BEATING UP ON DEBT COLLECTORS

By

Richard Luke Cornforth

Version 4.0

When the legal establishment starts putting on seminars to teach lawyers how to deal with people like me, we know we're starting to cause the corrupt legal establishment grief. What follows in Beating Up On Debt Collectors are strategies that put people in a position to win. Not only can you win using these strategies, you will make lawyers absolutely miserable. It is time for the predator to become the prey and the prey to become the predator! As Maximus said before the battle, "*Unleash Hell!*"

Richard Luke Cornforth

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First, lets refresh on the debt collection racket. As you knew already or learned from Secrets of The Legal Industry: 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 RICO (racketeering) 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. Also, executions must be bonded: this means, if they are going to take your property in satisfaction of judgment, in addition to following the proper procedure for proceeding *in rem* the judgment creditor must post bond before taking property to satisfy the judgment. The debt collection racket is one of the biggest components of the obscenely corrupt legal industry. I have yet to examine any debt collection case that was done properly – not even one.

One other thing – a copy of your state's rules of civil procedure is absolutely indispensable. I also recommend subscribing to Versus Law at versuslaw.com.

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 counselors inform you how to get an arbitration award against them. The following are letters to send to the slime-balls 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).

WHAT TO SAY TO THESE LITTLE DARLINGS WHEN THEY TRY TO GET YOU TO GO FOR THE ARBITRATION CON.

NOTICE

Kenneth L. Good & Laverne Good certified mail number ( )
2128 Winter Road
Somewhere, Florida 32000

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

Sirs:

We are objecting to the notice of arbitration in re: your contract FA0308000191962. We have two grounds for our objection: (1). Forum selection clauses in contracts of adhesion are unenforceable unless the clause could have been rejected without impunity (cite omitted), and (2). The United States Supreme Court has instructed that arbitration clauses are only enforceable to the extent that they permit parties to effectively enforce their substantive rights (cite omitted). In addition to not being allowed discretion relative to the forum selection clause, the arbitration forum of Minneapolis seems an obvious subterfuge deliberately intended to abridge the substantive rights of Floridians such as ourselves. We also believe that we can introduce witnesses who will testify that your arbitration form is a sham where no actual proceedings take place and those with the wherewithal to attend such proceedings are given the "old run around."

Fifteen days from the verifiable receipt of this notice, your silence shall verify that the so-called notice of arbitration is a fraud wherein you used the United States Mail in an attempt to create a legal 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

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. 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 19th 2003

Copy to: (attorney general)

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

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! The following two documents were developed by Dean Gerhart –

Dean is one of the most successful anti-shysters in the country!
dgerhart@columbus.rr.com

Sue Bear Rue
1234 Delightful Lane
Hometown, Michigan 00000
Respondent

IN THE
NATIONAL ARBITRATION FORUM

MBNA America Bank, N.A.,	NOTICE OF OBJECTION TO ARBITRATION RULE 13A(2)
Claimant,	Forum File Number: BR 549
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 Filling 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.

<u>NO JURISDICTION UNDER THE FAA</u>

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. S*hearson 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

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

MBNA America Bank, N.A., Claimant, v. Sue Bear Rue Respondent,	NOTICE OF OBJECTION TO ARBITRATION RULE 13A(2) Forum File Number: BR 549

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 Bridicakas **did not sign and date** therefore, Bredicakas has no actual knowledge of the articles Bredicakes 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

PHONE SCRIPTS TO USE WITH THIRD PARTY COLLECTORS

Commentary on the morality of debt: We 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).

WHAT IF THE SLIMEBALLS FOLLOW THE TRADITIONAL PATH OF CONTACTING YOU WITH A DUNNING LETTER?

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

Your Name (print certified mail number here)
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 #XXXXXXXXXXX #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, 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

Tip: Dayna Breyer, one of the most effective anti-shyters in the country recently learned from the horse’s mouth that the Federal Trade Commission <u>will</u> be on your side if the creditor has failed to resolve a billing error dispute. So, dispute often!

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

Kenney F. Love registered mail 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

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

Bobby Farmer ( )
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

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

Your Name (print certified mail number here)
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.

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 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

Astute students of the legal industry 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. I have yet to hear of anyone 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!**

What if they get an arbitration award against you? Remember they still have to proceed *in rem* otherwise known as "domestication" of the judgment. When they sue for domestication of their judgment, file a motion for summary judgment against them as follows:

Disputing an arbitration award from another state:

State of Wisconsin | Circuit Court | Dane County

In the Matter of the
Arbitration between

MBNA America Bank N A 665 Paper Mill Road Stop 1411 Wilmington DE 19884-1411
A foreign corporation,
P.O. Box 15168
Wilmington DE 19850

Vs. Case No. 03-CV 8888

William D. King
South CT
McFarland, Wisconsin 53000

Defendant's motion for summary judgment

Brief in support

William D. King moves this court for summary judgment of this court in favor of William D. King.

Affidavit

I, William D. King, 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 MBNA America Bank NA has standing to sue in any Wisconsin court by virtue of being duly registered as "MBNA America Bank NA," or by "MBNA America Bank NA" meeting the minimum contacts requirements for *in personam* jurisdiction.

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

3. I am not in receipt of any document that verifies I owe MBNA America Bank NA money.

4. I am not in receipt of any document, which verifies that MBNA America Bank NA authorized this action or is even aware of it.

5. As a result of the harassment of James A. Day, I have been damaged financially, socially, and emotionally.

_____
William D. King

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 arbitration clauses in contracts of adhesion are impermissible under the law and unenforceable

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. 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).

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

MBNA America Bank NA has failed or refused to produce the actual note, which MBNA America Bank NA alleges William D. King 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, **t**he 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

MBNA America Bank NA is a subset of the debt collection racket, a wide-spread, far-reaching scam of artists such as Rausch, Sturm, Israel & Hornik, S.C. 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

line up from such artists as Sturm, Israel & Hornik, S.C. then break apart the bundles and resell the worthless commercial paper in clusters based on the original mortgagee and geographic location. Sturm, Israel & Hornik, S.C. are the actual holders in due course although typically in the scam, artists such as Sturm, Israel & Hornik, 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 Sturm, Israel & Hornik, S.C, with the cooperation of a local judge, defraud parties such as William D. King. This scam is widespread, far-reaching and the main racket of the private business organizations to which artists such as Sturm, Israel & Hornik, S.C. belong. For other examples of this racket, see *Discover Bank v. Angie G. Walker and Esler C. Walker*, Civil Action File number 03-CV-2295, Muscogee County, Georgia, *Discover Bank v. Larry Pasket*, case number 03-SC-640, Clark County, Wisconsin, and *Discover Bank v. 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 numbers 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 v. David Misurelli*, Combined Court Fremont County, Colorado, case number 2003C 000890, *Capital One Bank v. 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 motion for summary judgment, an order shall be prepared and submitted to the court for ratification, unless prior to that time, MBNA America Bank NA presents a competent fact witness to rebut all articles - one through four - of William D. King's affidavit, 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: _____

William D. King

Certificate of Service

I, William D. King, certify that _____, 2003, I mailed a true and correct copy of the above and foregoing motion for summary judgment via certified mail, return receipt requested to: MBNA America Bank NA's agent for service of process.

_____

William D. King

Copy to: (attorney general)

Peg Lautenschlager
P.O. Box 7857
Madison, Wisconsin 53707-7857

Courtesy copy to: (slimeball attorney)
James A. Day
2448 South 102nd Street
Milwaukee, Wisconsin 53227

Answering a confirmation of an arbitration award where the so-called arbitration hearing was held in your state depriving you of the defense that the arbitration forum was a trespass on you substantive due process rights. Remember: in every lawsuit, there are two suits – one to get the judgment, and one to collect the judgment. A confirmation of an arbitration award is a variation of an "in rem" proceeding for collection – they still have to prove their claim.

State of Wisconsin Circuit Court Dane County

In the Matter of the
Arbitration between

MBNA America Bank N A 665 Paper Mill Road Stop 1411 Wilmington DE 19884-1411
A foreign corporation,
P.O. Box 15168
Wilmington DE 19850

Vs. Case No. 03-CV 8888

William D. King
South CT
McFarland, Wisconsin 53000

Brief in opposition to confirmation of an arbitration award

Brief in support

William D. King moves this court for summary judgment of this court in favor of William D. King.

Affidavit

I, William D. King, 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 MBNA America Bank NA has standing to sue in any Wisconsin court by virtue of being duly registered as "MBNA America Bank NA," or by "MBNA America Bank NA" meeting the minimum contacts requirements for *in personam* jurisdiction.

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

3. I am not in receipt of any document, which verifies that I agreed to arbitraton.

4. I am not in receipt of any document, which verifies that MBNA America Bank NA authorized this action or is even aware of it.

5. As a result of the harassment of James A. Day, I have been damaged financially, socially, and emotionally.

_____
William D. King

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

Title 9, Section 4 provides remedy for failure to engage in arbitration; however, absent a written agreement, the federal district court is deprived of jurisdiction to order arbitration. Forum selection clauses in contracts of adhesion are unenforceable if the clause is expressed in fine print, placed in the contract to avoid litigation, or if the forum selection clause could not have been disputed without impunity as part of a freely negotiated contract. See *Johnson and Johnson, v. Holland America Line-Westours, Inc.*, 557 N.W.2d 475, Forum selection clause must be reasonable communicate terms and be fundamentally fair *Deiro v. American Airlines, Inc.*, 816 F.2d 1360, 1364 (9th Cir. 1987). The forum selection clause must be "fundamentally fair." *Shut*e, 499 U.S. at 595, *In re: Hodes*, 858 F.2d at 908, and *Shankles v. Costa Armatori*, S.P.A., 722 F.2d 861, 866 (1st Cir. 1983).

Memorandum of Law in support of the point of law that

party alleging to be creditor must prove standing

MBNA America Bank NA has failed or refused to produce the actual note which MBNA America Bank NA alleges William D. King 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, **t**he 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

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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

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continuing series of offers to contract, are non-transferable. The scam is complete when artists such as Sturm, Israel & Hornik, S.C, with the cooperation of a local judge, defraud parties such as William D. King. This scam is wide-spread, far-reaching and the main racket of the private business organizations to which artists such as Sturm, Israel & Hornik, S.C. 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 Misurelli, 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 motion for summary judgment, an order shall be prepared and submitted to the court for ratification, unless prior to that

time, MBNA America Bank NA presents a competent fact witness to rebut all articles - one through four - of William D. King's affidavit, 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: _____

William D. King

Certificate of service

I, William D. King, certify that _____, 2003, I mailed a true and correct copy of the above and foregoing motion for summary judgment via certified mail, return receipt requested to: MBNA America Bank NA's agent for service of process.

_____

William D. King

Copy to: (attorney general)

Peg Lautenschlager
P.O. Box 7857
Madison, Wisconsin 53707-7857

Courtesy copy to: (slimeball attorney)
James A. Day
2448 South 102nd Street
Milwaukee, Wisconsin 53227

Like I say, hit them hard!

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.

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 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, **t**he 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 wide-spread, 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 wide-spread, 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 _____, 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.

_____

Larry Cherry

Copy to:

Peg Lautenschlager
P.O. Box 7857
Madison, Wisconsin 53707-7857

How to respond to some slimeball'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

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

Division A

UMB USA,
Plaintiff and defendant on counterclaim

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:

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.

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

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

<u>Or, skip being "Mr. Nice Guy" and go for the jugular!</u> **<u>NOTICE IN THIS STRATEGY, WE LAUNCH DISCOVERY UP FRONT.</u>**

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 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____

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____

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 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
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

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 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 _____

_____ 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 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 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.

_____
Donna 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 _____

_____ 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, **t**he 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 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

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

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.* (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

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, **t**he 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 ..." 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-inforceability 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.
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

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 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

<u>Can you ask for discovery? Yes, ask them as follows and make them suffer!</u>

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 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____

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____

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

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 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:

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2448 South 102nd Street, Suite 210
Milwaukee, Wisconsin 53227

_____

William D. Ozgood

What is they are evasive in response to your discovery? File a moton to compel!

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____

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 determind 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 Usa

money. 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____

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

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

*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 doucments

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 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

What if they want to depose you? Go to the deposition and have a good 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.

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 loose 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.

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.

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 if back, then you're going to loose 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?

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 <u>you</u> 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 warranteed it to himself, he needs to get a new lawyer.

<u>What if they move for summary judgment?</u> Submit a brief in opposition and file your own summary judgment motion.

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.r'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 one

single 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 **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 law

calling 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

_____

Esler C. Walker

How do you handle yourself in open court arguing against an attorney and a hostile judge?

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.

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.

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.

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.

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 serous crime, so what is your answer?

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, you can elect at that moment to stand on your pleadings by saying, "I elect to stand on my pleadings."

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.

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:

Oklahoma Tax Commission
_____
_____

_____
Delbert Diamond

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.

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

What if the judge won't sign your default? You file a notice and demand.

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 Brighterowsk*i, 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).

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

What if the judge does not respond after the notice and demand? You petition for a writ of mandamus.

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. Stat*e, 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 air-tight 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 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 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, **t**he 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 a**

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 Reassuarance D'lle 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. Sutliffe* 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.

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:

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

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

Table of contents

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.

Table of authorities

Federal Statutes:

Oklahoma State Statutes and rules:

Federal authorities:

American Red Cross v. Community Blood Center of the Ozarks,

Persuasive authorities:

Other publications:

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 Daine 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 devises 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 devises 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, **t**he 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 Il. 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. 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 Brighterowsk*i, 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 voilative 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: _____
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

_____

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

December 29th 2003

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Table of cases

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 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 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 aswer brief, you file a reply brief

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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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 Markowsk*i, 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

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: _____
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.

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/Fedlman* 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(6th

Cir. 1985)(quoting Resolute Ins. Co. v. *North Carolina* 397 F.2d 586, 589 (4th 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 intio.* See *Kalb v. Fuerstein*, 308 U.S. 433, 438-40 (1940). Where specific federal statue (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 judgment0

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. Amed. 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 form 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 (Okl. 1991). A void judgment is one that is void on face of judgment roll, *Capital Federal Savings Bank v. Bewley,* 795 P.2d 1051 (Okl. 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 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 to 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. Rodriquez,* 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 Brighterowsk*i, 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: _____

Joyce H. Rhino Joseph W. Rhino

File for injunctive relief too

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'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 effects 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: _____

Joyce H. Rhino 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 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.

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 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 ..." 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:_____

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
_____
_____
_____
_____

- and -

Glenn B. Stearns, Standing Chapter 13 Trustee

What if all that doesn't work? File a RICO suit! Just the threat of filing a RICO can make any sttorney cry and wet his pants!

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 *malum in se* 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 Reassuarance 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 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.

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:

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__, 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 defendents 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 loses. 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 Reassuarance 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 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