

SUPERIOR COURT
FRESNO COUNTY, CALIFORNIA

Case No.: No. 10CECG00514DRF

WACHOVIA MORTGAGE CORPORATION,)
a California corporation,)
a division of)
Wells Fargo Bank, N.A.,)
a national banking association)
Plaintiff,)
vs.)
ANDRE PAUL PROVOST, JR.,)
a legal fiction U.S. trust account)
Defendant)

Andre paul provost, jr., non-corporate)
Real party in interest, priority)
Creditor to U.S. trust account)
ANDRE PAUL PROVOST, JR.)
3rd Party Settlor)
vs.)
Donald R. Franson)
3rd Party Defendant)

**NOTICE OF FIDUCIARY BREACH OF
DONALD R. FRAZEN WITH BRIEF IN
SUPPORT AND MEMORANDUM OF LAW**

1. On June 8th, 2010, Notary filed in this Court on behalf of the beneficiary/Settlor's demands for claims in equity for appointed trustee Donald R. Franzen.

2. As of the date of this brief, there is no evidence of performance on the demands.

3. As a trespass on third party Settlor's Beneficiaries security interest in the Defendant and a denial of due process, the said failure to perform has created a personal liability for

third party defendant, and a tort.

4. The said failure to perform comprises a violation of public policy, the U.S. bankruptcy, and the best interest of the ANDRE PAUL PROVOST, JR Trust.

5. Fiduciary/Trustee Donald R. Frazen has not settled and closed case#10CECG00514DRF as demanded by Settlor/Beneficiary and has caused Settlor/Beneficiary to loose confidence in his administration of the trust.

6. An injury has been caused to the Trust as a result of the breach of fiduciary duty individually and in his official capacity.

7. Fiduciary/Trustee has also breached equitable demands of the Settlor. The Beneficiary/Settlor has all the equitable claims and title to the ANDRE PAUL PROVOST TRUST.

8. Fiduciary/Trustee has a responsibility in conduct to execute the demands of the Settlor/Beneficiary pursuant to Title 42 and the Judicial Code of Ethics.

9. Fiduciary/Trustee is liable for impairing the obligation of contracts. The contractual private security agreement is superior to the STATE OF CALIFORNIA CODES and protected as such in Article 1, sect. 10 of the Constitution ("No State shall pass any law imparing the Obligation of

Contracts") (see APOSTILLE Private Security Agreement).

10. Settlor/Beneficiary will bring forth multiple court watchers who will testify that their confidence in the judicial system has been diminished by the judge's unreasonable acts.

11. This action was filed and brought forth without completing administrative due process and without clean hands by the Plaintiff's against the ANDRE PAUL PROVOST, JR TRUST.

However, I am not the trust nor property of the trust named ANDRE PAUL PROVOST, JR; I am the living flesh and blood andre paul provost, jr., the Settlor and Only Contributing Beneficiary of that trust and therefore immune from prosecution or legal liability for any criminal or civil offence committed by its trustees or trust property (see affidavit of identity).

DEMANDS FOR RELIEF SOUGHT

1. Issue injunctive relief commanding fiduciary/trustee defendant to execute demands of equitable claims of Settlor/Beneficiary.
2. Issue declaratory relief as this court deems appropriate and just.
3. Award Defendant his costs of litigation.

Date:

Settlor/Beneficiary

MEMORANDUM OF LAW IN SUPPORT OF FIDUCIARY BREACH

As expressed otherwise, the powers delegated to a public officer are held in trust for the people and are to be exercised in behalf of the government or of all citizens who may need the intervention of the officer. Furthermore, the view has been expressed that all public officers, within whatever branch and whatever level of government and whatever be their private vocations, are trustees of the people, and accordingly labor under every disability and prohibition imposed by the law on trustees relative to the making of personal financial gain from a discharge of their trusts. That is, a public officer occupies a fiduciary relationship to the political entity on whose behalf he or she serves, and owes a fiduciary duty to the public. It has been said that the fiduciary responsibilities of a public officer cannot be less than those of a private individual. **Furthermore, it has been stated that any enterprise undertaken by the public official which tends to weaken the public confidence and undermine the sense of security for individual rights is against public policy.** (63C Am. Jur. 2d, Public Officers and Employees, 247).

Fraud in its common law sense of deceit - and this is one of the meanings that fraud bears in the statute, see United States vs. Dial, 757 F.2d, 163, 168 (7th Cir. 1985) - **includes the concealment of material information in a setting of fiduciary obligation.**

A public official is a fiduciary toward the public, including, in the case of a judge, the litigants who appear before him, and if he deliberately conceals material information from them, he is guilty of fraud. McNally vs. United States, 483 U.S., 350 (1987).

"if an inferior judge acts maliciously or corruptly he may incur liability."
see...Kalb v. Luce, 291 N.W. 841, 234, WISC 509
see...Pulliam v. Allen, 466 U.S. 522 (1983)

18 USC Sec. 241 01/19/04 TITLE 18 - CRIMES AND CRIMINAL PROCEDURE PART I -
CRIMES CHAPTER 13 - CIVIL RIGHTS Sec. 241. Conspiracy against rights. If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or, If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - They shall be fined under this title or imprisoned not more than ten

years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Treatise On Conspiracy

A person is a party to conspiracy if the party intentionally misleads either private parties or authorities. A conspirator need not do anything directly resulting in harm, also known as the vicarious liability rule of conspiracy. Each member of a conspiracy is criminally responsible for all crimes committed by his co-conspirators or even innocent agents of conspirators if the member of the conspiracy does any act to further the object of the conspiracy. Under laws relating to conspiracy, a lone perpetrator of wrong could not have accomplished the wrong by themselves. Any party who deliberately sets in motion a chain of events that he knows will cause a third party, even if an innocent agent, to commit an act, the conspirator is criminally responsible for that act. In law, to cause means to bring into existence as in to bring into existence a criminal act, which would not have happened absent the progenitor of the chain of events. The doctrine of innocent agent allows a defendant who is not present at the commission of a crime to be convicted as a principal in the first degree if the defendant engaged in actions which caused or enabled the actual perpetrator to commit the crime as an innocent agent of the defendant. An innocent agent who is not the offender of law is just as guilty as if the innocent agent had done the act; the innocent agent is deemed to be constructively present. It is not a defense for the innocent agent to claim want of proof that the principal wanted the innocent agent to commit a crime; it is only necessary to show that the innocent agent was part of a pattern of acts which caused the innocent agent to commit a crime. See 18 U.S.C. § 2(b) providing: Whoever willfully causes an act to be done which if directly performed by him would be an offense against the United States is punishable as a principal. A conspirator cannot claim immunity from criminal acts by causing a third party to do the criminal act.

Apart from the vicarious liability rule of conspiracy there is a separate and independent companion legal theory of criminal responsibility which imputes guilt to a non-perpetrator - aiding an abetting.

AIDING AND ABETTING DEFINED:

18 USC Sec. 3 01/19/04, TITLE 18 - CRIMES AND CRIMINAL PROCEDURE PART I - CRIMES, CHAPTER 1 - GENERAL PROVISIONS, Sec. 3. Accessory after the fact Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact. Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by life imprisonment or death, the accessory shall be imprisoned not more than 15 years.

The essence of conspiracy is the an agreement among co-conspirators to commit a crime or crimes. One is guilty under the theory of lawn known as aiding and

abetting if the actor instigates or encourages the commission of the offense, or assists the perpetrator in some way in the commission of the crime, or assists the perpetrator in evading the consequences of his crime or crimes.

ABSOLUTE JUDICIAL IMMUNITY VITIATED IN CASES OF CONSPIRACY

. . . "the judicially fashioned doctrine of official immunity does not reach so far as to immunize criminal conduct proscribed by an Act of Congress." See *SUING JUDGES, A Study of Judicial Immunity*, Abimbola Olowofoyeku, Clarendon Press Oxford, at page 77. "Absolute immunity from criminal liability involves immunity even in cases of alleged malice and negligence. Fraud, corruption, and other inherently criminal acts . . . [such as conspiracy and aiding and abetting] . . . are not covered. *SUING JUDGES*, id supra at page 78. See also, *United States v. Hastings*, 681 F.2d 706 at 711, n. 17 (11th Cir. 1982), *O'Shea v. Littleton*, 38 L.ed. 2d. 674 at 688 (1974), and *Cooke v. Bangs*, 31 F. 640 (US Cir. Ct. Minnesota, 1887) at page 642.

Reckless and wonton disregard for the for the consequences of one's actions or even indifference to the effects of one's actions establishes intent, even if no other evidence is extant to establish the existence of a conspiracy. Indifference and/or disregard of the criminal nature of the acts which one was a part of, no matter how seemingly insignificant the role played, renders a defense against aiding and abetting nonsensical and renders the law found at 18 U.S.C. § 4 construed to absurdity. Since every sane man is presumed to intend all the natural and probable consequences flowing from his own deliberate act, it follows that if one willfully does an act, the natural tendency of which is to cause criminal harm, the irresistible conclusion is that the crime was intended. "The intent with which an act is done may be inferred from the act itself and the surrounding circumstances, it being presumed that every person intends the natural and probable consequences of his actions." "The specific intent to [to commit a criminal act] may be inferred so long as the surrounding circumstances show that the defendant intended the wilfully committed act, the direct and natural tendency of which is [a criminal act]." *People v. Migliore*, 170 Ill. App. 3d 581, 586 (1988), "The [commission of the act] . . . supports the conclusion that the person doing so acted with intent to [commit the criminal act]" *People v. Thorns*, 62 Ill. App. 3d 1028, 1031 (1978), citing *People v. Munoz*, 44 Ill. App. 3d 339 (1976). See also, *People v. Coolidge*, 26 Ill.2d 533, 537, 187 N.E.2d 694 (1963). It is not a defense to criminal charges that the victim permitted the criminal act to occur.

PROOF OF MAILING

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