

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON DIVISION TWO

<u>Capital Bank (USA), N.A., Respondent</u> <u>(Suttle & Hammer)</u> vs. <u>David Koplitz, Appellant</u>	Court of Appeals No. 45313-4-11 Thurston County No. 11-2-02189-8 Opening Brief
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ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR THURSTON COUNTY
Dated 8/09/2013

Judge Thomas McPhee (Retired), JD Paula Casey (Retired), Judge
Erik D. Price

OPENING BRIEF OF APPELLANT

David Koplitz 5820 25th AVE SE Lacey, WA 98503	Malisa L. Gurule Suttell & Hammer PO Box 90006 Bellevue, WA, 98009-9006 Attorney
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FILED
COURT OF APPEALS
DIVISION II
2013 NOV 26 AM 11:47
STATE OF WASHINGTON
BY cm
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4532 11 wjd

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[5] Process - Service - Personal Service - Statutory Requirement - Purpose. An essential objective of RCW 4.28.080(15) is that process actually be delivered to a responsible person.

O'Neill v. Farmers Ins. Co. of Wash..... 8,10
124 Wn. App. 516,. [No. 52378-3-I. Division One Appellate Court Nov. 1, 2004.]
In its October 31, 2002 answer, Farmers listed insufficiency of service of process among its affirmative defenses.

Debra Stewart, App. vs. Griffith Industries, Inc., Et Al.....7,18
67009-3 File Date 11/13/2012 Judges Council of Record
Because the defendants raised the defense in their answer and engaged in no actions inconsistent with this defense, it is inapplicable to bar the affirmative defense.

PARRY v. WINDERMERE.....12
102 Wn. App. 920, [No. 45831-1-I. Division One. Appellate Court Oct. 16, 2000.]
Under CR 12(b), the defense of insufficiency of service of process is preserved by assertion in a responsive pleading or by motion.

Statues:

Federal Rules of Civil Procedure 8(a) (3), 8(c), 12(a), 12(b)(1-7), 12(f), 15(a-c).....17,18,26
The US Constitution 5th Admendment, The right to due process.....3,8,12,17,25,26
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APPELLANTS OPENING BRIEF

STATEMENT OF THE CASE

1. Nature of the Event

This action was brought to court by Capital One Bank also listed as Capital Bank on the clerk's papers and represented by Suttell and Hammer.

This original action involves alleged monies they feel they are due.

2. Relief Sought

The defendant ask for the ruling to be overturned and that the garnishment amount of \$11,562.34 be returned to the defendant and court cost and time of \$1000 be assessed against the plaintiff. due to RCW 19.16.250 (1) Prohibited practices, Title 4 civil procedure failure and RCW 8.4 misconduct when the plaintiff repeatedly sent documents and court dates to a known not valid address even after the court asked for a statement as to why they did it and repeated it in the final hearing

Additional grounds for over-turning the decision is based on the defense motion 60 action for relief and 8.4 misconduct after a no decision returned in the November 30, 2012 hearing.

In compliance for more entries from each side, the defense entered a motion of relief under RCW 60 in that the defendant was not working six months before the final decision in August 2013.

Recent plaintiff incident again places in question the conflict of law and RCW 8.4 Misconduct in false document representation to the Thurston County superior court clerk's office. (See Expanded Grounds).

3. Nature of the Judgment

Retired Judge William McPhee returned on the advice of sitting Judge Erick Price due to an open issue on an insufficiency of service process and to hear the defense evidence but that did not happen, the plaintiff council informed the defense of a wrong date for the final hearing.

The plaintiff went unopposed 8/5/2013 and won a default (CP-80-81, 82-83).

08/09/2013 Judge McPhee signed the orders without hearing the defense failing the prior agreement between Judge Price and Judge McPhee in April/May 2013. (CP-47,68).

The defense was asked by Judge McPhee why he was there and that he was only there to sign the order and denied all defense motions with no specific issue of law.

4. Questions Presented on Appeal

- (a) Did the trial court error in ruling for a default write of garnishment, when the summons was given to a person at the wrong location and signed by that person?
- (b) Did the trial court error when they issued a notice of issue action to re-serve the defendant but sent it to known invalid address?
- (c) As a matter of law, did the court error in allowing a rule 59 win for the plaintiff outside of court over the rule 12 defense move when a unrelated third party signed the summons and then never debated it in court?
- (d) Did the trial court error in allowing the plaintiff to present alone on issues to Judge McPhee without the defense by either not telling the defense or mailing to an invalid address.
- (e) Did the trial court fail the 5th and 6th admendment by having court sessions without the defense due to plaintiff actions and not listening to the defense after two judges agreed that the defense should be heard?
- (f) Why did the court clerk's office fail to realize that the plaintiff was asking for the same write again and got an updated write?

5. Summary of Argument

- (a) The court failed to uphold the Insufficiency of the serve process after the plaintiff served the wrong person and then issuing an order to re-due it but sent it to the wrong address and then told the other judge that it was completed. 11/09/2012 but then sided for the plaintiff in the end. (*The defense asked for a vacate but it was turned down*).
- (b) In the first year of the case the plaintiff misdirected court dates and documents to a stated wrong address was asked for a statement from Judge McPhee as to why they did it, but no action was taken against the plaintiff other than asking for a statements on misdirected court dates and items to the wrong address after being told to not use the address by the defense three times. (*The defense asked for misconduct vacate but it went unheard*).
- (c) The court failed to follow its own decisions on how to proceed with the case after an agreement between Judge Price and Jude McPhee and the litigants in having the defense heard and then not hearing the defense motions and evidence of Vacate Judgment, Misconduct and Relief in the final hearing.

(d) The defense entered a motion for relief after the court's decision of no decision entered on November 30, 2012 and the judge asking for more information from each side.

The defense entered conclusive evidence of serving the wrong person and a relief motion not being employed.

The motions were denied for no legal precedence in the end.

(e) The Plaintiff in the final hearing (moved to 8/5/2013) notified the defendant that it was 8/9/2013 but it was not, the judge asked why are you here I'm only her the sign the order and was given a default in the issue hearing of 8/5/2013.

7. Statement of Facts

May 2011?, The case started in a non-legal manor with the process server enlisting the help of Bruce Gingrich who lived at another location from the defendant and asked Bruce to sign for it.

Bruce signed for and misplaced it failing rule 4.28.0890, (Corrected Statement). (Summons CP-3, Affidavit CP-4).

RCW 19.16.250(1) prohibited practices (No licensee or employee of a licensee shall: (1) directly or indirectly aid or abet any unlicensed person.

*Weiss v. Glemph Oct. 1995 727 127 Wn.2d 726, 903 P.2d 455
[5] Process - Service - Personal Service - Statutory Requirement - Purpose.
An essential objective of RCW 4.28.080(15) is that process actually be delivered to a responsible person.*

11-03-2011 Judge William Thomas McPhee was assigned the case, and issued a notice issue action to re-due the service failing the FRCP's. (CP-6, 7)

11-02-2011 The plaintiff 12/2/2011 declaration for 11/02/2011 summons re-mailing shows another invalid address mailed to after being stated by the defense to stop mailing to it.

2

<input type="checkbox"/> EXPEDITE
<input checked="" type="checkbox"/> Hearing is set:
Date: <u>12/02/2011</u>
Time: <u>9:00am</u>
Judge/Calendar <u>McPhee</u>

NO PUBLIC 1

FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2011 NOV -3 AM 11:17
BETTY J. GOULD, CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

Capital One Bank (USA), N.A.

NO. 11-2-02189-8

Plaintiff,

vs.

DECLARATION OF MAILING

DAVID L KOPLITZ

s/n 294342.001

Defendant(s).

The undersigned declares and states as follows:

I am a citizen of the United States of America, and of the State of Washington, over the age of twenty-one years, not a party to the above entitled proceeding and competent to be a witness therein.

On 11/02/2011 I mailed a copy of the NOTE FOR MOTION, DECLARATION OF MAILING, MOTION AND DECL. FOR DEFAULT JUDGMENT, AFFIDAVIT OF SERVICE, PROPOSED ORDER, in the above entitled action to:

DAVID L KOPLITZ
3959 Martin Way E
Olympia WA 98506

placing said documents in a sealed envelope with first class postage fully paid thereon.

SUTTELL & HAMMER, P.S.
PO BOX C-98806
BELLEVUE, WA, 98009
425-455-8220/425-454-7884 FAX

12-02-2011 The plaintiff went to Judge Paula Casey over Judge McPhee's scheduled January 2012 conference and told the judge the action was completed when it was not and a default write was issued failing RCW 4.28.080 summons and how served. (Default Write CP 20-21).

10-23-2012* The defense is notified by the garnishment holder and responds to the write of garnishment as faulty under Rule 19.16.250 and title 4 of civil procedures because the service never happened and was sent to a wrong address even after a power bill was entered into court for location.

Customer **DAVID L. KOPLITZ**  **PUGET SOUND ENERGY** Page 1 of 3

STATEMENT SUMMARY AS OF OCT 03, 2012 Account No. **0000000000**

Balance on last billing	Account Balance
Thank you for your payment(s)	0.00
Balance Forward	0.00
Current Charges	0.00
CURRENT TOTAL AS OF OCT 03, 2012	0.00

Statement Due Date Oct 24, 2012 **AMOUNT DUE THIS STATEMENT** **0.00**

On Oct. 1, your bill was adjusted to reflect a slight increase in rates to cover costs for the PSE HELP low-income assistance program.

11-01-2012 The defense expanded its response with a move for an exemption due to 10K of the money being from a relatives 401K to cover medical and the discovery of a slow progressive debilitating medical condition discovered in the first attempted surgery. (Characterizing it under the law was unclear), The defense also asked for a rule 60(b), 60(4) vacate (corrected).

Judge McPhee cancelled the 11/19//2012 exemption hearing and turned down the affirmation vacate defense action and the 5th Admendment right. (11/9/2012 Order, CP-22-23).

O'Neill v. Farmers Ins. Co. of Wash. 124 Wn. App. 516,. [No. 52378-3-1. Division One Appellate Court Nov. 1, 2004.]
In its October 31, 2002 answer, Farmers listed insufficiency of service of process among its affirmative defenses.

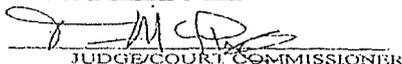
MC PUBLIC 1

FILED
SUPERIOR COURT
THURSTON COUNTY, WA
2012 NOV -9 AM 10:01
BETTY J. GOULD, CLERK

1 2 3 4 5 6 7 8 9 10 11 12	SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY FAMILY & JUVENILE COURT Capital One Bank (USA), Plaintiff/Petitioner, and David L. Koplitz Defendant/Respondent.	NO. <u>11-2-02187-8</u> ORDER Striking Exemption Claim Hearing
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13 This matter having come on regularly before the undersigned
14 judge of the above-entitled court on Plaintiff's Motion to
15 deny Exemption Claim, and the Court having reviewed the
16 records and files herein, finds that the Defendant's
17 pleadings are to be taken as a Motion to Vacate Judgment.
18 The Court orders that the Plaintiff's Motion to Deny Defendant's
19 Exemption Claim be stricken without prejudice, in order to
20 re-note the matter, sending notice to the Defendant's 5820
21 25th Ave SE, Lacey, WA address, and provide supplemental
22 pleadings regarding issues with service.

23
24
25 DATED this 9 day of November, 2012.

26
27 
28 JUDGE/COURT COMMISSIONER

ORDER - Page 1 of 1

THURSTON COUNTY SUPERIOR COURT
FAMILY & JUVENILE COURT
Mail: 2000 Lindbergh Dr, SW, Olympia, WA 98502
Location: 2801 11th Avenue SW, Tumwater
Tel: (360) 899-3201 Fax: (360) 899-3200
CLERK'S OFFICE: (360) 899-3200

11/19/2012 The plaintiff sent the issue to an invalid address again and Judge McPhee asked for a Declaration as to why they mailed items to the wrong address. (Note: The 11/19/2012 Declaration of

mailing comes up as a blank screen, the 11/28/2012 Declaration is correct but less than two days before the hearing of 11/30/2012).

11-28-2012 The plaintiff enters a response to something?

(Note: The defendant had to be informed by the court clerk's office of the following hearing due to plaintiff actions).

11-30-2012 The hearing finally took place with the defense present. Judge McPhee asked about the plaintiff subbing council and asked for another statement on recent mailing problems.

The plaintiff stated no knowledge of the issue, Judge McPhee then asked for a statement on the issue followed by progress made on obtaining additional information.

The defense stated and entered prior affirmation defense to the in sufficiency of the service and a motion to vacate on this ground.

The hearing quickly fell apart into an argument style debate by the plaintiff to get their late information in from 11/28/2012 (1 & 1/2 days before).

Judge McPhee decided to let the information in over the Title 4 civil procedure objection of the defense and read it later.

11-30-2012 Judge McPhee's decision was **No Decision and retired.** (CP-26).

Judge McPhee had asked for more submissions from each side.

I think during this time the plaintiff submitted and won a rule 59 issue over the defenses rule 12-affirmation defense because the judge felt that no motions should be in affirmation style.

Debra Stewart, App. vs. Griffith Industries, Inc., Et Al.
67009-3 File Date 11/13/2012 Judges Council of Record
Because the defendants raised the defense in their answer and engaged in no actions inconsistent with this defense, it is inapplicable to bar the affirmative defense.

The issue was never debated in court because Judge McPhee was retired and failed rule 12 defense and objections and rule 34.05.452 Rules and accepting affirmation statements.

4-16-2013* Retired Judge McPhee opinion was mailed to the litigants and new assigned Judge Erik D Price. The plaintiff made a move for a decision but it was supposed to be a motion hearing and the defense was successful at getting a draw because there was an open challenge in the courts opening that the insufficiency of the service was challengeable.

The judges decided to conference with retired Judge McPhee and get back to the litigants.

O'Neill v. Farmers Ins. Co. of Wash. 124 Wn. App. 516, [No. 52378-3-I. Division One Appellate Court Nov. 1, 2004.]

In its October 31, 2002 answer, Farmers listed insufficiency of service of process among its affirmative defenses.

(Note: This opinion can no longer be found in the court record that matches the first hearing with Judge Price and what was argued.

The courts summary list a revised version or one was withdrawn?

If you open 4/16/2013 it says court's opinion hand written on the document). (Hearing Nov/Dec entry CP-19, JD Conference 47, 68).

(Find and Insert Original Mailed Courts Opinion 4/16/2013).

4/19/2013, 4/26/2013, 5/17/2013 Judge Price's conference reveals that the defense was not heard and that Judge McPhee would return and as agreed upon hear the defense after asking for more information from the litigants back in November 30, 2012. (Hearing Nov/Dec entry CP-19, JD Conference 47, 68).

5-13-2013 the defense re-enters a more simplified multi-faceted motion to vacate on expanded evidence, motion to vacate on plaintiff conduct, and the relief motion due to not working. (Motions CP-48-67).

Due to the court clerk's office error, we came back 05/17/2013 with JD Price where we agreed again to have JD McPhee come back.

(CP-69).

5-21-2013 The defense entered a motion vacate on additional grounds besides a strike motion on the court's opinion from Judge McPhee being brought into court again but the court clerk's office closed the case which disrupted the process. (Motion Strike, Vacate CP-70-71).

The plaintiff brought the problem up to court or Judge Price and got it scheduled but never informed the defense and had a solo session with judge McPhee and nobody questioned why the defense was not present 8/5/2013 moved from 7/24/2013. (See Appendix I Case Summary).

8-9-2013* the defense received notice of hearing (page 13) from the plaintiff for 8/09/2013 and showed up expecting a hearing but the first words from Judge McPhee was why are you hear, I am only hear to sign the order.

Judge McPhee did acknowledged that the defense had entered a lot more evidence and inquired about whether it was intended for further action or appeal. (4th & 5th Admendment Failure).

PARRY v. WINDERMERE, 102 Wn. App. 920, [No. 45831-1-I. Division One. Appellate Court Oct. 16, 2000.] Under CR 12(b), the defense of insufficiency of service of process is preserved by assertion in a responsive pleading or by motion.

The defense motions and evidence went un-heard as well as the exemption claim, which was promised in the conference of Judge Price and Judge McPhee. (Default Judgment CP-80-81, Exemption Deny CP-82-83, Conference 47, 68).

2

MC PUBLIC #2

<p style="text-align: center;">SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY</p> <p>In Re Capital One Bank (USA), N.A.</p> <p style="text-align: right;">Petitioner,</p> <p>and DAVID L KOPLITZ</p> <p style="text-align: right;">Respondent.</p>	<p style="text-align: center;">FILED SUPERIOR COURT THURSTON COUNTY, WA</p> <p style="text-align: center;">2013 JUL 24 AM 11:07</p> <p>BETTY J. GOULD, CLERK</p> <p style="text-align: center;">NO. 11-2-02189-8</p> <p>JUDGE'S NOTICE OF ISSUE (NTIS)</p> <p style="text-align: center;">Clerk's Action Required</p>
<p>TO: THURSTON COUNTY CLERK and to all other parties listed herein: PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below.</p> <p>Calendar Date: 08/09/2013 Day of Week: Friday</p> <p>WARNING: Notice of Issue must be correct. If the Notice of Issue is filed late, contains a wrong date, is set on a full or canceled calendar, the hearing will <u>not</u> be scheduled and you will not be notified. Check the following website for unavailable hearing dates and to view the calendar to ensure your hearing is scheduled: http://www.co.thurston.wa.us/clerk/CourtCals.html</p>	
<p>Bench/Judge Copies: Deliver to Superior Court, Building 2, Rm. 150 Filing Deadlines: By 12:00 noon, 5 court days preceding the scheduled hearing date [LCR 5] Confirmation: Confirm at www.co.thurston.wa.us/clerk by clicking on Hearing Confirmation by 12:00 noon three court days prior to the hearing date [LCR 7]. Court Address: 2000 Lakeridge Drive SW, Building 2, Olympia WA 98502.</p>	
<p><input checked="" type="checkbox"/> SPECIAL SET (Friday - 8:30 am) CONFIRMATION REQUIRED</p> <p>ASSIGNED JUDGE:</p> <p><input checked="" type="checkbox"/> Judge Thomas McPhee, courtroom 204</p> <p><input type="checkbox"/> Judge Chris Wickham</p> <p><input type="checkbox"/> Judge Gary Tabor</p> <p><input type="checkbox"/> Judge Christee Schaller</p> <p><input type="checkbox"/> Judge James Dixon</p>	
<p><input type="checkbox"/> UNLAWFUL DETAINERS (Friday - 10:00 am) CONFIRMATION REQUIRED</p> <p><input type="checkbox"/> CIVIL MISCELLANEOUS (Friday-9:00 am) (DOL REVOCATIONS / RALJ / FIREARM RESTORATION) CONFIRMATION REQUIRED</p> <p><input type="checkbox"/> SUPPLEMENTAL PROCEEDINGS (Friday-9:00 am) CONFIRMATION REQUIRED</p>	
<p>Type of Motion:</p> <p><input type="checkbox"/> Default</p> <p><input type="checkbox"/> Discovery</p> <p><input type="checkbox"/> Summary Judgment/Dismissal</p> <p><input type="checkbox"/> Change Venue</p> <p><input type="checkbox"/> Continue Trial</p> <p><input type="checkbox"/> Show Cause</p> <p><input checked="" type="checkbox"/> Present Order</p> <p><input type="checkbox"/> TRO/Preliminary Injunction</p> <p><input type="checkbox"/> Other: _____</p>	
<p>NOTE FOR MOTION DOCKET - 1</p> <p style="text-align: right;">SUTTELL & HAMMER P.S. PO Box C-90006 BELLEVUE, WA, 98009 425-455-8220/425-453-3239 FAX</p>	

8. Expanded Grounds

10/4/2013* The plaintiff presented to the Thurston County superior court clerk's office under the first write as not being

paid for and to a lesser amount due to interest changes and meant to mislead the clerk's office. They issued a new 2013 write, which has already been paid under Judge McPhee order 8/9/2013.

This was action purposely undertaken to circumvent the defendants appeal cost for documents.

1 IF YOU FAIL TO ANSWER THIS WRIT AS COMMANDED, A JUDGMENT
2 MAY BE ENTERED AGAINST YOU FOR THE FULL AMOUNT OF THE
3 PLAINTIFF'S CLAIM AGAINST THE DEFENDANT WITH ACCRUING
4 INTERESTS, ATTORNEY FEES, AND COSTS WHETHER OR NOT YOU OWE
5 ANYTHING TO THE DEFENDANT. IF YOU PROPERLY ANSWER THE WRIT,
6 ANY JUDGMENT AGAINST YOU WILL NOT EXCEED THE AMOUNT OF ANY
7 NONEXEMPT DEBT OR THE VALUE OF ANY NONEXEMPT PROPERTY OR
8 EFFECT IN YOUR POSSESSION OR CONTROL.
9 JUDGMENT MAY ALSO BE ENTERED AGAINST THE DEFENDANT FOR
10 COSTS AND FEES INCURRED BY THE PLAINTIFF.
11 Witness, the Honorable PAULA CASBY, judge of the
12 above-entitled Court and the seal thereof, this 04 day of OCT, 2013.
13
14 BETTY J. GOUIN
15 Clerk of the Court
16 By: [Signature]
17 Deputy Clerk EVELYN DICKERSON
18 2000 Lakeridge Dr SW
19 Olympia, WA 98502
20
21 Karen L. Hammer, WSBA #35608
22 Isana Hammer, WSBA #36101
23 Patrick J. Layman, WSBA #5707
24 Melissa L. Curule, WSBA #40602
25 Nicholas R. Filer, WSBA #39536
 Ashley A. Nagrodski, WSBA # 40847
 Kristen E. Case, WSBA #43717
 Peter G. Marcek, WSBA #43094
 Sarah E. Davenport, WSBA #45269
 Mark C. Kroske, WSBA #45301
Attorney for Plaintiff
P.O. BOX C-90006
1831 LEVUE, WA, 98009
425.455.8220
#b 29332.001
Defendant's Information:
DAVID L KOPLITZ
5820 25th Ave SE
Lacey WA 98503

WE ARE DEBT COLLECTORS. THIS IS AN ATTEMPT TO COLLECT A
DEBT. ANY INFORMATION OBTAINED MAY BE USED FOR THAT
PURPOSE

SUTTELL & HAMMER, P.S.
PO BOX C-90006
BELLEVUE, WA, 98009
425-455-8220/425-455-8270 FAX

11/22/2013 (Second Expanded Grounds) The plaintiff got an exemption deny hearing when the case is closed and is only open on appeal, and the court clerk's office never should of approved it.

The plaintiff intends to use it misleadingly in the appeal response if they win. (Due to the Opening Brief being due on the same day, this section is not completed).

1	
2	
3	<input type="checkbox"/> EXPEDITE
4	<input type="checkbox"/> No hearing set
5	<input checked="" type="checkbox"/> Hearing is set
6	Date: <u>11-22-13</u>
7	Time: <u>9:00 am</u>
8	Judge/Calendar: <u>Price</u>
9	
10	IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
11	IN AND FOR THE COUNTY OF THURSTON
12	
13	CAPITAL ONE BANK (USA) N.A.,
14	Plaintiff,
15	NO. 11-2-02189-8
16	vs.
17	DAVID L KOPLITZ,
18	Defendant,
19	WASHINGTON STATE EMPLOYEES
20	CREDIT UNION,
21	Garnishee Defendant.
22	
23	PLAINTIFF'S MOTION TO DENY
24	DEPENDANT'S EXEMPTION CLAIM
25	<i>s/n 294342 001</i>

COMES NOW, the Plaintiff, CAPITAL ONE BANK (USA) N.A., by and through its attorneys of record, SUTTELL & HAMMER, P.S., and respectfully moves this Court to deny Defendant's Exemption Claim in this matter.

RELIEF REQUESTED

An Order Denying Defendant's Exemption Claim.

EVIDENCE RELIED UPON

1. Declaration of Plaintiff's Counsel

PLAINTIFF'S MOTION TO DENY DEPENDANT'S EXEMPTION CLAIM - 1	SUTTELL & HAMMER, P.S. P.O. Box C-90006 BELLEVUE, WA 98009 425-455-8220/425-454-7884 FAX
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9. Standard of Review

Fundamentals of Trial Techniques, 3rd Edition, Thomas A. Mauet

Washington Court Rules, (Local) Thomson & West

RCW's <http://apps.leg.wa.gov/RCW>

Federal Rules of Civil Procedure (FRCP's) 8(a)(3), 8(c), 12(a), 12(b)(1-7), 12(f), 15(a-c)

The US Constitution 5th Admendment, The right to "due process"

The US Constitution 6th Admendment, The right to a speedy, fair trial.

ASSIGNMENT OF ERROR

1. The trial court erred in accepting the summons of 10/11/2011 when it was served to the wrong location and signed by Bruce Gingrich at a location which is not the defendant and the affidavit of service is in error and failing the FRCP's and RCW 19.16.250(1). (Summons (CP-3, 4), Affidavit (CP-5).
Weiss v. Glemp, [5] Process - Service - Personal Service - Statutory Requirement - Purpose. An essential objective of RCW 4.28.080(15) is that process actually be delivered to a responsible person.
2. The trial court erred in that they gave a notice of issue action to the plaintiff 11/03/2011 to re-due the summons by Judge McPhee and overruled the defense motion to dismiss which was corrected to a vacate. The plaintiff sent it to an invalid address

and told Judge Paula (Not assigned to the case) that it was completed. (CP-5, Motion & Default Write CP-8 -18, CP- 26).

*Debra Stewart, App. vs. Griffith Industries, Inc., Et Al.
67009-3 File Date 11/13/2012 Judges Council of Record
Because the defendants raised the defense in their answer and engaged in no actions inconsistent with this defense, it is inapplicable to bar the affirmative defense. We affirm.*

3. The trial court erred in issuing a default write 12/02/2011 under JD Paula Casey not assigned over Judge McPhee (assigned Judge) to the case and the plaintiff lying to the court in that the above summons re-due was completed when it was sent to the wrong address. (Wrong Addr. CP-19).
4. The trial court erred in allowing the court to proceed without the defense when the plaintiff continued to send court dates and documents to the wrong address. Sending court dates and document to the wrong address, which was stated in writing to the plaintiff to correct the address March 2011 and again in October 2012 with a power bill attached.
5. The trial court erred in allowing the proceedings to continue when the person who signed the summons was not the defendant and that the plaintiff was pushing the notion that Bruce Gingrich lived at the defendants location , which not the case. This was a failure to uphold the FRCP's and RCW

19.16.250 (1) Prohibited Practices Rules. (11/09/2012 Plaintiff service incorrect, Defense restates position as vacate (CP-23) and Plaintiff order re-due service to correct address 11/19/2012 (CP-24-25).

6. The trial court erred in not vacating the judgment on the ground that the plaintiff on numerous times misdirected court dates to a known and stated invalid address.

Judge McPhee only asked for statement as to why they did it a couple of times but the plaintiff in the final hearing misdirected dates failing the 6th Admendmant right to a fair trial and to be heard in a court of law besides rule 8.4 on conduct.

(Declaration 11/28/2012, 7/24/2013 Plaintiff conduct responses not pulled, see Appendix I).

6. Defendant assigns as error the trial court for allowing the plaintiff to disrupt the November 30, 2012 hearing and the court allowing late information entry by the plaintiff under the 5 day rule of title 4 rule of court submissions.(Hearing CP-26, 11/30/2012 JD Decision CP-38-39).
8. Defendant assigns as error the trial court for not accepting the written motions and evidence of insufficiency of the service process after asking for more additional factual evidence after a

no decision hearing November 30 2012 thus failing the constitutional right of being heard.

9. Defendant assigns as error the trial court for allowing Judge McPhee's opinion and decision being submitted into court after retirement causing an undue bias of the new court and he plaintiff asked for a decision by the new assigned Judge Erik D. Price based on this document of 4/16/ 2013 Titled Courts Opinion from Judge McPhee. (4/16/2013 Courts Decision Letter missing? CP-38-39 is courts opinion). The defense Motion strike was boggled by the clerk's office closing the case when it was not over.

(Note: The first letter from Judge McPhee could not be found in the courts documents but is supported by court record of Judge Price hearing and may have been withdrawn after defense objection.)

(Court Transcript with Judge Erik D. Price CP-47, CP-68, confirm this).

10. Defendant assigns as error the trial court for not proceeding as agreed upon by Judge Price and Judge McPhee who agreed

that the defense should be heard. (Court Transcript with Judge Erik D. Price CP-47, CP-68, confirm this).

11. Defendant assigns as error the trial court for not hearing the motions and evidence as agreed upon under JD Price and conference after bringing back Judge McPhee on 8/09/2013. Judge McPhee asked why the defense was at the court and that he was only there to sign the order. He acknowledged the amount of evidence submitted and the motion statement and stated where you expecting something else and would appeal. (5/13/2013 Motions and Evidence CP-48-67), (5/21/2013 Motion to Vacate CP-70), (*8/09/2013 Order Denying CP-80-83).

(Note: The defense was informed by the Plaintiff that the hearing was 8/9/2013 which was wrong, the actual issue hearing was 8/5/2013).

SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY	
In Re Capital One Bank (USA), N.A.	NO. 11-2-02189-8
Petitioner,	JUDGE'S NOTICE OF ISSUE (NTIS)
and DAVID L KOPLITZ	
Respondent,	Clerk's Action Required
TO: THURSTON COUNTY CLERK and to all other parties listed herein: PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is directed to note this issue on the calendar checked below. Calendar Date: 08/09/2013 Day of Week: Friday	
WARNING: Notice of Issue must be correct. If the Notice of Issue is filed late, contains a wrong date, is set on a full or canceled calendar, the hearing will not be scheduled and you will not be notified. Check the following website for unavailable hearing dates and to view the calendar to ensure your hearing is scheduled: http://www.co.thurston.wa.us/clerk/CourtCalg.htm	
Bench/Judge Copies:	Deliver to Superior Court, Building 2, Rm. 150
Filing Deadlines:	By 12:00 noon, 5 court days preceding the scheduled hearing date [LCR 5]
Confirmation:	Confirm at www.co.thurston.wa.us/clerk by clicking on Hearing Confirmation by 12:00 noon three court days prior to the hearing date [LCR 7].
Court Address:	2000 Lakeridge Drive SW, Building 2, Olympia WA 98502.
<input checked="" type="checkbox"/> SPECIAL SET (Friday - 8:30 am) CONFIRMATION REQUIRED	Type of Motion: <input type="checkbox"/> Default <input type="checkbox"/> Discovery <input type="checkbox"/> Summary Judgment/Dissmissal <input type="checkbox"/> Change Venue <input type="checkbox"/> Continue Trial <input type="checkbox"/> Show Cause <input checked="" type="checkbox"/> Present Order <input type="checkbox"/> TRO/Preliminary Injunction <input type="checkbox"/> Other: _____
ASSIGNED JUDGE: <input checked="" type="checkbox"/> Judge Thomas McPhee, courtroom 204 <input type="checkbox"/> Judge Chris Wickham <input type="checkbox"/> Judge Gary Taber <input type="checkbox"/> Judge Christine Schaller <input type="checkbox"/> Judge James Dixon	
<input checked="" type="checkbox"/> UNLAWFUL DETAINERS (Friday - 10:00 am) CONFIRMATION REQUIRED	
<input type="checkbox"/> CIVIL MISCELLANEOUS (Friday - 9:00 am) (DOL REVOCATIONS / RALI / FIREARM RESTORATION) CONFIRMATION REQUIRED	
<input type="checkbox"/> SUPPLEMENTAL PROCEEDINGS (Friday - 9:00 am) CONFIRMATION REQUIRED	
NOTE FOR MOTION DOCKET - 1	
SUTTELL & HAMMER P.S. PO BOX C-90006 BELLEVUE, WA, 98009 425-455-8220/425-453-3239 FAX	

12. Defendant assigns as error the trial court after signing the order on 8/09/2013 the judge returned without councils and denied the defenses motion for a relief from judgment, entered back on 05/13/2012 in a multi-faceted motion after the 11/30/2012 request from Judge McPhee for more information. (Relief CP-66-67, Order 48-67). (Denied Relief Motion 8/19/2013).

13. Defendant assigns an error to the Thurston County clerk's office for accepting a false write presented by the plaintiff and served again on the bank, interfering with the defendants right to appeal and cost associated with that process and a clear act of misconduct under rule 8.4.

ARGUMENT

- (1) The first and most prevalent reason for appealing this case is that the court failed to uphold the insufficiency of the service process and the person who signed the summons is Bruce Gingrich who did not live at the defendant house.
Judge McPhee issued a directive 11-09-2013 to the plaintiff telling them that they have to re-due the service process because it was wrong but they never did.
- (2) The second reason is that the case took an unusual turn toward the defendant having to more extensively prove that Bruce Gingrich lived elsewhere by the plaintiff badgering Judge McPhee into the notion that he lived at the defendants house, which is not the case.

The final evidence clearly showed Bruce Gingrich at that time having 52 court appearance on non-legal activities and fugitive harboring.

The defendant also turned in a rental agreement of his location besides two-affirmation statement and a police arrest warrant.

- (3) The third reason is misconduct by the plaintiff redirecting court dates to a known bad address after being informed in writing two times and by power bill besides the court two times.

Judge McPhee asked only for a statement from the plaintiff as to why they did it but did not vacate and dismiss the plaintiff action failing rule 8.4 of conduct and title 4 of civil procedures.

The plaintiff again committed this act of many one final time after the re-call of Judge McPhee and conducting a one-sided presentation to Judge McPhee July 24, 2013 (moved to 8/05/2013) and then informed the defense that the hearing was 8/9/2013, which it was not thus failing the defendants 6th admendment rights. (See APP-X).

- (4) The fourth reason is that Judge McPhee allowed the plaintiff to submit documents late in the day two days before the hearing and over the objection of the defense and read them later and

failing court rules of document submissions and time for the defense to review the items.

- (5) The fifth reason is that the court failed to uphold its own decision in the conference between Judge Price and retired Judge McPhee that and the defense motions and evidence should be heard in court, including the motion for relief.

Prior to the final decision the court asked for more information and then did not for the defense, but let the plaintiff give a notice of issue presentation with the Judge without the defense.

- (6) The courts in-decision and confusion over the case ran for 20 months before a final decision and failed to uphold the 5th & 6th admendment of the US Constitution for proper due process and a fair and impartial trial in a reasonable time.

- (7) The seventh is that reversal is required because of cumulative errors by the court, the clerks office and the plaintiff's blatant acts of improper conduit by violating court procedures and civil law besides interference with the right to seek justice in a court of law.

CONCLUSION

The court clearly failed to uphold the law under the insufficiency of the service process of RCW 19.250 (1), FRCP's, RCW Title 4 Civil Procedures, RCW 12 defense objection and rule 60 relief with evidence only to deny it without legal reasoning.

The defense made several moves for motions that went un-heeded and even a motion strike for an entry of opinion from the retired judge tainting the new court and leading to another impasse that created another major delay in the case and a cumulative of over 20 months in court over the life of the event.

At one point, the just before the final ruling the court clerk's office actually closed the case when it was not resolved and the motion went un-heard due to deception of the plaintiff in sending the wrong day for the hearing to the defendant.

The case also fails on the grounds of the 5th and 6th admendments of due process and a fair and speedy trial.

This ruling clearly needs to be over-turned being based on no specific legal bases and denial for the motion of relief since it was valid and entered over five months before the final decision.

 11/22/2013

Defendant/Appellant / Date

APPENDIX I

Superior Court Case Summary, Thurston Superior Court, Case Number: 11-2-02189-8

Sub	Docket Date	Docket Code	Docket Description	Misc Info
1	10-11-2011		CASE INFORMATION COVER SHEET	Case Information Cover Sheet
2	10-11-2011		FILING FEE RECEIVED	Filing Fee Received 230.00
3	10-11-2011		NOTICE OF ASSIGNMENT ACTION	Notice Of Assignment Scheduling Conference 01-13-2012
4	10-11-2011	SUMMONS	Summons	
5	10-11-2011	COMPLAINT	Complaint	
6	10-11-2011		NT RE: DEPENDENT OF MILITARY PERSON	Nt Re: Dependent Of Military Person
7	11-03-2011		AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service
8	11-03-2011		NOTICE OF ISSUE ACTION	Notice Of Issue Default 12-02-2011M4
9	11-03-2011		DECLARATION OF MAILING	Declaration Of Mailing
10	11-03-2011		MOTION FOR DEFAULT JUDGMENT	Motion For Default Judgment
11	12-02-2011		MOTION HEARING JDG0002	Motion Hearing Judge Paula Casey Cc Burke
12	12-02-2011		DEFAULT JUDGMENT	Default Judgment
13	10-03-2012		AFFIDAVIT FOR GARNISHMENT	Affidavit For Garnishment
14	10-03-2012		WRIT OF GARNISHMENT	Writ Of Garnishment
15	10-03-2012		AFFIDAVIT FOR GARNISHMENT	Affidavit For Garnishment
16	10-03-2012		WRIT OF GARNISHMENT	Writ Of Garnishment
17	10-19-2012		ANSWER TO WRIT OF GARNISHMENT	Answer To Writ Of Garnishment
18	10-23-2012		ANSWER TO WRIT OF GARNISHMENT	Answer To Writ Of Garnishment
19	11-01-2012		NOTICE OF ISSUE ACTION	Notice Of Issue Deny Claim Exemption 11-09-2012M4
20	11-01-2012		VOID-SUB NUMBER VOIDED	Void-sub Number Voided
21	11-01-2012		ANSWER TO WRIT OF GARNISHMENT	Answer To Writ Of Garnishment
22	11-01-2012		DECLARATION	Declaration Ashley A Nagrodski

23	11-01-2012	MOTION	Motion To Deny
24	11-01-2012	DECLARATION OF MAILING	Declaration Of Mailing
25	11-09-2012	HEARING CANCELLED: COURT'S REQUEST	Hearing Cancelled: Court's Request (McPhee) Cc Frost
26	11-09-2012	ORDER	Order Striking Exemption Claim Hrg
-	11-09-2012	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order
27	11-19-2012 11-30-2012M4	NOTICE OF ISSUE ACTION	Notice Of Issue Motion Denying Exemption Claim
28	11-19-2012	DECLARATION OF MAILING	Declaration Of Mailing
29	11-28-2012	DECLARATION OF MAILING	Declaration Of Mailing
30	11-28-2012	RESPONSE	Response
31	11-28-2012	DECLARATION	Declaration Of Plaintiff Counsel
32	11-30-2012	MOTION HEARING	
JDG0004		Motion Hearing Judge William Thomas Mcphee	Cc Shackley
33	12-03-2012	LETTER	Letter From David Koplitz
34	01-10-2013	ANSWER TO WRIT OF GARNISHMENT	Answer To Writ Of Garnishment
35	04-16-2013	COURT'S DECISION	Court's Decision
36	04-19-2013 04-26-2013M4	NOTICE OF ISSUE ACTION	Notice Of Issue Present Order
37	04-19-2013	MOTION	Motion For Presentation Of Orders
38	04-19-2013	DECLARATION OF MAILING	Declaration Of Mailing
39	04-26-2013	MOTION HEARING	Motion Hearing
		Cc Charpentier Cr Wilcox	JDG0004 Judge Erik D. Price
40	05-01-2013	NOTICE OF ISSUE	
		ACTION	Notice Of Issue Presentation 05-17-2013M4
41	05-01-2013	DECLARATION OF MAILING	Declaration Of Mailing
42	05-03-2013	RESPONSE	Response For New Ruling
43	05-13-2013	MOTION	Motion To Vacate Judgment

44 05-17-2013 MOTION HEARING
 JDG0004 Motion Hearing Judge Erik D. Price Cc Nastansky Cr Wilcox

45 05-17-2013 CONSENT Consent For Pro Tem

46 05-17-2013 NOTICE OF APPEARANCE Notice Of Appearance

47 05-21-2013 MOTION Motion To Vacate Default Judgment

48 05-21-2013 MOTION Motion To Strike Documents

49 07-15-2013 HEARING CANCELLED: COURT'S REQUEST
 PRO00 Hearing Cancelled: Court's Request Judge Pro Tem Cc Merz

50 07-24-2013 NOTICE OF ISSUE ACTION Notice Of Issue Presentation With Judge
 Mcphee 8:30 08-05-2013N4

51 07-24-2013 DECLARATION OF MAILING Declaration Of Mailing

52 08-02-2013 NOTICE OF ISSUE Notice Of Issue Not Timely

53 08-02-2013 MOTION TO COMPEL Motion To Compel

54 08-09-2013 MOTION HEARING PRO00 Motion Hearing
 Judge Pro Tem Mcphee Cc Frost Cr Beehler

55 08-09-2013 ORDER DENYING MOTION/PETITION Order Denying Motion/petition

- 08-09-2013 EX-PARTE ACTION WITH ORDER Ex-parte Action With Order

56 08-09-2013 ORDER DENYING MOTION/PETITION Order Denying Motion/petition

- 08-09-2013 EX-PARTE ACTION WITH ORDER Ex-parte Action With Order

57 08-19-2013 MOTION Motion For Judgment Ot Pay

58 08-19-2013 ANSWER TO WRIT OF GARNISHMENT Answer To Writ Of Garnishment

59 08-19-2013 DECLARATION OF MAILING Declaration Of Mailing

60 08-19-2013 AFFIDAVIT IN SUPPORT Affidavit In Support

61 08-23-2013 JDGMT ON ANSWER OF GARN DEF Jdgmt On Answer Of Garn Def

- 08-23-2013 EX-PARTE ACTION WITH ORDER Ex-parte Action With Order

62 08-29-2013 TRUST RCVD-GARNISHMENT Trust Rcvd-garnishment 11,562.34

63 09-06-2013 APPELLATE FILING FEE Appellate Filing Fee 290.00

⋆

64	09-06-2013	NOTICE OF APPEAL TO COURT OF APPEAL	Notice Of Appeal To Court Of Appeal
65	09-09-2013	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed
66	09-11-2013	CERTIFICATE OF MAILING	Certificate Of Mailing
67	09-23-2013	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls
71	10-04-2013	AFFIDAVIT FOR GARNISHMENT	Affidavit For Garnishment
72	10-04-2013	WRIT OF GARNISHMENT	Writ Of Garnishment
68	10-07-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service
69	10-07-2013	STATEMENT	Statement Of Arrangements
70	10-07-2013	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
73	10-09-2013	CLERK'S PAPERS SENT	Clerk's Papers P 1-83
74	10-09-2013	LETTER	Letter To Koplitz W/clp Index
75	10-16-2013	ANSWER TO WRIT OF GARNISHMENT	Answer To Writ Of Garnishment
76	10-17-2013	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed
77	10-18-2013	LETTER	Letter From Defendant

APPENDIX II

RULE 12 DEFENSES AND OBJECTIONS

(4) (b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under rule 19.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered

(6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more

particularity in that pleading will further the efficient economical disposition of the action, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon him or upon the courts own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived (A) if omitted from a motion in the circumstances described in section (g), or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings; or at the trial on the merits.

(3) Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense, which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be affirmatively pleaded.

RULE 60 RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;
- (2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;
- (3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);
- (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (5) The judgment is void;
- (6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;
- (7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;
- (8) Death of one of the parties before the judgment in the action;
- (9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;
- (10) Error in judgment shown by a minor, within 12 months after arriving at full age; or
- (11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis,

audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or his attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes, Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

RULE 7 PLEADINGS ALLOWED; FORM OF MOTIONS

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b) Motions and Other Papers.

(1) How Made. An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.

Proof of Service

PROOF OF SERVICE

I certify that on 11/22/2013 ^{Mailed} ~~certified~~ one copy of the opinion brief to the Court of Appeals Division II Washington State in PDF Form.

I further certify that I mailed a certified copy to the plaintiff/respondent on 11/22/2013 mailed to:

Malisa L. Gurle
Suttell & Hammer
PO Box 90006
Bellevue, WA, 98009-9006

~~Defendant/Appellant~~

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**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON DIVISION TWO**

<p><u>Capital Bank (USA), N.A., Respondent</u> <u>(Suttle & Hammer)</u></p> <p align="center">vs.</p> <p><u>David Koplitz, Appellant</u></p>	<p>Court of Appeals No. 45313-4-11 Thurston County No. 11-2-02189-8</p> <p>Opening Brief</p>
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ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR THURSTON COUNTY
Dated 8/09/2013

Judge Thomas McPhee (Retired), JD Paula Casey (Retired), Judge Erik D. Price

OPENING BRIEF OF APPELLANT

<p>David Koplitz 5820 25th AVE SE Lacey, WA 98503</p>	<p>Malisa L. Gurule Suttell & Hammer PO Box 90006 Bellevue, WA, 98009-9006 Attorney</p>
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION TWO

<p><u>Capital Bank (USA), N.A., Respondent</u> <u>(Suttle & Hammer)</u> vs. <u>David Koplitz, Appellant</u></p>	<p>Court of Appeals No. 45313-4-11 Thurston County No. 11-2-02189-8 Opening Brief</p>
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Cert of Compliance & Signature Page

I David Koplitz certify that the opening brief complies with the size and formatting requirements of the law and written by the under signed.



David Koplitz 12/10/2013

Appellant/Defendant

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