

FILED

AUG 11 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 289788

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

Wells Fargo Bank, National Association
Respondent,

v.

Robert Main,
Appellant.

ON APPEAL FROM DOUGLAS COUNTY SUPERIOR COURT
(Honorable John Hotchkiss)

**BRIEF OF RESPONDENT WELLS FARGO BANK,
NATIONAL ASSOCIATION**

SCHWEET RIEKE & LINDE, PLLC

By: Thomas S. Linde

WSBA 14426

Katie A. Axtell

WSBA 35545

575 S. Michigan St.

Seattle, WA 98108

Attorneys for Respondent Wells Fargo
Bank, National Association

FILED

AUG 11 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 289788

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION III

Wells Fargo Bank, National Association
Respondent,

v.

Robert Main,
Appellant.

ON APPEAL FROM DOUGLAS COUNTY SUPERIOR COURT
(Honorable John Hotchkiss)

**BRIEF OF RESPONDENT WELLS FARGO BANK,
NATIONAL ASSOCIATION**

SCHWEET RIEKE & LINDE, PLLC

By: Thomas S. Linde

WSBA 14426

Katie A. Axtell

WSBA 35545

575 S. Michigan St.
Seattle, WA 98108

Attorneys for Respondent Wells Fargo
Bank, National Association

TABLE OF CONTENTS

I. INTRODUCTION 5

II. COUNTERSTATEMENT OF ISSUES 6

III. COUNTERSTATEMENT OF THE CASE..... 6

A. Facts..... 6

B. Procedural History 9

IV. ARGUMENT 13

A. Standard of Review 13

**B. The Trial Court Did Not Abuse its Discretion in Denying
Main’s Motion for Reconsideration..... 14**

**1. Main’s arguments were raised for the first time on
reconsideration after entry of the Order Granting Summary
Judgment and were thus not timely presented 15**

**2. The trial court correctly held that Main’s new argument on
reconsideration had no merit..... 15**

**C. The Trial Court Property Granted Wells Fargo’s Motion for
Summary Judgment 20**

**D. Wells Fargo is Entitled to Its Attorney’s Fees and Costs on
Appeal..... 21**

V. CONCLUSION 22

DECLARATION OF SERVICE 23

TABLE OF AUTHORITIES

Cases

<i>Berrocal v. Fernandez</i> , 155 Wn.2d 585, 590, 121 P.3d 82 (2005)	14
<i>Concerned Coupeville Citizens v. Town of Coupeville</i> , 62 Wn. App. 408, 413, 814 P.2d 243 (Div. I 1991).....	20
<i>Escude ex rel. Escude v. King County Public Hosp. Dist. No. 2</i> , 117 Wn.App. 183, 190 fn.4, 69 P.3d 895 (Div. I 2003)	14, 21
<i>Hodge v. Raab</i> , 151 Wn.2d 351, 88 P.3d 959 (2004)	14
<i>JDFJ Corp. v. Int'l Raceway, Inc.</i> , 97 Wn. App. 1, 7, 970 P.2d 343 (1999)	15
<i>Lilly v. Lynch</i> , 88 Wn.App. 306, 321, 945 P.2d 727 (Div. II 1997).....	13
<i>Meissner v. Simpson Timber Co.</i> , 69 Wn.2d 949, 421 P.2d 674 (1966)	14
<i>Nguyen v. Sacred Heart Medical Center</i> , 97 Wn. App. 728, 733, 987 P.2d 634 (Div. III 1999).....	20
<i>W. Telepage, Inc. v. City of Tacoma Dep't of Fin.</i> , 140 Wn.2d 599, 607, 998 P.2d 884 (2000)	13
<i>Weyerhaeuser Co. v. Commercial Union Ins. Co.</i> , 142 Wn.2d 654, 683, 15 P.3d 15 (2000).....	13
<i>Wilcox v. Lexington Eye Institute</i> , 130 Wn. App. 234, 241, 122 P.3d 729 (Div. I 2005)	15
<i>Wilson v. Steinbach</i> , 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).....	14
<i>York v. Wahkiakum School Dist. No. 200</i> , 163 Wn.2d 297, 302, 178 P.3d 995 (2008).....	13

Statutes

RCW 19.36.100.....	16, 18
RCW 19.36.110.....	5, 11, 12, 14, 15, 20

RCW 19.36.120.....5, 12, 18

RCW 19.36.130.....5, 12, 14, 16, 17, 20

RCW 19.36.140.....5, 17, 18, 20

RCW 19.36.900.....18

RCW 4.84.330.....22

Rules

CR 5915

RAP 18.121

RAP 9.12.....14, 20, 21

I. INTRODUCTION

This appeal arises out of an action by Respondent to enforce a promissory note and commercial security agreement. Appellant Robert Main (“Main”) Defendant and Counterclaim Plaintiff below, borrowed \$250,000.00 on a commercial line of credit from Respondent Wells Fargo Bank, National Association (“Wells Fargo”) to fund the construction of an auto shop with basement living quarters. This loan was secured by the assets of Main’s business. Main counterclaimed in the action, seeking damages against the bank based on an alleged oral agreement to lend Main additional funds to complete the auto shop project after he exhausted the line of credit and incurred substantial cost overruns.

After first entering judgment against Main on the debt, the trial court subsequently entered summary judgment in favor of Wells Fargo dismissing Main’s counterclaim. Main filed a motion for reconsideration claiming for the first time in his reconsideration motion, and contrary to the evidence in the record, that the alleged oral agreement was exempted from chapter RCW 19.36. The trial court denied Main’s motion for reconsideration, and Main has appealed.

The trial court correctly granted summary judgment to Wells Fargo dismissing Main’s counterclaim and correctly denied Main’s subsequent motion for reconsideration. This Court should affirm the trial court.

II. COUNTERSTATEMENT OF ISSUES

The following issues are relevant to this Court's resolution of Main's appeal:

1. Did the trial court abuse its discretion in denying Main's motion for reconsideration which contained new legal arguments not made by Main in his original opposition to the motion for summary judgment?
2. Did the trial court abuse its discretion in denying Main's motion for reconsideration based on the parties written agreements and Wells Fargo's compliance with RCW 19.36.140?
3. Should this Court find that the trial court erred in granting Wells Fargo's motion for summary judgment where Main's main argument on appeal is erroneous and was not timely raised before the trial court in its consideration of the summary judgment motion?

III. COUNTERSTATEMENT OF THE CASE

A. Facts

In October of 2003, Appellant Robert Main entered into a construction contract with contractor Larry Southwick ("Southwick") to construct a shop, with underground living quarters, in which to conduct his automotive restoration and repair business, located in East Wenatchee, Washington (hereinafter sometimes referred to as the "Auto Shop Project"). Clerk's Papers (CP) at 73, 79-81. Main initially funded the Auto Shop Project from \$250,000.00 in proceeds from the previous sale of

his truck and auto parts business which had been located in Quincy, Washington. CP at 79.

When the Auto Shop Project was approximately 50% complete, Main approached Wells Fargo to obtain financing to finish construction. CP at 81. Barbara Hegstrom (“Hegstrom”), a commercial loan officer and employee of Wells Fargo for 36 years, processed Main’s request for financing. CP 130-132. The amount of funds requested exceeded Hegstrom’s approval authority, and Main’s request was sent to Wells Fargo’s underwriting committee and was approved by Charles Cooper, the commercial banking team leader at the Wenatchee branch. CP 131.

On or about August 25, 2004, Appellant Robert Main executed and delivered to Wells Fargo a Promissory Note (“Note”) for a commercial line of credit in the original principal sum of \$250,000.00. CP 19-23. The Note evidenced a straight line of credit and specifically provided that “[o]nce the total amount of the principal has been advanced, Borrower is not entitled to further loan advances.” CP at 20 (emphasis added). The Note required monthly interest payments, and matured by its terms on March 15, 2005. CP at 19. The expected source of repayment was the liquidation of Main’s equipment and inventory retained from his Quincy truck parts business. CP at 131.

In connection with the Note, on or about August 25, 2004, Main executed and delivered to Wells Fargo a Commercial Security Agreement under which he pledged all his inventory, accounts, equipment, and general intangibles, along with a number of vehicles to secure the indebtedness of the Note. CP 25-32. Main also executed a Notice of Final Agreement (CP 34-35) and a Disbursement Request and Authorization. CP at 37.

The Disbursement Request and Authorization signed by Main specifically provided that the primary purpose of the loan was: “Business (Including Real Estate Investment).” CP at 37.

Additionally, the Notice of Final Agreement signed by Main stated in bold and capitalized letters:

**ORAL AGREEMENTS OR ORAL COMMITMENTS
TO LOAN MONEY, EXTEND CREDIT, OR TO
FORBEAR FROM ENFORCING REPAYMENT OF A
DEBT ARE NOT ENFORCEABLE UNDER
WASHINGTON LAW.**

CP at 34.

The entire amount of the line of credit (\$250,000) was subsequently advanced to contractor Southwick with Main’s approval. CP at 131. However, by the end of January 2005, Main and Southwick had sustained substantial cost overruns on the Auto Shop Project, and the cost to complete construction was estimated to exceed \$103,000. CP at 50,

131. Main approached Hegstrom at Wells Fargo to request additional funds for the Auto Shop Project to pay for the cost overruns. CP at 131. This request was never referred to Wells Fargo's underwriting group because Main was unable to demonstrate a viable source of repayment of any additional amounts from sufficient collateral. CP at 132.

In a letter agreement dated May 31, 2005, signed by Main, Wells Fargo memorialized a forbearance agreement with Main under which Main acknowledged that Wells Fargo would not lend Main additional funds to complete the Auto Shop Project. CP at 54-55. Wells Fargo did agree to: (1) cease the loan from accruing interest for a time; and (2) grant Main an additional 9 months to February 28, 2006, to payoff the loan by either selling or refinancing the Auto Shop Project, or selling the remaining business property collateral which secured the loan. CP 54-55.

B. Procedural History

Main ultimately failed to make payment on the Note when due and defaulted under the terms of the Note and Commercial Security Agreement. On or about June 5, 2006, Wells Fargo filed a Complaint for Possession of Personal Property ("Complaint"), claiming in excess of \$190,000 due and owing on the Note and seeking to realize on the collateral pledged as security for the indebtedness under the Note. CP 174-198.

Main filed an Answer on or about June 27, 2006, admitting the allegations in the Wells Fargo's Complaint, but arguing that Wells Fargo is only entitled to a judgment in the amount of \$71,600.00 for the value of the security. CP 199-200. On or about June 27, 2006, the court entered an Order Awarding Possession of Personal Property to Plaintiff Wells Fargo Bank. CP 201-203.

On August 23, 2006, Wells Fargo filed a Motion for Final Judgment against Main. CP 204-206. Main did not oppose the Motion for Final Judgment filed by Wells Fargo. Rather, on September 26, 2006, the date of the hearing on Wells Fargo's Motion for Final Judgment, Main filed an Amended Answer and Counterclaim, seeking monetary damages against Wells Fargo. CP 207-210. The crux of Main's counterclaim involves an alleged oral promise by Barbara Hegstrom on behalf of Wells Fargo to advance Main additional funds from the exhausted line of credit to complete the Auto Shop Project. CP 209.

On September 26, 2006, at the hearing on Wells Fargo's Motion for Final Judgment, the trial court found Main's counterclaim untimely and

entered a Final Judgment against Main in the total amount of \$202,471.15. CP 211-214.

Thereafter, on or about January 6, 2010, Wells Fargo filed a Motion for Summary Judgment seeking dismissal as a matter of law of Main's counterclaim on a number of bases, including that any alleged oral commitment by Barbara Hegstrom on behalf of Wells Fargo to loan Main additional funds was unenforceable under RCW 19.36.110 and 130. CP at 118-28. Wells Fargo's Motion for Summary Judgment was supported by the Declaration of Barbara Hegstrom, (CP at 130-33), the loan documentation, (CP at 19-47), correspondence signed by Main, (CP at 54-56), Main's responses to Wells Fargo's interrogatories, (CP at 62-64), Main's deposition testimony, (CP at 66-96), and Barbara Hegstrom's deposition testimony, (CP at 98-116), among other evidence.

Main submitted a Responsive Memorandum, (CP at 135-43), with no supporting declarations or documents, in opposition to Wells Fargo's Motion for Summary Judgment.

On or about February 19, 2010, after a hearing, the trial court entered an Order on Counterclaim Defendant Wells Fargo Bank's Motion for Summary Judgment ("Order Granting Summary Judgment") which granted Wells Fargo's motion. CP at 144-50.

Thereafter, Main filed a Motion for Reconsideration raising a new legal argument for the first time that asserted the alleged oral promise to advance additional funds to complete the Auto Shop Project was for personal, family, and household purposes, and thus did not fall within the purview of the provisions of RCW 19.36.110 and RCW 19.36.130. CP at 154. Main claimed that RCW 19.36.120 “works to immunize the subject transaction from the draconian application of the twin terrors of RCW 19.36.110 and RCW 19.36.130.” CP at 153.

Noting that Main’s new argument under RCW 19.36.120 had not been timely raised before the trial court on summary judgment, the trial court rejected Main’s new argument in its Decision on Motion for Reconsideration. CP at 164-165. In addition, the trial court specifically found that the loan documents signed by Main established that the primary purpose of the loan was “business” and that “Defendant did not deny that he signed documents indicating that this was a business loan, nor has Mr. Main presented any evidence that it was not approached or handled in that manner”. CP at 165.

On April 26, 2010, Main filed a Notice of Appeal seeking review of the trial court’s “Order Denying Counterclaim Plaintiff Robert R. Main’s Motion for Reconsideration entered on March 26, 2010”

(hereinafter referred to as “Order Denying Reconsideration”) CP at 170-71.

IV. ARGUMENT

A. Standard of Review

Main filed a Notice of Appeal of the trial court’s Order Denying Reconsideration. In his Appellant Brief, however, Main assigns error to the trial court’s entry of the Order Granting Summary Judgment. Washington courts of appeal review orders on motions for reconsideration and orders on motions for summary judgment under different standards.

“[T]he grant or denial of a motion for reconsideration is in the sound discretion of the trial court and will be overturned only upon an abuse of discretion.” *Lilly v. Lynch*, 88 Wn.App. 306, 321, 945 P.2d 727 (Div. II 1997). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Weyerhauser Co. v. Commercial Union Ins. Co.*, 142 Wn.2d 654, 683, 15 P.3d 15 (2000).

The standard of review of an order granting summary judgment on appeal is de novo. *York v. Wahkiakum School Dist. No. 200*, 163 Wn.2d 297, 302, 178 P.3d 995 (2008) (citing *W. Telepage, Inc. v. City of Tacoma Dep’t of Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000)). On appeal from an order for summary judgment, an appellate court engages in the same inquiry as the trial court. *Hodge v. Raab*, 151 Wn.2d 351, 88 P.3d 959

(2004); RAP 9.12. The court will consider all facts and all reasonable inferences from them in the light most favorable to the nonmoving party. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005) (citing *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)). Bare allegations of certain facts without any showing of evidence to support them are insufficient to raise a genuine issue of material fact for purposes of a motion for summary judgment. *Meissner v. Simpson Timber Co.*, 69 Wn.2d 949, 421 P.2d 674 (1966). Finally, a party's failure to assign error to or provide argument and citation to authority in support of an assignment of error precludes appellate consideration of an alleged error. *See, Escude ex rel. Escude v. King County Public Hosp. Dist. No. 2*, 117 Wn.App. 183, 190 fn.4, 69 P.3d 895 (Div. I 2003).

B. The Trial Court Did Not Abuse its Discretion in Denying Main's Motion for Reconsideration

The trial court properly denied Main's Motion for Reconsideration. Main raised a new theory on reconsideration that the alleged oral promise to advance additional funds to complete the Auto Shop Project was for personal, family, and household purposes, and thus did not fall within the purview of RCW 19.36.110 and .130. CP at 154.

1. Main's arguments were raised for the first time on reconsideration after entry of the Order Granting Summary Judgment and were thus not timely presented.

On reconsideration under Civil Rule 59 (CR 59), a party is not entitled to assert new legal arguments for the first time after entry of an adverse decision. *Wilcox v. Lexington Eye Institute*, 130 Wn. App. 234, 241, 122 P.3d 729 (Div. I 2005). The *Wilcox* court stated:

But here, the motion for reconsideration arguments were based on new legal theories with new and different citations to the record. *Wilcox* offers no explanation for why these arguments were not timely presented. CR 59 does not permit a [party] to propose new theories of the case that could have been raised before entry of an adverse decision.

Id. (citing *JDFJ Corp. v. Int'l Raceway, Inc.*, 97 Wn. App. 1, 7, 970 P.2d 343 (1999)).

As in *Wilcox*, Main raised a new legal theory on reconsideration which was not before the trial court on summary judgment. The arguments were untimely and should not be considered.

2. The trial court correctly held that Main's new argument on reconsideration had no merit.

Even if this Court considers Main's untimely argument, it is wholly without merit and finds no support in the record or the law. RCW 19.36.110 provides that:

A credit agreement is not enforceable against a creditor unless the agreement is in writing and signed by the creditor. The rights and obligations of the parties to a credit agreement shall be determined solely from the written agreement, and any prior or contemporaneous oral agreements between the parties are superseded by, merged into, and may not vary the credit agreement. Partial performance of the credit agreement does not remove the agreement from the operation of this section.

(emphasis added).

Under RCW 19.36.100, a “credit agreement” is defined as:

[a]n agreement, promise, or commitment to lend money, to otherwise extend credit, to forbear with respect to the repayment of any debt or the exercise of any remedy, to **modify or amend the terms under which the creditor has lent money** or otherwise extended credit, to release any guarantor or cosigner, or to make any other financial accommodation pertaining to a debt or other extension of credit.

(emphasis added.)

RCW 19.36.130 requires before or simultaneously with the making of the credit agreement, the lender to provide written notice to the borrower that oral commitments to loan money are unenforceable and provides that:

Notice, **once given** to a debtor, **shall be effective as to all subsequent credit agreements and effective against the debtor**, and its guarantors, successors, and assigns.

(emphasis added).

In August 2004, Main first entered into a credit agreement with Wells Fargo to obtain a \$250,000.00 commercial line of credit to complete the Auto Shop Project. The credit agreement was memorialized by various loan documents executed by Main on or about August 24, 2004, including the Note, Commercial Security Agreement, a Notice of Final Agreement, and a Disbursement Request and Authorization. *See generally* CP at 19-34. In accordance with RCW 19.36.130-RCW 19.36.140, the Notice of Final Agreement provided proper and conspicuous notice to Main of the unenforceability of oral agreements in the exact form suggested by the statute. CP at 34.

In addition, the terms of the Note provided that “[o]nce the total amount of the principal has been advanced, Borrower is not entitled to further loan advances.” CP at 20.

Main’s principal argument in this appeal is now that his request for additional funds to complete the Auto Shop Project is somehow “an additional and separate loan,” unconnected to the original funds borrowed by Main from Wells Fargo under the line of credit. Appellant’s Brief at 2, 4 & 5.

Main further claims that the alleged oral commitment by Wells Fargo to lend him additional funds to complete the Auto Shop Project is

somehow exempted from the statute of frauds requirement pursuant to RCW 19.36.120 which provides in pertinent part that:

RCW 19.36.100 through 19.36.140 and 19.36.900 shall not apply to . . . (2) a loan of money or extension of credit to a natural person that is primarily for personal, family, or household purposes and not primarily for investment, business, agricultural, or commercial purposes.

Main's argument is unsupportable. The record before the trial court is clear that Main and Southwick could not complete the *original* Auto Shop Project, due to cost overruns. CP at 50, 131. Thus, the additional funds requested by Main were needed to complete what was originally included under the \$250,000.00 line of credit, but for the cost overruns. In short, Main's request for additional funds was nothing more than a request seeking to amend or modify the parties' original written credit agreement.

On reconsideration, the trial court correctly concluded that: (1) Main's new argument had not been timely made prior to or during the hearing on the summary judgment motion; and (2) that the new argument had no merit. As the trial court stated:

The Exhibits submitted by the Counterclaim Defendant showed that this was not a home loan, but that the Counterclaim Plaintiff was escorted to the commercial department to secure a loan. Further Exhibit E to the Declaration of Michael A. Arch, filed on January 6, 2010, a disbursement request and authorization signed by Mr. Main, indicates that the primary purpose of the loan is "business." Exhibit C, signed by Mr. Main, is a "commercial" security agreement.

The Defendant did not deny that he signed documents indicating that this was a business loan, nor has Mr. Main presented any evidence that it was not approached or handled in that manner. The request for reconsideration is denied.

CP at 164-65.

The trial court was correct and clearly did not abuse its discretion in denying Main's motion for reconsideration. The circumstances and loan documents in this case are replete with commercial markings including, but not limited to: (1) Main originally funded the construction of the Auto Shop Project from proceeds of the sale of his previous Quincy auto business; (2) Main pledged his business collateral as security for the Note under the Commercial Security Agreement; (3) Main executed the Disbursement Request and Authorization and specifically agreed that the primary purpose of the loan was "Business (Including Real Estate Investment)."

Importantly, it is undisputed that Main's request for additional funds was to pay for cost overruns on the Auto Shop Project. There is no evidence in the record before this Court that supports Main's argument on appeal that the alleged oral agreement for additional funds was somehow a "separate" credit agreement primarily for personal, family, or household purposes.

Further, even if the request to borrow additional funds was “an additional and separate loan” as Main now claims, the notice provided to Main in the Notice of Final Agreement under RCW 19.36.140 was “effective as to all **subsequent** credit agreements” with Main under RCW 19.36.130. (emphasis added). Thus, any alleged oral commitment by Hedgstrom to Main to lend additional funds to complete the Auto Shop Project is unenforceable as a matter of law under RCW 19.36.110.

C. The Trial Court Property Granted Wells Fargo’s Motion for Summary Judgment

This Court should disregard Main’s efforts to reverse the trial court’s order granting Wells Fargo’s summary judgment motion. Main assigns error to the trial court granting Wells Fargo’s summary judgment motion based on arguments not before the trial court at the time of its decision. This is improper.

On review of an order granting a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court. RAP 9.12. *See Nguyen v. Sacred Heart Medical Center*, 97 Wn. App. 728, 733, 987 P.2d 634 (Div. III 1999). “Contentions not made to the trial court in its consideration of a summary judgment motion need not be considered on appeal.” *Concerned*

Coupeville Citizens v. Town of Coupeville, 62 Wn. App. 408, 413, 814 P.2d 243 (Div. I 1991).

The entirety of Main's appeal relies on his argument that the alleged oral agreement was primarily for personal, family, or household purposes. This argument was raised for the first time on reconsideration and was not before the trial court at the time of entry of the Order Granting Summary Judgment. Pursuant to RAP 9.12, Main's arguments on appeal should not be considered to determine whether the trial court properly entered summary judgment in favor of Wells Fargo.

Beside the arguments referenced above, Main makes no additional arguments in his brief in support of his assignment of error. As noted previously, a party's failure to provide argument and citation to authority in support of an assignment of error precludes appellate consideration of an alleged error. *See, Escude ex rel. Escude v. King County Public Hosp. Dist. No. 2*, 117 Wn. App. 183, 190 fn.4, 69 P.3d 895 (2003).

D. Wells Fargo is Entitled to Its Attorney's Fees and Costs on Appeal

Wells Fargo respectfully requests this Court to award its reasonable attorney's fees and costs incurred in responding to this appeal. Under RAP 18.1, a party must request attorney's fees and expenses in its opening brief if applicable law grants to the a party the right to recover reasonable

costs and attorney's fees on appeal. The Note and Commercial Security Agreement at issue in this case each provide for payment to Wells Fargo of attorney's fees and costs in a suit to enforce those agreements, including appeal. CP at 20 & 30. *See also* RCW 4.84.330. Wells Fargo is entitled to an award of their attorney's fees and costs under the terms of the Note and Commercial Security Agreement and by statute.

V. CONCLUSION

Main is not entitled to assert to the trial court on reconsideration new legal arguments not made at the time the trial court made its decision. On appeal, an appellate court can only consider evidence and issues that: (1) are called to the attention of the trial court at the time of its decision; and (2) are then fully briefed before the appellate court. For all of the reasons articulated herein, Wells Fargo respectfully requests that the orders of the trial court be affirmed.

DATED this 10^A of August, 2010.

SCHWEET RIEKE & LINDE, PLLC
Attorneys for Respondent
Wells Fargo Bank, National Association



By: Thomas S. Linde, WSBA 14426
Katie A. Axtell, WSBA 35545

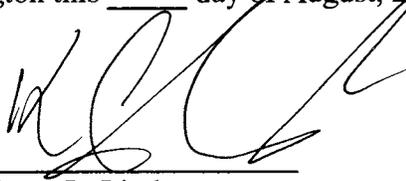
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following true and correct:

That on August 10, 2010, I caused the service of the above Brief of Respondent Wells Fargo Bank, National Association on the following:

Office of the Clerk Court of Appeals, Division III 500 N. Cedar St. Spokane, WA 99201	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Overnight Mail
Scott A. Volyn Attorney for Appellant 23 S. Wenatchee Ave., Suite 220 Wenatchee, WA 98807	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

Signed at Seattle, Washington this 10th day of August, 2010.



 Karen L. Linde