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No. 47285-6-II

COURT OF APPEALS
OF THE STATE OF WESTERN WASHINGTON
DIVISION II

REBUTTAL BRIEF ON COLLATERAL ATTACK ON SUMMARY JUDGMENT And BILL IN EQUITY

FILED
COURT OF APPEALS
DIVISION II
2015 SEP 15 PM 1:38
STATE OF WASHINGTON
BY_____
DEPUTY

David Arthur Darby, Appellant Petitioner, Pro Se

v.

Clark County, a political subdivision of the State of Washington and Individuals Acting in their official capacity for the County of Clark are the Following:

Greg Kimsey d.b.a. Clark County Auditor
Doug Lasher d.b.a. Clark County Treasurer
Peter Van Nortwick d.b.a. Clark County assessor
David Madore d.b.a. Clark County Commissioner
Edward L. Barnes d.b.a. Clark County Commissioner
Anthony Golick d.b.a. Clark County Prosecutor
Taylor R. Hallvik d.b.a. Clark County Deputy Pros.

This Bill in Equity is without the "Federal Rules of Civil Procedure," to be subject to the rules of the Chancery Court **as described** by HENRY R. GIBSON, A.M., LL.D., in his *A Treatise on Suits in Chancery* (Knoxville, Tennessee: Gaut-Ogden Company, 1907), Vol. I, pp. 1-57, Sections 1-64; Vol. II, pp. 950-966, Sections 1189-1205.

The local rules of court procedure do not apply to the rules of equity in Chancery.

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I. Opening Statement

All Municipal CORPORATIONS are masquerading as lawful governments (Constitutional), but in reality they are operating in Commerce; the federal UCC's and local RCW's codes are the laws of Commerce. Therefore, according to the 1943 Clearfield Doctrine this case should never have gotten this far. The lower courts should have recognized this fact. (See Opening Brief for complete text of Clearfield Doctrine). I, David Arthur Darby, have presented proof to the corporate GOVERNMENT and to the Courts that prove that there is no signed contract in Commerce that gives the government any authority over this Private Sovereign Natural Citizen of the Continental United States of America.

The government has no right to commit theft and take Private Sovereign Citizen David Arthur Darby's property valued at $500,000 for any reason. The Treasure of the County even devalued my property by not stating in the sale that my building that I had built was worth approximately $350,000 in addition to the property. Only the 5 acres and an old Modular Home that was not on the county records as being permitted, and therefore should not have been listed. The COUNTY committed theft for an alleged amount of approximately $23,000. I have presented my status to the CLARK COUNTY officials, the Superior Court of Clark County and now the Appeals Court of District II of Washington.

The federal government's Commercial codes protect my rights. UCC Title 42, Section 1981 and 1982 State that governments cannot have any jurisdiction over any property unless they have Monetary or Proprietary interest in real property. Title 42, Section 1981 and 1982 only applies to Private Citizens, since public citizens own nothing. It is now up to the corporate CLARK COUNTY GOVERNMENT officials to prove that David Arthur Darby is a public citizen. The commercial government must prove that it has a signed contract or prove that I am a member of

the CORPORATION OF CLARK COUNTY. The CLARK COUNTY government makes snide statements such as Darby Claims to be a sovereign, but so far has not produced any proof that I, David Arthur Darby, am under their jurisdiction as a public citizen. I believe in the rule of law, but it must work both ways. I have declared myself terminated from the Corporation at all levels. They have not acted in honor and presented me lawful authority that I cannot terminate any contract that is supposedly signed by myself, especially if I was forced or coerced into a contract that removes my Private Sovereign Status. I, David Arthur Darby pursuant to Article 3, Section 2 of the 1878 Constitution have proved that I am a Private Sovereign Free man pursuant to the afore mentioned Constitution, the 1783 Treaty of Paris, Article 2, and Black's 4th edition definition of State and the 1787 Constitution for the United States of America.

Therefore, if we go on the premise that my Declaration of Status is correct, since it has not been proven wrong in court, then the house of cards that the commercial CLARK COUNTY government has been trying to force on me falls apart. (See Petition for Adjunctive Hearing & Declaratory Order filed with this court) Since, the county has not proved that I am part of the corporation, then it stands to reason that the commercial CLARK COUNTY has no jurisdiction over me nor does it have the authority to force a Private Sovereign into the commercial CLARK COUNTY system, which a Private Sovereign has no part unless, that Private Sovereign has signed a contract pursuant to the 1943 Clearfield Doctrine. This is the only way a commercial government can have jurisdiction over a Private Sovereign.

The CORPORATE CLARK COUTNY has never shown me the proof, other than the commercial RCW's (REVISED CODE OF WASHINGTON,) that the GOVERNMENT OF WASHINGTON has the lawful Constitutional right to sell my property or even collect taxes on land that they have no monetary or proprietary interest in. The Feudal system does not apply to

the Private Sovereign Citizen. The corporate CLARK COUNTY will not present me with constitutional proof that the corporate CLARK COUNTY has any jurisdiction over a Private Sovereign Natural Citizen. Again, I will state for the record. "I am not a Public Citizen in Commerce and the Municipal Commercial Government has no authority to claim that I am a Public Citizen under their jurisdiction. For that they need a signed contract, again according to the 1943 Clearfield Doctrine."

We are at the juncture where we need to reduce this case to its essence. Taylor Halvik is representing himself and the COUNTY. The County Corporation leaders named have not honored this court with their Briefs. They are separate entities from the County. The Leaders were all named individually and acting unconstitutionally against me, David Arthur Darby.

1. This case revolves around the status of the private sovereign natural people of the State of Washington, pursuant to Article II, Section 3 of the lawful 1878 Constitution of the State of Washington. That same constitution also recognizes allodial land and the land patents. Since, the county turns a blind eye and treats all people as public citizens, which they have jurisdiction over, they are unaccustomed to dealing with the Private Sovereign Natural Born People. Public Citizens and contractual corporate people that have contracted with the UNITIED STATES FEDERAL CORPORATION, and its subsidiaries - the 50 STATES. I, David Arthur Darby have terminated that same corporate public contract and have resumed my original Private Sovereign Status that was taken from me by the federal corporation through ignorance on my part and fraudulent contracts. (The affidavits that concern this termination are before this court as proof of my status.) This case in its essence revolves around the premise that the Private Sovereign individual has the Constitutional right to have clear title to his/her land.

There are two distinct classes of people in this country and the law for each is different. The CORPORATE STATE AND COUNTY does not want those differences brought forth and ruled upon. The Corporate STATE will lose jurisdiction over any citizen that does not have a contract with them. The STATE AND COUNTY wants all of the people to be considered corporate contract citizens that have no constitutional protections. This gives the STATE uncontrolled powers to control and tax all who submit.

On the other hand, I David Arthur Darby, maintain that we must adjudicate the two statuses of people and determine the rights of non-contractual people (Private Sovereigns) versus the contractual people (Public Citizens) with no constitutional rights other than those rights that the Corporation wants to give them. Once the contract is lawfully terminated with Corporation governments, then the corporation government must recognize the status of the individual person and not assume that all the people are treated the same. This is not happening in Washington State.

2. The Superior Court was given a Mandatory Judicial notice, which the judge ignored from the very beginning. This Appeals court has my Mandatory brief that was not addressed by the judge. I stand on my brief and the law behind it.
3. On Page 1 of County's brief, the county's most recent attempt to obfuscate the truth. In the county's words; "This case arises from Mr. Darby's most recent attempt to claim that he is a "sovereign citizen" and is not subject to the laws of the State of Washington. He is not informing the court that he is talking about the corporate laws of the CLARK COUNTY Commercial Corporation that he is defending. Notice the attorney refers to this as another attempt. But, as the court can see that the attorney does not offer any

evidence to the contrary nor does he offer a copy of a signed contract giving the COMMERCIAL CLARK COUNTY jurisdiction over me. I, David Arthur Darby, Private Sovereign natural born free man have provided the court with all of my affidavits that even the President of the United States did not rebut. Therefore, since the rebuttal time is over for the President and the Governor of the State of Washington, I am now a Private Sovereign natural born free man. If the attorney for the county does not agree, then he should have provided the court with proof of his case. He has none. Besides, I have never said that I am not subject to the laws of Washington. I have said that I am not subject to the commercial laws of a fictional corporation. I am however subject to the laws set forth in the lawful 1878 Constitution of the State of Washington.

I will restate my position again for the court. The Private Sovereign Natural Born Free man is not subject to the commercial codes and statutes of the WASHINGTON and CLARK COUNTY Commercial Corporations. There is only one exception to that rule. The COMMERCIAL GOVERNMENT must have a signed contract with a Private Sovereign Natural Born Free Man before it has jurisdiction over anything Private. The CLARK COUNTY Attorney has not produced such a document. Therefore, there is no contract and I am not under the authority of the commercial STATE AND COUNTYS.

Attorney Hallvik brought up cause Number 12-2-03432-3, the summary judgement that caused this mess. Now we must look at the judge that caused this problem. Judge Gonzales would not accept me as a Private Sovereign individual, nor did he mention any of the Constitutional law set forward. He had a Mandatory Judicial Notice and also chose to ignore it. He ignored all the affidavits that I have presented to the county officials since 2006 that would have proved my case for me. I was supposed to loose and I did. I

have been railroaded in the courts of CLARK COUNTY since I started my quest for my constitutional rights. CLARK COUNTY is not a constitutional county and will not allow anyone no matter if they have proved that they are not under the jurisdiction of the commercial WASHINGTON STATE OR CLARK COUNTY. Never confuse them with the truth. I am going to do this if I must go all the way to the Supreme Court of the United States, where they do recognize my status.

On page 3 the Attorney Hallvik told the court that I because of my status I do not recognize the Washington State Constitution. He is totally wrong or completely misguided. I have referred to the Lawful 1878 Constitution of the State of Washington and how much it means to the Private Sovereign People of the State of Washington. Again he is using obfuscation to deflect the courts attention from the real issue. The 1878 Constitution of the State of Washington was passed by the people in 1878. But, because of politics in Washington D.C. we did not get Statehood until 1889. What Attorney Hallvik is not telling the court is that the 1878 Constitution of the State of Washington was the constitution used to confirm that Washington State had a Republican form of government. (See Senate Documents for the 50th Congress, 2nd Session, Misc Doc. No. 55.) Attorney Hallvik does not want the court to start thinking that if the 1878 Constitution is correct, then how the 1889 Constitution of the State of Washington replaced the 1878 Constitution. (I am glad that you thought of that question). Territory Governor Miles Moore did not want the 1878 Constitution of the State of Washington used because it gave too much freedom and control to the people. So, he called his own Constitutional Convention and did not follow the people's wishes written into the 1878 Constitution and called a constitutional convention himself, which is against Article XVI,

Sections 1 & 2 of the lawful 1878 Constitution of the State of Washington, where it states that only the legislature can call a constitutional convention not the governor.

4. Since, the case #12-2-03432-3 was brought up by the county Attorney Hallvik, the next question that must be considered is that the 1846 Oregon Treaty has more power than both the 1787 Constitution of the United States and the 1878 Constitution of the State of Washington concerning title to the land. The 1846 Oregon Treaty transferred clear title to the land that is considered as Washington, Oregon and parts of Idaho and Montana from the British King to the United States of America. Therefore, once the title was received by the United States of America though treaty, the United States Federal government had clear title to the land, until states were carved out of that territory.

   Clear title to the Oregon Territory means exactly that. Once a government has clear title to the land in question, the British Crown did not have the right to Tax or lien the land. That is what obtaining a clear title to the land means. The United States of America would have gone to war to protect that contractual treaty agreement.

   We are now talking chain of title. First, the title transferred to the United States of America through the 1846 Oregon Treaty. The land that was already settled within the territory was titled and was titled to the settlers for the land they carved out as their own. When there were adequate numbers of people in the territory the people applied for statehood the first time in 1878 and submitted the 1878 Constitution of the State of Washington to the Congress of the United States.

   Statehood was not granted until 1889 and the state made the agreement that all unassigned land would be managed and sold by the United States of America though the statehood agreement. The United States government then disposed of the titled land and

presented the Land Patents to all new Private Sovereign owners, which proved that the new owner had a quit claim and clear title to the land in question. The Codicil of the land patent stated that the title could be passed on to heirs and assigns in fee simple. The land could never be liened by governments and banks. This law has never been changed. The land patent is still the superior title to the land. The land patent is only available to the Private Sovereign individual. Therefore the only question before the court is the status of David Arthur Darby, because by settled law only Private Sovereigns can possess clear title to the land. David Arthur Darby has a recorded land patent, not a registered deed.

5. The next question before the court is whether the individual states have the right to ignore settled United States law and continue to ignore the Land Patent which is lawful superior title to the land. As we all know the United States of America contracted with all new states to dispose of all land that was not claimed at the time of Statehood, so that the United States of America could continue to present Land Patents to the settlers as they claimed the new land. The United States of America issued Land Patent titles to all settlers, which stated that once the settler had his land patent title in his possession, no government or bank could ever lien it. The land was fee simple.

   In my case, since I am a Private sovereign natural born person and did my due diligence in preparing the declaration of Land Patent and Homestead. I recorded the above paperwork with the COUNTY and the county did not take exception to the update of patent. CLARK COUNTY official had a 90 day period to take exception to the update of land patent on my land. They did not say one word. The STATE AND COUNTY governments were given plenty of time to take exception to the land patent update and

they did not. The COUNTY has no right to deny me at this late date the opportunity to declare myself as one of the assigns that are covered in the codicil of the Land Patent. Once declared the land patent becomes clear title to the land and government must take a back seat and protect the titles of the people. The CORPORATE STATE can no longer operate under the assumption that it owns all the land. A STATE OR COUNTY can only tax land that it owns. (The Definition of State is the Private Sovereign Natural Born People, therefore the State must protect the rights of ownership of the Private Sovereign people.)

6. The next question which the COUNTY did not mention and agrees with me by not mentioning it in their brief, is that the CORPORATE STATE GOVERNMENT must extend the rights and privileges of the original 1878 Constitution of the State of Washington to all private sovereign natural born citizens. The STATE AND COUNTY must recognize that there are two different statuses of citizens within the State. There are the Constitutional Private Sovereign natural born citizens and there are the people that are contractually under the jurisdiction of the corporate STATE OF WASHINGTON, and the CORPORATE UNITED STATES. The STATE AND COUNTY must start recognizing the private sovereign as a constitutionally protected class of people and start treating them as the trustors of the state, not the trustees of the CORPORATE STATE.

The County did not mention the 1878 Constitution of the State of Washington in its brief, which I find very curious. Essentially, this is why we are here. If the STATE AND COUNTY had followed its own lawful constitution of the Private Sovereign people of Washington we would not be here today. If the State and county had recognized the rights of the private sovereign citizen as constitutional and not corporate rights, we would

still not be here today. If CLARK COUNTY follows my petition for Adjudicative Hearing & Declarative Order, this case should end. The court has a copy of the order served on the CLARK COUNTY Prosecutor.

The court can find all of the articles that the 1878 Constitution of the State of Washington guarantees the people that it will enforce in my first brief. Such as, the state must recognize all land patents and grants and all land will be held in allodium. These are powerful statements and must be followed in the case of the Private Sovereign People of Washington. If the state will not follow its own promises to the People, then the people have no other recourse but to petition the United States of America to protect the people's God given rights through a valid contractual trust with the people called a constitution. Since the United States Congress gave its blessing to the 1878 Constitution and validated that it was Republican in form, then the Federal government has some responsibility to make sure the States follow their own constitutions. Otherwise the people can be under the tyranny of the STATE CORPORATION and the federal government is helpless to provide a remedy. In law there is always a remedy. In this case it is the higher courts of this nation.

7. The last and final question is the Land Patent itself. Does the CORPORATE STATE AND COUNTY have the right to ignore its own constitution and settled United States of America law and ignore the Declaration of Land Patent and Homestead in the name of the Private Sovereign Free Man? If we look at this logically, the STATE AND COUNTY corporate government cannot ignore the fact that the Private Sovereign individual has clear title to his or her land that was originally presented in the form of a land patent from the Federal United States of America. Then it stands to reason that the

CORPORATE STATE AND COUNTY can tax and lien any and all federal land when it so chooses if it continues to deny the value of the Land Patent.

If we follow this logic, then the land patent issued by the federal United States is a fraud on the settler and means nothing. Why was it given in the first place if it did not pass clear title to the settler? The full faith and credit of the United States of America would essentially be a joke. We know that this is not true. The STATES AND COUNTIES of this nation cannot tax or lien the federal government. Therefore, the CORPORATE STATES AND COUNTIES cannot tax and lien land patent titles that are presented under the full faith and credit of the United States of America unless the STATE AND COUNTY has a notarized, signed contract with any private sovereign citizen.

The United States of America is the final arbitrator of the superiority of the land patent since the United States of America presented it to so many settlers across this great nation. If the land patent is clear title to the land, then logically the STATE AND COUNTY governments must accept the land patent as clear title to the land and remove that piece of land from the county tax records. If the STATE AND COUNTY will not protect the rights of the Private Sovereign people, then it is up to the United States courts to uphold the rights of the Private Sovereign people of this county. When the local government oversteps so blatantly, then we the people have to appeal to the United States Courts for remedy.

The WASHINGTON STATE AND CLARK COUNTY Commercial Corporations must operate under the Torrens Act that was passed by the commercial legislature to register the land with the STATE AND COUNTY and give those commercial governments the right to tax and lien the land through contract. It is impossible for me to

prove a that the land patent assigned to my property was not registered by one of the previous land patent owners of my land, therefore it is entirely up to the COMMERCIAL CLARK COUNTY to prove to this court that it has a Torrens registration form that gives them the legal right to tax and lien my property through land registration. I have asked the auditor, who is the registrar of lands in the county and I have never been presented with such a document. Therefore, I PRAY that this court sides with the appellant and confirms that the Land Patent is Superior to a deed issued unlawfully by the COMMERCIAL CLARK COUNTY.

The brief of the COUNTY is of no consequence to the Private Sovereign Natural individual in equity, because it relies on codes and statutes that are unconstitutional and strictly in commerce. The Private Sovereign lives pursuant to the 1787 Constitution of the United States of America and the 1878 Constitution of the State of Washington. The Private Sovereign natural born individual goes by the 20 Maxims of equity and is presenting this Bill in Equity which is without the "Federal Rules of Civil Procedure," to be subject to the rules of the Chancery Court **as described** by HENRY R. GIBSON, A.M., LL.D., in his *A Treatise on Suits in Chancery* (Knoxville, Tennessee: Gaut-Ogden Company, 1907), Vol. I, pp. 1-57, Sections 1-64; Vol. II, pp. 950-966, Sections 1189-1205.

This action pleads for the rights of the private sovereign people. It does not take up the plight of the STATE CORPORATE PUBLIC CITIZENS in Commerce.

II. Statement of Facts (Affidavit of Rebuttal)

Items that the county **did not respond to** in the original informal brief in their rebuttal to in my opening brief, must be considered as the truth in my favor in this court pursuant to the American Jurisprudence and affidavits. If the Appellees do not rebut my affidavit of brief then the court must take what I have put forth as truth. My brief was notarized and witnessed as any formal affidavit.

Statement of the issues. As to the issue of Federal question, I have adequately answered that the Federal court does have jurisdiction. If the local courts do not want to try this in equity. That is why we are here today.

The COUNTY Attorney points out that I, David Arthur Darby, claim that I have the status of private sovereign natural citizen. In this he is wrong. I do not claim; I have proven that I am a private sovereign natural individual and lawfully able to declare the Land Patent back on my land, thus having clear title to my land. I have presented all the written notarized proof that this court has in the courts files. The COUNTY will not accept that I am now out of their jurisdiction and they have no jurisdiction.

The COUNTY Attorney has presented no proof that I am not a Private Sovereign Citizen and that I cannot have the land patent in my name. The COUNTY Attorney has not proved in Constitutional law that the Corporate STATE owns my property and has the right to sell it if I do not pay the rent under the feudal system called taxes. State code in commerce does not mean anything if it is unconstitutional. In fact a Private Sovereign is not required to follow unconstitutional laws. The county attorney, by not giving his proof in a constitutional rebuttal of my original brief has

already acknowledged my position as correct with no response. The 1878 Constitution of the State of Washington, expressly states that all land patents will be recognized and all land will be held in allodium. The COUNTY by not rebutting the use of the 1878 Constitution of the State of Washington is acknowledging the validity of my argument.

III. SUMMARY

The COUNTY has not answered the questions that have been brought forth in the opening informal brief. Therefore, they are silent and have no defense on what has been brought forward. The COUNTY should lose since it has not brought forth an adequate Constitutional defense for the CORPORATE STATE AND COUNTY. It is understandable, since CLARK COUNTY is operating in commerce and not under Constitutional law. That is why CLARK COUNTY is relying on commercial codes to win their argument. To reiterate, Commercial codes do not affect the Private Sovereign Natural Born Free Man at all.

The appellees individually have not presented an any defense. The COUNTY ATTORNEY should not represent the county and the individual appellees in mass. The CLARK COUNTY ATTORNEY is representing the COUNTY, himself, and all the elected officials. The appellees are the ones committing Constitutional fraud individually in the name of the Commercial CORPORATE GOVERNMENT OF CLARK COUNTY. Therefore they are held responsible personally for fraud and theft made in CLARK COUNTY'S name, but they are not protected by the COUNTY and it's bond if they commit fraud.

"Silence can only be equated with fraud when there is a legal or moral duty to speak, or when an inquiry left unanswered would be intentionally misleading... We cannot condone this shocking conduct... If this is the case we hope our message is clear. This sort of deception will not be tolerated and if this is routine it should be corrected immediately" *U.S. v. Tweel*, 550 F2d 297, 299-300

If District II Western District Court of Appeals for the State of Washington is unable to try this case in Equity or Chancery, then it is obligated to remove this case from the Appeals Court and move it to Chancery Court in Equity. This is my right as a Private Sovereign Citizen to request the removal from Admiralty Court and place this case in an Equity Court.

NOTARY CERTIFICATION

I, **David Arthur Darby, Private** Sovereign Natural Born State Citizen pursuant to Article 2, Section 3 of 1878 Constitution of the State of Washington, am the **Appellant** in the above-entitled action and I have prepared the above Rebuttal Affidavit to the best of my ability. I am competent to testify and I have personal knowledge of the matters stated herein except as to those matters stated upon belief or information and, as to those matters, I believe them to be true. I declare under penalty of perjury and my own commercial liability, under the laws of the United States of America and Washington State, that the foregoing is true, correct, complete, and not misleading, to the best of my knowledge, So Help Me GOD.

Executed this 9th, day of Sept 2015, in County of Clark State of Washington.

Authorized Representative David Arthur Darby

Darby, David Arthur
Private Sovereign State Citizen Pursuant to Article 2, Section 3 of the lawful 1878 Constitution of the State of Washington
P.O. Box 772 Amboy, Washington
Zip Excepted (Not Federal District)

DANIEL R ROSALES
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
12-03-2017

[STATE] Washington) s.s.:

[COUNTY] Clark)

On this 9th day of September, 2015,

The above signatory appears before me personally with picture ID and executes the forgoing instrument and acknowledges this to be their free act and deed.

_____ My Commission Expires: 12-3-17

Notary Public

PROOF OF PERSONAL SERVICE

Case name(s): David Arthur Darby v. Clark County

Case Number(s): Washington 47285-6-II + 9th Circuit Court # 15-35141

1. At the time of service I was at least 18 years of age and not a party to this legal action.
My mail location is: _____

2. I personally delivered the following document(s) as identified here:
Rebuttal Brief on Collateral Attack

3. I personally delivered the document(s) identified above as follows:

Person served: Thelma for Taylor Hallvik Prosecuting Attorney

Address where delivered: 1300 Franklin, 3rd Floor

Date and time:
Tuesday September 10, 2015 11:55AM

Person served: ~~Thelma receptionist~~

Address where delivered:

Date and time:

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DIVISION II
2015 SEP 15 PM 1:38
STATE OF WASHINGTON
BY _____
DEPUTY

[ ] Names and addresses of additional persons served and delivery dates and times are listed on attached page (identifying attachment at the top of the page).

I declare under the penalty of perjury, under the laws of the state of Washington, under penalty of bearing false witness pursuant to the Common Law and our God-Source Creator, that the foregoing is true, correct and not misleading.

Dated: 9/10/2015

DOLORES AQUINO
Print name

Signature