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STATE OF WASHINGTON

Appeal No. 43899-2-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION II

Case No. 43899-2-II on appeal from:

Kitsap County Superior Court Case No. 09-2-01654-4

APPEAL FROM AUGUST 3, 2012 JUDGMENT
AND ORDERS AS ENTERED BY THE KITSAP
COUNTY SUPERIOR COURT FOLLOWING ITS
JULY 20, 2012 RULING IN DENIAL OF
APPELLANT'S CR 60 (b) (5) MOTION TO
VACATE ITS JUDGMENT AND ORDERS ENTERED
ON JANUARY 15, 2010 AS VOID FOR LACK
OF SUBJECT MATTER JURISDICTION

✓ The Hon. Kevin D. Hull, Judge

APPELLANT'S OPENING BRIEF

[RE-FILED IN ORDER TO PROPERLY COMPLY WITH RAP 10.4
(b) MAXIMUM PERMITTED PAGE LENGTH OF 50 (FIFTY)
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Appellant's Opening Brief
[Appeal No. 43899-2-II]

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STATEMENT OF THE CASE

1. Nature And Appealability Of Subject August 3, 2012 Judgment And Order Entered At The Lower Court

On Appeal as filed September 4, 2012¹ pursuant to RAP 2.2 (10) and RAP 2.5 (a)² from August 3, 2012 Judgment and Order denying Plaintiff's Motion to Vacate and Imposing Sanctions of \$4,865.00³ entered by Judge Kevin D. Hull⁴ [at the Superior Court of the State of Washington for the County of Kitsap ("lower court") in re case no. 09-2-01654-4 [OLLA v. WAGNER ET AL.] following his July 20, 2012 ruling⁵ denying Appellant's motion to vacate Judgment and Orders as entered by Presiding Judge Russell W. Hartman dismissing Appellant's Complaint, filed June 25,

¹ CP, pgs. 2389-2395;

² CP, p. 2390;

³ CP, pgs. 2387-2388;

⁴ CP, p. 2255;

⁵ [CP, p. 2350, in denial of Appellant's motion [CP, pgs. 1771-1798] pursuant to CR 60 (b) (5) for relief from and to vacate, as void for lack of subject matter jurisdiction said lower court's January 15, 2010 Judgment and Orders [CP, p. 1329, lines 20-21;

2009⁶ and its claims with Prejudice⁷ based upon its January 15, 2010 Findings of Fact and Conclusions of Law⁸.

RAP 2.2 (10) which provides that:

"Generally. . . . a party may appeal from. . . : (10) Order on Motion for Vacation of Judgment. An Order granting or denying a motion to vacate a Judgment."

RAP 2.5 (a) provides that:

"[A] party may raise the following claimed errors for the first time in the appellate court: (1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted . . ."

Appellant seeks review of the lower court's subject ruling, judgments and orders on his CR 60 (b) (5) motion⁹.

2. Factual And Procedural Background Of The Lower Court Action And Relief Sought Therein As Pertinent To The Instant Appeal

i. Appellant's June 25, 2009 Complaint Filed At The Lower Court

⁶ CP, pgs. 2-145;

⁷ CP, pgs. 1328-1330;

⁸ CP, pgs. 1312-1327;

⁹ RAP 3.1; State v. Malone, 98 Wash. App. 342, 347-348, 989 P. 2d (1999);

Appellant's Complaint, as filed on June 25, 2009¹⁰ states that his action is "for the determination of an interest in real property and arises out of an offer or provision of loans. ."¹¹ Appellant had no right of possession because he was not in possession of such property at time of suit. Commencement of the action was perfected by shown service in California and filing of Summons¹².

Lis Pendens was filed on June 25, 2009¹³ by non-resident party Appellant as Plaintiff against non-resident Respondents' Washington State real property ["Washington property"] and none filed against subject California real property ["California property"]. Title to each property was transferred by Appellant to

¹⁰ CP, pgs. 2-145; see Ex. No. 2 to Appellant's July 13, 2012 filed Exhibits In Support Of Plaintiffs subject CR 60 (b) (5) Motion;

¹¹ CP, p. 11, par. 7 (Venue and Jurisdiction) failing to allege the true location of all subject property;

¹² CP, pgs. 146-148;;

¹³ CP, pgs. 149-152;

Respondents by deed in lieu of foreclosure, respectively, on October 18, 2008¹⁴ and November 18, 2008¹⁵ incidental to settlement of the loans¹⁶.

The subject matter of the lower court action was those two subject real properties that the Complaint sought determination of title to, possession of and rights of sell such¹⁷ was sought on the basis of alleged problems which transpired in the lending process of those subject loans for each of which, in turn, the Complaint asserted rights of rescission as the basis for its fourth cause of action, to quiet title.¹⁸ To such end, the Complaint sought a judicial declaration in

¹⁴ Ex. L of the Complaint (CP, pgs. 2-145); Ex. No. 41 of Exhibits In Support (CP, pgs. 1799-2245) of Appellant's subject motion to vacate (CP, pgs. 1771-1798);

¹⁵ also Ex. L of the Complaint (CP, pgs. 2-145); Ex. No. 42 of Exhibits In Support (CP, pgs. 1799-2250) of Appellant's subject motion to vacate (CP, pgs. 1771-1798);

¹⁶ Ex. K of the Complaint (CP, pgs. 2-145);

¹⁷ CP, p.98, at paragraphs 127 and 128 of the Complaint; CP, p. 106: Agreement To Hold Funds as Ex. B of the Complaint

¹⁸ CP, pgs. 78-81, par. 87;

addition to other declaratory relief under its twelfth cause of action¹⁹, as based upon its incorporated allegations, on which rescission was sought to such effect²⁰.

The loans were made on the basis of the value of the subject California real property²¹ located at 6368 Sea Star Drive, Malibu, California 90265 ["California real property"]²² which was Appellant's principal dwelling and domicile²³ and against which Appellant gave Respondents, for each subject loan, a second deed of trust to purchase the action's second subject property.²⁴

The Washington property named is located

¹⁹ CP, pgs. 95 -99, par. 125-129; CP, 95, par.125;

²⁰ CP, pgs. 56-60 and pgs. 81-84;

²¹ CP, p. 61, par. 64; CP, p. 1312-1313, par. 1 of the lower court's January 15, 2010 Findings Of Fact And Conclusions Of Law; see also, Ex. No. 22 to Exhibits in support (CP, pgs. 1799-2250);

²² Ex. Nos. 19, 20 & 21 to Exhibits in support (CP, pages 1799-2250); see also November 17, 2009 RP, p. 162 lines 22-25;

²³ CP, p. 57, par. 57; see also, Ex. No. 19 to Exhibits in support (CP, pgs. 1799-2250); Ex. No. 22 to Exhibits in support (CP pgs. 1799-2250);

at 10305 NE Shore Drive, Indianola, Washington 98342 ["Washington real property"] against which Appellant gave Respondents, upon its purchase following consummation of Loan no. 1 their only and first deed of trust²⁵.

Each of the subject loans was a California mortgage installment loan, ". . . all done in California"²⁶ made to California borrower Appellant²⁷ by California based Respondent lenders²⁸, each of whose respective loan disclosure statements were made on California Department of Real Estate forms.²⁹ Appellant

²⁴ CP, 57, par. 57 and CP, 1799-2250 (Exhibits in support at Ex. 19, 20 & 21, supra;

²⁵CP, pgs. 101 (Ex. E of Complaint);

²⁶ Respondent ROBERT H. WAGNER on oath November 17, 2009 RP, p. 162, lines 8-12;

²⁷ CP, p. 13 par. 10;

²⁸ CP, pgs. 2, 8 at par. 3, 9 and 12; respectively, on September 25, 2007 (CP, p. 19, par. 14; CP pages 2-145, Complaint Ex. C; at CP, pgs. 2009-2024)("Loan No. 1"), November 7, 2007 (CP, pgs. 24-26, CP, pgs. 2-145, Complaint Ex. H) ("Loan No. 2") and March 14, 2008 (CP, pgs. 32-33, par. 28; CP, pgs. 2-145, Complaint Ex. M) ("Loan No. 3").

²⁹ See Exhibit Nos. 11, 12 and 13 to Appellant's July 13, 2012 Exhibit in support of CR 60 (b) (5) motion to vacate (CP pgs. 1799-2250);

alleged extended rights to rescind all such loans as a basis for his real property action.

Each subject loan note, supra, contained a provision for choice of law of the state of California on its page 2 in accordance with which each respective loan's rights and obligations and their validity, for which the Complaint sought judicial determination of³⁰, were to be legally construed³¹ according to California law.

The Complaint's introduction states that "Plaintiff seeks rescission of all loans and agreements as executed in Washington State as based on fraudulent and intentional deceit. . . AS WELL AS statutory and punitive damages under

³⁰ CP, p. 98, par. 127;

³¹ CP, pgs. 2-145, Complaint at its Exhibits C, H and M; see July 13, 2012 filed Exhibit Nos. 8, 9 and 10 (CP, pgs. 1799-2250) supporting subject CR 60 (b) (5) motion to vacate;

the Truth In Lending"³² of which then Loan No. 1 was clearly not. Moreover the only security interests the Complaint seeks to have terminated are those on the subject California property³³ since the harm stemming from Respondents' actions in California from the subject loans affected the subject California real property equity only³⁴ Even the Complaint's Fifth Cause of Action for Rescission and Damages Based Upon Fraud³⁵, cannot attain any effect on title to the subject Washington property upon favorable outcome.

Based upon its allegations and claims, the Complaint had sought to quiet title³⁶ to the subject real properties by request for judicial declaration and by its wherefore clause for

³² CP, p. 5;

³³ CP, p. 59, par. 62;

³⁴ CP, pgs. 64-65, par. 71 & 72;

³⁵ at Complaint par. 99 [CP, p. 84];

³⁶ Fourth Cause of Action, CP, pgs. 78-80;

declaratory relief³⁷ on the re-alleged basis of Appellant's rights of rescission³⁸ while further on the non-justiciable claim that Respondents could keep a first mortgage lien on the subject Washington property³⁹ which would be legally impossible upon favorable outcome.

For the above purposes, the Complaint firstly sought⁴⁰ to "[r]escind the loan transactions. . .to terminate any security interest in Plaintiff's MALIBU HOUSE property created under the transactions" pursuant to alleged extended rights of rescission conferred on Appellant as borrower under the Federal Truth In Lending Act ("TILA")⁴¹ as well as on the non-justiciable claim pursuant to Washington State

³⁷ CP, p. 80 at par. 87 & 88;

³⁸ CP, p. 78, par. 83;

³⁹ CP, p. 80, par. 87;

⁴⁰ [CP, p. 2266, lines 1-4 of Respondents' Brief In Opposition To Plaintiff's Second Attempted Motion To Vacate;

⁴¹ CP, pgs. 56-60 (pursuant to 15 U.S.C. section 1639; statutory damage pursuant to the TILA at 15 U.S.C. sections 1635 (a), 1639 (j));

Mortgage Brokers Practices Act (RCW 19.146 et seq.)⁴² which is inapplicable to California loans involving California real property collateral⁴³.

The Complaint also alleged rights of rescission based upon fraud and deceit [Fifth Cause of Action, CP, pgs. 81-84] by Respondents⁴⁴ in regard to allegedly unknown TILA rights of rescission at time of settlement of the parties' mutual obligations under those loans⁴⁵, yet no prayer for relief for rescission and damages based upon fraud is contained in the Complaint.

⁴² CP, pgs. 57-58, par. 58;

⁴³ According to Washington State Dept. of Fin. Institutions (See Suppl. Record on Appeal Exhibit No. 3);

⁴⁴ CP, p. 49; see also November 30, 2009 RP, p. 346, lines 8-12; see also November 30, 2009 RP, p. 377, lines 15-17;

⁴⁵ CP, pgs. 51-52, par. 47; see also, as to the parties' October 16, 2008 dated agreement entitled Real Estate Purchase and Sale Agreement ("Settlement Agreement"), at CP, pgs. 51-52, par. 47; see also, Ex. No. 23 of Exhibits in support of subject motion to vacate (pgs. 1799-2250); see also CP, pgs. 127-134 (Ex. K of the Complaint); see Exhibit No. 23 of July 13, 2012 Exhibits, CP, pgs. 1799-2250, in support of subject CR 60 (b) (5) motion to vacate; also see p.2 of Exhibit K to lower court Complaint, CP, pgs. 2-145;

ii. Appellant's Prior And Pending California Action

Appellant had prior filed an action against the same Respondents at the Los Angeles Superior Court of the State of California as case no. BC404894 [OLLA v. WAGNER ET AL.] (hereinafter "California action")⁴⁶ on December 31, 2008, for quiet title⁴⁷ by judicial declaration⁴⁸.

iii. Trial, Resulting Judgment and Orders and Appellant's First Appeal Therefrom

Respondents filed a motion at the lower court for expedited fact finding *hearing*⁴⁹ apprising the lower court of the California action⁵⁰. The lower court

⁴⁶ See Exhibit No. 1 of Appellant Plaintiff's July 13, 2012 Exhibits In Support of Plaintiff's CR 60 (b) (5) Motion (CP, pgs. 1799-2250);

⁴⁷ [see Ex. No. 2 of supplemental record on appeal, true and correct 3/12/13 offprint of page 1 of Los Angeles Superior Court, Los Angeles Superior Court online case document image pages, case type: quiet title, for the California action no. BC404894 (OLLA v. WAGNER ET AL)] as to the subject California property only, which remains pending as of the date of this writing, on the basis of similarly made claims of TILA conferred extended rights of rescission in addition to claims on the basis of California law all again only affecting title to the subject California real property it sought quiet title to

⁴⁸ see Ex. No. 31 (Reply in support of Motion to Expunge Washington Lis Pendens) of Exhibits in support of Appellant's subject CR 60 (b) (5) motion to vacate (CP, pgs. 1799-2250);

⁴⁹ CP, pgs. 256-288; see also CP, pgs. 289-311, at p. 290); see also RP of November 19, 2009, p. 162;

⁵⁰ see CP, p. 1779; p. 3 of Defendants' July 12, 2009 filed Motion for Expedited Fact Finding Hearing (CP, pgs. 256-288 at p. 258);

granted such motion⁵¹.

The lower court's January 15, 2010 Judgment⁵² and January 15, 2010 Findings of Fact and Conclusions of Law⁵³ resulted in additional Order expunging two Lis Pendens⁵⁴ including one filed against the Washington property in association with prior pending California litigation already expunged by the California court because quiet title based on Appellant's rights of rescission is without effect on the subject Washington property. Appellant's December 21, 2009 Motion for Reconsideration was denied⁵⁵ was denied.

On February 10, 2010 Appellant filed timely notice of appeal at this Court stating

⁵¹ see November 17, 2009 RP at its pgs. 6-7; CP, p. 1783, lines 5-12;

⁵² CP, pgs. 1328- 1330;

⁵³ CP, pgs. 1312-1327;

⁵⁴ supplemental record on appeal Ex. 1;

⁵⁵ CP, pgs. 1231-1307; CP, p. 1308;

"[t]he third issue for appeal is that the trial court lacked jurisdiction as to the California property, pursuant to RAP 2.5 (a) (1)"⁵⁶.

A September 13, 2011 unpublished opinion⁵⁷ resulted at this Court affirming that lower court Judgment and Orders reached by review restricted to whether the trial court's unchallenged findings justified its conclusions of law⁵⁸ as this Court both noted Appellant's Opening Brief did not properly refer to the record on appeal and deemed none of Appellant's arguments on appeal as jurisdictional in nature⁵⁹.

⁵⁶ CP, pgs. 1331-1338; CP, p. 1332;

⁵⁷ CP, pgs. 2325-2336; see also Exhibit No. 8 of Declaration of Isaac A. Anderson, dated July 18, 2012 (CP, pgs. 2278-2349), supporting Respondents' Defendant's Brief In Opposition To Plaintiff's Second Attempted Motion To Vacate (CP, pgs. 2256-2269);

⁵⁸ see pgs. 11-12 of Exhibit No. 8 to Declaration of Isaac A. Anderson filed July 20, 2012, CP pgs. 2278-2349;

⁵⁹ CP, p. 2336, Exhibit No. 8 of Declaration of Isaac A. Anderson, CP pgs. 2278-2349 (Court of Appeals, Division II, of the State of Washington unpublished September 13, 2011 opinion at its p. 12); see also RP, p.15, lines 4-19; see also RP, p. 20, lines 13-21, Judge Kevin D. Hull's July 20, 2012 remark that subject matter jurisdiction issued was not prior resolved;

A November 16, 2011 Mandate at this Court then resulted⁶⁰.

iv. Appellant's CR 60 (b) (5) Motion To Vacate For Lack Of Subject Matter Jurisdiction, And Respondents' Opposition Thereto

Appellant's subject motion to vacate said Judgment and Orders on grounds of lack of subject matter jurisdiction⁶¹ was filed July 13, 2012 at the lower court and at July 20, 2012 hearing thereon Appellant clearly stated that the concern of the motion ". . . is whether [the lower court] trespassed on the jurisdiction of the California court"⁶² at which Respondents have sought res judicata effect of the lower court's January 15, 2010 Judgment in their favor.

Respondents had primarily opposed the motion by speciously stating⁶³ that this Court had

⁶⁰ [CP, pgs. 1603-1616];

⁶¹ see CP, pgs. 1775-1797; CP, p. 1783, lines 7-12;

⁶² RP, p. 6, lines 6-10;

⁶³ RP, p.11, lines 1-4; CP, p. 2261, lines 14-18;

already disagreed with Appellant's challenges to the lower court's subject matter jurisdiction over his action characterizing them hopelessly "couched. . . in terms of choice of law"⁶⁴ and therefore concluded that the lower court did in fact have subject matter jurisdiction over Appellant's action as filed which this Court had not in fact concluded.

Respondents' Opposition⁶⁵ also speciously maintained that the question of subject matter jurisdiction of the lower court was also resolved by the lower court's May 23, 2011 Judgment⁶⁶ following trial on Respondents' counter-claims action and Appellant's Appeal therefrom while, in fact, the lower court ruled at such trial that it merely possessed jurisdiction over the Respondents' counter-claims

⁶⁴ RP, p. 11, lines 23-24; RP, p. 11, lines 23-24

⁶⁵ CP, pgs. 2256- 2269; CP, p. 2262, lines 7-13;

⁶⁶ CP, pgs. 1600-1602; CP, p. 2262, line7-10;

because Appellant had filed his action resulting in the lower court's January 15, 2010 Findings of Fact and Conclusions of Law and Judgment that Respondents at the same time noted⁶⁷. Also, the January 6, 2012 ruling by this Court referred to by Respondents⁶⁸ granted, written opinion, the dismissal of that second appeal on the merits.

Respondents further opposed⁶⁹ on grounds that the Complaint's quiet title cause of action as to the subject Washington property automatically triggered the lower court's jurisdiction over Appellant's real property action with no regard to the fact that California real property was a subject property as well.

An Affidavit by Gregory M. Lee, Respondents' California counsel, mendaciously swears Appellant asserted that the Los Angeles Superior Court had

⁶⁷ CP, p. 2262, lines 3-6;

⁶⁸ CP, p. 2262, lines 12-13 & footnote 21; CP, pgs. 2279, lines 18-20; CP, pgs. 2346-2348]

⁶⁹ RP, p. 12, lines 18-23;

already⁷⁰ determined that the lower court's January 15, 2010 Judgment and Orders were void when in fact Appellant stated that the Los Angeles Superior Court merely recognized such Judgment pursuant to the full faith and credit clause⁷¹.

v. Appellant's Reply to Respondents' Opposition

Appellant Plaintiff's Reply⁷² conceded that pursuant to RCW 4.12.010 (Venue - Jurisdiction), the proper forum to adjudicate real property claims affecting title to Washington property ordinarily is the superior court of the county situate⁷³ so long as jurisdiction of the superior court does not conflict with RCW 2.08.010 which implements Art. IV, sec. 6 of the Washington State Constitution's proviso limiting original subject matter jurisdiction of the superior

⁷⁰ CP, p. 2271, lines 5-7 and footnote no. 1; see also CP, 2367 (p. 7 of Appellant Plaintiff's Reply to Respondent Defendant's Brief opposing motion to vacate);

⁷¹ see also RP, pgs 6 onto 7;

⁷² CP, pgs. 2351- 2360, at 2354, lines 16-21;

⁷³ CP, p. 2352, lines 16-21;

courts as over that class of actions "which involve the title to or possession of title of real property . . . in which jurisdiction shall not have been vested exclusively in some other court. . . ."74. Appellant's Reply argued that jurisdiction had prior vested at the California court as that "some other court".

vi. Legal Bases And Cited Authority According To Which The Lower Court Made Its Subject July 20, 2012 Ruling In Denial Of Appellant's CR 60 (b) (5) Motion To Vacate And Entered Its Subject August 3, 2012 Judgment And Order Based Thereo

On August 3, 2012 the lower court entered the subject Judgment and Orders75 following its July 20, 2012 ruling denying Appellant's Civil Rule 60 (b) (5) motion76 filed on July 13, 2012 for relief from and to vacate its January 15, 2010 Judgment77.

74 CP, p. 2357 – 2358;

75 CP, pgs. 2387- 2388;

76 CP, p. 2350; CP, pgs. 1771-1798; CP, pgs. 1799-2250; CP, pgs. 1759-1770; CP, pgs. 1617-1758;

77 CP, pgs. 1328-1330; Judgment and Orders dismissing Appellant's action as filed on

The lower court properly noted at the motion's hearing that no objection by the Appellant to the exercise of subject matter jurisdiction by the lower court over his case had ever yet been resolved⁷⁸ and was in accord that this Court's September 13, 2011 opinion⁷⁹ had in fact merely rejected previous arguments made by Appellant's first appeal's Opening Brief, deeming them not to have been jurisdictional in nature but rather merely choice of law arguments⁸⁰ and that thus Appellant could first make his subject matter jurisdictional objections by his subject Motion to vacate⁸¹.

At the subject hearing the lower court and

June 25, 2009 [CP, pgs. 2-145] in commencement of the subject suit (case no. 09-2

01654-4 [OLLA v. WAGNER ET AL.] with prejudice.

⁷⁸ RP July 20, 2012 p. 15, lines 13-19; RP, p. 20, lines 9-21;

⁷⁹ Ex. No. 8 of Declaration of Isaac A. Anderson in support of Opposition to instant motion to vacate, CP, pgs. 2278-2349;

⁸⁰ RP, p. 15, lines 13-17; RP, p. 20, lines 16-21;

⁸¹ CP, pgs. 1771-1798;

Respondents completely evaded the issues attendant to the fact that Appellant's real property action was for California real property in addition to Washington State real property, and seized on the language of the RCW 4.12.010 (Venue-Jurisdiction) to provide the statutory basis to justify the exercise of subject matter jurisdiction as challenged⁸². The lower court disregarded Appellant's points regarding the subject California real property at the hearing⁸³ and in his Motion⁸⁴ and Appellant's prior pending California action about which the lower court had been fully cognizant⁸⁵ at the time of its August 21, 2009 Order scheduling fact finding hearing on Appellant's Complaint⁸⁶.

The lower court's written Order on July 30, 2012⁸⁷ in denial of Appellant's motion for

⁸² RP, pgs. 18-19;

⁸³ RP, p. 16;

⁸⁴ CP, pgs. 1771-1798;

⁸⁵ see Respondents' Motion for Fact Finding Hearing at CP, p. 257, lines 9-11; see also Respondent Defendant ROBERT H. WAGNER'S Affidavit, in support of Respondents' Motion for Fact Finding Hearing, at CP, p. 290, par. 6 thereof;

⁸⁶ CP, pgs. 314-315;

⁸⁷ CP, pgs. 2384-2386; CP, pgs. 2372-2381;

reconsideration of such ruling concentrated on the subject Washington property and cited to ZDI Gaming, Inc. v. State ex rel. Wash. State Gambling Comm'n, 173 Wn. 2d 608, 617-18, 268 P. 3d 929 (2012)⁸⁸ as well as In re Marriage of Kowalewski, 163 Wn. 2d 542, 549-51, 182 P. 3d 959 (2008)⁸⁹ as the controlling authority on the issue of jurisdiction over Appellant's real property action. Judge Hull stated that Appellant "concedes this [lower] Court does have subject matter jurisdiction over this type of controversy . . ." ⁹⁰ in outright distortion of referenced text of Appellant which states that RCW 2.08.010 implements the constitutional limitation on any

⁸⁸ ZDI Gaming, Inc. v. State ex rel. Wash. State Gambling Comm'n, 173 Wn. 2d 608, 617-18, 268 P. 3d 929 (2012) [" [t]he defects Plaintiff cites, besides being of his own creation, relate to the timing of the actions in Washington and California, not to the type of controversy, and so plainly go to "something other than subject matter jurisdiction""]

⁸⁹ In re Marriage of Kowalewski, 163 Wn. 2d 542, 549-51, 182 P. 3d 959 (2008) (citing with approval Hicks v. Corbett, 130 Cal. App. 2d 87, 278 P.2d 77, 78. (1955))

⁹⁰ CP, p. 2385, lines 4-5 and footnote no. 2 ; see also CP, p. 2376, lines 6-14;

attempt to exercise jurisdiction which shall "have been vested exclusively in some other court. . . . " in regard to "subject matter California real property whose title [was controverted by] such California action's variously enumerated causes of action for rescission. . . ." ⁹¹. The lower court gave no heed to the fact of the legal ramifications of extra-territoriality and the prospect of commingled claims in train given subject California real property.

Plaintiff OLLA as aggrieved party now Appeals pursuant to both RAP 2.5 (a) (1) (for lack of subject matter jurisdiction) and RAP 2.5 (a) (2) (for lack of legal fact to support the lower court's conclusions of law) ⁹².

⁹¹ CP, p. 2374, lines 15-19;

⁹² Appellant's Notice of Appeal, as filed on September 4, 2012, at CP, pgs. 2389-2395 at p. 2390, lines 20-23;

ASSIGNMENTS OF ERROR

Assignment of Error No. 1:

The Kitsap County Superior Court of the State of Washington (hereinafter the "Lower Court") Erred Equally By Ruling, On July 20, 2012 That It Had Possessed Requisite Subject Matter Jurisdiction To Have Entertained Appellant's June 25, 2009 Complaint And Real Property Action Seeking Quiet Title To Both Subject California Real Property ("California property") And Subject Washington State Real Property ("Washington property") And To Deny Appellant's July 13, 2012 Filed CR 60 (b) (5) Motion For Relief From And To Vacate Its January 15, 2010 Judgment And Orders And By Subsequently Entering The August 3, 2012 Judgment And Orders Based Upon Such Ruling.

Assignment of Error No. 2:

The Lower Court Erred In Disregard Of The Fact That The Subject California Property As Well As All Claims Affecting Only Title Thereto Were Inherently Outside Of Such Court's Jurisdiction.

Assignment of Error No. 3:

The Lower Court Erred In Disregard Of The Controlling Exclusive And Prior Jurisdiction Possessed By The Los Angeles Superior Court Of

The State Of California Over The Subject
California Property Res And Related Claims
Controverting Title Thereto.

Assignment Of Error No. 4:

The Lower Court Erred In Disregard Of The
Limitations On Its Exercise Of Subject Matter
Jurisdiction Pursuant To Revised Code of
Washington ("RCW") Section 7.28 Et Seq. Under
Which Appellant Possessed No Legal Standing To
Sue For Quiet Title To The Subject Washington
Property.

Assignment Of Error No. 5:

The Lower Court Erred In Disregard Of The
Limitations Set Forth In The Washington State
Uniform Declaratory Judgment Act ("UDJA") As
Enacted In RCW Sections 7.24 Et Seq.

**ISSUES ON APPEAL ("IOA") PERTAINING
TO APPELLANT'S ASSIGNMENTS OF ERROR**

1. WHETHER THE LOWER COURT ERRED BY DENYING
APPELLANT'S CIVIL RULE 60 (b) (5) MOTION TO
VACATE ITS JANUARY 15, 2010 JUDGMENT AND ORDERS
FOR LACK OF SUBJECT MATTER JURISDICTION, AND BY
ENTERING SUBJECT JUDGMENT AND ORDERS TO THAT
EFFECT? (Pertaining to Assignment of Error Nos.
1-5)

2.WHETHER THE LOWER COURT HAD POSSESSED THE REQUISITE SUBJECT MATTER JURISDICTION OVER APPELLANT'S REAL PROPERTY ACTION AND RELATED CLAIMS TO HAVE PROCEEDED TO JUDGMENT AND ORDERS IN ENTER ITS JANUARY 15, 2010 DISMISSAL OF APPELLANT OLLA'S CLAIMS WITH PREJUDICE?
(Pertaining to Assignment of Error Nos. 1-5)

3.WHETHER THE COMPLAINT'S SUBJECT CALIFORNIA PROPERTY AND CLAIMS CONTROVERTING TITLE THERETO WERE ALREADY UNDER THE EXCLUSIVE AND PRIOR JURISDICTION OF THE LOS ANGELES SUPERIOR COURT OF THE STATE OF CALIFORNIA? **(Pertaining to Assignment of Error Nos. 1-4)**

4.WHETHER APPELLANT HAD ANY LEGAL STANDING TO SUE FOR QUIET TITLE TO THE ACTION'S SUBJECT WASHINGTON REAL PROPERTY? **(Pertaining to Assignment of Error Nos. 1-4)**

5.WHETHER ANY OF APPELLANT'S COMPLAINT'S CAUSES OF ACTION, RELATED CLAIMS AND REQUESTED REMEDIES AFFECTED TITLE TO THE SUBJECT WASHINGTON PROPERTY? **(Pertaining to Assignment of Error Nos. 1-5)**

6.WHETHER APPELLANT'S COMPLAINT'S CAUSES OF

ACTION AND RELATED CLAIMS SUPPORTING REQUESTED REMEDY OF QUIET TITLE AND DECLARATORY RELIEF WERE LEGALLY JUSTICIABLE IN NATURE? (**Pertaining to Assignment of Error Nos. 1-5**).

7. WHETHER THE LOWER COURT ERRED BY ITS SUBJECT DENIAL AND SUBSEQUENT JUDGMENT AND ORDER WITHOUT REGARD TO THE LIMITATIONS UNDER THE UNIFORM DECLARATORY JUDGMENTS ACT ("UDJA") (RCW 7.24 ET SEQ.)? (**Pertaining to Assignment of Error Nos. 1-3, 5**)

8. IS APPELLANT ENTITLED TO REASONABLE COSTS ON APPEAL AS PREVAILING PARTY? (**Pertaining to Assignment of Error Nos. 1-5**)

STANDARD OF REVIEW

Review of a trial court's decision to grant or deny a CR 60 (b) (5) motion to vacate is review de novo⁹³ within which only the propriety of the denial, not the impropriety of the underlying judgment, is before the court⁹⁴.

⁹³ [In re Marriage of Wilson (2003) 117 Wash. App. 40, 68 P.3d 1121]

⁹⁴ RP, p. 6, lines 13-20; see also, Barr v. MacGregan (2003) 119 Wash. App. 43, 78 P.2d 660;

Whether the lower court possessed subject matter jurisdiction over the parties' controversy and subject real property, as all questions of law, proceeds de novo.⁹⁵

"Whether a party has standing to sue is a conclusion of law which appellate courts review de novo."⁹⁶

ARGUMENT

AOE Nos. 1-5 / IOA Nos. 1- 8:

I. THE LOWER COURT'S SUBJECT JULY 20, 2012 RULING AND AUGUST 3, 2012 JUDGMENT BASED THEREON WERE IN ERROR IF THE LOWER COURT HAD NOT POSSESSED SUBJECT MATTER JURISDICTION OVER APPELLANT'S JUNE 25, 2009 COMPLAINT'S CAUSES OF ACTION, RELATED CLAIMS AND SUBJECT REAL PROPERTY

"A void judgment is a judgment, decree or order entered by a court which lacks jurisdiction of the parties or of the subject matter or which

⁹⁵ Spokane Airports v. RMA, Inc., 149 Wn. App. 930, par. 25, 939, 206 P. 3d 364, 369 (2009), review denied 167 Wn. 2d 1017, 224 P. 3d 773; see also, Mack v. Armstrong, 147 Wn. App. 522, 527, 195 P. 3d 1027 (2008).; see also, Crosby v. Spokane County, 137 Wn. 2d 296, 301, 971 P. 2d (1999).

⁹⁶ Mack v. Armstrong, 147 Wn. App., supra at 527.

lacks the inherent power to make or enter the particular order involved."⁹⁷

Civil Rule 60 provides in pertinent part that:

"(b) . . . On motion and upon such terms as are just, the court may relieve a party. . . from a final judgment, order or proceeding for the following reasons: . . . (5) The judgment is void; . . ."

No time limitation within CR 60 applies to the post-judgment motion to vacate the lower thus permissible under RAP 7.2 (e)⁹⁸ "A motion to vacate a judgment under CR 60 (b) (5) may be made at any time." Allstate Ins. Co. v. Khani, 75 Wn. App. 317, 323 (1994)⁹⁹.

⁹⁷ State ex rel. Turner v. Briggs, 94 Wn. App. 299, 302-03, 971 P. 2d 581 (1999); see also, Petersen v. The State of Washington, 16 Wash. App.77 (1976) at 79 (citing Bresolin v. Morris (1975)86 Wash. 2d at 245; Anderson, 52 Wash. 2d, infra, at 761)] see also, In re Marriage of Ortiz, 108 Wn. 2d 643, 649-50, 740 P. 2d 843 (1987).

⁹⁸ CP, pgs. 2380-2381; See Lindgren v. Lindgren, 58 Wash. App. 588, 596, 794 P. 2d 526 (1990) review denied, (1990) 116 Wash. 2d.813 (1991); see also Matter of Marriage of Leslie, 112 Wash. 2d. 612, 618-19, 772 P. 2d 1013 (1989)

⁹⁹ See also Matter of Marriage of Leslie, 112 Wash. 2d 612, 618-19, 772 P.2d 1013 (1989) (A challenge to a void judgment can be brought at any time) (citing John Hancock Mut. Life Ins. Co. v. Gooley, 196 Wash. 357, 370, 83 P.2d 221 (1938)]; See also Matter of Marriage of Leslie, 112 Wash. 2d 612, 618-19, 772 P.2d 1013 (1989) (A challenge to a void judgment can be brought at any time) (citing John Hancock Mut. Life Ins. Co. v. Gooley, 196 Wash. 357, 370, 83 P.2d 221 (1938)

"[L]ack of subject matter jurisdiction is not subject to waiver."¹⁰⁰

A party may raise, if only for the first time on appeal, lack of subject matter jurisdiction¹⁰¹.

". . . Subject matter jurisdiction typically refers to the authority of a court to provide relief as granted by the Constitution or the Legislature."¹⁰² Respondents' Brief In Opposition¹⁰³ states that "[a]s such, [courts] have the power to hear and determine all matter, legal and equitable, except in so far as these powers have been expressly denied."

¹⁰⁰ Skagit Surveyors & Engineers, LLC v. Friends of Skagit County, 135 Wn. 2d 542, 556, 958 P. 2d 962 (1998); Sprint Spectrum, LP v. State of Washington Dep't of Revenue, 156 Wn. App. 949, 235 P. 3d 849 (2010); Deaconess Hosp. v. Washington State Highway Comm'n, 66 Wash. 2d 378, 409, 403 P.2d 54 (1965) ("...litigants may not waive subject matter jurisdiction").

¹⁰¹ In re Saltis, 94 Wash. 2d 889, 893, 621 P. 2d 716 (1980);

¹⁰² Dougherty v. Dept. of Labor & Industry, 150 Wn.2d 310, 315, 76 P. 2d 1183 (2003);

¹⁰³ CP, p. 2265, lines 7-14, quoting Matter of Adoption of Buehl, 87 Wn. 2d 649, 655, 555 P. 2d 1334, 1338 (1976) states that "[s]ubject matter jurisdiction 'is the authority of the court to hear and determine the class of actions to which the case belongs[.]'" and, quoting In re Marriage of Thurston, 92 Wn. App. 494, 498, 963 P. 2d 947, 949 (1998);

A trial court has no discretion when faced with a void judgment and must vacate the judgment "whenever the lack of jurisdiction comes to light."¹⁰⁴

Clearly "[a]ny attempt by a court to "directly" assert extraterritorial jurisdiction over persons or property would. . .exceed the inherent limits of the State's power. Any judgment resulting from such an attempt has been concluded as not only unenforceable in other states but also void in the rendering state because it had been obtained in violation of the Due Process Clause of the Fourteenth Amendment¹⁰⁵ Thus, lopping off the subject California property from Appellant's in rem action to employ RCW 4.12.010 to carry on with Appellant's claims as to the subject Washington property and/or loan contract dispute remains legally indefensible for multiple reasons.

¹⁰⁴ Mitchell v. Kitsap County, 59 Wash. App. 177, 180-181, 797 P. 2d 516 (1990) (citing Allied Fidelity Ins. Co. v. Ruth, 57 Wash. App. 783, 790, 790 P. 2d 206 (1990));

¹⁰⁵ See Freeman v. Anderson, 119 U.S. 185, 187-188 (1886);

RCW 4.12.010 arises from the common law distinction between "local" actions, which must be commenced where the subject of the action is located, and "transitory" actions, which must be commenced wherever a defendant may be found¹⁰⁶ and the Washington State Supreme Court has repeatedly applied RCW 4.12.010 to limit the jurisdiction of the superior court over property located outside the county where the property is located¹⁰⁷ the lower court still faced other jurisdictional hurdles in order to proceed with Appellant's action.

The lower court's feeble attempt to craft an alternate transitory "contract" dispute out of Appellant's in rem (hence "local") real property action by resort¹⁰⁸ to the holding In re Marriage of Kowalewski, 163 Wn. 2d 542, 549-51, 182 P. 3d 959 (2008) which in turn cited with approval what

¹⁰⁶ See Washington State Bank v. Medallia Healthcare, 96 Wn. App. 547, 555, 984 P. 2d 1047 (1989);

¹⁰⁷ See Miles v. Chinto Min. Co., 21 Wn. 2d at 907; See also, Alaska Airlines v. Molitor, 43 Wn. 2d 657, 665, 263 P.2d 276 (1953);

¹⁰⁸ CP, page 2385, footnote no. 3;

was deemed to be an analogous California case, Hicks v. Corbett, 130 Cal. App. 2d 87, 278 P. 2d 77, 78 (1955) (holding that an out of state court can issue a marital dissolution decree indirectly affecting legal title to property located in another state¹⁰⁹ in order to¹¹⁰ legitimate, that a Washington court has "jurisdiction to resolve a contract dispute filed in Washington even though it can't order a conveyance of California land [,]" is off-point because Appellant's action was an in rem real property action whose non-justiciable claims for rescission of California loans pursuant to Washington State lending laws like the MBPA¹¹¹ (RCW 19.146 et seq.) do not clear the requisite jurisdictional hurdle for actions seeking actions seeking declaratory

¹⁰⁹ RP, pgs. 15-22;

¹¹⁰ RP, p. 19;

¹¹¹ See Ex. No. 3 of supplemental record on appeal as filed April 1, 2013;

judgments¹¹² anyhow in addition to the non-resident Respondents were served in California and the claims as filed by non-Washington State resident Appellant against them could not be brought in any Washington county as none were where the subject lending acts by the Respondents were done which gave rise to service under RCW 4.28.180 or RCW 4.28.185. Jurisdiction over Appellant's action could have been resolved as a legal question with no further fact finding function. See this Court of Appeals, Division II, of the State of Washington Opinion no. 38527-9-II, Sharon Davis, ET AL v. Washington State Dept. of Labor & Industries, on appeal from Thurston County Superior Court case no. 08-2-01647-9.

"Plaintiff's proof must demonstrate facts which support a finding of jurisdiction in order to avoid a motion to dismiss."¹¹³

¹¹² RCW 7.28.010 et seq.;

¹¹³ Data Disc Inc. v. Systems Technology Associates, Inc., 557 F. 2d 1280, 1285 (9th Cir. 1977);

"The rule is well known and universally respected that a court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal."¹¹⁴ Lack of subject matter jurisdiction renders the superior court powerless to pass on the matters before it¹¹⁵.

AOE Nos. 1-5; IOA Nos. 1-9:

II. THE ORIGINAL AND GENERAL JURISDICTION OF THE LOWER COURT COULD NOT BE INVOKED TO ENTERTAIN APPELLANT'S IN REM ACTION AS TO BOTH THE BOTH THE SUBJECT CALIFORNIA REAL PROPERTY AND/OR THE SUBJECT WASHINGTON REAL PROPERTY

i. Introduction

The lower court could not sustain its prior exercise of subject matter jurisdiction over Appellant's in rem real property action seeking quiet title to both subject California property and subject Washington property¹¹⁶

or even as to that subject Washington real

¹¹⁴ Deachenes v. King County, 83 Wn. 2d 714, 716, 521 P.2d 1181 (1974)[CP p. 1783, lines 12-13]; See also, In re Sentence of Hilburn, 63 Wn. App. 102, 103, 816 P. 2d 1247 (1991)("When a court lacks subject matter jurisdiction, dismissal without prejudice is the limit of what a court may do."); Branson v. Port of Seattle, 152 Wn. 2d 862, 879, 101 P.3d 67 (2004).

¹¹⁵ Deaconess Hosp. v. Wash. State Highway Comm'n, 66 Wash. 2d 378, supra at 409.

¹¹⁶ CP, p.1781, lines 19-22;

property alone through RCW 4.12.010¹¹⁷
as basis for his July 20, 2013 denial of such
motion and Respondents' opposing argument¹¹⁸.

The lower court's subject ruling raised
multiple issues of subject matter jurisdiction
for which this Court properly should therefore
review by exception to the rule limiting review
to points argued to the trial court as carved out
by Kruse v. Hemp, 121 Wn. 2d 715 at 721, 853 P.
2d 1373 (1993)¹¹⁹.

ii. AOE Nos.1-3 / IOA Nos.1-4:

The Complaint Improperly Sought To Have The Lower
Court Quiet Title To Subject California Real
Property Over Which Such Court Inherently
Possessed No Jurisdiction

A quiet title action, being a proceeding in
rem¹²⁰, local in nature as opposed to transitory¹²¹,
is sustained subject to the rules that two courts

¹¹⁷ RP, July 20, 2012, lines 11-21;

¹¹⁸ pgs. 11-12 in Exhibit No. 8 to Declaration of Isaac A. Anderson in support of Respondents' Brief opposing subject CR 60 (b) (5) motion to vacate (CP, pgs. 2278-2349);

¹¹⁹ Kruse v. Hemp, 121 Wn. 2d 715 at 721, 853 P. 2d 1373 (1993) (A reviewing court may perform acts necessary or appropriate to secure fair and orderly review and can waive appellate rules necessary to serve the ends of justice.)

¹²⁰ 40235 Washington St. Corp., 976 F. 2d at 589;

may not exercise jurisdiction over that same subject res¹²².

Art. IV, § 6 of the Washington State

Constitution provides that:

"[t]he superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property. . . and original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court . . ."

Such constitutional provision says nothing of "in rem" actions¹²³. Revised Code of Washington 2.08.020 similarly provides:

"The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve title or possession of real property . . . and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court. . . ."

¹²¹ Shelton v. Farkas, 30 Wn. App. 549, 553, 635 P. 2d 1109 (1981); 14 Karl B. Tegland, Washington Practice: Civil Procedure section 6:5, at 185 (2^d ed. 2009);

¹²² United States v. \$2542 in U.S. Currency, 754 F. Supp. 378, 379-380;

¹²³ See Young v. Clark, 149 Wn. 2d at 133; see also, City Of Tacoma v. Mary Kay, Inc., 177 Wn. App. 111, 114-115, 70 P. 3d 144 (2003); see also, Shoop v. Kittitas County, 149 Wn.2d 29, 37, 65 P.3d 1194 (2002);

Judge Hull persisted in evading the limitations set by the Wash. Const. Art. IV, sec. 6 that are on point with the issue of jurisdiction over Appellant's action, as well as, federal case law, infra, governing an in rem actions involving same claims controverting title to the same real property vested exclusively at some other court¹²⁴. To such end, Judge Hull invoked Revised Code of Washington ("RCW") § 4.12.010 (1)¹²⁵ (for its jurisdictional effect, as accorded it by recent case law, to trace jurisdiction over Appellant's in rem action and subject Washington property thereby. RCW section 4.12.010 pertinently provides that: _____

"[A]ctions for following causes shall be commenced in the county in which the subject of the action, or some part thereof is situated: (1) For the recovery of, for the possession of. . . or for the determination of all questions affecting the title . . .to real property. . ."

ZDI Gaming, Inc. v. Wash. State Gambling Comm'n,
173 Wn. 2d 608, 268 P. 3d 929(2012)¹²⁶
concerned whether a Washington State venue

¹²⁴ RP, p. 21, lines 3-15;

¹²⁵ RCW § 4.12.010 (1) (formerly RRS section 204) (Venue-Jurisdiction);

statute could be interpreted as jurisdictional in nature in order to contravene Washington State Constitution's jurisdictional limitation, and it recapitulated the Court's prior holding in Shoop v. Kittitas County, 149 Wn. 2d 29 at 37, 65 P. 3d 1194 that Wash. Const. Art. 4, sec. 6 precludes any restriction of jurisdiction over subject matter as among the superior courts. As a result, cases like Cugini v. Apex Mercury Mining Co., 24 Wn. 2d at 409, in which the Washington State Supreme Court similarly that "[t]he provisions of section 204 are jurisdictional in character" and "the jurisdictional requirement of the statute cannot be waived" remain controlling as such venue statutes do not contradict Art. IV, sec. 6¹²⁷.

But, as of further mention in ZDI Gaming, Inc., 173 Wn. 2d 608 (2012) supra, "[t]he legislature can, however, expand and shape jurisdiction, consistent with our constitution. Wash. Const.

¹²⁶ ZDI Gaming, Inc. v. Wash. State Gambling Comm'n, 173 Wn. 2d 608, 268 P. 3d 929(2012) [Wash. St. Supreme Court No. 83745-7, January 12, 2012] at CP, p. 2385, footnote no. 1);

¹²⁷ See also, Alaska Airlines, Inc. v. Molitor, 43 Wn. 2d 657, 665, 263 P.2d 276 (1953) (citing to State ex. Rel. Grove v. Card, 35 Wn. 2d. 215, 211 P. 2d 1005 (1949));

art. IV, section 6; Dougherty v. Dept. of Labor & Indus., 150 Wn. 2d 310, 316-17, 76 P. 3d 1183 (2003)" irrespective of those mere procedural requirements created by the legislature such as to proper or improper venue for an action.

iii. AOE Nos.1-5/ IOA Nos.1-8:

The Lower Court Could Not Simply Ignore The Subject California Property To Conform Appellant's Action To Be Within Its Jurisdiction So As To Proceed

By justifying jurisdiction over Appellant's action as involving Washington property (Kitsap County) property¹²⁸ the lower court sidestepped the jurisdictional limits implicit with in rem actions at the superior court. RCW 2.08.210 (Process-Venue) pertinently provides that:

"The process of the superior courts shall extend To all parts of the state: PROVIDED, That all actions for the recovery of the possession of, quieting to, or for the enforcement of liens upon, real estate, shall be commenced in the county in which the real estate, or any part thereof, affected by such action or actions is situated."

¹²⁸ RP, p. 18, lines 19-25;

The Legislature could not be clearer than that a quiet title action involving subject California property could not have been commenced at the lower court and such proceeds from that bedrock federal imperative and axiomatic legal principle long ago enunciated in Fall v. Eastin [215 U.S. 1,14 (1909)] by the U.S. Supreme Court applied such axiomatic legal principle derived from the Fourteenth Amendment's due process clause¹²⁹

Certainly, it is incontestable that the California court could have in rem jurisdiction¹³⁰ over the subject California property in its prior pending real property action along these same lines¹³¹ since the California property was land within the California's borders. "Where a court

¹²⁹ See Pennoyer v Neff, 95 U.S. 714, 722 (1878) (a Nebraska court handling a quiet title action as to Nebraska land was not required to recognize a deed to such land pursuant to a decree from a court in the State of Washington).

¹³⁰ see Ex. No. 2 of supplemental record on appeal;

¹³¹ California Code of Civil Procedure ("C.C.P.") section 392 (a) provides that:

"(a) . . .the superior court in the county where the real property of the action. . is situated is the proper court for the trial. . .(1) For the recovery of real property. . .or for the determination of that right, Or interest. . . to real property."

As the California property is within the California court's territorial confines, pursuant to C.C.P. § 760.040:

has jurisdiction it has a right to decide every question which occurs in the cause. . ."¹³²

Judge Hull's analysis evaded the legal facts presented by Appellant's in rem action whose supporting claims neither affect title to any Washington State real property nor are even at all justiciable in nature.

The lower court could freely transform Appellant's Complaint to fit its jurisdiction in order to proceed with it on the basis of RCW 4.12.010 and here as grounds for denial of the subject motion to vacate¹³³.

10. AOE Nos. 1-5/ IOA Nos.1-8 :

"(b) The [superior] court has complete jurisdiction over the parties to the action and the property described in the complaint and is deemed to have obtained possession and control of the property for the purposes of the action with complete jurisdiction to render the judgment provided for in this chapter."

See also, Arndt v. Griggs, 134 U.S. 316, 320-21, 323 (1890) (The basis of in rem jurisdiction is the power of a State to determine title to all property. . . located within its borders).

¹³² Wilcox v. Jackson, 38 U.S. 498, 13 Peters 264(1839) quoting Elliot et al. v. Pierson; 1 Peters 340.

¹³³ RP, p. 18, lines 19-25;

**Related Legislative Limits On Superior Court
Jurisdiction Consistent With Art. IV, Sec. 6 of
the Washington State Constitution**

In addition to those recognized exceptions to broad jurisdiction under Wash. Const. art. IV, sec. 6, supra, the superior court also faces further restrictions enacted by the legislature.

"Nothing in our constitution prohibits the legislature from creating procedural prerequisites to a court's exercise of jurisdiction."¹³⁴

Once a procedural requirement like standing or justiciability is transformed into an element of subject matter jurisdiction, a party's violation of the requirement becomes a defect of jurisdiction which can be raised at any time (RAP 2.5 (a)) and a judgment entered without subject matter jurisdiction is void¹³⁵.

⦿. AOE Nos. 1,4/ IOA Nos.1-2, 4:

**Because Appellant Had No Legal Standing To Sue,
Pursuant To RCW 7.28 Et Seq. For Quiet Title As**

¹³⁴ See James v. Kitsap County, 154 Wn. 2d 574, 587-588, 115 P. 3d 286 (2005); Sullivan v. Purvis, 90 Wn. App. 456, 459, 966 P. 2d 912 (1998).

¹³⁵ In re Marriage of Ortiz, 108 Wn. 2d 643, 649-50, 740 P. 2d 843 (1987).

To The Subject Washington Real Property, The Lower Court Additionally Lacked Subject Matter Jurisdiction Over Appellant's Underlying Real Property Action

Whether a party has standing to sue and whether a court has subject matter jurisdiction to hear a claim are issues that may be raised for the first time on appeal¹³⁶.

Appellant's quiet title action could still not have been entertained by the lower court absent the subject California property not only since no protectable interest or cause of action belonging to him was violated¹³⁷ regarding the Washington property but also since the Complaint evidences the lack of legal standing to sue for quiet title to the subject Washington property pursuant to RCW 7.28 ("Who May Maintain Actions...").

RCW 7.28.010, *infra*, provides that a person seeking to quiet title must present a valid subsisting interest in the property and the right

¹³⁶ Spokane Airports v. RMA, 149 Wn. App. 930 (Div. III, 2009), *supra* at pgs. 939-944 [citing to RAP 2.2 (a); Skagit Surveyors & Engineers v. Friends of Skagit County, 135 Wn.2d 542, *supra* at 556-557] ("When a petitioner lacks standing, the court is without subject matter jurisdiction to hear the claim.");

¹³⁷ Hoskins v. City of Kirkland, 7 Wn. App. 957, 961, 583 P. 2d 1117 (1972);

to possession thereof.¹³⁸ The party with the superior title must prevail.¹³⁹ An action to quiet title is equitable and designed to resolve competing real property interest claims¹⁴⁰.

RCW 7.28.010 states in pertinent part that a real property action in a Washington State court may be brought by:

"[a]ny person having a valid subsisting interest in real property, and a right to possession thereof, may recover the same by action in the superior court of the proper county to be brought. . . against the person claiming title or some interest therein, and may have judgment in such action quieting. . . title."

The doctrine of standing requires a plaintiff have a personal stake in the outcome of the case sufficient to bring suit¹⁴¹.

As of the date of filing of the Complaint, Appellant was neither in adverse possession of

¹³⁸ Wash. Sec. & Inv. Corp. v. Horse Heaven Heights, Inc., 132 Wn. App. 188,195, 130 P. 3d 880 (2006);

¹³⁹ Id.;

¹⁴⁰ Kobza v. Tripp, 105 Wn. App. 90, 95, 18 P. 3d 621 (2001);

¹⁴¹ Gustafson v. Gustafson, 47 Wn. App. 272, 276, 734 P. 2d 948 (1987); see also Postema v. Snohomish Cty., 83 Wn. App. 574, 579, 922 P. 2d 176 (1996);

the subject Washington property nor could he proceed adversely against Respondents' title thereto as transferred to them by deed in lieu of foreclosure on November 18, 2009 which none of the Complaint's claims for quiet title thereto, based on rescission, could reverse.

In such regard, the general rule of law in Washington State is that the provisions of a real estate contract and all prior negotiation and agreements are considered merged in a deed made in full execution of the real estate contract¹⁴² Consequently, the parties' Settlement Agreement merged into the contract and ceased to exist for the purposes of contesting transfer of the subject Washington property in the context of claims which do not support reversal of such transfer, extinguishing Appellant's rights in the property and leaving him no valid and subsisting interest therein.

¹⁴² Black v. Evergreen Land Developers, 75 Wn. 2d 241, 248, 450 P. 2d 470 (1969); see also, Barnhart v. Gold Run, Inc., 68 Wn. App. 417, 423, 843 P. 2d 545 (Div. III, 1993);

Appellant, as a California borrower and whose address is listed on each subject deed of trust giving prior to each subject loan as being in California, also had no standing to seek the remedy of rescission or other relief under the MBPA¹⁴³. As neither RCW 18.85.230 nor RCW 19.146 Et seq. govern the subject California loans, such claims are outside the "zone of interests" to be protected or regulated by those statutes in question in a Washington State court¹⁴⁴.

The lower court had reason to recognize that Appellant had no standing to sue for quiet title based on his Complaint and therefore abused its discretion by so ruling by means manifestly unreasonable¹⁴⁵.

vi. AOE Nos.1-3/ IOA Nos. 1-4:

The California Court Possessed Exclusive And Prior Jurisdiction Over The Subject California Property And All Claims Controverting Title Thereto In Its Prior Pending In Rem Real Property Action For Quiet Title Thereto

¹⁴³ RCW section 19.146.220 (2) (d) (ii) [CP, p. 62, par. 65 (of the Complaint)]of the MBPA (RCW s section 19.146 et seq.)and RCW 18.85.230 [CP, p. 60, par. 63 (of the Complaint)]

¹⁴⁴ American Legion Post #149, 164 Wn. 2d 594 at 594;

¹⁴⁵ See Dix v. JCT Grp, Inc., 160 Wn. 2d 826, 833, 161 P. 3d 1016 (2007);

Certainly, the lower court could not entertain claims controverting title to the subject California property outside of its territorial jurisdiction as properly prior pending at the California court. But, also, the California court had prior assumed complete and exclusive jurisdiction over the subject California real property as the only property which could be affected by remedy of rescission of the subject loans in service of its pending real property action for quiet title to such.

That prior and exclusive jurisdiction intersects with the well-established principle of federal law that "[w]hen one court is exercising in jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res."¹⁴⁶ "[A] second court will not assume in rem jurisdiction over the same res." To apply the doctrine, courts should "look behind the form of the action to the gravamen of a complaint and the nature of the right sued on."¹⁴⁷

¹⁴⁶[Marshall v. Marshall, 547 U.S. 293, 311, 126 S. Ct. 1735, 64 L. Ed. 2d 480 (2006)] which "... is no mere discretionary abstention rule. Rather it is a mandatory jurisdictional limitation." State Eng'r v. S. Fork Band of Te-Moak Tribe of W. Shoshone Indians, 339 F. 3d 804, 810 (9th Cir. 2003);

¹⁴⁷ State Eng'r, 339 F. 3d, supra at 810;

Civil Rule 8 (f) provides that: "All pleadings shall be so construed to do substantial justice."

Since first provided with notice of the prior pending California action¹⁴⁸ as from the time of Respondents' motion for expedited fact finding hearing¹⁴⁹ the lower court has repeatedly and adamantly refused to address issues of exclusive jurisdiction over the California property title and claims controverting such¹⁵⁰ at some other court, thus proceeding at odds with Mitchell v. Kitsap County, 59 Wash. App. at 180-181, supra.

Those claims were all drawn into such prior pending California case's in rem action and controversy pending proper determination by such California court as having exclusive jurisdiction over such California real property and its title directly affected by such claims not affecting title to subject Washington property.

¹⁴⁸ p. 1776, lines 2-14; CP, p. 1776, footnote no. 10;

¹⁴⁹ CP pgs. 256-288;

¹⁵⁰ RP, p. 21, lines 3-10;

iii. AOE Nos. 1, 5 / IOA Nos. 1-4, 6-8:

Appellant's Action Improperly Sought To
Quiet Title To Both California Real Property
And Washington State Real Property On The
Basis Of Claims Which Legally Affected Only
That Subject California Real Property

Respondents' July 19, 2012 Opposition itself notes "[Appellant] advanced practically the same claims he advanced in his Los Angeles Superior Court lawsuit."¹⁵¹ The California suit's claims did not, however, controvert title to the subject Washington property nor could it based on rights to rescind the subject loans, thus Respondents imply Appellant's claims do not affect title to the subject Washington property. Neither the remedy of rescission of the loans nor any judicial declaration of rights thereunder result in recovery of title or possession to the Washington property as judicial declaration, as sought¹⁵² yet to still leave Respondents first mortgage lien on the subject Washington property

¹⁵¹ CP, p. 2260, lines 6-7;

¹⁵² CP, 78, par. 83; and, regardless of the real property action being deemed otherwise triable as action at law as only presenting purely legal controversies pursuant to Durrah v. Wright, 63 P. 3d 184 (2004).

The lower court's judicial disregard of the subject California property automatically rendered Appellant's claims for quiet title and real property action non-justiciable. Washington State courts are prohibited from entertaining cases that do not present a justiciable controversy¹⁵³ whereupon dismissal without prejudice is the limit of what that trial court may do.¹⁵⁴

The Complaint thus neither supports nor demonstrates facts showing subject matter jurisdiction over its claims all of which affected title to only California real property¹⁵⁵.

¹⁵³ Walker v. Munro, 124 Wash. 2d 402, 411, 414, 879 P.2d 920 (1994); Berschauer Phillips Construction Co. v. Mutual Insurance Co. of Enumclaw, Court of Appeals of Washington, Div. I, No. 66643-6-1 (opinion filed June 27, 2011), *supra*, citing to Reid v. Dalton, 124 Wn. App. 113, 122, 100 P. 3d 349 (2004); High Tide Seafoods v. State, 106 Wn. 2d 695, 701-02, 725 P. 2d 411 (1986); Skagit Surveyors & Eng'rs, LLC v. Friends of Skagit County, 135 Wn. 2d 542, 556-57, 958 P. 2d 962 (1998);

¹⁵⁴ Housing Auth. v. Kirby, 154 Wn. App. 842, 850, 226 P. 3d 222, review denied, 169 Wn. 2d 1022, 238 P.3d 503 (2010).

¹⁵⁵ See Data Disc Inc. v. Systems Technology Associates, Inc., 557 F. 2d 1280, 1285 (9th Cir. 1977). See Grimwood v. University of Puget Sound, Inc., 110 Wn. 2d 355, 359-60, 753 P. 2d 517 (1988; See also, Barrett v. Freise, 119 Wash. App. 823, 119 Wash. App. 1026, 82 P. 3d 1179 (2003).

iii. As to AOE Nos. 1, 5 / IOA Nos. 1, 6-8 :

Regarding UDJA Limitation On Subject Matter
Jurisdiction Of Appellant's Action As
Seeking Declaratory Judgment(s)

The lower court had no jurisdiction to consider the declaratory relief sought by Appellant's Complaint which presented it with no justiciable controversy. A justiciable controversy must exist before a court's jurisdiction may be invoked under the Uniform Declaratory Judgment Act (RCW 7.24 et seq.) ("UDJA")¹⁵⁶.

The UDJA is "designed to settle and afford relief from insecurity and uncertainty with respect to rights, statutes and other legal relations"¹⁵⁷ as here with respect to rights under the subject loans.¹⁵⁸ A quiet title cause of action seeks the remedy of declaratory relief,

¹⁵⁶ Wash. St. Republican Pty v. Wash. St., 141 Wn. 2d 245, 284, 4 P. 3d 808 (2000); To-Ro Trade Shows v. Collins, 144 Wn. 2d 403, 411, 27 P.3d 1149 (2001); see also, DiNino v. State, 102 Wn. 2d 327, 330, 684 P. 2d 1297 (1984) accord Branson v. Port of Seattle, 152 Wn. 2d 862, 877, 101 P.3d 67 (2004); Bloome v. Haverly, 154 Wn. App. 129, 141, 225 P. 3d 330 (2010).

¹⁵⁷ DiNino, 102 Wn. 2d supra at 330;

¹⁵⁸ [see July 13, 2012 filed Exhibit Nos. 8, 9 and 10 (CP, pgs. 1799-2250) supporting subject CR 60 (b) (5) motion to vacate].

and the underlying claims must thus be justiciable to permit that relief sought be obtainable to finally and conclusively resolve the dispute between the parties¹⁵⁹.

Claims are justiciable if as sought are of a type such that it would finally and conclusively resolve the dispute between the parties, and the relief sought thus to be obtainable¹⁶⁰. RCW 7.24.010 of the Uniform Declaratory Judgment Act ["UDJA" (RCW 7.24 et seq.)] provides that:

"Courts of record within their respective jurisdiction shall have the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.. ."

RCW 7.24.020 authorizes that persons:

"interested under a deed. . . written contract . . . and whose rights, status or other legal relations are affected by a statute. .

¹⁵⁹ See Pasados Safe Haven v. State of Washington and Washington State Dept. of Agriculture (2011) 259 P. 3d 280, 162 Wash. App. 746: ". . . [T]he issue of justiciability is necessarily present in any declaratory judgment action . . . [and] authority to act is dependent upon whether a justiciable controversy exists. . . we may properly affirm a trial court judgment on any basis established by the pleadings and supported by the record." Pasados Safe Haven, 259 P. 3d 280, supra, citing to In re Marriage of Rideout, 150 Wn. 2d 337, 358, 77 P. 3d 1174 (2003) (quoting Truck Ins. Exch. v. Vanport Homes, Inc., 147 Wn. 2d 751, 766, 58 P.3d 276 (2002)).

¹⁶⁰ . DiNino, 102 Wn. 2d supra at 330-331; see also RCW 7.24.050;

.contract. . .may have determined any question of construction or validity. . .arising. . . and obtain a declaration of rights, status or other legal relations thereunder."

For purposes of declaratory relief, a justiciable Controversy's pertinent four elements include:

(1) . . .an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement. . . .(4) a judicial determination of which will be final and conclusive."¹⁶¹

All four elements must be present and the fourth element of a justiciable controversy is satisfied where judicial determination of the issue raised will conclusively resolve the parties' dispute¹⁶².

The first and fourth such elements were not satisfied by OLLA'S Complaint because its claims

¹⁶¹ Walker v. Munro, 124 Wash. 2d 402 at 411, 879 P. 2d 920 (1994)(quoting Nollete v. Christianson, 115 Wash. 2d 594, 599, 800 P. 2d 359 (1990); DiNino, 102 Wn. 2d, supra at 330-331, 684 P. 2d 1297 (quoting Clallam County Deputy Sheriff's Guild v. Bd. Of Clallam County Comm'rs, 92 Wn. 2d 844, 848, 601 P. 2d 943 (1979).

¹⁶² See To-Ro Trade Shows, 144 Wash. 2d, supra, at 411, 417, 27 P. 3d 1169; see also [Diversified Indus. Dev. Corp. v. Ripley], 82 Wash. 2d 811, 815, 514 P. 2d 137 (1973) (Where the four justiciability factors are not met "the court steps into the prohibited area of advisory opinions");

affected title to only California real property and were not justiciable or a subject for declaratory relief, thus, as a controversy which could have been settled or clarified by a State court.¹⁶³ The relief sought for quiet title as well as for rescission incident thereto cannot be attained. Also no claims or bases in the Complaint affects title of the subject Washington property already sold, being that rescission of the subject loans could only restore the parties' pre-loan(s) status quo with title of only the subject California property back with Appellant.

Additionally none of the Complaint's claims supporting rescission and damages based upon to Washington State law inclusive of the MBPA (RCW 19.146 et seq.)¹⁶⁴ The Complaint's claims were hypothetical as if the subject loans were Washington State made and the parties' respective obligations derived thereunder were regulated by

¹⁶³ . See, Eureka Federal Savings & Loan Ass'n v. Amer. Cas. Co. of Reading, Pennsylvania, 873 F. 2d 229 (1989) citing Bilbrey by Bilbrey v. Brown, 738 F. 2d 1462, 1470 (9th Cir. 1984) (quoting E. Borchard, Declaratory Judgments 299 (2 ed. 1941).

¹⁶⁴ CP, pgs. 57-59;

Washington State lending laws which they were not¹⁶⁵.

Thus, the Complaint failed to allege a present, existing dispute, case or controversy regarding whether the subject loans should be rescinded pursuant to Washington State law as a basis upon which to quiet title to the subject Washington property if any. The real property action did not meet the fourth such element since a judicial declaration by the lower court could not be final and conclusive because the claims relating to quiet title of the subject real properties, as based upon remedy of rescission sought, were not susceptible to adjudication pursuant to Washington State law.

For those reasons no favorable resolution of such by the lower court could thus be of effect

¹⁶⁵ See Wright v. Colville Tribal Enterprise Corp., 159 Wn. 2d 108, 120 n.6, 147 P. 3d 1275 (2006) (Madsen, J., concurring).

as a final judgment as argued¹⁶⁶ Appellant's real property action, seeking declaratory relief based on incorporation of re-alleged non-justiciable claims, could not successfully invoke the general jurisdiction of the lower court as sustainable.

CONCLUSION

The lower court did not possess requisite subject matter jurisdiction over Appellant's real property action to resolve its causes of action and enter Judgment and Orders on January 15, 2010. Consequently, the lower court properly should have granted Appellant's subject CR 60 (b) (5) motion to vacate its January 5, 2010 Judgment and Orders.

Thus, Appellant hereby requests that this Court reverse that July 20, 2012 ruling in denial and August 3, 2012 Judgment and Order based thereon, and accordingly remand back to the Kitsap County Superior Court under Orders to vacate and otherwise relieve Appellant from any

¹⁶⁶ CP, p. 2356.

and all legal effects of its January 15, 2010 Judgment and Orders and expunge its January 15, 2010 Findings of Fact and Conclusions of Law [CP, pgs. 1312-1327] and all other related resultant Judgments and Orders entered in re case no. 09-2-01654-4 [OLLA v. WAGNER ET AL.].

Sanctions should be properly imposed on Respondents for costs, with interest, for Appellant's costs of appeal, costs of trials as concluded, respectively, on December 11, 2009 and on March 27, 2011, and finally Appellant's instant CR 60 (b) (5) motion to vacate, to be tabulated in a cost bill to be submitted by Appellant upon disposition of appeal properly in his favor.

DATED: April 4, 2013

Respectfully submitted,

MARK OLLA, APPELLANT AND PLAINTIFF PRO SE

By: 

MARK OLLA, Appellant and Plaintiff Pro Se

DECLARATION OF MAILING

I, Janine Hecht state declare as follows:

I am a citizen of the United States of America and a resident of the state of Oregon. I am over the age of 21 years. I am neither a party to nor am affected in any by either the underlying Kitsap County Superior Court action relating to or by the Washington State Court of Appeals, Division II Appeal(s) captioned action.

My business address is: Staples 721 n. Coast Hwy Newport, OR 97365

On this 5 day of April, 2013, I caused the foregoing documents which can be accurately described as:

1. APPEL LANT MARK OLLA'S OPENING BRIEF
[dated April 4, 2013, and for which permission is concurrently sought for filing at 58 (fifty-eight) pages in total length];
2. APPEL LANT MARK OLLA'S April 4, 2013 MOTION TO FILE OVER-LENGTH BRIEF AT TOTAL 58 (FIFTY-EIGHT PAGES) IN LENGTH

By placing a true and correct copy of such above described document in the mail by manner as indicated below, all postage thereon having first been prepaid by Mark Olla, and as addressed to the following recipient interested parties:

Isaac A. Anderson
Law Office of Isaac A. Anderson
19717 Front Street
Poulsbo, WA 98370
isaac@isaacandersonlaw.com
Phone: (360) 779-4292

UPS 2 day delivery

---Page 1 of 2---

Declaration Of Mailing Of
Appellant Mark Olla's Opening Brief
Of 58 (Fifty-Eight) Pages In Length
As Dated April 4, 2013 And Motion
To File Such Over-Length Brief

[X] And by placing the original and one copy of each above described document in the mail by manner as indicated below, all postage thereon having been prepaid by Mark Olla, and as addressed to the following Court:

Court of Appeals, Division II, of the State of Washington [X] UPS overnight delivery
950 Broadway, Suite 300
Tacoma, Washington 98402

I declare the foregoing to be true and correct under penalty of perjury under the laws of the State of Washington on this 5 day of April, 2013 at newport,

Oregon

Print name here: Janine Hecht
Janine Hecht