

COURT OF APPEALS
DIVISION II

2013 AUG -7 PM 2:57

STATE OF WASHINGTON

BY *C*

NO. 44336-8 - II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

AMAS CANZONI and TANANA CANZONI,
individually, and the marital community composed thereof

Defendants/Petitioner.

v.

COLUMBIA STATE BANK,
a Washington banking association

Plaintiff/Respondent,

BRIEF OF RESPONDENT

Darren R. Krattli, WSBA # 39128
Attorney for Respondent

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I. INTRODUCTION

This appeal concerns whether the trial court properly granted summary judgment, to include (i) granting Respondent's Complaint for Specific Performance, which requested access to the Appellant's real property, (ii) releasing its cash bond for \$100.00, and (iii) dismissal of Appellant's claims with prejudice, which included vague requests to restrain the pending non-judicial foreclosure and to find that the subject obligation was paid in full.

II. STATEMENT OF THE ISSUES¹

1. Did counsel for Respondent's oral argument constitute mere argument on evidence that was otherwise properly admitted from declarations and the testimony of the Appellant? Yes.²
2. Is a copy of a promissory note admissible as evidence where there is no genuine question raised as to its authenticity? Yes.³
3. Did the Appellant fail to pay the obligations due under the promissory note where he attempted to pay with an "EFT Instrument" that did not constitute an acceptable means of payment under the terms of the promissory note and did not possess any identifiable value? Yes.⁴

¹ Appellant's Assignment of Error No. 4 is merely a restatement/conclusion of his Assignments of Error Nos. 1-3, and thus is not separately addressed.

² Appellants Opening Brief (hereinafter "**Appellant's Brief**"), 4 (Assignment of Error No. 1).

³ *Id.*, 4-5 (Assignment of Error No. 2).

⁴ *Id.*, 5 (Assignment of Error No. 3).

4. Did the trial court properly dismiss Appellant's claims, to include his arguments regarding the definition of "money" and whether a loan occurred where the only specific evidence before the court showed (i) Appellant received funds under the promissory note, (ii) Appellant made payments against the promissory note for eight and a half years, and (iii) Appellant claims to have satisfied the promissory note through the "EFT Instrument" payment? Yes.⁵

5. As the real property at issue was located in Thurston County and the Appellant requested affirmative relief, did the trial court possess jurisdiction to hear this matter? Yes.⁶

6. Where the trial court properly dismissed Appellant's claims challenging the validity of the trustee's sale under the parties' Deed of Trust, is the fact that Plaintiff's counsel also served as trustee during the sale irrelevant? Yes.⁷

III. STATEMENT OF THE CASE

Respondent, Columbia State Bank ("**Columbia**"), filed this action on March 5, 2012 in order to enforce its right to inspect the Appellant's real property.⁸ Columbia requested access to the property in order to assess its condition prior to proceeding with a trustee's sale under the

⁵ *Id.*, 6 (Assignment of Error No. 5).

⁶ *Id.*, 6 (Assignment of Error No. 6).

⁷ *Id.*, 6 (Assignment of Error No. 7).

⁸ Clerk's Papers (hereinafter "**CP**"), 7-37 (Complaint for Specific Performance).

parties' Deed of Trust.⁹ In response, Appellant filed a vague and rambling pleading in pseudo-legalese¹⁰ seeking, among other things, dismissal of Columbia's claims,¹¹ "dismissal" of Columbia's pending non-judicial foreclosure,¹² a finding that the subject obligation owed to Columbia was paid in full,¹³ and issuance of a "Full Reconveyance Deed."¹⁴

Columbia is the holder of a promissory note ("**Note**") dated July 23, 2002, which was executed by the Appellant.¹⁵ The Note was secured by a deed of trust executed by the Appellant, dated July 23, 2002 ("**Deed of Trust**"), which granted Columbia a security interest in certain real property of the Appellant commonly known as 14435 Vail Cut Off Road SE, in the city of Rainier, Washington (the "**Property**").¹⁶ The Deed of Trust was recorded with the Thurston County Auditor on July 30, 2002 under recording number 3450946.¹⁷ The Deed of Trust was subsequently assigned to American Marine Bank pursuant to an Assignment of Deed of Trust, dated March 28, 2003, which was recorded with the Thurston County Auditor on April 3, 2003 under recording number 3518018 (the

⁹ *Id.*

¹⁰ *Id.*, 40-57 (Original Bill in Equity).

¹¹ *Id.*, 56.

¹² *Id.*, 56-57.

¹³ *Id.*, 58.

¹⁴ *Id.*

¹⁵ *Id.*, 32-35 (the Note); *Id.*, 44 (verification of the Complaint and its exhibits by Donna Sayre).

¹⁶ *Id.*, 11-27 (the Deed of Trust); *Id.*, 44 (verification of the Complaint and its exhibits by Donna Sayre).

¹⁷ *Id.*

“**Assignment**”).¹⁸ The Note was also endorsed to American Marine Bank pursuant to an Allonge.¹⁹

In addition to the Note and Deed of Trust, Appellant executed a Uniform Residential Loan Application (“**Loan Application**”), dated July 26, 2002.²⁰ Through the Loan Application the Appellant requested a loan for \$200,000.00 to construct a permanent residence on the Property.²¹

Columbia is the successor in interest to the Federal Deposit Insurance Corporation (“**FDIC**”), receiver for American Marine Bank, with respect to the Note, Deed of Trust, and the Assignment.²² As such, Columbia is the current owner and holder of the Note, and the beneficiary of the Deed of Trust.²³

Although Columbia has not been able to locate the original Note,²⁴ a true and correct copy of the Note was produced to the trial court.²⁵ Columbia is in possession of the original Deed of Trust.²⁶

¹⁸ *Id.* 29-30 (the Assignment); *Id.*, 44 (verification of the Complaint and its exhibits by Donna Sayre).

¹⁹ *Id.* 37 (the Allonge); *Id.*, 44 (verification of the Complaint and its exhibits by Donna Sayre).

²⁰ *Id.*, 535 and 539-543.

²¹ *Id.*, 539.

²² *Id.*, 7 at ¶ 1.1; *Id.*, 44 (verification of the Complaint and its exhibits by Donna Sayre).

²³ *Id.*, 8 at ¶ 2.2; *Id.*, 44 (verification of the Complaint and its exhibits by Donna Sayre).

²⁴ *Id.*, 534 at ¶ 3.

²⁵ *Id.*, 32-35 (the Note); *Id.*, 44 (verification of the Complaint and its exhibits by Donna Sayre).

²⁶ *Id.*, 534 at ¶ 3.

Appellant admitted signing the Note and Deed of Trust on multiple occasions, to include in the Appellant's Brief.²⁷ In exchange for the Note, Appellant received construction draw payments from Columbia in the total amount of \$200,000.00.²⁸ Appellant executed a Residential Real Estate Construction Draw Sheet acknowledging draws of at least as \$178,777.53 of February 22, 2003,²⁹ and received a final draw of \$118.45 on March 10, 2003.³⁰

Following execution of the Note and Deed of Trust, Appellant made payments under the Note for eight and a half years in the total amount of \$119,273.70.³¹ Appellant ceased making payments in June 2011, which was nearly a year and a half after Columbia acquired the assets of American Marine Bank.³²

On April 14, 2012, Appellant attempted payment of the Note through an "EFT Instrument", which was just a canceled check from a closed bank account, in the amount of \$185,656.41.³³ Mr. Canzoni

²⁷ *Id.*, 47, ll. 3-4; *Id.*, 55, ll. 14-17; *Id.*, 411-12; Verbatim Report of Proceedings (VRP) (July 27, 2012) at 39:16-23; VRP (July 27, 2012) at 41:11-14; Appellant's Brief, 7, ll. 12-15.

²⁸ CP, 545.

²⁹ *Id.*, 548.

³⁰ *Id.*, 544.

³¹ *Id.*, 361 at ¶¶ 4-5; *Id.*, 365-382 (loan balance history); *see also* Appellant's Brief, 8 at ll. 9-12.

³² *Id.*, 3748-382 (detailing payments from February 12, 2010 through May 4, 2011); *Id.*, 535 at ¶ 5. American Marine Bank was closed on January 29, 2010, and its assets were immediately transferred to Columbia Bank on January 30, 2010. *Id.*, 534 at ¶ 2.

³³ *Id.*, 360 at ¶ 2; *Id.*, 363-64 (EFT Instrument).

implicitly acknowledged that it was drawn on a closed account, but maintains, without explanation, that the “EFT Instrument” is a form of payment.³⁴

Columbia Bank initiated the non-judicial foreclosure of the Deed of Trust pursuant to Chapter 61.24 RCW.³⁵ Appellant sought an order restraining the sale, and it was denied on August 10, 2012.³⁶ A Trustee’s Sale of the Property was held on August 17, 2012, and the Property was sold to a third party.³⁷

On October 15, 2012 Columbia filed a Motion for Summary Judgment.³⁸ Following a hearing on November 27, 2012, the trial court entered summary judgment (i) granting Respondent’s Complaint for Specific Performance, which requested access to the Appellant’s real property, (ii) releasing its cash bond for \$100.00, and (iii) dismissing all of

³⁴ VRP (July 27, 2012) at 40:12-17 (“It doesn’t look like anybody did anything with it except those statements that it is a closed check issued on a closed account. Now, I have never said it that it wasn’t a closed account. I only said it is an instrument to discharge debt, and that’s what it is. So it’s not a check.”); VRP (November 9, 2012) 101: 8-10 (“Said EFT instruments can only be issued on a closed checking account, can be called a reverse wire transfer to be done by the original account holder into an open account held by the receiving bank. The bank itself cannot initiate any transaction without committing fraud, nor can it refuse the transaction or funnel the transaction to a different account.”).

³⁵ CP, 499 at ¶ 3.

³⁶ *Id.*, 439.

³⁷ *Id.*, 499-505.

³⁸ *Id.*, 526-533.

Appellant's claims with prejudice (the "Order").³⁹ Appellant filed his Notice of Appeal on December 24, 2012.⁴⁰

IV. ARGUMENT

A. STANDARD OF REVIEW.

Appellant seeks review of an order granting summary judgment in favor of Columbia. On an appeal from summary judgment, a reviewing court engages in the same inquiry as the trial court.⁴¹ Summary judgment is appropriate if the pleadings show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.⁴²

B. RESPONSE TO ASSIGNMENT OF ERROR NO. 1: COUNSEL FOR RESPONDENT PRESENTED ORAL ARGUMENT FROM PROPERLY ADMITTED EVIDENCE.

Appellant fails to demonstrate any material fact presented solely by counsel for Columbia during oral argument that was relied upon by the trial court in granting summary judgment. Appellant only cites to two statements by counsel for Columbia, neither of which present any new

³⁹ *Id.*, 715-716.

⁴⁰ *Id.*, 718.

⁴¹ *Bainbridge Citizens United v. Washington State Dep't of Natural Res.*, 147 Wash. App. 365, 371, 198 P.3d 1033, 1036 (2008) (citing *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wash.2d 853, 860, 93 P.3d 108 (2004)).

⁴² 147 Wash. App. at 371; CR 56(c).

evidence, and merely reference evidence properly presented by declaration or by the Appellant himself.

Appellant cites to two portions of the report of proceedings.⁴³

First, Appellant references the following statement from the hearing on July 27, 2012, which was a hearing on Columbia's motion to compel access to the Property:⁴⁴

MR. KRATTLI: Your Honor, if I may continue. The points that Mr. Canzoni raised during his initial argument was I believe, if I heard correctly, acknowledged that at some point in time he did sign a note and deed of trust. Although -- and made payments towards that note and deed of trust, at a later date decided that he was not subject to the note and deed of trust and stopped making payments. However --⁴⁵

Mr. Canzoni does not identify what, exactly, he objects to in the above statement. Counsel for Columbia was referencing Appellant's earlier statements:

So we did basically sign, let's say, the promissory note and the deed of trust not being aware what's -- of what's really going on, and that led to the understanding that we are actually not having been loaned any money.⁴⁶

and

But nevertheless, before we stopped payments on the loans, or the alleged loans, Columbia Bank officially is a servicer of the loan and not necessarily an issuer of a loan.⁴⁷

Columbia's counsel was merely referencing the argument of Appellant, who elected to represent himself. As such, his pro se statements in court

⁴³ Appellant's Brief, 19, ll. 3-4 and 12-13 (referencing VRP (July 27, 2012) at 49 and 88, respectively).

⁴⁴ CP, 406-409.

⁴⁵ VRP (July 27, 2012) at 49: 11-19.

⁴⁶ *Id.* at 35: 14-17.

⁴⁷ *Id.* at 35: 1-4.

are not hearsay, but instead an admission of a party opponent.⁴⁸ Based on the available record, counsel for Columbia did not present any new evidence relied upon by the trial court. Appellant is the party that provided the additional evidence referenced during oral argument.

Next, the Appellant references a statement made by counsel for Respondent during a hearing August 10, 2012, which was a hearing on Appellant's motions, to include a motion to restrain the pending Trustee's Sale.⁴⁹

...because there's no basis in law or fact for them under 12(b)(6) or otherwise. This is not a case where there is a bona fide dispute, for instance, that a loan was made. This is not a case where, for instance, a national bank using robo signers has apparently started a wrongful foreclosure. This is a case where the record reflects abundantly there was a loan. It was made. It's an obligation of the defendants, and it's been in default for some period of time. At the core factually we submit this is a very simple case, and as a result, we'd ask the court to deny the defendant's motions thereby enabling this case to remain pending and allowing the bank to proceed with a nonjudicial foreclosure sale.⁵⁰

Once again, all of the facts discussed in the above quote are supported in the record, and the statement was merely oral argument summarizing the properly admitted facts. Columbia provided evidence that (i) funds were loaned to Appellant,⁵¹ and (ii) Appellant made payments on the loan for eight and a half years.⁵² As stated above, Appellant admitted (i) signing

⁴⁸ ER 801(d)(2).

⁴⁹ VRP (August 10, 2012) at 61-62.

⁵⁰ *Id.*, 88:1-13.

⁵¹ CP, 545.

⁵² *Id.*, 361 at ¶¶ 4-5; *Id.*, 365-382 (loan balance history); *see also* Appellant's Brief, 8 at ll. 9-12.

the Note and Deed of Trust,⁵³ and (ii) that he stopped making payments on the Note.⁵⁴

The statements quoted by Appellant are supported in the record through declarations and the testimony of Appellant himself. Appellant can point to no specific statement that only occurred during oral argument and that was materially relied upon by the trial court in granting summary judgment. As such, the Order should be affirmed with respect to Appellant's first assignment of error.

C. RESPONSE TO ASSIGNMENT OF ERROR NO. 2: THE PHOTOCOPY OF THE PROMISSORY NOTE IS ADMISSIBLE AS EVIDENCE AS THERE IS NO GENUINE QUESTION RAISED AS TO ITS AUTHENTICITY.

Appellant incorrectly argues that a "wet ink" original signature is required for enforcement of a promissory note.⁵⁵ Under Washington law, there is no requirement for an original document unless (i) there is a genuine question raised as to its authenticity, or (ii) under the circumstances it would be unfair to admit the duplicate in lieu of the original.⁵⁶ The Uniform Commercial Code, as adopted by the State of

⁵³ *Id.*, 47, ll. 3-4; *Id.*, 55, ll. 14-17; *Id.*, 411-12; VRP (July 27, 2012) at 39:16-23; VRP (July 27, 2012) at 41:11-14; Appellant's Brief, 7, ll. 12-15.

⁵⁴ VRP (July 27, 2012) at 35:1-4; VRP (November 16, 2012) at 126:12-14 and 133:13-16.

⁵⁵ Appellant's Brief, 20-26 (Assignment of Error No. 2); VRP 100: 6-10 ("Since the alleged plaintiff indicated that it did not need to provide the original note at all, it can be presumed that it is not in possession of the wet ink autographed original promissory note, and therefore, this charade of a court case is null and void *ab initio*.").

⁵⁶ ER 1003.

Washington, even allows for enforcement of a lost negotiable instrument.⁵⁷ Appellant acknowledges signing the Note,⁵⁸ but fails to identify even a single portion of the Note that he believes is a forgery or alteration. As such, the copy of the Note was properly admitted and relied upon by the trial court.

In addition to the copy of the Note, Respondent presented additional evidence regarding Appellant's obligations to Columbia. It produced (i) Appellant's Loan Application, requesting a loan in the amount of \$200,000.00 in order to construct a residence on the Appellant's Property,⁵⁹ (ii) a document signed by Appellant acknowledging draws of at least \$178,777.53 of February 22, 2003,⁶⁰ and (iii) evidence of eight and a half years of payments by Appellant.⁶¹ Appellant acknowledged (i) signing the Note and Deed of Trust,⁶² and (ii) that he stopped making payments.⁶³ Finally, Appellant also argues, in complete contradiction to his theory that the original Note must be

⁵⁷ RCW 62A.3-309, Enforcement of lost, destroyed, or stolen instrument.

⁵⁸ CP, 47, ll. 3-4; *Id.*, 55, ll. 14-17; *Id.*, 411-12; VRP (July 27, 2012) at 39:16-23; VRP (July 27, 2012) at 41:11-14; Appellant's Brief, 7, ll. 12-15.

⁵⁹ CP, 535 and 539-543.

⁶⁰ *Id.*, 548.

⁶¹ *Id.*, 361 at ¶¶ 4-5; *Id.*, 365-382 (loan balance history); *see also* Appellant's Brief, 8 at ll. 9-12.

⁶² *Id.*, 47, ll. 3-4; *Id.*, 55, ll. 14-17; *Id.*, 411-12; Verbatim Report of Proceedings (VRP) (July 27, 2012) at 39:16-23; VRP (July 27, 2012) at 41:11-14; Appellant's Brief, 7, ll. 12-15.

⁶³ VRP (July 27, 2012) at 35:1-4; VRP (November 16, 2012) at 126:12-14 and 133:13-16.

produced, that his “EFT Instrument” paid the Note in full.⁶⁴ Under these circumstances, it was reasonable for the trial court to rely upon a photocopy of the Note. As such, the Order should be affirmed with respect to Appellant’s second assignment of error.

D. RESPONSE TO ASSIGNMENT OF ERROR NO. 3:
APPELLANT’S “EFT INSTRUMENT” WAS NOT AN
EFFECTIVE FORM OF PAYMENT.

In complete contradiction to Appellant’s argument above that the Note must be produced to be enforced, Appellant simultaneously argues that the obligation due under the Note was paid in full through his “EFT Instrument” delivered on April 14, 2012.⁶⁵ The “EFT Instrument”, which was merely a check drawn on a known closed account,⁶⁶ was neither (i) an acceptable form of payment under the Note, nor (ii) a form of payment with any inherent value.

⁶⁴ CP, 58, ll. 10-15; VRP (July 27, 2012) 51:20-52:2; *see also* Appellant’s Brief, 26-32 (Assignment of Error No. 3).

⁶⁵ Appellant’s Brief, 26-32 (Assignment of Error No. 3).

⁶⁶ VRP (July 27, 2012) at 40:12-17 (“It doesn’t look like anybody did anything with it except those statements that it is a closed check issued on a closed account. Now, I have never said it that it wasn’t a closed account. I only said it is an instrument to discharge debt, and that’s what it is. So it’s not a check.”); VRP (November 9, 2012) 101: 8-10 (“Said EFT instruments can only be issued on a closed checking account, can be called a reverse wire transfer to be done by the original account holder into an open account held by the receiving bank. The bank itself cannot initiate any transaction without committing fraud, nor can it refuse the transaction or funnel the transaction to a different account.”).

By its own terms, the Note required payment in the form of “cash, check or money order.”⁶⁷ The “EFT Instrument” was not cash, a check, or a money order, and thus Columbia was not required to accept it as payment under the Note. However, even if the Note did not specify the form of payment, the “EFT Instrument” has no discernible value. Appellant acknowledges it was a check drawn on a closed account,⁶⁸ but cannot explain, even on appeal, the value of the “EFT Instrument” in any coherent or convincing fashion.⁶⁹

As the “EFT Instrument” has no intrinsic value and Appellant’s attempted payment with the “EFT Instrument” failed to comply with the permissible forms of payment under the Note, the Order should be affirmed with respect to Appellant’s third assignment of error.

E. RESPONSE TO ASSIGNMENT OF ERROR NO. 5:⁷⁰
THERE IS NO GENUINE DISPUTE THAT COLUMBIA
LOAN MONEY TO APPELLANT PURSUANT TO THE
NOTE

Appellant’s fifth assignment of error challenges the statement in the Note that a loan was received.⁷¹ There is no genuine factual dispute

⁶⁷ CP: 32 (“I will make all payments under this Note in the form of cash, check, or money order.”).

⁶⁸ VRP (July 27, 2012) at 40:12-17; VRP (November 9, 2012) 101: 8-10.

⁶⁹ See Appellant’s Brief, 26-35.

⁷⁰ As stated above in note 1, Appellant’s Assignment of Error No. 4 is not separately addressed.

⁷¹ Appellant’s Assignment of Error No. 5 consists mainly of nonsensical ramblings in pseudo-legalese. In responding to Assignment of Error No. 5, Respondent is addressing the primary factual issue raised: the impact of

that a loan was received by Appellant pursuant to the Note. Columbia presented evidence that (i) Appellant applied for a loan in the amount of \$200,000.00,⁷² (ii) Appellant received draws under the loan in the total amount of \$200,000.00,⁷³ (iii) Appellant signed a document acknowledging draws of at least \$178,777.53 of February 22, 2003,⁷⁴ and (iv) Appellant made payments towards repayment of the loan for eight and a half years.⁷⁵ Appellant presents no material evidence contradicting those facts, and thus there is no genuine dispute that a loan was made. As such, the Order should be affirmed with respect to Appellant's fifth assignment of error.

F. RESPONSE TO ASSIGNMENT OF ERROR NO. 6: THE TRIAL COURT POSSESSED BOTH SUBJECT MATTER AND PERSONAL JURISDICTION OVER THE APPELLANT AND THE CASE, AND VENUE WAS PROPER IN THURSTON COUNTY.

It is unclear what, exactly, Appellant disputes in his Assignment of Error No. 7. Appellant makes reference to "proceedings of an administrative nature"⁷⁶ and to Appellant's description of himself as a "living person".⁷⁷ As such, Columbia believes Assignment of Error No. 6

the phrase "In return for a loan that I have received..." in the Note. Appellant's Brief, 35, ll. 21-23.

⁷² CP, 535 and 539-543.

⁷³ *Id.*, 545.

⁷⁴ *Id.*, 548.

⁷⁵ *Id.*, 361 at ¶¶ 4-5; *Id.*, 365-382 (loan balance history); *see also* Appellant's Brief, 8 at ll. 9-12.

⁷⁶ Appellant's Brief, 43, ll. 7-8.

⁷⁷ *Id.*, 43, ll. 12-14.

is a generic challenge to venue, subject matter jurisdiction, and/or personal jurisdiction.

Venue in Thurston County is appropriate as the Property is located in Thurston County.⁷⁸ As the case involves a dispute regarding possession of real property, the Superior Court for Thurston County also has subject matter jurisdiction.⁷⁹ Finally, as Appellant filed a pleading seeking affirmative relief (restraint of the non-judicial foreclosure and satisfaction of the Deed of Trust),⁸⁰ Appellant waived any challenge to personal jurisdiction.⁸¹

There is no genuine dispute that venue was appropriate in Thurston County, and that the Superior Court for Thurston County possessed both subject matter jurisdiction and personal jurisdiction over the parties and the case. As such, the Order should be affirmed with respect to Appellant's sixth assignment of error.

G. RESPONSE TO ASSIGNMENT OF ERROR NO. 7: WHERE THE TRIAL COURT PROPERLY DISMISSED APPELLANT'S CLAIMS, THE ROLE OF RESPONDENT'S COUNSEL AS TRUSTEE IN THE NONJUDICIAL FORECLOSURE IS IRRELEVANT.

⁷⁸ RCW 4.12.010(1); CP. 11-27 (Deed of Trust regarding property located in Rainier, Thurston County, Washington).

⁷⁹ RCW 2.08.010.

⁸⁰ CP, 56-59.

⁸¹ *Washington Equipment Mfg. Co., Inc. v. Concrete Placing Co., Inc.*, 85 Wash.App. 240, 248 (Div.3, 1997).

Appellant's final argument addresses the roll of Respondent's counsel as Trustee in the non-judicial foreclosure. Given that the trial court properly dismissed Appellant's claims based on the admitted evidence, the fact that Respondent's counsel served as trustee in the non-judicial foreclosure is irrelevant.

Appellant cannot point to any action by Respondent's counsel during the case or the associated non-judicial foreclosure that constituted a breach of the trustee's duties under applicable law, to include RCW 61.24.010. Instead, Appellant makes vague accusations such as "the sole purpose to these court procedures is to further enrich Respondent and Trustee at cost of Appellant"⁸² and that Respondent's counsel "is likely to have a vested interest in a successful foreclosure."⁸³ Respondent's counsel repeatedly explained the legal reasoning for seeking access to the Property.⁸⁴ Innuendo is insufficient to create a factual dispute. The Order should be affirmed with respect to Appellant's seventh assignment of error.

V. CONCLUSION

Appellant has failed to present any meaningful argument

⁸² Appellant's Brief, 46, ll. 15-16.

⁸³ *Id.*, 44, ll. 19-21.

⁸⁴ VRP (July 27, 2013) at 45:14-46:7 (explaining the need for a preforeclosure appraisal and environmental site assessment to properly evaluate collateral due to the limitations on deficiency actions after a non-judicial foreclosure); VRP (November 16, 2012) 135:1-11.

warranting reversal of the trial court's Order. There is no genuine dispute that (i) Appellant executed the Note and Deed of Trust, (ii) Appellant received \$200,000.00 in funds pursuant to the Note, (iii) Appellant accepted responsibility for repayment of the Note as evidenced by eight and a half years of payments and the attempted "EFT Instrument" payment, and (iv) Appellant defaulted on the Note by terminating payments. Respondent was entitled to the relief requested, and the trial court properly dismissed the claims of Appellant. Appellant's nonsensical arguments should be rejected and the Order affirmed.

RESPECTFULLY SUBMITTED this 7th day of August, 2013.

EISENHOWER & CARLSON, PLLC

By: 

Darren R. Krattli, WSBA # 39128
Attorneys for Respondent
Columbia State Bank

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DIVISION II

Certificate of Service

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I hereby certify that on the 7th day of August, 2013, I caused all parties
hereto to be served with the *Brief of Respondent* and this *Certificate of*
Service by directing delivery to the following persons by the means stated:

By U.S. First Class Mail to:

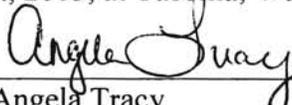
Mr. Amas Canzoni
P. O. Box 1073
Rainier, WA 98576

By Legal Messenger, to:

Clerk of the Court
Washington State Court of Appeals, Division II
950 Broadway, #300
Tacoma, WA 98402

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

DATED this 7th day of August, 2013, at Tacoma, Washington.



Angela Tracy