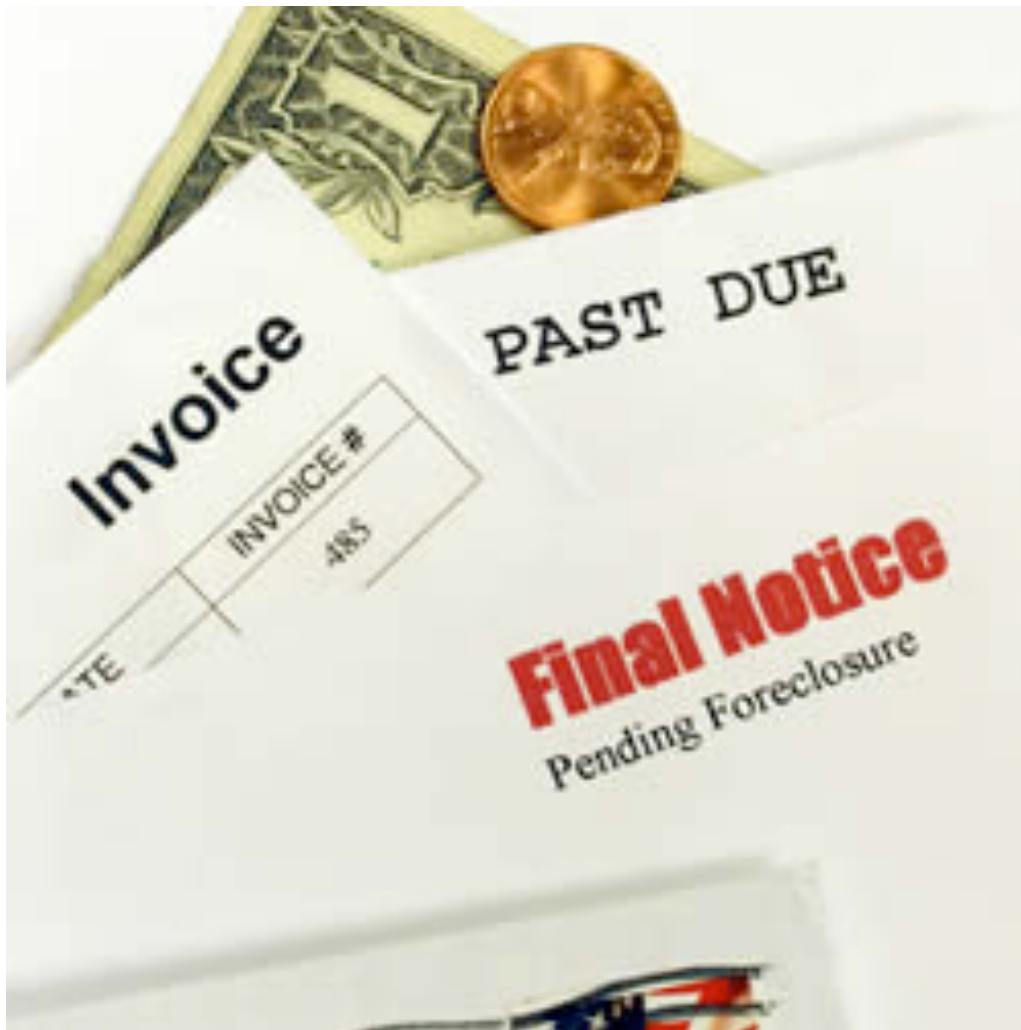


# HOW TO LEGALLY BEAT DEBT COLLECTORS

THE LEGAL SECRETS THAT NOBODY WILL TELL YOU...NOT EVEN ATTORNEYS.



STRATEGIES TO WIN ALMOST ANY DEBT COLLECTION LAWSUIT  
(FORECLOSURE, CREDIT CARD, ETC).

JULIO MARTINEZ-CLARK

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The contents of this book are for educational and instructive purposes only; readers are always encouraged to seek the advice of legal counsel in their geographical area. Responses to submitted questions are generalized and may not be specific to the reader's state or area. You may find an attorney specializing in consumer rights at <http://www.naca.net> or consult your local bar association.

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## 1. Introduction

The inspiration for this book started after my financial life was ruined due to the collapse of the residential real estate market in 2006. In 2003 I started investing in real estate purchasing, renovating and selling foreclosure homes in the Central Florida area. Between 2003 and 2006 my partner and I purchased, renovated and sold about 50 homes, and I was involved in a few commercial real estate ventures.

My educational background is in Electric Engineering with a MBA (Master in Business Administration). As Albert Einstein said *"Education is what remains after one has forgotten everything he learned in school."* Academic education teaches you how to think critically and how to analyze and put together information from different sources. When I started investing in foreclosure homes I knew nothing about the real estate industry; I had to learn a new profession and every deal I participated in taught me something new.

Real estate is an interesting industry because it involves a product that we all need to live in a modern society: housing and other forms of human dwellings and structures. By its nature, real estate is intrinsically related to the law since it is related to important human activities such as marriages, divorces, law suits/judgments, death, bankruptcy, etc. In order for me to be a skillful and successful real estate investor, I had to learn about the above-mentioned topics. Since my focus was in acquiring foreclosure homes, I had to deal with homeowners facing financial distress caused by several possible reasons such as medical, divorce, job loss, death, bankruptcy, etc. In order to best address the different challenges in purchasing the homes, I had to constantly research and study the laws to make sure the seller could legally transfer title of the property, I had to constantly consult with my real estate attorney, and I studied the different type of judgments a homeowner can get from creditors, the different type of liens, how the foreclosure process works, landlord-tenant law, how divorce and death affects real estate, bankruptcy law, and other myriad of laws affecting real estate. I increasingly developed curiosity for these topics.

After several years I have developed a good knowledge of law and have become an avid reader of different law

related topics. After several years of residential real estate boom, the market came to a crisis in which the number of properties for sale greatly outnumbered the willing and able buyers and credit requirements to obtain a loan have dramatically become stricter. This situation forced me to have too many unsold homes in my company's inventory that we were unable to sell. The rental income we obtained from the homes was not enough to pay for the expenses and we were forced to stop making payments to lenders, thus, falling into the foreclosure trap. At the time of this market crisis, I had mortgage and credit card debt and the dreaded collectors started calling, sending letters, and creditors initiated debt collection and mortgage foreclosure lawsuits.

Attorneys and judges are accustomed to dealing with average individuals with little or no knowledge of the law; they take advantage of your ignorance and abuse your rights based on your fear and ignorance of the legal system. Attorneys make easy money winning cases in the courts and don't expect you to use the law to your advantage; my goal with this book is to teach you legal techniques to put you in a position to win and to make attorneys' lives absolutely miserable. The tactics proposed in this book will help you represent yourself "pro se" in court or will help guide the actions of your attorney. I highly recommend you seek legal advice and seek an attorney representation if you don't have the time or the willingness to defend your self "pro se" (without an attorney). When dealing with a debt collection matter, you will be better served by seeking the advice of a consumer protection and/or consumer rights attorney. Unless an attorney is a consumer protection/rights one, most general attorneys will probably have a very limited knowledge of the law and will need your guidance. I recommend you provide them with the pleadings that you want them to submit to the court in your defense or in your attacks and let them review and revise them if necessary; your attorney is working for you and you must always be the guiding mind behind his actions. I encourage you to question everything that your attorney intends to submit to the courts and to discuss with him in detail your winning strategies. You may find an attorney specializing in consumer rights at <http://www.naca.net> or consult your local bar association.

This book was greatly influenced by the writings of Mr. Richard Cornforth who has done an extraordinary work in

educating the public in his seminars and book on the legal system in the United States.

I highly recommend that before you continue reading this book, you read the short document called "Lawyer's Secret Oath" part of the Appendix of this book and also available online at [http://www.geocities.com/three\\_strikes\\_legal/LawyersSecretOath.pdf](http://www.geocities.com/three_strikes_legal/LawyersSecretOath.pdf). I have no certainty whether what this document says is true or not; you have to make your own determination. I'm sure this document will at least stir a curiosity in you to continue researching the truth about the legal system in America.

I publish a free monthly newsletter called The Truth Report in which I expose the truth about several life topics (money, law, health, etc), life changing news and general information that you likely won't see in the mass media. If it's in the mass media, it's probably not important for you to know it. I kindly invite you to sign-up for the newsletter at my personal website at [www.JulioMartinezClark.com](http://www.JulioMartinezClark.com) where you will also find a list of resources that I consider crucial in your quest for the truth.



## 2. The Debt Collection Industry

I will quote what Mr. Bud Hibbs, considered "America's Consumer Credit Expert" and author of 2 books on credit and debt collectors said in his blog (<http://budhibbs.wordpress.com/>):

<http://budhibbs.wordpress.com/tag/debt-collection-industry/>

August 7, 2006

"The Debt Collection Industry in America has Changed  
Filed under: Debt Collection Industry — budhibbs @  
4:30 pm

"Despite tough government regulations protecting people against abusive debt collectors, a three-month ABC News investigation found many unscrupulous collectors routinely ignore the law.

A report on the debt collection industry issued by the Federal Trade Commission, however, found that consumers filed a record number of complaints against collectors in 2005, up 14 percent from the previous year. The debt collection industry in America has taken a turn for the worse. Gone are the days when consumers and collectors could talk and work out reasonable settlements, based on professionalism and accepted business practices. Today's debt collector is viewed as an uneducated, job-hopping, drug induced moron who is under incredible pressure to hit a quota or face job loss. Owners are flush with large hordes of cash, so paying off lawsuits has become just another cost of doing business. Washington, DC and your state capital is not concerned about this problem and the FTC and your state attorney's general are too overwhelmed to make a dent in the problem.

I receive more than 400 emails every day from consumers complaining about the illegal tactics used by debt collectors to fleece them out of their money. You file is now a 'case number', everyone is a 'legal assistant' or you've reached the 'pre-litigation department' which is nothing more than a call center where everyone is strung out on something, from an

abundance of caffeine, uppers, downers, coke and smoke. Most blame the pressure of the industry as it has exploded in the past three years to numbers that were once unimaginable. This has caused the debt buying segment to expand to a billion dollar industry and accounts that are ten and fifteen years old, to be back on the front burner, with a renewed vigor by the over-zealous debt collector to separate you from your cash.

To add to the pressures on both sides, the bottom feeders, those who buy old accounts are taking extreme measures to collect at the expense of violating laws and in many cases, committing crimes. These violations from organizations such as Unifund, Asset Acceptance, Midland Credit, Credigy, Account Management Services, Collect America, NCO, Shekinah, and anyone with a Buffalo, NY address threatening legal actions, posing as law enforcement and attorneys, manufacturing bogus documentation to validate their court filings, purchasing money orders to show phony payments on accounts, contacting third parties, violating everything the Fair Debt Collection Practices Act (FDCPA) states they should not legally be allowed to do.

The time has come to make changes and give consumers weapons to fight back these parasites of the American economy. I read recently where notorious bottom feeder Unifund, of Cincinnati, OH was at a debt buyers conference and their booth sign read: "FUTURE HOME LIENS FOR SALE!" Unifund president David G. Rosenberg has made millions living off the misery of others, with his despicable collection practices and innovated a lot of the bogus court filings that are now common. The good news is there are new ways you can employ to counter the moves of these parasites for both now and in the future that will make their jobs harder, more costly and bring a wrath of new legal problems upon them.

Having more than twenty years experience in this business, talked to millions of consumers dispensing advice, a few books, lots of radio and television and an upcoming movie on my resume, I feel it is now time

to share this knowledge on a scale that will arm the average consumer with information and resources to considerably up the ante for the debt collector. I'm looking for your input, your feedback on proven methods that will change how debt collectors operate. This blog will be a place to get assistance on dealing with the debt collectors on a scale that slows them down, holds them accountable, gives you power you never knew you had and ways to bring their collections to a crawl."

See how Mr. Hibbs on his website defines a debt collector: [http://www.budhibbs.com/debt\\_collector.htm](http://www.budhibbs.com/debt_collector.htm)

**"The Debt Collector-Money Beggars, Liars, Lawyers, Con-Men & Thieves"**

#### **AGENCY COLLECTORS (Beggars)**

Agency collectors have correctly been deemed the worst-type of collection agents! They operate from a computer database containing all your personal information, provided to them by the original creditor. When an outside agency gets your account, it has been 'charged-off' for non-payment. They make calls as fast as the auto-dialer can picking up the first one that hits a live voice and letting the rest go as annoyance calls. That's why sometimes you get only a recorded message telling you to call about a very important matter. Commission is their livelihood; they don't have time for pleasantries or obeying the law.

An agency collector's commission ranges from 15-25% of what they can extract from you. Most are paid bonuses if they hit a quota and steady, hard-working collectors can make \$40-60K per year. The majority will bring in much less because they routinely step over the line to increase their take.

Who Seeks a Career as a Debt Collector?

In a industry where deception, craftiness, and deceit are rampant, you might imagine most honest people would seek work elsewhere. And you're right. My experience says the average debt collector is male,

has a large ego, bounces from job to job, suffers low self-esteem and enjoys using the telephone as an instrument of empowerment. You shouldn't be surprised to find most of them have great debt problems themselves.

The debt collection business is plagued with high employee turnover. Constant training of new collectors puts great strain on the agencies and the employees. Every moment someone is in training is time lost on the phone. You can imagine the shortcuts that are taken to get a new caller on the floor as soon as possible.

Collectors see themselves in a position to take advantage of those they deem weaker, in an effort to overcome their own insecurities. They normally will talk-over any issues you may have, threaten and intimidate you, lie, misrepresent themselves, abuse, annoy and attempt to push you as far as they can. After all, a portion of what they collect from you becomes theirs. Unfortunately, far too few consumers complain about debt collectors overstepping their bounds, because they are intimidated or embarrassed about their dilemma. Over the years I've dealt with literally thousands of collectors and suggest that only 2 out of 10 are honest and hard working. The greater percentage are deadbeat scum either just out of, or heading back into a jail cell. Collecting is a male dominated business and because of the shortage of skilled workers, agencies are hiring anyone who can walk and chew gum to make their calls. Social skills, education and career orientation are NOT normally the prerequisites for a debt collector - money beggar position.

What Techniques Do They Employ?

You'll hear standard phrases such as: *"what is your intent"* or *"I'm going to recommend that our client take immediate legal action against you."* The innocent unsuspecting consumer feels threatened, even terrorized by the antics of unscrupulous debt collectors. The really bad ones will call you at work, violate third party disclosure, or worse, threaten you

with arrest or wage garnishment if they don't have the money today! They'll try to persuade you to pay off old debts using your new credit card, via Western Union wire transfers, bank drafting, debit checks and cash. They will tell you your credit report will be clean if you just send them the \$ MONEY\$.

The National Consumer Law League, (NCLC) and the National Association of Consumer Advocates, (NACA) assist attorneys across the country in pursuing agencies and collectors who violate the law and your rights. Collectors are learning that the phone name they use and the perceived anonymity of hiding behind a telephone can easily be overcome with today's modern technology and investigative techniques. Some collectors are learning first-hand that they too, can be charged with making threats over the phone and that their employers don't provide bail money or legal representation. Creditors are increasingly becoming less tolerant of agencies that allow abuse and will drop those that don't comply.

I urge you to complain about collector abuse by contacting the FTC, the American Collectors Association, the original creditor and your state bar association (against attorneys), or me if you feel your rights are being violated. There is a nationwide group of professional consumer attorneys, skilled in debt collection laws that passionately defend the rights of consumers against these illegal collectors. No consumer should ever suffer abuse from a debt collector. The laws WILL protect you!

#### **ATTORNEY/LAWYER DEBT COLLECTORS**

*The law binds attorneys who engage in the collection of debts and the collectors that work for them.* One of the worst attorney collection networks I have ever encountered is the Collect America/Refinance America franchise founded by Attorney P. Scott Lowery, of Denver CO. This is abuse at its absolute worst. The worst Collect America/Refinance America office that I have encountered appears to be Attorney James Anthony (Tony) Cambece, of Peabody MA. This group of misfits, brain dead, egotistical punks think collection laws

don't apply to them. Their ring-leader, Tony Cambece, a Massachusetts Attorney can be dealt with legally if consumers will file a bona-fide, written complaint about him and his thugs with the Massachusetts Bar Association, Boston, Mass at: (617) 542-3602. Many other law firms that engage in the collection of debts. One recent scam I've encountered is Attorney A. C. Donahue, of Somerset, KY. It appears that Attorney Donahue is NOT really an attorney in states that he is sending mail from, such as Oklahoma. When I tracked Attorney A. C. Donahue to his KY address, he told me over the phone that he would not speak to me and to contact his attorney. Would you feel comfortable sending money to the Donahue Law Group of OK, (oh), and KY? I certainly would recommend that you DO NOT! (At least until it can be determined just where Mr. A. C. Donahue is legally allowed to practice law. He seems a bit confused about this.) A majority of law firm collectors I have dealt with in my business are usually the ones with the "big head" syndrome. They try to impress you with titles such as 'Head Legal Assistant to Attorney Smith', or use the most intimidation to force payment with such classics as, *"the paperwork is ready to send to the courthouse for suit."* One of my favorites: *"We don't have time to play games with you. Are you sending the money today or not?"* These jerks seem to get their kicks convincing debtors that they have life and death power over them. They love to use the phone as a weapon of terror.

You almost never are allowed to speak with the attorney who sent you the letter because he is always "in court." You are told that they never take calls from debtors. Well that's not correct. The law states that if an attorney places their name and/or letterhead on a collection notice, they MUST make themselves available to talk with you and they MUST have some knowledge of the debt. Don't be intimidated by these over-bearing jerks. **THEY CAN BE HELD ACCOUNTABLE UNDER THE LAW!** If you feel that your rights are being abused by a debt collection attorney/law office, file a complaint with your State Bar Association, the Attorney General, or the Federal

Trade Commission, or contact me for a confidential referral to a consumer law professional in your area."

With the above information about the debt collection industry you have a very good idea of whom you are dealing with. If you are an educated consumer prepared with legal tools to win, debt collectors will not step on your legal rights.

In this book you will learn among other things that credit card contracts are not transferable; when a third party debt collector attempts to collect any consumer debt including state income taxes, the debt collector must obey the Fair Debt Collections Practices Act or they are subject to suit. Additionally, federal R.I.C.O. (Racketeer Influenced and Corrupt Organizations Act of 1970) law provides that a cause of action lies where one or more members of an enterprise affecting interstate commerce commit two or more acts of fraud or extortion resulting in damages to property or a business. Property includes bank accounts and money. Lost business opportunity is damage to a business interest. Before any party can legally prevail in any lawsuit, the party must be prepared to show standing to sue in the jurisdiction and standing to sue the respondent party. Corporations must also be prepared to show that the corporation's charter authorizes the activity sued over and also authorizes suing. The party legally prevailing in any lawsuit must show that a contract exists if the matter is a breach; and regardless, every prevailing party must "prove up" a claim of damages. After judgment is rendered, there must always be a second proceeding *in rem* for collection. Even though *in rem* proceedings have been simplified in most jurisdictions, don't count on attorneys knowing how to file an *in rem* petition.

The Debt Collection Industry is a multi-billion dollar racket run throughout the country. Just as a photocopy of a \$100 bill is evidence of a \$100 bill, it is not the actual Federal Reserve note; it's a copy that doesn't spend. Yet, debt collectors are collecting billions on photocopies of debt. That is, evidence of debt, not the debt.

The evidence of debt is being sold for and purchased for pennies on the dollar, while debt collectors/attorneys are collecting on the full face value plus penalties and attorney fees. There have been numerous occasions where 2,

3, and even 4 debt collectors have had photocopies of the same debt and were all trying to collect on the same debt, at the same time. How many times does one owe on the same debt? If at all?

The Courts have been rubber-stamping these transactions for so long that it has now become custom to rubber stamp. A custom that is at its best, difficult to overcome. The Courts don't like having to actually consider the facts and evidence, it is so much easier to hand out your money than for them to behave according to their own rules of procedure and evidence. The Courts want you to prove a negative that you don't owe. While refusing to require the Plaintiff to prove the charges he has brought against you.

Recently, a housewife in Colorado had gotten totally fed up. She has sued Wells Fargo for their participation in this racket. What happens most often is that a bank or credit card company will bundle defaulted accounts and sell them on the debt wholesale market. This is after they have written them off on their corporate taxes and collected the bad debt insurance. Then they destroy all of their records so they cannot be compelled to show that they have collected insurance to pay off the debt.

The wholesaler will then re-bundle and sell either to attorneys or to companies dedicated to collecting on these defaulted, already paid for, accounts. (Again, this is after they have been written off on corporate taxes and bad debt insurance has been collected.) What is being sold are photocopies of debt, they don't (except on very rare occasions) have the original thus cannot extinguish the debt when paid. What is worse, if there are a thousand photocopies, there will be a thousand claims and since none are the original, none can be satisfied/extinguished. Isn't that great!

It's come to my attention that there is web site where attorneys can go to purchase supposed Affidavits from their supposed clients; just fill in the blanks and low and behold an Affidavit appears. Now isn't that slick? The Affidavit that appears is at best defective, at worse, a fraud upon the Court; don't forget the Rubber Stamp Factor of the Courts.

The debt collection racket is one of the biggest components of the obscenely corrupt legal industry. If after reading this book you were to carefully examine any



debt collection lawsuit case you will very likely find that almost none of them was done properly.

### 3. Secrets of the Legal Industry

Most judgments are not merely voidable, but are in fact void judgments. They can be vacated; made to go away (Although, it is an up hill battle). Rarely has any authenticated evidence, competent fact witness, or even a claim been put before a court and on the record.

Defective affidavits, hearsay as evidence and no stated damages are but a few elements that rob the court of subject matter jurisdiction (at last count there are more than twenty elements that deprive the court of subject matter jurisdiction. Some of the elements are: denial of due process, denial of access to court, fraud upon the court, and fraud upon the court by the court. Although these pages are aimed primarily towards debt, credit card debt, the principals set forth herein apply to virtually all civil and criminal cases.

Common pleas such as "open account" or "account stated" are often used in place of, and sometimes in conjunction with, breach of contract. To file under breach a contract would require that they (the creditors) bring in the signed contract, agreement, or note. If they don't bring in a contract, they bring in the "terms of agreement" which has no signature or persons name on it, a template that could apply to anyone.

These are just some of the tools used by debt collectors (credit card debt collectors in particular) and their attorneys (also called counsels) to perpetrate a fraud upon the court, with or without the courts cooperation or complicity.

At the same time, courts, almost as a rule, openly display a bitter and venomous hatred of *pro se* / *pro per* litigants. *Pro se* is a Latin adjective meaning "for self", that is applied to someone who represents himself or herself without a lawyer in a court proceeding, whether as a defendant or a plaintiff and whether the matter is civil or criminal. So don't expect the courts to just roll over and give you what you demand without a battle. It doesn't matter to them that you are right, it matters only that you are *pro se*; an inferior, low life being, and the courts have a position and the income of their brotherhood to protect.

These are the four secrets of the legal industry:

- 1. Courts of general, limited, or inferior jurisdiction have no inherent judicial power.** Courts of general,

limited, or inferior jurisdiction get their jurisdiction from one source and one source only: **sufficient pleadings**. Someone before the court must tell the court what its jurisdiction is. Without pleadings sufficient to empower the court to act, that court cannot have judicial capacity. No judge has the power to determine whether he has jurisdiction. He does have the duty to tell when he does not. What this means to you is that no court can declare that it has the legal power to hear or decide cases, i.e. jurisdiction. Jurisdiction must be proved and on the record. Without sufficient pleadings, without jurisdiction, no court can issue a judgment that isn't void *ab initio*, void from the beginning, void on its face, a nullity, without force and effect.

2. **We have a common law system.** No statute, no rule, or no law means what it says as it is written. Only the holding tells you what it means. The statute means what the highest court of competent jurisdiction has ruled and determined that the statute means in their most recent ruling. What this means to you is that courts are governed/ruled by case law, what has been determined before, what the highest court of competent jurisdiction has said the law is, means. It is called the Doctrine of Precedent. This doctrine is so powerful that it can kill and has. A family in Florida has become quite familiar with this doctrine when they tried for 15 years to prevent feeding tubes from being removed from their daughter who was in a vegetative state.

- a. The real law is found in the Annotated Statutes. Sometimes referred to as a state or federal "Code." The Annotated Statutes is a collection of state or federal laws, generally organized by topic area, that is accompanied by a brief summary, or "annotation," of the court decisions of the appropriate state or federal appeals courts that have interpreted the meaning, constitutionality or limitations on the enforceability of the statutes. The importance of annotated law: (1). It is organized. (2). It is abbreviated (you don't need to read the whole

case) (3). The "holdings" define the real law. Examples of holdings:

- i. Debtor, as natural person who was obligated to pay debt to hospital for services provided in connection with her kidney infection, was "consumer" within meaning of the Fair Debt Collection Practices Act (FDCPA). *Creighton v. Emporia Credit Service, Inc.*, E.D.Va.1997, 981 F.Supp. 411.
- ii. Patient who had received medical services on credit, and who was primarily responsible for payment of account at medical center, qualified as "consumer" under the Fair Debt Collection Practices Act (FDCPA). *Adams v. Law Offices of Stuckert & Yates*, E.D.Pa.1996, 926 F.Supp. 521.
- iii. Fair Debt Collection Practices Act, establishing liability of debt collector who fails to comply with the Act "with respect to any person," does not limit recovery to "consumers," and thus would not preclude recovery by person to whom debt collector sent letter seeking to collect debt of such person's deceased father even if such person were not a consumer; but, in any event, such person was a "consumer" when collectors admittedly demanded payment of debt from him. *Dutton v. Wolhar*, D.Del.1992, 809 F.Supp. 1130.
- iv. Unpaid administrative and other fees charged under rental agreement by automobile and truck rental company in event of accident constituted "debt" under Fair Debt Collection Practices Act. *Brown v. Budget Rent-A-Car Systems, Inc.*, C.A.11 (Fla.) 1997, 119 F.3d 922.

You will find the Annotated Statutes in law libraries under the Lexis-Nexis brand or Thomson/Westlaw.

3. **Attorneys cannot testify.** Statements of counsel in brief or in argument are never facts before the court. What this means to you is that no attorney can state a fact before the court. This was more than adequately pointed out in 2000 when thousands of

Florida ballots were taken before the U.S. Supreme Court, without even so much as one competent fact witness. Without a witness the court could not see the ballots, the ballots were not before the court, and the ballots could not be introduced as evidence.

4. Before any determination, there must be a court of complete or competent jurisdiction.
  - a. There must be two parties with capacity to be there.
  - b. There must be subject matter jurisdiction.
  - c. Appearance or testimony of a competent fact witness.

What this means to you is that without jurisdiction, complete jurisdiction, no court can issue a judgment that isn't void, a nullity, without force or effect, on its face and in fact.

### **3.1 Twenty-Two Reasons To Vacate A Void Judgment**

The real issue in void judgments is, subject matter jurisdiction. Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties. *Wahl v. Round Valley Bank* 38 Ariz, 411, 300 P. 955(1931), *Tube City Mining & Milling Co. v. Otterson*, 16 Ariz. 305, 146p 203(1914); and *Millken v. Meyer*, 311 U.S. 457, 61 S. CT. 339, 85 L. Ed. 2d 278 (1940).

The really big deal with subject matter jurisdiction is that it can never be presumed, never be waived, and cannot be constructed even by mutual consent of the parties. Subject matter jurisdiction is two part: The statutory or common law authority for the court to hear the case and the appearance and testimony of a competent fact witness; in other words, sufficiency of pleadings.

Even if a court (judge) has or appears to have subject matter jurisdiction, subject matter jurisdiction can be lost. Major reasons why subject matter jurisdiction is lost:

1. No petition in the record of the case, *Brown v. VanKeuren*, 340 Ill. 118,122 (1930).
2. Defective petition filed, Same case as above.

## How To Legally Beat Debt Collectors

3. Fraud committed in the procurement of jurisdiction, Fredman Brothers Furniture v. Dept. of Revenue, 109 Ill. 2d 202, 486 N.E. 2d 893(1985).
4. Fraud upon the court, In re Village of Willowbrook, 37 Ill, App. 3d 393(1962)
5. A judge does not follow statutory procedure, Armstrong v. Obucino, 300 Ill 140, 143 (1921)
6. Unlawful activity of a judge, Code of Judicial Conduct.
7. Violation of due process, Johnson v. Zerbst, 304 U.S. 458, 58 S.Ct. 1019; Pure Oil Co. v. City of Northlake, 10 Ill.2d 241, 245, 140 N.E. 2d 289 (1956); Hallberg v Goldblatt Bros., 363 Ill 25 (1936).
8. If the court exceeded it's statutory authority. Rosenstiel v. Rosenstiel, 278 F. Supp. 794 (S.D.N.Y. 1967)
9. Any acts in violation of 11 U.S.C. 362(a), IN re Garcia, 109 B.R. 335 (N.D> Illinois, 1989).
10. Where no justiciable issue is presented to the court through proper pleadings, Ligon v. Williams, 264 Ill. App 3d 701, 637 N.E. 2d 633 (1st Dist. 1994).
11. Where a complaint states no cognizable cause of action against that party, Charles v. Gore, 248 Ill App. 3d 441, 618 N.E. 2d 554 (1st. Dist. 1993)
12. Where any litigant was represented before a court by a person/law firm that is prohibited by law to practice law in that jurisdiction.
13. When the judge is involved in a scheme of bribery (the Alemann cases, Bracey v Warden, U.S. Supreme Court No. 96-6133(June 9, 1997)
14. Where a summons was not properly issued.
15. Where service of process was not made pursuant to statute and Supreme Courth Rules, Janove v. Bacon, 6 Ill. 2d 245, 249, 218 N.E. 2d 706, 708 (1953)

16. When the rules of the Circuit court are not complied with.

17. When the local rules of the special court are not complied with. (One Where the judge does not act impartially, Bracey v. Warden, U.S. Supreme Court No. 96-6133 (June 9, 1997)).

18. Where the statute is vague, People v. Williams, 638 N.E. 2d 207 (1st Dist. (1994)).

19. When proper notice is not given to all parties by the movant, Wilson v. Moore, 13 Ill. App. 3d 632, 301 N.E. 2d 39 (1st Dist. (1973)).

20. Where an order/judgment is based on a void order/judgment, Austin v. Smith, 312 F 2d 337, 343 (1962); English v. English, 72 Ill. App. 3d 736, 393 N.E. 2d 18 (1st Dist. 1979) or

21. Where the public policy of the State of Illinois is violated, Martin-Tregona v Roderick, 29 Ill. App. 3d 553, 331 N.E. 2d 100 (1st Dist. 1975)

Another that can and should be checked on is does the judge have a copy of his oath of office on file in his chambers? If not, he is not a judge and yes, you can go into his office and demand to see a copy of his oath of office at any time. The laws covering judges and other public officials are to be found at 5 U.S.C. 3331, 28 U.S.C. 543 and 5 U.S.C. 1983 and if the judge has not complied with all of those provisions he is not a judge but a trespasser upon the court. If he is proven a trespasser upon the court (upon the law) not one of his judgments, pronouncements or orders are valid. All are null and void.

In all, there are 22 indices that tell us whether or not a court had subject matter jurisdiction and when examining a judgment one has to know each and every one of them by heart. If he knows them by heart he can go through a judgment and point out all of the errors that might make the case a void judgment, null and void upon it's face.

### **3.2 Summary Of The Law Of Voids**

Before a court (judge) can proceed judicially, jurisdiction must be complete consisting of two opposing

parties (not their attorneys - although attorneys can enter an appearance on behalf of a party, only the parties can testify and until the plaintiff testifies the court has no basis upon which to rule judicially), and the two halves of subject matter jurisdiction = the statutory or common law authority the action is brought under (the theory of indemnity) and the testimony of a competent fact witness regarding the injury (the cause of action). If there is a jurisdictional failing appearing on the face of the record, the matter is void, subject to vacation with damages, and can never be time barred.

A question that naturally occurs: "If I vacate avoid judgment, can they just come back and try the case again?" Answer: A new suit must be filed and that can only be done if within the statute of limitations. "Lack of jurisdiction cannot be corrected by an order *nunc pro tunc*. The only proper office of a *nunc pro tunc* order is to correct a mistake in the records; it cannot be used to rewrite history." E.g., *Transamerica Ins. Co. v. South*, 975 F.2d 321, 325-26 (7th Cir. 1992); *United States v. Daniels*, 902 F.2d 1238, 1240 (7th Cir. 1990); *King v. Ionization Int'l, Inc.*, 825 F.2d 1180, 1188 (7th Cir. 1987). Also see *Central Laborer's Pension and Annuity Funds v. Griffiee*, 198 F.3d 642, 644 (7th cir. 1999). *Nunc pro tunc* is a Latin expression in common use in the English language. It means "Now for then." *Nunc pro tunc* or now for then is a phrase which theoretically applies to acts that are allowed to be done after the time when they should have been done with a retroactive effect.

### 3.2.1 How To Vacate a Void Judgment

We petition to vacate them - we sue them! This is known as a collateral attack. Sometimes a direct attack is appropriate but not usually. A direct attack goes back into the same court where judgment obtained and likely to the same judge. Obviously, it is usually most beneficial to do a collateral attack - sue them! Sue the party who got the judgment against you. Also, after we get the judgment vacated, it's almost always moot and cannot be reasserted, especially if beyond the statute of limitations. Please remember, statutes of limitation do not apply to vacating void judgments.

Following are some sample cases to vacate void judgments. The court (meaning the judge) cannot consider



any information not shown to be of record in the original case as there is no pre-trial in vacating void judgments.

The following template is in the Vermont form. To file a proper and sufficient pleading empowering the court to rule favorable for you, check the style and authority to vacate void judgments in your state. One is a quiet title petition, which is a variation of the law of voids where the action is to recovery real property. An action to recover personal property is called a replevin. Another variation of the law of voids is exercisable in bankruptcy court; its advisable to use this last void strategy as a last resort and even then use chapter 13 rather than the ill effects of a chapter 7. The strategy is to file a chapter 13 - be sure to file a plan and an 11 USC 9014 at the same time. Set the 11 USC 9014 for hearing and notice the party holding the void judgment. After vacating the void judgment as a "contested matter," dismiss the chapter 13.

State of Vermont  
Essex County

Siwooganock Bank,	)	
	)	
plaintiff,	)	
	)	Essex Superior Court
vs.	)	Docket number 40-7-99Excv
	)	
Aaron J. Lovejoy, and	)	
Eva J. Lovejoy,	)	
	)	
defendant.	)	

Defendants' Vermont Rules of Civil Procedure, rule 60(b)(4)  
motion to vacate a void judgment / motion for injunctive  
and declaratory relief

Brief in support of motion to vacate

1. Aaron J. Lovejoy and Deborah Lovejoy as next friend of Eva J. Lovejoy, Aaron J. Lovejoy and Eva J. Lovejoy being aggrieved parties, move this court for vacation of a void judgment.

2. The judgment of foreclosure in this instant case is facially void for reason that Siwooganock Bank, hereinafter, "Siwooganock" failed or refused to prove damages entitling Siwooganock to judgment. **Even with a default judgment, DAMAGES MUST BE PROVED BY EVIDENCE ENTERED ON THE RECORD.** For example, see *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8<sup>th</sup> Cir. 07/25/2001). Oklahoma's supreme court has written most eloquently on the subject of **failure to enter evidence on the record renders default judgment void.** Taking account or proof or assessment of damages on default or decision of

issue of law, trial court could not award damages to plaintiff, following default judgment, without requiring evidence of damages. *Razorsoft, Inc. v. Maktal, Inc.*, Okla.App. Div. 1, 907 P.2d 1102 (1995), rehearing denied. A party is not in default so long as he has a pleading on file which makes an issue in the case that requires proof on the part of the opposite party in order to entitle him to recover. *Millikan v. Booth*, Okla., 4 Okla. 713, 46 P. 489 (1896). Proof of or assessment of damages upon petition claiming damages, it is error to pronounce judgment without hearing proof or assessing damages. *Atchison, T. & S.F. Ry. Co. v. Lambert*, 31 Okla. 300, 121 P. 654, Ann.Cas.1913E, 329 (1912); *City of Guthrie v. T. W. Harvey Lumber Co.*, 5 Okla. 774, 50 P. 84 (1897). In the assessment of damages following entry of default judgment, a defaulting party has a statutory right to a hearing on the extent of unliquidated damage, and encompassed within this right is the opportunity to a fair post-default inquest at which both the plaintiff and the defendant can participate in the proceedings by cross-examining witnesses and introducing evidence on their own behalf. *Payne v. Dewitt*, Okla., 995 P.2d 1088 (1999). A default declaration, imposed as a discovery sanction against a defendant, cannot extend beyond saddling defendant with liability for the harm occasioned and for imposition of punitive damages, and the trial court must leave to a meaningful inquiry the quantum of actual and punitive damages, without stripping defendant of basic forensic devices to test the truth of plaintiff's evidence. *Payne v. Dewitt*, Okla., 995 P.2d 1088 (1999). Fracture of two toes required expert medical testimony as

to whether such injury was permanent so as to allow damages for permanent injury, future pain, and future medical treatment on default judgment, and such testimony was not within competency of plaintiff who had no medical expertise. *Reed v. Scott*, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). Rendition of default judgment requires production of proof as to amount of un-liquidated damages. *Reed v. Scott*, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). When face of judgment roll shows judgment on pleadings without evidence as to amount of un-liquidated damages then judgment is void. *Reed v. Scott*, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). In a tort action founded on an un-liquidated claim for damages, a defaulting party is deemed to have admitted only plaintiff's right to recover, so that the court is without authority or power to enter a judgment fixing the amount of recovery in the absence of the introduction of evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Presumptions which ordinarily shield judgments from collateral attacks were not applicable on motion to vacate a small claim default judgment on ground that court assessed damages on an un-liquidated tort claim without first hearing any supporting evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Rule that default judgment fixing the amount of recovery in absence of introduction of supporting evidence is void and not merely erroneous or voidable obtains with regard to exemplary as well as compensatory damages. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Where liability of father for support of minor daughter and extent of such liability and amount of attorney's fees to be allowed was

dependent on facts, rendering of final judgment by trial court requiring father to pay \$25 monthly for support of minor until minor should reach age 18 and \$100 attorney's fees without having heard proof thereof in support of allegations in petition was error. *Ross v. Ross*, Okla., 201 Okla. 174, 203 P.2d 702 (1949). Refusal to render default judgment against codefendant for want of answer was not error, since defendants and court treated answer of defendant on file as having been filed on behalf of both defendants, and since plaintiff could not recover without offering proof of damages and offered no such proof. *Thomas v. Williams*, Okla., 173 Okla. 601, 49 P.2d 557 (1935). Under R.L.1910, §§ 4779, 5130 (see, now, this section and § 2007 of this title), allegation of value, or amount of damages stated in petition, were not considered true by failure to controvert. *Cudd v. Farmers' Exch. Bank of Lindsay*, Okla., 76 Okla. 317, 185 P. 521 (1919). Hearing Trial court's discovery sanction barring defendant from using cross-examination and other truth-testing devices at post-default non-jury hearing on plaintiff's damages violated due process. *Payne v. Dewitt*, Okla., 995 P.2d 1088 (1999). For a good Vermont citation on the subject, see 02/07/86 *CHARLES REUTHER v. MARILYN GANG* 1986.VT.20 507 A.2d 972, 146 Vt. 540 wherein the court found, "Where defendant answered both complaints filed by plaintiff and had filed counterclaim, but did not appear for trial, her requests for continuance evidenced her intent to continue to defend action; thus, trial court erred when it did not proceed to take testimony before it entered default judgment for plaintiff; un-sworn statement of plaintiff's

attorney could not support default judgment rendered." It is also true, in mortgage foreclosures, prove up of the claim requires presentment of the original promissory note and general account and ledger statement. Claim of damages, to be admissible as evidence, must incorporate records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987). Siwooganock, in alleged foreclosure suit, failed or refused to produce the actual note which Siwooganock alleges Eva J. Lovejoy owed. Where the complaining party can not prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.), Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part

payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469, in *Carnegie Bank v, Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3-302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9<sup>th</sup> Cir 1977). "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform

Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession..." Unequivocally the Court's rule is that in order to prove the "instrument", possession is mandatory.

#### Conclusion

3. Siwooganock's judgment of foreclosure is as bogus as a three-dollar bill. This court has a non-discretionary duty to vacate the void judgment and compel Siwooganock to compensate the defendants for the fair market rental for the time of deprivation of access to their own property and damages to the property other than normal wear and tear as well as ending trespass to the property.

#### Cause for injunctive and declaratory relief

4. Putative owners of the property that is the res of this non-controversy did not acquire good title as Siwooganock had no valid title to convey. Siwooganock's claim was facially void. As irreparable harm will come to the lawful homestead of Eva Lovejoy, this court's duty is to protect the property from further trespass or injury by the putative owners.

Prepared and submitted by;

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Aaron J. Lovejoy      Deborah Lovejoy

#### Certificate of mailing

I, Deborah Lovejoy, certify, that March \_\_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing



## How To Legally Beat Debt Collectors

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motion to vacate and motion for injunction via certified  
mail return receipt requested to:

Siwooganock Bank

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Deborah Lovejoy

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

Sharon C. Right	)		
	)		
and	)		
Jim R. Right	)		
	)		
Plaintiffs	)		
	)		
v.	)	CIVIL	NO. _____
	)		
MIDFIRST BANK, N.A.	)		
	)		
Defendant.	)		
	)		

PETITION IN THE NATURE OF A PETITION TO VACATE  
 A VOID JUDGMENT AND COLLATERAL ATTACK OKLAHOMA STAUTE TITLE  
 12, SECTIONS 1031, 1038

1. Sharon C. Right and Jim R. Right, aggrieved parties, petition this court under authority of O.S. 12, §§ 1031, 1038 for vacation of a void judgment attached.

2. Fraud was practiced in obtaining judgment warranting vacation of "judgment" CS-2001-1234: (1) William L. Nixon, Jr. committed felony fraud by advancing writings which William L. Nixon, Jr. knew were false with the intent

that Sharon C. Right and Jim R. Right and the court would rely on to deprive Sharon C. Right and Jim R. Right of money, property and rights. William L. Nixon, Jr. knew that the sum demanded of Sharon C. Right and Jim R. Right was different from and greater than a sum Sharon C. Right and Jim R. Right could owe under any lawful theory.

3. The putative judgment in CS-2001-1234 is insufficient on its face. The putative judgment in CS-2001-1234 is not ratified by the signature of a judge. This suggests that William L. Nixon, Jr. and David M. Harbour are involved in the holder in due course fraud racket. See O.S. Title 21, Chapter 19, § 554, "Attorney Buying Evidence of Debt-Misleading Court. Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a misdemeanor. Any attorney who in any proceeding before any court of a justice of the peace or police judge or other inferior court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the court in any matter of law is guilty of a misdemeanor and on any trial therefore the state shall only be held to prove to the court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of law." Any person guilty of falsely preparing any book, paper, [({ record, })], instrument in writing, or other matter or thing, with intent to produce it, or allow it to

be produced as genuine upon any [({ trial, proceeding or inquiry whatever, )}] authorized by law, SHALL BE GUILTY OF A FELONY. See Oklahoma Statutes Title 21. Crimes and Punishments, Chapter 13, Section 453. Reasonably and logically, the rubber stamp mark of David M. Harbour either appears on the attached putative judgment without knowledge of David M. Harbour or David M. Harbour chose to stamp the judgment rather than sign it to be able to later deny knowledge of the fraud clearly articulated at O.S. Title 21, Chapter 19, § 554. It is also true that an unsigned order is not an order. See *Second Nat. Bank of Paintsville v. Blair*, 186 S.W.2d 796.

4. A default judgment (even if properly signed) does not enjoy the presumption of *res judicata*. William L. Nixon, Jr., placed no evidence on record to prove his case: For want of a competent fact witness appearing and testifying on record, the court wanted subject matter jurisdiction to consider the unverified, undocumented claims of William L. Nixon, Jr.

5. A jury's determination that the putative judgment in CS-2001-1234 contained a claim which was greater than and different from lawfully owed and or that the putative judgment was not signed and or that jurisdiction is lacking on the face of the record for want of any evidence whatsoever, warrants vacation of the "judgment" in CS-2001-1234. Determination that William L. Nixon, Jr. has violated O.S. Title 21, Chapter 19, § 554 and or O.S. Title 21, Chapter 13, § 453, and or O.S. Title 21, Chapter 11, § 421 requires a warrant for the arrest of William L. Nixon, Jr. A jury's determination that William L. Nixon, Jr. willfully

## How To Legally Beat Debt Collectors

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acted to defraud Sharon C. Right and Jim R. Right justly requires that William L. Nixon, Jr. be compelled to compensate Sharon C. Right and Jim R. Right a sum of not less twenty-five thousand dollars (\$25,000.00), the standard damages for fraud.

JURY TRIAL DEMANDED

Prepared and submitted by:

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Sharon C. Right

Jim R. Right

IN THE DISTRICT COURT OF OKLAHOMA COUNTY

STATE OF OKLAHOMA

Billie E. Brighter	)	
and	)	
Bernarda Brighter	)	
a married couple	)	
	)	
Plaintiffs	)	
	)	
	)	No. 1234567890
	)	
GOETZ AND COMPANY, INC.,	)	
	)	
Defendant.	)	
	)	

PETITION IN THE NATURE OF A QUIET TITLE ACTION  
AND CLAIM / JUDICIAL NOTICE

1. Billie E. Brighter and Bernarda Brighter, hereinafter the "Brighters," petition this court under authority of 12 Okl. St. § 93 (4), 12 Okl. St. §§ 131, 1141 and 21 Okl. St. § 1533.

JUDICIAL NOTICE

2. All officers of the court for Oklahoma County, Oklahoma are hereby placed on notice under authority of the supremacy and equal protection clauses of the United States Constitution and the common law authorities of *Haines v Kerner*, 404 U.S. 519, *Platsky v. C.I.A.* 953 F.2d. 25, and *Anastasoff v. United States*, 223 F.3d 898 (8<sup>th</sup> Cir. 2000) relying on *Willy v. Coastal Corp.*, 503 U.S. 131, 135 (1992), "*United States v. International Business Machines Corp.*, 517 U.S. 843, 856 (1996), quoting *Payne v. Tennessee*, 501 U.S. 808, 842 (1991) (Souter, J.,

concurring). *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8<sup>th</sup> Cir. 07/25/2001), and Local Rules of the United States District Court for the Western District of Oklahoma, Rule 7.1(h), *In re Haines*: pro se litigants (the Brighters are pro se litigants) are held to less stringent pleading standards than bar licensed attorneys. Regardless of the deficiencies in their pleadings, pro se litigants are entitled to the opportunity to submit evidence in support of their claims. *In re Platsky*: court errs if court dismisses the pro se litigant (the Brighters are pro se litigants) without instruction of how pleadings are deficient and how to repair pleadings. *In re Anastasoff*: litigants' constitutional rights are violated when courts depart from precedent where parties are similarly situated. All litigants have a constitutional right to have their claims adjudicated according the rule of precedent. See *Anastasoff v. United States*, 223 F.3d 898 (8<sup>th</sup> Cir. 2000). Statements of counsel, in their briefs or their arguments are not sufficient for a motion to dismiss or for summary judgment, *Trinsey v. Pagliaro*, D.C. Pa. 1964, 229 F. Supp. 647. See also, Local Rules of the United States District Court for the Western District of Oklahoma, Rule 7.1(h). This court is also noticed on the following point of law: Prevailing party on default judgment of liability must still prove damages, *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8<sup>th</sup> Cir. 07/25/2001). This court is further noticed on U.S.C.A. Const. Amend. 5 - *Triad Energy Corp. v. McNeill* 110 F.R.D. 382 (S.D.N.Y. 1986), Fed. Rules Civ. Proc., Rule 60(b)(4),

28 U.S.C.A., U.S.C.A. *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985), *State v. Blankenship* 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996), *Graff v. Kelly*, 814 P.2d 489 (Okla. 1991), *Capital Federal Savings Bank v. Bewley*, 795 P.2d 1051 (Okla. 1990), and *Com. V. Miller*, 150 A.2d 585 (Pa. Super. 1959), all discussed and relied upon *infra*.

3. Notwithstanding the fact that the record made in the underlying case construes in harmony with 12 Okla. St. § 93 (4), defense of laches cannot be raised where the judgment is facially void. Void judgment is one entered by court without jurisdiction to enter such judgment, *State v. Blankenship* 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996). Void judgment, such as may be vacated at any time is one whose invalidity appears on face of judgment roll, *Graff v. Kelly*, 814 P.2d 489 (Okla. 1991). A void judgment is one that is void on face of judgment roll, *Capital Federal Savings Bank v. Bewley*, 795 P.2d 1051 (Okla. 1990). Where condition of bail bond was that defendant would appear at present term of court, judgment forfeiting bond for defendant's bail to appear at subsequent term was a void judgment within rule that laches does not run against a void judgment *Com. V. Miller*, 150 A.2d 585 (Pa. Super. 1959).

4. CAUSE OF ACTION: GOETZ AND COMPANY INC. is trespassing on property to which the Brighters hold right, title, and interest to described as "Lots THIRTEEN (13) and FOURTEEN (14) in Block FIFTY FOUR (54) in SHIELD'S SOUTH OKLAHOMA CITY ADDITION to Oklahoma City, Oklahoma County, Oklahoma as shown by the recorded plat thereof." A copy of the Brighters' deeds is attached. The putative



judgment of FIRST ENTERPRISE BANK giving rise to the chain of title ending with GOETZ AND COMPANY, INC., occulting the Brighters' property, is void on its face: (1) Even in a default judgment, plaintiff must prove case by submission of evidence through a competent witness. The record made in CJ-0000 reveals no evidence construing in harmony with Local Rule 7.1(h) of the United States District Court for the Western District of Oklahoma, Oklahoma Title 12, Chapter 12, Rule 13, or the common law authority of *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8<sup>th</sup> Cir. 07/25/2001). (2) The court in the underlying action wanted subject matter jurisdiction to rule favorably for debt collector in the action Delmer W. Porter. Mr. Porter failed or refused to inform the Brighters of their due process rights under the Fair Debt Collections Practices Act. When the Brighters were deprived of due process rights, the court was deprived of subject matter jurisdiction. For examples see: "Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process," U.S.C.A. Const. Amend. 5 - *Triad Energy Corp. v. McNeill* 110 F.R.D. 382 (S.D.N.Y. 1986) and "Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process," Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 - *Klugh v. U.S.*, 620 F.Supp. 892 (D.S.C. 1985).

5. The amount in controversy exceeds ten thousand dollars (\$10,000.00).

## REMEDY SOUGHT

6. A jury's determination that GOETZ AND COMPANY INCORPORATED's claim of title to the Brighter property is void justly requires ending trespass to the Brighters' property described *supra*, removing all instruments occulting the Brighters' title, compensating the Brighters for the fair market value of rents for the time of trespass, compensating the Brighters for damages to the property other than normal wear and tear, and compensating the Brighters for the costs in bringing this action.

JURY TRIAL DEMANDED

## How To Legally Beat Debt Collectors

### IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

In re:	)	
	)	
George Washington,	)	Case No. 02-05555-R
	)	Chapter 13
Debtor	)	11 USC 9014 motion
	)	to contest creditor
vs.	)	HoltonPunque's claim
	)	as falsely asserted
	)	
Holton Punque,	)	
	)	
Creditor	)	
	)	

---

#### Brief in support

1. Holton Punque's putative judgment against George Washington, case number CJ-99-169, Osage County, Oklahoma is facially void. Holton Punque alleges valid judgment against George Washington in a sum of twenty-five thousand dollars plus statutory interest. Holton Punque's counsels have deceived Holton Punque into thinking that because George Washington failed to enter and appearance and answer in the proceeding; Holton Punque obtained a valid judgment. Nothing could be further from the truth. The debt Holton Punque was attempting to collect goes back to an alleged failure to pay in the early eighties. All competent jurists know that a right of action to collect a debt lapses after five years in Oklahoma. Nonetheless, counsel persuaded Payne to sue George Washington. Oklahoma Statute 12, Section 102, provides "When a right of action is barred by the provisions of any statute, it shall be unavailable

either as a cause of action or ground of defense, except as otherwise provided with reference to counterclaim or setoff.” Because the statute of limitations had run, Payne had no remedy. After the prescribed time period has lapsed, a statute of limitation serves to extinguish the remedy for the redress of an accrued cause of action. *Smith v. Westinghouse Elec. Corp.* 732 P.2d 466, 468 (Okla. 1987) and *Reynolds v. Porter*, 760 P.2d 816, 820 (Okla. 1988).

2. Regardless, the record made in the Osage County Oklahoma case reveals the so-called judgment to be bogus even if the action was timely. Puque’s so-called judgment was via default. All competent jurists know that even in a default judgment, plaintiff must “prove up the claim” by submitting an affidavit of damages. See *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8<sup>th</sup> Cir. 07/25/2001). If affidavit of damages proving up claim incorporates reference to records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauano*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986).

3. Determination by this court, Holton Puque cannot show by certified copies from the record made in CJ-99-169

Osage County, Oklahoma, that Holton Puque filed a timely action and / or proved up his claim by submitting two (2) affidavits verifying a claim: one the account general ledger signed and dated under penalty of perjury by the person who maintained the ledger wherein is verified that George Washington is indebted to Holton Puque and secondly, Holton Puque's affidavit of damages sworn under penalty of perjury that George Washington damaged Holton Puque requires denial of Payne's claim as matter of law.

4. Determination by this court, that Holton Puque is represented by counsel in the matter of Puque vs. Washington, Osage County case number CJ-99-169, judgment creditor in this instant case, and that counsel is deemed by bar membership to be intelligent, educated, and trained and under Rule eleven duty to make inquiry, reasonable under the circumstances, and therefore knew that the so-called judgment in Osage County is facially void warrants sanction of Mr. Puque's counsel in a sum sufficient enough so as to be instructional and amend the counsel's bad behavior. Reasonably and logically, the sanction should not be less than the sum sought to be taken away from George Washington.

Prepared and submitted by:

---

George Washington  
1301 East 15<sup>th</sup> Street  
Pawhuska, Oklahoma 74056

Certificate of service

I, George Washington, certify that December \_\_\_\_, 2002, I mailed a true and correct copy of the above and foregoing motion to contest a matter via first class mail to:

Thomas M. Klenda  
15 East 5<sup>th</sup> Street, Suite 3900  
Tulsa, Oklahoma 74103-4346

- and -

Lonnie D. Eck, Standing Chapter 13 Trustee  
P.O. Box 3038  
Tulsa, Oklahoma 74101-2038

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA

In re:	)	
	)	
George Washington,	)	Case No. 02-05542-R
	)	Chapter 13
Debtor	)	11 USC 9014 motion to
	)	contest creditor
	)	Holton Puque's claim
vs.	)	as falsely asserted
	)	
Holton Puque,	)	
	)	
Creditor	)	
_____	)	

Notice of motion

George Carter notices Thomas M. Klenda, counsel of record for Holton Puque of motion to contest creditor Holton Puque's claim as falsely asserted. You should consult with competent legal counsel. If you do not want the court to grant the requested relief, or if you want your views considered, you must file a written response with the Clerk of the United States Bankruptcy Court for the Northern District of Oklahoma no later than fifteen (15) days from the date of filing this request for relief.

## How To Legally Beat Debt Collectors

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You should also mail a copy of your response to George Washington.

Declaration

Fifteen days from the receipt of this notice of motion, an order will be prepared and submitted to the court for ratification, unless prior to that time, counsel for Holton Puke answers disputing the material facts and points of law with evidence and authority and sets the matter for hearing.

Prepared and submitted by:

---

George Washington  
1 East 15<sup>th</sup> Street  
Pawhuska, Oklahoma 74000

### Certificate of service

I, George Washington, certify that December \_\_\_\_, 2002, I mailed a true and correct copy of the above and foregoing notice of motion to contest a matter via first class mail to:

Thomas M. Klenda  
15 East 5<sup>th</sup> Street, Suite 3900  
Tulsa, Oklahoma 74103-4346

- and -

Lonnie D. Eck, Standing Chapter 13 Trustee



P.O. Box 3038

Tulsa, Oklahoma 74101-2038

## 4. How to Win

In this section I will give you some legal techniques with the use of motions and pleadings to use in different type of debt collection legal actions

### 4.1 Arbitration

Arbitration has become quite popular as a way of lawyers and their crooked buddies, the judges, ripping people off. There are some folks out there who are counterattacking them before they have a chance to work this con. Internet searches will likely take you to some sites where attorneys inform you how to get an arbitration award against them. Public Citizen, a consumer oriented non-profit organization has recently published a report called "How Credit Card Companies Ensnare Consumers" in which it publically denounces the arbitration scam. You can access the report at [http://www.citizen.org/documents/Final\\_wcover.pdf](http://www.citizen.org/documents/Final_wcover.pdf).

Here is what Mr. Higgs has to say about the arbitration scam in his blog.

"June 11, 2007

**The Scam of Arbitration**

Filed under: **Arbitration Justice** — budhibbs @ 4:13 pm

[The Scam of Arbitration](#)

Debt collectors, junk debt buyers and bottom feeders are looking to enrich themselves through arbitration claims filed with the National Arbitration Forum, Minneapolis, MN. Some of the organizations filing arbitration claims include Wolpoff & Abramson, Baltimore, MD, Collect America (CACH & CACV) Denver, CO, Mann-Bracken, Atlanta, GA ,NCO Financial Systems, Baltimore, MD and Midland Credit Management. Arbitration is an area most consumers have little or no knowledge of and the system is set up to take advantage of that. The National Arbitration Forum (NAF) is biased in favor of those who file claims because their filing fee of \$250/per account is what keeps them in business.

To give you an idea of how this functions, let's use our Washington bureaucracy for an illustration: NAF is the Congressional representative writing laws. Debt

buyers are the lobbyists looking for favorable results on their investments. They write a check to the NAF, the arbitration claim is filed, the NAF pays a local lawyer to rubber stamp awards in favor of the debt buyer and just like Washington, they make a ton of money, while you get screwed. Sound familiar?

The attorneys they use are from your local area (with exceptions) who are also paid a fee of \$250/hour with the expectation they will handle up to six claims per hour. Do the math, does this sound ethical? The arbitrators rubber stamp their approval, many lie and sign statements that are false and perjured so they can stay on the money side of the NAF.

The arbitration process conducted by the NAF is a corrupt system of big bucks designed to screw the consumer who is mostly kept in the dark about the process and how it evolves. I have seen many awards where attorneys lied in their statements just so they could collect the \$250/fee. (Does this sound like a lobbying organization?)

There are ways to take on this corrupt system and turn the tables on the National Arbitration Forum and the lawyers they pay to make awards against you they may not be entitled to. A national group of consumer attorneys is fighting the arbitration system head-on.

If you are threatened with, or served an arbitration claim get in touch with me for assistance and referral to an expert who can assist you. If you fail to respond to an arbitration claim, it could eventually end up with a judgment against you, so the time to take action is when you are threatened or served."

The following are letters you can use to send to the attorneys who try to trap you in an arbitration forum. Actually, for the most part, arbitration clauses in contracts of adhesion, like other "choice of law" or "forum selection" clauses are unconstitutional. (A contract of adhesion is one printed in mass; they all look the same and you either "adhere" to the contract or reject it).



## How To Legally Beat Debt Collectors

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disability where none existed. If you succeed in taking any money or property from us or interfering with a business interest which we may have, your receipt of this letter shall be added to our evidence file in support of a racketeering suite against you.

Most sincerely,

---

Kenneth L. Good      Laverne Good

October 4th 2003

Copy to: (state attorney general)

Charlie Crist  
State of Florida  
The Capitol PS-O  
Tallahassee, Florida 32399-1050

## How To Legally Beat Debt Collectors

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And if they don't get the point -

### SECOND NOTICE AND WARNING

Kenneth L. Good & Laverne Good  
Certified mail number (                      )  
2128 Chester Road  
Yulee, Florida 32097-4905

Wolpoff & Abramson, L.L.P.  
Two Irvington Centre  
702 King Farm Blvd. 5th Floor  
Rockville, MD 20850

And

The Forum  
P.O. Box 50191  
Minneapolis, MN 55405-0191

To the personal attention of: Laura Johnson & Ronald  
M. Abramson:

Leave us alone! Your so-called National Arbitration Forum is a complete, total, and utter fraud. Because you are both ignorant of the law and in spite of the fact that you are contumacious, we are affording you the courtesy of reviewing controlling authorities.

WARNING! Your continued harassment may result in criminal RICO charges against you and shall result in a civil RICO suit against proper parties. We request: (1). Your written assurance that you will leave us alone, and (2). Your written assurance that you will cease and desist with your ridiculous fraud, "National Arbitration Forum."

MBNA America Bank NA's reliance on an arbitration clause in MBNA's contracts of adhesion is morally, ethically, and legally wrong. See *Myers v. MBNA America and North American Capitol Corporation*, CV 00-163-MDWM (D.

## How To Legally Beat Debt Collectors

Mont., March 20, 2001), *Armendariz v. Found. Health Psychare Servs., Inc.*, 6 P.3d 669, 690 (Cal. 2000), *Circuit City v. Adams*, 279 F.3d 889, 893 (9th Cir. 2002), (citing *Stirlen v. Supercuts, Inc.*, 60 Cal. Rptr. 2d 138, 145 (Ct.App. 1997), *Soltani v. W. & S. Life Ins. Co.*, 258 F.3d 1038, 1042 (9th Cir. 2001), *Neal v. State Farm Ins. Co.*, 10 Cal. Rptr. 781 (Ct. App. 1961), *Flores v. Transamerica HomeFirst, Inc.*, 113 Cal. Rptr. 2d 376, 382 (Ct. App. 2001), *Szetela v. Discover Bank*, 118 Cal. Rptr. 2d 862, 867 (Ct. App. 2002), *ACORN v. Household Int'l, Inc.*, 211 F. Supp. 2d 1160, 1172 (N.D. Cal. 2002), *Mandel v. Household Bank*, 2003 SL 57282, at \*4 (Cal. Ct. App. Jan. 7, 2003) (applying Nevada law), *Murcuro v. Superior Court*, 116 Cal. Rptr. 2d 671, 678 (Ct. App. 2002), *Gilmer v. Interstate/Johnson Lane Corp.* 500 U.S. 20 (1991), *In re: Cole*, 105 F.3d at 1482, *Shankle v. B-G Maint., Inc.*, 163 F.3d 1230, 1235 (10th Cir. 1999), *In re: Doctor's Assocs.*, 517 U.S. at 688, and *Ting v. AT&T*, NO. 02-15416 (9th Cir. Feb. 11, 2003).

Stop harassing us. Leave us alone.

Most sincerely,

\_\_\_\_\_  
Kenneth L. Good

\_\_\_\_\_  
Laverne Good

November 19<sup>th</sup>, 2003

Copy to: (attorney general)

Charlie Crist  
State of Florida  
The Capitol PS-O  
Tallahassee, Florida 32399-1050

## How To Legally Beat Debt Collectors

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What if the wise guys get the picture and try to get you into an arbitration forum in your state? Object to an arbitration forum even if it is in your state!



## How To Legally Beat Debt Collectors

Sue Bear Rue  
1234 Delightful Lane  
Hometown, Michigan 00000  
Respondent

IN THE  
NATIONAL ARBITRATION FORUM

NOTICE OF OBJECTION TO ARBITRATION RULE 13A(2)  
Forum File Number: BR 549

MBNA America Bank, N.A.,  
Claimant,

v.

Sue Bear Rue  
Respondent,

---

POINTS AND AUTHORITIES

Sue Bear Rue, Respondent, hereby asserts Respondent's objection to this claim for the following reasons as instructed pursuant to Rule 13A of the National Arbitration Forum Code of Procedure July 1, 2002 hereafter, the Code:

STATEMENT OF CASE

1. Claimant has submitted a claim to this Forum stating that this is a claim for money and other relief.

BASIS FOR OBJECTION TO ARBITRATE

2. I reject this claim as filed on the basis that this forum lacks both Personal and Subject matter jurisdiction in this matter and has failed to comply with the rules of the Code.

Based on the documentation I have received from this forum and the Claimant I have reason to believe that this claim as filed lacks several key elements required to be considered a valid claim and I demand strict proof thereof:

a. Rule 1 of the Code states that both parties agree to arbitrate. I have never agreed to waive my right to meaningful access to due process by way of contract.

- b. Rule 12A (2) of the Code requires that the initial claim shall include: a copy of the Arbitration Agreement or notice of the location of a copy of the Arbitration Agreement;
- c. Rule 12 A (3) of the Code requires a copy documents that support the Claim.
- d. Rule 12 A (4) of the Code requires an affidavit asserting that statements and documents in the Claim are accurate.
- e. Rule 12 A (5) of the Code requires that the appropriate Filing Fee be paid.
- f. Rule 12 B Requires that Claimant promptly file with the forum proof of service of the initial Claim on the Respondent.
- g. Rule 20 A of the Code indicates that the Arbitrator has powers provided by the code, the agreement of the Parties and the applicable Substantive law.
- h. Rule 20 C of the Code indicates that the Arbitrator does not have the power to decide matters not properly submitted under this code.

LAW AND ARGUMENT  
NO VALID AGREEMENT TO ARBITRATE

3. Claimant has filed a claim with this forum listing false and misleading allegations regarding the agreement to arbitrate. Arbitration Agreement is clearly defined in the Code under Rule 2 C and is requirement in order to establish the existence of a valid claim. Without first establishing the existence of this agreement any ruling rendered by this forum for either party would be void on its face for lack of personal and subject matter jurisdiction.

4. The courts have upheld that a party who has not agreed to arbitrate a dispute cannot be forced to do so. In addition is has been established that the party making the claim must show that the respondent in the claim was made aware of the arbitration agreement, and that they agreed to its provisions. *Casteel v. Clear Channel Broad., Inc.*

5. Arbitration is a matter of contract, and a party cannot be compelled or required to submit to arbitration any dispute he has not agreed to submit. A party who has not agreed to arbitrate a dispute cannot be forced to relinquish the right to trial.

6. Further, under the first step in analysis to decide whether a dispute must be arbitrated under the Federal Arbitration Act (FAA), a party may challenge the validity of an arbitration agreement under general contract principles. 9 U.S.C.A. Sec.1 et seq.; See also *In Re David's Supermarkets, Inc.* 43 S.W.3d 94 (2001). In addition, the federal policy favoring arbitration does not apply to the determination of whether there is a valid agreement to arbitrate between the parties; instead ordinary contract principles determine who is bound. 9 U.S.C.A. Sec. 1 et seq.; *Fleetwood Enterprises, Inc. v. Gaskamp*, 280 F.3d 1069, opinion supplemental on denial of rehearing 303 F.3d 453.

7. Claimant claims that there was an alleged agreement to arbitrate. This would then be governed by provisions under the FAA. Even under the FAA, there must be evidence of a valid agreement. Courts are clear in upholding an agreement to arbitrate must be clear to both parties. Otherwise, the legislative intent of arbitration is abused and devalued. In *Stout v. Byrider*, 50 F.Supp.2d 733, affirmed 228 F.3d 709, the court held that arbitration is a matter of contract, and thus, a party cannot be compelled to arbitrate any claims he or she did not agree to arbitrate when making the contract. In the case at hand, Claimant never agreed to arbitration. Claimant never received any agreement or contract, or information regarding an arbitration clause.

8. The Federal Arbitration Act, 9 U.S.C.A., provides that the purpose of arbitration is to give arbitration agreements the same force and effect as other contracts, where parties expressly agree to submit to disputes to arbitration. Further, there must be a clear agreement to arbitrate. In the case at hand, Respondent did not receive notice or agreement to arbitrate, nor did Respondent ever expressly agree to arbitration. On this basis it is reasonable to assume that Respondent was also not notified of his/her right to opt out of this provision with out impunity.

9. No arbitration agreement exists between Respondent and Claimant whatsoever, and none of Respondent's arguments should be construed to mean that such agreement exists.

## NO JURISDICTION UNDER THE FAA

10. "Federal law preempts state law on issues of arbitrability." *Three Valleys Mun. Water Dist. v. E.F. Hutton* (9th Cir. 1991) 925 F.2d 1136, 1139. "...a party who contests the making of a contract containing an arbitration provision cannot be compelled to arbitrate the threshold issue of the existence of an agreement to arbitrate. Only a court can make that decision." *Three Valleys Mun. Water Dist. v. E.F. Hutton*, at 1140/1141.

11. 9 USC Sec. 2 requires a written agreement to arbitrate. The requirement is jurisdictional. Without a written agreement, the FAA does not apply. Further, there is no requirement under the FAA mandating that the jurisdictional defense of "no agreement to arbitrate" be raised within a particular period of time.

12. In the alternative, even with Claimant's assertion that there was an agreement to arbitrate, the alleged agreement is unenforceable. In *Badie v. Bank of America*, 67 Cal.App 4th 779, although a California case, the appellate court held that the alleged agreements in the terms and conditions cannot be construed as agreement to arbitrate. Therefore, even if Respondent had received an agreement to arbitration notice, it would be unenforceable. The court stated that "the initial step in determining whether there is an enforceable ADR agreement between a bank and its customers involves applying ordinary state law principles that govern the formation and interpretation of contracts in order to ascertain whether the parties have agreed to some alternative form of dispute resolution. Under both federal and California state law, arbitration is a matter of contract between the parties." (*First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944-945; see also *Mastrobuono v. Shearson Lehman Hutton, Inc.* (1995) 514 U.S. 52, 56-57, 62-63; *Moncharsh v. Heily & Blase* (1992) 3 Cal.4th 1, 8.) As the United States Supreme Court has stated, "The 'liberal federal policy favoring arbitration agreements,' [citation] . . . is at bottom a policy guaranteeing the enforcement of private contractual arrangements." (*Mitsubishi Motors v. Soler Chrysler-Plymouth* (1985) 473 U.S. 614, 625; see also *Volt Info. Sciences v. Leland Stanford Jr. U.* (1989) 489 U.S. 468,

478.) Similarly, the California Supreme Court has stated that, "[T]he policy favoring arbitration cannot displace the necessity for a voluntary *agreement* to arbitrate." (*Victoria v. Superior Court* (1985) 40 Cal.3d 734, 739, italics in original.) "Although '[t]he law favors contracts for arbitration of disputes between parties' [citation omitted], 'there is no policy compelling persons to accept arbitration of controversies which they have not agreed to arbitrate . . . .'" [Citation omitted.]" (*Id.* at pp. 744; see also *Arista Films, Inc. v. Gilford Securities, Inc.* (1996) 43 Cal.App.4th 495, 501; *Chan v. Drexel Burnham Lambert, Inc.* (1986) 178 Cal.App.3d 632, 640.).

13. *Myers v. MBNA America and North American Capitol Corporation*, CV 00-163- M-DWM (D.Mont., March 20, 2001), although not an appellate case, is similar in ruling as the above mentioned *Badie* case. The judge ruled that a mandatory arbitration clause cannot be enforced. In that case, the arbitration clause in the alleged credit card agreement was held unenforceable because the defendant never agreed under the contractual relationship between parties to arbitrate her dispute with MBNA. The judge found that no such agreement could be implied. The judge further stated that "MBNA skipped offer and went straight to acceptance. . . if MBNA's argument that Myers agreed to arbitration . . . there would be no reason to stop at arbitration. . . MBNA could amend the agreement to include a provision taking a security interest in Myers' home or requiring Myers to pay a penalty if she failed to convince three friends to sign up for MBNA cards." *Id.*

WHEREFORE, there is no consent or agreement on the part of Respondent to arbitrate,

Respondent respectfully requests that this matter be dismissed as outlined in the Code Rule 41 A.

---

Sue Bear Rue

CERTIFICATE OF SERVICE

## How To Legally Beat Debt Collectors

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The undersigned parties hereby certifies that on this date a copy of the foregoing document was duly served upon the Claimant by depositing same in the United States Mail, postage prepaid, via facsimile and/or hand delivered at their last known addresses:

MBNA America Bank, N.A.  
702 King Farm Blvd.  
Two Irvington Centre  
Rockville, MD 20850-5775

DATED: March \_\_\_\_\_, 2004

---

Sue Bear Rue

Sue Bear Rue  
1234 Delightful Lane  
Hometown, Michigan 00000  
Respondent

IN THE  
NATIONAL ARBITRATION FORUM

NOTICE OF OBJECTION TO ARBITRATION RULE 13A(2)  
Forum File Number: BR 549

MBNA America Bank, N.A.,  
Claimant,

v.

Sue Bear Rue  
Respondent,

---

Respondents motion to strike the so-called affidavits of  
Bruce Buttkiss, Jr.

Brief in support

The putative affidavits of Bruce Buttkiss, Jr. are nullities for the reason that: (1). Mr. Bredicakas incorporates documents by reference which Bredicakas **did not sign and date** therefore, Bredicakas has no actual knowledge of the articles Bredicakas purports to swear to, and (2) the affidavits do not include any actual accounting and therefore are merely idealistic and theoretical notions of Bredicakas.

Conclusion

This forum's swift to admit that the so-called affidavits are nullities avoids the conclusion that the arbitration forum is openly colluding with MBNA America Bank, N.A. in violation of 18 USC 1961, 1962 & 1864(a).

Prepared and submitted by:

---

Sue Bear Rue  
726 Iowa Street

Ashland, Oregon 97520-2944

**CERTIFICATE OF SERVICE**

The undersigned parties hereby certifies that on this date a copy of the foregoing document was duly served upon the Claimant by depositing same in the United States Mail, postage prepaid, via facsimile and/or hand delivered at their last known addresses:

MBNA America Bank, N.A.  
702 King Farm Blvd.  
Two Irvington Centre  
Rockville, MD 20850-5775

DATED: March \_\_\_\_, 2004

\_\_\_\_\_  
Sue Bear Rue



## 4.2 Overview Of The Fair Debt Collections Practices Act

The Act does not apply to the original makers of a loan. The Act applies to third party debt collectors. Third party debt collectors includes lawyers and law firms who are attempting to collect any alleged debt including mortgage foreclosures. *George W. Heintz v. Darlene Jenkins*, 514 U.S. 291, 115 S.Ct. 1489. When a third party debt collector contacts an alleged debtor, the collector must in the first communication or within five (5) days thereafter furnish the alleged debtor with a "dunning letter." The dunning letter must inform the alleged debtor that the collector is attempting to collect a debt and inform the alleged debtor that they have thirty (30) days to dispute the debt. 15 USC 1692g, 1692g(a)(3). The alleged debtor has thirty (30) days to dispute the debt requiring the collectors to furnish validation of the debt. 15 USC 1692G(b). Validation of the debt can either be a signed judgment order or an accounting that is signed and dated by the person responsible for maintaining the account general ledger. See *Spears v. Brennan, Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987). Bear in mind creditor's attorneys can use in their defense that in 1999 the United States Fourth Circuit Court of Appeals has opined that validation can be nothing more complicated than this: "Verification of a debt involves nothing more than the debt collector confirming in writing that the amount being demanded is what the creditor is claiming is owed; the debt collector is not required to keep detailed files of the alleged debt." See, *Chaudhry v. Gallerizzo*, 174 F.3d 394 (1999).

Let's say you have been sued for an old credit card debt and you are called to a hearing. The county clerk says it's just a hearing where you can say whether you owe the debt or not, eh? Shame on her for giving you such bad advice. It isn't that she has given you bad advice but she should not have made it sound so simple as that. She at least ought to have told you that the lawyer on the case was from the local office of Dewey Cheatum & Howe, and the

hearing will be held in the courtroom of Judge Whangum Hardnose who is a good friend of the lawyers. She should have warned you that Judge Hardnose almost always grants judgments against people like you. She should have at least told you that you need expert help or Judge Hardnose will hang a judgment on you in less than 5 minutes so he can clear the day's docket quickly and get back to his own law office or whatever. She should have told you that the judge won't even care what the debt was for, how much the debt is, how much interest they plan on hitting you with or how much they plan to charge you for that 5 minutes it takes to get the judgment. So let me assure you that the above is all approximately true. Should you send them a letter offering to settle? Well, that is one option, of course and they will be probably be glad to settle for as little as \$3.000 immediate cash. If you don't have that much cash they may even be willing to let you make payments provided you are willing to sign a stipulated judgment and of course you never want to do that under any circumstances. How do you know how they got that figure? You don't and they don't really want to take the time or trouble to explain it to you in the way the courts have ruled that they must do. There are many cases on record where the federal courts have ruled that debt collectors must give you a full and complete accounting of the debt and how their final amount has been calculated. One such case is *Fields v. Wilber Law Firm, P.C.* 383 F.3d 562 C.A.7 (Ill.), 2004, which is a 7th Circuit Court of Appeals case in which Judge Minh ruled that exact way. Most debt collectors like to claim that they only have to give you a very limited amount of information and of course they can quote cases such as *Spears vs Brennan*, *Chaudry* and others in an attempt to make you think they know what they are talking about and therefore can't be argued with. Nothing could be further from the truth. You have the right to know how much the debt is and what it is for, you have the right to examine their evidence if they have any that they usually don't. They usually don't because the Judge Hardnoses who sit on our benches all across America really don't care about all of that unless they are forced to question the validity of the debt by people who have learned how to fight back against shyster lawyers and their sleazy tricks. It isn't just a hearing where you can say whether you owe the debt or not. It is a hearing where you can demand to know and say a lot more than that but you do have to know how to do

it properly or they will win the case easily.

Debt collection activity must cease if the debt is disputed. Failure to notice the alleged debtor of their due process rights subjects the collector to suit for violation of the Act and any action to collect without informing the alleged debtor of their due process rights or failure to cease collection activity until timely validation subjects the collector to suit for damages under the Act and voids any legal proceedings including mortgage foreclosures. All that having been said, requesting validation of the debt works for two reasons: First and most importantly, it buys you some time. Under the FDCPA, all collection activity must cease until the attorney puts that verification in the mail to you. The verification is usually a simple statement signed by the creditor, and it will not take the collection attorney long to obtain it or mail it, but it does "stay" collection activities, including law suits, until answered. Secondly, it sends a signal to the collection attorney that you are not going to be a rollover debtor. He knows you will be active in the defense of the suit. The last point is very critical because a high percentage of collection suits simply proceed to default judgment without any response from the debtor. Default judgment is a collection attorney's dream. He loves consumers who don't answer law suits and, believe it or not, a majority of law suits filed by collection attorneys go unanswered because the debtors feel like they can't fight the debt in court, usually because they feel they owe the money so they have no point in fighting. However, by filing a validation request, you send a very strong message to the collection attorney that you aren't going to give up. He might actually have to go to court himself and you may force him to prove the debt. Also, by filing the validation request, you actually stay the collection proceedings. Thus, if a collection attorney cannot move forward against you in a collection suit, the chance of your having a default judgment against you is greatly diminished. They don't like that one bit.

The Act also allows damages when the collector makes false statements regarding the character or amount of the alleged debt. An aggrieved party has one year from the violation of the Act to sue or one year from the taking of property by the collector. An aggrieved party under the Act is entitled to one thousand dollars (\$1,000.00) in statutory damages plus unlimited damages for intentional infliction of emotional anguish. *Bank of the West v.*

*Superior Court*, 2 Cal. 4<sup>th</sup> 1254, 1267, 833 P.2d 545 (1992), and *Fletcher v. Security Pacific National Bank*, 23 Cal.3d 442, 451, 591 P.2d 51 (1979). In addition, without time limitation, judgments including judgments that have been collected and mortgage foreclosures are void by reason of deprivation of due process rights deprives the court of subject matter jurisdiction. It is possible to recover full damages under both strategies or double recovery. Award of statutory damages does not require proof of actual damages, *Woolfolk v. Van Ru Credit Corp.*, D.Conn.1990, 783 F.Supp. 724. Consumer need not produce evidence of actual damages, *Crawford v. Credit Collection Services* D.S.D. 1995, 898 F.Supp.699. Actual damages not capped at \$1,000 *Smith v. Law Offices of Mitchell N. Kay*, D. Del. 1991, 124 B.R. 182. Court may consider sum necessary to amend bad behavior. *Bank of the West v. Superior Court*, 2 Cal. 4<sup>th</sup> 1254, 1267, 10 Cal Rptr. 2d 538, 833 P.2d 545 (1992) and *Fletcher v. Security Pacific National Bank*, 23 Ca.3d 442, 451, 153 Cal.Rptr. 28, 591 P.2d 51 (1979). Debtor need not show intentional conduct on part of collector. *Russell v. Equifax A.R.S.* 74 F.3d 30, 33 (2<sup>nd</sup> Cir. 1996), *Bently v. Great Lakes Collection Bureau*, 6 F.3d 60, 63 (2<sup>nd</sup> Cir. 1993). The FDCPA allows recovery for costs. If a debtor notifies a debt collector within 30 days after receiving notice of an alleged debt, that the debt, or any portion thereof, is disputed, the debt collector shall cease collection activity until the debt collector obtains and sends verification of the debt to the debtor. 15 USC 1692g(b). A copy of the consumer credit contract is not sufficient to validate the debt. Validation requires presentment of the account and general ledger statement signed and dated by the party responsible for maintaining the account. *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). and *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987). The debt collector must actually review the file. 15 USC 1692e(g). Claims under the Fair Debt Collections Practices Act adhere to the unsophisticated consumer standard. See *Gammon v. GC Services Ltd. Partnership*, C.A.7 (Ill.) 1994, 27 F.3d 1254, on remand 162 F.R.D. 313.

According to the Financial Services Regulatory Relief Act of 2006 (FSRRA), the filing of a legal complaint (lawsuit) does not constitute an initial communication for purposes of the validation notices required by section 809 of the FDCPA (§1692g). Thus, collection attorneys who merely litigate collection cases are exempted from the requirements of § 1692g:

S. 2856 [109th]: Financial Services Regulatory Relief Act of 2006

<http://www.govtrack.us/congress/bill...bill=s109-2856>

SEC. 802. OTHER AMENDMENTS.

(a) Legal Pleadings- Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding at the end the following new subsection:

`(d) Legal Pleadings- A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).'.

(b) Notice Provisions- Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding after subsection (d) (as added by subsection (a) of this section) the following new subsection:

`(e) Notice Provisions- The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.'.

(c) Establishment of Right To Collect Within the First 30 Days- Section 809(b) of the Fair Debt Collection Practices Act (15 U.S.C. 1692g(b)) is amended by adding at the end the following new sentences:  
 `Collection activities and communications that do not otherwise violate this title may continue during the

30-day period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.'

Assigned or purchased debt: How do you know Bob is the right guy to pay? Why should you care if a debt is purchased or assigned? In an assignment, the collection agency does not own the debt, and therefore you do not technically owe them any money. There is no way for a collection agency to prove that you owe them money because there is only an assignment of the debt and not a contract between you and the creditor. One loophole: Some contracts have the wording 'debtor agrees to be responsible for payment of this debt to creditor "or its assigns."' This is a contract between you and the debt collector as well as the creditor and if they can provide you with a copy of a contract that states this (with your signature!), you are pretty much stuck and perhaps need to negotiate. [www.creditinfocenter.com/rebuild/debt\\_validation.shtml](http://www.creditinfocenter.com/rebuild/debt_validation.shtml).

What does a debt collector need to provide as debt validation?

- Proof that the collection company owns the debt/or has been assigned the debt. (Bob is legally entitled to collect this particular debt from you.) This is basic contract law. It is very difficult to get a judgment without a direct contract between collection agency and the original creditor.
- At a minimum, some account statements from the original creditor. If you really want to get sticky, you can pin them down on the amount of the debt by requiring complete payment history, starting with the original creditor. (How the heck did Bob calculate this debt? What fees/interest Bob has tacked on to this debt and how he determined these fees?) This requirement was established by the case *Fields v. Wilber Law Firm*, Donald L. Wilber and Kenneth Wilber, USCA-02-C-0072, 7th Circuit Court, Sept 2004.
- Copy of the original signed loan agreement or credit card application. (Your contract with Joe establishing the

debt between you.) However, account statements from the original can fulfill these requirements.

When a creditor hires a collection agency the debt has been assigned to the collection agency. If a collection agency is successful at collecting the money on the account, they usually keep a percentage of what is collected as payment for services. Original creditors sometimes sell debts in large portfolios to collection agencies. This is starting to be the norm, and several of these companies, called Junk Debt Buyers (JDBs), are now being traded on Wall Street. The companies do not spend much money at all for these debts, sometimes paying less than 1 cent on the dollar. Even if the debt is not a large debt, they often hire attorney to send out mass form letters to debtors in the hopes of collecting. As you can see, even if they get a small percentage of the debtor to pay, profits are enormous. Continue to treat any collection agency, junk debt buyer or law firm who says they own the debt as a collection agency subject to the FDCPA. You can still request validation and proof of the purchase, because if they can't validate it, the collection agency can't prove you owe the debt. Often a JDB will tell a consumer that since they purchased the debt, they are not subject to the FDCPA. It's simply not true FDCPA Section 809. Validation of debts [15 USC 1692g] (b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or any copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector. Plus, they must show proof positive that you owe them this debt. It's not enough to send you a computer-generated printout of the debt. There is an opinion letter from the FTC to support this: [www.ftc.gov/os/statutes/fdcpa/letters/wollman.htm](http://www.ftc.gov/os/statutes/fdcpa/letters/wollman.htm); nor can they ask you to pay for digging up your records: [www.ftc.gov/os/statutes/fdcpa/letters/krisor2.htm](http://www.ftc.gov/os/statutes/fdcpa/letters/krisor2.htm). So, if a creditor can't verify a debt: They are not allowed to collect the debt; they are not allowed to contact you about the debt; and they are also not allowed to report it under



the Fair Credit Reporting Act (FCRA). Doing so is a violation of the FCRA, and the FCRA states that you can sue for \$1,000 in damages for any violation of the Act. The opinion letter from the FTC which clearly spells out that a collection agency cannot report a debt to the credit bureaus which has not been validated: [ftc.gov/os/statutes/fdcpa/letters/cass.htm](http://ftc.gov/os/statutes/fdcpa/letters/cass.htm). On Spears vs. Brennan the appeals court determined: "Brennan (plaintiff collection agency attorney) violated 15 U.S.C. § 1692g(b) when he obtained a default judgment against Spears (defendant) after Spears had notified Brennan in writing that the debt was being disputed and before Brennan had mailed verification of the debt to Spears." This means that you have an absolute defense in court to deny them judgment if they still have not validated the debt. Once you get your FDCPA dispute letter in, the collector cannot even get a judgment until they satisfy the FDCPA law. The appeals court overturned the default summary judgment in part because the collection agency lawyer did not meet the rules of the FDCPA. This could be grounds for getting a default judgment vacated. It's also another violation of the FDCPA and you can collect \$1,000 from them.

As you can see, "debt" stopped being a "debt" when the original creditor charged it off, sold it and took the tax deduction for the loss. It became an investment when the first junk debt buyer bought it as an investment with full knowledge that it was a bad debt. These people are not creditors and are not afforded the protection under the law that creditors are. They are simply investors who made a bad investment. This is like you calling your stockbroker to purchase a stock, you buy it, it crashes, you lose all your money and then you sue your stockbroker because you made a bad investment. This is exactly what these junk debt buyers are doing when they use the courts to collect on their bad investments. The courts get really pissed off when they are used to enforce return on investment. You need to bring this up repeatedly and even add it into your response to the summons. Get it documented early on and make it a part of permanent record, which your response to the summons becomes. First of all, under Federal law, a debt must be "charged off" 180 days after first major delinquency, which is usually on the 7th month. The purpose of this mandatory charge-off is to stop penalties and excessive interest. That is the whole reason for it. The interest is limited to a statutory maximum, not the



contract rate. The contract rate only applies up to the date of charge-off. After charge-off the statutory max applies. As far as JDB go, they must be able to prove that they own the debt and be able to show an entire account history and itemization of all charges, otherwise, the suit gets dismissed. There is a big difference between "assignment" and "sale." In any civil suit in FL, legal fees and costs must be sought in addition to the principal amount. They are not automatic. They are awarded by the court, or excluded by the court. The junk debt buyer does not have any prior business relationship or contract with the debtor; therefore, they do not have the same rights as the original creditor. They must prove that the obligation actually exists. Furthermore, the amount paid for the debt is the amount of the loss; not the original contract amount or charge off amount. The courts will dismiss these suits almost every time when the amount is questioned, and cannot be documented. The Discovery Motion is perfectly valid as provided for under the law being made by the defendant. The Pro Se status makes no difference whatsoever. A Pro se Defendant has all of the same rights of the Discovery process as the defendant being represented by counsel. Most debt cases in FL never get past the pre-trial appearance, as anyone who denies a claim, gets forced into a little room with an arbitrator. Little do most people know, they do not have to say anything at this time except stating they deny the debt and want a trial date. A common misunderstanding, is interest on a credit card. FDCPA allows a collector to add interest if your original agreement calls for addition of interest during collection proceedings or the addition of such interest is allowed under state law; every state authorizes the collection of such interest (if it is in the agreement). The assignee, the collection agency, must be collecting on behalf of the original creditor and if the original creditor has an in house collection dept, the chances are the collection agency is trying to pull a fast one; the original creditor has to contract with the collection agency.

Discovery in small claims court: if you do not request discovery. then you will lose out if you have to appeal: appeals court will look into errors, and what's in the records. Court is your final chance to be heard. Pretty much if it isn't said during the trial, it isn't going to be said in appeal unless there's was an error or a bad call by the court. If a debt was attempted to be collected on by

another collection agency, the 3rd or new collection agency can't claim to be the assignee a contract must be signed by you to be used in court. You should always request discovery, so you know what you are up against. Don't expect the other guy to play fair or within the rules You must request for cost and reasonable attorney fee if you win; it's up to the court to award them to you if you win the case. Most attorneys will agree that a pro se should not get attorney's fees; there is plenty of case law to support a pro se getting reasonable attorney fees in certain cases.

### **4.3 To Complete Foreclosure, Is The Original Note Required? You Be The Judge**

Where the complaining party cannot prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.) Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469 in *Carnegie Bank v Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3-302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner **and holder** of the alleged note, and prove that

certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9<sup>th</sup> Cir 1977), "Under the Uniform Commercial Code, **the only notice sufficient** to inform all interested parties that a security interest in instruments has been perfected is **actual possession** by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. In *Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is **"instrument,"** security interest in which must be perfected by **possession** ..." Unequivocally the Court's rule is that in order to prove the "instrument", possession is mandatory. In addition to the note, another element of proof is necessary - an accounting that is signed and dated by the person responsible for the account. Claim of damages, to be admissible as evidence, must incorporate records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986).

#### **4.4 Are All Contracts Assignable? What About Contracts That "Die With The Individual" Or Go To A Question Of The Credit Of The Parties? You Be The Judge.**

"As a general rule, all contracts are assignable . . . . An exception to this rule is that a contract that relies on the personal trust, confidence, skill, character or *credit* of the parties, *may not* be assigned without the consent of the parties." See *Crim Truck & Tractor Co. v. Navistar Int'l* 823 S.W.2d 591, 596 (Tex. 1992). See also *Southern Community Gas Co. v. Houston Natural Gas Corp.*, 197 S.W. 2d 488, 489-90 (Tex.Civ.App. - San Antonio 1946, writ ref'd n.r.e.), and *Moore v. Mohon*, 514 S.W. 2d 508, 513 (TexCiv. App. - Waco 1974, no writ). Most rights under *contracts* are

*assignable*. 2 R.C.L. 598. The exception is where rights are coupled with liabilities, with *contracts* for personal services or with *contracts* involving personal confidence. Fire insurance *contracts* are within the class last mentioned, and are held not to be *assignable* because of the confidence reposed by the insurer in the owner of the property. Thus, the owner may not sell the property and transfer the policy to the purchaser along with the title; for the insurer has not agreed to insure the property in the hands of the purchaser nor to assume the hazard involved in his ownership and possession. On the other hand, an assignment, not of the policy itself with its obligations, but of the owner's rights there under by way of pledge or otherwise as security for a debt, is held valid, in the absence of express restriction to the contrary; and the reason for this distinction is that such pledge or assignment does not affect the personal relationship, i.e., the ownership of the property by the insured, upon the faith of which the policy has been issued. Cooley's Briefs on Insurance (2d Ed.) vol. 2, pp. 1768, 1769; *Ellis v. Kreutzinger*, 27 Mo. 311, 72 Am.Dec. 270; *True v. Manhattan Fire Ins. Co.* (C.C.) 26 F. 83; *Stokes v. Liverpool & London & Globe Ins. Co.*, 130 S.C. 521, 126 S.E. 649. Such rights could only have arisen in *Deutsche* from a direct guaranty made by the *Mauricios* to *Deutsche*, or by assignment from someone to whom a guaranty had been made that was legally *assignable*. There is no claim of a direct guaranty to *Deutsche*, so any rights it had could only have arisen from a legally valid assignment by *Centron* or *Security Marine* of the *Mauricios'* guaranties to them. The district court concluded that such rights had been validly assigned. We disagree. Under Maryland law, neither of the assignments made by *Centron* to *Deutsche* in respect of *Chesapeake's* indebtednesses was effective to assign any guaranty rights against the *Mauricios* respecting the note secured by the fifty-foot yacht. Whether a particular assignment is effective to assign a guaranty respecting a particular debt depends on two things: (1) whether the assignment in terms covers the guaranty, and (2) whether the guaranty is a legally *assignable* one. *Deutsche* relies on two assignments as the source of its right to recover from the *Mauricios* as guarantors of the note securing the fifty-foot yacht: (1) *Centron's* July 31, 1990 assignment to *Deutsche* and (2) *Centron's* October 1, 1990 assignment to *Deutsche* simultaneously with *Security*

Marine's assignment to Centron, of their respective "rights, titles, and interests" in Chesapeake's indebtednesses. Looking first to Centron's July 31, 1990 assignment, we conclude that, even if it could be interpreted as intended to include the Mauricio guaranty to Centron, the guaranty was not legally assignable. While, as indicated in Part II.A., an assignment of debt carries with it an assignment of any guaranty of that debt, this does not mean that a guaranty may be assigned independently of any underlying debt. The general rule is, in fact, to the contrary where the guaranty is "special," i.e., made only to particular potential lender or lenders. As expressed in black-letter form: If a guaranty covers future *credit* which is to be extended by a specific individual, it may not be transferred to another person so as to enable him to become the creditor who is secured by the guaranty. 38 Am. Jur. 2d Guaranty § 35. The Centron guaranty is such an instrument. It specifies that it is made "to induce . . . Centron Financial Services, Inc. to make loans and in consideration of loans heretofore and hereafter made by [Centron] to Chesapeake." JA 36. Further, it promises "prompt and punctual payment . . . of any and all present and future indebtedness . . . of [Chesapeake] to you," i.e. Centron. Id. (emphasis added). The guaranty does contemplate that once Centron extended *credit* to Chesapeake, Centron might assign the debt, for the guaranty was for payment to Centron, "its successors and assigns." Id. The guaranty nowhere includes, however, a promise to pay debts arising between Chesapeake and anyone other than Centron. Under the general rule, therefore, the Centron guaranty, covering only *credit* extended by Centron, could not be assigned by Centron so as to enable Deutsche to become a creditor secured by the guaranty. We are satisfied that Maryland courts would so hold, though on a basis more explanatory of the actual reason for non-assignability of guaranties independently of consummated debt. Maryland law properly treats guaranties of future debt as simply a species of "continuing" or "standing" offers to make a series of individual, unilateral *contracts*. See *Weil v. Free State Oil Co.*, 200 Md. 62, 87 A.2d 826, 830 (Md. 1956). Under general contract law principles, such offers are accepted by the extension of *credit* by the offeree. See *id.* ("to be accepted from time to time by [*credit* extension]"). See generally Restatement (Second) of *Contracts* § 31, cmt. b (1981) ("continuing guaranty" constitutes a "standard

example of a divisible offer to make a series of contracts"). And, until such a continuing offer is accepted, it remains only an offer of contract which, as with contract offers in general, is not *assignable*. See *Routzahn v. Cromer*, 220 Md. 65, 150 A.2d 912, 915 (Md. 1959) ("an offer made to one person cannot be accepted by another"); Restatement (Second) of *Contracts* § 52 ("an offer can be accepted only by a person whom it invites to furnish consideration"); 38 Am. Jur. 2d *Guaranty* § 35 ("offer of guaranty is, in and of itself, not *assignable*").

A note void in the hands of the payee, because obtained by him of the maker by fraud, is collectible in the hands of a subsequent *bona fide* holder who has taken it before maturity for value; but if such holder has paid on such transfer a less sum than the amount of the note, he can only recover the amount which he, or some prior holder through whom he derives title, has paid for it. *Holcomb v. Wyckoff*. 1870 WL 5231 (N.J. Sup.).

#### 4.5 How To Beat An Old Credit Card Debt

What is the best strategy to beat an old credit card debt that has been sold to a debt buyer? During my research for this book, I've found a great source of information on this topic; according to the law offices of Edelman, Combs, Latturner & Goodwin, LLC at <http://www.edcombs.com/CM/Actions/Are-You-Being.asp>,

"Debt buying is a fast-growing business in the U.S. Just because a debt buyer claims they are owed money from you in court or in a letter doesn't mean they are entitled to anything. Many of the debts they purchase are undocumented, not beyond the statute of limitations, or legally invalid.

"If you are being dunned or sued by a debt buyer, it is important for you to understand your rights as a consumer. You may have a valid defense to the claim -- or you may have a claim against the debt buyer.

"The Federal Trade Commission reported with regard to a lawsuit filed in 2004 that accounts enforced by the debt buyer may come from "consumers who never owed the original debt in the first place. Many consumers pay to get [a debt buyer] to stop threatening and harassing them, their families, their friends, and their co-workers." (<http://www.ftc.gov/opa/2004/12/camco.htm>)

"Likewise, the Attorney General of Minnesota in 2004 sued two collection agencies that represent debt buyers. According to the Attorney General, the companies used illegal tactics such as ignoring written disputes filed by consumers to coerce those consumers into paying invalid debts.

"Even if you know the debt is valid, you have the right to know that the debt buyer actually owns the debt. The debt buyer must be prepared to provide you with a copy of an assignment of the debt that specifically refers to the debtor by name, address, and account number. Also, beware: making even a small payment may revive the statute of limitations on an old debt which would otherwise be uncollectible.

[Click on this link for more information on debt buying and your legal rights.](http://www.edcombs.com/CM/Custom/collection.defense.1-2008.pdf)" [On this link you will be able to download an extraordinary .pdf document titled titled "Defense of Collection Cases" by the law offices of Edelman, Combs, Lattuner & Goodwin, LLC - <http://www.edcombs.com/CM/Custom/collection.defense.1-2008.pdf>]

#### **4.6 Phone Scripts To Use With Third Party Collectors**

Commentary on the morality of debt: I believe that if we owe, we should repay. The fallacy is that we rarely owe when a collector calls. The following phone scripts are not mean spirited when we realize that the caller is trying to get us to pay money that we don't owe!

In spite of CallerID or other screening, if a collector calls you,

"Thank you for calling. May I have your full name please? Thank you. Please spell your full name for me. Now, (their name) what is your Social Security Number? (After listening to their protest say) I just need to have your identity so I will be suing the correct person if you violate my rights under the Fair Debt Collections Practices Act."

- or -

"Thank you for calling. Do I have a contract with your company? (They'll tell you they're call regarding your xyz

bill). That's not my question. Do I have a contract with your company? Don't ever call me again."

- or -

"Thank you for calling. I was not expecting your call and I'll need a while to look up some helpful information. Would you please hold? (Don't wait for their answer. put the phone down and walk away)."

#### ***4.7 How To Respond To Debt Collections Letters***

If you have studied this topic in other sources, you will recognize that the above and foregoing dispute letters go beyond what is required under the Fair Debt Collections Practices Act. So why do they work? Because you are offering to contract with them - otherwise known as a conditional acceptance. People that have used them have reported great success and almost nobody has being contacted again after sending one of the above letters to a debt collector. Also, very important I advise against sending a cease and desist letter or any letter containing the words "cease and desist." A cease and desist letter is an invitation to being sued!



## How To Legally Beat Debt Collectors

### 4.7.1 Dispute letter to a debt collector (credit card, mortgage or other loan)

Your Name \_\_\_\_\_ Certified mail receipt  
 number \_\_\_\_\_  
 Your address \_\_\_\_\_  
 City, state, zip code \_\_\_\_\_

The name of the person who sent you the collection letter  
 Their address \_\_\_\_\_  
 City, state, zip \_\_\_\_\_

Sir or Madam:

You are in receipt of notice under the authority of The Fair Debt Collections Practices Act regarding your file #XXXXXXXXXX #OOOOOOO 000000 RMS008. It is not now, nor has it ever been my intention to avoid paying any obligation that I lawfully owe. In order that I can make arrangements to pay an obligation which I may owe, please document and verify the "debt" by complying in good faith with this request for validation and notice that I dispute part of, or all of the alleged debt.

1. Please furnish a copy of the original promissory note redacting my social security number to prevent identify theft and state under penalty of perjury that your client named above is the holder in due course of the promissory note and will produce the original for my own and a judge's inspection should there be a trial to contest these matters.
2. Please produce the account and general ledger statement showing the full accounting of the alleged obligation that you are now attempting to collect.
3. Please identify by name and address all persons, corporations, associations, or any other parties having an interest in legal proceedings regarding the alleged debt.
4. Please verify under penalty of perjury, that as a debt collector, you have not purchased evidence of debt and are proceeding with collection activity in the name of the original maker of the note.
5. Please verify under penalty of perjury that you know and understand that certain clauses in a contract of adhesion, such as a so-called forum selection clause, are unenforceable unless the party to whom the contract is extended could have rejected the clause without impunity.
6. Please verify under penalty of perjury that you know and understand that credit card contracts are a series of continuing offers to contract and as such are non-transferable.
7. Please provide verification from the stated creditor that you are authorized to act for them.
8. Please verify that you know and understand that contacting me again after receipt of this notice without providing procedurally proper validation of the debt constitutes the use of interstate communications in a scheme of fraud by advancing a writing,

## How To Legally Beat Debt Collectors

---

which you know is false with the intention that others rely on the written communication to their detriment.

Disputing the "debt"

Your signature

Your name

month day year

Copy to:

Consumer Response Center

Federal Trade Commission

Washington, D.C. 20580

## How To Legally Beat Debt Collectors

### 4.7.2 Dispute letter to a debt collector (attempting to collect state taxes)

Kenney F. Love                      Certified mail receipt number \_\_\_\_\_  
 916 E. Maple Blvd.  
 Sunnyville, Oklahoma 74000

GC Services Limited Partnership  
 C/o P.O. Box 271376  
 Oklahoma City, Oklahoma 73137

Jess Moran:

You are in receipt of notice under the authority of The Fair Debt Collections Practices Act regarding your file #ITIS235242479. It is not now, nor has it ever been my intention to avoid paying any obligation that I lawfully owe. In order that I can make arrangements to pay an obligation which I may owe, please document and verify the "debt" by complying in good faith with this request for validation and notice that I dispute part of or all of the alleged debt.

1. Please furnish a copy of the assessment this so-called debt is based on redacting my social security number to prevent identify theft and state under penalty of perjury that Oklahoma Tax Commission is the holder in due course of the original assessment and will produce the original for my own and a judge's inspection should there be a trial to contest these matters.
2. Please name the person or persons who completed the assessment along with their verification under penalty of perjury showing the full accounting of the alleged obligation that you are now attempting to collect.
3. Please identify by name and address all persons, corporations, associations, or any other parties having an interest in legal proceedings regarding the alleged debt.
4. Please verify under penalty of perjury, that as a debt collector, you have not purchased evidence of debt and are proceeding with collection activity in the name of the Oklahoma Tax Commission.
5. Please provide verification from the Oklahoma Tax Commission that you are authorized to act for them.
6. Please verify that you know and understand that contacting me again after receipt of this notice without providing procedurally proper validation of the debt constitutes the use of interstate communications in a scheme of fraud by advancing a writing, which you know is false with the intention that others rely on the written communication to their detriment.

Disputing the "debt"

Kenney F. Love  
 April 30th 2003

## How To Legally Beat Debt Collectors

### 4.7.3 Dispute letter to a debt collector (attempting to collect a bill for services)

Bobby Farmer      Certified mail receipt number \_\_\_\_\_  
 Route 1, Box 60  
 Union City, Oklahoma 73090

Lawrence R. Scott  
 2519 N. W. 23rd Street, Suite 204  
 Oklahoma City, Oklahoma 73107

Sir:

You are in receipt of notice under the authority of The Fair Debt Collections Practices Act regarding your file "INTEG CANADIAN VALLEY REG.". It is not now, nor has it ever been my intention to avoid paying any obligation that I lawfully owe. In order that I can make arrangements to pay an obligation which I may owe, please document and verify the "debt" by complying in good faith with this request for validation and notice that I dispute part of or all of the alleged debt.

1. Please furnish a copy of the original contract redacting my social security number to prevent identify theft and state under penalty of perjury that your client is the bona fide party in interest of the contract and will produce the original for my own and a judge's inspection should there be a trial to contest these matters.
2. Please produce the account and general ledger statement showing the full accounting of the alleged obligation that you are now attempting to collect.
3. Please identify by name and address all persons, corporations, associations, or any other parties having an interest in legal proceedings regarding the alleged debt.
4. Please verify under penalty of perjury, that as a debt collector, you have not purchased evidence of debt and are proceeding with collection activity in the name of the original contracting party.
5. Please verify under penalty of perjury that you know and understand that certain clauses in a contract of adhesion, such as a so-called forum selection clause, are unenforceable unless the party to whom the contract is extended could have rejected the clause without impunity.
6. Please provide verification from the stated creditor that you are authorized to act for them.
7. Please verify that you know and understand that contacting me again after receipt of this notice without providing procedurally proper validation of the debt constitutes the use of interstate communications in a scheme of fraud by advancing a writing that you know is false with the intention that others rely on the written communication to the detriment of Bobby Farmer.

Disputing the "debt"

Bobby Farmer

May 28th 2003

## How To Legally Beat Debt Collectors

### 4.7.4 Dispute letter to a debt collector (attempting to domesticate a foreign judgment)

Your Name      Certified mail receipt number \_\_\_\_\_  
 Your address  
 City, state, zip code

The name of the person who sent you the collection letter  
 Their address  
 City, state, zip

Sir or Madam:

You are in receipt of notice under the authority of The Fair Debt Collections Practices Act regarding your file #IL-10969. It is not now, nor has it ever been my intention to avoid paying any obligation that I lawfully owe. In order that I can make arrangements to pay an obligation which I may owe, please document and verify the "debt" by complying in good faith with this request for validation and notice that I dispute part of or all of the alleged debt.

1. Please furnish a copy of the alleged judgment and document that the court file in the original proceeding shows a copy of the original promissory note redacting my social security number to prevent identify theft and state under penalty of perjury that the judgment debtor named was the holder in due course of the promissory note and will produce the original for my own and a judge's inspection should there be a trial to contest these matters. I also request that the "debt" be fully extinguished in the event that I pay off the note by returning the original to me Brightered paid in full and signed by an officer of the holder in due course.
2. Please produce the account and general ledger statement showing the full accounting of the alleged obligation that the judgment was based on.
3. Please identify by name and address all persons, corporations, associations, or any other parties having an interest in legal proceedings regarding the alleged debt.
4. Please verify under penalty of perjury, that as a debt collector, you have not purchased evidence of debt and are proceeding with collection activity in the name of the original maker of the note.
5. Please verify from the record in the proceedings in case number IL-10969 that the record in the trial court established that I was a resident of Illinois, operated a business in Illinois, or owned property in Illinois establishing the Illinois Court's personal jurisdiction over me. If personal jurisdiction was based on a forum selection clause, please give ten examples of parties who were allowed to line through the forum selection clause in the contract of adhesion with the judgment creditor.
6. Please verify under penalty of perjury that you know and understand that contracts which go to the credit of the parties are non-transferable absent a specific enabling clause fully disclosed at the time of contracting and cite the enabling clause in the contract the judgment was based on a accompany the document with an affidavit of the party co-signing the contract that the transfer clause was fully disclosed to me.

## How To Legally Beat Debt Collectors

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7. Please verify under penalty of perjury that you know and understand that credit card contracts are a service of continuing offers to contract and as such are non-transferable.

8. Please provide verification from the stated judgment creditor that you are authorized to act for them.

9. Please verify that you know and understand that contacting me again after receipt of this notice without providing procedurally proper validation of the debt constitutes the use of interstate communications in a scheme of fraud by advancing a writing that you know is false with the intention that others rely on the written communication to their detriment.

Disputing the "debt"

Your signature

Your name

month day year

Copy to:

Consumer Response Center

Federal Trade Commission

Washington, D.C. 20580

## 4.8 Defense Against Mortgage Foreclosure

According to the Law Office of Edelman, Combs, Lattuner & Goodwin, LLC at <http://www.edcombs.com/CM/News/News178.asp>, which has published on their website above a great guide to formulate a foreclosure defense strategy.

"Many lawyers and judges have long assumed that if a mortgage company seeks to foreclose, the defendant probably owes the money and has no defense. In fact, as recent publicity concerning the widespread problem of predatory lending has made clear, many mortgage lenders overreach. In a substantial portion of residential mortgage foreclosures, the homeowner has a valid defense to at least part of the claim. Either they are not in default at all, or the extent of the default is significantly less than claimed, or the mortgage is subject to attack, most likely under the Truth in Lending Act, 15 U.S.C. §1601 et seq. ("TILA"), as amended by the Home Ownership & Equity Protection Act of 1994, 15 U.S.C. §§1602(aa) and 1639 ("HOEPA"), and implementing Federal Reserve Board Regulation Z, 12 C.F.R. part 226.

"Unfortunately, most foreclosures end in default or bankruptcy. Few result in a lawyer looking through the loan documents to see if the homeowner has any claims or defenses. In part, this is because "minorities, women, and the elderly bear the brunt of abusive mortgage lending practices, particularly in predominantly minority or low-income neighborhoods that do not have access to mainstream sources of credit." "Curbing Predatory Home Mortgage Lending," joint report of the Department of Housing and Urban Development and the Department of the Treasury, HUD Document No. 00-142, issued June 20, 2000."

In this section I will insert a document from the law offices of David Leen & Associates, PLLC. This document is freely available online and I have added here for your convenience.

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## BORROWERS' DEFENSES TO FORECLOSURE®

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By David A. Leen  
David Leen & Associates, PLLC  
520 East Denny Way  
Seattle, WA 98122  
(206) 325-6022

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DAVID A. LEEN is a principal in the law firm of David Leen & Associates, PLLC in Seattle where his main emphasis of practice is on real estate, business and consumer litigation. He received his B.A. degree with honors from Beloit College and his J.D. degree from the University of Oregon. Mr. Leen was a Reginald Heber Smith Fellow from 1971-1973. He is a former regional attorney for the Federal Trade Commission and the Legal Service Corporation. Mr. Leen is the author of several law review articles and manuals on real estate and a frequent speaker before professional and civic groups on various real estate topics and has testified on foreclosure issues before the Washington State Legislature and the U.S. Congress. Mr. Leen handled several recent landmark cases on deed of trust foreclosure, including Cox v. Helenius, 103 Wn.2d 383 (1985), which imposed new responsibilities upon trustees in the foreclosure process, and Vail v. Brown, 946 F.2d 589 (8th Cir. 1991), imposing due process upon foreclosure of VA insured loans. Mr. Leen is a member of the Deed of Trust Revision Committee of the Washington State Bar Association. He is also a Trustee of the Legal Foundation of Washington, which distributes IOLTA funds to low income legal service providers.

This outline covers mainly Washington law, but an effort has been made to include information that will be useful in most foreclosure contexts. Bankruptcy and tax issues pervade foreclosures, but are beyond the scope of this article. The focus is upon residential foreclosures as opposed to commercial foreclosures although there is substantial overlap.



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(April 2002)

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I. GENERAL CONSIDERATIONS

## A. WHETHER TO REINSTATE, DEFEND OR GIVE-UP

By far the most important decision that must be initially made is whether the property is worth saving. This is often ignored and wasted effort is expended when there is no "equity" (realistic fair market value minus all debt, liens, property taxes, anticipated foreclosure costs, late fees, and selling costs) in the property.

The options are as follows:

1. Reinstatement. Pay the costs and late charges and stop the process. In most non-judicial foreclosures this is permitted up until the date of sale. In Washington the lender must allow reinstatement 10 days prior to the sale date. See RCW 61.24. Often a lender or relative will loan necessary funds and take a subordinate lien on the property to do so. This makes sense only if the new payments are within the means of the debtor.
2. Sell the Property. If there is equity, but no ability to reinstate, then immediately list and sell the property to recoup equity.
3. Obtain Foreclosure Relief. Most government insured loans (if, VA, FHA) have programs allowing (or requiring) lenders to assist defaulting borrowers. See discussion under §V infra. Check into these options immediately.
4. Give Up. This is actually an option as most state laws permit the debtor to remain in possession during the foreclosure process and redemption period rent-free. Most laws, especially in non-judicial foreclosure states - do not allow (or at least limit)

deficiencies. Debtors contemplating bankruptcy should take advantage of homestead rights and redemption rights. If there is no equity or negative equity and no ability to make payments, there is no economic reason to try to avoid foreclosure.

5. Defend the Foreclosure. After all of the above have been considered, defense of the foreclosure may be warranted. This outline discusses some defenses that may result in re-instatement of the mortgage or recovery of equity.

#### B. OFFENSIVE STRATEGY

In addition to defenses that may be raised, there may be affirmative claims that can be brought against the lender which should be immediately determined and raised in a counterclaim or set-off or, in the case of non-judicial foreclosure, brought by separate suit and coupled with an injunction against continuing the non-judicial foreclosure. These claims can also be brought in bankruptcy. See, e.g. In re Perkins, 106 BR 863 (1989).

A few examples of affirmative claims:

1. Truth-in-Lending Act Violations. Often lenders will hand the debtor a claim, which can turn a debt into an asset. If the Truth-in-Lending disclosure statement is less than one year old, there may be damage claims for improper disclosure. See, 15 U.S.C. 1635. More importantly, there may be a right of rescission, which can be exercised up to three years after the closing resulting in a tremendous advantage to the borrower. See, e.g., Beach v. Ocwen Fed Bank, 118 S. Ct. 1408 (1998).

2. Usury. If a state usury law applies (usually on seller financed real estate), this can parlay a debt into an asset. Federal pre-emption generally prevents this, but there are exceptions. See, RCW 19.52.

3. Mortgage Broker Liability, Lender Liability, Unfair or Deceptive Acts or Practices. Numerous claims that arise in the mortgage financing context give rise to set-offs that can allow negotiation out of the foreclosure. See e.g. Mason v. Mortgage America, 114 Wn. 2d 842 (1990). Intentional breach of contract gives rise to emotional stress damages. See, Cooperstein v. Van Natter, 26 Wn. App. 91 (1980); Theis v. Federal Finance Co., 4 Wn. App. 146 (1971).

Under a new federal statute to regulate high interest, predatory loans, Congress enacted in 1994 the Home Ownership and Equity Protection Act (effective on loans after October 1, 1995). This amendment to the Truth-In-Lending Act requires greater disclosures in loans where a number of factors exist such as, points exceeding 8% and other excessive costs. Penalties include enhanced damages and rescission. See 15 U.S.C. 1602(u) and 15 U.S.C. 1640(a).

The Mortgage Broker Practices Act, RCW 31.04 and the Consumer Protection Act also have enhanced damages and attorney fees.

## II. DEFENDING NONJUDICIAL DEED OF TRUST FORECLOSURES

### A. INTRODUCTION

The deed of trust is currently one of the most common devices for securing conventional and government insured or guaranteed real estate loans. The deed of trust may be typically foreclosed either judicially as a mortgage or non-judicially. Set forth below are the jurisdictional variations in security agreements and the most common foreclosure procedures

. Nonjudicial foreclosure is allowed in approximately one-half of the states. Also listed

are the states that permit nonjudicial foreclosure and their relevant statutes

. With nonjudicial foreclosure, it is not necessary to utilize the court for the foreclosure sale unless a deficiency judgment is sought. Nonjudicial foreclosure is often the preferred method of foreclosure because it is more efficient than judicial foreclosure and quicker. The nonjudicial foreclosure procedure has been found constitutional between private parties on the basis that there is no state action

, but there is a serious question as to whether the government can direct a lender to use a nonjudicial procedure

#### B. PROCEDURE FOR RESTRAINING TRUSTEE'S SALE

Anyone having an interest in the real property security, including the borrower, may restrain the non-judicial foreclosure of a deed of trust on any proper ground

. Proper grounds for enjoining a trustee's sale include: (1) there is no default on the obligation, Salot v. Wershow, 157 CA.2d 352, 320 P.2d 926 (1958), (2) the deed of trust has been reinstated, (3) the notice of default, notice of sale, or proposed conduct of the sale is defective, Crummer v. Whitehead, 230 CA.2d 264, 40 CR 826 (1964), (4) the lender has waived the right to foreclose, (5) a workout/settlement has been agreed to, (6) equitable reasons that would entitle a debtor to close a sale of the property or complete a refinance, (7) to enforce government relief programs, and trustee misconduct. Finally, there may be defenses to the debt (i.e. usury, truth in lending violations, misrepresentation of the seller, breach of warranty by the seller, etc.) or set-offs, which substantially reduce the debt.

##### 1. Time for Filing Action

The action can presumably be filed any time before the scheduled trustee's sale, but the sooner the better. Under Washington law, if one seeks to restrain the sale, five days notice must be given to the trustee and the beneficiary. See the Revised Code of Washington (hereinafter "RCW") 61.24.130(2); Note, supra, footnote 4. A trustor in California has at least one hundred and ten days (after the recording of the notice of default) to seek to enjoin the sale. In California, fifteen days are required for noticing a motion for a preliminary injunction. See CCP section 1005.

## 2. Effect of Lis Pendens

Filing a lis pendens at the time the lawsuit is commenced constitutes constructive notice to purchasers and others dealing with the property of the claims and defenses asserted by the plaintiff

. Even if the plaintiff does not seek an order restraining the trustee's sale or a restraining order is denied, purchasers at the sale acquire the property subject to the pending litigation

## 3. Notice of Application for Restraining Order

In Washington, a person seeking to restrain a trustee's sale must give five days notice to the trustee setting forth when, where and before whom the application for the restraining order or injunction will be made. See RCW 61.24.130(2). See also Civil Rules 6 and 81 of the Civil Rules for Superior Court regarding computation of time.

## 4. Payment Obligation

When a preliminary injunction is sought, many states require the petitioner to post an injunction bond to protect the lender from injury because of the injunction

. Some courts require the party seeking the injunctive relief to pay to the court the amount due on the obligation

. If the amount due on the obligation is in dispute, most courts will require the borrower to tender at least what he/she acknowledges is due

.  
Under Washington law, if the default is in making the monthly payment of principal, interest and reserves, the court requires such sum to be paid into the court every thirty days. See RCW 61.24.130(1)(a). A practice tip: even if local law does not require this, it would advantageous to offer to make ongoing payments. Then the creditor loses nothing during the pendency of the suit. In the case of default on a balloon payment, the statute requires that payment of the amount of the monthly interest at the new default rate shall be made to the court clerk every thirty days. See RCW 61.24.130 (1)(b). If the property secured by the deed of trust is an owner occupied single family dwelling, then the court must require the party seeking to restrain the trustee's sale to make the monthly payment of principal interest and reserves to the clerk of the court every 30 days. See RCW 61.24.130(1).

Although the amount that the party seeking to restrain the trustee's sale must pay as a condition of continuing the restraining order would ordinarily be the regular monthly payment on the obligation, RCW 61.24.130(1)(a), when there is a balloon payment past due, RCW 61.24.130(1)(b) provides:

In the case of default in making payments of an obligation then fully payment by its terms, such sum shall be the amount of interest accruing monthly on said obligation at the non-default rate, paid to the clerk of the court every thirty days.

This is consistent with the intent to preserve the status quo while the lawsuit is pending and provide security only for prospective harm.

Failure to seek a restraint may constitute a waiver of all rights to challenge a sale for defects whenever the party who received notice of the right to enjoin the trustee's sale, had actual or constructive knowledge of a defense to foreclosure prior to the sale, and failed to bring an action to enjoin the sale. The doctrine of waiver would thus preclude an action by a party to set aside a completed trustee's sale

. Finally, RCW 61.24.130 allows the court to consider the grantor's equity in determining the amount of security. This would significantly help a borrower avoid a costly bond. An appraisal showing equity should persuade a court that the lender is protected while the underlying dispute is resolved in court.

When a party knew or should have known that they might have a cause of action to set aside the sale but unreasonably delayed commencing the action, causing damage to the defendant, the doctrine of laches may bar the action

#### C. DEFENSES BASED ON TRUSTEE MISCONDUCT

Most defenses that are available in judicial foreclosures are also available in nonjudicial foreclosures of deeds of trust. Defenses may include violation of Truth-in-Lending, usury statutes, other consumer protection legislation, or special requirements when the government is the lender, insurer, or guarantor, *infra*. Other defenses are unique to nonjudicial foreclosure of deeds of trust because they relate to the particular obligations imposed upon trustees who conduct the sale of the real property.

##### 1. Breach of Fiduciary Duties



A trustee selling property at a nonjudicial foreclosure sale has strict obligations imposed by law. In most states, "a trustee is treated as a fiduciary for both the borrower and the lender."

In McPherson v. Purdue, 21 Wn. App. 450, 452-3, 585 P.2d 830 (1978), the court approved the following statement describing the duties of a trustee from California law:

Among those duties is that of bringing "the property to the hammer under every possible advantage to his cestui que trusts," using all reasonable diligence to obtain the best price.

In Cox v. Helenius, 103 Wn.2d 383, 388, 693 P.2d 683 (1985), the Washington Supreme Court adopted the following view:

Because the deed of trust foreclosure process is conducted without review or confrontation by a court, the fiduciary duty imposed upon the trustee is "exceedingly high".

The court went on to illuminate four duties of the trustee:

- (1) The trustee is bound by his office to use diligence in presenting the sale under every possible advantage to the debtor as well as the creditor;
- (2) The trustee must take reasonable and appropriate steps to avoid sacrifice of the debtor's property and his interest;
- (3) Once a course of conduct is undertaken that is reasonably calculated to instill a sense of reliance thereon by the grantor, that course of conduct can not be abandoned without notice to the grantor; and
- (4) When an actual conflict of interest arises between the roles of attorney for the beneficiary and trustee, the attorney should withdraw from one position, thus preventing a breach of fiduciary duty.

In Blodgett v. Martsch, 590 P.2d 298 (UT 1978), it was stated that "the duty of the trustee under a trust deed is greater than the mere obligation to sell the pledged property, . . . it is a duty to treat the trustor fairly and in accordance with a high punctilio of honor." The Supreme Court in Blodgett went even further and found that the breach of this confidential duty may be regarded as constructive fraud

The general rule is summarized in Nelson & Whitman, Real Estate Finance Law, (West Publishing Co., 3d Ed. 1994), §7.21:

. . . a trustee in a deed of trust is a fiduciary for both the mortgagor and mortgagee and must act impartially between them. As one leading decision has stated, "the trustee for sale is bound by his office to bring the estate to a sale under every possible advantage to the debtor as well as to the creditor, and he is bound to use not only good faith but also every requisite degree of diligence in conducting the sale and to attend equally to the interest of debtor and creditor alike, apprising both of the intention of selling, that each may take the means to procure an advantageous sale."

Mills v. Mutual Building & Loan Association, 216 N.C. 664, 669, 6 S.E.2d 549, 554 (1940).

The fiduciary duty of a trustee to obtain the best possible price for trust property that it sells has been discussed in nonjudicial and other contexts

However, this "fiduciary" characterization of a trustee is not accepted in all jurisdictions. The California Supreme Court has stated,

"The similarities between a trustee of an express trust and a trustee under a deed of trust end with the name. 'Just as a panda is not a true bear, a trustee of a deed of trust is not a true trustee.' \*\*\* [T]he trustee under a deed of trust does not have a true trustee's interest in, and control over, the trust property. Nor is it bound by the fiduciary duties that characterize a true trustee."

Monterey S.P. Partnership v. W.L. Bangham, Inc. 49 Cal.3d 454, 462, 261 Cal.Rptr. 587,592 (1989).

In most jurisdictions, a trustee cannot, without the express consent of the trustor, purchase at the sale that he conducts

. A court may impose additional affirmative duties (beyond the statutory requirements) upon the trustee in certain circumstances. This could include a requirement that a trustee's sale be continued, if necessary, to prevent a total loss of the debtor's equity. West v. Axtell, 322 Mo. 401, 17 S.W.2d 328 (1929). RCW 61.24.040(6) authorizes a trustee to continue a trustee's sale for a period or periods totaling 120 days for "any cause he deems advantageous."

However, the Washington Court of Appeals has ruled that the trustee need not exercise "due diligence" in notifying interested parties of an impending sale. Morrell v. Arctic Trading Co., 21 Wn. App. 302, 584 P.2d 983 (1978). Further, the general rule is that a trustee is not obligated to disclose liens or other interests which the purchaser could or should have discovered through his or her own investigation. Ivrey v. Karr, 182 Md. 463, 34 A.2d 847, 852 (1943). The Washington courts have held that even when a trustee is aware of defects in title, the trustee only undertakes an affirmative duty of full and accurate disclosure if s/he has made any representations or answered any questions concerning the title. McPherson v. Purdue, 21 Wn. App. 450, 453, 585 P.2d 830 (1978). However, despite this general rule, there is authority behind the proposition that a trustee has a fiduciary duty to restrain the sale due to defects known to the trustee. In Cox v. Helenius, 103 Wn.2d 383,\*,693 P.2d 683 (1985), in which the trustee knew that the right

to foreclose was disputed and that the attorney for the trustor had failed to restrain the sale, the court held that the trustee should have either informed the attorney for the trustor that she had failed to properly restrain the sale or delayed foreclosure. As a result of the trustee's failure to do so, the sale was held void.

Trustees are not permitted to "chill the bidding" by making statements which would discourage bidding, for example, a statement that it is unlikely that the sale will be held because the debtor intends to reinstate

. If a trustee does engage in "chilled bidding", the sale is subject to being set aside

## 2. Strict Construction of the Deed of Trust Statute

The nonjudicial foreclosure process is intended to be inexpensive and efficient while providing an adequate opportunity for preventing wrongful foreclosures and promoting the stability of land titles

. However, statutes allowing foreclosure under a power of sale contained within the trust deed or mortgage are usually strictly construed. Id. at 509.

Recent decisions have moved away from the strict construction ruling, holding that some technical violations of statutes governing nonjudicial foreclosures will not serve as grounds for setting aside sale when the error was non-prejudicial and correctable. See Koegal, supra at 113. An example of a non-prejudicial and correctable error is noncompliance with the requirement that the trustee record the notice of sale 90-days prior to the actual sale when actual notice of the sale was given to the debtors 90-days prior to the sale and the lack of recording caused no harm. Steward, supra at 515.

Further, inconsequential defects often involve minor discrepancies regarding the notice of sale. In Bailey v. Pioneer Federal Savings and Loan Association, 210 Va. 558, 172 S.E.2d 730 (1970), where the first of four published notices omitted the place of the sale, the court held that since there was "substantial compliance" with the requirements specified by the deed of trust and since the parties were not affected in a "material way," the sale was valid

. In another case, where the notice of sale was sent by regular rather than by statutorily required certified or registered mail and the mortgagor had actual notice of the sale for more than the statutory period prior to the sale, the sale was deemed valid

. Clearly a grantor must show some prejudice.

#### D. POST-SALE REMEDIES

##### 1. Statutory Presumptions

The Washington Deed of Trust Act contains statutory presumptions in connection with a trustee's sale that are similar to those found in most other states.

RCW 61.24.040(7) provides, in part:

. . . the [trustee's] deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value.

Such provisions are designed to protect bona fide purchasers and to assure that the title passed through a trustee's sale will be readily insurable. However, although the required recitals are described as "conclusive" in favor of bona fide purchasers and encumbrancers for value, there is extensive case law setting forth the basis for rebutting these presumptions. They also don't apply to a dispute between the grantor and grantee.

See, generally, Nelson & Whitman, Real Estate Finance Law, (2d ed. 1985) § 7.21 ff. Some states employ other means of stabilizing titles, such as title insurance. Yet another means of stabilizing titles is to include a provision in the deed of trust that in the event of a trustee's sale, the recital will be conclusive proof of the facts. See, Johnson v. Johnson, 25 Wn. 2d 797 (1946); Glidden v. Municipal Authority, 111 Wn. 2d 341 (1988), modified By Glidden v. Municipal Authority, 764 P.2d 647 (1988).

## 2. The Bona Fide Purchaser

The law is well settled that a bona fide purchaser, in order to achieve that status, must have purchased the property "for value." See RCW 61.24.040(7).

The general rule is set forth in Phillips v. Latham, 523 S.W.2d 19, 24 (Tex. 1975):

[The purchaser] cannot claim to be a good-faith purchaser for value because the jury found . . . that the sale price of \$691.43 was grossly inadequate. These findings are not attacked for lack of evidence. Although good faith does not necessarily require payment of the full value of the property, a purchaser who pays a grossly inadequate price cannot be considered a good-faith purchaser for value.

Further, if a lis pendens has been recorded, it "will cause the purchaser to take subject to the plaintiff's claims." Bernhardt, California Mortgage & Deed of Trust Practice (2d Edition 1990). A purchaser will not then constitute a bona fide purchaser able to utilize the presumptions of regularity in recitals of the trustee's deed. See CC § 2924. The beneficiary of a deed of trust is not a bona fide purchaser. See Johnson, *supra*.

## E. SETTING ASIDE THE TRUSTEE'S SALE

Setting aside a trustee's sale is largely a matter for the trial court's discretion. Crummer v. Whitehead, 230 Cal. App. 2d 264, 40 Cal. Rptr. 826 (1964); Brown v.

Busch, 152 Ca. App. 2d 200, 313 P.2d 19 (1957). After a trustee's sale has taken place, a trustor or junior lienor may bring an action in equity to set aside the sale. See Crummer v. Whitehead, 230 Cal. App. 2d 264, 40 Cal. Rptr. 826 (1964); see also Note, "Court Actions Contesting The Nonjudicial Foreclosure of Deeds of Trust In Washington," 59 Wash.L.Rev. 323 (1984)

An action may be brought to set aside a trustee's sale under circumstances where the trustee's sale is void. Cox v. Helenius, 103 Wn.2d 383, 693 P.2d 683 (1985). In those circumstances where the defect in the trustee's sale procedure does not render the trustee's sale void, the court will probably apply equitable principles in deciding what relief, if any, is available to the parties. A general discussion of equitable principles in contexts other than trustee's sale can be found in Eastlake Community Council v. Roanoake Associates, 82 Wn.2d 475, 513 P.2d 36 (1973) and Arnold v. Melani, 75 Wn.2d 143, 437 P.2d 908 (1968). Although it is preferable to raise any defenses to the obligations secured by the deed of trust or other defects in the nonjudicial foreclosure process prior to the trustee's sale, a trustee's sale can presumably be set aside if there was a good reason for not restraining it. Possible reasons could include those described below.

1. Breach of the Trustee's Duty

- a. Inadequate Sale Price

The general rule on using inadequate sale price to set aside a deed of trust sale is stated in Nelson & Whitman, *supra*, § 7.21:

All jurisdictions adhere to the recognized rule that mere

inadequacy of the foreclosure sale price will not invalidate a sale, absent fraud, unfairness, or other irregularity. Stating the rule in a slightly different manner, courts sometimes say that inadequacy of the sale price is an insufficient ground unless it is so gross as to shock the conscience of the court, warranting an inference of fraud or imposition

In Cox v. Helenius, supra, at p. 388, the court indicated that the inadequate sale price coupled with the trustee's actions, would have resulted in a void sale, even if not restrained.

Generally, unless the sale price is grossly inadequate, other irregularities or unfairness must exist. However, considerable authority exists to support setting aside a sale when, coupled with an inadequate sale price, there is any other reason warranting equitable relief. Nelson & Whitman, Real Estate Finance Law, supra.

b. Hostility or Indifference to Rights of Debtor.

In Dingus, supra, at 289, it is stated:

In an action to set aside a foreclosure sale under a deed of trust, evidence showing that the trustee was hostile and wholly indifferent to any right of the mortgagor warrants setting aside the sale. Lunsford v. Davis, 254 S.W. 878 (Mo. 1923).

CF. Cox v. Helenius, supra.

c. Other Trustee Misconduct

Other trustee misconduct that would give rise to grounds for setting aside a trustee's sale could include "chilled bidding" where the trustee acts in a manner that discourages other parties from bidding on the property

. Actions by the trustee which lull the debtor into inaction may also give rise to grounds for avoiding the sale



. Particular note should also be made of the discussion in Cox v. Helenius, *supra*, at p.390 in which trustees who serve a dual role as trustee and attorney for the beneficiary are directed to transfer one role to another person where an actual conflict of interest arises.

## 2. Absence of Other Foreclosure Requisites

RCW 61.24.030 sets forth the requisites to non-judicial foreclosure. Failure to meet these requisites may render the trustee's sale void. In Cox v. Helenius, 103 Wn.2d 383, 693 P.2d 683 (1985), the court concluded that a trustee's sale was void under circumstances where the borrower had filed an action contesting the obligation and that action was pending at the time of the trustee's sale. The action was filed after service of the notice of default but before service of the notice of foreclosure and trustee's sale.

The decision in Cox was based on language in the Deed of Trust Act that made it a requisite to foreclosure that "no action is pending on an obligation secured by the deed of trust." That part of the Cox decision was legislative overruled by Chapter 193, Law of 1985, Reg. Sess., which amended RCW 61.24.030(4) to read as follows:

That no action commenced by the beneficiary of the deed of trust is now pending to seek satisfaction of an obligation secured by the deed of trust in any court by reason of the grantor's default on the obligation secured;

As a result of the amendment, pendency of an action on the obligation brought by the grantor does not render a subsequent trustee's sale void. Only pending actions commenced by the beneficiary to seek satisfaction of the obligation secured by the deed of trust operate as a bar to nonjudicial foreclosure. The trustee must be properly appointed and be appointed before the trustee has authority to act. When an eager trustee "jumps the gun" the actions are equally void.

## F. ADDITIONAL STATUTORY REMEDIES

### 1. Confirmation of Sale Price.

Many states (but not Washington) require confirmation that the nonjudicial sale resulted in a fair value to the debtor. Below is listed the states that have adopted fair market value statutes

. Fair market value statutes are usually used to limit deficiency judgments to the difference between the fair market value and the debt. Failure to confirm the sale within the statutory period is usually a bar to a deficiency. For example, in Georgia the court must be petitioned for a confirmation of the sale if a deficiency judgment is sought.

### 2. Redemption in Nonjudicial Foreclosures.

Approximately one-half of the states allow for redemption after foreclosure, although not Washington. Some states allow redemption after a nonjudicial sale. See Minnesota Statutes Annotated § 580 et seq. Generally, the grantor can remain in possession during the redemption period, rent the property (retaining the rents) and/or sell the property (or sell the redemption rights).

## G. RAISING DEFENSES IN THE UNLAWFUL DETAINER (EVICTION) ACTION

In Washington, RCW 61.24.060 specifies that the purchaser at a trustee's sale is entitled to possession of the property on the 20th day following the sale. If the grantor or person claiming through the grantor refuses to vacate the property, the purchaser is entitled to bring an action to recover possession of the property pursuant to the unlawful detainer statute, RCW 59.12. Ordinarily, parties in possession will not be allowed to raise some defenses in the unlawful detainer action that could have been raised prior to the trustee's

sale

. In most states defenses in an eviction action are severely limited. Despite these early cases restricting defenses in unlawful detainer, e.g. Peoples National Bank v. Olander, 6 Wn. App. 28 (1971), a more recent case, Cox v. Helenius, 103 Wash. 2d 208 (1985), allowed defenses to be raised that the sale was void because of defects in the foreclosure process itself. In fact, Cox v. Helenius was initially a unlawful detainer action in the King County Superior Court. In Savings Bank of Puget Sound v. Mink, 49 Wn. App. 204 (1987), Division One of the Court of Appeals, held that a number of defenses raised by the appellant (Truth-in-Lending violations, infliction of emotional distress, defamation, slander, etc.) were *not* properly assertable in an unlawful detainer action but ruled that:

However, in *Cox v. Helenius, supra*, the Supreme Court recognized that there may be circumstances surrounding the foreclosure process that will void the sale and thus destroy any right to possession in the purchaser at the sale. In *Cox*, the Court recognized two bases for post sale relief: defects in the foreclosure process itself, i.e., failure to observe the statutory prescriptions and the existence of an actual conflict of interest on the part of the trustee...

**B. The Deed of Trust Act must be construed strictly against lenders and in favor of borrowers.**

Washington law is similarly clear that the Deed of Trust Act, being non-judicial in nature and without the scrutiny by courts until the unlawful detainer stage, is strictly construed against lenders and in favor of borrowers. Queen City Savings and Loan v. Mannhalt, 111

In order to avoid the jurisdictional and other problems that arise when trying to litigate claims in the unlawful detainer action, it is recommended that a separate action be filed to set aside the trustee's sale and that the two actions be consolidated.

#### H. DAMAGES FOR WRONGFUL FORECLOSURE

There is a damage claim for the tort of wrongful foreclosure. The claim may also exist as a breach of contract claim. See, Theis v. Federal Finance Co., 4 Wn. App. 146 (1971); Cox v. Helenius, *supra*.

### III. DEFENDING JUDICIAL FORECLOSURES

#### A. INTRODUCTION

The same range of defenses is generally available to the borrower in both nonjudicial and judicial foreclosures. Defenses may include fraud or misrepresentation, violations of Truth-in-Lending, violations of usury statutes, violations of other consumer protection acts, or failure to comply with applicable regulations when the government is the lender, insurer, or guarantor. Other defenses, however, are unique to judicial foreclosures and must be raised affirmatively. Most rights are set forth in statutes and they must be asserted in compliance with the particular requirements of the law. The judicial foreclosure statutes are set forth below

.

#### B. HOMESTEAD RIGHTS

If the plaintiff's complaint seeks possession of the property at the sheriff's sale and the homeowner wishes to remain on the premises during the redemption period, then the homeowner should plead the existence of homestead rights in the answer so as not to waive them. State, ex rel., O'Brien v. Superior Court, 173 Wash. 679, 24 P.2d 117 (1933); State, ex rel., White v. Douglas, 6 Wn.2d 356, 107 P.2d 593 (1940).

#### C. UPSET PRICE

Some states authorize the court to establish an upset price (or minimum bid

amount) in a foreclosure sale. In Washington, RCW 61.12.060 authorizes the court where a deficiency is sought, in ordering a sheriff's sale, to take judicial notice of economic conditions and, after a proper hearing, fix a minimum or upset price for which the mortgaged premises must be sold before the sale will be confirmed. If a depressed real estate market justifies seeking an upset price, then the mortgagor should request in the answer that one be set. See, McClure v. Delguzzi, 53 Wn. App. 404 (1989). Some states give this power to the courts with any sale without reference to any other valuation method. See e.g. Kan. Stat. §60-2415(b) (1988); Mich. Comp. Laws Ann. §600.3155 (1919). The court has great discretion in arriving at and setting an upset price if the statute fails to specify the method to be used in calculating the price. There is always the danger that in the absence of statutory standards, the power to set the upset price will be abused

#### D. DEFICIENCY JUDGMENTS

A deficiency judgment results when the amount for which the property is sold at the sheriff's sale is less than the amount of the judgment entered in the foreclosure action. A deficiency judgment in connection with a foreclosure is enforceable like any other money judgment. If the mortgage or other instrument contains an express agreement for the payment of money, then the lender may seek a deficiency judgment. See RCW 61.12.070. In Thompson v. Smith, 58 Wn. App. 361 (1990), Division I, held the acceptance of a deed in lieu of foreclosure triggers the anti-deficiency provisions of the Deed of Trust Act, 61.24.100. The procedural requirements for obtaining a deficiency judgment vary, but must be strictly adhered to or the right will be lost. In general, an

action must be brought within a statutorily set amount of time following the foreclosure sale. For example, California Civ. Proc. Code § 726 (Supp. 1984) (three months); N.Y. Real Prop. Acts. Law § 1371 (2) (McKinney 1979) (ninety days); and Pennsylvania Stat. Ann. tit. 12, section 2621.7 (1967) (six months). Many states also have time limits for the completion of the execution of a deficiency. Maryland Rules, Rule W75 (b)(3) (1984) (three years); and Ohio Rev. Code Ann. § 2329.08 (Anderson 1981) (two years on land with dwelling for two families or less or used as a farm dwelling). Some states have longer redemption periods when a deficiency is sought. e.g. Wisconsin (6-12 months); Washington (8-12 months).

#### E. REDEMPTION RIGHTS

Approximately one-half of the states have statutes that give a borrower the right to redeem the property after the foreclosure sale. This right has specific statutory time limits. The time period for redemption varies from thirty days to three years after the foreclosure sale. Strict compliance with the statutory requirements is mandatory.

Under Washington law, if the lender seeks a deficiency judgment or if the mortgage does not contain a clause that the property is not for agricultural purposes, then the redemption period is one year from the date of the sheriff's sale. See RCW 6.23.020.

If the lender does not seek a deficiency judgment and the mortgage contains a clause that the property is not being used for agricultural purposes, then the redemption period is eight months. Id.

There is no statutory redemption period if there is a structure on the land and the court finds that the property has been abandoned for six months prior to the decree of foreclosure. See RCW 61.12.093. This section is not applicable to property that is used

primarily for agricultural purposes. RCW 61.12.095.

The purchaser at the sheriff's sale, or the purchaser's assignee, must send notice to the judgment debtor every two months that the redemption period is expiring. Failure to give any of the notices in the manner and containing the information required by statute will operate to extend the redemption period. RCW 6.23.080.

Any party seeking to redeem must give the sheriff at least five days written notice of the intention to apply to the sheriff for that purpose. RCW 6.23.080(1). The amount necessary to redeem is the amount of the bid at the sheriff's sale, interest thereon at the rate provided in the judgment to the time of redemption, any assessment or taxes which the purchaser has paid after circumstances, other sums that were paid on prior liens or obligations. RCW 6.23.020.

Redemption rights are freely alienable and a property owner can sell the homestead during the redemption period free of judgment liens. Great Northwest Federal Savings and Loan Association v. T.B. and R.F. Jones, Inc., 23 Wn. App. 55, 596 P.2d 1059 (1979). This is an important right and is often overlooked. For example, in VA loans the sale price is very low because the VA deducts its anticipated costs of holding and resale. Therefore, the property can be redeemed for that amount. There, lenders routinely advise debtors to move out at the beginning of the period, which they do not legally have to do.

The debtor can sometimes rent the property and the rents retained during the redemption period.

#### F. POSSESSION AFTER SALE

If the homeowner exercises his redemption rights and there is a purchaser in

possession, then the homeowner can apply for a writ of assistance to secure possession of the property anytime before the expiration of the redemption period. If the homeowner has no right to claim a homestead or is not occupying the property as a homestead during redemption period, then the lender can apply for a writ of assistance at the time of the foreclosure decree to obtain possession of the property. A writ of assistance is similar to a writ of restitution and is executed by the sheriff. The purchaser at the sheriff's sale normally has no right to possession until after receipt of a sheriff's deed

#### G. POST FORECLOSURE RELIEF

A foreclosure can be vacated under rules allowing vacating judgments, e.g. F.R.Civ.P. 60(b); See also Godsden & Farba, Under What Circumstances Can a Foreclosure Sale be Set Aside Under New York Law, New York State Bar Journal (May 1993).

### IV. MISCELLANEOUS ISSUES

#### A. BANKRUPTCY

Bankruptcy has a significant impact on real estate foreclosures and is beyond the scope of this outline. Under section 362 (a) of the Bankruptcy Code, filing any of the three types of bankruptcy stays all foreclosure proceedings. See 11 U.S.C.A. § 362 (a)(4); Murphy, The Automatic Stay in Bankruptcy, 34 Clev.St.L.Rev. 597 (1986). A stay has been held to apply to a possessory interest after foreclosure to allow a challenge to the validity of the foreclosure in an adversary action in bankruptcy court. In re Campos, No. 93-04719 (W.D. WN-B.Ct, Order of July 9, 1993). The stay applies to both judicial and nonjudicial foreclosures and it also applies whether or not the foreclosure was begun



before the bankruptcy. See 11 U.S.C.A. § 362 (a). The only notable exception to the automatic stay is for foreclosures brought by the Secretary of HUD on federally insured mortgages for real estate involving five or more units. See 11 U.S.C.A. § 362 (b)(8).

A trustee in a bankruptcy may also undo a foreclosure as a fraudulent transfer if a creditor gets a windfall. See II U.S.C. §547 and §548, within 90 days or within one year if an "insider" forecloses

A portion of the equity under state or federal law may be protected from creditors, although not from secured creditors.

#### B. WORKOUTS (DEED IN LIEU)

A deed is sometimes given by a mortgagor in lieu of foreclosure and in satisfaction of a mortgage debt. Such a workout "is subject to close scrutiny in an effort to determine whether it was voluntarily entered into on the part of the mortgagor under conditions free of undue influence, oppression, unfairness or unconscientious advantage. Further the burden of proving the fairness rests with the mortgagee." Robar v. Ellingson, 301 N.W.2d 653, 657-658 (N.D.1981) (insufficient threshold evidence of oppression or unfairness to trigger mortgagee's burden of proof). Courts also tend to find the deed in lieu of foreclosure to be another mortgage transaction in the form of an absolute deed. Peugh v. Davis, 96 U.S. (6 Otto) 332, 24 L.Ed. 775 (1877). See also, Noelker v. Wehmeyer, 392 S.W.2d 409 (Mo.App.1965). When a mortgagee takes a deed in lieu there is the possibility that the conveyance will be avoided under bankruptcy laws. It should be noted that if other liens have been created against a property after the time of the original mortgage, the deed in lieu will not cut off those liens. See Note, 31

Mo.L.Rev. 312, 314 (1966). A deed in lieu should contain a comprehensive agreement regarding any deficiency claims, etc.

### C. LENDER LIABILITY

It is possible to use theories of lender liability to assist in successfully negotiating a workout, or an avoidance of foreclosure. This principally occurs in commercial foreclosures but there are some strategies that apply to the residential setting. This may involve persuading the lender that failing to reach a workout agreement may result in a claim against the lender, absolving the borrower from liability on the loan and/or granting an affirmative judgment against the lender. Some of the useful theories of lender liability are breach of agreement to lend, breach of loan agreement, failure to renew term note/wrongful termination, promissory estoppel, lender interference, and negligent loan management. Some of the common law defenses for a borrower are fraud, duress, usury and negligence. Further, because banks are so closely regulated, a borrower should also explore statutory violations. For a detailed treatment of workouts, see Dunaway, supra, (Vol. 1, Chapter 4B)

### D. MOBILE HOME FORECLOSURES

Generally, mobile homes are repossessed under Article 9-503 of the Uniform Commercial Code, and are beyond the scope of this outline. Many states limit deficiencies in purchase money security agreements and/or allow reinstatement. There are many abuses in the sales of mobile homes and the various consumer protection laws (and usury laws) provide a fertile source of potential defenses. See generally, Unfair and Deceptive Practices, National Consumer Law Center (2nd ed.), paragraph 5.4.8.

### E. TAX CONSEQUENCES OF FORECLOSURE

Although beyond the scope of this outline, there are tax consequences when property is foreclosed, particularly in commercial transactions.

First, a foreclosure or deed in lieu of foreclosure is treated as a sale or exchange. Treas. Rep. 1-001-2; Rev. Ruling 73-36, 1973-1 CB 372. The amount realized (gained) is the greater of the sales proceeds or the debt satisfied. Parker v. Delaney, 186 F.2d 455 (1st Cir. 1950). When debt is cancelled (such as by an anti-deficiency statute), a gain may be generated. IRS Code §61(a).

Second, when home equity debt plus purchase debts exceeds the value of the property, a taxable gain can be generated. Finally, if the debtor is "insolvent" when the foreclosure occurs, §108(a)(1)(A) of the IRS Code excludes income (gain) to the extent the debtor is insolvent. This is complicated and a tax expert should be consulted to analyze any potential tax bite upon foreclosure. See generally, Dunaway, supra, for a detailed analysis of the tax consequences of foreclosure.

## V. THE GOVERNMENT AS INSURER, GUARANTOR OR LENDER

### A. INTRODUCTION

There are a variety of federal home ownership programs that may provide special protections for homeowners who are faced with the prospect of foreclosure. These protections generally apply regardless of whether the security divide used is a mortgage or deed of trust. The programs range from home loans insured by the Department of Housing and Urban Development (HUD) or guaranteed by the Veteran's Administration (VA) to programs such as the Farmer's Home Administration (FmHA) home ownership

program where the government acts as a direct lender. The procedures which must be followed by loan servicers and applicable governmental agencies are described below. Also, Fannie Mae published in 1997 a Foreclosure Manual for loan services, which outlines various workouts and other loss mitigation procedures.

When the government controls the loan (or the lender) its actions are subject to the protection of the due process provision of the Fifth Amendment to the U.S. Constitution

. This calls into question the use of nonjudicial foreclosure as there is no opportunity to be heard and notice is usually deficient or, at best, minimal.

#### B. HUD WORKOUT OPTIONS

##### 1. Applicability

Homeowners who have a HUD insured mortgage or deed of trust may be eligible for relief through the HUD foreclosure prevention program. HUD regulations also require that lenders meet certain servicing responsibilities before proceeding with foreclosure. Regulations for loss mitigation are found at 24 C.F.R. Sec. 203.605.

##### 2. Procedure when the Homeowner is in Default

###### a. Delinquency Required for Foreclosure.

The servicer shall not turn the action over for foreclosure until at least three full monthly payments are unpaid after application of any partial payments. 24 C.F.R. Sec. 203. The servicer is required to send a HUD brochure on avoiding foreclosure to the borrower informing them of their right to seek various alternatives to foreclosure.

The servicer must allow reinstatement even after foreclosure has been

started if the homeowner tenders all amounts to bring the account current, including costs and attorney fees. 24 C.F.R. Sec. 203.

b. Forbearance Relief.

The homeowner may be eligible for special forbearance relief if it is found that the default was due to circumstances beyond the homeowners' control. 24 C.F.R. Sec. 203. The homeowner and the lender are authorized to enter into a forbearance agreement providing for:

- i. Increase, reduction, or suspension of regular payments for a specified period;
- ii. Resumption of regular payments after expiration of the forbearance period;
- iii. Arrangements for payment of the delinquent amount before the maturity date of the mortgage or at a subsequent date.

Suspension or reduction or payments shall not exceed 18 months under these special forbearance relief provisions.

c. Recasting of Mortgage.

HUD has the authority to approve a recasting agreement to extend the term of the mortgage and reduce the monthly payments. 24 C.F.R. Sec. 203.

HUD's actions may be declared unlawful and set aside if the court finds it to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See Federal National Mortgage Association v. Rathgens, 595 F. Supp. 552 (S.D. Ohio 1984); Butler v. Secretary of Housing and Urban Development, 595 F. Supp. 1041 (E.D. Pa. 1984). See, generally, Ferrell v. Pierce, 560 F. Supp. 1344 (N.D. Ill. 1983).

In Brown v. Kemp, 714 F. Supp. 445 (W.D. Wash. 1989) the court

found HUD's decision for an assignment program application to be informal agency action and thus reviewable under the "arbitrary" and "capricious" standard.

Failure to follow servicing requirements or comply with the HUD assignment regulations or handbook provisions may also constitute an equitable defense to foreclosure

### C. THE VA HOME LOAN PROGRAM

#### 1. Applicability

Homeowners who have a VA guaranteed mortgage or deed of trust may be eligible for relief through a VA recommended forbearance program or "refunding" of the loan. Regulations promulgated at 38 C.F.R. Sec. 36.4300, et seq., and VA servicing handbooks establish a policy of forbearance when a loan is in default. The VA is reluctant to enforce these regulations against lenders.

#### 2. Forbearance Relief

Lenders are officially encouraged to grant forbearance relief for mortgagors who default on their loans due to circumstances beyond their control. Lender's Handbook, VA Pamphlet No. 26-7 (Revised) and VA Manual 26-3. These rights should be pursued with the lender immediately.

#### 3. Refunding Loans

The Veteran's Administration is authorized to "refund" loans when borrowers meet certain criteria. Refunding the loan is when the VA pays the lender in full and takes an assignment of the loan and security in cases where the loan is in default. The VA then

owns the loan and the veteran makes payments to the VA directly. Although 38 C.F.R. Sec. 36.4318 authorize refunding, the regulations are much more vague than those promulgated in connection with the HUD assignment program.

#### 4. Judicial Review

The VA decision to deny assignment of a VA loan is committed to agency discretion within the meaning of the federal Administrative Procedures Act, 5 U.S.C. Sec. 701(a)(2), and is not reviewable. Rank v. Nimmo, 677 F.2d 692 (9th Cir. 1982).

The courts have ruled that a borrower has no express or implied right of action in federal court to enforce duties, which VA or lenders might have under VA publications with respect to forbearance assistance. See, Rank v. Nimmo, *supra*; Gatter v. Nimmo, 672 P.2d 343 (3rd Cir. 1982); Simpson v. Cleland, 640 F.2d 1354 (D.C. Cir. 1981). But, see, Union National Bank v. Cobbs, 567 A.2d 719 (1989) (failure to follow VA Handbook an equitable defense).

Failure to follow VA publications, however, may be an equitable defense to foreclosure under state law. See, Simpson v. Cleland, *supra*.

#### 5. Waiver of Debt/Release of Liability

Federal statutes, VA regulations and guidelines require the VA to waive a deficiency (or indemnity) debt, after a foreclosure, when equity and good conscience require it. 38 C.F.R. §1.965(a)(3). The VA is reluctant to follow its own regulations and must be pressed. The Court of Veterans Appeals (CVA) reverses over 50% of denial of waivers - an astonishing measure of the VA's failure to follow clear federal law! See The Veterans Advocate, Vol. 5, No. 10, P. 93 (June 1994). The VA urged its regional offices to avoid CVA rulings until forced to retract this directive. See The Veterans Advocate,

supra. The VA also ignores the six-year statute of limitations when demanding payment. 28 U.S.C. 2415.

Secondly, the VA can determine that the claimed debt is invalid, such as when the veteran is eligible for a retroactive release of liability. This occurs when the VA would have released the veterans when the property was sold to a qualifying purchaser who assumes the debt. 38 U.S.C. 3713(b); Travelstead v. Derwinski, 978 F.2d 1244 (Fed. Cir. 1992).

The VA has the burden to determine whether the veteran should be released.

#### 6. Deficiency Judgments and VA Loans

It is the policy of VA to order an appraisal prior to a judicial or nonjudicial foreclosure sale and to instruct the lender to bid the amount of the appraisal at the sale. This “appraisal” is always below fair market value and includes the VA's anticipated costs of holding and liquidating the property. 38 U.S.C. 3732(c); 38 C.F.R. §36.4320. Ordinarily, on pre-1989 laws, VA will not waive its right to seek a deficiency judgment in a judicial foreclosure and will reserve its right to seek a deficiency against a borrower, even in the case of a nonjudicial foreclosure of a deed of trust, notwithstanding the anti-deficiency language of RCW 61.24.100. On loans made after 1989 changes in the VA program, deficiencies are not sought.

Although, United States v. Shimer, 367 U.S. 374 (1960) appears to authorize this VA deficiency policy, the Washington non-judicial deed of trust foreclosure procedure which retains judicial foreclosure and preservation of the right to seek a deficiency judgment as an option, seems to make United States v. Shimer, distinguishable.

In United States v. Vallejo, 660 F. Supp. 535 (1987), the court held that the VA



must follow Washington foreclosure law, including the anti-deficiency provisions of the Deed of Trust Act as the "federal common law". This ruling was subsequently followed in a class action, Whitehead v. Derwinski, 904 F.2d 1362 (9th Cir. 1990), wherein the VA has been permanently enjoined from collecting \$63 million in claims and ordered to repay millions in illegally collected deficiencies. This issue of the application of various state laws as to federally insured loans is not clear, as the Ninth Circuit overruled Whitehead in Carter v. Derwinski, 987 F.2d 611 (9th Cir. - en banc - 1993). Subsequent decisions still create doubt as to whether United States v. Shimer, supra, is still good law

At the very least, if the lender is instructed by the VA to preserve the right to seek a deficiency against the borrower, then the lender should be required to foreclose the deed of trust judicially as a mortgage.

#### D. RURAL HOUSING SECTION 502 LOANS

##### 1. Applicability

The Rural Housing Service (RHS) formerly, the Farmer's Home Administration, is authorized to grant interest credit and provide moratorium relief for homeowners who fall behind on their loan payments due to circumstances beyond their control. Regulations for moratorium relief and interest credit are found at 7 C.F.R. Sec. 3550 et seq and must be complied with prior to foreclosure. United States v. Rodriguez, 453 F. Supp. 21 (E.D. Wn. 1978). See, 42 U.S.C. §1472. All servicing of RHS loans is handled at the Centralized Servicing Center in St. Louis, MO (phone: 1-800-793-8861).

##### 2. Interest Credit

If a homeowner falls behind on his RHS loan because of circumstances beyond

his or her control, then RHS has the authority to accept principal only and waive the interest payments. Although RHS is supposed to use this remedy before considering moratorium relief, it rarely does.

### 3. Moratorium Relief

If a homeowner falls behind in loan payments because of circumstances beyond his or her control, RHS may suspend payments or reduce payments for six months. Moratorium relief may be extended for additional six-month segments up to a total of three years

Once a homeowner has been granted moratorium relief, RHS cannot grant it again for five years. If a homeowner cannot resume payments in three years from when moratorium relief began, then it will begin foreclosure proceedings.

After moratorium relief has been extended, the homeowner can make additional partial payments to catch up the delinquent amount or, the loan can be reamortized. RHS will restructure the loan, 7 U.S.C. 2001.

### 4. Waiver of Redemption and Homestead Rights

Form mortgages used by RHS purported to waive the homeowner's redemption rights and homestead rights in the event of foreclosure. It is questionable whether such a waiver is enforceable

### 5. Homestead Protection

See, 7 U.S.C. 2000.

### 6. Lease/Buy-Back

See, 7 U.S.C. 1985 (e).

## VI. RESOURCES

The following treatises are excellent sources of basic information about all aspects of the foreclosure process. Dunaway, The Law of Distressed Property (4 volumes - Clark Boardman Co. 1994 and suppl.; Nelson & Whitman, Real Estate Finance Law (West 3rd Ed. 1994); Bernhardt, California Mortgages and Deed of Trust Practice, (3rd ed. 2000 University of Calif.), Repossessions and Foreclosures (4th ed. 2000) National Consumer Law Center. See also, Fuchs, Defending Non-Judicial Residential Foreclosures, Texas Bar J (November 1984).

#### 4.9 File Your Own Lawsuit Against Them

The following is a 2003 lawsuit filed in Federal court against an attorney representing a creditor who violated the due process right of the debtor by not furnishing a "dunning letter" per the Fair Debt Collection Practices Act. Notice that the law has changed since this 2003 lawsuit was filed; according to the Financial Services Regulatory Relief Act of 2006 (FSRRA), the filing of a legal complaint (lawsuit) does not constitute an initial communication for purposes of the validation notices required by section 809 of the FDCPA (§1692g). Thus, collection attorneys who merely litigate collection cases are exempted from the requirements of § 1692g and don't have to send a "dunning letter" to debtors anymore before they start a collections lawsuit.

I've included this 2003 lawsuit for you to undersand the strategy used to sue a creditor's attorney under the Fair Debt Collection Practices Act.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

Rosalie McNamara	)	
	)	
Plaintiff,	)	
	)	
v.	)	Number BR 549
	)	
O'Halloran, Kosoff, Greitner, and	)	
Cook, P. C.	)	
	)	
Defendant.	)	

VERIFIED PETITION IN THE NATURE OF A PETITION FOR REDRESS OF INJURIES UNDER AUTHORITY OF THE FAIR DEBT COLLECTIONS PRACTICES ACT, FOR VIOLATIONS UNDER 15 U.S.C. 1601 ET SEQ.

1. Rosalie McNamara, an aggrieved party, petitions this Court under authority of 15 USC 1601 et seq. hereinafter "The Act."

2. FIRST CAUSE OF ACTION: O'Halloran, Kosoff, Greitner, and Cook, P. C., hereinafter, "O'Halloran," a debt collector, engaged collection activity against Rosalie McNamara, and continue to engage in collection activity without prior advising Rosalie McNamara of Ms. McNamara's due process rights expressly reserved at 15 USC 1692(g)(3), *Harvey v. United Adjusters*, 509 F.Supp. 1218.

3. SECOND CAUSE OF ACTION: O'Halloran has trespassed on Rosalie McNamara's due process rights by truncating the time within which Rosalie McNamara is privileged to respond to a debt collector.

4. Rosalie McNamara is lawfully entitled to statutory damages against O'Halloran up to a maximum of one thousand dollars (\$1,000.00). See 15 USC 1692(a)(k). In addition to statutory damages, Rosalie McNamara is lawfully entitled to unlimited additional damages for emotional distress, embarrassment, and humiliation caused by O'Halloran, as a jury should decide. See 15 USC 1692k(a)(1).

#### REMEDY SOUGHT

5. Determination by this court, that Illinois state law, consistent with The Act, affords Rosalie McNamara greater protection and relief than The Act justly requires the court's instruction so to the jury.

6. A jury's determination that O'Halloran has violated consumer law justly requires this court's order to O'Halloran to compensate Rosalie McNamara for statutory damages not exceeding \$1,000.00. A jury's determination that O'Halloran subjected Rosalie McNamara to intentional infliction of emotional stress justly requires a jury's decision as to whether O'Halloran should be compelled to compensate Rosalie McNamara in a sum equal to or greater than the sum sought from Rosalie McNamara as a means to amend O'Halloran's bad behavior. See *Bank of the West v. Superior Court*, 2 Cal. 4<sup>th</sup> 1254, 1267, 10 Cal Rptr. 2d 538, 833 P.2d 545 (1992) and *Fletcher v. Security Pacific*

## How To Legally Beat Debt Collectors

*National Bank*, 23 Ca.3d 442, 451, 153 Cal.Rptr. 28, 591 P.2d 51 (1979).

JURY TRIAL DEMANDED

\_\_\_\_\_  
Rosalie McNamara

STATE OF ILLINOIS

INDIVIDUAL ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 2003, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act.

Given under my hand and seal the day and year last above written.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Rosalie McNamara

57 laughter Lane

Brookwood, Illinois 60000

### ***4.9 Respond Their Legal Complaint When They Sue You***

What if they give up on collections and file suit against you? File a motion to dismiss their suit.



## STATE OF WISCONSIN CIRCUIT COURT CLARK COUNTY

Discover Bank  
Plaintiff,

Vs. Defendant's motion to dismiss  
Case Number 03-SC-3333

Larry Cherry,  
An individual  
N12654 Golden Ave.  
Glenwood, Wisconsin 54444  
Defendant.

**Defendant's motion to dismiss for failure to state  
a claim upon which relief can be granted**

**Brief in support**

Larry Cherry motions this court to dismiss case numbered as 03-SC-640 with prejudice. Discover Bank has failed to state a claim upon which relief can be granted.

**Affidavit**

I, Larry Cherry, of age and competent to testify, state as follows based on my own personal knowledge:

1. I am not in receipt of any document which verifies that corporations have standing to sue in the small claims courts of Wisconsin.

## How To Legally Beat Debt Collectors

2. I am not in receipt of any document which verifies that Discover Bank has standing to sue in any Wisconsin court by virtue of being duly registered as "Discover Bank," or by "Discover Bank" meeting the minimum contacts requirements for *in personam* jurisdiction in Wisconsin.

3. I am not in receipt of any document which verifies that I have a contract with Discover Bank.

4. I am not in receipt of any document which verifies that I owe Discover Bank money.

5. I am not in receipt of any document which verifies that Discover Bank authorized this action or is even aware of it.

6. As a result of the harassment by Matthew J. Richburg, I have been damaged financially, socially, and emotionally.

\_\_\_\_\_  
Larry Cherry

STATE OF \_\_\_\_\_ INDIVIDUAL ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he

executed the same as his free and voluntary act. Given  
under my hand and seal the day and year last above written.  
My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

### **Memorandums of law**

#### **Memorandum of law in support of the point of law that party alleging to be creditor must prove standing**

Matthew J. Richburg failed or refused to produce the actual note, which Discover Bank alleges Larry Cherry owes. Where the complaining party cannot prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.) Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. See

Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469 in *Carnegie Bank v Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3-302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977), "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession..."

**Memorandum of law in support of the point of law that to prove damages in foreclosure of a debt, party must enter the account and general ledger statement into the record through a competent fact witness**

To prove up claim of damages, foreclosing party must enter evidence incorporating records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Il.

### **Mandatory judicial notice**

Discover Bank is a subset of the debt collection racket, a widespread, far-reaching scam of artists such as Matthew J. Richburg. How the scam works: In a back room of the Chicago Board of Trade, worthless bundles of commercial paper in the form of copies of charged off debt are sold at auction. The typical face value of the bundles often amounts to tens of millions of dollars. The mortgagees are often not harmed because they often have hypothecated the loan and have

risked nothing. Actors up line from such artists as Kohn Law Firm S.C. then break apart the bundles and resell the worthless commercial paper in clusters based on the original mortgagee and geographic location of the individual copies. Artists such as Kohn Law Firm S.C. are the actual holders in due course although typically in the scam, artists such as Kohn Law Firm S.C. invest as little as 75 cents on the hundred face for the worthless commercial paper, then allege they are third party debt collectors attempting to collect for the original maker of the loan. This racket is particularly heinous in the case of credit card contracts, which as a continuing series of offers to contract are non-transferable. The scam is complete when artists such as Matthew J. Richburg, with the cooperation of a local judge, defraud parties such as Larry Cherry. This scam is widespread, far-reaching and the main racket of the private business organizations to which artists such as Matthew J. Richburg belong. For other examples of this racket specifically involving "Discover Bank" see Discover Bank versus Angie G. Walker and Esler C. Walker, Civil Action File number 03-CV-2295, Muscogee County, Georgia, Discover Bank versus Naomi R. Williams, case number 02- CVF 1514, Rocky River Municipal court, Rocky River, Ohio, and Discover Bank versus Roger Braker and Sharon A. Braker, case number CS-2003-2488, Oklahoma County, Oklahoma. This court's inquiry, reasonable under the circumstances, establishes a pattern of racketeering with Discover Bank as the enterprise **unless Discover Bank enters an appearance in this instant case and joins in the vacation of void judgment number 02-CVF-1514.**

**Declaration**

September 23rd 2003, an order shall be prepared and submitted to the court for ratification, unless prior to that time, Discover Bank presents a competent fact witness to rebut all articles - one through five - of Larry Cherry affidavit, making their statements under penalty of perjury, supporting all the rebutted articles with evidence which would be admissible at trial.

Prepared and submitted by:

---

Larry Cherry

**Certificate of service**

I, Larry Cherry, certify that \_\_\_\_\_, 20\_\_, I mailed a true and correct copy of the above and foregoing motion to dismiss via certified mail, return receipt requested to: Discover Bank's agent for service of process.

---

Larry Cherry

Copy to:

Peg Lautenschlager

P.O. Box 7857

Madison, Wisconsin 53707-7857

***4.10 Respont to their Counterattack***

How to respond to the complainant attorney's answer to your motion to dismiss.



STATE OF WISCONSIN CIRCUIT COURT CLARK COUNTY

Discover Bank  
Plaintiff,

Vs. Defendant's reply, response, and counter  
motion for summary judgment  
Case Number 03-SC-333  
Larry Cherry,

Defendant.

**Defendant's reply to plaintiff's brief in opposition to  
defendant's motion to dismiss / response to plaintiff's  
motion for summary judgment / defendant's counter motion  
for summary judgment**

**Reply to plaintiff's brief in opposition to defendant's  
motion to dismiss**

Matthew J. Richburg's brief in opposition to defendant's motion to dismiss is a substantive and procedural nullity, frivolous on its face. Richburg purports to state facts in Richburg's so-called **STATEMENT OF FACTS**; however, as all competent legal advisors know, statements of counsel in brief or in argument are not facts before the court. What Richburg calls facts are in actuality Richburg's theories and conclusions about this instant case. There being no attempt to state actual facts through a competent fact witness, this court cannot notice the conclusory materials

contained in Richburg's so-called statement of facts; for as all competent legal advisors know, a party cannot be both witness and counsel in the same cause. See *United States v. Lovasco* (06/09/77) 431 U.S. 783, 97 S. Ct. 2044, 52 L. Ed. 2d 752, *Gonzales v. Buist*. (04/01/12) 224 U.S. 126, 56 L. Ed. 693, 32 S. Ct. 463, *Holt v. United States*, (10/31/10) 218 U.S. 245, 54 L. Ed. 1021, 31 S. Ct. 2, *Telephone Cases. Dolbear v. American Bell Telephone Company, Molecular Telephone Company v. American Bell Telephone Company. American Bell Telephone Company v.. Molecular Telephone Company, Clay Commercial Telephone Company v. American Bell Telephone Company, People's Telephone Company v. American Bell Telephone Company, Overland Telephone Company v. American Bell Telephone Company*,. (PART TWO OF THREE) (03/19/88) 126 U.S. 1, 31 L. Ed. 863, 8 S. Ct. 778, and *Trinsey v. Pagliaro*, D. C. Pa. 1964, 229 F. Supp. 647. Response to plaintiff's motion for summary judgment: rebuttal of Matthew J. Richburg's patently frivolous arguments.

Rebuttal of Mr. Richburg's frivolous argument: **"I. This Court has personal jurisdiction over the defendant and defendant's motion to dismiss should be denied."** Matthew J. Richburg is literally so ignorant that he doesn't know the difference between those elements for personal jurisdiction over a defendant which are: domiciled in a jurisdiction, operating a business in a jurisdiction, owning property within a jurisdiction, or committing an act within a jurisdiction, and standing to sue within a jurisdiction which relies on either being licensed to do

business in a jurisdiction or evidence minimum contacts within the jurisdiction. **This court is noticed: Discover Bank failed or refused to rebut the affidavit of Larry Cherry challenging the standing of Discover Bank to sue. The following fact is before this court: This court does not have jurisdiction over this instant case for reason that Discover Bank lacks standing to sue in Wisconsin courts.**

Rebuttal of Mr. Richburg's frivolous argument: **"II. Plaintiff's complaint does state a claim upon which relief can be granted and defendant's motion to dismiss should be denied."** Again, Matthew J. Richburg demonstrates his incompetence in the law. To state a claim in a debt collection action, plaintiff must show: (1). Standing to sue in the venue, (2). Standing to sue by actual possession of the note, and (2). Damages as evidenced by the account and general ledger statement signed and dated by the party responsible for account. **This court is noticed: Larry Cherry challenged whether Discover Bank had a contract with Larry Cherry, whether Larry Cherry owed Discover Bank money, and whether Discover Bank authorized this action. This court is further noticed: Discover Bank failed or refused to rebut Larry Cherry's affidavit: This court has actual knowledge: Discover Bank does not have a contract with Larry Cherry; Larry Cherry does not owe Discover Bank money; Discover Bank did not authorize this action.**

Rebuttal of Mr. Richburg's frivolous argument: **"III. There is no genuine issue as to any material fact, and the plaintiff is entitled to summary judgment as a matter of law."** Richburg is correct: there is no genuine issue as to any material fact; however, it is Larry Cherry who is entitled to summary judgment as a matter of law.

**Defendant Larry Cherry's motion for summary judgment  
Brief in support**

Triable issues of material fact to which there is no dispute: (1). Discover Bank lacks standing to sue in Wisconsin courts, (2). Discover Bank has no contract with Larry Cherry, (3). Larry Cherry does not owe Discover Bank money, (4). Discover Bank did not authorize this action, and (5). Larry Cherry has been damaged financially, socially, and emotionally by this frivolous action.

**Conclusion, remedy sought, and prayer for relief**

The cause of justice and proper administration of law require judgment for Larry Cherry and against Discover Bank along with monetary sanctions applied against Matthew J. Richburg sufficient to amend Richburg's bad behavior of filing a patently frivolous lawsuit. This court's swift response to apply the remedy avoids the conclusion that this court is willfully involved in violation of law including law occurring at 18 USC § § 1961, 1962, & 1964(a).

Prepared and submitted by:

---

Larry Cherry

**Certificate of service**

I, Larry Cherry, certify that \_\_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing reply, response and motion to: Matthew J. Richburg, 312 E. Wisconsin Ave. Suite 501, Milwaukee, Wisconsin, 53202-4305.

---

Larry Cherry

Copy to:

Peg Lautenschlager

P.O. Box 7857

Madison, Wisconsin 53707-7857

## How To Legally Beat Debt Collectors

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What if the court (judge) denies your motion to dismiss?

File an answer and a counterclaim:

## COMBINED COURT OF FREMONT COUNTY, COLORADO

Fremont County Courthouse  
136 Justice Center Rd.  
Canon City, Colorado 81212

---

Case Number: 2003C 000000

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Division A

UMB USA,  
Plaintiff and defendant on counterclaim  
vs  
David Majestic  
Defendant and plaintiff on counterclaim

---

Answer and counterclaim

---

Answer brief

FIRST AFFIRMATIVE DEFENSE: This court is deprived of subject matter jurisdiction to hear UMB USA's claim. Third party debt collectors and racketeers, Kuhlman and Kuhlman violated David Majestic's due process rights by proceeding with collection activity without validating the debt. Documents proffered by Kuhlman and Kuhlman are insufficient to validate the alleged debt.

SECOND AFFIRMATIVE DEFENSE: David Majestic denies that UMB USA has standing to bring suit in Colorado courts and demands strict proof.

THIRD AFFIRMATIVE DEFENSE: David Majestic denies that UMB USA is a current contract holder with David Majestic and demands strict proof.

FOURTH AFFIRMATIVE DEFENSE: David Majestic denies that David Majestic owes UMB USA money and demands strict proof.

FIFTH AFFIRMATIVE DEFENSE: This court is deprived of subject matter jurisdiction to rule favorably for UMB USA for reason that UMB USA, by and through Kuhlman & Kuhlman have worked a fraud on this court.

#### Brief in support of counterclaim

UMB USA by and through Kenton H. Kuhlman and Kuhlman & Kuhlman have committed fraud by preparing and submitting false documents to this court with the intention that this court and David Majestic rely on the false documents to the detriment of David Majestic

#### Affidavit

I, David Majestic, of age and competent to testify, state as follows based on my own personal knowledge:



## How To Legally Beat Debt Collectors

1. I am not in receipt of any document which verifies that UMB USA has standing to sue in any Colorado court by virtue of being duly registered as "UMB USA," or by "UMB USA" meeting the minimum contacts requirements for *in personam* jurisdiction.

2. I am not in receipt of any document which verifies that I have a contract with UMB USA.

3. I am not in receipt of any document which verifies that I owe UMB USA money.

4. I am not in receipt of any document which verifies that UMB USA authorized this action or is even aware of it.

5. As a result of the harassment of Kenton H. Kuhlman, I have been damaged financially, socially, and emotionally,

\_\_\_\_\_  
David Majestic

STATE OF \_\_\_\_\_ INDIVIDUAL ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act. Given under my hand and seal the day and year last above written.

## How To Legally Beat Debt Collectors

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My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

### Second mandatory judicial notice

This court was previously informed that UMB USA and Kuhlman & Kuhlman are involved in racketeering. This court breached duty occurring at 18 USC 4 to make inquiry, and for reason that this court has actual knowledge that UMB USA failed to rebut the affidavit of David Majestic, this court has willfully acceded to fraud absent this court's swift response to dismiss UMB USA's fraudulent claim *sua sponte* and assist in the prosecution of UMB USA and Kuhlman & Kuhlman under authority of 18 USC 1961 & 1962.

### Remedy sought and prayer for relief

The rule of law requires dismissal of UMB USA's claim with prejudice, remand of UMB USA and Kuhlman & Kuhlman to other authority for prosecution, and subject to a jury's determination that UMB USA and Kuhlman & Kuhlman have committed fraud, whatever sum is necessary to amend the bad behavior of UMB USA and Kuhlman & Kuhlman.

TRIAL BY JURY DEMANDED

Prepared and submitted by:

\_\_\_\_\_  
David Majestic

## How To Legally Beat Debt Collectors

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### Certificate of service

I, David Majestic, certify that \_\_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing answer and counterclaim via certified mail, return receipt requested to:

Kenton H. Kuhlman, 5290 DTC Parkway, Suite 170, Greenwood Village, Colorado 80111-2764

\_\_\_\_\_  
David Majestic

Copy to:

Ken Salazar

1525 Sherman St. 7th floor Denver, Colorado 80203

### ***4.11 Launch Discovery***

Skip being “Mr. Nice Guy” and go for the jugular! Notice in this strategy, we launch discovery up front. Formal discovery is used by attorneys to learn about the other side’s case. One tool of formal discovery is the Request for Production of Documents. If the court you are being sued in is governed by Rules of Civil Procedure, then you may file a formal Request for Production of Documents before your trial date and obtain documents from the creditor’s attorney.

Docket number CV-03-00000

Citibank (South Dakota) N.A. ) Superior Court  
 ) Middlesex Judicial  
 plaintiff and defendant on counterclaim, ) District  
 )  
 v. )  
 )  
 David P. Aaron, )  
 )  
 defendant and plaintiff on counterclaim.)

Defendant's amended answer and counterclaim

Brief in support of answer

David P. Aaron disputes that Citibank (South Dakota) N.A. has standing to sue in Connecticut courts and demands strict proof.

David P. Aaron disputes that Citibank (South Dakota) N.A.'s corporate charter authorizes Citibank (South Dakota) N.A. to engage in consumer lending and demands strict proof.

David P. Aaron disputes that Citibank (South Dakota) N.A.'s corporate charter authorizes Citibank (South Dakota) N.A. to sue in foreclosure of consumer debt and demands strict proof.

David P. Aaron disputes that David P. Aaron has a contract with Citibank (South Dakota) N.A. and demands strict proof.

David P. Aaron disputes that David P. Aaron owes Citibank (South Dakota) N.A. money and demands strict proof.

David P. Aaron disputes that Citibank (South Dakota) N.A. authorized this action by delegating authority to Solomon and Solomon, P.C. of 5 Columbia Circle, Albany, New York and demands strict proof.

Brief in support of counterclaim

Citibank (South Dakota) N.A., by and through Solomon and Solomon, P.C. has committed fraud by preparing and submitting a known false document to this court with the intention that David P. Aaron rely on the false document to deprive David P. Aaron of money and property. Citibank (South Dakota) N.A., by and through Solomon and Solomon, P.C. falsely alleges that David P. Aaron has a contract with Citibank (South Dakota) N.A., and fraudulently alleges that David P. Aaron owes Citibank (South Dakota) N.A. the sum of \$7,653.30 warranting damages to be paid to David P. Aaron in a sum of not less than twenty-two thousand, nine hundred fifty nine dollars and ninety cents (\$22,959.90) or the standard damages for fraud.

Prepared and submitted by:

---

David P. Aaron  
3 Ridgefield Drive  
Middletown, CT 06444

## CERTIFICATE OF SERVICE

I, David P. Aaron, certify that February \_\_\_\_, 2004, I mailed a true and correct copy of the above and foregoing answer and counterclaim to:

Linda Clark Devaney  
5 Columbia Circle  
Albany, New York 12203

---

David P. Aaron

Docket number CV-03-0102620

Citibank (South Dakota) N.A.	) Superior Court
	) Middlesex Judicial
plaintiff and defendant on counterclaim,	) District
	)
v.	)
	)
David P. Aaron,	)
	)
defendant and plaintiff on counterclaim.)	

Defendant's request for admissions to plaintiff Citibank  
(South Dakota) N.A.

To: Citibank (South Dakota) N.A. (please note: where discovery requests are directed to a corporation, counsel for the corporation is required to nominate officers of the corporation to answer).

Defendant, David P. Aaron, submits the following request for admissions to plaintiff Citibank (South Dakota) N.A. You are required to answer each request for admissions separately and fully, in writing, under oath, and to serve a copy of the responses upon David P. Aaron within (30) days after service of these requests for admissions.

#### Instructions

1. These requests for admissions are directed toward all information known or available to Citibank (South Dakota) N.A. including information contained in the records



and documents in Citibank (South Dakota) N.A.'s custody or control or available to Citibank (South Dakota) N.A. upon reasonable inquiry. Where requests for admissions cannot be answered in full, they shall be answered as completely as possible and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever actual knowledge is possessed with respect to each unanswered or incompletely answered request for admission.

2. Each request for admissions is to be deemed a continuing one. If, after serving an answer to any request for an admission, you obtain or become aware of any further information pertaining to that request for admission, you are requested to serve a supplemental answer setting forth such information.

3. As to every request for an admission which you fail to answer in whole or in part, the subject matter of that admission will be deemed confessed and stipulated as fact to the court.

#### Definitions

a. "You" and "your" include Citibank (South Dakota) N.A. and any and all persons acting for or in concert with Citibank (South Dakota) N.A.

b. "Document" includes every piece of paper held in your possession or generated by you.

#### Requests for admissions

First admission: Admit or deny that Citibank (South Dakota) N.A. is not licensed to do business in Connecticut by

## How To Legally Beat Debt Collectors

virtue of being registered with the Secretary of State of Banking and nominating an agent for service of process.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Second admission: Admit or deny that Citibank (South Dakota) N.A. has no regular, systematic way of doing business in Connecticut, also known as "minimum contacts" as would be evidenced by such things as yellow pages listings for Citibank (South Dakota) N.A. and logos appearing at retail outlets clearly signing "Citibank (South Dakota) N.A."

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Third admission: Admit or deny that Citibank (South Dakota) N.A.'s charter does not authorize Citibank (South Dakota) N.A. to engage in consumer lending.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Fourth admission: Admit or deny that Citibank (South Dakota) N.A.'s charter does not authorize Citibank (South Dakota) N.A. to bring suits in foreclosure of consumer debts.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

## How To Legally Beat Debt Collectors

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Fifth admission: Admit or deny that Citibank (South Dakota) N.A.'s is not the present holder of a contract with David P. Aaron.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Sixth admission: Admit or deny that Citibank (South Dakota) N.A. sold the contract which Citibank (South Dakota) N.A. had with David P. Aaron.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Seventh admission: Admit or deny that Citibank (South Dakota) N.A. has been informed by counsel that a credit card contract is a continuing series of offers to contract and as such is not transferable.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Eighth admission: Admit or deny that Citibank (South Dakota) N.A. never had any sums of money or capital at risk in the contract with David P. Aaron.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Ninth admission: Admit or deny that Citibank (South Dakota) N.A. possesses no account and general ledger statement verifying that David P. Aaron presently owes Citibank (South Dakota) N.A. money.

Admitted\_\_\_\_\_

## How To Legally Beat Debt Collectors

Denied\_\_\_\_\_

Tenth admission: Admit or deny that officers of Citibank (South Dakota) N.A. know and understand that after a credit card is charged off, it is common practice to sell the charged

off debt for deep discounts to lawyers in the debt collection business.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Eleventh admission: Admit or deny that officers of Citibank (South Dakota) N.A. know and understand that attorneys who purchase evidence of debt and then file lawsuits in the name of the original maker of the debt are committing felony fraud.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Twelfth admission: Admit or deny that officers of Citibank (South Dakota) N.A. know and understand that Solomon and Solomon P.C. routinely purchases evidence of debt from Citibank (South Dakota) N.A., then rely on Citibank (South Dakota) N.A. to aid and abet felony fraud.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Thirteenth admission: Admit or deny that Citibank (South Dakota) N.A. cannot be affected financially by the outcome of litigation against David P. Aaron, as, if the suit is

**How To Legally Beat Debt Collectors**

lost, it is Solomon and Solomon P.C.'s loss, and if the suit is won, it is Solomon and Solomon P.C.'s win.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

\_\_\_\_\_  
Print name title Officer of Citibank (South Dakota) N.A.

State of \_\_\_\_\_

County of \_\_\_\_\_

Before me this day appeared \_\_\_\_\_,  
known to me as the person who made the above and foregoing  
statements of his own free will.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary

Prepared and submitted by: \_\_\_\_\_

David P. Aaron

Certificate of service

I, David P. Aaron, certify that \_\_\_\_\_, 2004, I  
mailed a true and correct copy of the above and foregoing  
request for admissions via certified mail, return receipt  
requested to:

Linda Clark Devaney

## How To Legally Beat Debt Collectors

---

5 Columbia Circle  
Albany, New York 12203

---

David P. Aaron

Docket number CV-03-0102620

Citibank (South Dakota) N.A. ) Superior Court  
 ) Middlesex Judicial  
 plaintiff and defendant on counterclaim,) District  
 )  
 v. )  
 )  
 David P. Aaron, )  
 )  
 defendant and plaintiff on counterclaim.)

Defendant's request for production of documents to  
 plaintiff Citibank (South Dakota) N.A.

To: Citibank (South Dakota) N.A.

Defendant, David P. Aaron, submits the following request for production of documents to plaintiff Citibank (South Dakota) N.A. You are required to inform David P. Aaron of the date, place, and time that David P. Aaron can view the documents (in Middletown, Connecticut) and make copies. Alternately, you can furnish David P. Aaron with verified copies of all documents. If the document does not exist, you are required to state that it does not exist. Failure to comply fully or partially with this request within thirty days of receipt of service shall be deemed a confession that the document does not exist or that Citibank (South Dakota) N.A. is committing fraud by concealment.

### Instructions

1. These requests for production of documents is directed toward all information known or available to Citibank (South Dakota) N.A. including information contained in the records and documents in Citibank (South Dakota) N.A.'s custody or control or available to Citibank (South Dakota) N.A. upon reasonable inquiry.

2. Each request for production of documents is to be deemed a continuing one. If, after serving an answer to any request for an admission, you obtain or become aware of any further information pertaining to that requested production of documents, you are requested to serve a supplemental answer setting forth such information.

### Definitions

a. "You" and "your" include Citibank (South Dakota) N.A. and any and all persons acting for or in concert with Citibank (South Dakota) N.A.

b. "Document" includes every piece of paper held in your possession or generated by you. Requests for production of documents:

First document: All pages, front and back of Citibank (South Dakota) N.A.'s corporate charter.

Second document: The account and general ledger of each and every contract Citibank (South Dakota) N.A. alleges David P. Aaron has with Citibank (South Dakota) N.A. showing all receipts and disbursements, verified under penalty of perjury by an employee



of Citibank (South Dakota) N. A.

Third document: The copy, front and back, of the contract Citibank (South Dakota) N.A. alleges David P. Aaron has with Citibank (South Dakota) N.A. showing any and all assignments or allonges.

Fourth document: The copy, front and back, of the contract for services which Citibank (South Dakota) N.A. has with Solomon and Solomon, P.C.

Prepared and submitted by: \_\_\_\_\_  
David P. Aaron

Certificate of service

I, David P. Aaron, certify that \_\_\_\_\_, 2004, I mailed a true and correct copy of the above and foregoing request for production of documents via certified mail, return receipt requested to:

Linda Clark Devaney  
5 Columbia Circle  
Albany, New York 12203

\_\_\_\_\_  
David P. Aaron

***4.12. File Your Motion for Summary Judgment Against Them***

What if your time to answer is past? File a motion for a summary judgment.

State of Michigan  
In the 45-B Judicial District Court

Discover Bank

Plaintiff,

Vs.

Case No. 03-11111 GC

John W. Smart

Donna Smart

Defendants.

\_\_\_\_\_ /

Defendants' motion for summary judgment

Brief in support

John W. Smart and Donna Smart move this court for summary judgment of this court in favor of John W. Smart and Donna Smart.

Affidavit

I, John W. Smart, of age and competent to testify, state as follows based on my own personal knowledge: 1. I am not in receipt of any document which verifies that Discover Bank has standing to sue in any Michigan court by virtue of being duly registered as "Discover Bank," or by "Discover

## How To Legally Beat Debt Collectors

Bank" meeting the minimum contacts requirements for *in personam* jurisdiction.

2. I am not in receipt of any document which verifies that I have a contract with Discover Bank.

3. I am not in receipt of any document which verifies that I owe Discover Bank money.

4. I am not in receipt of any document which verifies that Capital One Bank authorized this action or is even aware of it.

5. As a result of the harassment of Alma L. Tyler, I have been damaged financially, socially, and emotionally.

\_\_\_\_\_  
John W. Smart

STATE OF \_\_\_\_\_ INDIVIDUAL ACKNOWLEDGMENT  
COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act. Given under my hand and seal the day and year last above written. My commission expires \_\_\_\_\_

\_\_\_\_\_

## How To Legally Beat Debt Collectors

Notary Public

### Affidavit

I, Donna Smart, of age and competent to testify, state as follows based on my own personal knowledge:

1. I am not in receipt of any document that verifies that Discover Bank has standing to sue in any Michigan court by virtue of being duly registered as "Discover Bank," or by "Discover Bank" meeting the minimum contacts requirements for *in personam* jurisdiction.

2. I am not in receipt of any document that verifies that I have a contract with Discover Bank.

3. I am not in receipt of any document that verifies that I owe Discover Bank money.

4. I am not in receipt of any document that verifies that Capital One Bank authorized this action or is even aware of it.

5. As a result of the harassment of Alma L. Tyler, I have been damaged financially, socially, and emotionally.

\_\_\_\_\_  
Donna Smart

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

INDIVIDUAL ACKNOWLEDGMENT

## How To Legally Beat Debt Collectors

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act. Given under my hand and seal the day and year last above written.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

### Memorandums of law

Memorandum of law in support of the point of law that party alleging to be creditor must prove standing

Discover Bank has failed or refused to produce the actual note which Discover Bank alleges John W. Smart and Donna Smart owe. Where the complaining party cannot prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.) Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically

states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469 in *Carnegie Bank v Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3- 302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977), "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have

followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession ..."

Memorandum of law in support of the point of law that to prove damages in foreclosure of a debt, party must enter the account and general ledger statement into the record through a competent fact witness

To prove up claim of damages, foreclosing party must enter evidence incorporating records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Il.

Memorandum in support of the point of law that when jurisdiction is challenged, the party claiming that the court has jurisdiction has the legal burden to prove that jurisdiction was conferred upon the court through the



proper procedure. Otherwise, the court is without jurisdiction.

Whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. *Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. *Loos v American Energy Savers, Inc.*, 168 Ill.App.3d 558, 522 N.E.2d 841(1988) ("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff."). The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge has immediately lost subject-matter jurisdiction.

#### Mandatory judicial notice

Discover Bank is a subset of the debt collection racket, a wide-spread, far-reaching scam of artists such as Weltman, Weinberg & Reis Co., L. P.A. How the scam works: In a back room of the Chicago Board of Trade, worthless bundles of

commercial paper in the form of copies of charged off debt are sold at auction. The typical face value of the bundles often amounts to tens of millions of dollars. The mortgagees are often not harmed because they often have hypothecated the loan and have risked nothing. Actors up line from such artists as Weltman, Weinberg & Reis Co., L. P.A. then break apart the bundles and resell the worthless commercial paper in clusters based on the original mortgagee and geographic location. Weltman, Weinberg & Reis Co., L. P.A. are the actual holders in due course although typically in the scam, artists such as Weltman, Weinberg & Reis Co., L. P.A. invest as little as 75 cents on the hundred face for the worthless commercial paper, then allege they are third party debt collectors attempting to collect for the original maker of the loan. **This racket is particularly heinous in the case of credit card contracts, which as a continuing series of offers to contract, are non-transferable.** The scam is complete when artists such as Weltman, Weinberg & Reis Co., L. P.A., with the cooperation of a local judge, defraud parties such as John W. Smart and Donna Smart. This scam is wide-spread, far-reaching and the main racket of the private business organizations to which artists such as Weltman, Weinberg & Reis Co., L. P.A. belong. For other examples of this racket, see Discover Bank versus Angie G. Walker and Esler C. Walker, Civil Action File number 03-CV-2295, Muscogee County, Georgia, Discover Bank versus Larry Pasket, case number 03-SC-640, Clark County, Wisconsin, and Discover Bank versus Roger Braker and Sharon A. Braker, case number

CS-2003-2488, Oklahoma County, Oklahoma, *Bancorp. V. Carney*, Los Angeles County, California, case number EC 032786, *First USA Bank v. Borum*, Oklahoma County, Oklahoma case number CS 99-332-25, *Bank of America v. Bascom*, County of Monroe, New York, index number 4522/00, *Discounts R. US* (a major syndicate player in the holder in due course fraud racket) *v. Hausler*, General Sessions Court, Smith County, Tennessee, case number 8758-24-179, *Banco Popular v. Plosnich*, DuPage County, Illinois, case number 98 CH 0913, *Citicorp Mortgage v. Tecchio*, Monmouth County, New Jersey, case number F-12473-97, *Direct Merchants Credit Card Bank v. Sommers*, Caddo County, Oklahoma case number CS-2002 116, *Creditors Recovery Corporation v. Choisnard*, Tulsa County, Oklahoma case number CS 02-7225, *First Collection Services v. Elowl*, General Court of Justice, New Hanover County, North Carolina case number 02 SP 338 & 02 SP 598, *CitiMortgage v. Lance*, Court of Common Pleas, County of Orangeburg, South Carolina, docket number 00-CP-38-1033, UMB USA Verus David Majestic, Combined Court Fremont County, Colorado, case number 2003C 000890, Capital One Bank versus Barbara Davis and Phil C. Davis, Highlands County Michigan, Case number 03-754-SPS, and *Conseco Finance Corporation v. Ray*, Court of Common Pleas, County of Columbia, South Carolina, docket number 00-CP-02-397.

#### Declaration

Fifteen days from the verifiable receipt of this petition to vacate, an order shall be prepared and submitted to the court for ratification, unless prior to that time, Discover

## How To Legally Beat Debt Collectors

Bank presents a competent fact witness to rebut all articles - one through four - of John W. Smart and Donna Smart's affidavits, making their statements under penalty of perjury, supporting all the rebutted articles with evidence which would be admissible at trial, and sets the matter for hearing.

Prepared and submitted by:

\_\_\_\_\_  
John W. Smart

\_\_\_\_\_  
Donna Smart

### Certificate of service

I, John W. Smart, certify that \_\_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing motion to dismiss via certified mail, return receipt requested to: Discover Bank's agent for service of process.

\_\_\_\_\_  
John W. Smart

***4.13 How to Deal With Magistrate Judges***

What if the court you're in has magistrate judges or referees who make recommendations to the court? Object!

## How To Legally Beat Debt Collectors

Rocky River Municipal Court  
21012 Hilliard Blvd., Rocky River, Ohio 44116-3398  
440,333,2003

September 16th 2003

Discover Bank  
Plaintiff,

Vs.

Naomi R. Sweet,  
P.O. Box 549  
Westlake, Ohio 44444  
Defendant.

Defendant's objection to the magistrate's recommendation

Naomi R. Sweet objects to the Magistrate's recommendation that Naomi R. Sweet' motion to vacate be denied. Grounds for objection

No court has authority to deny a jurisdictional challenge. No court has judicial authority to make a judicial ruling on a jurisdictional challenge. A jurisdictional challenge is only resolved one of two ways: (1). The party asserting jurisdiction, in this case Discover Bank, proving jurisdiction **by showing on the record** that (1). Corporations have standing to sue in the municipal courts of Ohio, (2). that Discover Bank has standing to sue in

Ohio courts by virtue of being duly registered as "Discover Bank," or by "Discover Bank" meeting the minimum contacts requirements for *in personam* jurisdiction, (3). Verifying that Ohio municipal courts have subject matter jurisdiction to litigate breach of contract cases. (4). verifying that Ohio municipal courts have subject matter jurisdiction to litigate civil cases involving controversy amounts exceeding fourteen thousand dollars. (5). Verifying that Naomi R. Sweet has a contract with Discover Bank, (6). verifying that Naomi R. Sweet owes Discover Bank money, and (7). Verification that Discover Bank authorized this action **OR**, without each and every one of this items being **verified on the record**, the matter is void. It is immaterial if the case is closed as there is no statute of limitations applying to void judgments. A "void judgment" as we all know, grounds no rights, forms no defense to actions taken there under, and is vulnerable to any manner of collateral attack (thus here, by ). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not *res judicata*, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been. 10/13/58 *FRITTS v. KRUGH*. SUPREME COURT OF MICHIGAN, 92 N.W.2d 604, 354 Mich. 97.

Notice to the court

Irrespective of whether a party moves to vacate a judgment, Ohio courts have inherent authority to vacate a **void**

**judgment.** *Patton v. Diemer* (1988), 35 Ohio St.3d 68. A **void judgment** is one that is rendered by a court that is "wholly without jurisdiction or power to proceed in that manner." *In re Lockhart* (1952), 157 Ohio St. 192, 195, 105 N.E.2d 35, 37. A judgment is void *ab initio* where a court rendering the judgment has no jurisdiction over the person. *Records Deposition Service, Inc. v. Henderson & Goldberg, P.C.* (1995), 100 Ohio App.3d 495, 502; *Compuserve, Inc. v. Trionfo* (1993), 91 Ohio App.3d 157, 161; *Sperry v. Hlutke* (1984), 19 Ohio App.3d 156. In *Van DeRyt v. Van DeRyt* (1966), 6 Ohio St. 2d 31, 36, 35 Ohio Op. 2d 42, 45, 215 N.E.2d 698,704, we stated, "A court has an inherent power to vacate a **void judgment** because such an order simply recognizes the fact that the judgment was always a nullity." Service of process must be reasonably calculated to notify interested parties of the pendency of an action and afford them an opportunity to respond. A default judgment rendered without proper service is void. A court has the inherent power to vacate a **void judgment**; thus, a party who asserts improper service need not meet the requirements of Civ.R. 60(B). (Emphasis added.) *Emge*, 124 Ohio App.3d at 61, 705 N.E.2d at 408. We note further that appellant's main contention is that the default judgment granted by Judge Connor is void because it was rendered against a non-entity. As will be addressed *infra*, judgments against non-entities are void. A Civ.R. 60(B) motion to vacate a judgment is not the proper avenue by which to obtain a vacation of a **void judgment**. See *Old Meadow Farm Co. v. Petrowski* (Mar. 2, 2001), *Geauga App. No. 2000-G-2265*, unreported; *Copelco Capital, Inc. v. St. Brighter's*



*Presbyterian Church* (Feb. 1, 2001), *Cuyahoga App.* No. 77633, unreported. Rather, the authority to vacate void judgments is derived from a court's inherent power. *Oxley v. Zacks* (Sept. 29, 2000), I. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING MR. FINESILVER'S MOTION TO VACATE **VOID JUDGMENT** WHEN THE UNCONTROVERTED TESTIMONY OF MR. FINESILVER SUBMITTED TO THE TRIAL COURT SHOWS THAT MR. FINESILVER NEVER RECEIVED THE COMPLAINT OF C.E.I., OR NOTICE OF THE PROCEEDINGS IN THE TRIAL COURT. II. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HOLD A HEARING ON MR. FINESILVER'S MOTION TO VACATE **VOID JUDGMENT** WHEN MR. FINESILVER TESTIFIED THAT HE NEVER RECEIVED NOTICE OF THE ACTION FILED BY C.E.I. III. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING MR. FINESILVER RECEIVED SERVICE OF THE COMPLAINT WHEN C.E.I. DID NOT OBTAIN SERVICE OF PROCESS AS REQUIRED BY THE OHIO CIVIL RULES. IV. THE TRIAL COURT ABUSED ITS DISCRETION BY FINDING THAT MR. FINESILVER WAS SERVED AT A PROPER BUSINESS ADDRESS WHEN MR. FINESILVER HAD LEFT THE STATE AND NO LONGER MAINTAINED ANY PHYSICAL PRESENCE AT SAID BUSINESS ADDRESS. After reviewing the record and the arguments of the parties, we reverse the decision of the trial court. *Cleveland Electric Illuminating Company v. Finesilver*, No. 69363 (Ohio App. Dist.8 04/25/1996). "The authority to vacate a **void judgment** is not derived from Civ.R. 60(B), but rather constitutes an inherent power possessed by Ohio courts." *Patton v. Diemer* (1988), 35 Ohio St.3d 68, paragraph four of the syllabus; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 368. Because a court has the inherent power to vacate a

**void judgment**, a party who claims that the court lacked personal jurisdiction as a result of a deficiency in service of process is entitled to have the judgment vacated and need not satisfy the requirements of Civ.R. 60(B). *State ex rel. Ballard v. O'Donnell* (1990), 50 Ohio St.3d 182, paragraph one of the syllabus; *Cincinnati School Dist. Bd. of Edn.* at 368; Patton at paragraph three of the syllabus; *Thomas* at 343. See, also *Sweet v. Ludlum* (Aug. 20, 1999), Portage App. No. 98-P-0016, unreported, at 7, 1999 Ohio App. LEXIS 3869. The authority to vacate a **void judgment**, therefore, is not derived from Civ. R. 60(B), "but rather constitutes an inherent power possessed by Ohio courts." Patton, *supra*, paragraph four of the syllabus. A party seeking to vacate a **void judgment** must, however, file a motion to vacate or set aside the same. *CompuServe*, *supra*, at 161. Yet to be entitled to relief from a **void judgment**, a movant need not present a meritorious defense or show that the motion was timely filed under Civ. R. 60(B). ("A **void judgment** is one entered either without jurisdiction of the person or of the subject matter." *Eisenberg v. Peyton* (1978), 56 Ohio App.2d 144, 148. A motion to vacate a **void judgment**, therefore, need not comply with the requirements of Civ.R. 60(B) which the petitioner ordinarily would assert to seek relief from a jurisdictionally valid judgment. *Demianczuk v. Demianczuk* (1984), 20 Ohio App.3d 244, 485 N.E.2d 785. Entry was void because it constituted a modification of a property division without a reservation of jurisdiction to do so--an act the court may not perform under *Wolfe v. Wolfe* (1976), 46 Ohio St.2d 399, at paragraph one of the syllabus, and

our opinion in *Schrader v. Schrader* (1995), 108 Ohio App.3d 25. Because the notices required by R.C. Chapter 5715 were not given to Candlewood prior to the BOR's July 2, 1997 hearing and after its August 18, 1997 decision, and no voluntary appearance was made by Candlewood, the BOR's August 18, 1997 decision is a nullity and void as regards Candlewood. As one Texas appellate court so aptly stated concerning a **void judgment**, "[i]t is good nowhere and bad everywhere." *Dews v. Floyd* (Tex.Civ.App.1967), 413 S.W.2d 800, 804. A court has an inherent power to vacate a void judgment because such an order simply recognizes the fact that the judgment was always a nullity." The term "inherent power" used in the two preceding cases is defined in Black's Law Dictionary (6 Ed.1990) 782 as "[a]n authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another." Because this claim challenged the subject matter jurisdiction of the trial court, it was not barred by res judicata because a **void judgment** may be challenged at any time. See *State v. Wilson* (1995), 73 Ohio St.3d 40, 45-46, 652 N.E.2d 196, 200, fn. 6. If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*. See *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941, paragraph three of the syllabus. A **void judgment** is a mere nullity, and can be attacked at any time. *Tari v. State* (1927), 117 Ohio St. 481, 494, 159 N.E. 594, 597-598. A movant, however, need not present a meritorious defense to be entitled to relief from a **void judgment**. *Peralta v. Heights Med. Ctr., Inc.*

**How To Legally Beat Debt Collectors**

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(1988), 485 U.S. 80, 108 S.Ct. 896, 99 L.Ed.2d 75. Nor must a movant show that the motion was timely filed under the guidelines of Civ.R. 60(B) if a judgment is void. *In re Murphy* (1983), 10 Ohio App.3d 134, 10 OBR 184, 461 N.E.2d 910; *Satava v. Gerhard* (1990), 66 Ohio App.3d 598, 585 N.E.2d 899; see, generally, *Associated Estates Corp. v. Fellows* (1983), 11 Ohio App.3d 112, 11 OBR 166, 463 N.E.2d 417.

**This court is further noticed: the magistrate's recommendation was SENT TO THE WRONG ADDRESS.**

Prepared and submitted by:

---

Naomi R. Sweet

Certificate of service

I, Naomi R. Sweet, certify that \_\_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing motion to dismiss via certified mail, return receipt requested to: Discover Bank's agent for service of process.

---

Naomi R. Sweet

Copy to: (attorney general)

Jim Petro

State Office Tower

30 East Broad Street, 17th Floor

Columbus, Ohio 43215-3428

***4.14 How To Deal When Faced with a Hearing***

What is they call you in for a hearing and you haven't filed anything in the case? Is there anything you can do? Yes, you can file an instanter.

In the Chancery Court of Smith County, Tennessee

Citizens Bank,	)
	)
Plaintiff,	)
	)
vs.	) No. 6666
	)
Naomi Rosecrans,	)
	)
defendant.	)
	)
	)

Defendant's instanter motion to dismiss / memorandums of  
law / notice to the court

Brief in support of motion to dismiss

Memorandum of law in support of the point of law that party alleging to be creditor must prove standing James L. Bass failed or refused to produce the actual note which Citizens Bank alleges Naomi Rosecrans owes. Where the complaining party can not prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4)

that a certain balance is due and owing on the note. See In Re: *SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.) Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469 in *Carnegie Bank v Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3-302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th

Cir 1977), "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrcty.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession ..." Whereas James L. Bass has practiced subterfuge by filing a pleading and scheduling a hearing for determination which abridges Naomi Rosecrans's due process rights, Naomi Rosecrans places this court on notice of other state's laws regarding necessity of proving standing.

Memorandum of law in support of the point of law that even  
in a default judgment, damages must be proved

Trial court could not award damages to plaintiff, following default judgment, without requiring evidence of damages. *Razorsoft, Inc. v. Maktal, Inc.*, Okla.App. Div. 1, 907 P.2d 1102 (1995), rehearing denied. A party is not in default so long as he has a pleading on file which makes an issue in the case that requires proof on the part of the opposite party in order to entitle him to recover. *Millikan v. Booth*, Okla., 4 Okla. 713, 46 P. 489 (1896). Proof of or assessment of damages upon petition claiming damages, it is error to pronounce judgment without hearing proof or assessing damages. *Atchison, T. & S.F. Ry. Co. v. Lambert*, 31 Okla. 300, 121 P. 654, Ann.Cas.1913E, 329 (1912); *City*



of Guthrie v. T. W. Harvey Lumber Co., 5 Okla. 774, 50 P. 84 (1897). In the assessment of damages following entry of default judgment, a defaulting party has a statutory right to a hearing on the extent of unliquidated damage, and encompassed within this right is the opportunity to a fair post-default inquest at which both the plaintiff and the defendant can participate in the proceedings by cross-examining witnesses and introducing evidence on their own behalf. Payne v. Dewitt, Okla., 995 P.2d 1088 (1999). A default declaration, imposed as a discovery sanction against a defendant, cannot extend beyond saddling defendant with liability for the harm occasioned and for imposition of punitive damages, and the trial court must leave to a meaningful inquiry the quantum of actual and punitive damages, without stripping defendant of basic forensic devices to test the truth of plaintiff's evidence. Payne v. Dewitt, Okla., 995 P.2d 1088 (1999). Fracture of two toes required expert medical testimony as to whether such injury was permanent so as to allow damages for permanent injury, future pain, and future medical treatment on default judgment, and such testimony was not within competency of plaintiff who had no medical expertise. Reed v. Scott, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). Rendition of default judgment requires production of proof as to amount of unliquidated damages. Reed v. Scott, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). When face of judgment roll shows judgment on pleadings without evidence as to amount of unliquidated damages then judgment is void. Reed v. Scott, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). In a tort action founded on an unliquidated claim

for damages, a defaulting party is deemed to have admitted only plaintiff's right to recover, so that the court is without authority or power to enter a judgment fixing the amount of recovery in the absence of the introduction of evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Presumptions which ordinarily shield judgments from collateral attacks were not applicable on motion to vacate a small claim default judgment on ground that court assessed damages on an unliquidated tort claim without first hearing any supporting evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Rule that default judgment fixing the amount of recovery in absence of introduction of supporting evidence is void and not merely erroneous or voidable obtains with regard to exemplary as well as compensatory damages. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Where liability of father for support of minor daughter and extent of such liability and amount of attorney's fees to be allowed was dependent on facts, rendering of final judgment by trial court requiring father to pay \$25 monthly for support of minor until minor should reach age 18 and \$100 attorney's fees without having heard proof thereof in support of allegations in petition was error. *Ross v. Ross*, Okla., 201 Okla. 174, 203 P.2d 702 (1949). Refusal to render default judgment against codefendant for want of answer was not error, since defendants and court treated answer of defendant on file as having been filed on behalf of both defendants, and since plaintiff could not recover without offering proof of damages and offered no such proof. *Thomas v. Sweet*, Okla., 173 Okla. 601, 49 P.2d 557 (1935). Under R.L.1910, §§ 4779,

5130 (see, now, this section and § 2007 of this title), allegation of value, or amount of damages stated in petition, were not considered true by failure to controvert. *Cudd v. Farmers' Exch. Bank of Lindsay, Okla.*, 76 Okla. 317, 185 P. 521 (1919). Hearing Trial court's discovery sanction barring defendant from using cross-examination and other truth-testing devices at post-default non-jury hearing on plaintiff's damages violated due process. *Payne v. Dewitt, Okla.*, 995 P.2d 1088 (1999). Whereas James L. Bass has practiced subterfuge by filing a pleading and scheduling a hearing for determination which abridges Naomi Rosecrans's due process rights, Naomi Rosecrans places this court on notice of other state's laws regarding necessity of proving a default judgment.

Memorandum of law in support of the point of law that to prove damages in foreclosure of a debt, party must enter the account and general ledger statement into the record through a competent fact witness

To prove up claim of damages, foreclosing party must enter evidence incorporating records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371,

(Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Il. Whereas James L. Bass has practiced subterfuge by filing a pleading and scheduling a hearing for determination which abridges Naomi Rosecrans's due process rights, Naomi Rosecrans places this court on notice of other state's laws regarding necessity of prove up of the claim.

Memorandum of law in support of the point of law that a  
void judgment cannot operate

The general rule is that a void judgment is no judgment at all. Where judgments are void, as was the judgment originally rendered by the trial court here, any subsequent proceedings based upon the void judgment are themselves void. In essence, no judgment existed from which the trial court could adopt either findings of fact or conclusions of law. *Valley Vista Development Corp. v. City of Broken Arrow*, 766 P.2d 344, 1988 OK 140 (Okla. 12/06/1988); A void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question. A void judgment neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it, are absolutely void. The parties attempting to enforce it are trespassers." *High v. Southwestern Insurance Company*, 520 P.2d 662, 1974 OK 35 (Okla. 03/19/1974); and, a void

judgment cannot constitute *res judicata*. Denial of previous motions to vacate a void judgment could not validate the judgment or constitute *res judicata*, for the reason that the lack of judicial power inheres in every stage of the proceedings in which the judgment was rendered. *Bruce v. Miller*, 360 P.2d 508, 1960 OK 266 (Okla. 12/27/1960). Whereas James L. Bass has practiced subterfuge by filing a pleading and scheduling a hearing for determination which abridges Naomi Rosecrans's due process rights, Naomi Rosecrans places this court on notice of other states' laws regarding the un-enforceability of void judgments.

Memorandum of law in support of the point of law that  
a void judgment is not void when declared void but is void  
*ab initio*

If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*. See *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941. Whereas James L. Bass has practiced subterfuge by filing a pleading and scheduling a hearing for determination which abridges Naomi Rosecrans's due process rights, Naomi Rosecrans places this court on notice of other states' laws regarding the law that void judgment is not void when vacated but is void *ab initio*.

Memorandum of law in support of the point of law that party  
seeking to vacate a void judgment is invoking the  
ministerial powers of the court / courts lack discretion  
when it comes to vacating void judgments

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994). See also, *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a **void judgment**). Whereas James L. Bass has practiced subterfuge by filing a pleading and scheduling a hearing for determination which abridges Naomi Rosecrans's due process rights, Naomi Rosecrans places this court on notice of other states' laws regarding the law that the court, in considering a jurisdictional challenge **has not judicial capacity..**

I, Naomi Rosecrans, of lawful age and competent to testify state as follows based on my own personal knowledge:

1. I am not in receipt of any document which verifies that Citizens Bank has standing to sue in Tennessee courts.
2. I am not in receipt of any document which verifies that I have a contract with Citizens Bank
3. I am not in receipt of any document which verifies that I owe Citizens Bank money.
4. I am not in receipt of any document which verifies that Citizens Bank authorized suit against me or is even aware of it.

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5. I am not in receipt of a motion for judgment by default or motion for summary judgment on behalf of Citizens Bank.

6. As the result of James L. Bass' pattern of acts against me, I have been damaged financially, socially, and emotionally.

\_\_\_\_\_  
Naomi Rosecrans

STATE OF TENNESSEE                      INDIVIDUAL ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act. Given under my hand and seal the day and year last above written. My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Prepared and submitted by: \_\_\_\_\_  
Naomi Rosecrans

Certificate of service

I, Naomi Rosecrans, certify that August \_\_, 2003, I hand delivered a true and correct copy of the above and

foregoing motion to vacate via certified mail, return receipt requested to:

James L. Bass

---

Naomi Rosecrans



**4.15 Discovery On You**

Can they ask you for discovery? Yes, answer them as follows:

IN THE SUPERIOR COURT OF MUSCOGEE COUNTY  
STATE OF GEORGIA

Discover Bank,	)	
	)	
Plaintiff,	)	
)	)	
v.	)	Case number SU-03-CV-2295
)	)	
Angie G. Silver, and	)	
Esler C. Silver,	)	
Defendants.	)	

Defendant's response to plaintiff's request for production  
of documents

Response to requests numbered 1, 2, 4, 10, 12, 13, 14, 15, & 16: Defendants respectfully decline to comply at this time: (1). Lawful treatment of defendants' motion to dismiss will dispose of Discover Bank's claim, (2). Discover has defaulted on Angie G. Silver and Esler C. Silver's counterclaim, (3). Attorneys purporting to represent Discover Bank have failed or refused to furnish proof of authority to act for Discover Bank, and (4). Discover Bank has failed or refused to deny being part of a nationwide racket.

Response to requests number 3, 5, & 9: Objection: items 3, 5, & 9 are plaintiff's burden to prove - not defendants' burden to disprove.

Response to request number 6: Evidence is available and shall be tendered to the authorized representative of Discover Bank.

Response to request number 7: Objection: Violation of the Fair Debt Collections Practices Act is denial of due process.

Response to request number 8: Objection: the request is nonsensical. There is no such thing as subject matter jurisdiction over a person. Subject matter jurisdiction applies to

## How To Legally Beat Debt Collectors

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the person in the sense that the court either has subject matter jurisdiction or it does not. Where due process is denied, the court is said to want subject matter jurisdiction.

Prepared and submitted by:

\_\_\_\_\_  
Angie G. Silver

\_\_\_\_\_  
Esler C. Silver

### Certificate of mailing

I, Esler C. Silver, certify that October \_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing responses to requests for production to:

Elizabeth C. Whealler & J. Curtis Tottle, Jr.  
1655 Enterprise Way  
Marietta, Georgia 30067

\_\_\_\_\_  
Esler C. Silver

**4.16 Ask for Discovery**

Can you ask for discovery? Yes, ask them as follows and make them suffer!

STATE OF WISCONSIN \* CIRCUIT COURT \* DANE COUNTY

Hsbc Bank Usa Formerly Marine Midland Bank,  
a foreign corporation,  
P.O. Box 2103  
Buffalo, NY 14240  
Plaintiff,

Vs. Case No. : 02-CV0081

William D. Ozgood  
60 South CT  
McFarland, Wisconsin 53555

Defendant.

Defendant's request for admissions to plaintiff Hsbc Bank  
Usa

To: Hsbc Bank Usa (please note: where discovery requests are directed to a corporation, counsel for the corporation is required to nominate officers of the corporation to answer). Defendant, William D. Ozgood, submits the following request for admissions to defendant Hsbc Bank Usa. You are required to answer each request for admissions separately and fully, in writing, under oath, and to serve a copy of the responses upon William D. Ozgood within (30) days after service of these requests for admissions.

#### Instructions

1. These requests for admissions are directed toward all information known or available to Hsbc Bank Usa including information contained in the records and documents in Hsbc Bank Usa's custody or control or available to Hsbc Bank Usa upon reasonable inquiry. Where requests for admissions cannot be answered in full, they shall be answered as completely as possible and incomplete answers shall be accompanied by a specification of the reasons for the incompleteness of the answer and of whatever actual knowledge is possessed with respect to each unanswered or incompletely answered request for admission.

2. Each request for admissions is to be deemed a continuing one. If, after serving an answer to any request for an admission, you obtain or become aware of any further

## How To Legally Beat Debt Collectors

information pertaining to that request for admission, you are requested to serve a supplemental answer setting forth such information.

3. As to every request for an admission which you fail to answer in whole or in part, the subject matter of that admission will be deemed confessed and stipulated as fact to the court.

### Definitions

- a. "You" and "your" include Hsbc Bank Usa and any and all persons acting for or in concert with Hsbc Bank Usa.
- b. "Document" includes every piece of paper held in your possession or generated by you.

### Requests for admissions

First admission:

Admit or deny that Hsbc Bank Usa is not licensed to do business in Wisconsin by virtue of being registered with the Secretary of State or the Secretary of State of Banking and nominating an agent for service of process.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Second admission:

Admit or deny that officers of Hsbc Bank Usa has no regular, systematic way of doing business in Wisconsin, also known as "minimum contacts."

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Third admission: Admit or deny that Hsbc Bank Usa's charter does not authorize Hsbc Bank Usa to engage in consumer lending.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Fourth admission: Admit or deny that Hsbc Bank Usa's charter does not authorize Hsbc Bank Usa to bring suits in foreclosure of consumer debts.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

## How To Legally Beat Debt Collectors

Fifth admission: Admit or deny that Admit or deny that Hsbc Bank Usa's is not the present holder of a contract with William D. Ozgood.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Sixth admission: Admit or deny that Admit or deny that Hsbc Bank Usa sold the contract which Hsbc Bank Usa William D. Ozgood.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Seventh admission: Admit or deny that Hsbc Bank Usa has been informed by counsel that a credit card contract is a continuing series of offers to contract and as such is not transferable.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Eighth admission: Admit or deny that Hsbc Bank Usa never had anything at risk in the contract with William D. Ozgood.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Ninth admission: Admit or deny that Hsbc Bank Usa possess no account and general ledger statement verifying that William D. Ozgood presently owes Hsbc Bank Usa money.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Tenth admission: Admit or deny that officers of Hsbc Bank Usa know and understand that after a credit card is charged off, it is common practice to sell the charged off debt to lawyers in the debt collection business for deep discounts.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Eleventh admission: Admit or deny that officers of Hsbc Bank Usa know and understand that attorneys who purchase evidence of debt and then file lawsuits in the name of the original maker of the debt are committing felony fraud.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

## How To Legally Beat Debt Collectors

Twelfth admission: Admit or deny that officers of Hsbc Bank Usa know and understand that RAUSCH, STURM, ISRAEL & HORNIK, S.C. routinely purchases evidence of debt from Hsbc Bank Usa, then relies on Hsbc Bank Usa to aid and abet felony fraud.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Thirteenth admission: Admit or deny that Hsbc Bank Usa cannot be affected financially by the outcome of litigation against William D. Ozgood as if the suit is lost, it is RAUSCH, STURM, ISRAEL & HORNIK, S.C.'s loss and if the suit is won, it is RAUSCH, STURM, ISRAEL & HORNIK, S.C.'s win.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

\_\_\_\_\_  
Print name title Officer of Hsbc Bank Usa

State of \_\_\_\_\_ County of \_\_\_\_\_

Before me this day appeared \_\_\_\_\_, known to me as the person who made the above and foregoing statements of his own free will.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary

Prepared and submitted by: \_\_\_\_\_  
William D. Ozgood

Certificate of service

I, William D. Ozgood, certify that \_\_\_\_\_, 2004, I mailed a true and correct copy of the above and foregoing request for admissions via certified mail, return receipt requested to:

Julie A. Rausch  
2448 South 102nd Street, Suite 210  
Milwaukee, Wisconsin 53227

\_\_\_\_\_  
William D. Ozgood



## How To Legally Beat Debt Collectors

STATE OF WISCONSIN \* CIRCUIT COURT \* DANE COUNTY

Hsbc Bank Usa Formerly Marine Midland Bank,  
a foreign corporation,  
P.O. Box 2103  
Buffalo, NY 14240  
Plaintiff,

Vs. Case No. : 02-CV0081

William D. Ozgood  
6011 South CT  
McFarland, Wisconsin 53558

Defendant

Defendant's request for production of documents to  
plaintiff Hsbc Bank Usa

To: Hsbc Bank Usa

Defendant, William D. Ozgood, submits the following request for production of documents to defendant Hsbc Bank Usa. You are required to inform William D. Ozgood of the date, place, and time that William D. Ozgood can view the documents (in Milwaukee, Wisconsin) and make copies. Alternately, you can furnish William D. Ozgood with verified copies of all documents. If the document does not exist, you are required to state that it does not exist. Failure to comply fully or partially with this request within thirty days of receipt of service shall be deemed a confession that the document does not exist or that Hsbc Bank Usa is committing fraud by concealment.

### Instructions

1. These requests for production of documents is directed toward all information known or available to Hsbc Bank Usa including information contained in the records and documents in Hsbc Bank Usa's custody or control or available to Hsbc Bank Usa upon reasonable inquiry.
2. Each request for production of documents is to be deemed a continuing one. If, after serving an answer to any request for an admission, you obtain or become aware of any further information pertaining to that requested production

## How To Legally Beat Debt Collectors

of documents, you are requested to serve a supplemental answer setting forth such information.

### Definitions

a. "You" and "your" include Hsbc Bank Usa and any and all persons acting for or in concert with Hsbc Bank Usa.

b. "Document" includes every piece of paper held in your possession or generated by you.

### Requests for production of documents

First document: All pages, front and back of Hsbc Bank Usa's corporate charter.

Second document: The account and general ledger of each and every contract Hsbc Bank Usa alleges William D. Ozgood has with Hsbc Bank Usa showing all receipts and disbursements.

Third document: The copy, front and back, of the contract Hsbc Bank Usa alleges William D. Ozgood has with Hsbc Bank Usa showing any and all assignments or allonges.

Fourth document: The copy, front and back, of the contract for services which Hsbc Bank has with RAUSCH, STURM, ISRAEL & HORNIK, S.C.

Prepared and submitted by: \_\_\_\_\_  
William D. Ozgood

### Certificate of service

I, William D. Ozgood, certify that \_\_\_\_\_, 2004, I mailed a true and correct copy of the above and foregoing request for production of documents via certified mail, return receipt requested to:

Julie A. Rausch  
2448 South 102nd Street, Suite 210  
Milwaukee, Wisconsin 53227

\_\_\_\_\_  
William D. Ozgood

***4.17 Motion to Compel***

What if they are evasive in response to your discovery? File a motion to compel!

## How To Legally Beat Debt Collectors

STATE OF WISCONSIN \* CIRCUIT COURT \* DANE COUNTY

Hsbc Bank Usa Formerly Marine Midland Bank,  
a foreign corporation,  
P.O. Box 2103  
Buffalo, NY 14240  
Plaintiff,

Vs. Case No. : 02-CV0081

William D. Ozgood  
60 South CT  
McFarland, Wisconsin 53555

Defendant

Defendant's motion to compel compliance with defendant's  
request for admissions to plaintiff Hsbc Bank Usa

Defendant, William D. Ozgood requested the following  
admissions. The significance of each admission is  
articulated relative to each admission.

To: Hsbc Bank Usa (please note: where discovery requests  
are directed to a corporation, counsel for the corporation  
is required to nominate officers of the corporation to  
answer).

Defendant, William D. Ozgood, submits the following request  
for admissions to defendant Hsbc Bank Usa. You are required  
to answer each request for admissions separately and fully,  
in writing, under oath, and to serve a copy of the  
responses upon William D. Ozgood within (30) days after  
service of these requests for admissions.

### Instructions

1. These requests for admissions are directed toward all  
information known or available to Hsbc Bank Usa including  
information contained in the records and documents in Hsbc  
Bank Usa's custody or control or available to Hsbc Bank Usa  
upon reasonable inquiry. Where requests for admissions  
cannot be answered in full, they shall be answered as  
completely as possible and incomplete answers shall be  
accompanied by a specification of the reasons for the  
incompleteness of the answer and of whatever actual

knowledge is possessed with respect to each unanswered or incompletely answered request for admission.

2. Each request for admissions is to be deemed a continuing one. If, after serving an answer to any request for an admission, you obtain or become aware of any further information pertaining to that request for admission, you are requested to serve a supplemental answer setting forth such information.

3. As to every request for an admission which you fail to answer in whole or in part, the subject matter of that admission will be deemed confessed and stipulated as fact to the court.

#### Definitions

a. "You" and "your" include Hsbc Bank Usa and any and all persons acting for or in concert with Hsbc Bank Usa.

b. "Document" includes every piece of paper held in your possession or generated by you. Requests for admissions

First admission: Admit or deny that Hsbc Bank Usa is not licensed to do business in Wisconsin by virtue of being registered with the Secretary of State or the Secretary of State of Banking and nominating an agent for service of process. Without proof of being licensed to do business in Wisconsin, Hsbc Bank Usa lacks standing to bring suits in Wisconsin courts depriving this court of subject matter jurisdiction.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Second admission: Admit or deny that officers of Hsbc Bank Usa has no regular, systematic way of doing business in Wisconsin, also known as "minimum contacts." This court has knowledge that without a license to do business in Wisconsin, the only other way for Hsbc Bank Usa to have standing to avail Hsbc Bank Usa of Wisconsin courts is proof of minimum contacts. If Hsbc Bank Usa lacks standing in Wisconsin courts, this court is deprived of power to provide Hsbc Bank Usa remedy.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

## How To Legally Beat Debt Collectors

Third admission: Admit or deny that Hsbc Bank Usa's charter does not authorize Hsbc Bank Usa to engage in consumer lending. This court has actual knowledge that Hsbc Bank Usa is a fiction with no implied powers other than granted by charter. Without grant as shown in Hsbc Bank Usa's charter to engage in consumer lending, Hsbc Bank Usa's making consumer loans is *ultra viries* depriving this court of subject matter jurisdiction to rule favorably for Hsbc Bank Usa.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Fourth admission: Admit or deny that Hsbc Bank Usa's charter does not authorize Hsbc Bank Usa to bring suits in foreclosure of consumer debts. This court has actual knowledge that Hsbc Bank Usa is a fiction with no implied powers other than granted by charter. Without grant as shown in Hsbc Bank Usa's charter to sue in foreclosure of consumer loans, Hsbc Bank Usa's bringing suit in foreclosure of a consumer loan is *ultra viries* depriving this court of subject matter jurisdiction to rule favorably for Hsbc Bank Usa.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Fifth admission: Admit or deny that Admit or deny that Hsbc Bank Usa's is not the present holder of a contract with William D. Ozgood. This court has actual knowledge that only the party possessing the actual and original debt instrument has standing to sue the debtor.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Sixth admission: Admit or deny that Admit or deny that Hsbc Bank Usa sold the contract which Hsbc Bank Usa William D. Ozgood. This court has actual knowledge that credit cards are continuing offers of a series of contracts and as such are non-transferable meaning once a credit card is sold, the contract is extinguished.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Seventh admission: Admit or deny that Hsbc Bank Usa has been informed by counsel that a credit card contract is a

continuing series of offers to contract and as such is not transferable. This court has knowledge that an attorney, in signing pleadings, is claiming that the attorney has made inquiry, reasonable under the circumstances, and that the pleading is well grounded in fact and warranted by existing law. The response to this admission is necessary to determine whether attorneys representing Hsbc Bank Usa have committed felony fraud by intentionally preparing and submitting a false document to this court.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Eighth admission: Admit or deny that Hsbc Bank Usa never had anything at risk in the contract with William D. Ozgood. This response is necessary to determine whether Hsbc Bank Usa has violated truth and lending laws.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Ninth admission: Admit or deny that Hsbc Bank Usa possess no account and general ledger statement verifying that William D. Ozgood presently owes Hsbc Bank Usamoney. Without this document, this court has no competent evidence to rely on to determine that William D. Ozgood is indebted to Hsbc Bank Usa.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Tenth admission: Admit or deny that officers of Hsbc Bank Usa know and understand that after a credit card is charged off, it is common practice to sell the charged off debt to lawyers in the debt collection business for deep discounts. This admission is necessary to show that Hsbc Bank Usa is involved in unlawful activity.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

Eleventh admission: Admit or deny that officers of Hsbc Bank Usa know and understand that attorneys who purchase evidence of debt and then file lawsuits in the name of the original maker of the debt are committing felony fraud. This admission is necessary to show that Hsbc Bank Usa is involved in racketeering.

Admitted\_\_\_\_\_

Denied\_\_\_\_\_

## How To Legally Beat Debt Collectors

Twelfth admission: Admit or deny that officers of Hsbc Bank Usa know and understand that RAUSCH, STURM, ISRAEL & HORNIK, S.C. routinely purchases evidence of debt from Hsbc Bank Usa, then relies on Hsbc Bank Usa to aid and abet felony fraud. This admission is necessary to determine whether officers of Hsbc Bank Usa are willing to perjure themselves in defense of RAUSCH, STURM, ISRAEL & HORNIK, S.C.

Admitted \_\_\_\_\_

Denied \_\_\_\_\_

Thirteenth admission: Admit or deny that Hsbc Bank Usa cannot be affected financially by the outcome of litigation against William D. Ozgood as if the suit is lost, it is RAUSCH, STURM, ISRAEL & HORNIK, S.C.'s loss and if the suit is won, it is RAUSCH, STURM, ISRAEL & HORNIK, S.C.'s win. This admission is necessary to reveal that both Hsbc Bank Usa and RAUSCH, STURM, ISRAEL & HORNIK, S.C. are involved in racketeering.

Admitted \_\_\_\_\_

Denied \_\_\_\_\_

This court is further noticed: at least one officer from Hsbc Bank Usa must be identified as the author of admissions - statements of counsel are not facts before the court.

\_\_\_\_\_  
Print name Title Officer of Hsbc Bank Usa

State of \_\_\_\_\_

County of \_\_\_\_\_

Before me this day appeared \_\_\_\_\_, known to me as the person who made the above and foregoing statements of his own free will.

My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary

Prepared and submitted by: \_\_\_\_\_

William D. Ozgood

Certificate of service



## How To Legally Beat Debt Collectors

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I, William D. Ozgood, certify that \_\_\_\_\_, 2004,  
I mailed a true and correct copy of the above and foregoing  
request for admissions via certified mail, return receipt  
requested to:

Julie A. Rausch  
2448 South 102nd Street, Suite 210  
Milwaukee, Wisconsin 53227

\_\_\_\_\_  
William D. Ozgood

## How To Legally Beat Debt Collectors

STATE OF WISCONSIN \* CIRCUIT COURT \* DANE COUNTY

Hsbc Bank Usa Formerly Marine Midland Bank,  
a foreign corporation,  
P.O. Box 2103  
Buffalo, NY 14240  
Plaintiff,

Vs. Case No. : 02-CV0081

William D. Ozgood  
6011 South CT  
McFarland, Wisconsin 53558

Defendant

Defendant.'s motion to compel production of documents

Defendant has requested production of documents to  
plaintiff Hsbc Bank Usa

To: Hsbc Bank Usa

Defendant, William D. Ozgood, clarified the following request for production of documents to defendant Hsbc Bank Usa: You are required to inform William D. Ozgood of the date, place, and time that William D. Ozgood can view the documents (in Milwaukee, Wisconsin) and make copies. Alternately, you can furnish William D.

Ozgood with verified copies of all documents. If the document does not exist, you are required to state that it does not exist. Failure to comply fully or partially with this request within thirty days of receipt of service shall be deemed a confession that the document does not exist or that Hsbc Bank Usa is committing fraud by concealment.

### Instructions

1. These requests for production of documents is directed toward all information known or available to Hsbc Bank Usa including information contained in the records and documents in Hsbc Bank Usa's custody or control or available to Hsbc Bank Usa upon reasonable inquiry.

2. Each request for production of documents is to be deemed a continuing one. If, after serving an answer to any request for an admission, you obtain or become aware of any further information pertaining to that requested production of documents, you are requested to serve a supplemental answer setting forth such information.

#### Definitions

a. "You" and "your" include Hsbc Bank Usa and any and all persons acting for or in concert with Hsbc Bank Usa.

b. "Document" includes every piece of paper held in your possession or generated by you.

Plaintiff Hsbc Bank Usa has failed or refused to responds to defendants' requests for production of documents / the necessity of the document is articulated following each request

First document: All pages, front and back of Hsbc Bank Usa's corporate charter. Without this document, the court has nothing to rely on to determine whether Hsbc Bank Usa is authorized to engage in consumer lending or bring suit in foreclosure of a consumer loan.

Second document: The account and general ledger of each and every contract Hsbc Bank Usa alleges William D. Ozgood has with Hsbc Bank Usa showing all receipts and disbursements. Without this document, the court has no competent evidence before it to rely on to determine that William D. Ozgood owes Hsbc Bank Usa money.

Third document: The copy, front and back, of the contract Hsbc Bank Usa alleges William D. Ozgood has with Hsbc Bank Usa showing any and all assignments or allonges. Without submission of the original debt instrument, this court is without competent evidence that a contract has been breached or which party has standing to bring suit for breach.

Fourth document: The copy, front and back, of the contract for services which Hsbc Bank has with RAUSCH, STURM, ISRAEL & HORNIK, S.C. Without this document, this court has no competent evidence to determine whether this suit was authorized by Hsbc Bank Usa. Without proof of delegation of authority to act, this count has prima facie

## How To Legally Beat Debt Collectors

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evidence of fraud practiced by RAUSCH, STURM, ISRAEL & HORNIK, S.C.

Prepared and submitted by: \_\_\_\_\_  
William D. Ozgood

Certificate of service  
I, William D. Ozgood, certify that \_\_\_\_\_, 2004,  
I mailed a true and correct copy of the above and foregoing  
request for production of documents via certified mail,  
return receipt requested to:

Julie A. Rausch  
2448 South 102nd Street, Suite 210  
Milwaukee, Wisconsin 53227

\_\_\_\_\_  
William D. Ozgood

### **4.18 Deposition**

In law, a deposition is evidence given under oath and recorded for use in court at a later date. In many countries depositions are given in courtrooms, but in the United States they are given outside a courtroom in certain well-defined circumstances. In the U.S. it is a part of the discovery process in which litigants obtain information from each other in preparation for trial.

What if they want to depose you? Go to the deposition and have a good time! It is your opportunity to testify, to tell your story. Just beware of the treachery of attorneys. You can always ask that the question be repeated, ask that compound questions be ask one at a time, you can say I don't know, and I don't recall. For questions answered in the affirmative say, "to my best recollection at this time."

Hogden: I'm Bruce Hogden. I am here for he defendant, Earl White. Mr. Good, I'm an attorney and I represent Earl White in connection with a lawsuit you filed against him. Do you understand that?

Mike: Perfectly clear to me.

Hogden: All your answers should be yes or no unless I ask you to expound. It that clear Mr. Good?

Mike: Gotcha.

Hog: I'm here to take your deposition in connection with that lawsuit. You understand?

Mike: Yes.

Hog: You've never had your deposition taken before?

Mike: (answer yes or no).

Hog: Do you understand that your testimony is subject to the penalties of perjury if you do not tell the truth?

Mike: Sure, I understand that.

Hog: And the court reporter here is going to take down my questions and your answers, and those questions and answers may be used at trial in this matter. Do you understand that?

Mike: Yes.

Hog: Are you taking any medication today that might affect how your answers my questions?

Mike: No.

Hog: Are you suffering from any mental or emotional conditions that might affect how you testify today?

Mike: Now that could be. I'll try not to let it affect me, but my life has been repeatedly threatened.

Hog: How has your life been threatened?

Mike: Well, in example, about three weeks ago, I was pulling a trailer when the wheels came loose. Lucky for me I wasn't going fast down some major highway when it happened. I could have been killed and also, I might have hurt someone else. That's a lot to think about, especially when it's about the fifth or sixth time something like that has happened including Earl White trying to run over me.

Hog: Reporter, we need to go off the record here for a minute.

Off the record: Hog. Mr. Good, do you understand the difference between fact and speculation? Mike: I know what happened. Hog: Just the same, I am going to ask you not to make any further comments about my client, Okay? Mike: I'll do my best.

Hog: If this deposition has to be terminated, I'm going to ask the court to sanction you. Mike: You'll have to take that up with the judge.

Hog. I just want to make sure that there is nothing that will affect your memory of the events leading up to this suit.

## How To Legally Beat Debt Collectors

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Mike: I'm with you.

Hog: Can you state your full legal name?

Mike: Yes, I can.

Hog: Mr. Good, I'm warning you, if you don't answer my questions, there are going to be serious consequences.

Mike: Are you threatening me?

Hog: Reporter we need to go off record again.

Off the record: Mr. Good, if I report this conduct by you to the judge, you're definitely going to lose your case. So answer my questions and no nonsense, okay? Mike: Just get on with it. Ask your questions that you need to ask.

Hog: What is your full name?

Mike: (Answer).

Hog: Spell your name for the record.

Mike: (spell name).

Hog: What is your address?

Mike: (state address).

Hog: Do you do business as Good Farms.

Mike: I don't know.

Hog: You don't know whether you do business as Good Farms or not?

Mike: No, I really don't. I've been through bankruptcy and those proceedings showed that I was insolvent. So I really don't know.

Hog: Okay, have you ever done business as Good Farms?

Mike: Yes.

## How To Legally Beat Debt Collectors

Hog: From when until when did you do business as Good Farms.

Mike: From about (month and year).

Hog: Till when?

Mike: I don't know.

Hog: Mr. Good, who has coached you on how to answer today?

Mike: I don't know what you mean by coach.

Hog: Who has helped you with all these legal matters?

Mike: I object. The question is not likely to lead to the discovery of evidence which would be admissible at trial. (memorize this statement and use it often)

Hog: Mr. Good, this is a deposition. You have to answer my questions.

Mike: No I don't. If there is a valid objection such as the one I've just given, I can object.

Hog: I'll have the judge force you to answer and also punish you for not answering.

Mike: That's between you and the court.

Hog: So answer the question. Who is helping you.

Mike: I've already answered that question, I objected.

Hog: Reporter, enter an exception to that answer. Are you currently married?

Mike: That's privileged, Mr. Hodgden.

Hog: Are you refusing to answer that question?

Mike: It's clearly outside the scope of this proceeding. It's personal information.

Hog: I'm just asking if you are refusing to answer the question.



Mike: You are harassing me. If this is all you intend to do today, harass me instead of asking relevant questions, I'm going to excuse myself. I've got things to do.

Hog: Would you feel better if I called the judge?

Mike: If you have some pertinent questions, you had better ask them or I'll be leaving and the only thing the record will show is that you harassed me.

Hog: Do you have any children?

Mike: I object. The question is of no relevance to these proceedings.

Hog: Okay Mr. Good, I'm definitely going to ask the court to sanction you, but before I do that, I'm going to get to the heart of the matter.

Mike: Thank you.

Hog: Did you borrow money from the FSA?

Mike: I don't know.

Hog: You expect the court to believe that you don't even know whether you took out a loan with the FSA or not?

Mike: I wanted to way back years ago, but I'm not sure what happened. All I know for sure, is that the FSA tried to take my property away and sell it to Earl White.

Hog: Mr. Good, there is no dispute that you took a loan out with the FSA.

Mike: Why are you testifying?

Hog: I'm not testifying, I'm just stating facts.

Mike: You may not know this but only witnesses can state facts and attorneys are not witnesses.

Hog: I'm asking the questions here.

## How To Legally Beat Debt Collectors

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Mike: Then go ahead and ask your questions.

Hog: After you borrowed from the FSA and defaulted on the loan, they foreclosed the loan and took the farm. Isn't that what happened?

Mike: I'm going to object to that question. That's called leading the witness and I'm not going to answer.

Hog: Okay, Did you borrow from the FSA, yes or no?

Mike: I don't know.

Hog: Why don't you know?

Mike: I have no record of anything authorizing the FSA to make farm loans. I have no record of any promissory note that I signed with FSA where FSA complied with truth in lending laws.

Hog: I enter exhibit one. This is a copy of a loan application with FSA. Is that your signature on the loan app?

Mike: I don't know.

Hog: I remind you that you are under oath. I'm going to ask you again. Is that your signature?

Mike: I don't know.

Hog: Why don't you know? Mike: Well for one thing, it's a copy.

Hog: So is it a copy of your signature?

Mike: You'd have to ask the person who made the copy.

Hog: Okay, do you have any reason to believe that this is not your signature?

Mike: That's not the issue. You see, dishonest people with computers and scanners can scan your signature, then paste the image on a document to make it look like you signed it.

Hog: Are you saying this document is a forgery?

Mike: I'm just saying that I'm not sure.

Hog: Okay, as the result of this application, you got money and that enabled you to operate your farm. Is that correct?

Mike: I have no idea. All I know is that I wanted to get some financing for my farming operations and it looks like I wound up without either the financing or the farm.

Hog: Mr. Good. This isn't going to look good to the judge. He is going to see that you are evading the questions and will punish you. You are an adult. You know that if you borrow money and don't pay it back, then you're going to lose the collateral to you put up for the loan. You understand that don't you?

Mike: I understand it in principle but what I don't understand is if I borrowed money and didn't pay it back, where is the evidence of that?

Hog: The judgment of foreclosure was a summary judgment because you didn't dispute the facts that you borrowed money and didn't pay it back.

Mike: The burden was not on me to disprove their case. The FSA had a burden to prove their case. That's especially true in a summary judgment, cause in a summary judgment there are not facts in dispute.

Hog: That's what the court ruled.

Mike: The court's ruling is void because no evidence was entered into the record to prove that I had a loan with FSA or that FSA was damaged in any way by me.

Hog: I don't know where you get all this malarkey but it's wrong.

Mike: Are you going to ask any more questions or just be argumentative?

## How To Legally Beat Debt Collectors

Hog: Okay, I going to give you the opportunity to avoid being charged with perjury. Are you claiming that you never had a loan with FSA?

Mike: I'm not saying that at all. I'm saying that I don't know.

Hog: I think the prosecutor needs to hear this baloney from you, and I know he'll indict you, so you better answer and answer correctly. Did you take a loan out with FSA?

Mike: Something the prosecutor should be interested in is how it can be that a person's property can be taken away in respect of a loan without verification that the loan ever existed.

Hog: Just answer the question. Did you take a loan out with the FSA?

Mike: I don't think so and I'll tell you why. Everybody knows that when you borrow on a note, when the note is satisfied, the debt is discharged and I've never been discharged in this alleged loan. I've not been tendered the original promissory note marked paid in full.

Hog: Oh, nobody every does that anymore.

Mike: Maybe you could explain that to a grand jury.

Hog: What you're saying then is that you never borrowed from the FSA?

Mike: No, I'm saying that I don't know for sure but it kinda looks like I've been had in the predatory lending racket.

Hog: Answer the question. Did you take out a loan with the FSA?

Mike: What do you want?

Hog: I want you to answer the question.

Mike: I did answer the question. You don't like my answer, but my answer is still, I don't know.

Hog; Okay. Was there a marshal's sale on this farm?

Mike: Objection, that calls for a legal opinion.

Hog: What? Just to answer whether you know whether the U.S. Marshal sold your property?

Mike: To repeat myself, there was not an offer of presentment of a promissory note that I signed. There was no account and general ledger showing that I damaged FSA, and after the so-called marshal's sale was consummated and money was tendered to pay off the note, I never got discharged.

Hog: But if they gave you the note marked paid in full or satisfied or something, you might destroy the note and then where would they be?

Mike: It wouldn't create a problem for them. It would create a problem for me. Somebody else could come along and claim that I owed on the note and having the note marked paid in full would be my defense that the note was not longer owed.

Hog: But somebody else couldn't sue unless they had the note.

Mike: Mr. Hodgden, thank you for confessing my case. Without the note showing that I was indebted to FSA, the thing was a non-suit and taking my property was a fraud. Earl White was no innocent purchaser cause if he's buying property without title insurance or a warranty deed he should know that he's taking a big risk.

Hog: What if he now has a warranty deed?

Mike: Then he needs to claim against the guarantors of the deed? And if he warranted it to himself, he needs to get a new lawyer.

***4.19 Responding to a Motion for Summary Judgment***

What if they move for summary judgment? Submit a brief in opposition and file your own summary judgment motion.

## How To Legally Beat Debt Collectors

IN THE SUPERIOR COURT FOR THE COUNTY OF MUSCOGEE  
STATE OF GEORGIA

Discover Bank, )  
)  
plaintiff and defendant on counterclaim, )  
)  
v. ) Civil Action File number 03-CV-2295  
)  
Angie G. Walker, and )  
Esler C. Walker, Jr. )  
defendants and plaintiffs on counterclaim. )

Defendants' brief in opposition to putative plaintiff  
Discover Bank's motion for summary  
judgment / Counterclaimants' motion for summary judgment

Brief in opposition to putative plaintiff Discover Bank's  
motion for summary judgment

1. This court is reminded: This court has absolutely nothing to rely on to conclude that Discover Bank is involved in case number 03-CV-2295 or is even aware of this action.

2. Elizabeth C. Whealler and J. Curtis Tottle, Jr.'s so-called motion for summary judgment is a substantive and procedural nullity - frivolous on it's face. This court has actual knowledge of the law to the effect that this court knows that motion for summary judgment is "not a trial based on affidavits" but must consider the factual materials of record to determine whether triable issues are disputed, and even if not disputed, whether reasonable persons could come to differing conclusions regarding the facts of record.

3. This court is noticed: Elizabeth C. Whealler and J. Curtis Tottle, Jr., allegedly acting on behalf of Discover Bank have placed no facts in the record for this court's determinations, to wit: The so-called affidavit of Mark Schaffer is facially void for reason that Schaffer's allegations occurring in article 2. of the so-called affidavit (a). confess that Shaffer has no actual knowledge of the records maintained by Discover Bank, and (b). states a mere conclusory opinion of Shaffer's, which without

corroboration, this court cannot notice. Shaffer's so-called affidavit, at article 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13 .14. 15. 16. & 17, tenders for this court's consideration of materials which are not facts but mere conclusory opinions of Schaffer as all these articles call the court's attention to materials that are NOT OF RECORD BECAUSE THEY WHERE EITHER (A). NOT SUBMITTED WITH THE AFFIDAVIT AS EXHIBITS, (B). MATERIALS SUBMITTED WERE NOT PREPARED AND MAINTAINED BY SHAFFER, AND (C). ALLEGED EVIDENCE IS NOT VERIFIED BY BEING SIGNED AND DATED BY A COMPETENT FACT WITNESS WHO CAN BE QUESTIONED UNDER OATH.

Conclusion regarding Elizabeth C. Whealler and J. Curtis Tottle, Jr.'s so-called motion for summary judgment

4. Whereas this court has actual knowledge that putative plaintiff has placed nothing in the record to verify standing to bring this suit; and whereas, this court has actual knowledge that counsel allegedly representing Discover Bank have placed not onesingle shred of evidence into the record which would be admissible at trial, Discover Bank's motion for summary judgment must be denied as a matter of law.

Brief in support of counterclaimant's motion for summary judgment

5. This court is reminded: Discover Bank, with notice and opportunity to answer and defend on the counterclaim, failed to answer or otherwise defend.

6. This court is noticed of the following triable issues of fact which are not in dispute:

Discover Bank lacks standing to bring suit in Georgia courts. This court has jurisdiction to consider the counterclaim against Discover Bank by virtue of the fact that Discover Bank has committed fraud in Georgia. Discover Bank fraudulently alleged that Angie G. Walker and Esler C. Walker, Jr. have a contract with Discover Bank. This allegation made by and through Elizabeth C. Whealler and J. Curtis Tottle, Jr., rose to the level of fraud for reason that Discover demanded a sum from Angie G. Walker and Esler C. Walker, Jr. based on a contract which Whealler and Tottle allege the Walkers have with Discover Bank, but



## How To Legally Beat Debt Collectors

Whealler and Tottle have failed or refused to produce the *de facto* contract. Discover Bank fraudulently alleged that Angie G. Walker and Esler C. Walker, Jr. owe money to Discover Bank, but Whealler and Tottle have failed or refused to produce a verified accounting (not mere conclusory statements) that the Walker's owe Discover Bank money.

Conclusion regarding the motion for summary judgment on the counterclaim

Whereas this court has actual knowledge, that Discover Bank failed to prove standing to bring suit in Georgia; and whereas, this court has actual knowledge that Discover Bank committed fraud in Georgia by presenting a patently false claim to this court with the intention that this court willfully accede to the fraud to the detriment of Angie G. Walker and Esler C. Walker, Jr.; and whereas, federal law occurring at 18 USC 1961, 1962, & 1964(a), (fraud, extortion, and civil racketeering) preempts state lawcalling for treble damages for fraud, Angie G. Walker and Esler C. Walker, Jr. are entitled to \$18,365.49 as a matter of law. This court's swift response to: (1). Enter judgment for and in favor of Angie G. Walker and Esler C. Walker, Jr. and (2). Remand Elizabeth C. Whealler, J. Curtis Tottle, Jr., and Mark Schaffer to other authority for considered prosecution for the criminal acts of fraud and extortion avoids the conclusion that this court is willfully aiding and abetting the violation of *malum in se* offenses including but not limited to 18 USC 1341, 1510, 1951, 1961 & 1962.

Prepared and submitted by:

\_\_\_\_\_  
Angie G. Walker    Esler C. Walker, Jr.

Certificate of service

I, Esler C. Walker, certify that \_\_\_\_\_, 2004, I mailed a true and correct copy of the above and foregoing brief in opposition and motion for summary judgment via certified mail, return receipt requested to:

Elizabeth C. Whealler and J. Curtis Tottle, Jr.  
1655 Enterprise Way  
Marietta, Georgia 30067

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Esler C. Walker

## **4.20 When In Court**

How do you handle yourself in open court arguing against an attorney and a hostile judge?

### **4.20.1 First and likely scenario: no witness – just attorney**

COURT: Let's see we're hearing a motion for judgment by default as the defendant has failed to answer and defend?

Dave: Objection. Your honor, I have moved for a summary judgment and the plaintiff has not entered any facts on the record – there is nothing in dispute. (or alternately, I've moved to dismiss, I've filed a counterclaim, etc.).

COURT: Let me explain something here. They sued you. This is their case against you. I'm going to listen to their argument, then you'll get to talk.

Atty: Mr. Goodguy borrowed money and hasn't paid it back. My client is entitled to judgment.

Dave: Objection. Your honor, counsel is attempting to testify for a witness who is not in appearance. Attorneys can't testify.

COURT: I'm not going to repeat myself Mr. Goodguy. I'm going to allow plaintiff's attorney to present his case, then you'll get to talk. If you interrupt again, I'll expel you from this courtroom. Is that clear?

Dave: Yes, your honor.

Atty: Mr. Goodguy signed up for a credit card, used the card to make purchases, and now wants to get something for nothing by not paying the money back. My client is entitled to recover.

COURT: Now you can talk Mr. Goodguy.

Dave: Thank you, your honor. Your honor, this court has nothing to rely on, no evidence whatsoever that Citibank of South Dakota has standing to sue in Connecticut courts.

## How To Legally Beat Debt Collectors

Atty: Objection, Your honor Citibank is a national banking institution and doesn't need to register with the secretary of state to have standing to sue.

Dave: Objection: Your honor you said the attorney would talk and then I'd get a chance to talk. He's interrupting me.

COURT: He's raising a point of law which is different from testimony. He can do that.

Dave: A fundamental issue here is whether Citibank of South Dakota can sue in the courts of Connecticut and since Citibank of South Dakota has neither registered with the secretary of state nor shown a regular, systematic way of doing business here, Citibank of South Dakota lacks standing to sue.

COURT: Well of course they have standing to sue here. Dave: Sir, why are you arguing for the plaintiff?

COURT: Mr. Goodguy, the court can ask you questions and also make comments in the interest of justice.

Dave: Can the court be argumentative?

COURT: I can't give you legal advice.

Dave: I'm not asking for legal advise. I'm asking for a judicial ruling.

COURT: Mr. Goodguy, complete your argument or I'm going to terminate this hearing. Really, this is why you need an attorney. You see, when you don't have an attorney, things just don't go well for you.

Dave: Not only does Citibank of South Dakota not have standing to sue....

COURT: I'll make the determinations here and I'm not going to tolerate anymore of your conclusory arguments.

Dave: Nothing has been entered on the record to show that Citibank has standing to sue. Nothing has been entered on the record to show that I have a contract with Citibank.

Nothing has been entered on the record to show that I owe Citibank money. Nothing has been entered on the record to show that Citibank authorized this suit or even knows about it.

Atty: Your honor, Mr. Goodguy is turning this into a circus. My client does have standing to sue because my client is a national banking institution. Mr. Goodguy signed a contract with my client and used it and you have a copy of that contract. I've also submitted some billings and an affidavit from the billing department. Besides all that you know that I come in here every week on behalf of Citibank.

Dave: None of what the attorney has just said proves anything. Only the original contract and not a copy proves standing to sue me and only the original can discharge the obligation. Also, only the account and general ledger signed and dated by the person responsible for the bookkeeping is proof of damages.

COURT: Mr. Goodguy, I've already heard your argument. The conclusions are mine.

## How To Legally Beat Debt Collectors

### 4.20.2 Second scenario: witness in appearance – happens only about 1% of the time.

COURT: Let's see we're hearing a motion for judgment by default as the defendant has failed to answer and defend?

Dave: Objection: Your honor, I have moved for a summary judgment and the plaintiff has not entered any facts on the record – there is nothing in dispute. (or alternately, I've move to dismiss, I've filed a counterclaim, etc.).

COURT: Let me explain something here. They sued you. This is their case against you. I'm going to listen to their argument, then you'll get to talk.

Atty: Mr. Goodguy borrowed money and hasn't paid it back. My client is entitled to judgment. Sally Smith is here in appearance today to testify to the facts of the case.

COURT: All right, everyone who is going to testify today, please raise your hand. I've gotta' swear you in.

Witness – Sally Smith or whoever: My name is Sally Smith. I am familiar with the bookkeeping procedures of Citibank. Mr. Goodguy opened an account with Citibank in November of 1999. Mr. Goodguy has used his account to make purchases and ceased to make payments in October of 2002, leaving an outstanding balance of six thousand and eighty-four dollars. We've contacted him, but he refuses to pay and that's why we're here.

COURT: Mr. Goodguy, you may question the witness.

Dave: Ms. Smith, how long have you been employed by Citibank?

Smith: I've been familiar with their bookkeeping procedures for about five years.

Dave: So you're not an employee of Citibank?

Smith: I just said that I know all about their procedures and everything they do.

Dave: Let the record show that no witness is in appearance to testify on behalf of Citibank.

## How To Legally Beat Debt Collectors

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Atty: Objection. You honor, Sally Smith is competent to testify on behalf of Citibank.

COURT: I'll allow.

Dave: Ms. Smith, were you present when I signed a contract with Citibank?

Atty: Objection. That Mr. Goodguy has contracted with Citibank is not at issue here.

COURT: Sustained.

Dave: Ms. Smith, do I have a contract with Citibank today?

Smith: Well, the procedure is that once you fall into arrears on a credit card, the card is charged off, but you still owe the debt.

Dave: Am I indebted to Citibank today? Smith: You are still indebted under the contract.

Dave: Am I indebted to Citibank.

Atty: Your honor, I must object to this line of questioning. This is harassment.

COURT: You just heard that you are still indebted under the contract.

Dave: Ms. Smith, did you maintain the account and general ledger on my account?

Smith: I am familiar with the bookkeeping procedures of Citibank.

Dave: But do you have knowledge of my account?

Smith: Yes I do. I know how much you owe, your outstanding balance.

Dave: I have no further questions.

## How To Legally Beat Debt Collectors

Atty: I have some questions for Mr. Goodguy. Did you make application for a credit card with Citibank?

Dave: I don't know? To my recollection, I've applied for Visa cards, Mastercards, and other cards, but I don't specifically recall Citibank.

Atty: Is this your signature on this billing?

Dave: I don't know.

Atty: Does it look like your signature?

Dave: I don't understand the question.

Atty: Do you have any reason to believe that this is not your signature?

Dave: Yes, I do.

Atty: Why would you say that this is not your signature?

Dave: Because it is a copy. Anyone who knows about computers knows that computers and scanners can be used to piece together documents. If you had the original, I might be able to tell.

Atty: Your honor, please make the witness answer yes or no. Is this your signature Mr. Goodguy?

Dave: I don't know.

COURT: Mr. Goodguy, answer yes or no to the question.

Dave: No that is not my signature. (it's a copy!)

Atty: Your honor this is outrageous, he knows very well that is his signature.

Dave: Objection - counsel is attempting to testify for me.

COURT: Mr. Goodguy, you are under oath and can be charged with perjury. That is a very serious crime, so what is your answer?



## How To Legally Beat Debt Collectors

Dave: No, that is not my signature. (it is a copy)

Atty: Your honor, he should be charged with perjury.

Dave: That is not my signature. It might be a copy, but it is not my signature.

Atty: Then is it a copy of your signature? Dave: For that, you'd have to ask the person who made the copy of the document.

COURT: We're going to have to pass on the question. Do you have anything further counselor?

Atty: Your honor, the record shows that Mr. Goodguy contracted with Citibank, used the card, and hasn't paid the balance due and owing my client. My client is entitled to judgment and Mr. Goodguy should be sanctioned for his frivolous arguments.

COURT: Anything else Mr. Goodguy? And before you answer, this court will not tolerate nonsense.

Dave: Your honor, it is true is it not that a credit card is a continuing series of offers to contract and as such is non-transferable?

COURT: I can't give you legal advice.

Dave: I'm not asking for legal advise. I'm asking for a judicial determination.

COURT: What's your point?

Dave: If a credit card contract is non-transferable, and Citibank charged of the card and sold it, that would be a fraudulent transfer and Mr. Attorney here and also Ms. Smith would be committing fraud would they not?

COURT: I'll take that in counsel, now wind this up before I terminate this hearing to the plaintiff's favor.

Dave: The record does not, repeat, does not show that Citibank has standing to due in this state's

courts; does not show that Citibank has standing to sue me by virtue of actual possession of the only article which can discharge the obligation, the original contract; does not show that I owe Citibank money; and, does not show that Citibank authorized this action or is even aware of it. The record does show, repeat does show, that Mr. Atty has committed felony fraud by making material representations to this court, which Mr. Atty knows are false with the intention that I and this court rely on the false representations to my detriment of losing money and property. You have a duty judge, to dismiss this case with prejudice and remand Mr. Atty to other authority for considered prosecution.

**NOTES**

It is a good idea to have a court reporter present at these hearings so there is a complete record of the proceedings. When a court reporter is present, the judge tends to behave himself.

Also, at anytime, other than when testifying under oath, if you feel like you're over your head and the process is getting too complicated for you, elect at that moment to stand on your pleadings by saying, "I elect to stand on my pleadings."

**4.21 File Your Motion for Judgment By Default**

What if they don't answer your counterclaim? You file a motion for judgment by default and present the court with an order to sign giving you the victory.

## How To Legally Beat Debt Collectors

In the District Court in and for Osage County  
State of Oklahoma

Delbert Diamond,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. Cv-2003-583
	)	
State of Oklahoma,	)	
Ex rel. Oklahoma	)	
Tax Commission,	)	
	)	
defendant.	)	

Plaintiff's motion to enter default judgment and 12, O.S. §  
688 hearing for determination of damages  
Brief in support of motion to enter default judgment

Delbert Diamond moves this court under authority of the rules for local courts rule 4(7) for entry of judgment by default against the Oklahoma Tax Commission. The Oklahoma Tax Commission, in receipt of notice and having had opportunity in this instant case, has failed or refused to enter an appearance and answer or otherwise defend.

### Conclusion

This court's swift response to: (1). Ratify Delbert Diamond's proposed order of default and (2). Set the matter for hearing under authority of 12, O.S. § 688 to determine the sum of damages due and owing Delbert Diamond avoids the conclusion that this court is willfully in violation of 18 USC §§ 1961, 1962 & 1964(a).

Prepared and submitted by: \_\_\_\_\_  
Delbert Diamond

### Certificate of mailing

I, Delbert Diamond, certify that on December \_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing motion for judgment by default to:

## How To Legally Beat Debt Collectors

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Oklahoma Tax Commission

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---

---

Delbert Diamond

## How To Legally Beat Debt Collectors

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Prepare an order for the court to sign. Take it the judge's office and tell the judge's clerk that you'll wait while the order is being signed.

**How To Legally Beat Debt Collectors**

In the District Court of Caddo County  
State of Oklahoma

Direct Merchants Credit Card Bank,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CS-2002-116
	)	
Diane Summers,	)	
	)	
defendant.	)	
	)	
	)	

Order

Whereas this court has knowledge that Diane Summers moved for summary judgment and pleaded matters not of record supporting with affidavit; and whereas, this court has knowledge that counsel for putative plaintiff is in receipt of the motion and having had opportunity has failed to dispute the claims of Diane Summers; and whereas, this court finds the following triable issues of fact are not in dispute: Direct Merchants Credit Card Bank lacks standing to sue in Oklahoma courts, Diane Summers does not have a contract with Direct Merchants Credit Card Bank, Diane Summers does not owe Direct Merchants Credit Card Bank money, and Direct Merchants Credit Card Bank did not authorize this action, summary is granted in favor of Diane Summers and against Direct Merchants Credit Card Bank. Direct Merchants Credit Card Bank's claims against Diane Summers are denied with prejudice.

Diane Summers is hereby ordered to submit a bill of costs for defending in this action exclusive of attorney fees.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judge of the District Court

## How To Legally Beat Debt Collectors

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What if the judge won't sign your default? You file a notice and demand.



## How To Legally Beat Debt Collectors

Rocky River Municipal Court  
21012 Hilliard Blvd., Rocky River, Ohio 44116-3398  
440,333,2003

September 16th 2003

Discover Bank  
Plaintiff,

Vs.

Naomi R. Sweet,  
P.O. Box 451187  
Westlake, Ohio 44145  
Defendant.

Notice and demand

Judicial notice

This court is noticed: (1). Party moving to vacate judgments is proceeding via direct attack; (2). Party attacking void judgment is invoking the ministerial side of the court - the court is deprived of judicial discretion; (3). Party asserting that the court had jurisdiction has the burden of proof to show on the record that the court had jurisdiction; and (4). Where the face of the record verifies jurisdictional failings, the court has a non-discretionary duty to vacate the void judgment. Defendant, Naomi R. Sweet, moved this court under authority of *Oxley v. Zacks* (Sept. 29, 2000), for vacation of this court's order granting judgment as void for reason total lack of subject matter jurisdiction. Discover Bank, in receipt of notice and having had opportunity has failed or refused to rebut the following facts: corporations lack standing to sue in the municipal courts of Ohio; Discover Bank lacks standing to sue in any Ohio court; Ohio municipal courts lack subject matter jurisdiction to litigate breach of contract cases; Ohio municipal courts lack subject matter jurisdiction to litigate civil cases involving controversy amounts exceeding fourteen thousand dollars; Naomi R. Sweet does not have a contract with Discover Bank; Naomi R. Sweet does not owe Discover Bank money; Discover Bank did not authorized this action; as a result of the harassment

of business entity known as Thomas & Thomas, Naomi R. Sweet has been damaged financially, socially, and emotionally. This court is especially noticed: The alleged debt that Thomas & Thomas falsely urge that Naomi R. Sweet owes Discover Bank is for a lost credit card - see attached exhibit. This leads to the ready conclusion that Thomas & Thomas, in addition to running the debt collection fraud racket, have also engaged in identity theft.

Memorandum of law in support of the point of law that party seeking to vacate a void judgment is invoking the ministerial powers of the court / courts lack judicial discretion when it comes to vacating void judgments

When rule providing for relief from void judgments is applicable, *relief is not discretionary matter*, but is mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994). See also, *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a void judgment). For other authorities concurring, see *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash. App. 783, 790, 790 P.2d 206 (1990), *Bd. of Revision* (2000), 87 Ohio St.3d 363, 368, *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998), *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974), *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty, Cleveland Electric Illuminating Company v. Finesilver*, No. 69363 (Ohio App. Dist.8 04/25/1996), *In re Marriage of Brighterowski*, 50 Wash. App. 633, 635, 749 P.2d 754 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash. App. 517, 520, 731 P.2d 533 (1987), *In re: Thomas*, 906 S.W.2d at 262, *In re: Weaver Constr.*, 190 Colo. at 232, 545 P.2d at 1045, *Leen*, 62 Wash. App. at 478, *Lubben v. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645, 649, (1st Cir. 1972), *Good v. Kitsap County*, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990), *Love v. Packer*, 174 N.C. 665, 94 S.E. 449, 450, *Patton v. Diemer* (1988), 35 Ohio St.3d 68 *Roller v. Holly*, 176 U.S. 398, 409, *Small v. Batista*, 22 F. Supp.2d 230, 231 (S.D.N.Y. 1998), *Wright & A. Miller*, FEDERAL PRACTICE AND PROCEDURE, (1973), Civil § 2862.

#### Demand

This court's swift response to vacate this court's order granting judgment to Discover Bank avoids the conclusion that this court is willfully in violation of 18 USC § 1916, 1962 & 1964(a).

**How To Legally Beat Debt Collectors**

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Prepared and submitted by: \_\_\_\_\_  
Naomi R. Sweet

Certificate of service

I, Naomi R. Sweet, certify that October\_\_\_\_\_, 2003, I  
mailed a true and correct copy of the above and foregoing  
notice and demand to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Naomi R. Sweet

And to: (attorney general)  
Jim Petro  
State Office Tower  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43215-3428

**4.22 Your Writ Of Mandamus**

What if the judge does not respond after the notice and demand? You petition for a writ of mandamus. A writ of mandamus or simply mandamus, which means "we command" in Latin, is the name of one of the prerogative writs in the common law, and is issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly.

Mandamus is a judicial remedy which is in the form of an order from a superior court to any government, subordinate court, corporation or public authority to do or forbear from doing some specific act which that body is obliged under law to do or refrain from doing, as the case may be, and which is in the nature of public duty and in certain cases of a statutory duty.[2] It cannot be issued to compel an authority to do something against statutory provision.

Mandamus can be supplemented by the statement that it is not only the command to do but also a command not to do a particular thing against the rights of the petitioner. Mandamus is supplemented by legal rights. It must be a judicially enforceable and legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when he is denied a legal right by someone who has a legal duty to do something and abstains from doing it.

In the Ohio Supreme Court

Naomi R. Sweet,  
Petitioner

Vs.

(name of judge - not magistrate goes here)  
Respondent.

Petition for a writ of mandamus authorized by the Ohio  
Constitution, Article IV, § 2

Naomi R. Sweet, an aggrieved party, petitions this court under authority of the Ohio Constitution for relief of a void judgment order depriving Naomi R. Sweet of money and property without due process of law and subjecting Naomi R. Sweet to fraud aided and abetted by (name of judge - not magistrate goes here). Naomi R. Sweet moved the court of (name of judge - not magistrate goes here) for vacation of a void judgment and noticed the plaintiff and putative counsel of the motion. See exhibit "A." In receipt of notice and opportunity, neither the plaintiff nor putative counsel answered the jurisdictional challenge. (date) Naomi R. Sweet responded to the improper magistrate's report and recommendation. See exhibit "B." This court is noticed: neither the magistrate or the plaintiff controverted Naomi R. Sweet' objection to the magistrate's report and recommendation. (date) Naomi R. Sweet filed a notice and demand and proposed order. See exhibits "C" and "D." This court is noticed: the court failed or refused to rule on Naomi R. Sweet' objection. (date) Naomi R. Sweet filed and objection and noticed the court that the court's taking money from Naomi R. Sweet would reduce Naomi R. Sweet to a status of peonage. This court is noticed: (magistrate's name) exhibited contempt for Constitutionally protected rights of Naomi R. Sweet and proceeded to reduce Naomi R. Sweet to poverty. (name of judge - not magistrate goes here) is in direct breach of duty found at CJC Canon 3(c).

#### Conclusion

Whereas this court has knowledge of the law, this court has knowledge that a jurisdictional challenge is an

administrative proceeding, the court in which jurisdiction is challenged lacking judicial discretion; that when jurisdiction is challenged, it is incumbent on the party asserting that the court had jurisdiction to show on the record that jurisdiction was perfected; and, where a jurisdictional failing appears on the face of the record, the court has a non-discretionary duty to vacate the void judgment and order reparations. Whereas this court is noticed: Naomi R. Sweet clearly and logically challenged the jurisdiction of the Rocky River Municipal court in the matter of Discover Bank versus Naomi R. Sweet, case number 02-CVF 1514 and neither Discover Bank nor attorneys alleging to represent Discover Bank showed wherein the record did not have the many jurisdictional defects cited by Naomi R. Sweet, the so-called judgment in case number 02-CVF 1514 is utterly void, a nullity, grounding no rights and conveying no interest.

#### Remedy sought

The cause of justice and proper administration of law require this court's supervision of (name of judge - not magistrate goes here) including entering an order vacating the void judgment in case number 02-CVF 1514, ordering attorneys allegedly representing Discover Bank to cease and desist all collection activity against Naomi R. Sweet, ordering attorneys allegedly representing Discover Bank to return all sums taken from Naomi R. Sweet together with statutory interest from the date of the taking, and any other penalty applied to the attorneys allegedly representing Discover Bank which this court, within its equitable discretion, may find reasonable, lawful, and just.

Prepared and submitted by:

\_\_\_\_\_  
Naomi R. Sweet

#### Certificate of service

I, Naomi R. Sweet, certify that \_\_\_\_\_, 2003, I hand delivered a true and correct copy of the above and foregoing petition for a writ of mandamus to the clerk of courts for Rocky River Municipal Court.

\_\_\_\_\_  
Naomi R. Sweet

What if you are mistreated regarding your petition for a writ of mandamus?

In the Oklahoma Supreme Court

Dwayne Marvin Coinage  
Petitioner

Vs.

The district court for the County of Washington County,  
Oklahoma

Ex rel. David Gambill  
Respondent.

Petitioner's objection and notice to the Oklahoma Supreme  
Court regarding the meeting with the referee, which was  
held January 7th 2004

Grounds for objection

The meeting on the above styled matter, occurring on January 7th 2004, monitored by Gregory W. Albert, was conducted in a manner prejudicial to the rights of Dwayne Marvin Coinage and also in a manner likely to lead to a miscarriage of justice. Mr. Albert advised Dwayne Marvin Coinage, hereinafter, "Dwayne Coinage," that Judge Gambill had a duty to conduct an evidentiary hearing based on Dwayne Coinage's motion to dismiss filed in the underlying case. When Dwayne Coinage informed Mr. Albert that Judge Gambill had refused to notice the evidence Dwayne Coinage entered into the record and threatened to have Dwayne Coinage arrested for even trying to present evidence in support of his claims, Mr. Albert examined the file and advocated that Gambill was within his authority because Gambill had recast the motion to dismiss as an answer. When asked what authority Gambill had to convert a motion to dismiss to an answer, Mr. Albert responded that Gambill had not converted the motion but had recast it as if there was a difference. When asked what authority Gambill had to recast the motion, Mr. Albert claimed that an Oklahoma District Court Judge has authority to examine any paper filed in that judge's court and identify it for what it really is. When Dwayne Coinage asked where an Oklahoma District Court Judge gets such authority, Mr. Albert replied, "I think he gets it from the people. I think they give him that mantle of authority," or words to that effect.



This court needs to supervise Gregory W. Albert including instruction on Oklahoma District Court Judge's authority, to wit: We recognize the district court, in our unified court system, is a court of general jurisdiction and is constitutionally endowed with "unlimited original jurisdiction of all justiciable matters, except as otherwise provided in this Article,". Article 7, Section 7, Oklahoma Constitution. However, this "unlimited original jurisdiction of all justiciable matters" can only be exercised by the district court through the filing of pleadings which are *sufficient* to invoke the power of the court to act. See *Chandler v. State*, 96 Okl.Cr. 344, 255 P.2d 299, 301-2 (1953), *Smith v. State*, 152 P.2d 279, 281 (Okl.Cr. 1944); *City of Tulsa*, 554 P.2d at 103; *Nickell v. State*, 562 P.2d 151 (Okl.Cr. 1977); *Short v. State*, 634 P.2d 755, 757 (Okl.Cr. 1981); *Byrne v. State*, 620 P.2d 1328 (Okl.Cr. 1980); *Laughton v. State*, 558 P.2d 1171 (Okl.Cr. 1977)., and *Buis v. State*, 792 P.2d 427, 1990 OK CR 28 (Okla.Crim.App. 05/14/1990). Beyond Mr. Albert's advocacy that Oklahoma District Court Judge's have inherent judicial power because they are chosen by the people, Albert advocates that questions of *res judicata*, collateral estoppel, and statutory limitations are questions of fact reserved for a jury and that Dwayne Coinage would have a chance to raise these issues at trial. One can only imagine what Albert's jury instruction would be regarding statutory limitation. Perhaps Albert would instruct the jurors, "Ladies and Gentlemen of the jury, if you see evidence that this action was brought after the statute of limitations had run, it is your duty to inform this court that this trial was not necessary and then you can all get up and leave and go home." Albert also wants an explanation of how the statutory requirement that once the statute of limitations has run, there is no cause of action nor defense there of could be an affirmative defense. When Dwayne Coinage further corrected Mr. Albert that the so-called order of Gambill was a minute order and not an order of the court and supported the contention with the docket sheet showing no order, Albert, nonetheless considered the minute order to be an order. When Dwayne Coinage informed Mr. Albert that he was not in receipt of the so-called order "recasting" the motion to dismiss as an answer allegedly reserving issues of *res judicata*, collateral estoppel, and statutory limitations as questions of fact to be resolved by the jury, counsel for Gambill "chimed in"

and stated that it was the state's position that Gambill didn't have to notice a pro se litigant of the changing of their motion. This court is advised to consult *Castro v. United States*, Argued October 15th 2003, decided October 15th 2003 by the United States Supreme Court wherein that honorable court ruled that the court re-characterizing a pro se litigant's motion has not only a duty to notice the pro se litigant but also to instruct the pro se litigant of the meaning and effect of the "recasting" of the pro se litigant's motion. The meeting conducted in a general tone of acrimony revealed that Gregory W. Albert is neither a student of the law nor a respectful of the United States Supreme Court's Doctrines, to wit: Albert repeatedly ridiculed Dwayne Coinage for not being able to cite the statute or rule for his points of law, but when counsel for Gambill averred that Gambill had no duty to notice Dwayne Coinage on the putative order of the court, Albert willfully acceded to the erroneous point of law without query of Gambill's counsel's authority. It is also true that Albert was particularly contumacious regarding who may assist the pro se litigant during an administrative hearing. Albert and this court are noticed of United States Supreme Court Doctrine established in *Sperry v. State of Florida, ex rel. the Florida Bar* 373 U.S. 379, 83 S. Ct. 1322, 10 L. Ed.2d 428 (1963). Reinforced in *Keller v. Wisconsin Ex Rel. State Bar of Wisconsin*, - The pro se litigant preparing for and participating in an administrative proceeding can have assistance of counsel without having to patronize so-called licensed bar associates. This court is also noticed of recent authority in Washington State, which subsidizes the public's knowledge that employing a bar-licensed attorney is not a guarantee of competency and honesty; rather, it is an almost airtight guarantee of dishonesty and incompetence. Even where the actions of non-bar attorneys constitute the practice of law, the parties can continue the practice as long as they provide the same standard of care as a practicing attorney. See *Jones v. Allstate Ins. Co.* 146 Wash. 2d 291, 45 P.3d 1068 (Wash. 05/09/2002). Given Albert's opinions, it is likely that Albert would defend his blatant interference with Dwayne Coinage's right to assistance of counsel by claiming that he (Albert) was acting in a judicial capacity conducting a judicial hearing. This court is reminded: Only Constitutionally created, or Article III judges can conduct judicial

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proceedings. See *Northern Pipe Line Co. v. Marathon Pipeline Co.*, 458 U.S. 50, 102 S. Ct. 2858, 73 L. Ed. 2d 598 (1982). Again, this court has means to know that Albert contravenes United States Supreme Court Authority in support of his contention, "I've been doing this for thirty years, so I know what I'm doing." Notice This court is noticed: no respondent was in appearance at the meeting held by Gregory W. Albert, suggesting that the respondents presumed that "the fix was in." Albert should be asked why he presumed to speak for Gambill who was not in appearance. This court is further noticed: in the underlying case, Dwayne Coinage entered evidence that his adversary had testified under oath as to having no interest in the property which is the res of the non-suit in the lower court and evidence that the matter had also been lost in an adversary proceeding as well. Thus, this court as well as Gregory W. Albert have knowledge of violation of Oklahoma Statutes Title 21. Crimes and Punishments, Chapter 13, Section 453 and that Judge Gambill has aided and abetted this felony.

### Conclusion

Respect for the rule of law requires this court disregarding the report and recommendation of Gregory W. Albert and assuming original jurisdiction.

### Affidavit

I, Dwayne Coinage, of lawful age and competent to testify, state as follows based on my own personal knowledge:

I certify that the factual representations in the above and foregoing petition for a writ of mandamus are truthful and accurate to the best of my knowledge.

\_\_\_\_\_  
Dwayne Coinage

STATE OF \_\_\_\_\_ INDIVIDUAL ACKNOWLEDGMENT  
COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he

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executed the same as his free and voluntary act. Given under my hand and seal the day and year last above written. My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Prepared and submitted by:

\_\_\_\_\_  
Dwayne Coinage

### Certificate of service

I, Dwayne Coinage, certify that \_\_\_\_\_, 2004, I hand delivered a true and correct copy of the above and foregoing objection and notice to Gregory W. Albert, and mailed a copy to counsel for Judge Gambill. And also

Edwin L. Worthington  
U.S. Department of Justice  
Southern District of Mississippi  
100 West Capital, Suite 1553  
Jackson, Mississippi 39269

Noel Hillman  
U. S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, D.C. 20530-0001

\_\_\_\_\_  
Dwayne Coinage

In the above mailing, a copy was sent to Worthington and Hillman. This pair teamed up to indict Oliver Diaz, Jr. (justice of the Mississippi Supreme Court), two former Mississippi Supreme Court Justices, and a private attorney. Worthington has made the public statement, "people are not treated fairly in courts" - no kidding! A number of people who copied to Hillman and Worthington have been invited to make a statement for use in a possible FBI/DOJ investigation.

What if they already have a judgment against you? You move to vacate the judgment as void.

In the District Court of Caddo County  
State of Oklahoma

Direct Merchants Credit Card Bank,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. CS-2002-111
	)	
Diane Summers,	)	
	)	
defendant.	)	
	)	
	)	

Defendant's motion to vacate a void judgment under  
authority of Oklahoma Statute Title 12, Sections 1038 /  
judicial notice

Brief in support of motion to vacate

Diane Summers, an aggrieved party, moves this court under authority of O.S. 12, § 1038 for vacation of a void judgment attached. Love, Beal & Nixon, practicing subterfuge and acting in a purely criminal mode, obtained judgment in this instant case. Diane Summers did not receive notice and have opportunity on a motion for either default or summary judgment. Even if Love, Beal & Nixon had properly noticed Diane Summers, the record does not reveal that Direct Merchants Credit Card Bank proved standing to bring this action and Love, Beal & Nixon failed to prove up the claim of damages.

Memorandum of law in support of the point of law that  
party alleging to be creditor must prove standing

Love, Beal, & Nixon failed or refused to produce the actual notes which Direct Merchants Credit Card Bank alleges Diane Summers owes. Where the complaining party can not prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial*

*LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.) Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469 in *Carnegie Bank v Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3- 302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977), "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession ..."

Memorandum of law in support of the point of law that even in a default judgment, damages must be proved

Trial court could not award damages to plaintiff, following default judgment, without requiring evidence of damages. *Razorsoft, Inc. v. Maktal, Inc.*, Okla.App. Div. 1, 907 P.2d

1102 (1995), rehearing denied. A party is not in default so long as he has a pleading on file which makes an issue in the case that requires proof on the part of the opposite party in order to entitle him to recover. *Millikan v. Booth*, Okla., 4 Okla. 713, 46 P. 489 (1896). Proof of or assessment of damages upon petition claiming damages, it is error to pronounce judgment without hearing proof or assessing damages. *Atchison, T. & S.F. Ry. Co. v. Lambert*, 31 Okla. 300, 121 P. 654, Ann.Cas.1913E, 329 (1912); *City of Guthrie v. T. W. Harvey Lumber Co.*, 5 Okla. 774, 50 P. 84 (1897). In the assessment of damages following entry of default judgment, a defaulting party has a statutory right to a hearing on the extent of unliquidated damage, and encompassed within this right is the opportunity to a fair post-default inquest at which both the plaintiff and the defendant can participate in the proceedings by cross-examining witnesses and introducing evidence on their own behalf. *Payne v. Dewitt*, Okla., 995 P.2d 1088 (1999). A default declaration, imposed as a discovery sanction against a defendant, cannot extend beyond saddling defendant with liability for the harm occasioned and for imposition of punitive damages, and the trial court must leave to a meaningful inquiry the quantum of actual and punitive damages, without stripping defendant of basic forensic devices to test the truth of plaintiff's evidence. *Payne v. Dewitt*, Okla., 995 P.2d 1088 (1999). Fracture of two toes required expert medical testimony as to whether such injury was permanent so as to allow damages for permanent injury, future pain, and future medical treatment on default judgment, and such testimony was not within competency of plaintiff who had no medical expertise. *Reed v. Scott*, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). Rendition of default judgment requires production of proof as to amount of unliquidated damages. *Reed v. Scott*, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). When face of judgment roll shows judgment on pleadings without evidence as to amount of unliquidated damages then judgment is void. *Reed v. Scott*, Okla., 820 P.2d 445, 20 A.L.R.5th 913 (1991). In a tort action founded on an unliquidated claim for damages, a defaulting party is deemed to have admitted only plaintiff's right to recover, so that the court is without authority or power to enter a judgment fixing the amount of recovery in the absence of the introduction of evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Presumptions which ordinarily shield judgments from

collateral attacks were not applicable on motion to vacate a small claim default judgment on ground that court assessed damages on an unliquidated tort claim without first hearing any supporting evidence. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Rule that default judgment fixing the amount of recovery in absence of introduction of supporting evidence is void and not merely erroneous or voidable obtains with regard to exemplary as well as compensatory damages. *Graves v. Walters*, Okla.App., 534 P.2d 702 (1975). Where liability of father for support of minor daughter and extent of such liability and amount of attorney's fees to be allowed was dependent on facts, rendering of final judgment by trial court requiring father to pay \$25 monthly for support of minor until minor should reach age 18 and \$100 attorney's fees without having heard proof thereof in support of allegations in petition was error. *Ross v. Ross*, Okla., 201 Okla. 174, 203 P.2d 702 (1949). Refusal to render default judgment against codefendant for want of answer was not error, since defendants and court treated answer of defendant on file as having been filed on behalf of both defendants, and since plaintiff could not recover without offering proof of damages and offered no such proof. *Thomas v. Sweet*, Okla., 173 Okla. 601, 49 P.2d 557 (1935). Under R.L.1910, §§ 4779, 5130 (see, now, this section and § 2007 of this title), allegation of value, or amount of damages stated in petition, were not considered true by failure to controvert. *Cudd v. Farmers' Exch. Bank of Lindsay*, Okla., 76 Okla. 317, 185 P. 521 (1919). Hearing Trial court's discovery sanction barring defendant from using cross-examination and other truth-testing devices at post-default non-jury hearing on plaintiff's damages violated due process. *Payne v. Dewitt*, Okla., 995 P.2d 1088 (1999).

Memorandum of law in support of the point of law that to prove damages in foreclosure of a debt, party must enter the account and general ledger statement into the record through a competent fact witness

To prove up claim of damages, foreclosing party must enter evidence incorporating records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the



ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Il.

Memorandum of law in support of the point of law that a  
void judgment cannot operate

The general rule is that a void judgment is no judgment at all. Where judgments are void, as was the judgment originally rendered by the trial court here, any subsequent proceedings based upon the void judgment are themselves void. In essence, no judgment existed from which the trial court could adopt either findings of fact or conclusions of law. *Valley Vista Development Corp. v. City of Broken Arrow*, 766 P.2d 344, 1988 OK 140 (Okla. 12/06/1988); A void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question. A void judgment neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it, are absolutely void. The parties attempting to enforce it are trespassers." *High v. Southwestern Insurance Company*, 520 P.2d 662, 1974 OK 35 (Okla. 03/19/1974); and, A void judgment cannot constitute *res judicata*. Denial of previous motions to vacate a void judgment could not validate the judgment or constitute *res judicata*, for the reason that the lack of judicial power inheres in every stage of the proceedings in which the judgment was rendered. *Bruce v. Miller*, 360 P.2d 508, 1960 OK 266 (Okla. 12/27/1960).

Memorandum of law in support of the point of law that  
a void judgment is not void when declared void but is void  
*ab initio*

If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*. See *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941.

Memorandum of law in support of the point of law that party seeking to vacate a void judgment is invoking the ministerial powers of the court / courts lack discretion when it comes to vacating void judgments

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994). See also, *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a void judgment).

#### Judicial notice

This court is noticed: As soon as practical and reasonable, Love, Beal, and Nixon, the private business organizations to which they belong, and all who aid and abet Love, Beal, and Nixon shall be sued under authority of 18 USC 1964(a). See O.S. Title 21, Chapter 19, § 554, "Attorney Buying Evidence of Debt-Misleading Court. Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of a misdemeanor. Any attorney who in any proceeding before any court of a justice of the peace or police judge or other inferior court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the court in any matter of law is guilty of a misdemeanor and on any trial therefore the state shall only be held to prove to the court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of law." Any person guilty of falsely preparing any book, paper, [({ record, })], instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced as genuine upon any [({ trial, proceeding or inquiry whatever, })] authorized by law, SHALL BE GUILTY OF A FELONY. See Oklahoma Statutes Title 21. Crimes and Punishments, Chapter 13, Section 453.

Memorandum of law in support of judicial notice

The federal district courts have jurisdiction under Civil RICO to order any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise. Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit. Because the language of Racketeer Influenced and Corrupt Organizations Act authorizing suit by any person injured in his business or property by reason of violation of Act tracks section 4 of the Clayton Act, rules established in antitrust cases for identifying proper complaints should be applied to RICO, too. Both requirements of Rule mandating particularity in pleading of fraud and liberal notice pleading philosophy of federal rules apply to RICO claims based upon fraud. Congress intended RICO. In order to state claim for treble damages as result of injury to business or property, plaintiff in RICO action must (1) prove RICO violation, (2) prove injury to business or property, and (3) that the violation caused the injury. Additionally, plaintiff must prove (1) existence of enterprise which affects interstate commerce, (2) that defendant was employed by or associated with the enterprise, (3) that defendant participated in the conduct of the enterprise's affairs, and (4) that the participation was through a pattern of racketeering activity. Elements essential to CR are (1) existence of RICO enterprise, (2) existence of pattern of racketeering activity, (3) nexus between defendant, pattern of RICO activity or RICO enterprise, and (4) resulting injury to plaintiff in his business or property. Plaintiff must demonstrate that he sustained injury as proximate result of one or more predicate acts constituting pattern. Plaintiff must allege that defendant, through commission of two or more acts, constituting pattern of racketeering activity, directly or indirectly invested in, or maintained an interest in, or participated in an enterprise affecting interstate

commerce. Plaintiff must allege injury flowing from commission of predicate acts, which means that recovery must show some injury flowing from one or more predicate acts. Plaintiff must show how violation caused injury and in conjunction with RICO prohibitions stated in 18 USC 1962 (which centers on actions conducted through pattern of RICO activity by reason of requirement effectively forces civil RICO plaintiff to demonstrate that predicate act alleged for purposes of making out violation of 1962 resulted in direct harm). Causal connection between injury and alleged acts of RICO activity is requirement of standing under RICO. Injury must be caused by a pattern of RICO activity or by individual RICO predicate acts. Pattern or acts must proximately cause the injury. There must be a direct relationship between plaintiff's injury and plaintiff's conduct (as in plaintiff relying on). The test for proximate cause is reasonably foreseeable or anticipated as natural consequence. Civil Rico cause of action does not require prior criminal conviction, relationship to organized crime, or proof of injuries outside those caused by the predicate acts. To prove that enterprise existed within meaning of RICO plaintiffs must present evidence of ongoing organization and evidence that various associates functioned as continuing unit. RICO plaintiff must establish that defendant has received money from pattern of RICO activity and has invested that money in enterprise affecting interstate commerce. Showing injury requires proof of concrete financial loss. Loss cannot be intangible. Lost profit is an injury cognizable within Civil Rico. No particular RICO injury need be proven to maintain a Civil Rico. Plaintiffs must prove criminal conduct in violation of RICO injured business or property. Liability attaches where injury is direct or indirect result; however, standing requires direct injury. Lost opportunity must be concrete injury meaning not speculative. Civil Rico does not apply to personal injuries. Plaintiff need only establish that predicate acts were proximate cause of injury. Plaintiffs are not required to show nexus between defendants and organized crime. Plaintiffs must show (1) at least two predicate acts, (2) that predicates were related, and (3) that defendants pose a threat of continued criminal activity. Cardinal question is whether defendants have committed one of enumerated acts under 18 USC 1961. Relying on fraud to one's detriment and resulting injury to property or business is injury

cognizable within Civil Rico. Communicating misrepresentations to the effect that the party relying on the misrepresentations loses money or property is injury. Injury caused by reliance on fraud is injury. Standard of proof is preponderance of the evidence. Question of whether plaintiff's business or property was injured is question of law for the court taking into consideration such factors as foreseeability of particular injury, intervention of independent causes and factual directness of causal connection. There are elements that must be pled before plaintiff may avail himself of enhanced damages, (1) two predicate acts, (2) which constitute a pattern of racketeering activity, (3) directly participating in the conduct of an enterprise of (4) activities that affect interstate commerce, and (5) that plaintiff was injured in business or property. There is no right of contribution under civil liability provision of RICO Act. Each element of RICO violation and its predicate acts must be alleged with particularity. To state a claim under CR there must be a person, enterprise, and pattern of racketeering activity. Plaintiffs must show a nexus between control of enterprise, RICO activity, and injury. Complaint must allege (1) existence of enterprise affecting interstate commerce, (2) that defendant participated directly or indirectly in the conduct or affairs of the enterprise, and (3) defendant participated through a pattern of racketeering activity that must include the allegation of at least two racketeering acts. A necessary ingredient of every successful Civil Rico claim is an element of criminal activity. Civil Rico claim must adequately allege that scheme of fraud would have foreseeable result and continuity or threat of continuing racketeering acts. Enterprise as defined in Civil Rico is (1) identified formally or *informally*, and (2) common purpose of making money from fraud schemes. Referring to entity as both enterprises and person does not defeat Civil Rico in spite of requirement of (1) identifying a persons and a (2) separate enterprise. Enterprise can be association-in-fact. Plaintiff must show how person's criminal conduct enables obtaining an interest or control of the enterprise. Failing to allege that defendant was affiliated with or engaged in organized crime is not fatal to Civil Rico claim. Sufficiency of pleading of RICO conspiracy claim is not subject to higher pleading standard of civil rule for fraud claims. In order to sufficiently allege a conspiracy,

a party must allege two acts of racketeering with enough specificity to show there is probable cause to believe that crimes were committed. Although rule that fraud must be pled with particularity requires that plaintiff in a suit brought under RICO provide only a general outline of the alleged fraud scheme, sufficient to reasonably notify the defendants of their purported role in the scheme, the complaint must, at minimum, (1) describe the predicate acts with some specificity and (2) state the time, (3) place, (4) content of the alleged communications perpetrating the fraud and (5) identity of party perpetrating a fraud. Fraud allegations are sufficient for purpose of stating Civil Rico claim if the place the defendant on notice of precise misconduct Claim must be made that defendant actually made false statements. To state a claim the "continuity plus relationship standard" must be met. Pattern of racketeering activity means a nexus between the affairs of the enterprise and the RICO activity. There must be a threat of future activity. Continuity means "regular way of doing business." To satisfy the "pattern prong" requires that acts be related. Actual fraud and not constructive fraud must be shown. See *Attick v. Valeria Associates, L.P.*, S.D. N.Y. 1992, 835 F. Supp. 103., *Avirgan v. Hull*, C.A. 11 (Fla.) 1991, 932 F.2d 1572., *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639*, C.A.D.C. 1990, 913 F.2d 948, 286 U.S. App. D.C. 182, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed. 2d 1007, *Hecht v. Commerce Clearing House, Inc.* C.A. 2 (N.Y.) 1990, 897 F.2d 21, 100 A.L.R. Fed. 655., *Standard Chlorine of Delaware, Inc. v. Sinibaldi*, D.Del. 1992, 821 F. Supp. 232., *Jordan v. Herman*, F.D. Pa. 1992, 792 F. Supp. 380, *Nassau-Suffolk Ice Cream, Inc. v. Integrated Resources, Inc.* S.D.N.Y. 1987, 114 F.R.D. 684., *Polletier v. Zweifel*, C.A. 11 (Ga.) 1991, 921 F.2d 1465, rehearing denied 931 F.2d 901, certiorari denied 112 S.Ct. 167, 502 U.S. 855, 116 L.Ed. 131, *Khurana v. Innovative Heath Care Systems, Inc.*, C.A. 5 (La.) 1997, 130 F.3d 143, vacated 119 S.Ct. 442, 525 U.S. 979, 142 L.Ed. 2d 397, on remand 164 F.3d 900, *In re American Honda Motor Co., Inc. Dealership Relations Litigation*, D.Md. 1996, 941 F.Supp. 528., *Red Ball Interior Demolition Corp. v. Palmadessa*, S.D.N.Y. 1995, 908 F.Supp. 1226., *Protter v. Nathan's Famous Systems, Inc.* E.D. N.Y. 1995, 904 F.Supp. 101, *Prudential Ins. Co. of America v. U.S. Gypsum Co.* D.N.J. 1993, 828 F.Supp. 287, *Compagnie de Reassurance D'ille de*

*France v. New England Reinsurance Corp.* D. Mass. 1993, 825 F.Supp. 370., *Grand Cent. Sanitation, Inc. v. First Nat. Bank of Palmerton*, M.D.Pa. 1992, 816 F.Supp. 299, *Randolph County Federal Sav. & Loan Assoc. v. Sutcliffe* S.D. Ohio 1991, 775 F. Supp. 1113, *Venzor v. Gonzalez*, N.D. Ill. 1996, 936 F. Supp. 445, *Miller v. Affiliated Financial Corp.* N.D. Ill. 1984, 600 F.Supp. 987, *Yancoski v. E.F. Hutton & Co. Inc.* F.D. Pa. 1983, 581 F.Supp. 88, *Gitterman v. Vitoulis* S.D. N.Y. 1982, 564 F.Supp. 46,. *Minpeco, S.A. v. Hunt*, S.D.N.Y. 1989, 718 F.Supp. 168, *Florida Dept. Ins. V. Debenture Guar.* M.D. Fla. 1996, 921 F.Supp. 750, *In re Sahlen & Associates, Inc. Securities Litigation*, S.D. Fla.1991, 773 F.Supp. 342, *Buck Creek Coal, Inc. v. United Workers of America*, S.D. Ind. 1995, 917 F.Supp. 601, *In re Phar-Mor, Inc. Securities Litigation*, W.D. Pa. 1994, 900 F.Supp. 777, *Liquid Air Corp. v. Rogers* C.A. 7 (Ill.) 1987, 834 F.2d 1297., *Poeter v. Shearson Lehman Bros. Inc.* S.D. Tex. 1992, 802 F.Supp. 41, *Guiliano v. Everything Yogert, Inc.* E.D. N.Y. 1993, 819 F.Supp. 626., *Babst v. Morgan Keegan & Co.* E.D. La. 1988, 687 F.Supp. 255, *U.S. v. Gigante*, D.N.J. 1990, 737 F.Supp. 292, *Frank E. Basil, Inc. v. Leidesdorf*, N.D.Ill. 1989, 713 F.Supp. 1194, *In re Crazy Eddie Securities Litigation*, E.D. N.Y. 1990, 747 F.Supp. 850, and *O'Rourke v. Crosley*, D.N.J. 1994, 847 F.Supp. 1208.

#### Affidavit

I, Diane Summers, of lawful age and competent to testify state as follows based on my own personal knowledge:

1. I am not in receipt of any document which verifies that Direct Merchants Credit Card Bank has standing to sue in Oklahoma courts.
2. I am not in receipt of any document which verifies that I have a contract with Direct Merchants Credit Card Bank
3. I am not in receipt of any document which verifies that I owe Direct Merchants Credit Card Bank money.
4. I am not in receipt of any document which verifies that Direct Merchants Credit Card Bank authorized suit against me or is even aware of it.



## How To Legally Beat Debt Collectors

5. I am not in receipt of a motion for judgment by default or motion for summary judgment on behalf of Direct Merchants Credit Card Bank.

6. As the result of Love, Beal & Nixon, P.C.'s pattern of acts against me, I have been damaged financially, socially, and emotionally.

\_\_\_\_\_  
Diane Summers

STATE OF OKLAHOMA                      INDIVIDUAL ACKNOWLEDGMENT  
COUNTY OF \_\_\_\_\_ Oklahoma Form  
Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act. Given under my hand and seal the day and year last above written.

My commission expires \_\_\_\_\_

\_\_\_\_\_ Notary Public

### Declaration

Fifteen days from the verifiable receipt of this motion to vacate a void judgment, an order shall be prepared and submitted to the court for ratification unless prior to that time, Love, Beal & Nixon, P.C. rebut all articles - one through five - of my affidavit by and through a competent fact witness making their statement under penalty of perjury, supporting all the rebutted articles with evidence which would be admissible at trial, and sets the matter for hearing.

Prepared and submitted by: \_\_\_\_\_  
Diane Summers

### Certificate of service

I, Diane Summers, certify that July\_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing motion to vacate via certified mail, return receipt requested to:



## How To Legally Beat Debt Collectors

---

Love, Beal & Nixon  
P.O. Box 32738  
Oklahoma City, Oklahoma 73123

---

Diane Summers

What if you just can't win? You appeal! Two variations follow

**How To Legally Beat Debt Collectors**

---

No. DF-999999

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Diane Summers  
Appellant,

Vs.

Direct Merchants Credit Card Bank  
Appellee

On appeal from the lower court's refusal to vacate a void  
judgment

Caddo County, Oklahoma  
District Court Number CS-2002-111

Appellants' brief-in-chief

Diane Summers  
P. O. Box 1454  
Anadarko, Oklahoma 73005  
No phone number at this time

November 28th 2003

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Second proposition: Attorneys who purchase evidence of debt, then prosecute an action in the name of the original maker of the loan are engaging in criminal activity and attorneys who prepare and submit false documents to a court are committing felonies.

Third proposition: Oklahoma courts lack judicial power to review a void judgment. Where the judgment is void on the face of the record, Oklahoma courts have a non-discretionary duty to vacate the void judgment, order repair of all damages caused by the void judgment, and duty to remand those who have committed criminal acts to other authority for considered prosecution.

Fourth proposition: When the court's jurisdiction is challenged, it is incumbent on the party asserting that the court had jurisdiction to show, on the record, that the court had jurisdiction: where parties, including judges enforce a judgment the record shows is void, all actors are trespassers on the law.

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### History

The record made in Caddo County case number CS-2002-116 verifies that third party debt collector, Love, Beal, & Nixon, violated the Fair Debt Collections Practices Act, 15 USC 1601 et seq., by failing to notice Diane Summers that Love, Beal, & Nixon was a debt collector attempting to collect a debt, by failing to validate the alleged debt, and then, by misrepresenting the character and amount of the debt Diane Summers allegedly owed. The matter languished without rising to a justiciable controversy until Diane Summers called the question by filing a motion for summary judgment and noticing the court of the debt collection fraud racket. The court rushed to judgment *sua sponte* without being moved under authority of the rules for local courts, rule 4(7) with the obvious result of obstructing justice, illegally saving Love, Beal, & Nixon from having to answer the motion for summary judgment and blatantly depriving Diane Summers of important substantive and procedural due process rights. Diane Summers moved for vacation of the void judgment, challenging Love, Beal, & Nixon to show, on the record, that Direct Merchants Credit Card Bank: (1). has standing to sue in Oklahoma courts, (2). has a contract with Diane Summers, (3). has been damaged by Diane Summers, and, (4). that Direct Merchants Credit Card Bank had authorized suit with delegated authority to Love, Beal, & Nixon. Establishing that Love, Beal, & Nixon is a racketeer influenced corrupt business organization which routinely relies on Oklahoma district court judges to aid and abet violation of 18 USC 1961 & 1962, the court below, presumed jurisdiction to make a judicial determination that the void judgment was valid. It is from this criminal misconduct that Diane Summers appeals, and the standard of review is, of course, gross abuse of discretion as the court lacked judicial power to refuse to vacate a judgment the record verifies obtained without: (1). Verification that Direct Merchants Credit Card Bank has standing to sue in Oklahoma courts, (2). Verification that Direct Merchants Credit Card Bank has a contract with Diane Summers, (3). Verification that Diane Summers damaged Direct Merchants Credit Card Bank, (4). Verification that Direct Merchants Credit Card Bank authorized suit against Diane Summers with authority delegated to Love, Beal, and Nixon, or, (5). That Love, Beal, & Nixon moved the court for judgment by default and



set the matter for hearing with notice to Diane Summers. The trial court judge, John E. Herndon, should be compelled to appear and testify before a federal grand jury and explain exactly what article, absent a contract, the debtor can ask for or demand as evidence that the alleged debt has been discharged. See judge's duty found at 18 USC 4.

#### Questions presented:

Whether the Oklahoma supreme court was correct to rule and determine that even a default judgment must be proved and absent evidence entered on the record with notice to the opposing party for opportunity to use basic forensic devices to the test the sufficiency of the evidence, the judgment is utterly void?

Whether the Oklahoma Supreme Court was correct to rule and determine that a void judgment is no judgment at all?

Whether the Oklahoma Legislature intended to protect consumers from the debt collections racket?

Whether the Oklahoma Supreme Court, by and through its appellate tribunals, openly and willfully participates in aiding and abetting violation of law including 18 USC 1961 & 1962?

#### Argument and authorities

First proposition: Where the record shows absolutely no evidence, no prove up of the claim, no contract, no nothing, absolutely no evidence entered on the record in support of the claim, the judgment is void, a nullity, conveying no interest, and grounding no rights.

This court is noticed: the court below awarded a judgment by default *sua sponte* without any evidence whatsoever being entered on the record. Even a default judgment must be proved and without evidence entered on the record with notice and opportunity to the opposing party to use basic forensic devices to test the sufficiency of the evidence, the judgment is void. See *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001), *Razorsoft Inc. v. Maktal, Inc.*, Okla. App.

Div. 1, 907 P.2d 1102 (1995), *Millikan v. Booth*, Okla. 713, 46 P. 489 (1896), *Atchison, T. & S.F. Ry. Co. v. Lambert*, 31 Okla. 300, 121 P. 654, Ann. Cas. 1912 E, 329 (1912), *City of Guthrie v. T.W. Harvey Lumber Co.*, 5 Okla. 774, 50 P. 84 (1897), *Payne v. Dewitt*, Okla., 995 P.2d 1088 (1999), *Reed v. Scott*, Okla. 820 P.2d 445, 20 A.L.R. 5th 913 (1991), *Graves v. Walters*, Okla. App. 534 P.2d 702 (1975), *Ross v. Ross*, Okla. 201 Okla. 174, 203 P.2d 702 (1949), *Thomas c. Sweet*, Okla. 173 Okla. 601, 49 P.2d 557 (1935), and *Cudd v. Farmers' Exch. Bank of Lindsay*, Okla., 76 Okla. 317, 185 P. 521 (1919). The general rule is that a void judgment is no judgment at all. Where judgments are void, as was the judgment originally rendered by the trial court here, any subsequent proceedings based upon the void judgment are themselves void. In essence, no judgment existed from which the trial court could adopt either findings of fact or conclusions of law. *Valley Vista Development Corp. v. City of Broken Arrow*, 766 P.2d 344, 1988 OK 140 (Okla. 12/06/1988); A void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question. A void judgment neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it, are absolutely void. The parties attempting to enforce it are trespassers." *High v. Southwestern Insurance Company*, 520 P.2d 662, 1974 OK 35 (Okla. 03/19/1974); and, A void judgment cannot constitute *res judicata*. Denial of previous motions to vacate a void judgment could not validate the judgment or constitute *res judicata*, for the reason that the lack of judicial power inheres in every stage of the proceedings in which the judgment was rendered. *Bruce v. Miller*, 360 P.2d 508, 1960 OK 266 (Okla. 12/27/1960).

Second proposition: Attorneys who purchase evidence of debt, then prosecute an action in the name of the original maker of the loan are engaging in criminal activity and attorneys who prepare and submit false documents to a court are committing felonies

Where the complaining party can not prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the

note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.) Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469 in *Carnegie Bank v Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3-302." Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977), "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession..." To prove up claim of damages, foreclosing party must enter evidence incorporating records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for

preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. See O.S. Title 21, Chapter 19, § 554, "Attorney Buying Evidence of Debt-Misleading Court. Every attorney who either directly or indirectly buys or is interested in buying any evidence of debt or thing in action with intent to bring suit thereon is guilty of misdemeanor. Any attorney who in any proceeding before any court of a justice of the peace or police judge or other inferior court in which he appears as attorney, willfully misstates any proposition or seeks to mislead the court in any matter of law is guilty of a misdemeanor and on any trial therefore the state shall only be held to prove to the court that the cause was pending, that the defendant appeared as an attorney in the action, and showing what the legal statement was, wherein it is not the law. If the defense be that the act was not willful the burden shall be on the defendant to prove that he did not know that there was error in his statement of law." Any person guilty of falsely preparing any book, paper, [({ record, })], instrument in writing, or other matter or thing, with intent to produce it, or allow it to be produced as genuine upon any [({ trial, proceeding or inquiry whatever, })] authorized by law, SHALL BE GUILTY OF A FELONY. See Oklahoma Statutes Title 21. Crimes and Punishments, Chapter 13, Section 453. See also, 18 USC 1961 & 1962.

Third proposition: Oklahoma courts lack judicial power to review a void judgment. Where the judgment is void on the face of the record, Oklahoma courts have a non-discretionary duty to vacate the void judgment, order repair of all damages caused by the void judgment, and duty to remand those who have committed criminal acts to other authority for considered prosecution.

When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is

mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994). See also, *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a void judgment). For other authorities concurring, see *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash. App. 783, 790, 790 P.2d 206 (1990), *In re: Bd. of Revision* (2000), 87 Ohio St.3d 363, 368, *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998), *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974), *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty*, *Cleveland Electric Illuminating Company v. Finesilver*, No. 69363 (Ohio App. Dist.8 04/25/1996), *In re Marriage of Brighterowski*, 50 Wash. App. 633, 635, 749 P.2d 754 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash. App. 517, 520, 731 P.2d 533 (1987), *In re: Thomas*, 906 S.W.2d at 262, *In re: Weaver Constr.*, 190 Colo. at 232, 545 P.2d at 1045, *Leen*, 62 Wash. App. at 478, *Lubben v. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645, 649, (1st Cir. 1972), *Good v. Kitsap County*, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990), *Love v. Packer*, 174 N.C. 665, 94 S.E. 449, 450, *Patton v. Diemer* (1988), 35 Ohio St.3d 68 *Roller v. Holly*, 176 U.S. 398, 409, *Small v. Batista*, 22 F. Supp.2d 230, 231 (S.D.N.Y. 1998), *Wright & Miller*, FEDERAL PRACTICE AND PROCEDURE, (1973) ,Civil § 2862. See also 18 USC 4.

Fourth proposition: When the court's jurisdiction is challenged, it is incumbent on the party asserting that the court had jurisdiction to show, on the record, that the court had jurisdiction: where parties, including judges enforce a judgment the record shows is void, all actors are trespassers on the law.

Whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. *Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. *Loos v American Energy Savers, Inc.*, 168 Ill.App.3d 558, 522 N.E.2d 841(1988) ("Where

jurisdiction is contested, the burden of establishing it rests upon the plaintiff."). The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge has immediately lost subject-matter jurisdiction. Should the judge not have subject-matter jurisdiction, then the law states that the judge has not only violated the law, but is also a trespasser of the law. *Von Kettler et.al. v Johnson*, 57 Ill. 109 (1870) ("if the magistrate has not such jurisdiction, then he and those who advise and act with him, or execute his process, are trespassers."); *Elliott v Peirsol*, 1 Pet. 328, 340, 26 U.S. 328, 340 (1828) ("without authority, its judgments and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to a reversal in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences, are considered, in law, as trespassers. This distinction runs through all the cases on the subject; and it proves, that the jurisdiction of any court exercising authority over a subject, may be inquired into in every court, when the proceedings of the former are relied on and ought before the latter, by the party claiming the benefit of such proceedings."); *In re TIP-PA-HANS enterprises, Inc.*, 27 B.R. 780, 783 (1983) (a judge "lacks jurisdiction in a particular case until it has been demonstrated that jurisdiction over the subject matter exists") (when a judge acts "outside the limits of his jurisdiction, he becomes a trespasser ... "). (" ... courts have held that where courts of special or limited jurisdiction exceed their rightful powers, the whole proceeding is *coram non judice* ... "). Trespasser - "One who enters upon property of another without any right, lawful authority, or express or implied invitation, permission, or license, not in performance of any duties to owner, but merely for his own purpose, pleasure or convenience. *Mendoza v City of Corpus Christi*, Tex. App. 13 Dist., 700 S.W.2d 652, 654." Black's Law Dictionary, 6th Edition, page 1504. The Illinois Supreme Court held that if a court "could not hear the matter upon the jurisdictional paper presented, its finding that it had the power can add nothing to its authority, - it had no authority to make that finding." *The People v. Brewer*, 128 Ill. 472, 483 (1928). When judges act when they

do not have jurisdiction to act, or they enforce a void order (an order issued by a judge without jurisdiction), they become trespassers of the law, and are engaged in treason. The Court in *Yates v. Village of Hoffman Estates, Illinois*, 209 F. Supp. 757 (N.D. Ill. 1962) held that "not every action by a judge is in exercise of his judicial function. ... it is not a judicial function for a judge to commit an intentional tort even though the tort occurs in the courthouse." When a judge acts as a trespasser of the law, when a judge does not follow the law, the judge loses subject-matter jurisdiction and the judges' orders are void, of no legal force or effect. *The U.S. Supreme Court, in Scheuer v. Rhodes*, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal constitution, he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." By law, a judge is a state officer. The judge then acts not as a judge, but as a private individual (in his person).

#### Conclusion

Whereas this court has actual knowledge, that like the court below, this court and all courts lack judicial discretion to review a void judgment; and whereas this court has actual knowledge that the record made in the court below verifies that the judgment in Caddo County case number CS-2002-116 is facially void; this court's non-discretionary duty is to vacate the void judgment, remand CS-2002-116 with instruction to the Caddo County court to repair Diane Summers, and remand all culpable actors to other authority for considered prosecution.

Prepared and submitted by:

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Diane Summers

## CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of  
appellant's opening brief on the \_\_\_\_\_ day of November,  
2003 to:

Love, Beal & Nixon  
P.O. Box 32738  
Oklahoma City, Oklahoma 73123

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Diane Summers



STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT IV

People's Bank  
Plaintiff-respondent,

Vs.

William D. King,  
Defendant-appellant.

Appellant's opening brief  
Appeal number 03 - 2222  
Dane County Case number 03-CV000

Appeal from order granting summary judgment  
Dane County Circuit Court, Branch 13  
Michael Nowakowski, presiding

William King  
South Ct.  
McFarland, Wisconsin 55555  
(608) 658-4444

## How To Legally Beat Debt Collectors

December 29th 2003

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*Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980) (9)  
*Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987) (9)

Statement of the issues (submitted: it is not at issue whether a summary judgment is inappropriate where the plaintiff enters no facts on the record in support of their claim - that summary judgment is inherently void where the plaintiff's totally insufficient pleadings pose only conclusory and theoretical matters absent any facts is not in controversy).

1. Whether the circuit court has discretion to forward in a case where the record of the case shows lack of jurisdiction?
2. Whether violation of the Fair Debt Collections Practices Act deprives the alleged debtor of due process rights depriving the court of subject matter jurisdiction?
3. Whether a summary judgment is void where party fails to prove standing?
4. Whether a summary judgment is void where party fails to prove up claim?

#### Statement regarding oral argument

This court is noticed: In the court below the oral argument was between appellant and judge in the judge's office - not in open court. As no transcript of any hearing was made and the resolve of those jurisdictional failings posited by William King must rest on the record made or the total lack thereof, oral argument would not likely benefit this tribunal in its determinations.

#### Statement regarding whether the decision should be published

In as much as rulings of compelling public interest such as whether Wisconsin residents are subjected to sham legal process for reason that "judgments" are being rendered against parties without any evidentiary support whatsoever - merely the warrants of attorneys, the decision of this court should be in publication.

#### Statement of the case

People's Bank, alleging indebtedness, without prior notice required under the Fair Debt Collections Practices Act, sued consumer William D. King and allegedly obtained a summary judgment. This court is noticed: People's Bank did not show that William D. King had a contract with People's Bank. People's Bank did not show that William D. King had damaged People's Bank in any way. The court below had nothing to rely on to know that People's Bank has standing to sue in Wisconsin court's or that People's Bank's charter authorizes People's Bank to enter into consumer debt contracts. The court below disregarded the record which contained only hypothetical and theoretical conclusions and no fact whatsoever and entered summary judgment for People's Bank and against William D. King. It is from this miscarriage of justice that William D. King appeals.

#### Argument

The circuit court lacks discretion to proceed where the record shows matters before the court do not rise to a justiciable controversy. Where there are no affidavits, depositions, admissions, or interrogatories, the court is without factual basis to rule judicially for the plaintiff. Wisconsin summary judgment statute § 802.08 requires showing of evidentiary facts. Violation of the Fair Debt Collections Practices Act deprives the alleged debtor of due process rights depriving the court of subject matter jurisdiction. The Act applies to third party debt collectors. Third party debt collectors includes lawyers and law firms who are attempting to collect any alleged. *George W. Heintz v. Darlene Jenkins*, 514 U.S. 291, 115 S.Ct. 1489. When a third party debt collector contacts an alleged debtor, the collector must in the first communication or within five (5) days thereafter furnish the alleged debtor with a "dunning letter." The dunning letter must inform the alleged debtor that the collector is attempting to collect a debt and inform the alleged debtor that they have thirty (30) days to dispute the debt. 15 USC 1692g, 1692g(a)(3). The alleged debtor has thirty (30) days to dispute the debt requiring the collectors to furnish validation of the debt. 15 USC 1692G(b). Debt collection activity must cease if the debt is disputed. Failure to notice the alleged debtor of their due process rights or failure to cease collection activity until timely validation voids any legal proceedings. As a matter of law,

a creditor violating the WCA must suffer the consequences of its wrongful repossession and prohibited debt collection practices. The WCA plainly treats venue as a jurisdictional issue. Therefore, the failure to have proper venue means the judgment is void. Void judgments can always be challenged. Moreover, there is no need for a trial in any of the three instances. As a matter of law, the creditor violated the WCA and must suffer the consequences of its wrongful repossession and prohibited debt collection practices. This court is noticed: the court below failed to require counsel for People's Bank to show that the Fair Debt Collections Practices Act and the WCA had been complied with.

A summary judgment is void where party fails to prove standing. To have standing, party suing in foreclosure of debt must produce the original promissory note. Complaining party must (1). Prove standing by possession of the original promissory note, and (2). Must prove damages by appearance of a competent fact witness: Where the complaining party cannot prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.), Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or surrender of the bond or note and mortgage, as the case may be. *Carnegie Bank v, Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability. Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the

plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977). "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. In *Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession ..." Unequivocally the Court's rule is that in order to prove the "instrument", possession is mandatory. This court is noticed: the record in the court below does not show that People's Bank had standing in the underlying case.

Summary judgment is void where party fails to prove up claim. Prevailing party in civil action must prove damages. For example, see *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001). Claim of damages, to be admissible as evidence, must incorporate records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987).

#### Conclusion and remedy sought

Determination by this court that the record in the court below does not verify compliance with consumer debtor law, does not verify standing on the part of People's Bank, and does not verify damages in the form of verified sums due and owing People's Bank, requires vacating the lower

**How To Legally Beat Debt Collectors**

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court's order of summary judgment and remand to the court below with instruction to repair William D. King.

Prepared and submitted by: \_\_\_\_\_  
William D. King.

Certificate of Mailing

I certify that this brief was deposited in the United States mail for delivery to the Clerk to the Court of Appeals by first-class mail. I further certify that the brief was correctly addressed and postage was pre-paid.

\_\_\_\_\_  
Date William D. King.

Form and Length Certification

I certify that this brief conforms to the rules contained in Wis. Stat. Section (Rule) 809.19(8)(b) and (c) for a brief produced using the following font: Mono-spaced font: 10 characters per inch; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides. The length of this brief is 10 pages.

\_\_\_\_\_  
Date William D. King

And after they file an answer brief, you file a reply brief



## How To Legally Beat Debt Collectors

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No. DF-99999

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Diane Sommers  
Appellant,

Vs.

Direct Merchants Credit Card Bank  
appellee

On appeal from the lower court's refusal to vacate a void  
judgment Caddo County, Oklahoma

District Court Number CS-2002-0000

Appellants' reply brief

Diane Sommers  
P. O. Box 549  
Indian City, Oklahoma 730050  
No phone number at this time

January 28th 2004

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<i>Carter v. Fenner</i> , 136 F.3d 1000, 1005 (5th Cir. 1998) . . .	3
<i>Chavez v. County of Valencia</i> , 86 N.M. 205, 521 P.2d 1154 (1974) . . .	3
<i>Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty, Cleveland Electric Illuminating Company v. Finesilver</i> , No. 69363 (Ohio App. Dist.8 04/25/1996) . . .	3
<i>High v. Southwestern Insurance Company</i> , 520 P.2d 662, 1974 OK 35 (Okla. 03/19/1974) . . . . .	4
<i>In re Marriage of Markowski</i> , 50 Wash. App. 633, 635, 749 P.2d 754 (1988) . . .	3
<i>In re: Thomas</i> , 906 S.W.2d at 262 . . . . .	3
<i>In re: Weaver Constr.</i> , 190 Colo. at 232, 545 P.2d at 1045 . . . . .	3
<i>In re:Bd. of Revision</i> (2000), 87 Ohio St.3d 363, 368 . . . . .	3
<i>Lubben v. Selective Serv. Sys. Local Bd. No. 27</i> , 453 F.2d 645, 649, (1st Cir. 1972) . . .	3
<i>Mitchell v. Kitsap County</i> , 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990) . . .	3
<i>Moore v. Packer</i> , 174 N.C. 665, 94 S.E. 449, 450 . . . . .	3
<i>Orner v. Shalala</i> , 30 F.3d 1307, (Colo. 1994) . . . . .	3

*Patton v. Diemer* (1988), 35 Ohio St.3d 68 . . . . . 3  
*Roller v. Holly*, 176 U.S. 398, 409 . . . . . 3  
*Small v. Batista*, 22 F. Supp.2d 230  
 231 (S.D.N.Y. 1998) . . . . . 3  
 Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, (1973)  
 ,Civil § 2862 3

#### Reply to William L. Nixon, Jr.'s "INTRODUCTION"

William L. Nixon's so-called introduction verifies that Mr. Nixon expects this Court to proceed extra-legally. The standard of review when court denies a motion to vacate is GROSS abuse of discretion - Where party challenges the jurisdiction of the court, the court is *deprived* of judicial discretion. When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994). See also, *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a void judgment). For other authorities concurring, see *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash. App. 783, 790, 790 P.2d 206 (1990), *In re: Bd. of Revision* (2000), 87 Ohio St.3d 363, 368, *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998), *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974), *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty*, *Cleveland Electric Illuminating Company v. Finesilver*, No. 69363 (Ohio App. Dist.8 04/25/1996), *In re Marriage of Markowski*, 50 Wash. App. 633, 635, 749 P.2d 754 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash. App. 517, 520, 731 P.2d 533 (1987), *In re: Thomas*, 906 S.W.2d at 262, *In re: Weaver Constr.*, 190 Colo. at 232, 545 P.2d at 1045, *Leen*, 62 Wash. App. at 478, *Lubben v. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645, 649, (1st Cir. 1972), *Mitchell v. Kitsap County*, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990), *Moore v. Packer*, 174 N.C. 665, 94 S.E. 449, 450, *Patton v. Diemer* (1988), 35 Ohio St.3d 68 *Roller v. Holly*, 176 U.S. 398, 409, *Small v. Batista*, 22 F. Supp.2d 230, 231 (S.D.N.Y. 1998), Wright & Miller, FEDERAL PRACTICE AND PROCEDURE, (1973) ,Civil § 2862. This court has knowledge: no judge has *discretion* when it comes to vacating a void judgment. On Simplest of terms, John E. Herndon had no discretion to abuse.

Reply to William L. Nixon's "SUMMARY OF THE RECORD"

William L. Nixon, in Nixon's article 5 of Nixon's summary of the record, falsely alleges that a motion for summary judgment requires leave of the court. Nixon also feigns insult by claiming that Nixon's firm is falsely accused of purchasing the debt. This court is noticed: Nixon has not denied purchasing evidence under penalty of perjury.

Reply to William L. Nixon's "ARGUMENT AND AUTHORITIES"

Nixon attempts to trick, deceive and mislead this court with the lie that Diane Sommers did not state the proper Statutory authority for the vacation of the Default Judgment. The record reveals that Diane Sommers relied on 12, O. S. Section 1038 - lack of subject matter jurisdiction and correctly pled that Nixon had circumvented local rules for district courts in applying for a default judgment (which in actuality was backdated to avoid having to answer on the motion for summary judgment). This court is noticed: Diane Sommers established that Direct Merchants Credit Card Bank lacks standing to sue in Oklahoma Courts, that Direct Merchants Credit Card Bank lacked standing to sue Diane Sommers, that Diane Sommers had not damaged Direct Merchants Credit Card Bank, and that Love, Beal, and Nixon did not have delegated authority to represent Direct Merchants Credit Card Bank. All of these jurisdictional failings spell "VOID JUDGMENT" and Nixon taking money in respect of the void judgment spells "SWINDLE." See *High v. Southwestern Insurance Company*, 520 P.2d 662, 1974 OK 35 (Okla. 03/19/1974) wherein the Oklahoma appellate court ruled that a void judgment is, in legal effect, no judgment at all. By it no rights are divested; from it no rights can be obtained. Being worthless, in itself, all proceedings founded upon it are necessarily equally worthless, and have no effect whatever upon the parties or matters in question. A void judgment neither binds nor bars anyone. All acts performed under it, and all claims flowing out of it, are absolutely void. The parties attempting to enforce it are trespassers."

Conclusion

## How To Legally Beat Debt Collectors

Whereas this court shall notice: Diane Sommers, in the court below, challenged whether the court below was deprived of subject matter jurisdiction for reason that Diane Sommers was deprived of due process right to be noticed on a motion for judgment by default as required by the Oklahoma Court Rules For Local Courts. Nixon, not John E. Herdon, had the burden of showing on the record that Nixon had respected Diane Sommers's due process rights by noticing Diane Sommers on the motion for default. Not only does Nixon not have a clue of what is meant by "jurisdictional challenge," Nixon failed to show that the record verified the notice. The court was undeniably deprived of subject matter jurisdiction for reason that the court conscienced the violation of Diane Sommers's due process rights. As Diane Sommers has illustrated *supra*, Diane Sommers also challenged whether Direct Merchants Credit Card Bank had standing to sue in Oklahoma Courts, whether Direct Merchants Credit Card Bank had standing to sue Diane Sommers by reason of actual possession of the debt instrument, whether the record contained any evidence whatsoever that Diane Sommers had damaged Direct Merchants Credit Card Bank, and whether Love, Beal & Nixon had authority to act for Direct Merchants Credit Card Bank. Nixon was not responsive to any of these challenges and the court, John E. Herndon, breached non-discretionary, non-judicial duty to vacate the void judgment.

Prepared and submitted by:

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Diane Sommers

### CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of appellant's opening brief on the \_\_\_\_ day of January, 2004 to:

Love, Beal & Nixon P.O. Box 32738  
Oklahoma City, Oklahoma 73123

---

Diane Sommers

What if you don't win on appeal? Sue in federal court.

## How To Legally Beat Debt Collectors

### IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF WISCONSIN

Joyce H. Rhino,           )  
     And                        )  
 Joseph W. Rhino,         )  
     Plaintiffs,             )  
                                   )  
 v.                            ) Number \_\_\_\_\_  
                                   )  
 SN SERVICING CORPORATION,     )  
 NATIONS CREDIT HOME EQUITY    )  
     SERVICES CORPORATION,        )  
  
 Jonathan D. McCollister, an individual )  
     And                                        )  
 Maryann Sumi, an individual,                )  
     Defendants.                                    )

Joyce H. Rhino and Joseph W. Rhino's petition, complaint,  
 and claim under authority of 42 USC 1983

#### Jurisdictional statement

This court has subject matter jurisdiction to consider this claim. Although this claim tenders for review of a state court judgment, this court is noticed: the state court judgment is void as articulated *infra*. There are exceptions to the *Rooker/Feldman* doctrine when the state court judgment was procured through fraud, deception, accident, or mistake *Sun Valley Foods Co. v. Detroit Marine Terminals, Inc.* 801 F.2d 186, 189(6thCir. 1985)(quoting *Resolute Ins. Co. v. North Carolina* 397 F.2d 586, 589 (4 Cir. 1968)). *Rooker/Feldman* will not apply when the party had no reasonable opportunity to raise his federal claim in state proceedings, *Wood v. Orange County*, 715 F.2d 1543, 1547 (11th Cir. 1983), cert. Denied, 467 U.S. 1210, 104 S. Ct. 2398, 81 L. Ed. 2d 355 (1984). If the state court did not have subject matter jurisdiction over the prior action, its orders would be void *ab initio* and subject to attack notwithstanding *Rooker/Feldman*, *James v. Draper* (In re. Lake), 202 B.R. 754, 758 (B.A.P. 9th Cir. 1996). A state court judgment is subject to collateral attack if the state

court lacked jurisdiction over the subject matter or the parties, or the judgment was procured through extrinsic fraud. Exception to the *Rooker/Feldman* rule comes into play when the state proceedings are considered a legal nullity, and thus, are void *ab initio*. See *Kalb v. Fierstein*, 308 U.S. 433, 438-40 (1940). Where specific federal statute (such as 18 USC 1964(a)) specifically authorizes review, the *Rooker/Feldman* doctrine is inapplicable. See *Plyer v. Love*, 129 F.3d 728, 732 (4th Cir. 1997), *Young v. Murphy*, 90 F.3d 1225, 1230 (7th Cir. 1992), and *In re: Gruntz*, 202 F.3d 1074, 1079 (9th Cir. 2000).

SN SERVICING CORPORATION & NATIONS CREDIT HOME EQUITY SERVICES CORPORATION, by and through, Jonathan D. McCollister conspired with state actor Maryann Sumi under color of law to deprive Joyce H. Rhino and Joseph W. Rhino of Federally Protected Rights reserved under The Fifth Amendment of The United States Constitution, specifically applying to the color of law actions of Jonathan D. McCollister and Maryann Sumi under authority of The Fourteenth Amendment of The United States Constitution.

CAUSE OF ACTION: McCollister and Maryann Sumi conspired to deprive and did deprive Joyce H. Rhino and Joseph W. Rhino of property without due process of law. As a result of the damage to the rights of Joyce H. Rhino and Joseph W. Rhino, the Rhinos have damages in fact exceeding two hundred eighty-nine thousand, six hundred twenty-one dollars. McCollister practiced intrinsic fraud by falsely claiming that SN SERVICING CORPORATION had a claim against the Rhinos. Sumi compounded the fraud by claiming all the material allegations of SN SERVICING CORPORATION's complaint were proven and true. The record made in case number 02-CV-3461, Dane County, does not verify: That SN SERVICING CORPORATION had standing to bring suit against the Rhinos and SN SERVICING CORPORATION did not prove damages by the Rhinos.

(in this area, tell why the judgment is void - lack of personal jurisdiction, failure to notice under the fair debt collections practices act when domesticating judgment)



Memorandum of law in support of the point of law that even in a default judgment, damages must be proved

Even with a default judgment, DAMAGES MUST BE PROVED BY EVIDENCE ENTERED ON THE RECORD. For example, see *American Red Cross v. Community Blood Center of the Ozarks*, 257 F.3d 859 (8th Cir. 07/25/2001).

Memorandum of law in support of the point of law that a void judgment cannot operate

Void judgments are those rendered by a court which lacked jurisdiction, either of the subject matter or the parties, *Wahl v. Round Valley Bank* 38 Ariz. 411, 300 P. 955 (1931); *Tube City Mining & Milling Co. v. Otterson*, 16 Ariz. 305, 146 P. 203 (1914); and *Milliken v. Meyer*, 311 U.S. 457, 61 S.Ct. 339, 85 L.Ed. 2d 278 (1940). A void judgment which includes judgment entered by a court which lacks jurisdiction over the parties or the subject matter, or lacks inherent power to enter the particular judgment, or an order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court, *Long v. Shorebank Development Corp.*, 182 F.3d 548 (C.A. 7 Ill. 1999). A void judgment is one which, from its inception, was a complete nullity and without legal effect, *Lubben v. Selevtive Service System Local Bd. No. 27*, 453 F.2d 645, 14 A.L.R. Fed. 298 (C.A. 1 Mass. 1972). A void judgment is one which from the beginning was complete nullity and without any legal effect, *Hobbs v. U.S. Office of Personnel Management*, 485 F.Supp. 456 (M.D. Fla. 1980). Void judgment is one that, from its inception, is complete nullity and without legal effect, *Holstein v. City of Chicago*, 803 F.Supp. 205, reconsideration denied 149 F.R.D. 147, affirmed 29 F.3d 1145 (N.D. Ill 1992). Void judgment is one where court lacked personal or subject matter jurisdiction or entry of order violated due process, U.S.C.A. Const. Amend. 5 - *Triad Energy Corp. v. McNell* 110 F.R.D. 382 (S.D.N.Y. 1986). Judgment is a void judgment if court that rendered judgment lacked jurisdiction of the subject matter, or of the parties, or acted in a manner inconsistent with due process, Fed. Rules Civ. Proc., Rule 60(b)(4), 28 U.S.C.A.; U.S.C.A. Const. Amend. 5 - *Klugh v. U.S.*,

620 F.Supp. 892 (D.S.C. 1985). A void judgment is one which, from its inception, was, was a complete nullity and without legal effect, *Rubin v. Johns*, 109 F.R.D. 174 (D. Virgin Islands 1985). A void judgment is one which, from its inception, is and forever continues to be absolutely null, without legal efficacy, ineffectual to bind the parties or to support a right, of no legal force and effect whatever, and incapable of enforcement in any manner or to any degree - *Loyd v. Director, Dept. of Public Safety*, 480 So. 2d 577 (Ala. Civ. App. 1985). A judgment shown by evidence to be invalid for want of jurisdiction is a void judgment or at all events has all attributes of a void judgment, *City of Los Angeles v. Morgan*, 234 P.2d 319 (Cal.App. 2 Dist. 1951). Void judgment which is subject to collateral attack, is simulated judgment devoid of any potency because of jurisdictional defects, *Ward v. Terriere*, 386 P.2d 352 (Colo. 1963). A void judgment is a simulated judgment devoid of any potency because of jurisdictional defects only, in the court rendering it and defect of jurisdiction may relate to a party or parties, the subject matter, the cause of action, the question to be determined, or relief to be granted, *Davidson Chevrolet, Inc. v. City and County of Denver*, 330 P.2d 1116, certiorari denied 79 S.Ct. 609, 359 U.S. 926, 3 L.Ed. 2d 629 (Colo. 1958). Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved and such a judgment may be attacked at any time, either directly or collaterally, *People v. Wade*, 506 N.W.2d 954 (Ill. 1987). Void judgment may be defined as one in which rendering court lacked subject matter jurisdiction, lacked personal jurisdiction or acted in manner inconsistent with due process of law *Eckel v. MacNeal*, 628 N.E. 2d 741 (Ill. App. Dist. 1993). Void judgment is one entered by court without jurisdiction of parties or subject matter or that lacks inherent power to make or enter particular order involved; such judgment may be attacked at any time, either directly or collaterally *People v. Sales*, 551 N.E.2d 1359 (Ill.App. 2 Dist. 1990). *Res judicata* consequences will not be applied to a void judgment which is one which, from its inception, is a complete nullity and without legal effect, *Allcock v. Allcock* 437 N.E. 2d 392 (Ill. App. 3 Dist. 1982). Void judgment is one which, from its inception is complete nullity and without legal effect *In re Marriage of Parks*,

630 N.E. 2d 509 (Ill.App. 5 Dist. 1994). Void judgment is one entered by court that lacks the inherent power to make or enter the particular order involved, and it may be attacked at any time, either directly or collaterally; such a judgment would be a nullity *People v. Rolland* 581 N.E.2d 907, (Ill.App. 4 Dist. 1991). Void judgment under federal law is one in which rendering court lacked subject matter jurisdiction over dispute or jurisdiction over parties, or acted in manner inconsistent with due process of law or otherwise acted unconstitutionally in entering judgment, U.S.C.A. Const. Amend. 5, *Hays v. Louisiana Dock Co.*, 452 n.e.2d 1383 (Ill. App. 5 Dist. 1983). A void judgment has no effect whatsoever and is incapable of confirmation or ratification, *Lucas v. Estate of Stavos*, 609 N. E. 2d 1114, rehearing denied, and transfer denied (Ind. App. 1 dist. 1993). Void judgment is one that from its inception is a complete nullity and without legal effect *Stidham V. Whelchel*, 698 N.E.2d 1152 (Ind. 1998). Relief from void judgment is available when trial court lacked either personal or subject matter jurisdiction, *Dusenberry v. Dusenberry*, 625 N.E. 2d 458 (Ind.App. 1 Dist. 1993). Void judgment is one rendered by court which lacked personal or subject matter jurisdiction or acted in manner inconsistent with due process, U.S.C.A. Const. Amends. 5, 14 *Matter of Marriage of Hampshire*, 869 P.2d 58 ( Kan. 1997). Judgment is void if court that rendered it lacked personal or subject matter jurisdiction; void judgment is nullity and may be vacated at any time, *Matter of Marriage of Welliver*, 869 P.2d 653 (Kan. 1994). A void judgment is one rendered by a court which lacked personal or subject matter jurisdiction or acted in a manner inconsistent with due process *In re Estate of Wells*, 983 P.2d 279, (Kan. App. 1999). Void judgment is one rendered in absence of jurisdiction over subject matter or parties 310 N.W. 2d 502, (Minn. 1981). A void judgment is one rendered in absence of jurisdiction over subject matter or parties, *Lange v. Johnson*, 204 N.W.2d 205 (Minn. 1973). A void judgment is one which has merely semblance, without some essential element, as when court purporting to render is has no jurisdiction, *Mills v. Richardson*, 81 S.E. 2d 409, (N.C. 1954). A void judgment is one which has a mere semblance, but is lacking in some of the essential elements which would authorize the court to proceed to judgment, *Henderson v. Henderson*, 59 S.E. 2d 227, (N.C. 1950).

Void judgment is one entered by court without jurisdiction to enter such judgment, *State v. Blankenship* 675 N.E. 2d 1303, (Ohio App. 9 Dist. 1996). Void judgment, such as may be vacated at any time is one whose invalidity appears on face of judgment roll, *Graff v. Kelly*, 814 P.2d 489 (Okla. 1991). A void judgment is one that is void on face of judgment roll, *Capital Federal Savings Bank v. Bewley*, 795 P.2d 1051 (Okla. 1990). Where condition of bail bond was that defendant would appear at present term of court, judgment forfeiting bond for defendant's bail to appear at subsequent term was a void judgment within rule that laches does not run against a void judgment *Com. V. Miller*, 150 A.2d 585 (Pa. Super. 1959). A void judgment is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment, *State v. Richie*, 20 S.W.3d 624 (Tenn. 2000). Void judgment is one which shows upon face of record want of jurisdiction in court assuming to render judgment, and want of jurisdiction may be either of person, subject matter generally, particular question to be decided or relief assumed to be given, *State ex rel. Dawson v. Bomar*, 354 S.W. 2d 763, certiorari denied, (Tenn. 1962). A void judgment is one which shows upon face of record a want of jurisdiction in court assuming to render the judgment, *Underwood v. Brown*, 244 S.W. 2d 168 (Tenn. 1951). A void judgment is one which shows on face of record the want of jurisdiction in court assuming to render judgment, which want of jurisdiction may be either of the person, or of the subject matter generally, or of the particular question attempted to be decided or relief assumed to be given, *Richardson v. Good*, 237 S.W. 2d 577, (Tenn.Ct. App. 1950). Void judgment is one which has no legal force or effect whatever, it is an absolute nullity, its invalidity may be asserted by any person whose rights are affected at any time and at any place and it need not be attacked directly but may be attacked collaterally whenever and wherever it is interposed, *City of Lufkin v. McVicker*, 510 S.W. 2d 141 (Tex. Civ. App. - Beaumont 1973). A void judgment, insofar as it purports to be pronouncement of court, is an absolute nullity, *Thompson v. Thompson*, 238 S.W.2d 218 (Tex.Civ.App. - Waco 1951). A void judgment is one that has been procured by extrinsic or collateral fraud, or entered by court that did not have jurisdiction over subject matter or the parties, *Rook v. Rook*, 353 S.E. 2d 756, (Va. 1987).

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 lacks the inherent power to make or enter the particular order involved, *State ex rel. Turner v. Briggs*, 971 P.2d 581 (Wash. App. Div. 1999). A void judgment or order is one that is entered by a court lacking jurisdiction over the parties or the subject matter, or lacking the inherent power to enter the particular order or judgment, or where the order was procured by fraud, *In re Adoption of E.L.*, 733 N.E.2d 846, (Ill.App. 1 Dist. 2000). Void judgments are those rendered by court which lacked jurisdiction, either of subject matter or parties, *Cockerham v. Zikratch*, 619 P.2d 739 (Ariz. 1980). Void judgments generally fall into two classifications, that is, judgments where there is want of jurisdiction of person or subject matter, and judgments procured through fraud, and such judgments may be attacked directly or collaterally, *Irving v. Rodriguez*, 169 N.E.2d 145, (Ill.app. 2 Dist. 1960). Invalidity need to appear on face of judgment alone that judgment or order may be said to be intrinsically void or void on its face, if lack of jurisdiction appears from the record, *Crockett Oil Co. v. Effie*, 374 S.W.2d 154 ( Mo.App. 1964). Decision is void on the face of the judgment roll when from four corners of that roll, it may be determined that at least one of three elements of jurisdiction was absent: (1) jurisdiction over parties, (2) jurisdiction over subject matter, or (3) jurisdictional power to pronounce particular judgment hat was rendered, *B & C Investments, Inc. v. F & M Nat. Bank & Trust*, 903 P.2d 339 (Okla. App. Div. 3, 1995). Void order may be attacked, either directly or collaterally, at any time, *In re Estate of Steinfield*, 630 N.E.2d 801, certiorari denied, See also *Steinfeld v. Hoddick*, 513 U.S. 809, (Ill. 1994). Void order which is one entered by court which lacks jurisdiction over parties or subject matter, or lacks inherent power to enter judgment, or order procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that party is properly before court, *People ex rel. Brzica v. Village of Lake Barrington*, 644 N.E.2d 66 (Ill.App. 2 Dist. 1994). While voidable orders are readily appealable and must be attacked directly, void order may be circumvented by collateral attack or remedied by mandamus, *Sanchez v. Hester*, 911 S.W.2d 173, (Tex.App. - Corpus Christi 1995). Arizona courts give great weight to federal courts' interpretations

of Federal Rule of Civil Procedure governing motion for relief from judgment in interpreting identical text of Arizona Rule of Civil Procedure, *Estate of Page v. Litzenburg*, 852 P.2d 128, review denied (Ariz.App. Div. 1, 1998). When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994). Judgments entered where court lacked either subject matter or personal jurisdiction, or that were otherwise entered in violation of due process of law, must be set aside, *Jaffe and Asher v. Van Brunt*, S.D.N.Y.1994. 158 F.R.D. 278. A "void judgment" as we all know, grounds no rights, forms no defense to actions taken there under, and is vulnerable to any manner of collateral attack (thus here, by ). No statute of limitations or repose runs on its holdings, the matters thought to be settled thereby are not res judicata, and years later, when the memories may have grown dim and rights long been regarded as vested, any disgruntled litigant may reopen the old wound and once more probe its depths. And it is then as though trial and adjudication had never been. 10/13/58 *FRITTS v. KRUGH*. SUPREME COURT OF MICHIGAN, 92 N.W.2d 604, 354 Mich. 97. On certiorari this Court may not review questions of fact. *Brown v. Blanchard*, 39 Mich 790. It is not at liberty to determine disputed facts (*Hyde v. Nelson*, 11 Mich 353), nor to review the weight of the evidence. *Linn v. Roberts*, 15 Mich 443; *Lynch v. People*, 16 Mich 472. *Certiorari is an appropriate remedy to get rid of a void judgment, one which there is no evidence to sustain. Lake Shore & Michigan Southern Railway Co. v. Hunt*, 39 Mich 469.

Memorandum of law in support of the point of law that  
a void judgment is not void when declared void but is void  
*ab initio*

If the trial court was without subject matter jurisdiction of defendant's case, his conviction and sentence would be void *ab initio*. See *Patton v. Diemer* (1988), 35 Ohio St.3d 68, 518 N.E.2d 941.

Memorandum of law in support of the point of law that party  
seeking to vacate a void judgment is invoking the  
ministerial powers of the court / courts lack discretion  
when it comes to vacating void judgments



When rule providing for relief from void judgments is applicable, relief is not discretionary matter, but is mandatory, *Orner v. Shalala*, 30 F.3d 1307, (Colo. 1994). See also, *Thomas*, 906 S.W.2d at 262 (holding that trial court has not only power but duty to vacate a void judgment). For other authorities concurring, see *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash. App. 783, 790, 790 P.2d 206 (1990), *Bd. of Revision* (2000), 87 Ohio St.3d 363, 368, *Carter v. Fenner*, 136 F.3d 1000, 1005 (5th Cir. 1998), *Chavez v. County of Valencia*, 86 N.M. 205, 521 P.2d 1154 (1974), *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty, Cleveland Electric Illuminating Company v. Finesilver*, No. 69363 (Ohio App. Dist.8 04/25/1996), *In re Marriage of Brighterowski*, 50 Wash. App. 633, 635, 749 P.2d 754 (1988); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wash. App. 517, 520, 731 P.2d 533 (1987), *In re: Thomas*, 906 S.W.2d at 262, *In re: Weaver Constr.*, 190 Colo. at 232, 545 P.2d at 1045, *Leen*, 62 Wash. App. at 478, *Lubben v. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645, 649, (1st Cir. 1972), *Good v. Kitsap County*, 59 Wash. App. 177, 180-81, 797 P.2d 516 (1990), *Love v. Packer*, 174 N.C. 665, 94 S.E. 449, 450, *Patton v. Diemer* (1988), 35 Ohio St.3d 68 *Roller v. Holly*, 176 U.S. 398, 409, *Small v. Batista*, 22 F. Supp.2d 230, 231 (S.D.N.Y. 1998), *Wright & A. Miller*, FEDERAL PRACTICE AND PROCEDURE, (1973) ,Civil § 2862.

Memorandum in support of the point of law that when jurisdiction is challenged, the party claiming that the court has jurisdiction has the legal burden to prove that jurisdiction was conferred upon the court through the proper procedure. Otherwise, the court is without jurisdiction.

Whenever a party denies that the court has subject-matter jurisdiction, it becomes the duty and the burden of the party claiming that the court has subject matter jurisdiction to provide evidence from the record of the case that the court holds subject-matter jurisdiction. *Bindell v City of Harvey*, 212 Ill.App.3d 1042, 571 N.E.2d 1017 (1st Dist. 1991) ("the burden of proving jurisdiction rests upon the party asserting it."). Until the plaintiff submits uncontroversial evidence of subject-matter jurisdiction to the court that the court has subject-matter jurisdiction, the court is proceeding without subject-matter jurisdiction. *Loos v American Energy Savers, Inc.*,

168 Ill.App.3d 558, 522 N.E.2d 841(1988) ("Where jurisdiction is contested, the burden of establishing it rests upon the plaintiff."). The law places the duty and burden of subject-matter jurisdiction upon the plaintiff. Should the court attempt to place the burden upon the defendant, the court has acted against the law, violates the defendant's due process rights, and the judge has immediately lost subject-matter jurisdiction.

#### Conclusion and remedy sought

Determination by this court that Jonathan D. McCollister cannot produce from the record made in case number 02-CV-3461, Dane County, Wisconsin, both the offer of presentment of the original promissory note giving rise to the Rhinos' obligation to SN SERVICING CORPORATION and the account and general ledger statement showing all receipts and disbursement on the alleged defaulted loan signed and dated by the auditor who prepared the account and general ledger statement requires vacation of the void judgment in case number 02-CV-3461, Dane County, Wisconsin as a matter of law together with whatever other damages and relief this court may find reasonable, lawful, and just.

Prepared and submitted by:

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Joyce H. Rhino

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Joseph W. Rhino



File for injunctive relief too...

## How To Legally Beat Debt Collectors

### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN

Joyce H. Rhino,	)	
And	)	
Joseph W. Rhino,	)	
Plaintiffs,	)	
	)	
v.	)	Number _____
	)	
SN SERVICING CORPORATION,	)	
NATIONS CREDIT HOME EQUITY	)	
SERVICES CORPORATION,	)	
Jonathan D. McCollister, an individual	)	
And	)	
Maryann Sumi, an individual,	)	
Defendants.	)	

Joyce H. Rhino and Joseph W. Rhino's motion for a  
preliminary injunction

#### Brief in support of a preliminary injunction

Joyce H. Rhino and Joseph W. Rhino, will suffer irreparable harm by denial of this preliminary injunction. Joyce H. Rhino and Joseph W. Rhino have lived at 1779 Norman Way in Madison, Wisconsin for many years. Joyce H. Rhino and Joseph W. Rhino will lose abode and suffer irreparable harm by denial of this preliminary injunction. Joyce H. Rhino and Joseph W. Rhino will suffer insult, degradation, and deprivation of personhood by denial of this preliminary injunction.

Joyce H. Rhino and Joseph W. Rhino are likely to prevail in this instant petition. The record in the underlying case makes Joyce H. Rhino and Joseph W. Rhino's averments undeniable.

Public interest will not be impaired by granting this preliminary injunction.

Joyce H. Rhino and Joseph W. Rhino have no other remedy at law for protection from parties records show have conspired to deprive the Rhinos of their most fundamental rights.

Denial of Joyce H. Rhino and Joseph W. Rhino's preliminary injunction will cause Joyce H. Rhino and Joseph W. Rhino to bear a greatly unbalanced harm. SN SERVICING CORPORATION'S harm would be delayed possession. Joyce H. Rhino and Joseph W. Rhino's harm will be loss of abode, damage to reputation and character, and assault on personhood.

Denial of Joyce H. Rhino and Joseph W. Rhino's preliminary injunction goes beyond economic injury.

The cost to the court on error later corrected to the favor of SN SERVICING CORPORATION is not as great as the cost to the Court for error later corrected to Joyce H. Rhino and Joseph W. Rhino's favor.

Granting Joyce H. Rhino and Joseph W. Rhino's Motion for Preliminary Injunction conserves the property no matter who prevails. Denial of Joyce H. Rhino and Joseph W. Rhino's Motion for Preliminary Injunction directly affects the property by reducing it to a status of a bell which can't be "unrung."

#### Conclusion and remedies sought

This court's swift response to enjoin SN SERVICING CORPORATION or any agent for SN SERVICING CORPORATION from taking possession of the property in question until all of Joyce H. Rhino and Joseph W. Rhino's claims have been litigated will serve the cause of justice. Prepared and submitted by:

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Joyce H. Rhino

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Joseph W. Rhino

Can you go to bankruptcy court for protection? Yes, but remember to file a chapter 13 - download the forms from the Internet (<http://www.uscourts.gov/bkforms/>) and be sure to submit a plan. At the same time, file under authority of 11 USC 9014 - to challenge the validity of the creditor's claims.

## How To Legally Beat Debt Collectors

### IN THE UNITED STATES BANKRUPTCY COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

In re:	)	
	)	
Rosalie McNamara,	)	Case No. 02-B-444
	)	Chapter 13
Debtor	)	11 USC 9014 motion to
	)	contest creditor
	)	Banco Popular's claim
vs.	)	as falsely asserted
	)	
Banco Popular,	)	
	)	
Creditor	)	
_____		)

#### Brief in support

1. Banco Popular's putative judgment against Rosalie McNamara, case number 98 CH 0000, Dupage County, Illinois is facially void. Banco Popular alleges valid judgment against Rosalie McNamara in a sum of \$204,946.12.

2. The record made in the Dupage County Illinois case reveals the so-called judgment to be bogus for three reasons.

One, Banco Popular's "judgment" was obtained by debt collector Robert Rappe, Jr. Rappe failed to notice Rosalie McNamara via a dunning letter. The Fair Debt Collections Practices Act requires that prior to collection activity or within five days of initial contact, the collector must communicate specific, unambiguous information to the consumer including statement of the amount of debt; the name of the creditor to whom the debt is owed; a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector; a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the

consumer by the debt collector; and a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. See 15 USC 1692g(a). Notification under authority of the Act is a due process right. When a party's due process rights are violated, the court in which the action is brought is deprived of subject matter jurisdiction. Thus Banco Popular's judgment obtained by Rappe is facially void for reason that Rappe violated Rosalie McNamara's due process rights under the Fair Debt Collections Practices Act.

Secondly, Banco Popular's so-called judgment was via summary judgment where only Rosalie McNamara submitted an affidavit. Claim of damages, to be admissible as evidence, must incorporate records such as a general ledger and accounting of an alleged unpaid promissory note, the person responsible for preparing and maintaining the account general ledger must provide a complete accounting which must be sworn to and dated by the person who maintained the ledger. See *Pacific Concrete F.C.U. V. Kauanoe*, 62 Haw. 334, 614 P.2d 936 (1980), *GE Capital Hawaii, Inc. v. Yonenaka* 25 P.3d 807, 96 Hawaii 32, (Hawaii App 2001), *Fooks v. Norwich Housing Authority* 28 Conn. L. Rptr. 371, (Conn. Super.2000), and *Town of Brookfield v. Candlewood Shores Estates, Inc.* 513 A.2d 1218, 201 Conn.1 (1986). See also *Solon v. Godbole*, 163 Ill. App. 3d 845, 114 Ill. Dec. 890, 516 N. E.2d 1045 (3Dist. 1987). Banco Popular, in alleged foreclosure suit, failed or refused to produce the actual note, which Banco Popular alleges Rosalie McNamara owes. Where the complaining party cannot prove the existence of the note, then there is no note. To recover on a promissory note, the plaintiff must prove: (1) the existence of the note in question; (2) that the party sued signed the note; (3) that the plaintiff is the owner or holder of the note; and (4) that a certain balance is due and owing on the note. See *In Re: SMS Financial LLC. v. Abco Homes, Inc.* No.98-50117 February 18, 1999 (5th Circuit Court of Appeals.), Volume 29 of the New Jersey Practice Series, Chapter 10 Section 123, page 566, emphatically states, "...; and no part payments should be made on the bond or note unless the person to whom payment is made is able to produce the bond or note and the part payments are endorsed thereon. It would seem that the mortgagor would normally have a Common law right to demand production or

surrender of the bond or note and mortgage, as the case may be. See Restatement, Contracts S 170(3), (4) (1932); C.J.S. Mortgages S 469, in *Carnegie Bank v, Shalleck* 256 N.J. Super 23 (App. Div 1992), the Appellate Division held, "When the underlying mortgage is evidenced by an instrument meeting the criteria for negotiability set forth in N.J.S. 12A:3-104, the holder of the instrument shall be afforded all the rights and protections provided a holder in due course pursuant to N.J.S. 12A:3-302" Since no one is able to produce the "instrument" there is no competent evidence before the Court that any party is the holder of the alleged note or the true holder in due course. New Jersey common law dictates that the plaintiff prove the existence of the alleged note in question, prove that the party sued signed the alleged note, prove that the plaintiff is the owner and holder of the alleged note, and prove that certain balance is due and owing on any alleged note. Federal Circuit Courts have ruled that the only way to prove the perfection of any security is by actual possession of the security. See *Matter of Staff Mortg. & Inv. Corp.*, 550 F.2d 1228 (9th Cir 1977). "Under the Uniform Commercial Code, the only notice sufficient to inform all interested parties that a security interest in instruments has been perfected is actual possession by the secured party, his agent or bailee." Bankruptcy Courts have followed the Uniform Commercial Code. *In Re Investors & Lenders, Ltd.* 165 B.R. 389 (Bkrtcy.D.N.J.1994), "Under the New Jersey Uniform Commercial Code (NJUCC), promissory note is "instrument," security interest in which must be perfected by possession ..." Unequivocally the Court's rule is that in order to prove the "instrument", possession is mandatory.

Thirdly, Banco Popular lacks standing in this court. A check of the records of the Secretary of State of Finance for the State of Illinois shows Banco Popular is operating without authorization.

3. Determination by this court, Banco Popular cannot show that debt collector Robert Rappe, Jr. notified Rosalie McNamara via a dunning letter compliant with the Fair Debt Collections Practices Act prior to foreclosure suit and/or Banco Popular cannot show by certified copies from the record made in 98 CH 0913 Dupage County, Illinois, that Banco proved up the claim by submitting an affidavit verifying the account general ledger signed and dated under

penalty of perjury by the person who maintained the ledger wherein is verified that Rosalie McNamara is indebted to Banco Popular and/or that Banco Popular lacks standing in this court, justly requires denying Banco Popular's claims as falsely asserted and invoking this Court's non-discretionary duty to vacate the "judgment" as void.

Prepared and submitted by:

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Rosalie McNamara  
57 Briarwood Lane  
Oak Brook, Illinois 60523-8706

Certificate of service

I, Rosalie McNamara, certify that January \_\_\_\_, 2003, I mailed a true and correct copy of the above and foregoing motion to contest a matter via first class mail or hand delivered to:

Banco Popular at

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- and -

Glenn B. Stearns, Standing Chapter 13 Trustee



What if all that doesn't work? File a RICO (Racketeer Influenced and Corrupt Organizations Act,) suit! Just the threat of filing a RICO can make any attorney cry and wet his pants!

### ***4.3 Civil R.I.C.O. – The ultimate weapon***

The federal district courts have jurisdiction to ordering any person to divest himself of any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person, including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, the activities of which affect interstate or foreign commerce; or ordering dissolution or reorganization of any enterprise. Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefore in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit. Because the language of Racketeer Influenced and Corrupt Organizations Act authorizing suit by any person injured in his business or property by reason of violation of Act tracks section 4 of Clayton Anti-trust Act, rules established in antitrust cases for identifying proper complaints should be applied to RICO, too. Both requirements of Rule mandating particularity in pleading of fraud and liberal notice pleading philosophy of federal rules apply to RICO claims based upon fraud. Congress intended RICO Act's civil remedies to help eradicate organized crime from social fabric by divesting association of fruits of ill-gotten gains. Primary intent of Congress was to combat infiltration of organized crime into legitimate businesses operating in interstate commerce. Civil RICO is remedial rather than punitive. In order to state claim for treble damages as result of injury to business or property, plaintiff in RICO action must (1) prove RICO violation, (2) prove injury to business or property, and (3) that the violation caused the injury. Additionally, plaintiff must prove (1) existence of enterprise which affects interstate commerce, (2) that defendant was employed by or associated with the enterprise, (3) that defendant participated in the conduct of the enterprise's affairs, and (4) that the participation was through a pattern of racketeering activity. Elements

essential to CR are (1) existence of RICO enterprise, (2) existence of pattern of racketeering activity, (3) nexus between defendant, pattern of RICO activity or RICO enterprise, and (4) resulting injury to plaintiff in his business or property. Plaintiff must demonstrate that he sustained injury as proximate result of one or more predicate acts constituting pattern. Plaintiff must allege that defendant, through commission of two or more acts, constituting pattern of racketeering activity, directly or indirectly invested in, or maintained an interest in, or participated in an enterprise affecting interstate commerce. Plaintiff must allege injury flowing from commission of **predicate acts** which means that recovery must show some injury flowing from one or more predicate acts: **plaintiff cannot merely allege that act of racketeering occurred and he lost money.** Plaintiff must show how violation caused injury and in conjunction with RICO prohibitions stated in 18 USC 1962 (which centers on actions conducted through pattern of RICO activity by reason of requirement effectively forces civil RICO plaintiff to demonstrate that predicate act alleged for purposes of making out violation of 1962 resulted in direct harm). Causal connection between injury and alleged acts of RICO activity is requirement of standing under RICO. Injury must be caused by a pattern of RICO activity or by individual RICO predicate acts. Pattern or acts must proximately cause the injury. There must be a direct relationship between plaintiff's injury and plaintiff's conduct (as in plaintiff relying on). The test for proximate cause is reasonably foreseeable or anticipated as natural consequence. CR cause of action does not require prior criminal conviction, relationship to organized crime, or proof of injuries outside those caused by the predicate acts. To prove that enterprise existed within meaning of RICO plaintiffs must present evidence of ongoing organization and evidence that various associates functioned as continuing unit. RICO plaintiff must establish that defendant has received money from pattern of RICO activity and has invested that money in enterprise affecting interstate commerce. Showing injury requires proof of concrete financial loss. Loss cannot be intangible. Lost profit is an injury cognizable within CR. No particular RICO injury need be proven to maintain a CR. Plaintiffs must prove criminal conduct in violation of RICO injured business or property. Liability attaches where

injury is direct or indirect result; however, standing requires direct injury. Lost opportunity must be concrete injury meaning not speculative. CR does not apply to personal injuries. Plaintiff need only establish that predicate acts were proximate cause of injury. Plaintiffs are not required to show nexus between defendants and organized crime. Plaintiffs must show (1) at least two predicate acts, (2) that predicates were related, and (3) that defendants pose a threat of continued criminal activity. Cardinal question is whether defendants have committed one of enumerated acts under 18 USC 1961. Relying on a fraud to one's detriment and resulting injury to property or business is injury cognizable within CR. Communicating misrepresentations to the effect that the party relying on the misrepresentations loses money or property is injury. Injury caused by reliance on fraud is injury. Corporation may be liable where its officers conduct affairs of corporation in a manner which violates 1961. Vicarious liability is not a proper basis for finding under CR. Aiding and abetting is sufficient nexus under CR especially if knowingly, intentionally or recklessly assisting. To hold defendant liable for mail fraud, RICO plaintiff need not be primary victim, but only intended victim. Claim cannot be maintained against a municipal corporation. State courts have concurrent jurisdiction over CR claims. CR = four year statute of limitations. Plaintiff must bring action within four years of discovery. Defendant's plea of guilty waives right to assert any statute of limitations. Fraud must be pled with particularity. Standard of proof is preponderance of the evidence. Question of whether plaintiff's business or property was injured is question of law for the court taking into consideration such factors as foreseeability of particular injury, intervention of independent causes and factual directness of causal connection. There are elements that must be pled before plaintiff may avail himself of enhanced damages, (1) two predicate acts, (2) which constitute a pattern of racketeering activity, (3) directly participating in the conduct of an enterprise of (4) activities that affect interstate commerce, and (5) that plaintiff was injured in business or property. There is no right of contribution under civil liability provision of RICO Act. Neither declaratory nor injunctive relief is available under CR. Each element of RICO violation and its predicate acts must be alleged with particularity. To state

a claim under CR there must be a **person, enterprise, and pattern of racketeering activity**. Plaintiffs must show a nexus between control of enterprise, RICO activity, and injury. Complaint must allege (1) existence of enterprise affecting interstate commerce, (2) that defendant participated directly or indirectly in the conduct or affairs of the enterprise, and (3) defendant participated through a pattern of racketeering activity that must include the allegation of at least two racketeering acts. A necessary ingredient of every successful CR claim is an element of criminal activity. Bare allegation of violation in conjunction with equally inadequate factual allegations are insufficient to state a CR claim. CR claim must adequately allege that scheme of fraud would have foreseeable result and continuity or threat of continuing racketeering acts. Enterprise as defined in CR is (1) identified formally or informally, and (2) common purpose of making money from fraud schemes. Referring to entity as both enterprises and person does not defeat CR in spite of requirement of (1) identifying a persons and a (2) separate enterprise. Enterprise can be association-in-fact. Plaintiff must show how person's criminal conduct enables obtaining an interest or control of the enterprise. **Homeowners who alleged that real estate developer had conducted racketeering enterprise in which he misled them into purchasing home they could not afford, by fraudulently asserting that homes would be entitled to various tax abatements and mortgage credit certificates, and that title companies and mortgage lenders had conspired with developer to defraud homeowners and realize maximum profits, claimed injures directly attributable to developer's alleged substantive violations of Racketeer Influenced and Corrupt Organizations Act, and thus could maintain civil RICO conspiracy claims against title companies and mortgage lenders, even if title companies and lenders did not manage corrupt enterprise. *Smith v. Berg*. C.a. 3 (Pa.) 2001, 247 F.3d 532.** Plaintiff must show investment of money or property obtained by criminal activity from plaintiff used in enterprise involved in interstate commerce. Alleged fraud must include information that a reasonable person could deduce that "person" (1) had actual knowledge of falsity and strong inference of (2) intent. Scienter of adequately alleged intent is (1) acting with intent to defraud OR willful and reckless disregard for plaintiff's interests. **Allegations that lenders forced borrowers to**

sign blank and incomplete documents, which were later altered to reflect greater debt repayment obligations and which obligated borrowers to pay more money that they owed and to make all repayments at higher interest rate went beyond mere hard bargaining and were sufficient to state RICO claim based on extortion. *Center Cadillac, Inc. v. Bank Leumi Trust Co. of New York*, S.D.N.Y. 1992, 808 F. Supp. 213, affirmed 99 F.3d 401. Failing to allege that defendant was affiliated with or engaged in organized crime is not fatal to CR claim. Sufficiency of pleading of RICO conspiracy claim is not subject to higher pleading standard of civil rule for fraud claims. In order to sufficiently allege a conspiracy, a party must allege two acts of racketeering with enough specificity to show there is probable cause to believe that crimes were committed. Although rule that fraud must be pled with particularity requires that plaintiff in a suit brought under RICO provide only a general outline of the alleged fraud scheme, sufficient to reasonably notify the defendants of their purported role in the scheme, the complaint must, at minimum, (1) describe the predicate acts with some specificity and (2) state the time, (3) place, (4) content of the alleged communications perpetrating the fraud and (5) identity of party perpetrating a fraud. Fraud allegations are sufficient for purpose of stating CR claim if the place the defendant on notice of precise misconduct Claim must be made that defendant actually made false statements. To state a claim the "continuity plus relationship standard" must be met. Pattern of racketeering activity means a nexus between the affairs of the enterprise and the RICO activity. There must be a threat of future activity. Continuity means "regular way of doing business." To satisfy the "pattern prong" requires that acts be related. Actual fraud and not constructive fraud must be shown.

## How To Legally Beat Debt Collectors

### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS

George Orwell, Sr., an individual,	)	
And	)	
George Orwell, Jr, an individual,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Number _____
	)	
The American Bar Association,	)	
A private business	)	
Organization and enterprise	)	
Domestic to Illinois,	)	
Ex rel.	)	
Alfred P. Carlton, Jr.,	)	
Frederick Turner, Jr.,	)	
Paul W. Lamar,	)	
Thomas H. Sutton,	)	
Larry O. Baker,	)	
James M. Wextten,	)	
Charles L. P. Flynn,	)	
Thomas M. Welch,	)	
Richard P. Goldenhersh,	)	
Terrence J. Hokins,	)	
And	)	
Robert Lewis,	)	
	)	
Defendant.	)	

Petition, complaint, and claim in the nature of a suit for civil remedy under authority of 18 USC 1964(a) "CIVIL RICO"

1. George Orwell, Sr., an individual domiciled in the Southern Federal District of Illinois at Rt.1, Box 59-C, Roseville, Illinois 62000. George Orwell, Jr is a married individual domiciled in the Southern Federal District of Illinois at Rt.1, Box 59-C, Roseville, Illinois 62000. Together, the Orwells do business as "Orwells' Future Picks."

2. The American Bar Association is an association headquartered in the State of Illinois at 750 North Lakeshore Drive, Chicago, Illinois 60611 and, as such, has

capacity to be sued - see Illinois Court Rules and Procedure 5/2-209.1 and is subject to notice and opportunity via U.S. Mail certified, return receipt requested - see Section ILCS 2-205.1.

3. Alfred P. Carlton, Jr., is the president of the American Bar Association and Frederick Turner, Jr., Paul W. Lamar, Thomas H. Sutton, Larry O. Baker, James M. Wextten, Charles L. P. Flynn, Thomas M. Welch, Richard P. Goldenhersh, Terrence J. Hokins, and Robert Lewis participate in the operations of the enterprise American Bar Association. A jury shall determine membership in the association grants members privileges including license to violate 18 USC 1961 and 18 USC 1962 with absolute impunity where only other enterprise members review member misconduct.

Affidavit of George Orwell, Sr.

I, George Orwell, Sr., of age and competent to testify state as follows based on my own personal knowledge:

(a). Between September 15<sup>th</sup> 2000, at 11:00 A.M., and October the 13<sup>th</sup> 2000, Thomas H. Sutton violated 18 USC 1961 and 18 USC 1962 by intelligently crafting a materially false document with the intention that I rely on the document to my detriment. The effect of Sutton's false document was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(b). June 28<sup>th</sup> 2000, Thomas H. Sutton, aided and abetted Charles L. P. Flynn in the preparation and submission of false documents with the intent that I rely on the false documents to my detriment. The effect of Flynn's false documents was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(c). Beginning September 13<sup>th</sup> 2000 and culminating about October 10<sup>th</sup> 2000 Sutton intelligently crafted false and fraudulent documents with the intention that I rely on the frauds to my detriment. The effect of Sutton's false document was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(d). September 15<sup>th</sup> 2000, Mr. Sutton uttered fraud with the intent that I rely on the fraud to my detriment. The effect of Sutton's false document was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise. This fraud of Mr. Sutton's was aided and abetted by Frederick Turner, Jr.

(e). November 1<sup>st</sup> 2002, Robert Lewis, a.k.a. Robert Wayne Lewis, committed fraud by simply lying about the contents of a public record. Mr. Lewis' intention was to deprive me of property and business interest by expecting me to rely on his false statement regarding the record. The effect of Lewis' false document was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(f). January 28<sup>th</sup> 2002, Robert Lewis, lied about the contents of a certain public record. Mr. Lewis' intention was to deprive me of property and business interest by expecting me to rely on his false statement regarding the record. The effect of Lewis' false document was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(g). December 2<sup>nd</sup> 2002, Frederick Turner, Jr. uttered a false and fraudulent document with the intension that I rely on the false document to my detriment. The effect of Turner's false document was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(h). Subsequent to December 16<sup>th</sup> 2002, Thomas M. Welch, Richard P. Goldenhersh, and Terence J. Hokins aided and abetted frauds committed by Frederick Turner, Jr. The effect of Welch, Goldenhersh, and Hokins cover-up was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(i). October 11<sup>th</sup> 2002, Frederick Turner, Jr. fabricated three false documents, commonly known as a "pack of lies" with the intent that I would rely on the document to by detriment. The effect of Turner's cover-up was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(j). January 30<sup>th</sup> 2001, Frederick Turner, Jr. composed a false document with the intention that I would rely on it to my detriment. The effect of Turner's falsehood was to deprive me of a large sum of money and to coincidentally interfere with my business enterprise.

(k). As a result of the frauds committed or aided and abetted by Frederick Turner, Jr., Paul W. Lamar, Thomas H. Sutton, Larry O. Baker, James M. Wextten, Charles L. P. Flynn, Thomas M. Welch, Richard P. Goldenhersh, Terrence J. Hokins, and Robert Lewis, I have been defrauded of business and property interest of not less than five hundred fifty-thousand dollars, (\$550,000.00).



**How To Legally Beat Debt Collectors**

\_\_\_\_\_  
George Orwell, Sr.

On the \_\_\_\_\_ day of February of 2003, before me, appeared George Orwell, Sr., personally known to me, ore presented satisfactory evidence to be the Secured-Party in the above instrument.

Witness my hand and seal

Notary signature \_\_\_\_\_

My commission Expires \_\_\_\_\_

Affidavit of George Orwell, Jr

I, George Orwell, Jr, of age and competent to testify state as follows based on my own personal knowledge:

(a). I am in business with George Orwell, Sr.  
(b). As a result of the frauds committed or aided and abetted by Frederick Turner, Jr., Paul W. Lamar, Thomas H. Sutton, Larry O. Baker, James M. Wextten, Charles L. P. Flynn, Thomas M. Welch, Richard P. Goldenhersh, Terrence J. Hokins, and Robert Lewis, affecting George Orwell, Sr., I have been defrauded of business and property interest of an indeterminable amount.

\_\_\_\_\_  
George Orwell, Jr.

Rt-1, Box 63  
Roseville, Illinois 62000  
(618)BR549

On the \_\_\_\_\_ day of February of 2003, before me, appeared George Orwell, Jr, personally known to me, ore presented satisfactory evidence to be the Secured-Party in the above instrument.

Witness my hand and seal

Notary signature \_\_\_\_\_

My commission Expires \_\_\_\_\_

Plaintiffs' RICO case statement detailing the racketeering enterprise, the predicate acts of racketeering, and the economic purpose

4. The American Bar Association is literally running a racket by conducting "proceedings" not cognizable within the Federal Rules of Civil Procedure or any state's rules of civil procedure resulting in countless void judgments. George Orwell, Sr., is among those victimized and dares to stand up to the corruption and monstrous evil of a system of law and justice taken over and run as a commercial enterprise dedicated to control the market place of something referred to as the "practice of law." "I feel as though the lawyers of this country are like passengers on the Titanic . . . the music is playing and the champagne glasses are tinkling, yet . . . practitioners in their momentary bliss are oblivious to the [icebergs] ahead." - Altman and Weil, national law firm consultants. "Our profession faces quantum change. I believe lawyers are like the great buffalo herds of the 1800's, locked in stampedes for extinction. Is the cliff two years away or five? . . . I believe at least six out of 10 American lawyers will go over the cliff." - Charlie Robinson, futurist and attorney. In today's America, there are way too many attorneys! Many, like the respondents in this case, have to resort to a life of crime to make a living. Although George Orwell, Sr., has clearly articulated an economic motive by members of the enterprises, the bars, an economic-motive requirement is not absolutely necessary to state a civil RICO claim. See *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 114 S.Ct. 798, 127 L.Ed. 99 (US 01/24/1994). This court shall notice that George Orwell, Sr., in his complaint has testified of injury to property and business by reason of acts which violate section 4 of the Clayton Act in as much as all actors clearly articulated that only the bars had standing in their courts. *Attick v. Valeria Associates, L.P.*, S.D. N.Y. 1992, 835 F. Supp. 103. George Orwell, Sr., has articulated violation of racketeering laws, testified that the violation injured both business and property warranting treble damages. *Avirgan v. Hull*, C.A. 11 (Fla.) 1991, 932 F.2d 1572. In naming the bar to which all actors belong, George Orwell, Sr., has

established that an enterprise exists which undeniably affects interstate commerce. *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639*, C.A.D.C. 1990, 913 F.2d 948, 286 U.S. App. D.C. 182, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed. 2d 1007. George Orwell, Sr., has standing to sue under RICO as he has shown violation of RICO, injury to business and property, and causation of the injury by the violation. *Hecht v. Commerce Clearing House, Inc.* C.A. 2 (N.Y.) 1990, 897 F.2d 21, 100 A.L.R. Fed. 655. George Orwell, Sr., has perfected a RICO claim by showing the existence of a RICO enterprise = the bar, showing a pattern of racketeering activity fraud (see affidavits), shown nexus between the defendants and the pattern of frauds, and shown resulting injury to business and property. *Standard Chlorine of Delaware, Inc. v. Sinibaldi*, D.Del. 1992, 821 F. Supp. 232. George Orwell, Sr., has demonstrated that he sustained injury as proximate result of the pattern of frauds by the defendants. *Jordan v. Herman*, F.D. Pa. 1992, 792 F. Supp. 380. The defendant's required membership in the enterprise, the bar, to be privileged to do bar business both direct and indirect investment by the members in the bar's enterprise affecting interstate commerce. *Nassau-Suffolk Ice Cream, Inc. v. Integrated Resources, Inc.* S.D.N.Y. 1987, 114 F.R.D. 684. George Orwell, Sr., clearly articulated being defrauded of a large sum of money and business losses. *Polletier v. Zweifel*, C.A. 11 (Ga.) 1991, 921 F.2d 1465, rehearing denied 931 F.2d 901, certiorari denied 112 S.Ct. 167, 502 U.S. 855, 116 L.Ed. 131. The cause-in-fact that but-for the chicanery of the bar members, George Orwell, Sr., would have his money and his business would not have incurred tangible losses is sufficient to state factual causation for provision of RICO act providing for treble damages. *Khurana v. Innovative Heath Care Systems, Inc.*, C.A. 5 (La.) 1997, 130 F.3d 143, vacated 119 S.Ct. 442, 525 U.S. 979, 142 L.Ed. 2d 397, on remand 164 F.3d 900. George Orwell, Sr.,'s reliance on traditional principles of proximate causation applying to RICO cases is illustrated in the well pleaded, un-rebutted testimony that he was defrauded of his money and his business interfered with by predicate acts of the defendants. *In re American Honda Motor Co., Inc. Dealership Relations Litigation*, D.Md. 1996, 941 F.Supp. 528. There exists an un-denied relationship between the acts of the defendant and the damage to property and business interests

of the Orwells. *Red Ball Interior Demolition Corp. v. Palmadessa*, S.D.N.Y. 1995, 908 F.Supp. 1226. The damage caused by the defendants was the natural and reasonably foreseeable consequence of the frauds promulgated by the defendants. *Protter v. Nathan's Famous Systems, Inc.* E.D. N.Y. 1995, 904 F.Supp. 101. The fraud by the defendants was the legal cause of George Orwell, Sr., being defrauded, his business interests interfered with, and related damages. *Prudential Ins. Co. of America v. U.S. Gypsum Co.* D.N.J. 1993, 828 F.Supp. 287. The enterprise the bar is evident to a high degree and it is also evident to a high degree that associates such as the members act as a continuing unit. In actuality, the bar is the best example anyone could possibly conceive of as a racketeer influenced corrupt organization. *Compagnie de Reassurance D'lle de France v. New England Reinsurance Corp.* D. Mass. 1993, 825 F.Supp. 370. It is undeniable that the bar associates received money for defrauding George Orwell, Sr., and their payments under and over the table to the bar officers represents their necessary investment in the bar for the continuing privilege of, in the vernacular, continuing to rip people off in phony, out of court proceedings. *Grand Cent. Sanitation, Inc. v. First Nat. Bank of Palmerton*, M.D.Pa. 1992, 816 F.Supp. 299. Undeniably, the defendant has usurped the courts and used the courts for purposes of fraud and extortion - George Orwell, Sr., is but one of millions of examples of fraud by the bar mentality of "Constitution? What Constitution? They really ain't no law 'cept the law we makes up as we goes along so we can rob people." *Randolph County Federal Sav. & Loan Assoc. v. Sutcliffe* S.D. Ohio 1991, 775 F. Supp. 1113. **Where persons arrange to fix contests, claim for civil RICO rises.** *Venzor v. Gonzalez*, N.D. Ill. 1996, 936 F. Supp. 445. No particular RICO injury need be proven to maintain a civil RICO action. *Miller v. Affiliated Financial Corp.* N.D. Ill. 1984, 600 F.Supp. 987. A showing of competitive injury is not required before a civil claim under RICO can be stated. *Yancoski v. E.F. Hutton & Co. Inc.* F.D. Pa. 1983, 581 F.Supp. 88. Commercial loss is not required for recovery of damages under this section. *Gitterman v. Vitoulis* S.D. N.Y. 1982, 564 F.Supp. 46. Plaintiff in racketeering action need only establish that predicate acts were proximate cause of injury. *Minpeco, S.A. v. Hunt*, S.D.N.Y. 1989, 718 F.Supp. 168. Relying on communicated misrepresentations, like the false documents advanced by

Frederick Turner, Jr., Paul W. Lamar, Thomas H. Sutton, Larry O. Baker, James M. Wextten, Charles L. P. Flynn, Thomas M. Welch, Richard P. Goldenhersh, Terrence J. Hokins, caused a loss is sufficient to state claim under RICO. *Florida Dept. Ins. V. Debenture Guar.* M.D. Fla. 1996, 921 F.Supp. 750. Aiding and abetting such as clearly articulated in respect of some of the respondents warrants liability under RICO. *In re Sahlen & Associates, Inc. Securities Litigation*, S.D. Fla.1991, 773 F.Supp. 342. Standing is conferred on a RICO where plaintiff's business or property has been injured by reason of conduct constituting a RICO violation. *Buck Creek Coal, Inc. v. United Workers of America*, S.D. Ind. 1995, 917 F.Supp. 601. To state a RICO claim, private plaintiff must allege that he suffered an injury in his business or property by reason of a violation of the Act. *In re Phar-Mor, Inc. Securities Litigation*, W.D. Pa. 1994, 900 F.Supp. 777. Proof by a preponderance of the evidence is sufficient to finding of liability in a civil RICO action. *Liquid Air Corp. v. Rogers* C.A. 7 (Ill.) 1987, 834 F.2d 1297. George Orwell, Sr., has testified that the defendants committed or aided and abetted two or more acts of fraud which were part of a pattern, of racketeering activity by direct participants in an enterprise affecting interstate commerce and that they were injured in their property and business interests. *Poeter v. Shearson Lehman Bros. Inc.* S.D. Tex. 1992, 802 F.Supp. 41. George Orwell, Sr., has testified that the defendant misrepresented material facts with deliberate disregard of truth. *Guiliano v. Everything Yogert, Inc.* E.D. N.Y. 1993, 819 F.Supp. 626. George Orwell, Sr., has testified that the defendant acted with reckless disregard for Roy Orwell, Jr.'s interests adequately alleging intent under RICO. *Babst v. Morgan Keegan & Co.* E.D. La. 1988, 687 F.Supp. 255. Civil RICO complaint identified alleged predicate acts with sufficient particularity, where complaint not only specified the type of predicate acts committed, including extortion, but identified approximate date, participants, victims, and general methods by which acts were committed. *U.S. v. Gigante*, D.N.J. 1990, 737 F.Supp. 292. Plaintiffs who file civil actions under RICO Act need not present allegations as specific as criminal bill of particulars, nor establish probable cause to believe that defendant committed predicate racketeering offenses. *Frank E. Basil, Inc. v. Leidesdorf*, N.D.Ill. 1989, 713 F.Supp. 1194. **Sufficiency of pleading of RICO**

conspiracy claim is not subject to higher pleading standard of civil rule for fraud claims. *In re Crazy Eddie Securities Litigation*, E.D. N.Y. 1990, 747 F.Supp. 850. A claim that the bar's bad behavior is not regular, ongoing and likely to recur is absurd. Extortionate conduct, well documented as the way the bar conduct business poses a threat of continuing racketeering activity. *O'Rourke v. Crosley*, D.N.J. 1994, 847 F.Supp. 1208.

Remedy sought and prayer for relief

5. The Federal District Court has a duty to order the dissolution of enterprises determined to be in contravention of laws articulated at 18 USC 1961, 18 USC 1962, and 18 USC 1964(a).

6. The Federal District Court is empowered to order treble damages as remedial to the racketeering activities of "RICO" enterprises and their constituent members.

7. A jury's determination that the American Bar Association has engaged in a pattern of frauds rising to a level of racketeering requires this court's order to the American Bar Association to dissolve and cease operations.

8. A jury's determination that Frederick Turner, Jr., Paul W. Lamar, Thomas H. Sutton, Larry O. Baker, James M. Wextten, Charles L. P. Flynn, Thomas M. Welch, Richard P. Goldenhersh, Terrence J. Hokins, and Robert Lewis are members of the enterprise American Bar Association, and as such, committed or aided and abetted two or more predicate acts of fraud resulting in defrauding George Orwell, Sr., of property and business interests justly requires compensating George Orwell, Sr. and George Orwell, Jr. in a sum not less than one million, six hundred fifty thousand dollars, (\$1,650,000.00).

JURY TRIAL DEMANDED

Prepared and submitted by:

George Orwell, Sr.

George Orwell, Jr.

## How To Legally Beat Debt Collectors

In The District Court of The United States  
For the XXXX District of XXXX

Abner Doubleday, an individual	)	
and all others similarly situated,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Number _____
	)	
Worldwide Asst. Purchasing, an enterprise	)	
affecting interstate commerce,	)	
Worldwide Asst. Management, L.L.C, a	)	
an enterprise affecting inter-	)	
state commerce,	)	
C. T. Corporation System, an enterprise	)	
affecting interstate commerce,	)	
Phlem Snopes, an individual predicate	)	
actor in schemes violating	)	
federal laws providing that fraud	)	
and extortion are <i>malum in se</i>	)	
offenses,	)	
Lucretia Borgia, a public officer	)	
using public office to aid and abet	)	
fraud and extortion,	)	
	)	
Defendants.	)	

Petition, complaint, and claim under authority of 18 USC  
1964(a)

Subject matter jurisdictional statement

FEDERAL QUESTION JURISDICTION: 28 USC § 13331: The federal district court has subject matter jurisdiction to consider this claim under authority of 18 USC 1964(a) and by virtue of sufficient pleadings clearly articulating violations of 18 USC 1961 & 1962. The violations are pled with particularity *infra*. Furthermore, the clear face of this record shows the claims of Abner Doubleday in harmony with *Attick v. Valeria Associates, L.P.*, S.D. N.Y. 1992, 835 F. Supp. 103, *Avirgan v. Hull*, C.A. 11

(Fla.) 1991, 932 F.2d 1572, *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union* 639, C.A.D.C. 1990, 913 F.2d 948, 286 U.S. App. D.C. 182, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed. 2d 1007, *Hecht v. Commerce Clearing House, Inc.* C.A. 2 (N.Y.) 1990, 897 F.2d 21, 100 A.L.R. Fed. 655, *Standard Chlorine of Delaware, Inc. v. Sinibaldi*, D.Del. 1992, 821 F. Supp. 232, *Jordan v. Herman*, F.D. Pa. 1992, 792 F. Supp. 380, *Nassau-Suffolk Ice Cream, Inc. v. Integrated Resources, Inc.* S.D.N.Y. 1987, 114 F.R.D. 684, *Polletier v. Zweifel*, C.A. 11 (Ga.) 1991, 921 F.2d 1465, rehearing denied 931 F.2d 901, certiorari denied 112 S.Ct. 167, 502 U.S. 855, 116 L.Ed. 131, *Khurana v. Innovative Heath Care Systems, Inc.*, C.A. 5 (La.) 1997, 130 F.3d 143, vacated 119 S.Ct. 442, 525 U.S. 979, 142 L.Ed. 2d 397, on remand 164 F.3d 900, *In re American Honda Motor Co., Inc. Dealership Relations Litigation*, D.Md. 1996, 941 F.Supp. 528, *Red Ball Interior Demolition Corp. v. Palmadessa*, S.D.N.Y. 1995, 908 F.Supp. 1226, *Protter v. Nathan's Famous Systems, Inc.* E.D. N.Y. 1995, 904 F.Supp. 101, *Prudential Ins. Co. of America v. U.S. Gypsum Co.* D.N.J. 1993, 828 F.Supp. 287, and *Compagnie de Reassurance D'lle de France v. New England Reinsurance Corp.* D. Mass. 1993, 825 F.Supp. 370.

#### Statement of *in personum* jurisdiction

Worldwide Asst. Purchasing, also known as Worldwide Asset. Management, L.L.C. is an enterprise affecting interstate commerce. Worldwide Asst. Purchasing, also known as Worldwide Asset. Management, L.L.C. operates from xxxxx, xxxxx in Atlanta, Georgia. C. T. Corporation System, located at xxxxx, in Memphis, Tennessee is a local facilitator of fraud and extortion for Worldwide. Phlem Snopes is a member of the enterprise, Worldwide Asst. Purchasing, also known as Worldwide Asset. Management, L.L.C. Lucretia Borgia aided and abetted Phlem Snopes in Phlem Snopes's violations of 18 USC 1961 & 1962.

#### Statement of venue

Venue is appropriate in the xxxx, District of Tennessee as the predicate acts of fraud and extortion committed by Phlem Snopes occurred in the xxxx, District of Tennessee.



## Theory of the case

Phlem Snopes is engaged in the debt collection fraud racket. HOW THE DEBT COLLECTION FRAUD RACKET WORKS: Worldwide Asset Purchasing, also known as Worldwide Asset Management, L.L.C. is a subset of the debt collection racket, a wide-spread, far-reaching scam composed of artists such as Phlem Snopes. How the scam works: In a back room of the Chicago Board of Trade or simply from one of many Internet hosts, worthless bundles of commercial paper in the form of copies of charged off debt are sold at auction. The typical face value of the bundles often amounts to tens of millions of dollars. The original makers of the loans including mortgagees are often not harmed because they often have hypothecated the loan and have risked nothing. Actors up line from such artists as Phlem Snopes then break apart the bundles and resell the worthless commercial paper in clusters based on who the original mortgagee is and what the geographic location of the origin of the individual copies. Artists such as Phlem Snopes are the actual "end user" holders in due course although typically in the scam, artists such as Worldwide Asset Management, L.L.C., invest as little as 75 cents on the hundred face amount for the worthless commercial paper, then allege they are third party debt collectors attempting to collect for the original maker of the loan. Enterprises such as Worldwide Asset Purchasing, in turn marks up the worthless commercial paper and resells to artists such as Phlem Snopes who, for a very small investment use threat, coercion, intimidation, and deception to defraud and extort money and property from parties such as Abner Doubleday. Whenever necessary, scam artists such as Phlem Snopes, subject parties such as Abner Doubleday to shame legal proceedings where: (1). Standing to sue in the respective state court is never proved, (2). Standing to sue as a bona fide holder-in-due-course is never proved, (3). Corporate charter authority to make consumer loans is never proved, (4). Corporate charter authority to sue for damages on consumer loans is never proved, (5). Damages in fact are never proved, and (6). Delegation of authority from enterprises such as Worldwide Asset Purchasing to predicate actors such as Paul Phlem Snopes is never proved. When defendants raise any defense whatsoever, thugs such as Bettyer Thomas Moore, either are or pretend to, be

absolutely "clueless." In this instant case, Moore is either "on the take" receiving kickbacks and bribes from Phlem Snopes, or Moore lacks the character and intellect to make decisions affecting other people's lives. This racket is particularly heinous in the case of credit card contracts, which as a continuing series of offers to contract, are non-transferable. The scam is complete when artists such as Phlem Snopes, with the cooperation of thugs like Lucretia Borgia, defraud parties such as Abner Doubleday.

FIRST PREDICATE ACT IN VIOLATION OF 18 USC 1961 & 1962: (Month day and year), predicate actor Phlem Snopes filed a fraudulent security instrument in the district court of xxxxx County, Tennessee. Phlem Snopes fraudulently claimed that Abner Doubleday was indebted to Worldwide Asset Purchasing in a sum in excess of xxxxx thousand dollars. Concisely, Phlem Snopes advanced a writing which Phlem Snopes knew was false, with the intention that Abner Doubleday rely on the fraud to Abner Doubleday's detriment. Phlem Snopes's fraudulent claim was urged under color of an official right. A jury shall determine that Phlem Snopes absolutely violated 18 USC 1961 & 1962 by the fraud and extortion which occurred on July 29th 2003.

SECOND PREDICATE ACT IN VIOLATION OF 18 USC 1961 & 1962: (Month day and year), predicate actor Phlem Snopes again filed a fraudulent security instrument in the district court of xxxxx County, Tennessee. Phlem Snopes fraudulently claimed that Abner Doubleday was indebted to Worldwide Asset Purchasing in a sum in excess of xxxxx thousand dollars. Concisely, Phlem Snopes advanced a writing which Phlem Snopes knew was false, with the intention that Abner Doubleday rely on the fraud to Abner Doubleday's detriment. Phlem Snopes's fraudulent claim was urged under color of an official right. A jury shall determine that Phlem Snopes absolutely violated 18 USC 1961 & 1962 by the fraud and extortion which occurred on July 29th 2003.

THIRD PREDICATE ACT IN VIOLATION OF 18 USC 1961 & 1962: (Month day and year), predicate actor Phlem Snopes filed a fraudulent security instrument in the district court of xxxxx County, Tennessee. Phlem Snopes fraudulently claimed that Abner Doubleday was indebted to Worldwide

Asset Purchasing in a sum in excess ofxxxxxx thousand dollars. Concisely, Phlem Snopes advanced a writing which Phlem Snopes knew was false, with the intention that Abner Doubleday rely on the fraud to Abner Doubleday's detriment. Phlem Snopes's fraudulent claim was urged under color of an official right. A jury shall determine that Phlem Snopes absolutely violated 18 USC 1961 & 1962 by the fraud and extortion which occurred on July 29th 2003.

FOURTH PREDICATE ACT IN VIOLATION OF 18 USC 1961 & 1962: (Month day and year), predicate actor Phlem Snopes filed a fraudulent security instrument in the district court of xxxxx County, Tennessee. Phlem Snopes fraudulently claimed that Abner Doubleday was indebted to Worldwide Asset Purchasing in a sum in excess of xxxxx thousand dollars. Concisely, Phlem Snopes advanced a writing which Phlem Snopes knew was false, with the intention that Abner Doubleday rely on the fraud to Abner Doubleday's detriment. Phlem Snopes's fraudulent claim was urged under color of an official right. A jury shall determine that Phlem Snopes absolutely violated 18 USC 1961 & 1962 by the fraud and extortion which occurred on July 29th 2003.

FIFTH PREDICATE ACT IN VIOLATION OF 18 USC 1961 & 1962: (Month day and year), predicate actor Phlem Snopes filed a fraudulent security instrument in the district court of xxxxx County, Tennessee. Phlem Snopes fraudulently claimed that Abner Doubleday was indebted to Worldwide Asset Purchasing in a sum in excess of xxxxx thousand dollars. Concisely, Phlem Snopes advanced a writing which Phlem Snopes knew was false, with the intention that Abner Doubleday rely on the fraud to Abner Doubleday's detriment. Phlem Snopes's fraudulent claim was urged under color of an official right. A jury shall determine that Phlem Snopes absolutely violated 18 USC 1961 & 1962 by the fraud and extortion which occurred on July 29th 2003. In this episode of mischief, Phlem Snopes secured Lucretia Borgia's sworn agreement to aide and abet in the defrauding of Abner Doubleday.

#### Affidavit

I, Abner Doubleday, of age and competent to testify, state as follows based on my own personal knowledge:

## How To Legally Beat Debt Collectors

1. I was contacted by Phlem Snopes about (month day and year). Phlem Snopes alleged that I owed him a large sum of money, but in the time since, has refused to document and verify that I owe him, Worldwide Asset Purchasing, or Worldwide Asset Management, L.L.C. money.

2. Month day, year, Phlem Snopes falsely alleged that Worldwide Asset Purchasing had a claim against me and had authority to sue in Tennessee courts.

3. Month day, year, Phlem Snopes falsely alleged that although he was attorney of record for Worldwide Asset Purchasing, he was not their agent for service of process.

4. Month day, year, Phlem Snopes falsely alleged that although he was attorney of record for Worldwide Asset Purchasing, he was not their agent for service of process.

5. Month day, year, Phlem Snopes falsely alleged that a party who had no personal knowledge of the business records of (name of bank) could testify competently about (name of bank's) records.

6. Month day, year, Phlem Snopes secured agreement from Lucretia Borgia that Moore would help Phlem Snopes defraud me.

7. Month day, year, Phlem Snopes made thinly veiled threats to the effect that he was out to get me.

8. As a result of the harassment of Phlem Snopes and Phlem Snopes's repeated attempts to extort money and property from me and because of Phlem Snopes's dissemination of false information about my finances, I have been deprived of business opportunities and been damaged in my business enterprises.

\_\_\_\_\_  
Abner Doubleday

STATE OF \_\_\_\_\_ INDIVIDUAL ACKNOWLEDGMENT

COUNTY OF \_\_\_\_\_

Before me, the undersigned, a Notary Public in and for said County and State on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_,

## How To Legally Beat Debt Collectors

personally appeared \_\_\_\_\_ to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act. Given under my hand and seal the day and year last above written. My commission expires \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Plaintiffs' RICO case statement detailing the racketeering enterprise, the predicate acts of racketeering, and the economic purpose

Worldwide Asset Purchasing, also known as Worldwide Asset Management, L.L.C. is running a racket by taking money and property from parties situated similarly to Abner Doubleday to satisfy a nonexistent "debts." This court shall notice that Abner Doubleday, in this complaint, has testified of injury to property and business by reason of acts which violate section 4 of the Clayton Act. See *Attick v. Valeria Associates, L.P.*, S.D. N.Y. 1992, 835 F. Supp. 103. Abner Doubleday has articulated violation of racketeering laws, testified that the violation injured both business and property warranting treble damages. See *Avirgan v. Hull*, C.A. 11 (Fla.) 1991, 932 F.2d 1572. In naming Worldwide Asset Purchasing, also known as Worldwide Asset Management, L.L.C., an enterprise to which Phlem Snopes belongs, Abner Doubleday has established that an enterprise exists which undeniably affects interstate commerce. See *Yellow Bus Lines, Inc. v. Drivers, Chauffeurs & Helpers Local Union 639*, C.A.D.C. 1990, 913 F.2d 948, 286 U.S. App. D.C. 182, certiorari denied 111 S.Ct. 2839, 501 U.S. 1222, 115 L.Ed. 2d 1007. Abner Doubleday has standing to sue under RICO as Abner Doubleday has shown violation of RICO, injury to business and property, and causation of the injury by the violation. See *Hecht v. Commerce Clearing House, Inc.* C.A. 2 (N.Y.) 1990, 897 F.2d 21, 100 A.L.R. Fed. 655. Abner Doubleday has perfected a RICO claim by showing the existence of a RICO enterprise, showing a pattern of racketeering activity: fraud, shown nexus between the defendants and the pattern of frauds, and shown resulting injury to business and property. See *Standard Chlorine of Delaware, Inc. v. Sinibaldi*, D.Del. 1992, 821 F. Supp. 232. Abner Doubleday has demonstrated that Abner

Doubleday sustained injury as proximate result of the pattern of frauds by the defendants. See *Jordan v. Herman*, F.D. Pa. 1992, 792 F. Supp. 380. Phlem Snopes's membership in the enterprise, Worldwide Asset Purchasing, also known as Worldwide Asset Management, L.L.C., empowers Mendelson to do illicit business benefiting Worldwide Asset Purchasing, also known as Worldwide Asset Management, L.L.C. directly and indirectly. Worldwide Asset Purchasing, also known as Worldwide Asset Management, L.L.C. is able to recoup and profit by Worldwide Asset Purchasing, also known as Worldwide Asset Management, L.L.C.'s investment affecting interstate commerce. See *Nassau-Suffolk Ice Cream, Inc. v. Integrated Resources, Inc.* S.D.N.Y. 1987, 114 F.R.D. 684. Abner Doubleday clearly articulated being Mendelson's target of extortion and resulting business losses. See *Polletier v. Zweifel*, C.A. 11 (Ga.) 1991, 921 F.2d 1465, rehearing denied 931 F.2d 901, certiorari denied 112 S.Ct. 167, 502 U.S. 855, 116 L.Ed. 131. The cause-in-fact that but-for the chicanery of the enterprise member, Phlem Snopes, Abner Doubleday would have his money and his business would not have incurred tangible losses is sufficient to state factual causation for provision of RICO act providing for treble damages. See *Khurana v. Innovative Heath Care Systems, Inc.*, C.A. 5 (La.) 1997, 130 F.3d 143, vacated 119 S.Ct. 442, 525 U.S. 979, 142 L.Ed. 2d 397, on remand 164 F.3d 900. Abner Doubleday's reliance on traditional principles of proximate causation applying to RICO cases is illustrated in the well pleaded, testimony that Abner Doubleday was the target of extortion and his business interfered with by predicate acts of the defendants. See *In re American Honda Motor Co., Inc. Dealership Relations Litigation*, D.Md. 1996, 941 F.Supp. 528. There exists an undeniable relationship between the acts of the defendants and the damage to property and business interests of Abner Doubleday. See *Red Ball Interior Demolition Corp. v. Palmadessa*, S.D.N.Y. 1995, 908 F.Supp. 1226. The damage caused by the defendants was the natural and reasonably foreseeable consequence of the frauds promulgated by the defendants. See *Protter v. Nathan's Famous Systems, Inc.* E.D. N.Y. 1995, 904 F.Supp. 101. The fraud by the defendants was the legal cause of Abner Doubleday being the target of extortion, his business interests being interfered with, and related damages. See *Prudential Ins. Co. of America v. U.S. Gypsum Co.* D.N.J. 1993, 828 F.Supp.

287. The enterprise, Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C. is evident to a high degree and it is also evident to a high degree that associates such as Phlem Snopes act as a continuing unit. See *Compagnie de Reassurance D'lle de France v. New England Reinsurance Corp.* D. Mass. 1993, 825 F.Supp. 370. It is undeniable that Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C receives money for defrauding parties such as Abner Doubleday and Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C.'s receipts and compensation to collateral enterprises represents their necessary investment in the class of business to which Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C. belongs for the continuing privilege of, in the vernacular, continuing to rip people off in phony, sham proceedings. See *Grand Cent. Sanitation, Inc. v. First Nat. Bank of Palmerton*, M.D.Pa. 1992, 816 F.Supp. 299. Undeniably, the defendants have used the courts for purposes of fraud and extortion. Mendelson's attacks on Abner Doubleday is but one of many of examples of fraud by Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C. and other enterprises similarly constituted.

#### Remedy sought and prayer for relief

The Federal District Court has a duty to order the dissolution of Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C. and C.T. Corporation System under authority of 18 USC 1964(a). The Federal District Court is empowered to order treble damages as remedial to the racketeering activities of "RICO" enterprises and their constituent members. A jury's determination that Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C by and through Phlem Snopes and Lucretia Borgia has engaged in a pattern of frauds rising to a level of racketeering requires this court's order to Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C and C.T. Corporation System to dissolve and cease operations. A jury's determination that Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C by and through Phlem Snopes and Lucretia Borgia committed or aided and abetted two or more predicate acts of fraud resulting in defrauding Abner Doubleday and others similarly situated of property

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and business interests justly requires ordering Worldwide Asset Purchasing also known as Worldwide Asset Management, L.L.C., C.T. Corporation System, and Phlem Snopes and Lucretia Borgia to compensate all parties in a sum not less than three times the collective sums of property and losses to businesses of all who are similarly situated  
TRIAL BY JURY DEMANDED

Prepared and submitted by:

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Abner Doubleday



## 5. Resources

- A Black's law dictionary is indispensable - the older the better.
- Emanuel series, i.e., Emanuel on Civil Procedure
- US Code online
- Findlaw.com
- Versuslaw.com
- Your state's federal and state rules of civil procedure.
- PACER a subscription service to download federal court records.
- Access to the Federal and State Annotated Statutes (Lexis-Nexis or Thomson/Westlaw).

## 6. Recommended Additional Material

If you are interested in discovering the truth about the very important aspects of life: Money, health, and spirituality, I have included some resources for you to start your path towards uncovering the truth about what's really happening behind the scene in our society. I invite you to sign-up for my email list so that I can give you updates on this book and some other legal topics related to debt collection. By being a member of my email list, you will also receive my free monthly newsletter called "The Truth Report" in which I expose the truth about several life topics (money, law, health, etc), life changing news and general information that you likely won't see in the mass media. If it's in the mass media, it's probably not important for you to know it.

### 1. Books:

- a. Miracle on Main Street: Saving Yourself and America from Financial Ruin by F. Tupper Saussy
- b. The David Icke Guide to the Global Conspiracy (and how to end it). David Icke.  
<http://www.davidicke.com>
- c. Infinite Love is the Only Truth, Everything Else is Illusion. David Icke. [www.davidicke.com](http://www.davidicke.com)
- d. "The Federal Zone: Cracking the Code of Internal Revenue". Paul Andrew Mitchell.  
<http://www.supremelaw.org>
- e. All books by Dr. David R. Hawkins, M.D., Ph.D. starting with Power vs. Force, The Hidden Determinants of Human Behavior: An Anatomy of Consciousness. [www.veritaspub.com](http://www.veritaspub.com)
- f. The China Study: The Most Comprehensive Study of Nutrition Ever Conducted and the Startling Implications for Diet, Weight Loss and Long-term Health by T. Colin Campbell and Thomas M. Campbell II
- g. Fantastic Voyage - Live Long Enough to Live Forever, by Ray Kurzweil and Terry Grossman, M.D.  
[www.fantastic-voyage.net](http://www.fantastic-voyage.net)

### 2. Videos:

- a. Freedom or Fascism: Live at Brixton Academy 2006.  
[www.davidicke.com](http://www.davidicke.com)

- b. America from Freedom to Fascism.  
[www.freedomtofascism.com](http://www.freedomtofascism.com)
- c. Zeitgeist Movie  
[www.zeitgeistmovie.com](http://www.zeitgeistmovie.com)

### 3. Websites:

- 4. <http://famguardian.org/>
- 5. <http://tocongress.com/>
- 6. [www.cuttingthroughthematrix.com](http://www.cuttingthroughthematrix.com)
- 7. [www.davidicke.com](http://www.davidicke.com)
- 8. [www.informationclearinghouse.info](http://www.informationclearinghouse.info)
- 9. [www.rense.com](http://www.rense.com)

Please visit my personal website at [www.JulioMartinezClark.com](http://www.JulioMartinezClark.com) to get a complete and updated list of resources that I consider crucial in your quest for the truth.

## 7. Appendix A

Current legal research on several topics that you can use as reference (see documents at [http://www.beat-debt-collectors.com/Additional\\_Resources.html](http://www.beat-debt-collectors.com/Additional_Resources.html)):

- 1. Necessity of producing in court note or other evidence of debt sued on, as a precaution against possibility of double liability.pdf
- 2. Objection to Subject Matter.pdf
- 3. State Street Bank and Trust Co. v. Lord Fla.App. 4 Dist., 2003.pdf
- 4. Lawyers Secret Oath.pdf