

Case No. 68878-2-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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REPUBLIC CREDIT ONE, LP, a limited partnership,

Plaintiff/Appellant,

v.

QUEEN ANNE BUILDERS, LLC, a Washington limited  
liability company, *et al.*,

Respondents/Defendants.

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**REPLY BRIEF OF PLAINTIFF/APPELLANT,  
REPUBLIC CREDIT ONE, LP**

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ORIGINAL

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## II. CONTINUED REQUEST FOR RELIEF

Appellant Republic Credit One, LP (“Republic Credit” or “Appellant”), by and through its attorneys, Hacker & Willig, Inc., P.S., respectfully presents this Reply Brief following the filing of the Respondents’ Brief by Defendants/Respondents Crown Development, Inc. (“Crown Development” or “Defendant”); Cory J. Burke and Geneanne G. Burke, and the marital community composed thereof (the “Burkes” or “Defendants”); Greg H. Blunt, an individual and his marital community with Jill Blunt (the “Blunts” or “Defendants”) (collectively, the “Defendants” or “Respondents”). Republic Credit’s Reply Brief is submitted in accordance with Rule of Appellate Procedure (“RAP”) 10.3(c). Republic Credit is unquestionably entitled to enforce the deficiency owed in the instant case under RCW 61.24.100.

Two loans, memorialized by two separate promissory notes, were made by Shoreline Bank to Queen Anne Builders, LLC (among the defendants below) and guaranteed by Respondents (and other defendants below). The two loans were later transferred to two separate lenders (the unsecured 2545 Loan to GBC International Bank (“GBC”), and the deficiency claim raised herein to Republic). One loan was subject to a lawsuit filed in King County Superior Court by GBC, the First King County Lawsuit (Case No. 10-2-15811-1 SEA), which resulted in a jury

verdict in favor of the holder of the relevant (2545) unsecured note, GBC. The secured loan, the loan at issue here, was subject to a foreclosure action, which resulted in a deficiency. Republic Credit is the holder of the deficiency rights and brought this lawsuit in the lower court against Respondents to seek a deficiency judgment.

Respondents spend much of their brief setting forth arguments they previously – unsuccessfully – raised in front of the 12-member jury in the First King County Lawsuit, which, as stated, related to a separate promissory note. Again, all such arguments were dismissed by the jury in rendering its verdict nearly unanimously in favor of GBC, the Plaintiff therein. The remainder of Respondents’ brief is dedicated to the unabashedly self-serving argument that, although Respondents (Defendants below) were nearly **two (2) months late** in filing their request for attorneys’ fees, they are somehow still entitled to entry of an award of attorneys’ fees. They most certainly are not.<sup>1</sup>

The essence of this appeal centers on the question of whether the trial in the First King County Lawsuit on a separate obligation is preclusive of the causes of action raised herein. Again, it most certainly is not. A separate, prior proceeding as to the merits of one loan obligation

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<sup>1</sup> If Respondents are asserting an issue on cross-appeal, they were required to file a separate brief on the subject of their cross-appeal on December 6, 2012, following the filing of their Notice of Appeal on October 22, 2012.

has no bearing whatsoever on the bringing of a cause of action on a **separate loan obligation** involving the same parties. If Respondents' arguments were extended to their **illogical** conclusion, a lender would never, ever make more than one loan to the same borrower because the lender would risk losing its rights to pursue contractual remedies against that borrower for each separate obligation; loan documents, generally, as they did here, routinely contain cross-collateralization provisions regardless of the number of loans maintained by the borrower. Accordingly, the Order of the lower court appealed herein should be reversed and this case remanded for further proceedings and/or for entry of summary judgment in favor of Republic Credit. In addition, Republic Credit is entitled to all of its attorneys' fees and costs in this appeal pursuant to the clear terms of the loan documents and pursuant to RAPs 14.1-14.6 and 18.1.

### **III. FURTHER FACTS, LEGAL AUTHORITY & ARGUMENT**

#### **A. The First King County Lawsuit Does Not Preclude the Causes of Action Raised Herein.**

Respondents' arguments raised in their briefing amount to little more than a recitation of the same arguments they tried against GBC – unsuccessfully – in front of the jury in the First King County Lawsuit, which arguments have absolutely no bearing on the present case. For

example, the “FDIC guidelines” have no relevance whatsoever to the present case (*see*, Respondents’ Brief, pg. 1) as Respondents did not raise the allegation in the lower court that Republic violated the FDIC guidelines in any way; indeed, it purchased its deficiency here rights *from* the FDIC.

Respondents also argued to the jury during the First King County Lawsuit that Shoreline Bank “wooded” Respondents into guaranteeing the loans at issue (*see*, Respondents’ Brief, pg. 3); this argument, too, failed. Also unsuccessful were Respondents’ statements as to, and general categorization of, the loan history between them and Shoreline Bank. *See*, Respondents’ Brief, pgs. 4-6.

**1) Republic’s Analysis of the Applicable Case Law is Sound.**

Turning to the applicable case law, both Appellant and Respondents rely on the case of *Landry v. Luscher*, 95 Wn. App. 779 (1999), but Respondents’ reliance is misplaced. *Landry* is a **car accident case**, where out of a single collision arose two lawsuits filed by the injured party, one after another. *Id.* at 780. The same parties were involved in both lawsuits wherein the same causes of action were asserted, and where the relief requested was **identical**. *Id.* at 782 (emphasis added). Though the general principles and authority as stated in *Landry* are instructive, the

case is clearly factually distinguishable from the present matter and it was error for the lower court to base its factual decision by way of analogy to *Landry*.

Quite obviously, more than “separate paperwork” (*see*, Respondents’ Brief, pg. 11) distinguishes the loan at issue herein from the loan at issue in the First King County Lawsuit: a different loan, involving altogether different loan documents, consisting of a different loan amount, and identified under a separate loan number, was at issue in the First King County Lawsuit. The 4190 Loan, at issue herein, was a separate loan secured by **real property collateral** (the “Property”). The Defendants knowingly and willingly executed separate sets of loan documents for each loan, which loans were separately collateralized, and the focuses of the two loans were quite different. Therefore, the present case **does not** involve the same persons or parties (Republic Credit, not Shoreline Bank, owns the deficiency, the “Deficiency”), causes of action (a cursory view of the two Complaints reveals different causes of action), subject matter (the \$500,000.00 - 2545 Loan versus the \$1,117,316.00 - 4190 Loan), or persons for/against whom the claim is made (here, Republic Credit, not GBC or Shoreline Bank).

Respondents also rely on *Karlberg v. Otten*, 167 Wn. App. 522 (2012), an interesting case in which neighboring landowners sought to

**adjust the same boundary line twice.** Yet, again, such reliance is misplaced as the case is easily factually distinguishable from the instant matter. In *Karlberg*, the appeal arose from two successive judgments quieting title: in his first action, plaintiff Karlberg sought and obtained a judgment placing a new boundary line between his property and defendant Otten's about halfway between a survey line and an old fence; in his second action, Karlberg sought and obtained a judgment establishing the fence (and not the survey line) as the boundary line. *Id.* at 525. It is no wonder the Court of Appeals held that res judicata precluded the second, **identical** lawsuit.

Here, Appellant does not seek to “move the same boundary line” (i.e., to re-litigate the claims brought in the First King County Lawsuit under the 2545 Loan), it seeks to “move an entirely different boundary line on a totally different piece of property” (i.e., to litigate **for the first time** the Deficiency owing by the Defendants to Republic on the 4190 Loan). Also, *Karlberg* involved one piece of property, and yet the 2545 Loan and the 4190 Loan are the equivalent of two separate “pieces of property.”

This case does resemble, however, another of Respondents' cited cases, *Seattle-First National Bank v. Kawachi*, 91 Wn.2d 223 (1987), a Washington Supreme Court case in which *enforcement* of successive loans

was not barred even where the successive transactions involved the very same parties (both lender and borrower) and such loans were separated by a few years. In *Kawachi*, the Supreme Court found that neither collateral estoppel nor res judicata barred the successive claims. *Id.* at 227-228.

The Court in *Kawachi* analyzed several precedential cases cited by both sides to assess whether the claims raised therein were barred, finding that in each of the cited cases, those claims which were found to be barred were matters which were **included in the controversy adjudicated in the prior action or proceeding**. None of them held that **independent claims**, arising out of **separate transactions**, are barred because they *could* have been asserted in an earlier action. *Id.* at 227 (emphasis added).

This is precisely what Respondents would have this Court do here: to hold that Appellant's claims are barred simply because they *could* have been brought in the First King County Lawsuit. But, this is not the standard. Also, like in *Kawachi*, the loans were not taken at the same time: the 4190 Loan was originally written in **March of 2007** (later rewritten in November of 2008) and the 2545 Loan was executed and funded in **December of 2008**. *See*, Clerk's Papers ("CP") 582-670. Accordingly, the Order should be reversed.

- 2) **Respondents' Cross-Collateralization Argument is Misguided and Devoid of Any Supporting Authority.**

As they did in the First King County Lawsuit, Respondents continue to make much of the fact that the 4190 Deed of Trust states that it secures “all obligations, debts and liabilities” of Respondents to “Lender” (Republic as successor to Shoreline Bank). *See*, CP 582. This means that, at a lender’s option, it may look to the real property collateral associated with a loan to satisfy a defaulted debt owed on a separate loan obligation, assuming same is provided for in the applicable loan documents. Such provision is not effective as a “gotcha” litigation tactic to be used by a borrower against a lender on the issue of estoppel.

In addition, Respondents fail to recognize that they are contractually obligated to repay the Deficiency to Republic as they executed personal guaranties of the 4190 loan obligation, which was secured in part by the 4190 Deed of Trust. *See*, CP 582. Republic is unquestionably entitled to enforce the Deficiency owed in the instant case under RCW 61.24.100. Again, if Respondents’ arguments are extended to their illogical conclusion, a lender would never, ever make more than one loan to the same borrower.

Further, the personal guaranties admittedly signed by Respondents in this case contain extensive contractual waiver provisions, including a waiver of any argument as to direct proceedings against any single

guarantor, and any argument as to lender's option to proceed "dictly against or exhaust any collateral[.]" *See*, Guaranties, CP 582.

Accordingly, the Order should be reversed.

**B. Respondents' "Cross-Appeal Issue" is Misguided and Erroneous.**

Though Respondents are required to file separate briefing on this point (evidently electing not to do so on December 6, 2012, at their own peril, as required by the Rules),<sup>2</sup> Respondents raise the "issue" for review on "cross-appeal" that the lower court erred in denying Respondents' late request for an award of attorneys' fees and costs.

**1) Respondents' Motion for Fees Was Properly Denied Below.**

The lower court granted summary judgment in Respondents' favor on June 12, 2012 (the Order on appeal), which Order terminated the case immediately as to the Respondents. *See*, CP 847. Pursuant to Washington Superior Court Civil Rule ("CR") 54(d)(2), the motion for attorneys' fees and expenses must be filed no later than ten (10) days after entry of judgment. Here, Respondents did not file their fee request until August 13, 2012, approximately two (2) months after summary judgment was ordered and entered on their behalf. *See*, Notice of Appeal, October 22,

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<sup>2</sup> For this reason alone, Respondents' "issue for review on cross-appeal" should be stricken.

2012. Accordingly, the Respondents' motion for fees was not filed timely.

In order to attempt to remedy their mistake in filing their motion for fees nearly **two months late**, Respondents attempt to manufacture their own "error" in the lower court by now stating that they are entitled to CR 54(b) findings. Respondents did not request CR 54(b) findings contemporaneously with their motion for summary judgment (*see*, CP 271), but instead only did so after they realized that their motion for fees would be gravely tardy. Though this case did, at the outset, involve multiple parties and claims, after summary judgment was entered for the Bargreens and for Respondents (although Republic believes that summary judgment was granted in error), the case was over, pending appeal. Respondents should not be permitted to "gin up" an "error" in the lower court under a CR 54(b) claim simply because Respondents' fees requested were too late to be properly awarded. Accordingly, Respondents' "issue" on "cross-appeal" should be denied.

Regarding the award of attorneys' fees and costs, CR 54(d) provides:

(1) *Costs and Disbursements.* Costs and disbursements shall be fixed and allowed as provided in RCW 4.84 or by any other applicable statute. If the party to whom costs are awarded does not file a cost bill or an affidavit detailing disbursement within 10 days after the entry of the judgment, the clerk shall tax costs and disbursements pursuant to CR 78(e).

(2) *Attorneys' Fees and Expenses.* Claims for attorneys' fees and expenses, other than costs and disbursements, shall be made by motion unless the substantive law governing the action provides for the recovery of such fees and expenses as an element of damages to be proved at trial. Unless otherwise provided by statute or order of the court, **the motion must be filed no later than 10 days after entry of judgment.**

*See*, CR 54(d) (West 2012 ed.) (emphasis added).

Here, the Order Granting Defendants Motion for Summary Judgment was entered on June 12, 2012, following argument on May 11, 2012. *See*, Order, CP 847. Pursuant to CR 54(d)(2), the Respondents should have brought their motion for fees within ten (10) days after June 12, 2012, but instead elected to file their motion on August 13, 2012. *See*, Motion for Entry of Judgment, August 13, 2012. Upon entry of the Order on June 12, 2012, the case was terminated as to the Defendants, the case schedule ended, and Republic Credit was barred from taking any further action against the Respondents after that time. The Respondents here do not even attempt to show excusable neglect as to why their fee request is untimely. *See, Corey v. Pierce County*, 154 Wn. App. 752, 225 P.3d 367 (2010).

The Order was the determination of the court upon all issues presented by the pleadings and fixes absolutely and finally the rights of the parties. *McGuire v. Bryant Lumber & Shingle Mill Co.*, 53 Wash. 425,

102 P. 237 (1909). Also, the Order is the final determination of rights of parties to this case. *Spokane & Idaho Lumber Co. v. Stanley*, 25 Wash. 653, 66 P. 92 (1901); *Exchange Nat'l Bank v. Pantages*, 74 Wash. 481, 133 P. 1025 (1913); *Mitchell v. Cunningham*, 8 F.2d 813 (9th Cir. 1925); *Billias v. Panageotou*, 193 Wash. 523, 76 P.2d 987 (1938); *St. Germain v. St. Germain*, 22 Wn.2d 744, 157 P.2d 981 (1945); *State ex rel. Lynch v. Pettijohn*, 34 Wn.2d 437, 209 P.2d 320 (1949). Accordingly, Respondents' motion for fees should have been filed nearly two (2) months prior, and was properly denied as untimely filed. Respondents' "issue" on "cross-appeal" should be denied.

**2) Respondents' Reliance on Corey is Incorrect.**

Respondents rely extensively on *Corey v. Pierce County*, 154 Wn. App. 752, 773 (2010), yet such reliance is misplaced. Appellant admits that *Corey* is one of this state's definitive cases on the issue of timeliness of an attorneys' fees request, yet *Corey* – its facts and its holding – do not come to Respondents' aide here.

In *Corey*, after the jury entered its verdict in plaintiff's favor, counsel for plaintiff filed its attorneys' fees request more than ten (10) days later, and such fee request was **denied** as untimely. *Id.* at 774. Here, upon entry of the Order in Respondents' favor, the case terminated as Respondents, nothing further was required to be decided, and contrary to

Respondents' claim, no further issues were to be decided. Respondents had no basis for entry of judgment against Appellant; the only reasonable, predicted outcome of their motion for summary judgment was entry of an order granting same. At the same time the Order was entered in favor of Respondents, summary judgment was similarly granted as to the remaining defendants in the action in the lower court.<sup>3</sup> *See*, CP 719. The defendants below consisted entirely of Respondents, the Bargreens, and the Ryssel parties: summary judgment was entered (in error) as to Respondents and the Bargreens, and the Ryssel parties had never appeared in the case or participated in any way. The case in the lower court was over at the time the Orders on summary judgment were entered. Accordingly, Respondents' "issue" on "cross-appeal" should be denied.

**3) CR 54(b) is Inapplicable.**

Respondents here know full well that their fee request was untimely, which is why they now raise the "red herring" argument that they were somehow entitled to findings under CR 54(b); Respondents must believe that this "back door" argument is the only way to get attorneys' fees in the lower court proceeding. In reality, Respondents' would have been well served by bringing a motion for entry of judgment

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<sup>3</sup> Defendants Andy and Renee Ryssel never appeared or participated in the lower court case in any way, and had to be served by publication because of their refusal of service of process.

for attorneys' fees and costs within ten (10) days of entry of the Order as required under CR 54(d);<sup>4</sup> at the time the Order was entered, they were not entitled to any findings under CR 54(b). Respondents have not cited any authority that sufficiently demonstrates that they were absolutely entitled to CR 54(b) findings. Accordingly, Respondents' "issue" on "cross-appeal" should be denied.

**4) Nevertheless, Respondents' Fees Requested are Patently Unreasonable and Were Therefore Properly Denied.**

Respondents' requested attorneys' fees and costs below were wholly unreasonable considering the limited amount of work done by Respondents' counsel. The proceeding was resolved on summary judgment before any discovery was taken or any other motion filed. As an initial matter, regarding the amount of contracted attorneys' fees, RCW 4.84.020 provides:

In all cases of foreclosure of mortgages and in all other cases in which attorneys' fees are allowed, the amount thereof shall be fixed by the court at such sum **as the court shall deem reasonable**, any stipulations in the note, mortgage or other instrument to the contrary notwithstanding; but in no case shall said fee be fixed above contract price stated in said note or contract.

*See*, RCW 4.84.020 (West 2012 ed.) (emphasis added).

Also, the Washington Rules of Professional Conduct ("RPC")

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<sup>4</sup> Indeed, this was their only option according to the Rules.

assist with the determination as to the reasonableness of attorney fees by applying several enumerated factors. *See*, RPC 1.5(a) (1-8); *In re Disciplinary Proceeding Against Boelter*, 139 Wn.2d 81, 96, 985 P.2d 328 (1999); and, *In re Kagele*, 149 Wn.2d 793, 815 (2003). Such RPC states:

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the **time and labor required**, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will **preclude other employment** by the lawyer;

(3) the **fee customarily charged** in the locality for similar legal services;

(4) the **amount involved** and the results obtained;

(5) the time **limitations imposed** by the client or by the circumstances;

(6) the nature and **length of the professional relationship** with the client; [and]

(7) the **experience, reputation, and ability** of the lawyer or lawyers performing the services[.]

*See*, RPC 1.5(a) (1-8) (West 2012 ed.) (emphasis added).

Here, this is a simple case involving a discrete set of defendants, all guarantors of a commercial loan taken from Shoreline Bank; such case would not preclude counsel for any party from simultaneously representing an array of other clients in other matters; there were no time limitations to speak of which would have made representation of the Defendants more difficult; and the Defendants are currently represented

by the same counsel in other matters (*see, e.g.*, King County Superior Court Case No. 10-2-15811-1 SEA).

As the Court is aware, this litigation is based upon the Deficiency remaining after a Trustee's sale (the "Sale") relating to a default on a promissory note. The promissory note, which was secured by a deed of trust against real property, was unquestionably guaranteed by the Defendants (and others). *See*, CP 582. Pursuant to RCW 61.24.005, *et seq.*, guarantors of commercial debt are liable for the Deficiency following a non-judicial foreclosure. Accordingly, Republic Credit sued the guarantors of the promissory note – the Respondents in this matter – for the Deficiency remaining following the Sale, which Deficiency amount is the difference between the total outstanding loan balance of \$1,117,316.00 and the \$900,000.00 winning bid amount at the Sale. *See*, CP 671. This case does not involve any dynamic or new areas of the law, does not involve novelty whatsoever, and requires only that skill of basic business litigation law practice. It is a suit on personal guaranties of a promissory note, plain and simple, and Defendants' attorneys' fees requested are unreasonably high.

Further, the trial judge is given broad discretion in determining the reasonableness – and therefore the **unreasonableness** – of attorney fees. *See, Schmidt v. Cornerstone Invs., Inc.*, 115 Wn.2d 148, 169, 795 P.2d

1143 (1990); and, *Bowles v. Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 71-72 (1993). Often, courts apply two separate methods of calculating attorney fees. A “percentage of recovery” approach, which is inapplicable in this case as the Defendants leave the table with nothing, sets attorney fees by calculating the total recovery secured by the attorneys and awarding them a reasonable percentage of that recovery, often in the range of 20 to 30 percent. See, *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990). Or, the “lodestar” approach sets the fees by first determining the number of hours that were reasonably spent by the attorneys, multiplying it by a reasonable hourly compensation, and then adjusting this amount upward or downward based on additional factors. See generally, *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597-99, 675 P.2d 193 (1983); and, *Bowles*, 121 Wn.2d at 72. The lodestar method is generally preferred when calculating statutory attorney fees, as here. *Id.*

It is those “additional factors” that become applicable to the present case, all of which justify a downward adjustment to the Defendants’ fee request. In essence:

The trial court must determine the number of hours reasonably expended in the litigation. To this end, the attorneys must provide reasonable documentation of the work performed. This documentation . . . must inform the court, in addition to the number of hours worked, of the

type of work performed and the category of attorney who performed the work (i.e., senior partner, associate, etc.). The court must limit the lodestar to hours reasonably expended, and should therefore discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time.

*See, Bowers*, 100 Wn.2d at 597 (emphasis added).

Under *Bowers*, duplicated effort and otherwise unproductive time are areas that are certainly reflected in Respondents' fee motion below. *See*, Motion for Entry of Judgment, August 13, 2012. Also, the time entries stated in Respondents' counsel's motion in the lower court did not adequately explain the process and required activities with sufficiency to defend the fees requested. *Id.* And, the Court cannot forget that the attorney's usual fee is not conclusively a reasonable fee, and the court may consider the level of skill required by the litigation, time limitations imposed on the litigation, the amount of the potential recovery, the attorney's reputation, and the undesirability of the case. The reasonable hourly rate should be computed for each attorney, and each attorney's hourly rate may well vary with each type of work involved in the litigation." *Bowers, id.*

Given the legal authority cited above, Respondents requested an unreasonable amount of attorneys' fees below, especially given the character of many of the line items "billed" to the client, and thus for this

additional reason their motion for fees was properly denied. There was no discovery taken in this litigation. No extensive meetings. No mediation. No substantive non-dispositive motions. The only substantive action taken in this matter was Respondents' motion for summary judgment. Additionally, Respondents' counsel bills for large amounts of time spent "drafting," but all "drafting" projects should have been undertaken by those associate attorneys or paralegals, or legal assistants, with lower billable rates. It is inequitable to foist upon Appellant the obligation to pay for extensive "drafting" done at the highest possible billable hourly rate.

Furthermore, Respondents request fees for large amounts of time spent on this appeal, which is clearly premature. Fees for such time spent "reviewing" the appeal is not properly awardable by the trial court, but may be contemplated at a later date by the Court of Appeal in any proper fee request made therein. Accordingly, Respondents' motion for fees was properly denied as untimely *and* unreasonable, and should not be reversed herein. Respondents' "issue" on "cross-appeal" should be denied.

**C. Respondents' Testimony as to the Declaration of Andy Ryssel Should be Stricken.**

Throughout their briefing, Respondents refer – and cite – to a document that is not properly in the record before this Court: the

Declaration of Andy Ryssel (“Ryssel Decl.,” *see*, CP 285). All such testimony and “evidence” in this record should therefore be stricken.

As a general matter, the majority of Respondents’ arguments in this appeal attempt to lay blame at the feet of their real estate development partner, Andy Ryssel. *See*, Respondents’ Brief, pgs. 4-8. And, much of the “facts” associated therewith comes from the Ryssel Decl.

The Ryssel Decl. was inadmissible below, and is not admissible in this appeal, because it is hearsay under Washington Rule of Evidence (“ER”) 801, without any applicable exception under ER 803. As stated above, Mr. Ryssel did not appear or answer in the lower court proceedings, and has not participated in any way in this appeal. It is Mr. Ryssel’s out of court statements, made in the First King County Lawsuit, that Respondents’ counsel incorporates as his own statement to prove the truth of the contents thereof. This is **improper**. Therefore, this Court is left to take only Respondents’ counsel’s statements as fact, which is contrary to the Rules.

#### IV. CONCLUSION

For all the reasons stated above, again, the entry of summary judgment in favor of the Defendants should be reversed, fees awarded to Republic Credit in this appeal, and this case remanded for entry of summary judgment in favor of Republic Credit. At a minimum, this

matter should be remanded for further proceedings, including a trial on the merits, if necessary. The trial court committed obvious error of law, both in consideration and in application, and therefore its decision must be reversed.

DATED this 14th day of December, 2012.

Respectfully submitted,

HACKER & WILLIG, INC., P.S.

A handwritten signature in black ink, appearing to be 'Arnold M. Willig', written over a horizontal line.

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