence, arguments,
2 affidavits and rebuttals of Respondent's employee declarations by the
3 Appellant.

4 The following case also substantiate that it is a Fact of law that the person asserting
5 jurisdiction must, when challenged, PROVE that jurisdiction exists: [**Thomson v.**
Gaskiel, 315 U.S. 442, 62 S. Ct. 673, (83 L. Ed. 111)(1942)]

6 **F Assignment of Error 6**

7 Did the Trial Court err in making the proceedings that of
8 administrative nature, thus indicating that the Appellant is subject to
9 the court (as corporate person) and thus the Trial Court's actions are
10 not subject to Constitutions and Amendments?

11 Issues Pertaining to Assignment of Error

12 a. *Case law supporting the rights of the People*
13 *appears not to apply to this case.*

14 Appellant, at the beginning of each hearing announced his 'status of being a
15 living person and as such not subject to this court' (**RP p.62/14-63/18**), at
16 the same time appearing in propriam personam so as to speak in this court.

17 [**People v. Herkimer**, 15 Am Dec 379, 4 Cowen N.Y. 345, 348
18 (1825)][See **Waring v. City of Savannah**, 60 Georgia, Page 93, 1878
19 WL2560]

20 Whereas the corporation "COLUMBIA STATE BANK" cannot appear in
21 court and thus is represented by Counsel. There is a conflict. Would the
22 Appellant not appear in Trial Court Hearings, the Summary Judgment
23 would be swift and instantaneously, without due process of law and without
24 subject matter jurisdiction, in favor of the Respondent.

25 "Where the rights as secured by the Constitution are involved, there can be no rule making
or legislation which would abrogate them." [**Miranda v. Arizona**, 384 U.S. 436 p.
491 (1966)]
[**Nestor v. Hershey**, 425 F2d 504 (1969)]

Therefore the Appellant, as a living being and occupant of real property

1 must appear in court. Is he representing himself, or is he made to appear in
2 behalf of an illusion, a corporate person with a legal name identical to his
3 name as a living person? Is that the reason why it appears that whatever the
4 Appellant was saying was ignored? Was the judge recognizing the
5 Constitution and its Amendments? Was the judge bound to her sworn oath
6 to the Constitution of the united States of America, or was this an entirely
7 different kind of court?

8 “ Under our form of government, the legislature is not supreme. It is only one of the organs
9 of that absolute sovereignty which resides in the whole body of the People. And like other
10 bodies of the government, it can only exercise such powers as have been delegated to it,
11 and when it steps beyond that boundary, its acts... are utterly void.” [**Billings v. Hall**, 7
12 California 1 (1857)]

13 [**Meyer v. Nebraska**, 262 U.S. 390, 399, 400 (1923)]

14 [**Reid v. Covert**, 354 U.S. 1, 1 L. Ed. 2nd. 1148 (1957)]

15 “As in our interaction with our fellow-men certain principles of morality are assumed to
16 exist, without which society would be impossible. So certain inherent rights lie at the
17 foundation of all action, and upon a recognition of them alone can free institutions be
18 maintained. These inherent rights have never been more happily expressed than in the
19 Declaration of Independence, the evangel of liberty to the people: ‘We hold these truths to
20 be ‘self evident’ - words so plain that their truth is recognized upon their mere statement -
21 that all men are endowed’ - not by the edicts of Emperors or decrees of Parliament, or acts
22 of Congress, but by their Creator with certain unalienable rights - that is, rights which
23 cannot be bartered away, or given away, or taken away.. and that among these are life,
24 liberty and the pursuit of happiness, and to secure these - not grant them but secure them -
25 governments are instituted among men, deriving their just powers from the consent of the
governed.” [**Butchers’ Union Co. V. Crescent City Co.**, 111 U.S. 746, at
756-757 (1884)]

18 **G Assignment of Error 7**

19 A trustee is considered to be a neutral party between two parties of a
20 contract (Note and Deed). Counsel’s employer is also named trustee
21 in said non-judicial foreclosure procedures and is likely to have a
vested interest in a successful foreclosure.

22 Issues Pertaining to Assignment of Error

23 a. *Inherent conflict of interest with likely profit agreement*
24 *between the parties unless proven otherwise (disclosure of*
contractual agreement between the parties).

25 As has been shown, a non-judicial foreclosure is mainly a statutory

1 procedure to deprive a non-14th amendment citizen from his rightful
2 property, deprive him of his right to enjoy the fruits of his employment,
3 deprive him of his right to his pursuit of happiness, thereby bypassing
4 common law. Such foreclosure is supported by various rules, statutes, laws
5 that again are aimed to a subject to the United States Corporation (located
6 in Washington DC) and as such not a living person.

7 “Under our system [in America] the people, who are there [in England] called subjects, are
8 here the sovereign... Their rights, whether collective or individual, are not bound to give
9 way to a sentiment of loyalty to the person of a monarch. The citizen here [in America]
10 knows no person, however near to those in power, or however powerful himself to whom
11 he need yield the rights which the law secures to him...” [**United States v. Lee**, 106
12 U.S. 196, at 208 (1882)]

13 This Complaint in support of the non-judicial foreclosure is a mere profit
14 maximizing scheme, aimed to deprive the Appellant, as one of the People,
15 not the US Corporation, of what is rightfully his.

16 “A judgment reached without due process of law is without jurisdiction and thus void.”
17 [**Bass v. Hoagland**, 172 F. 2d 205, 209 (1949)]

18 “An act of the legislature is not necessarily the ‘law of the land.’ A state cannot make
19 anything ‘due process of law’ which, by its own legislation, it declares to be such.”
20 [**Burdick v. People**, 36 N.E. 948, 949, 149 Ill. 600 (1894)]

21 “It is the doctrine of the common law, that the Sovereign cannot be sued in his own court
22 without his consent.” [**The Siren v. United States** 74 U.S. 152 (1868)]
23 [**U.S. v. Wong Kim Ark**, p.914 (1898), quoting **Dred Scott v. Sandford**,
24 60 U.S. 393, 19 How. 577 (1856)]

25 [**Hooven and Allison Co. V. Evatt**, 324 U.S. 652, 65 S.Ct. 870 (1945)]:

“The term ‘United States’ may be used in any one of several senses:

- 26 (1) It may be merely the name of a sovereign occupying the position analogous to that
27 of other sovereign in the family of nations [i.e. United States, Japan, England,
28 France, etc.] OR
- 29 (2) It may designate the territory over which the sovereignty of the United States
30 extends, [i.e. Washington D.C., Guam, Puerto Rico, U.S. Virgin Islands, federal
31 enclaves, etc.] OR
- 32 (3) It may be the collective names of the states which are united by and under the
33 Constitution.” [i.e. the 50 Republic (Sovereign) states of the Union]

34 **Ibid** 674: “In exercising its constitutional power to make all needful regulations
35 respecting territory belonging to the United States, Congress (under Art. I, §8, Cl. 17 and
Article IV §3, Cl. 2 of the Constitution) is not subject to the same constitutional limitations
as when it is legislating for the United States (the 50 states).”

1 The trustee being a business partner of the very Bank that does the
2 depriving is not surprising under that point of view.

3 A Debt collector under 15USC §1692 is defined as “any person who uses any
4 instrumentality of interstate commerce or the mails in any business the principal purpose of
5 which is the collection of any debts, or who regularly collects or attempts to collect,
6 directly or indirectly, debts owed or due another.” [**Brooks v Citibank (South
7 Dakota), N.A.**, 2009 U.S. App. LEXIS 20119 (9th Cir. Or. Sept. 8, 2009)]
8 [**Heintz v. Jenkins**, 513 U.S. 291, 115 S. Ct. 1489, 131 L. Ed.2d 395
9 (1995)] explains how the United States Supreme Court has ruled that attorneys who
10 regularly engage in the activity of collecting consumer debt fall within the definition of a
11 debt collector under FDCPA (Fair Debt Collection Practice Act).

12 However, this society being one of perpetual bankruptcy, debt cannot be
13 paid, only discharged, exactly what the Appellants did and have a right to
14 do. Should the trustee be biased by profiting directly from a foreclosure, the
15 trustee and its representatives are not fit to fill this office and must be
16 replaced.

17 *b. No purpose for court action besides maximizing
18 of financial gains for trustee and bank.*

19 As has been amply shown, the sole purpose to these court procedures is to
20 further enrich Respondent and Trustee at cost of Appellant, to ‘auction off’
21 a property that rightfully belongs to the Appellant. To be done under its
22 value with no consequence to the Respondent and affiliated parties.

23 [**United States v. Minker**, 350 U.S. 179, 187 (1956)]

24 “The rights and liberties of the citizens of the United States are not protected by custom
25 and tradition alone, they are preserved from the encroachments of government by
26 express/enumerated provisions of the Federal Constitution.” [**Reid v. Covert**, 354
27 U.S. 1, 1 L. Ed. 2nd. 1148 (1957)]

28 All financial responsibility is, as has been amply shown, thrust to the
29 Appellant with little or no lawful and/or legal justification.

30 “Pleadings are intended to serve as a means of arriving at fair and just settlements of
31 controversies between litigants. They should not raise barriers which prevent the

1 achievement of that end. Proper pleading is important but its importance consists in its
2 effectiveness as a means to accomplish the end of a just judgment.” [NAACP v.
3 Button, 371 US 415 (1963); United Mineworkers of America v. Gibbs,
4 383 US 715 (1966); Johnson v. Avery, 89S (1969)]
5 [Puckett v. Cox, 456 F2d 233 (1972 Sixth Circuit USCA)]

6 VI CONCLUSION

7 There is genuine doubt as to the legality of the contract terms within the
8 Promissory Note (and thus also the Deed of Trust), a mere outdated copy of
9 the Note being introduced as supporting evidence (alleged fact) in this
10 Complaint. The original Note has likely been changed and unless forced to
11 produce the original, potential fraud (justifying RICO action) remains
12 undetected, protected by the current court rulings).

13 There is genuine doubt as to the alleged witnesses’ testimonies
14 (declarations) to be truthful and material fact supported by first hand
15 material fact witnesses. There is genuine doubt as to sufficiency of
16 procedure (subject matter jurisdiction and due process). There is genuine
17 doubt under the view of RCW62A to legality of Respondent’s handling of
18 an EFT instrument rendered by an entitled party, said instrument(s) being
19 without genuine defect, to discharge debt. There is genuine doubt as to the
20 whereabouts of the original Note and the truthfulness to the unsubstantiated
21 ‘witness statement’ of Counsel for Respondent (*RP p.123/9-10*). Is
22 ‘genuine doubt’ supported with the argument sufficient to reverse a
23 judgment by the Trial Court?

24 The Appellant respectfully requests this Court to reverse the Trial Courts
25 Summary Judgment, with prejudice (and if justified, also annul (hold
Appellant harmless of) the non-judicial foreclosure procedures), have the

1 Respondent carry all cost for all its actions including third party services,
2 lawyer fees, hold the Appellant harmless of further suits, and have the court
3 assess just and adequate reimbursement for time and money invested by
4 Appellant in this matter, and any other relief the Court sees just and fit to
5 resolve this matter.

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Dated this 28th day of June, 2013

Without Prejudice, UCC 1-308
All Rights Reserved.

...By: 

Amas Canzoni, sui juris, natural person

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1 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
2 DIVISION II

3 COLUMBIA STATE BANK,)
4 Plaintiff / Respondent)
5 vs.)
6 Tanana Canzoni, Estate of;)
7 Amas Canzoni,)
8 Defendant(s) / Appellant(s))

No. 44336-8-II
No. 12-2-00474-6

CERTIFICATE OF SERVICE

APPELLANT'S
OPENING BRIEF

9
10 **Certificate of Service**

11 APPELLANT'S OPENING BRIEF
12 Certificate of Service

13 I hereby certify under penalty of perjury that I have this day

- 14 - mailed the original and one true copy of the foregoing documents
15 upon the Court of Appeals, Division II, by USPS mail, postage
16 prepaid, to the address following address:
Court of Appeals of Washington State, Division II
950 Broadway Ste 300
Tacoma, WA 98402-3694
- 17 - mailed a true copy of the foregoing documents, upon the party of
18 record in this proceeding, by USPS mail, postage prepaid, to
alleged Counsel for Respondent/Plaintiff COLUMBIA STATE
19 BANK:
EISENHOWER & CARLSON, PLLC, attn. Darren R. Krattli
1200 Wells Fargo Plaza, 1201 Pacific Avenue
20 Tacoma, WA 98402

21 Dated this 28th day of June, 2013

22 ..By: 
23 Amas Canzoni, Appellant/Defendant

24 general post-office [box 1073]
25 Rainier, Washington [98576-9998]
united States of America
Phone # 360-888-4730 (leave message)

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DIVISION II