DATE FILED: June 13, 2021

SUPREME COURT STATE OF COLORADO 1300 Broadway, Suite 250 Denver, Colorado 80203	
District Court, Denver County, Colorado The Honorable Judge Shelly Gilman Case No. 21CV000091 PETITIONERS: Benjamin Wegerner, Younge and Hockensmith, and Wegener, Scarbourogh, Youmge and Hockensmith *:* -vs- Respondent: ROBERT A. FRANCIS	**COURT USE ONLY**
	Case Number

VERIFIED ANSWER BRIEF TO ORDER TO SHOW CAUSE REQUESTED BY BENJAMIN WEGENER, WEGENER, SCARBOROUGH YOUNGE AND

HOCKENSMITH, AND YOUNGE AND HOCKENSMITH

Robert A. Francis, Respondent ("Mr. Francis") respectively files his response to the Show Cause Order of this Court as follows:

Certificate of Compliance

I hereby certify that this brief complies with all requirements of C.A.R. 28 or C.A.R. 28.1 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that: The brief does comply with the applicable word limits set forth in C.A.R. 28(g) or 28.1(g).

Exclusive of the caption, Table of Contents, Table of Authorities, Signature Block and Certificate of Service, this Brief contains 6885 words (Word).

This Brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b).

For each issue raised by the appellants, the brief contains under a separate heading before the discussion of the issue, a concise statement:

(1) Of the applicable standard of appellate review with citation to authority; and

(2) Whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

In response to each issue raised, the appellees must provide under a separate heading before the discussion of the issue, a statement indicating whether appellees agree with appellants' statements concerning the standard of review and preservation for appeal and, if not, why not.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R 28 or 28.1, and C.A.R. 32.

/s/ *Robert A. Francis* (Signature of party)

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PRELIMINARY STATEMENT

This Answer Brief is under oath. The Respondent "(Mr. Francis") routinely verifies his pleadings so there can be no dispute as to his facts.

The issue raised by the Petitioner is one of fact. Did or did not the Petitioner (and his co-counsel) delude the Colorado Court of Appeals when responding to a question falsely.

This Petition arises from Denver County 2021CV91 which reduced to a case the issue of the falsehood. The facts of that case are undisputed. The Petitioner, however, choses to not confront them in his Petition. Instead his lists numerous cases, not one of which did he participate in. Many of them do not include an identity

of party(s) with this case, an identity of issues(s), were prosecuted by a lawyer other than Mr. Francis, or in which Mr. Francis was not a participant.

ISSUES PRESENTED FOR REVIEW

1. Did the Petitioner (and his co-counsel) mislead the Court of Appeals in the second appeal of Pitkin County, 2010CV201 resulting in the conclusion the Judi B. Francis Trust was in default in assessment payments?

2. Do the circumstances of Denver District Court Civil Action Number 2019CV91 justify the relief sought?

3. Does the Colorado Constitution guarantee Respondent guarantee Respondent access to the Denver District Court

4. Did the Pitkin County District Court have jurisdiction over The Francis Children's Trust and Robert Francis in Pitkin County Civil Action Number 2010CV2010 (combined with Pitkin County 2011CV46)?

STATEMENT OF THE CASE/BACKGROUND

I.

This case is a follow-up to Pitkin County 2010CV201. Pitkin County 2010CV involved a dispute over payment of condominium assessments. The unit ("the unit") was located in the Aspen Mountain Condominiums in Aspen ("the complex"). It was owned by a Plaintiff in 2010CV210, The Judi B. Francis Trust ("the Trust").

At the annual meeting held February 18, 2010 the Board of Directors of the complex introduced a proposed amended declaration. It was sponsored by the Association's lawyer, Mr. Scott Harper. The complex's manager, Mr. Ronald

Erickson, presented the Declaration at the meeting The Declaration provided for a lowering of the percentages of the Board's assessments while raising the three ground floor units' assessments. The Trust owned a ground floor unit.

The condominium case cannot be sufficiently comprehended without an understanding of the configuration of the complex. It consisted of 11 units over three floors. There were three units on the ground floor including the Trust's and 8 units on the upper two floors. The upper two floors had had a higher assessment due to being larger (because of a limited common element). The lower 3 units had a smaller assessment. They had no limited common element.

Mr. Harper advised the Board it could adopt the realignment of assessments with a vote of 67% of the owners. Mr. Erickson agreed. They were both wrong.

Mr. Harper's advice was based upon section 38-33.3-217(4) (a) of The Colorado Common Interest Ownership Act which says;

> "Except to the extent expressly permitted or required by other provisions of this article, no Amendment may change the uses to which any unit is restricted in the absence of a vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated **or any larger percentage the Declaration specifies.**

The Declaration required the affirmative vote of every owner. The three smaller units didn't vote for the reallocation.

Moreover, the directors were disqualified from voting. In addition to the apparent conflict of interest (lowering their assessment while raising others) their voting was precluded by a provision in the proposed Declaration: **Exhibit 1**.

"CONFLICT OF INTEREST POLICY

A. Definitions

1. "Conflicting interest transaction" means a contract, transaction, or any other financial relationship a) between the association and a director; b) between the association and a party related to a director; or c) between the association and an entity in which a director of the association is a director or an officer."

2. "Party related to a director means a spouse, a decedent, an ancestor, a sibling, the spouse or descendant of a sibling, . . . or an entity in which a party related to a director is a director, officer, or has a financial interest."

. . .

3. **"**Participation and Voting. The director shall not take part in the discussion and shall leave the room during the discussion and the vote on the matter. Notwithstanding the foregoing, the disinterested board members may ask the interested board member to remain during any portion of the discussion and / or vote, provided that the director does not vote."

The reallocation of the assessments failed for that reason as well. The vote was void.

The Court of Appeals set aside the vote, concluding it was barred by CCIOA.

The complex is a non-profit corporation. Non-profit corporations have a conflict-of-interest provision, C.R.S. 7-128-501:

(1) As used in this section, "conflicting interest transaction" means: A contract, transaction, or other a financial relationship between a nonprofit corporation and a director of the nonprofit corporation, or between the

nonprofit corporation and a party related to a director, or between the nonprofit corporation and an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest.

. . .

(3) No conflicting interest transaction shall be void or voidable or be enjoined, set aside. Or give rise to an award of damages or other sanctions in a proceeding by a member or by or in the right of the nonprofit corporation, solely because the conflicting interest transaction involves a director of the nonprofit corporation or a party related to a director or an entity in which a director of the nonprofit corporation is a director or officer or has a financial interest or solely because the director is present at or participates in the meat of the nonprofit corporation's board of directors or of the committee of the board of directors that authorizes, approved, or ratifies the conflicting interest transaction or solely because the director's vote is counted for such purpose if:

(a) The material facts as to the director's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the board of directors or the committee, and the board of directors or committee in good faith authorizes, approved, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested directors even though the disinterested directors are less than a quorum; or

(b) The material facts as to the directors relationship or interest in as to the conflicting interests transaction are disclosed or are known to the members entitled to vote their own, and the conflicting interests transaction is specifically authorized, approved, or ratified in good faith by a vote of the members entitled to vote thereon; or

(c) The conflicting interest transaction is fair as to the nonprofit Association.

. . .

(5) for purposes of this section, a "party related to a director" shall mean a spouse, a descendant, an ancestor, a sibling the spouse or descendant of a sibling, an estate or trust in which said the director or a party related to a

director has a beneficial interest, or an entity in which a party related to a director is a director, officer, or has a financial interest.

The first assessment payment after the reallocation was due for the fourth quarter of 2010. Mr. Francis had learned that the Association was believing it could apply payments to claimed interest, late fees and attorney fees, and by doing so the payment would be in default. To avoid that Mr., Francis placed restrictive endorsements on all the checks, directing they be applied to specific invoices and specific quarterly payments.

At one point Mr. Francis received a check returned by Mr. Erickson with a covering note that said that Mr. Francis should remove the restrictive endorsement and resend the check "because the bank would not accept it with the restrictive endorsement." Mr. Francis knew that was not true and took the check to the bank for deposit. **Exhibit 8**. The check was negotiated.

Starting in 2013 the Trust moved to deposit payments into the Court. That lasted for approximately two years thereafter. A copy of the registry of the Court and checks is attached. **Exhibit 9**. All payments from the inception through the oral argument were paid at the increased rate.

On or about December 23, 2013, Judge Nichols entered a judgment against Glasgow/the Trust (as "the Francis Children's Trust") and Robert Francis, as an attorney, for attorney fees, (whom Nichols believed to be the attorney who had appeared in the case for the Trust).

She followed that judgment with an order dated December 26, 2013. The following is the relevant portion of that order:

In paragraph 55, Judge Nichols comments;

The Court held on January 4, 2013, that Mr. Allen was the attorney for the Children's Trust and that, although Mr. Francis could become co-counsel, *he had not yet entered an appearance. This conclusion, which no party challenged,* was based on the signing of the Children's Trust's Third Party Complaint by both Mr. Allen and Mr. Francis[as Trustee for the Francis Children's Trust], and the fact that Mr. Allen had previously entered on behalf of other parties as an attorney, with his registration number, *whereas Mr. Francis had not.*

In paragraph 56 she adds:

While the court would have preferred that Mr. Allen notified the Court and the parties that he was not representing the Children's Trust and *that the Children's Trust was appearing pro se through its trustee, Mr. Francis, this pleading appears to clearly convey that message.*

Paragraph 58:

> Since that filing, Mr. Francis has filed and signed numerous motions on behalf of the Children's Trust and Mr. Allen has not. Mr. Francis has signed his numerous motions "as Trustee" for the Children's Trust and, on a few occasions, as simply "Robert A. Francis. [1]" *As far as the Court can see, Mr. Francis has never entered an appearance or provided a registration number and therefore the Court can only conclude that the Children's Trust is proceeding pro se by its Trustee, Mr. Francis.* [2]

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[1] She was mistaken. I did not sign any pleadings in my personal capacity, let alone "numerous". Any pleading filed on behalf of me as trustee of the Francis Children's Trust, would have said so in the preamble to the pleading and with the signature. Moreover, the body of any motion would have contained numerous references to "the Trust." One can only surmise that if Judge Nichols had

reviewed all of the motions filed by the Trust, she would not have made the above comment.

[2] At the bottom of page 9 Judge Nichols puts the following footnote: "The Court recognizes there is confusion here and will attempt to clarify this confusion in this order by directing both Mr. Allen and Mr. Francis to provide written notice on who represents who in this case and what party, if any, if [sic] proceeding pro se."

After the trial, Mr. Allen suggested Mr. Francis file a non-party appeal out of caution in case any opposing party claim he had personally appeared in the case. **Exhibit 10**. The Court of Appeals issued a show cause order to show cause why he should not be dismissed. He confessed it and the Court ruled that he was not a party. **Exhibit 11**. The Petitioner was served with the order.

II.

On August 22nd, oral argument was held in the Colorado Court of Appeals in the second appeal of 2010CV201 ("the condominium case"). Mr. Francis was not a party to the case nor had he participated as attorney. He was, however, present for the oral argument. Mr. Wegener argued a portion of the case and his co-counsel Mr. John Lassalette the balance.

At the beginning of the appeal Mr. Allen was asked the question "is there a credibility issue in this case." He answered "no." Mr. Francis was present as an observer with his wife. He was not in the case individually, as a party, nor as an attorney. He was puzzled by the question is he and Mr. Allen believed that there was no credibility issue. The panel was asking whether Mr. Francis had told the truth.

Both Mr. Wegener and Mr. Lassalette were ask a question. The question was "excluding attorney fees, late charges, and interest, were the defendants in default?" In other words were there restrictive endorsements associated with all of the payments?

Both attorneys knew that restrictive endorsement checks require application to the debt specified. Both attorneys knew that the endorsements were there. Both attorneys knew that if they admitted that the endorsements were there that the Court would necessarily conclude that the owner was not in default, the foreclosure could never have happened, and the owner would be entitled to its attorney fees.

Both gave profoundly false answers. The owner obtained a transcript of the hearing.

Mr. Wegener said: "I think to start off and what I want to say is that this case has been a very long standing case and that it got filed originally in 2010 over a number of different issues including a sewer back up at one point in time and also *an argument that the change in the covenants arguing for the increase in assessments was invalid.* As that case progressed through we alternately had a determination by the trial court very early on in the case by December 2012 that the change and assessments was valid and that wasn't later overturned on appeal until 2017 and actually of thrust of the case from 2012 up until now has been with regard to the assessments that are owed, ***whether it was it that increased or the reduced rate.***

Judge: Let me pursue this a little bit. Why doesn't the rule that was announced in Judge Terry's case invalidate what Mr. Allen calls the FIFO method, which as I understand it was adopted in the same amendment or series of amendments as the change sharing ratio of the common elements?

Wagener: Sure and Mr. Lassalette could probably add a little more to that but the 1972 Covenants and a 2010 change the covenants mirror the collection policy of

interest of attorney fees as well as the parts that apply that would fall under CCIOA with respect to attorney fees and things like that. And the other issue, none of that was invalidated it was just the increased assessments from 8% to like 9.5% that it went to.[1]

Judge: So what you're saying is Mr. Allen calls the FIFO method was the same in the initial covenants as it has been applied since 2010.

Wegner: Right.

Judge: So there was no amendment to that part. The amendment reaffirmed all those all the prior Covenants. The only real applicable change with regard to those 2010 covenants was to change the percentage to increase to try to get a little more fair based upon what everyone was using some deck space but the collection method always remain the same. And that collection method is spelled out in a number of covenants across HOA's as well as in case law interpreting CCIOA ***if we go back to that lower amount there is still assessments owed:***

Judge: and that's the way it's been since 1970.

Wegner: And that's the way it's been since 1972. And more importantly is what the prior Court did on that appeal is remanded for some very finite issues and the issue was that if we go back to that lower amount is there still assessments old. And the question that the trial court answered was yes there was. ***we go back to 2010 in start seeing that when it was an increased assessment oh, Mr. Francis or the Francis party's never paid the lower amount; they stopped paying it also even at the increased or lower amount*** the association had to engage an attorney. And then some assessments were paid again in 2011/2012 but those prior assessments never caught up for 2018 and ***then we have a whole year worth of misses missed Assessments in 2013*** and this is what the trial court ultimately found as part of the second Hearing in January of last year . . . ***Mr. Francis and the Francis parties while there was 68 - 70000 of assessment sold they really only paid 44000 of those.*** So those costs of collection, those interest in those late fees would have accrued regardless of the amount being churned charged and there for the association was still owe that money and that's ultimately what the court found . . . ."

Mr. Lassalette's argument appears as:

[1] The Petitioner was wrong. The purported change was in the failed declaration.

Judge Can you explain to me, Mr. Lassalette how you accounted for, and I presume you made a new calculation on remand on the assessments owed, the interest charge, the fees assessed, how did you account for the difference between what the appellants were charged at the higher 9% rate versus what they should have been charged post-appeal the 8% rate? Lassalette: Your honor, it was just a mathematical exercise. All we did was we went through we took the amount, that percentage is relationship to the entire budget of the Association so instead of calculating as 9.019%. We just recalculated at 8%. , We had the benefit of remand order that had great clarity and very specific directive. And that's exactly what we followed, that's exactly what Judge Lynch followed. What happened is then upon showing the recalculated amounts we also showed that ***based upon the nonpayment for extensive period of time in 2010, that by the time action was initiated for collection and enforcement in 2011 there were still valid collection and enforcement actions.*** The late fees and the interest were all still valid and enforcement actions. The late fees and the interest were all still valid. ***Because of nonpayment for last approximately 7 months of 2010, so the judge re – determined that late fees were appropriate,***[2] she re —determined that interest was appropriate, she re—determined that the attorney fees were appropriate. She did not gloss over this. We had to go forward, that those were still outstanding amounts which warranted those additional fees to come in only because of the self – inflicted damage of nonpayment for extensive periods of time by the owners. That's how we got to those numbers. So Judge Lynch did not make any presumption as to late fees, interest or attorney fees. She reviewed the entire record of payment and nonpayment under the mandate of the Court of Appeals, did it at 8%, and said they still all, and because they still all, there's still late fees. And your honor, they could have pulled the rug out from under that, all they had to do was pay the undisputed fees, but they didn't; they went nonpayment for seven months in 2010. Then they were playing catch-up as Mr. Allen indicated. ***And then during the pendency of the action there were no payments for the entirety of 2013, none,*** so they just rolling backwards and that's how we got to these numbers, that's how we got to this problem. And Judge Lynch re—determined all of that. She did not make presumptions as to any of those numbers.

Judge: ***So, what's the approximate amount of the unpaid assessments apart from interest and late fees and legal fees?***

Lassalette: ***I believe we were at a $70,000 number that's in our brief.***

[2] Mr. Lassalette was being asked to eliminate attorney fees.

Judge: Well, Mr. Allen said they actually paid $40,000. So the difference is really about $30,000.

Lassalette: Well, if you were to apply. If you were to apply the payments in a manner which does not comply with the by – laws, or the 1972 declaration or the 2010 declaration, then yes, you would be chipping away at it, to the tune of $44,000. Except these owners in purchasing consented to the declaration, the old one, they consented to the bylaws, they to this entire payment application mythology. So that's why it is an application to that hierarchy, as laid out which they consented to by the purchase of the property, and that purchase of that property happened long before.

Judge: That's okay. Mr. Allen seem to suggest that he desired more inquiry into the account method. I think he even mentioned that he requested a special master and perhaps was denied. Could you shed any light that's something unfamiliar to me from my review?

Lassalette: It's not in the record, your honor, I don't understand where he's coming up with that. We had a one-day hearing on the remand order of the Court of Appeals and Judge Lynch followed it exactly. We didn't exceed the scope of the remand order. We didn't and we presented exactly what it asked and required.

Judge: Thank you.

Lassalette: Thank you

III.

Following the reversal of the first appeal the presiding judge, Judge Denise Lynch convened a hearing, Because he was the one who had made all the payments and attached the restrictive covenants he testified to that end. The Petitioner did not attend the hearing.

Judge Lynch concluded his testimony was "not credible" and "self-serving." **Exhibit 12**. Had she believed him, the only possible conclusion would have been to

affirm the award of attorney fees given to the Trust and set aside the foreclosure which had been stayed pending appeal.

Mr. Francis knew when he saw her ruling that at some point during this litigation he would request a polygraph examination. He took one March 14, 2019. **Exhibit 13, (**with exhibits attached to the polygraph).

Polygraph examinations are based on 3 questions. All three of the questions in Mr. Francis' case where directed to the existence and delivery of the restrictive covenants. The questions and answers are on page 2 of Exhibit 5.

Mr. Francis passed with, in the words of the polygrapher, "a perfect score."

IV.

After the oral argument, Mr. Francis had the attached transcript prepared. Mr. Allen had dropped out, so Mr. Francis began calling and emailing both attorneys concerning the evident falsity of their remarks. **Exhibit 13**.

To obtain relief he brought the instant action. **Exhibit 14**. When a lawyer is sued along with his or her client the client has a crossclaim. That was discussed with the Association attorney. **Exhibit 15**.

He refused. The option under those circumstances was to provide the Association with the required notice.

SUMMARY OF ARGUMENT

This request springs from Denver County 2021CV91 which in turn is based entirely one issue: the existence of the restrictive covenants. Amended Complaint **Exhibit 16**. Had the Petitioner told the truth the Trust would have won.

Under the facts it is impossible to believe they didn't know that, absent interest, late fees, the Trust was over paid for 2010 and 2013 and was not behind *in any amount an at any time.* Both lawyers further breached their duty of candor to the Court.

This Petition was chosen not out of a duty to protect the public but out of a duty to protect himself and Mr. Lassalette.

DISCUSSION

Issue No 1: Did the Petitioner (and his co-counsel) mislead the Court of Appeals in the second appeal resulting in the conclusion the Trust was in default in assessment payments?

Where Raised: There is no transcript so no reference can be made to a portion of the record. However the true basis for the petition can be found at page 25 as follows below:

Standard of Review: The true facts.

In the order relied upon by Judge Lynch said:

> "Respondent Alleged in his Complaint that Petitioner Benjamin M. Wegener a co-counsel for [The Aspen Mountain Condominium Association] in Court of Appeals 2018CA772, John Lassalette, Esq., made false statements to the Court of Appeals during oral argument with respect to amounts which were owed to [the Aspen Mountain Condominium Association] by the Francis parties. Specifically, Respondent alleged a statement made by counsel during oral argument that the Francis Parties did not make any assessment payments during 2013 was false. however this statement accurately reflected the District Courts finding of fact that"

> [I]n 2013, Owners made no payments." The complaint also alleged counsel's statements during oral argument that the assessments (exclusive of attorney fees, interest, late fees, etc.) currently owed by the Francis parties at the time was in the $70,000 range, which Respondent argued were false. however, this statement also accurately reflected the District "Court's finding of fact that the Francis parties[3] owed "[q]uarterly and special assessments in the amount of $73,311.52."

The Petitioner's reliance upon the District Court's "finding of fact" is disingenuous. First and foremost, that argument doesn't address his contending during oral argument that "Mr. Francis made no payments in 2010."

Second, he and Mr. Lassalette knew that the truth was diametrically opposed to what Judge Lynch may have "found." It's not that the misrepresentations were slightly off. They couldn't have been more wrong. It was a "yes" or "no" question. There is no room for shading.

At the very least their responses lacked total candor in violation of C.R.P.C., Rule 3.3. At worst deceptive. The truth is (1) the Trust made all the payments in 2010 at the higher rate, (2) made all the payments for 2013, and (3) was ahead of payment – at the higher rate – at the time of the oral argument.

Mr. Francis should not be prevented from seeking relief in 2021CV91 because of opposing counsel's misconduct.

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[3] The Petitioner utilizes the label "the Francis parties." The only party to 2010CV201 was the Trust.

Third, Mr. Wegener Requests that the court issue a permanent restraining order against Mr. Francis from appearing pro se in any court in the state of Colorado. The only authority he cites is *Board of County Commissioners of Morgan County v. Winslow*, 862 P.2d 921, (Colo. App.). The holding in that case outlines the parameters corralling the sweeping relief Petitioner seeks. The Court held:

"A review of the thirty-four actions that Winslow has commenced in this court since 1983 indicates that nearly everyone can be traced, directly or indirectly, to the Morgan County case. By filing repetitive, often frivolous pleadings, Winslow demonstrates his failure to comprehend the fundamental principles of jurisdiction, stare decises and res judicata. Winslow's filings are many times incorrect in procedure and form the often attempts to evade the Court's final ruling on a matter by filing multiple motions for reconsideration. Once having commenced an action, he seeks to expand the proceedings to include matters outside the scope of the original complaint and, often, outside the Court's jurisdiction. Several parties said notify the court that Winslow has failed to comply with Federal and local procedural rules requiring the service of pleadings and other papers filed with the court. Monetary sanctions have not proven effective in deterring his abuse of the legal process.

In addition, the documents filed by respondents events a primary concern with matters of complete irrelevance to this proceeding and contain spirited, though groundless, assertions of corruption and criminal conduct by among others, the governor of Colorado, the individual members of this court, the Attorney General of Colorado, numerous County, state, and federal district court judges, and several attorneys who represent or have represented interest contrary to respondents. Respondents conduct here is not unlike the conduct prescribed in the cases cited above. The only significant distinction between those cases and the present one is that here, respondents interference with efficient judicial processes has been much more acute, initiating 162 separate legal proceedings, most of which have been dismissed for want of legal merit, is, by any measure, an
abuse of the judicial system which cannot be condoned.

The focus of the Petitioner's request is the Denver case, verified under oath and supported by exhibits. The allegations are not frivolous, they were made for the first time, and .

The Petition's only legal authority falls light-years outside the parameters of this case, not the least of which is that Mr. Francis be enjoined throughout the state of Colorado. The Respondent in *Board of County Commissioners* was apparently only enjoined in the county in which the 162 cases occurred. If that is the test, then The Petitioner's motive for this request is sharply underscored.

The petitioner lists 28 cases in support of this Petition. Space and time restraints preclude a response to each. It has already been observed that the Petitioner did not participate in a single one.

l of the cases were cases in which Mr. Francis had no connection whatsoever. Several involved claims against Mr. Harper and Mr. Erickson for the void judgments they claimed. More involved issues unrelated to the condominium case. All can be fully defended. However, Mr. Francis beleves it necessary to highlight a few examples.

Issue No. 2: Do the circumstances of Denver District Court Civil Action Number 2019CV91 justify the relief sought?

Where raised: Raised by the citation of *Board of County Commissioners of Morgan County v. Winslow,* 862 P.2d 921, (Colo. App.) coted at page .

Standard of Review: *Board of County Commissioners of Morgan County v. Winslow,* 862 P.2d 921, (Colo. App.)

The Petitioner cites one case in support, *Board of County Commissioners of Morgan County v. Winslow*, 862 P.2d 921, (Colo. App.). That court defined the bar for enjoining a person from appearing pro se *in that* Court. It said:

"A review of the thirty-four actions that Winslow has commenced in this court since 1983 indicates that nearly everyone can be traced, directly or indirectly, to the Morgan County case. By filing repetitive, often frivolous pleadings, Winslow demonstrates his failure to comprehend the fundamental principles of jurisdiction, stare decises and res judicata. Winslow's filings are many times incorrect in procedure and form often attempts to evade the Court's final ruling on a matter by filing multiple motions for reconsideration. Once having commenced in action, he seeks to expand the proceedings to include matters outside the scope of the original complaint and, often, outside the Court's Jurisdiction. Several parties had notified the court that Winslow has failed to comply with Federal and local procedural rules requiring the service of pleadings and other papers filed with the court. Monetary sanctions have not proven effective in deterring his abuse of the legal process.

In addition, the documents filed by respondents evidence a primary concern with matters of complete relevance to this proceeding and contain spirited, though groundless, assertions of corruption and criminal conduct by among others, the governor of Colorado, the individual members of this court, the Attorney General of Colorado, numerous County, state, and federal district court judges, and several attorneys who represent or have represented interests contrary to respondents. Respondent's conduct here is not unlike the conduct prescribed in the cases cited above. The only significant distinction between those cases in the present one is that here, Respondents interference with efficient judicial processes has been much more acute. Initiating 162 separate legal proceedings, most of which have been dismissed for want of legal merit, is, by any measure, an abuse of the judicial system which cannot be condoned.

In this case the amended complaint was verified and supported by exhibits. It was the first time the Respondent was sued for misconduct. The undisputed evidence

is completely against him. The *Board of County Commissioners* does not support him.

Issue No. 3: Does the Colorado Constitution guarantee Mr. Francis access to the Denver District Court

Issue Raised: The premise of the Petition

Standard of Review: Constitution of Colorado

"The Constitution of the state of Colorado guarantees to every person the right of access to courts of justice. Colo. Const. art II, Sec. 6; *See also Bd. Of County Commissioners v. Howard,* 640 P.2d 1128, 1129 (Colo. 1982). In Colorado, that guarantee allows persons to represent their own interests in legal proceedings. See, e.g., *Denver Bar Association v. Public Utilities Commission,* 154 Colo. 273, 281, 391 P.2d 467, 472 (1964) (a natural person may appear in his own behalf and represent himself, notwithstanding he may not be a lawyer"). *In re Marriage of Kanefsky* 260 P.3d 327 (Colo. App. 2010).

Issue No. 4: Did the Pitkin County District Court have jurisdiction over The Francis Children's Trust and Robert Francis in Pitkin County Civil Action Number 2010CV2010 (combined with Pitkin County 2011CV46)?

Issue Raised: Throughout.

Standard of Review: The ruling of the Colorado Court of Appeals and Judge Nichols.

It is undisputed that the District Court in 2010 never had jurisdiction over the Francis Children's Trust and Mr. Francis – ever. A number of the cases cited by the Petitioner involve efforts by those entities attempting to refute the claims of Mr. Lassalette, Mr. Erickson and the Association that they did have judgments against those entities.

Judge Nichols confirmed by her comments that the children's Trust was represented by Mr. Francis as its trustee. His appearance was void and the court never obtained jurisdiction over it to award attorney fees.

The holding of the Supreme Court like was established the Court never obtained at jurisdiction. Any case in which the Petitioner claims any affirmative relief is wrong.

CONCLUSION

I.

This is a classic case of "litigation by grievance" (by both the Petitioner and his c-counsel). It has nothing to do with his desiring to facilitate the integrity of the legal system.

The Petitioner has known for almost three years that the restrictive endorsements were on the checks. He has also known that the Trust was not in default because of the restrictive endorsements. It is impossible for him to have believed that there were no payments in 2010 (there were), impossible for him to have believed there were no payments for 2013 (there were), and impossible for him to have believed the Trust was behind by $70,000 (it was *ahead on payments at the time of oral argument).* It goes beyond a coincidence that his co-counsel made the same identical untruths.

His only conceivable defense to those untruths is to seek a stay to prevent the filing of a completely meritorious proceeding which would finally expose the concealing of the facts from a client that has paid him handsomely for being wrong. Attached is the proposed second amended complaint drafted before the receipt of Petitioner's request. **Exhibit 11**. It says it all.

That's what this claim is all about. This proceeding is if nothing a profound violation of Petitioner's duty of candor to *this Court.*

II.

It is impossible to address the cases listed. But two examples shed light on the fact the Petitioner has cited many that he knows nothing about.

A revealing glimpse to the petition appears from an order by Judge Christopher Seldin. **Exhibit 12**. He does not mention the source of Judge Seldin's information. The source is Mr. Lassalette who filed a pleading in another Seldin case. **Exhibit 13**.

Another is on order for attorney fees by Judge Lynch. **Exhibit 14**. She inherited the case for Judge Nichols. The order she signed was prepared by Mr. Erickson's lawyer. He and Mr. Francis exchanged numerous communications where Mr. Francis requested him to show in the Court file where Mr. Francis appeared individually. He was never able to do so. As a counsel of record he did receive the copy of the Court of Appeals ruling that Mr. Francis was not a party. **Exhibit 15**.

The pont is that Judge Nichils never had jurisdiction over either the Children's Trust or Mr. Francis personally. The Lynch order was meaningless, and the Petition's citing of that order as a basis for enjoinment is specious. This analysis could be carried forward to many of the citations.

That's what this claim is all about. The only purpose of this Petition is to interdict a claim *against* Petitioner and to prevent the Trust from obtaining the relief the Judi B. Francis Trust is entitled.

Respectfully submitted this 13th day of June, 2021.

By /s/ Robert A. Francis

Original signature on file

STATE OF COLORADO)
)ss
COUNTY OF PITKIN)

_____
Robert A. Francis

On June 14, 2021 before me, personally appeared Robert A. Francis who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities and that by his signature on the instrument he executed the instrument.

I certify under penalty of perjury under the laws of the state of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

CERTIFICATE OF SERVICE

I certify that I have served a true copy of the foregoing this 13h day of June, 2021, electronically upon the foregoing:

/s/ Robert A. Francis
Signature in file

..

DATE FILED: April 21, 2020 5:13 PM
FILING ID: A666DEAC3C910
CASE NUMBER: 2010CV201

Proof Positive

Lie Detection Specialists

Proof Positive Testing, LLC
5290 E Yale Circle, Ste 105, Denver, CO 80222
1755 Telstar Drive, Suite 300. Colorado Springs, CO 80920

Denver 303-805-1039, Colorado Springs 719-649-3433 Fax 720-746-2817

CONFIDENTIAL

Personal Information	
Name:	Bob Francis
Purpose:	Statement Verification
Exam Information	
Exam Location:	Denver
Exam Date:	March 14, 2020
Examiner:	Stephen Daniels
Final Call:	**NDI No Deception Indicated (Truthful)**

Section 1: Purpose of Examination

The main issue under consideration for the polygraph examination was whether or not the examinee was telling the truth to the pertinent questions listed under Section 3 of this report.

Section 2: Pre-Test Interview

On 3/14/2020 the subject Bob Francis arrived and voluntarily submitted to a polygraph examination. The following forms were read, completed, and voluntarily signed by the examinee: Polygraph Consent Form and Polygraph Waiver Form.

During the pre-test interview, the examinee Bob Francis **made the following Statements or Disclosures: The Subject stated that he was accused of not being credible regarding testimony and exhibits he presented. The Subject stated that he personally prepared or delivered each document attached to this report.**

At the conclusion of the pre-test phase of the polygraph examination, the examiner discussed and thoroughly reviewed all the test questions with the examinee. The purpose of this detailed review is to provide the examinee an opportunity to ensure he/she completely understands the questions before the onset of the testing phase of the examination.

Section 3: In-Test Phase

A Lafayette computerized polygraph system, model LX5000 was used for the collection of polygraph tests (test data). This instrument makes a continuous recording of autonomic responses associated with respiration, electrodermal activity, and cardiovascular functioning. The instrument also includes sensors designed to record peripheral behavior activity and cooperation during the examination. A *functionality check prior to the examination* confirmed the instrument was in proper working order.

EXHIBIT 1

EXHIBIT 7

The following pertinent questions were asked during the polygraph examination.

R4: Regarding the checks in the Affidavit; Did you lie about the preparation or delivery of those checks? **Answered No**
R6: Regarding the checks in the Affidavit; Did you withhold any of the pertinent checks from the Affidavit? **Answered No**
R8: Have you lied or withheld any pertinent facts from the Affidavit? **Answered No**

Section 4: Result

It is the opinion of this examiner this Examinee **was being truthful** during testing (**No Deception Indicated**).

Global analysis of the physiological data revealed that it was of sufficient interpretable quality to complete a standardized analysis of the test results. Analysis was performed using the following techniques:

Technique	Result	
Empirical Scoring System	**No Deception Indicated**	**Truthful**
OSS 3 Computer Algorithm	**No Deception Indicated**	**Truthful**

Empirical Scoring System

Analysis of the polygraph tests using the Empirical Scoring System resulted in statistically significant numerical scores that support a conclusion of **"no deception indicated" (Truthful)** when the Subject was answering the above listed questions

Section 5: Post-Test Interview: On 3/14/2020 the subject Bob Francis was cooperative and forthright as I conducted the interview and as I reviewed the questions. There were no obvious attempts to hide information or details from this examiner. There **were no** COUNTER MEASURES detected. The examination was concluded, and the subject was released from the office.

***Note**: The polygraph tests and allied documentation are maintained for a period of six months from the date of examination.*

Examiner: Stephen Daniels, APA, CAPE, CO DOC Steve@proofpositivetesting.com

Stephen Daniels

#2

Lafayette Instrument Company

Objective Scoring System - Version 3

By Raymond Nelson, Mark Handler and Donald Krapohl (2007)

Result	**No Significant Reactions**
Description	**Probability of non-deception: >99.9%**
Exam Type	Multi-facet (MGQT)
Scoring Method	OSS-3 Two-stage (Senter 2003)
Test of Proportions	None - No significant differences in artifact distribution
PF Name	Bob Francis 2
Report Date	Saturday, March 14, 2020
Subject	
Examiner	

Spot Scores

ID	p-value	Result
R6	< 0.001	No Significant Reactions
R8	0.003	No Significant Reactions
R2	< 0.001	No Significant Reactions

Decision Alpha (1 tailed)

Cumulative normal distribution (Berland 1985)

Setting	Value
NSR	0.050
SR	0.050
Bonferroni corrected alpha	0.017
Test of Proportions (1 tailed)	0.050

Components

Component	Weight
Pneumo	0.19
EDA	0.53
Cardio	0.28

Relevant Questions

	Exam 1 Chart 4	
R6	Regarding the Affidavit about the conversation have you withheld or lied about any of that conversation?	No
R8	Have you directly lie about anything in the conversation affidavit filed with the Court?	No
R2		No
	Exam 1 Chart 5	
R6	Regarding the Affidavit about the conversation have you withheld or lied about any of that conversation?	No
R8	Have you directly lie about anything in the conversation affidavit filed with the Court?	No
R2	Regarding the Affidavit about the conversation involving Yourself, Ms. Schindler, Mr. Allen, have you withheld or lied about any of the pertinent facts?	No
	Exam 1 Chart 6	
R8	Have you directly lie about anything in the conversation affidavit filed with the Court?	No
R2	Regarding the Affidavit about the conversation involving Yourself, Ms. Schindler, Mr. Allen, have you withheld or lied about any of the pertinent facts?	No
R6	Regarding the Affidavit about the conversation have you withheld or lied about any of that conversation?	No

Charts Scored

Exam	Chart	Date	Time
1	4	3/14/2020	1:52 PM
1	5	3/14/2020	1:57 PM
1	6	3/14/2020	2:02 PM

Remarks

AFFIDAVIT

1. I, Robert A. Francis, being first duly sworn depose and say:
2. That I make this affidavit from my personal knowledge.
3. That all of the documents attached to this affidavit I personally prepared and delivered to the Defendants in Pitkin County Colorado District Court Civil action number 2010CV201 (combined with Civil Action No.2011CV46).
4. All of the documents are true and correct.
5. Any document with the signature of my wife, Judi B. Francis, or me, is true and correct.

STATE OF COLORADO)
)ss
COUNTY OF PITKIN)

Robert A. Francis

On April 21, 2021 before me, Daryl Mitros personally appeared Robert A. Francis's who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in their authorized capacities and that by his/her/their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under penalty of perjury under the laws of the state of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

DARYL MITROS
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20194019875
MY COMMISSION EXPIRES MAY 29, 2023

Daryl Mitros

Affidavit of Robert A. Francis

STATE OF COLORADO)
) ss.
COUNTY OF PITKIN)

Robert A. Francis states or affirms under penalty of perjury:

1. I am a Colorado-licensed Attorney and Counselor at Law. My Colorado Supreme Court-issued registration number is 6104. My date of admission to practice in Colorado was October 29, 1971.

2. The matters set forth herein are based on my own knowledge.

3. I am a graduate of Indiana University (Class of 1962), and of the University of Michigan School of Law at Ann Arbor (Class of 1968). During the Vietnam Era I served as an active-duty officer in the United States Marine Corps. I remain an active Marine Corps veteran, and I continue to participate in Marine Corps-related charitable and service-related service activities.

4. I have known George M. Allen both personally and professionally since the early 1990's, when he returned to practice in Colorado, after some 15 years handling complex civil litigation in Micronesia, Hawaii, Guam, and elsewhere in the Western Tropical Pacific.

5. My first acquaintance with George Allen was when he represented adverse parties to my clients in state and federal litigation involving rights of succession as to an Aspen business. In that litigation he was thoroughly professional, meticilous, and always well-prepared.

6. About six years ago, when faced with complex litigation issues involving property owned by family trusts as to which I am variously a trustee or hold other fiduciary responsibilities, I contacted George to represent our family interests. In the ensuing years that has involved litigation matters in state courts in both Colorado and Hamilton County, Ohio, and federal litigation in Colorado. In some of those matters George has been my co-counsel. At no time, however, has he represented me in a personal or individual capacity.

EXHIBIT
32

7. Before retaining George in 2011 or 2012, I researched his professional background more thoroghly than I had previously inquired. I now know he is an alumnus of Harvard College (Class of 1963), and the University of Colorado School of Law (1967). He practiced in Denver from 1967 to 1975. While in Denver he was class counsel and lead counsel in the landmark case of *Rich v. Martin Marietta Corp.*, 522 F.2d 333 (10th Cir. 1975), a case on which he and I have relied for its precedents as to breadth of discovery and presumption of discrimination in employment litigation under 42 U.S.C. §1983, and Title VII of the 1964 Civil Rights Act, 42 U.S.C. §2000(e). *Rich* has been cited and adopted in every federal circuit, as reflected in more than 60 citations in the Federal Reporter, and in over 80 federal district court cases, as well as in numerous state decisions.

8. In 1975 George relocated to the Marshall Islands where he filed and successfully prosecuted nuclear testing-related litigation on behalf of indigenous landowners at Bikini Atoll. He was later appointed by the late Robert Peckham, then Chief Judge of the U.S. District Court in the Northern District of California, as subclass lead counsel in the so-called Guam Land Cases, *Jose Torres, et al. v. United States*, Case No. 81-CV-0078-RLP (D. Guam), a matter involving thousands of parcels of land taken after World War II for the more than 60 permanent U.S. military installations that occupy more than one-third of the land area of Guam. In that litigation, George retained Stanford Research Institute, Intl. in Menlo Park CA for a $200,000-plus statistical analysis of land values on Guam in the post-World War II era. The SRI study formed the basis of allocation of over $40 million in settlement funds.

9. In 1999, George filed and obtained a successful outcome in *Noyes v. Zions Bancorporation, et al.* (D. Utah 1999), the only post-World War II private party Clayton Act suit where a federally approved multi-billion-dollar super-regional bank merger was stopped. That matter involved complex statistical analysis of three markets where Dr. Kenneth Thomas of the Wharton School found that the proposed merger would be anti-competitive. After voluntary recusal of the entire Utah federal bench, John Edwards Conway, then Chief Judge of the U.S. District Court for New Mexico, denied the dismissal motions filed by Zions and First Security Bank, N.A., and the day following denial of those motions, Goldman Sachs, the financial advisor to Zions, withdrew its recommendation for the merger.

10. In my work, I continue to manage investments and assets of complex family trusts. On their behalf trades are made weekly, always in reliance on statistical market research and statistical data. I work with statistics constantly, and have done so for decades. I have served as a fiduciary trust officer for transactions involving many millions of dollars, and as a lawyer I have advised on transactions involving assets of many millions of dollars.

11. At George Allen's request I have read and reviewed the September 15, 2017 Precision Consulting Company, LLC Report on sentencing patterns by County Judge Bradley Burback. The scholarship in that report is excellent, and its conclusions, drawn by its distinguished authors, are unimpeachable, as are their academic credentials from Caltech (Mr. Guo), and the University of Cambridge (Dr. Barugel). I am well satisfied that the Guo-Barugel Report establishes a demonstrated and profoundly disturbing pattern and practice of bias in sentencing by Judge Burback.

12. In litigation George Allen has handled for our family he sought and obtained recusal of Pitkin County District Judge Gail Nichols under Colo. R. Civ. P. Rule 97. I reviewed every word of those submissions. They were careful, and respectful, and Judge Nichols granted the Rule 97 motion without awaiting filing of a Reply supporting the motion. I understand the record of *Rich v. Martin Marietta* includes a 28 U.S.C. §144 recusal motion directed to the then Chief Judge of the U.S. District Court in Denver, who granted the motion, and the case was then tried by the late Chief Judge Sherman Finesilver.

13. I have worked almost daily with George Allen for many years. He is a former principal in America's oldest law firm, Cadwalader, Wickersham & Taft, founded in New York City in 1792. He is a former member of the Board of Governors of the Colorado Bar Association. His record of achievement is well known. His recognition as one of the premier civil trial lawyers on the Colorado Western Slope is well-deserved.

I have read the above affidavit and the statements therein are true.

Robert A. Francis

Robert A. Francis

Subscribed and sworn before me this 2d day of October, 2017.

23. We will be sending an itemization of the costs as soon as they are assembled. It is anticipated that they will be well into five figures.

24. Since the Owner is entitled to its costs without the necessity of filing suit, it will do that by applying the third quarter assessment thereto, the fourth quarter, and every other quarter thereafter until the claim is sooner paid as the result of the requested mediation.

25. In the meantime, please consider this that request for mediation and advise me of the Association's availability for mediation. I have made tentative arrangements with Aspen Dispute Resolution. They are available pretty much any time over the next two weeks.

26. There's another matter. Probably a month-six weeks ago I spoke with Richard Lane the Younge and Hockensmith lawyer defending the Association and the three Directors/Officers about a situation, I discovered while assisting George with the brief on appeal. I asked him to pass the information on to you. He said that he would give it to Ben to pass on.

27. We have been advised that the material was passed on, but have heard nothing from the Association. We are passing it on herewith. Please respond.

28. It seems that John has miss-appropriated (I actually heard it described as "embezzlement"-not my word) of money which should have gone to the Association.

29. Since this behavior was the type which could lead to serious sanctions by the grievance committee, a grievance was filed. The details of the grievance are lengthy. To save time a copy of the grievance is attached. Simply, John has taken money that belongs to the Association to satisfy non-existent judgments for attorney fees. If you have any questions, please contact me, preferably by phone.

Sincerely,

The Owner of Unit 1-A

Notary Public, State of Colorado

Signed by Robert A. Francis on 10/2/2017.

Sayeh Pakzad
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20064050509
MY COMMISSION EXPIRES January 18, 2019

RC. 3, 2011

Attn: Treasurer, Aspen Mountain Condominium Association:

Enclosed is an overpayment of the 1st quarter 2012 assessment for Unit 1-A.

This payment is directed to the Treasurer because the governing documents for the Condominium Association appoint the Treasurer as the appropriate individual for receipt of all amounts due the Association.

Unfortunately, there is a question as to whether the Association has any validly constituted officers, so this will be delivered to the Treasurer as thought to be in existence by the Association.

Of course this payment is with reservation of all rights, and tendered solely to be applied against the said alleged assessment due. It is the position of the Owners of Unit 1-A that all alleged assessments for the entire complex have been illegally assessed since April 1, 2010, and that, accordingly, the payments made by said owners since that time were not due.

Sincerely, the owners of Unit 1-A

mutuelle 694
2019 2012

DEPOSIT INSTRUCTIONS: ALPINE BANK

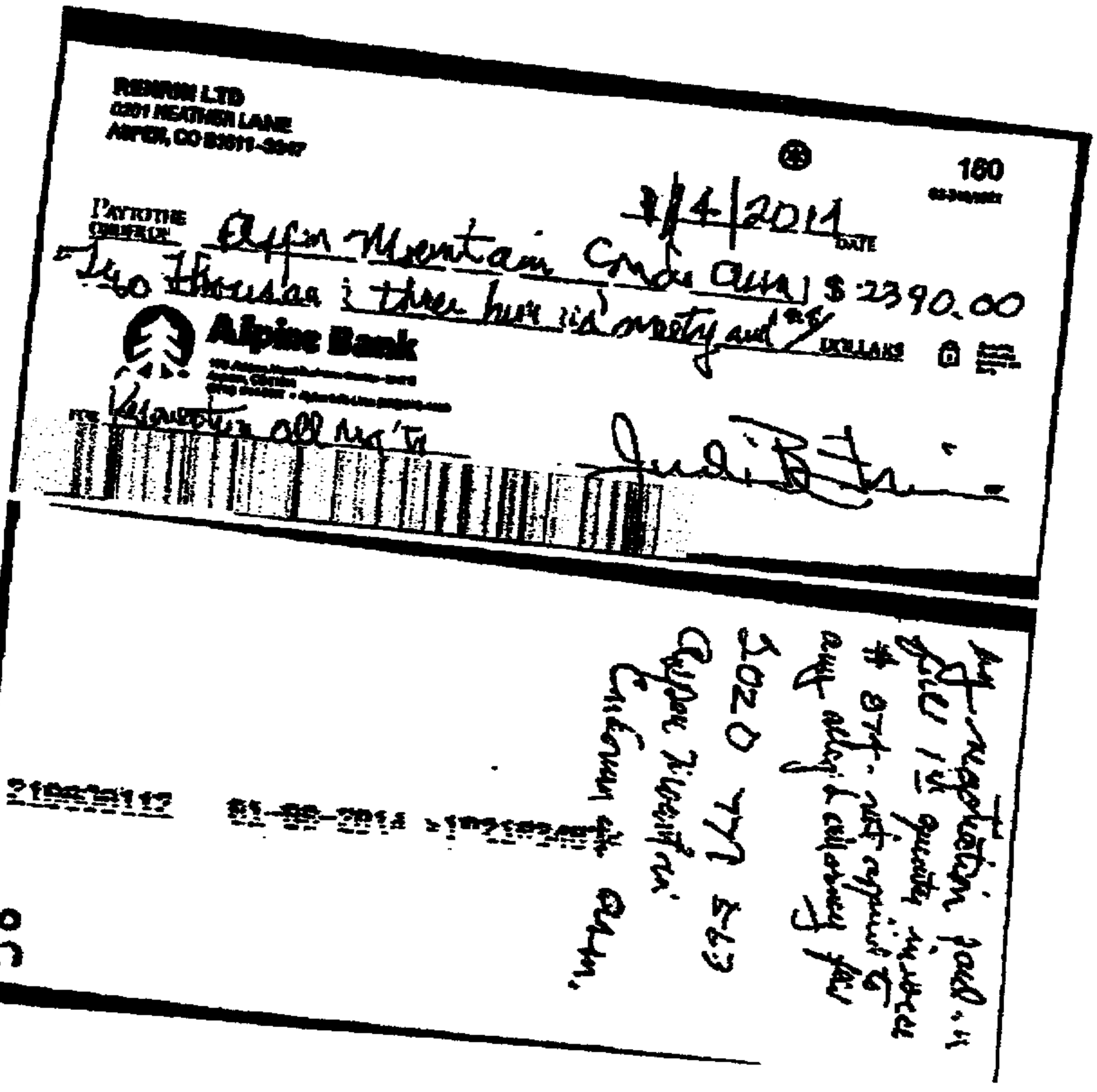
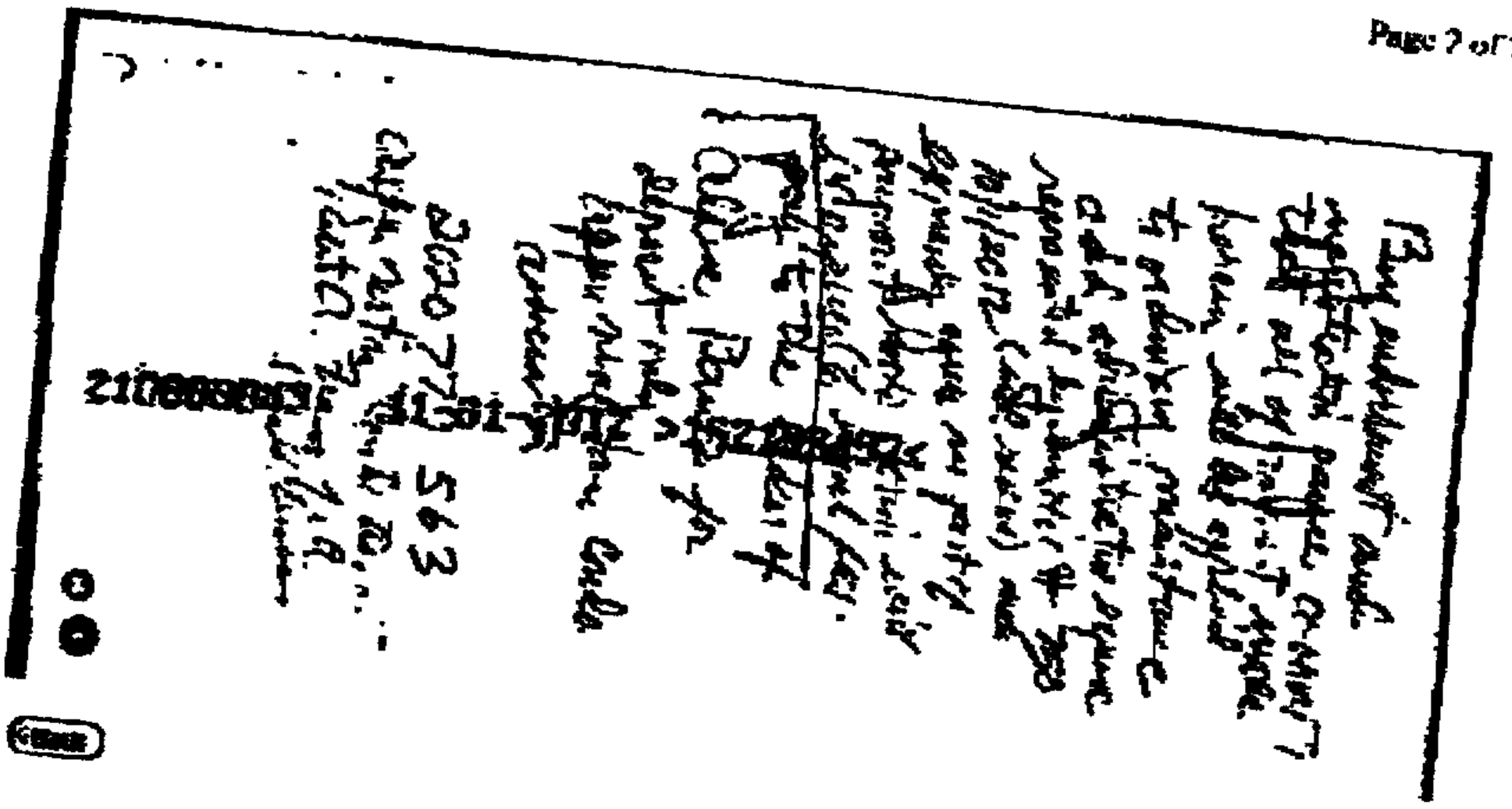


EXHIBIT 2



EXHIBIT

3

VECTRA BANK

SUMMARY ACCOUNTS BILL PAY TRANSFERS SERVICES Messages Profile Help Log Out

Balances Activity eStatementsSearch

View Transaction

Use this screen to view a cleared transaction.

Transaction Information

Description: CHECK
Account: Deposit Account - xxx-xx168-2
Transaction: Check 4056
Date Cleared: 01/20/2011
Amount: $ 2,099.58

Date Initiated: 01/20/2011
FI Reference ID: 20110121024941770B5

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by calling Customer Support from the number below. In order to maintain this service, there is scheduled maintenance every Saturday at 11:00 PM MT and on the last day of each month at 7:00 PM MT. During this time, which typically lasts about six hours, your images may not be available. We apologize for the inconvenience this may cause.

Transaction Image

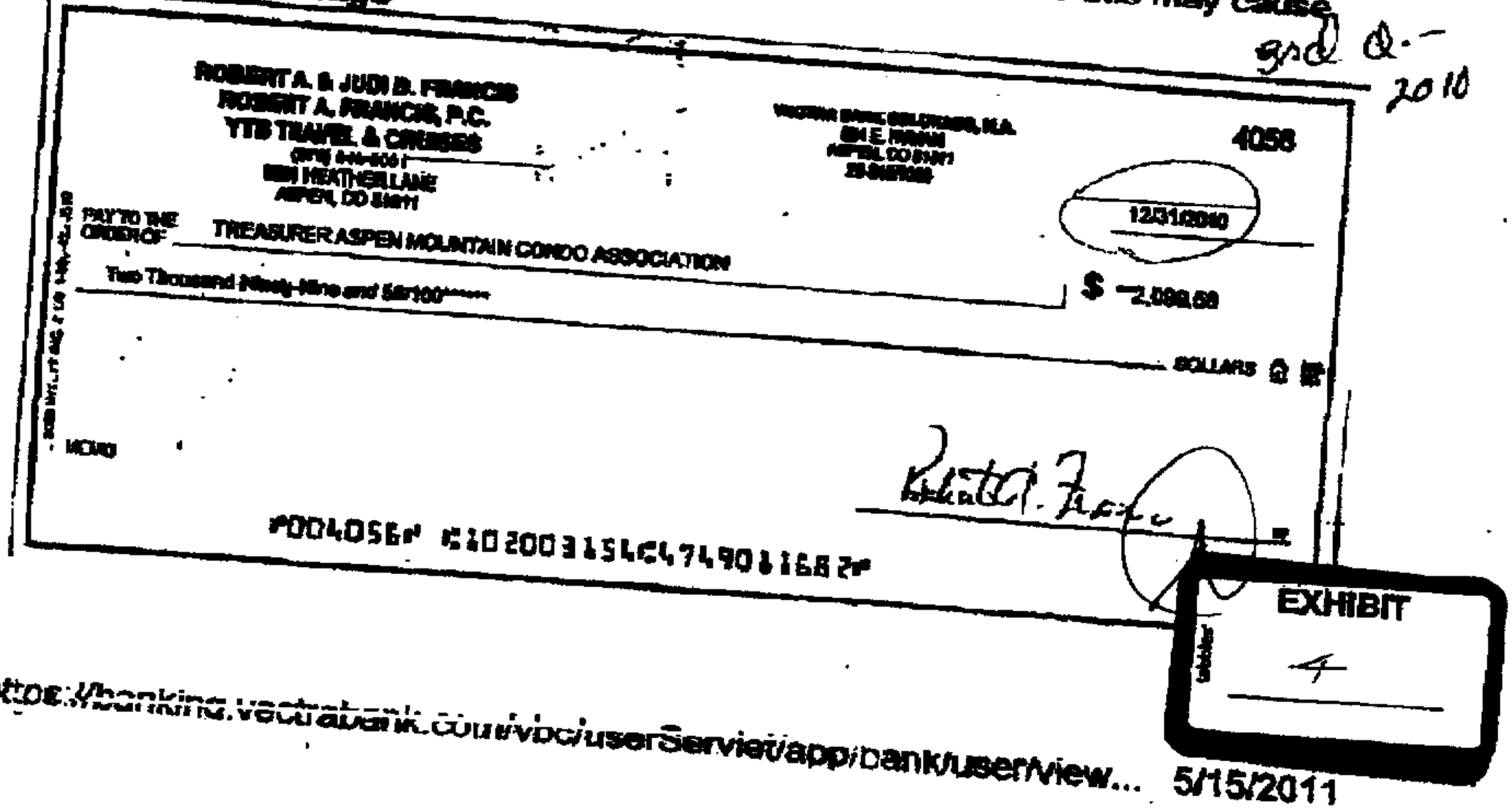


EXHIBIT 4

Matt:

To confirm the phone conversation we just had:

You agree the request for attorney fees of the Aspen Mountain Condominium Association and Steve Daubenmire is currently subject to a stay of execution and upon the lifting of the stay a response to the request for attorney fees can be filed.

We also agree that the lifting of the stay would trigger the time for filing a demand for a hearing.

We talked about the remarks made by the Association's attorney John Lassalette during the oral argument in the Court of Appeals August 22, 2018. Those remarks reopened the issue of attorney fees anew for the entire case as to all parties. His argument is verbatim in the complaint. Because it is a new claim there is no res judicata, statute of limitations, issue preclusion, etc. That it was a new claim is clear from the amended complaint—verified and with 31 exhibits. You confirmed that you were not familiar with the complaint. In filing his motion to dismiss he was grasping at straws.

I spoke with him before he filed his motion to dismiss. He didn't have any answer to his false answer. The motion to dismiss was blatantly absurd.

John was asked, if attorney fees, interest, and late fees were omitted from the amount due for assessments, would the Judi B. Francis Trust be in default. The correct answer should have been "no." The Court was asking John if there had been restrictive endorsements on the checks.

His answer is in the complaint. Those false answers were what led the Court to affirm the decision. Had he answered correctly the foreclosure would have been set aside and the Association would have been liable for likely more than seven figures in attorney fees.

I and my wife Judi were present at the oral argument. So was Steve. At the hearing January 23rd, 2018 Steve testified that he saw all of the restrictive covenants, but disregarded them to apply them wrongly to attorney fees.

I think we all agree that a restrictive covenant controls. Steve's applying the assessment payments to attorney fees was clear malfeasance. Is there a conflict defending both Steve and the Association?.

2010CV201 has been appealed. Just this week I got notice that the records had been completed and submitted. That triggers the filing of my opening brief within several weeks. Given Lassalette's remarks, in my opinion, the Association clearly has/had a cross-claim against him.

Have a great weekend.

Bob

.

View Transaction - Vectra Bank

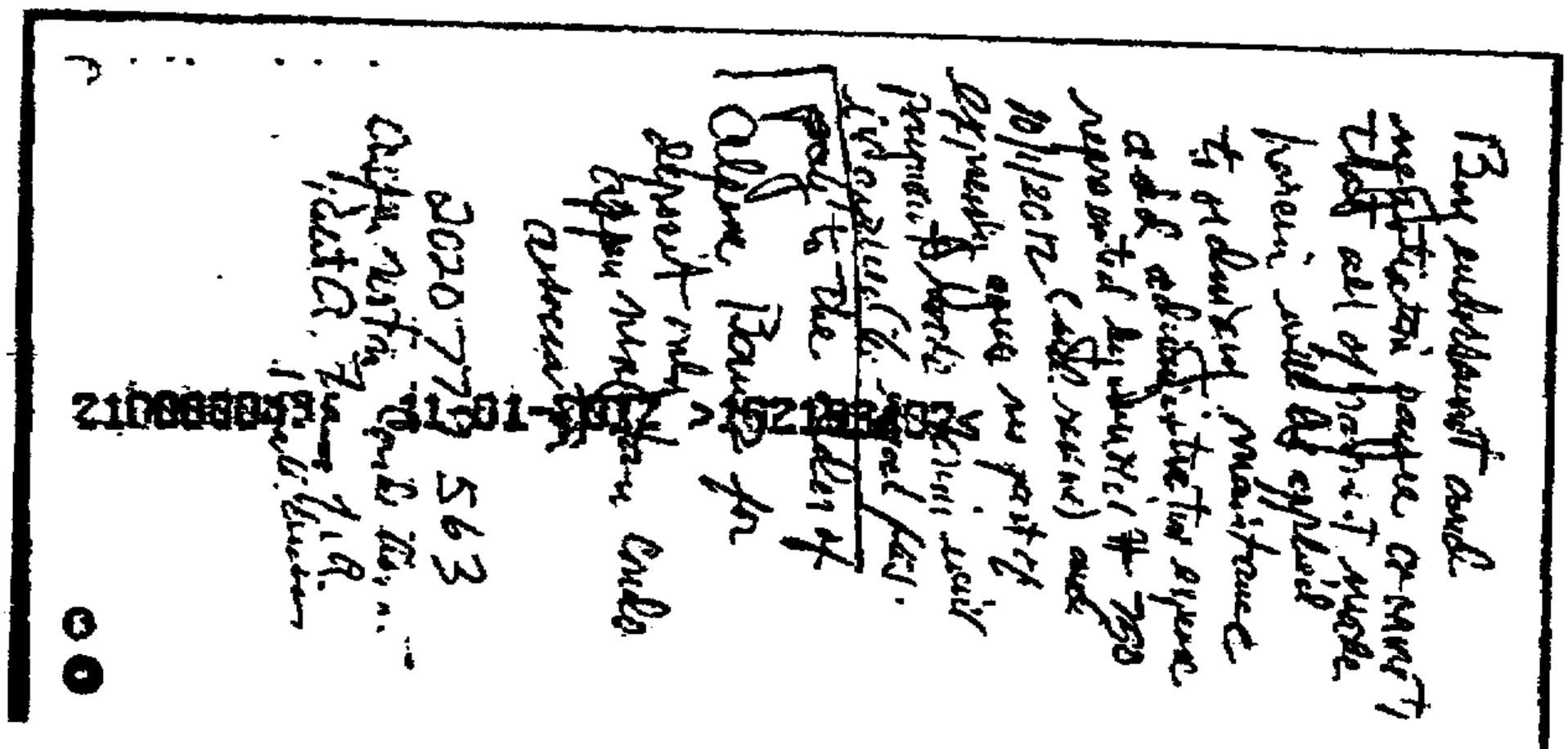


EXHIBIT
5

VECTRABANK Colorado

SUMMARY ACCOUNTS BILL PAY TRANSFERS SERVICES Messages Prefs Help Log Out

Balances Activity eStatements/eNotices Search

View Transaction

Use this screen to view a cleared transaction.

Transaction Information

Description: CHECK
Account: Deposit Account - xxx-xx168-2
Transaction: Check 3342
Date Cleared: 12/31/2012
Amount: $ 10.00

Date Initiated: 12/31/2012
FI Reference ID: 20130101125431648 22

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by calling Customer Support from the number below. In order to maintain this service, there is scheduled maintenance every Saturday at 11:00 PM MT and on the last day of each month at 7:00 PM MT. During this time, which typically lasts about six hours, your images may not be available. We apologize for the inconvenience this may cause.

Transaction Image

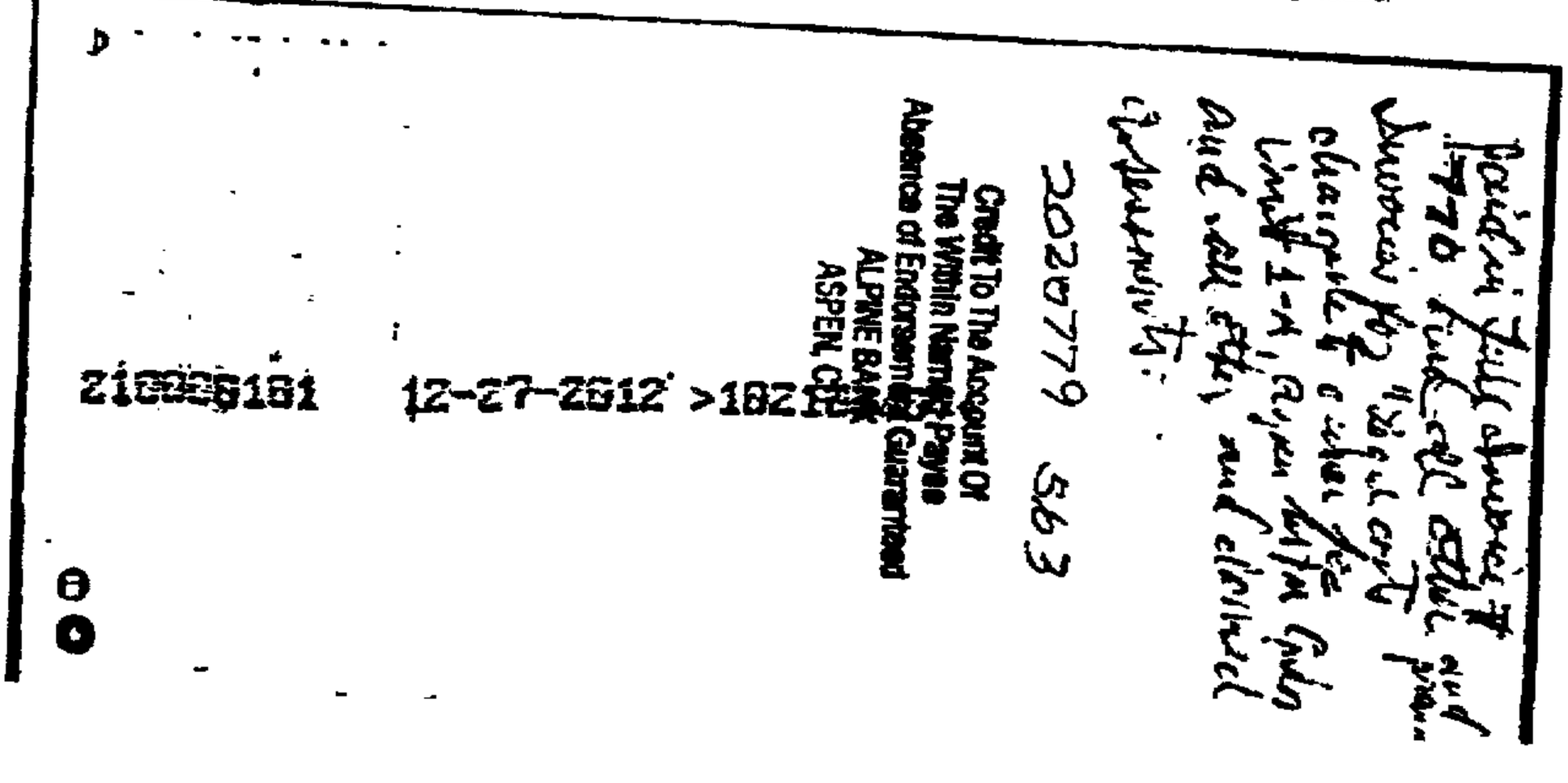


EXHIBIT 6

governing legal documents. Warning notices shall be deemed to be routine notices and shall be sent by regular mail first class or by e-mail. All other notices shall be delivered by certified or registered mail.

3. Request for Hearing. If an Owner desires a hearing to challenge or contest any alleged violation and possible fine, or to discuss any mitigating circumstances, the Owner must request such hearing, in writing, within ten (10) days of the date of the Notice of Alleged Violation. The request for hearing shall describe the grounds and basis for challenging the alleged violation or the mitigating circumstances. In the event a proper and timely request for a hearing is not made as provided herein, the right to a hearing shall be deemed forever waived. If a hearing is not requested within the 10-day period, the Board shall determine if there was a violation based on the information available to it, and if so, assess a reasonable fine as set forth in the fine schedule, within a reasonable time after expiration of the 10-day period. The Board of Directors shall give written notice of said fine to the applicable Owner.

4. Board of Directors to Conduct Hearing. The Board shall hear and decide cases set for hearing pursuant to the procedures set forth herein. The Board may appoint an officer or other Owner to act as the Presiding Officer at any of the hearings. The Board shall determine whether a violation exists and impose fines.

5. Conflicts. Any Board member who is incapable of objective and disinterested consideration on any hearing before the Association shall disclose such to the President of the Association prior to the hearing in the case. If possible, or if advance notice is not possible, then such disclosure shall be made at the hearing, and the Board member shall be disqualified from all proceedings with regard to the hearing. If disqualification of any Board member(s) results in an even number of remaining Board members eligible to hear a case, the Presiding Officer may appoint an Association member, in good standing, to serve as a voting member of the hearing board.

6. Hearing. The Board or its managing agent on behalf of the Board shall inform the Owner of the scheduled time, place, and date of the requested hearing by certified or registered mail. The Presiding Officer may grant continuances for good cause. At the beginning of each hearing, the Presiding Officer shall establish a quorum, explain the rules, procedures, and guidelines by which the hearing shall be conducted, and shall introduce the case before the Board. The complaining parties and the Owner shall have the right but not the obligation to be in attendance at the hearing. Each party may present evidence, testimony, and witnesses. The decision of the Board at each hearing shall be based on the matters set forth in the Notice of Alleged Violation and Hearing, Request for Hearing, and such evidence as may be presented at the hearing. Unless otherwise determined by the Board of Directors in accordance with the terms of the Colorado Common Interest Ownership Act, all hearings shall be open to attendance by all members of the Association. If a complaining party is unable to attend the Hearing, he or she may instead submit a letter to the Board explaining the basis of the complaint.

7. Decision. After all testimony and other evidence have been presented to the Board at a hearing, the Board shall render its written findings and decision, and impose a reasonable fine, if applicable, within a reasonable period of days after the hearing. A decision either a finding for or against the Owner shall be by a majority vote of the Board of Directors or hearing body. The Board may also issue and record with the Clerk and Recorder a Notice of Violation. On notice of satisfactory compliance with

EXHIBIT 1

indicates that he is both a non-party and seeks to appeal in his capacity as a Trustee.

This Court will not consider pleadings from pro se parties who are represented by counsel. Here, in his trustee capacity, Robert A. Francis is represented by counsel George Allen. Moreover, if an individual is not a proper party to the action, there is no standing to appeal. *Duke v. Pickett*, 30 Colo. App. 432, 494 P.2d 120 (1972). It appears that Robert A. Francis appeared in the district court in his capacity as a trustee only, and not as an individual.

Therefore, the Court ORDERS appellant Robert A. Francis to show cause, in writing and within 21 days, why the two pro se notices of appeal should not be dismissed with prejudice.

The Court DEFERS on all remaining motions until the jurisdictional issues raised in this Order have been resolved.

BY THE COURT

and III provide further support for the accuracy and credibility of the Exhibits A1 through 3.

20. Mr. Francis testified that Owners don't owe any past due assessments, late fees, interest or legal fees. He testified that AMCA actually owes him money. The Court does not find Mr. Francis' testimony to be credible. Not only was his testimony self-serving but he provided absolutely no written proof that Owners made their payments. He didn't introduce any cancelled checks or money orders reflecting payments that were allegedly made. The Court thus finds that with the exception of the payments reflected in Exhibit A1, Owners owe AMCA past due assessments, interest, late fees and attorney fees.

CONCLUSIONS OF LAW AND ORDER.

21. Owner's twice responded to AMCA's July 2010 invoice by stating that they were not going to pay the assessments. (See Exhibits NNN and OOO.

22. After the Owner's responses, AMCA engaged counsel to collect the assessments. Such action is authorized in the Declaration. (See Exhibit G, Article G).

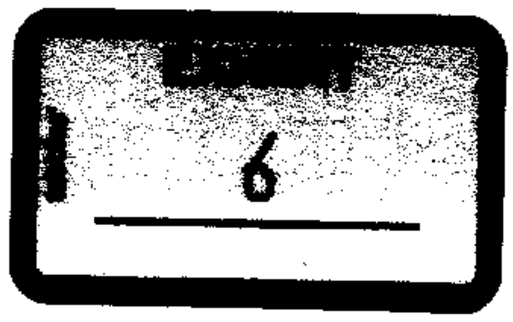
23. Owners have not timely paid all of the assessments owed.

24. The Declarations allow for payments to be first credited to attorney fees.

25. AMCA is entitled to reimbursement for its collection costs and reasonable attorney fees and costs incurred as a result of Owners failure to timely pay the assessments. See, C.R.S. § 38-33.3-123(1)(a) and the Declaration.

26. The accounting contained in exhibits A1-4 accurately reflects the amount owed by Owners to AMCA under the Declaration:

> i. Quarterly and special assessments in the amount of $73,311.53 (Article 4, Section 4.3(b); Article 5, Sections 5.2 and 5.5); and



Rob Francis <jmbg123@comcast.net> 8/14/2020 8:21 AM

Re: 201/43

To John Lassalette <lassalette@hotmail.com> • ben@wegscar.com <ben@wegscar.com>

You have seen my supplementation of the record. You introduced those records. On their face they show that excluding interest, late fees, and attorney fees, we did overpay for 2010, we were not $70,000 in arrears, and we overpaid for 2013. That nails your responsibility, if it was needed, to advise the association of your malpractice and to withdraw from representation of the Association, Miller, Daubenmeir and Lynton.

Robert A. Francis

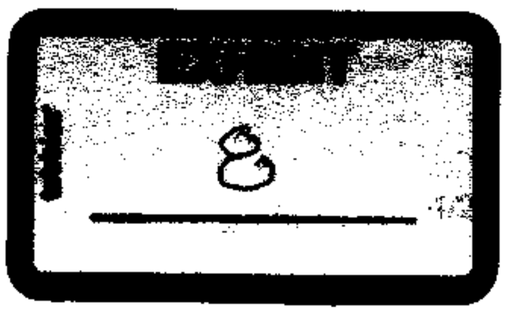
On 08/13/2020 9:56 AM John Lassalette <lassalette@hotmail.com> wrote:

See prior correspondence on this topic.

John Lassalette
John M. Lassalette, P.C.

206 Cody Lane, Ste. D
Basalt, CO 81621
970-544-6470
www.solutiondrivenlaw.com

On Aug 12, 2020, at 2:01 PM, Rob Francis < jmbg123@comcast.net> wrote:



John Lassalette <lassalette@hotmail.com> 8/27/2020 1:36 PM

Re: 24 Aug 2020 letter

To Rob Francis <jmbg123@comcast.net>

Mr. Francis,

I'm in receipt of your correspondence attachment, and do not understand your position with regard to conflict of interest. I represented one client (AMCA) throughout this litigation, and have no other client involved in the matter. I have no position adverse to AMCA, nor does it have a position adverse to me or my law firm.

You reference my request for attorney fees, but that was on behalf of, and to secure attorney fees awarded by the Court in favor of AMCA. AMCA paid my invoices, so there is no dispute or conflict of interest in pursuing AMCA's award of attorney fees on their behalf.

The governing documents and pertinent statutes dictated that attorney fees, interest and late charges are properly included as assessments when incurred in an enforcement action in conformity with such governing documents and statutes.

You speak of a foreclosure, yet there was never a foreclosure sale of the subject property. It is my understanding the property was sold in an arm's-length transaction after being marketed and advertised by the Owners through a real estate broker.

The Owners have not been declared the prevailing party in this litigation at any juncture. The Owners lost the statutory ability to recover attorney fees when they violated the governing documents through nonpayment, which led to the enforcement action undertaken on behalf of AMCA.

AMCA has been advised of every filing and development in this matter for the duration of my involvement. There is no malpractice claim basis With regard to my firm or Mr. Wegener's firm.

Thank you.

John Lassalette
John M. Lassalette, P.C.

206 Cody Lane, Ste. D
Basalt , CO 81621-8123
970-544-6470
www.solutiondrivenlaw.com

On Aug 24, 2020, at 5:12 PM, Rob Francis < jmbg123@comcast.net> wrote:

Rob Francis <jmbg123@comcast.net>

To lassalette@hotmail.com <lassalette@hotmail.com>

9/4/2020 3:38 PM

John: Please see the attached.

The conflict comes from the first sentence of your response. You don't have the same position as the Association. Your position is that absent attorney fees, interest, and late fees the Trust was in default. The Association's position is that absent the items we were not in default.That is their position because Daubenmier said so.

Robert A. Francis

- Lass email re conflict.docx (21 KB)
- App 1, Wegener objection, August 28, 2020.pdf (111 KB)
- App 2 Wegner,.pdf (292 KB)
- App 3 Wegner.pdf (140 KB)

John Lassalette <lassalette@hotmail.com> 9/10/2020 2:50 PM

Re: 8 Sept email

To Rob Francis <jmbg123@comcast.net>

Mr. Francis,

I do not have any reason or responsibility to answer your questions. Your three assumptions are all **incorrect**, again based upon your failure to listen or read any relevant document.

I never represented any of the directors individually. Defense representation of the directors was under an insurance policy. The directors did not bring any claims individually. I only represented the Association, which would be obvious to you if you had read any of my filings over the past 10 years.

Judge Lynch's ruling relied on far more than Steve's testimony. There were numerous exhibits entered into the record, all of which corroborated and supported his testimony and his accounting. The polygraph test taken by you is entirely irrelevant. Also, any restrictive endorsement on a check you deposited directly into the Association's account or the Court Registry is of no consequence as the Association did not accept and endorse such checks. Such deposits bypassed the Association and have no binding effect on the Association. Checks which you wrote but were never deposited also are of no consequence in either the accounting or as to a restrictive endorsement.

The directors were provided the address to the Court of Appeals oral argument website, to view Mr. Wegener and my oral arguments. I have only heard positive comments and strong compliments.

If you feel there was nothing to do in pursuit of the collection and foreclosure aspects of the case, such misplaced notions might explain why you are currently in the situation you occupy.

If you feel there have been violations of the RPC, feel free to report them.

John Lassalette
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On Sep 10, 2020, at 3:20 PM, Rob Francis < jmbg123@comcast.net> wrote:

You still haven't answered the questions I have asked. I will have to assume that the answers are (1) yes, there were no payments for 2010, (2) yes, there were no payments in 2013 and (3) yes, absent attorney fees, interest and late fees the Judi B. Francis Trust was $70,000.00 in arrears.

And the conflict? I gather you still represent Steve individually. Since he introduced as the President the only evidence which allowed Lynch to conclude the Trust was in default. If he had been asked the above three questions he would have to say said "no" to all three, and Lynch would have ruled in our favor and the case would have been reversed. If you read my brief you have seen I took a lie-detector which proved that all the checks except the two Gary Sandblom sent in for the third and fourth quarters of 2010 and I think one Judi signed for the court registry in 2013.had restrictive endorsements.

I assume you haven't reviewed your remarks at the COA with any of the Board Members.

I also assume that you did put in a pleading that you did not do anything in defense of the Association on the Trust's complaint side of the case.

If that is true, I assume the fees Lynch awarded for "wining some things" was wrong. You and I both know that any fees you claimed for the defense were rolled into the fees for the foreclosure. When you took over the foreclosure Harper had filed the foreclosure case and there was nothing to do until the Trust's case was over. Yet you claimed $160,000 in attorney fees for the foreclosure ($190,000-$30,000) when there was nothing to do.

Robert A. Francis

On 09/09/2020 5:54 PM John Lassalette < lassalette@hotmail.com> wrote:

Mr. Francis,

You don't listen, you don't review the documents, you don't review the orders of the court; I'm not going to waste any more of my time with explanations that fall on deaf ears. Please do not send me anymore of these position letters, the matter will be resolved by the courts. However, please feel free to email any conferral required under the Rules of Civil Procedure or the Appellate Rules.

Thank you.

John Lassalette
John M. Lassalette, P.C.

John Lassalette <lassalette@hotmail.com> 9/10/2020 3:09 PM

Re: 8 Sept email

To Rob Francis <jmbg123@comcast.net>

Mr. Francis,

Are you aware that you sent me the same email three separate times? It was sent once at 3:20 PM, again at 3:49 PM and the third time at 3:58 PM. Are you experiencing cognitive difficulties? If you were unaware of your repetitive actions, you may wish to consult a healthcare provider.

John Lassalette
John M. Lassalette, P.C.

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On Sep 10, 2020, at 3:58 PM, Rob Francis < jmbg123@comcast.net> wrote:

Robert A. Francis

——— Original Message ———
From: Rob Francis < jmbg123@comcast.net>
To: John Lassalette < lassalette@hotmail.com>
Date: 09/10/2020 2:20 PM

Rob Francis <jmbg123@comcast.net>

To lassalette@hotmail.com <lassalette@hotmail.com>

9/22/2020 1:32 PM

John:

You asked where the conflict comes from. From lots of places, but a couple days ago I came across the attached affidavits. Because I was not a party I hadn't seen them. To say i was surprised, is an understatement. You notarized them.

The conclusions sworn to in the affidavit are completely false. The document was hand delivered, Where did your information regarding what the affidavits come from?

But the fact that you knew that the Association had a cross-claim against Erickson. for convincing it it could reassess the assessments, unless, as I suspect, you didn't know CCIOA prohibited a reassessment, is absolutely a clear conflict.

The conflict comes from Erickson trying to cover his butt, and you were a party to it. Erickson was not your client. He owes a duty to your client. Your client has a crossclaim against him for blowing the estopple certificate. You made it possible to do it.

Did you notarize the affidavit knowing they were false? Or did the information come from Erickson and Cross? Why were you the notary?

Bob

P.S. I just reread the affidavits. Clever that Erickson and Cross used the word "personally," dancing around the fact that CCIOA allows the request for an estopple certificate to be delivered to the registered agent. It was in this case. Did he tell you that? What did he tell you?s

Robert A. Francis

- **Lass affidavits of Lassalette and Cross, September 22, 2020..pdf (821 KB)**

August 24, 2020.

John and Ben:

You may have seen the documents introduced by John at the attorney fee hearing. They flatly proved that absent attorney fees, interest, and late charges, the Judi B. Francis Trust overpaid at the time of foreclosure and throughout.

That nails the conflict that each of you have. If it didn't exist all along, iit was conclusively presented by asking for attorney fees.

How both of you can represent the Association in the appeal escapes me. You would have to agree on behalf of the Association the Trust was in fact overpaid prior to the foreclosure and the foreclosure could not have happened.

It has already been agreed that the Trust prevailed on the declaratory judgment and therefore is entitled to its fees as the prevailing party. The requesting of fees reopened that issue.

John, your ethical obligation to advise the Association it may have a malpractice claim against you is even more pronounced.

A word to the wise.

<logo_linkedin_92x22.png>

On Sep 22, 2020, at 2:32 PM, Rob Francis < jmbg123@comcast.net> wrote:

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Robert A. Francis

<Lass affidavits of Lassalette and Cross, September 22, 2020..pdf>

Rob Francis <jmbg123@comcast.net>

9/24/2020 2:32 PM

Re:

To John Lassalette <lassalette@hotmail.com>

First of all, Ron Erickson doesn't know CCIOA. He sponcered the amendment prohibited by CCIOA., and neither did you or Harper..

Secind he and you didn't know that CCIOA doesn't require "service." I thought you used the word "delivered" as an attempt to be vague in the affidavits.

Robert A. Francis

On 09/23/2020 3:16 PM John Lassalette <lassalette@hotmail.com> wrote:

The same one you reference - CCIOA regarding the certificate request. Apparently Mr. Erickson knows the provisions well enough to understand that the service requirements were not met.

John Lassalette
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On Sep 23, 2020, at 3:45 PM, Rob Francis < jmbg123@comcast.net> wrote:

What is the statute you refer to?

Robert A. Francis

On 09/22/2020 3:00 PM John Lassalette < lassalette@hotmail.com> wrote:

Mr. Francis,

The affidavits you attached to your email were served on you by ICCES e-service on August 8, 2013. If you chose to ignore the notice and not review the documents, that was your own choice, but service on you is confirmed by ICCES.

As for the representations in the affidavits, that information was entirely provided and affirmed by Mr. Erickson and Ms. Cross. They both stated they were not served in conformity with the applicable statute. I am not responsible for the content of their affidavit, and as a Notary Public just confirmed their identity as stated in the notary block. I notarized the documents as a convenience to both affiants.

I am entirely unaware of Mr. Erickson's role, opinion or participation in any determination to amend the bylaws and declaration. I did not have any involvement with AMCA at the time or during the amendment process. You have been advised on numerous prior occasions that AMCA counsel for the purposes of amending the bylaws and declaration was Candyce Cavanaugh of Orten Cavanaugh Holmes & Hunt, LLC. Neither Scott Harper nor I had any involvement.

Based on the above, I do not have the conflict you assert.

It would appear you failed to properly process and serve the estoppel certificate request. It would appear you failed to exercise proper due diligence and review the affidavits after being served with them by ICCES on August 8, 2013. Have you advised the Trusts, Trustees and Ms. Francis of your conflict of interest?

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<Lass affidavits of Lassalette and Cross, September 22, 2020..pdf>

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To lassalette@hotmail.com <lassalette@hotmail.com>

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Thank you.

John Lassalette
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On Sep 8, 2020, at 4:43 PM, Rob Francis < jmbg123@comcast.net> wrote:
<Lass email September 8, 2020.docx>

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SYNOPSIS OF PAYMENTS FOR 2010:

1. The payment for the second quarter of 2010 was made in the "new" rate of $2099.58. **Exhibit 13.**The old rate was $1715. **Exhibit 14.** That left an overpayment of $384.58.

2. The 3rd quarter payment was made late on October 10, 2010 in the amount of $2099 .58. That was again an overpayment of $384.58 which, at that time, meant that the assessments were overpaid by $769.16.

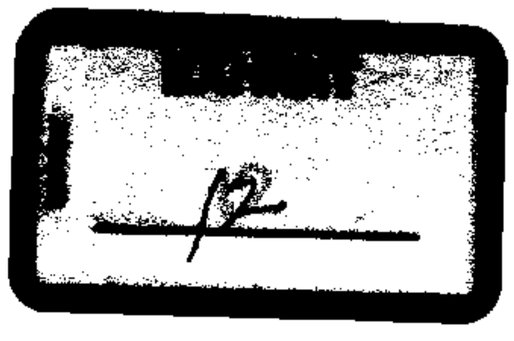
3. The fourth quarter payment in the amount of $2,099.53 was made on November, again late. But the third overpayment raised the total over payments to $1,153.59

4. Even though the plaintiff had a credit as of the start of 2011, a late payment was made in the amount of $200 on May 15th, 2011 (with restrictive endorsement). **Exhibit 15.**

5. The lien filed by the Association was filed on August 19, 2010. **Exhibit 16.** At that time the third quarter assessment was only partially in default because of the credit coming over from the second quarter. As required by CCIOA, set forth verbatim in the motion, a lien for assessments cannot be filed until more than six months assessments are owed. Therefore, the property manager prematurely filed the lean and its filing was void. Another fatal mistake.

6. Nevertheless, an email was exchanged between Mr. Harper and Mr. Erickson, at ***11:41 AM that same morning.*** The lien statement was recorded, 41 minutes ***before*** the exchange between Mr, Harper and Mr. Erickson. In the email Mr. Harper indicated that in order to accelerate the assessment payments the Board had to approve at a meeting called for that purpose. A meeting was never convened. The lien had already been recorded so it could not have accelerated in any event. **Exhibit 17.**

7. In summary, all of the assessments for 2010 were significantly overpaid and if any late charge(s) were due because of the late payments, they were paid. Mr. Lassalette's false statement that the plaintiffs "didn't make any payments for 2010" couldn't have been more outrageous.



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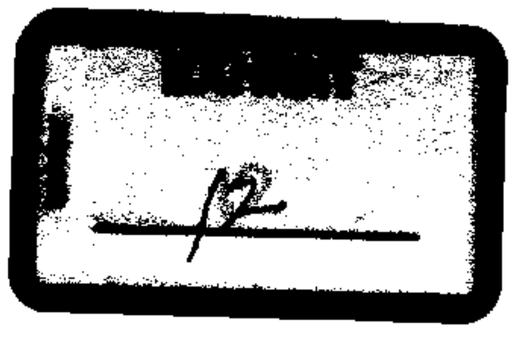
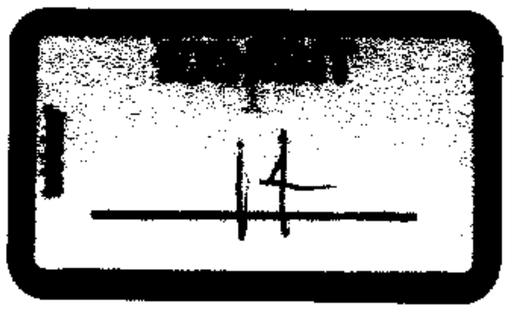


DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Phone Number: (303) 606-2300 **ROBERT A. FRANCIS, *pro* se** **Plaintiff,** **V.** **BENJAMIN WEGENER, YOUNGE AND HOCKENSMITH, WEGENER, SCARBROUGH, YOUNGE and HOCKENSMITH, and THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION,** **Defendants.** **and ROBERT FRANCIS ex rel. THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, Third Party Plaintiff.** **vs.** **BENJAMIN WEGENER, YOUNGE AND HOCKENSMITH, and WEGENER, SCARBOUROGH, YOUNGE and HOCKENSMITH, and DONALD MILLER, STEVE DAUBENMIER, and BRICE LYNTON, Directors of the Aspen Mountain Association,** **Third Party Defendants.**	**Case Number: 2021CV**
Party: Robert A. Francis, pro se *Address 0201 Heather Lane, Aspen, Colorado 81611* *Phone Number: (970) 948-6061* *Fax Number: (970) 925-1062* *Email: jmbg123@comcast.net*	



	Division 2 Courtroom:
SECOND AMENDED VERIFIED COMPLAINT	

The Plaintiff files this second amended complaint, as follows:

GENERAL ALLEGATIONS

1. Jurisdiction and venue is proper in Denver County because the subject matters of this case are misrepresentation and breach of a duty of good faith, all of which occurred in Denver County.

2. The plaintiff has standing to bring this complaint as he is the beneficiary of the Judi B. Francis Trust ("the Trust"), and the Trust was the owner of the property at all times relevant hereto.

3. He also has standing as he was serving as the agent for the Judi B. Francis Trust with respect to the subject matter. The misrepresentations, all made in Denver County, made by the defendants, and Mr. John Lasslatte, the dfendnats' co-counsel were: (1)" Mr. Francis or the Francis Parties never paid [any assessments;" (2) "The only real applicable change with regard to those 2010 [covenants] was to change the percentage to increase to try to get a little more fair based upon what everyone was using some deck space;" (3) "Back to 2010 and start seeing that when it was an increased assessment;"(4) Mr. Francis or the Francis parties never paid the lower amount; they stopped paying at all so even at the increased or lower amount the association had to engage an attorney; (4) and then some assessments were paid again in 2011/2012 but those prior assessments never caught up for 2018; (5) and then

we have a whole year worth of missed assessments in 2013; and (6) Mr. Francis and the Francis parties while there was $68 – $70,000 of assessments owed they really only paid $44,000 of dollars.

4. Mr. Francis was the person who made all the payments as the agent for the Judi B. Francis Trust the owner of the property for which payments were made.
5. He did not act in the subject transactions as an attorney.

6. He was not actively licensed from approximately 2005 to approximately 2012.

7. The underlying litigation was commenced in June 2010.

8. The Judi B. Francis Trust is a Colorado Trust, and at all times relevant hereto was the owner of Unit 1-A, the Aspen Mountain Condominiums, Aspen, Colorado ("the unit")

9. The Defendant, Benjamin Wegener is a licensed Colorado attorney and, at all times relevant hereto a partner with the law firm of Younge and Hockensmith, which, upon information and belief after the event which forms the basis for this claim, formed the law firm of Wegener, Scarborough, Young and Hockensmith. (All defendants collectively, "The Wegener defendants")

10. The defendant, the Aspen Mountain Condominium Association, ("the Association ") is, upon information and belief, a non-profit Colorado Association.

11. Mr. Wegener represented the Association, along with co-counsel Mr. John Lassalette, with respect to Pitkin County District Court Civil Action No. 2010CV201.

12. The Association is charged with the responsibility of managing a condominium complex located in Aspen, Colorado and known as the Aspen Mountain Condominiums ("the complex").

13. A portion of the Associations responsibilities involved the levy and collection of assessments for maintenance and repair of the common elements.

14. The complex is subject to a condominium declaration (" the Declaration ") recorded in the Pitkin County public records at book 269 page 314.

15. At all times relevant hereto, the Trust owned a condominium unit ("the unit") in the complex.

16. The complex consisted of 11 units. The 11 units were separated into two groups for the purpose of assessing the units for common expenses.

17. The eight units with limited common elements ("the larger units") in one group and three smaller units ("in the second group).

18. The larger units were assessed for common assessments at a higher level than the other three units because of their having a limited common element in the form of patios / decks.

19. The unit owned by the Trust was one of the three smaller units.

20. On February 18th, 2010 the Association held the annual meeting of the members for the fiscal year 2010-2011.

21. Upon information and belief, the association wished to amend the Declaration (" the proposed amended declaration ") at that meeting.

22. Apart of the proposed amended declaration called for a realignment of the assessments (" the assessments") so that the assessments to be paid by the larger group would be reduced and the amount paid by the smaller group would be increased.

23. After the annual meeting the Trust began paying the assessment at the higher ("new") rate.

24. It was ultimately determined the Association could not reallocate the assessments. It was precluded by a provision of the Colorado Common Interest Ownership Act, C.R.S. 35-33.3-217(d). *Francis v. The Aspen Mountain Condominium Association.*

25. The correct rate was the previous ("old") amount for assessments.

26. The Trust learned that the Association was claiming it could apply the assessments to its claimed attorney fees, interest and attorney fees and therefore the Trust was in default on the interest payments.

27. A hearing was held on January 29, 2018 in 2010CV201 regarding whether or not the Trust was in default on the payment of the assessments.

28. Four exhibits were introduced at the said hearing which showed the total amounts of the assessment payments made by the Trust, the amount of the interest charged, the late fees charged, and the attorney fees claimed by the Association. **Exhibit 1**.

29. Exhibit 1shows a total of the assessments paid to January 31, 2018 of $68, 716.53.

30. All of the payments for assessments were subject to a restrictive endorsement directing the payments to specific quarterly invoices and/or expressly not to attorney fees. **Exhibit 2**.

31. One assessment payment was hand-delivered by Mr. Francis together with a writing which said: "Of course this payment is with reservation of all rights, intended solely to be applied against the said alleged assessment due. It is the position of the owners of Unit 1-A that all alleged assessments for the entire complex have been illegally accessed since April 1. 2010 and that, accordingly, the payments made by said owners since that time we're not due."

32. Mr. Francis prepared an analysis of the payments for 2010. **Exhibit 4**.

33. The Defendant Benjamin Wegener has recently filed a request with the Colorado Supreme Court to enjoin the Plaintiffs from prosecuting this case. Said request was filed on behalf of all of the Wegener defendents.

FIRST CLAIM FOR RELIEF OF ROBERT FRANCIS
(Against All Defendants for Negligence)

34. The Trust incorporates by reference herein all of those allegations contained in paragraphs 1 through 33, inclusive, as though re-alleged and fully set forth in this claim for relief and every other claim for relief hereinafter.

35. The request refered to in paragraph 33 above reopined any issues which may have been resolved in the Wegener defendants favor.

36. Pitkin County 2010CV201 was appealed. Oral argument was held August 22, 2019.

37. The oral argument at the Court of Appeals was partially argued by Mr. Wegner and partially by Mr. Lassalette.

38. The portion of the oral argument argued by Mr. Wegener appears on **Appendix A**.

39. All of the comments regarddingmade by Mr. Wegener were complete falsehoods.

40. His comments were directed to the question of the panel of whether the payments made on behalf of the Trust contained restrictive endorsements directing that the payments be made to assessments.

41. Had he told the truth it would have established that the Trust had paid all assessments for 2010 in increased amounts, had made all of its payments for the year 2013 at the increased amount, had made all the payments for 2011, at the increased amount, had paid the full amount of the assessments do at the increased amount, through the first quarter of 2017, had paid a total amount of approximately 68000, that the three smaller units did not have a limited element and it was the existence of The Limited element that produced the difference in the assessments assess to the units, that the reallocation was not an attempt to be "fair."

42. All of the statements made by Mr. Wegener were completely false.

43. The statements materially misled the Court on the single issue of the appeal (whether the defendants were in default) causing the Court of Appeals to affirm the appeal.

44. Had Mr. Wegener told the truth, a reversal would have occurred.

45. As alleged above, Mr. Wegener owed a duty of care to the Trust and to Mr. Francis, individually and as the sole beneficiary of the Trust to respond truthfully in his representations to the Court of Appeals.

46. He breached that duty of care by negligently misrepresenting the facts as alleged hereinbefore.

47. The so-called "litigation privilege" does not apply when the actor has an independent duty to the injured party, as do the defendants. *See*.

SECOND CLAIM FOR RELIEF
(Of the Plaintiffs Against All Defendants for Misrepresentation)

48. The Trust incorporates by reference herein all of those allegations contained in paragraphs 1 through 47, inclusive, as though re-alleged and fully set forth in this claim for relief and every other claim for relief hereinafter.

49. Mr. Wegener made false representations to material facts which were capable of knowledge.

50. He did so knowing the representations were false, or without knowing whether the representations were true or false.

51. He intended to induce the Court of Appeals to act on his false representations.

52. The Court of Appeals relied on the false representations.

53. The false representations caused the plaintiff damages in an amount to be determined at trial.

THIRD CLAIM FOR RELIEF
(Against All Defendants for Breach of the Duty of Good Faith)

54. Mr. Francis incorporates by reference herein all of those allegations contained in paragraphs 1 through 48, inclusive, as though re-alleged and fully set forth in this claim for relief.

55. Non-profit common interest communities owe a duty of good faith to its members. C.R.S 38-33.3-116.

56. At all times relevant hereto, the Trust was a member of the Aspen Mountain Condominium Association.

57. The defendants owed a duty of good faith and fair dealing to the plaintiff.

58. They breached that duty as alleged herein.

59. The breach caused damage to the plaintiff as alleged heroin.

(For Negligent Misrepresentation Against the Wegener Defendants)

62. Mr. Francis incorporates by reference herein all of those allegations contained in paragraphs 1 through 61, inclusive, as though re-alleged and fully set forth in this claim for relief and every other claim for relief hereinafter.

63. During the oral argument the panel asked a question "is there a credibility issue in this case."

64. Mr. Wegener was present when that statement was made.

65. Mr. Wegener's oral argument occurred after the making of that statement.

66. Upon information and belief, the question referred to the conclusion expressed by Judge Lynch in her order regarding assessments that Mr. Francis had lied.

67. Mr. Francis testified at the hearing regarding assessment payments he had made every assessment payment subject to restrictive endorsements directing that the payments be made to specific invoices, and/or to specific quarterly payments and/or not to be applied to attorney fees.

68. Upon information and belief, if the panel had concluded that those restrictive covenants were appended to all the assessment payments, it would have had to conclude that the Trust was not in default on its assessment payments and reversed.

69. Nevertheless, the defendants offered as a defense to this case that Judge Lynch was correct in concluding that Mr. Francis lied.

70. The defendants knew or should have known that restrictive covenants were appended to all payments.

71. The president of the Association and the Defendent, Mr. Steve Daubenmeir, testified at the hearing that he had personally seen the restrictive covenants.

72. Accordingly, during Mr. Francis' testimony Mr. Daubenmeir knew that Mr. Francis did not lie.

73. His knowledge of that fact is imputed to the defendant Association.

74. In addition, Mr. Francis sent communications to the defendant Association in which he specifically advised the Association that the payments were made to pay assessments and that further payments would be made "with reservation of all rights." **Exhibit 3**.

75. All of the assessment payments were delivered to the agent of the Association, Aspen Resort Accommodations, and the restrictive covenants associated with each payment were readily apparent.

76. The knowledge of Aspen Resort Association concerning the existence of the restrictive covenants was imputed to the Association.

77. The representations to the Court of Appeals by Mr. Wegener were in direct contradiction to the facts as known by his client.

78. Mr. Wegener did not advise the Court that the restrictive covenants had been made and therefore, there were no assessments owing.

79. The representations were, at best, negligent and made in bad faith.

SIXTH CLAIM FOR RELIEF
(Third Party Claim of the Aspen Mountain Condominium Association Against The Wegner Defendants)

80. The condominium declaration of the Aspen Mountain Condominiums

WHEREFORE the Trust prays for the following relief:

1st. For an award of damages against both defendants, jointly and severally, for the negligence of Mr. Wegener;

2nd. For damages against both defendants, jointly and severally, for the misrepresentations of Mr. Wegener;

3rd. For damages against both defendants, jointly and severally, for their breach of good faith.

4th. For punitive damages against Mr. Wegener his actions as alleged herein;

5th. For damages jointly and severely against both defendants for defamation *per se*;

6th. For interest on any amounts found to be owing, costs, attorney fees and such further relief as may be deemed appropriate;

Dated this 6nd day of April, 2021.

/s/ Robert A Francis

THE PLAINTIFF REQUESTS A TRIAL BY A JURY OF SIX

STATE OF COLORADO)
)ss
COUNTY OF PITKIN)

Robert A. Francis
Individually and as
the sole beneficiary of the
Judi B. Francis Trust

On April 6, 2021 before me personally appeared Robert A. Francis who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in their authorized capacities and that by his/her/their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under penalty of perjury under the laws of the state of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

CERTIFICATE OF SERVICE

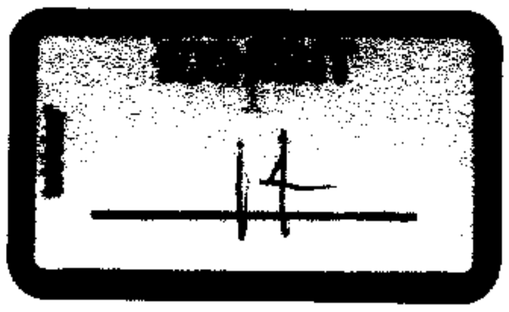
I certify that I have served the foregoing upon the defendants by deposition in the U.S. Mail this 2nd day of April, 2021 addressed as follows:

Benjamin Wegener
743 Horizon Court, Suite 200
Grand Junction, Colorado 81506

Younge and Hockensmith
743 Horizon Court
Grand Junction, Colorado 81506

Wegener, Scarborogh, Younge, and Hockensmith
743 Horizon Court, Suite 200
Grand Junction, Colorado 81506

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Court Address: 1437 Bannock Street Denver, CO 80202 Phone Number: (303) 606-2300 **ROBERT A. FRANCIS, *pro* se** **Plaintiff,** **V.** **BENJAMIN WEGENER, YOUNGE AND HOCKENSMITH, WEGENER, SCARBROUGH, YOUNGE and HOCKENSMITH, and THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION,** **Defendants.** **and ROBERT FRANCIS ex rel. THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, Third Party Plaintiff.** **vs.** **BENJAMIN WEGENER, YOUNGE AND HOCKENSMITH, and WEGENER, SCARBOUROGH, YOUNGE and HOCKENSMITH, and DONALD MILLER, STEVE DAUBENMIER, and BRICE LYNTON, Directors of the Aspen Mountain Association,** **Third Party Defendants.**	**Case Number: 2021CV**
Party: Robert A. Francis, pro se *Address 0201 Heather Lane, Aspen, Colorado 81611* *Phone Number: (970) 948-6061* *Fax Number: (970) 925-1062* *Email: jmbg123@comcast.net*	



	Division 2 Courtroom:
SECOND AMENDED VERIFIED COMPLAINT	

The Plaintiff files this second amended complaint, as follows:

GENERAL ALLEGATIONS

1. Jurisdiction and venue is proper in Denver County because the subject matters of this case are misrepresentation and breach of a duty of good faith, all of which occurred in Denver County.

2. The plaintiff has standing to bring this complaint as he is the beneficiary of the Judi B. Francis Trust ("the Trust"), and the Trust was the owner of the property at all times relevant hereto.

3. He also has standing as he was serving as the agent for the Judi B. Francis Trust with respect to the subject matter. The misrepresentations, all made in Denver County, made by the defendants, and Mr. John Lasslatte, the dfendnats' co-counsel were: (1)" Mr. Francis or the Francis Parties never paid [any assessments;" (2) "The only real applicable change with regard to those 2010 [covenants] was to change the percentage to increase to try to get a little more fair based upon what everyone was using some deck space;" (3) "Back to 2010 and start seeing that when it was an increased assessment;"(4) Mr. Francis or the Francis parties never paid the lower amount; they stopped paying at all so even at the increased or lower amount the association had to engage an attorney; (4) and then some assessments were paid again in 2011/2012 but those prior assessments never caught up for 2018; (5) and then

we have a whole year worth of missed assessments in 2013; and (6) Mr. Francis and the Francis parties while there was $68 – $70,000 of assessments owed they really only paid $44,000 of dollars.

4. Mr. Francis was the person who made all the payments as the agent for the Judi B. Francis Trust the owner of the property for which payments were made.
5. He did not act in the subject transactions as an attorney.

6. He was not actively licensed from approximately 2005 to approximately 2012.

7. The underlying litigation was commenced in June 2010.

8. The Judi B. Francis Trust is a Colorado Trust, and at all times relevant hereto was the owner of Unit 1-A, the Aspen Mountain Condominiums, Aspen, Colorado ("the unit")

9. The Defendant, Benjamin Wegener is a licensed Colorado attorney and, at all times relevant hereto a partner with the law firm of Younge and Hockensmith, which, upon information and belief after the event which forms the basis for this claim, formed the law firm of Wegener, Scarborough, Young and Hockensmith. (All defendants collectively, "The Wegener defendants")

10. The defendant, the Aspen Mountain Condominium Association, ("the Association ") is, upon information and belief, a non-profit Colorado Association.

11. Mr. Wegener represented the Association, along with co-counsel Mr. John Lassalette, with respect to Pitkin County District Court Civil Action No. 2010CV201.

12. The Association is charged with the responsibility of managing a condominium complex located in Aspen, Colorado and known as the Aspen Mountain Condominiums ("the complex").

13. A portion of the Associations responsibilities involved the levy and collection of assessments for maintenance and repair of the common elements.

14. The complex is subject to a condominium declaration (" the Declaration ") recorded in the Pitkin County public records at book 269 page 314.

15. At all times relevant hereto, the Trust owned a condominium unit ("the unit") in the complex.

16. The complex consisted of 11 units. The 11 units were separated into two groups for the purpose of assessing the units for common expenses.

17. The eight units with limited common elements ("the larger units") in one group and three smaller units ("in the second group).

18. The larger units were assessed for common assessments at a higher level than the other three units because of their having a limited common element in the form of patios / decks.

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24. It was ultimately determined the Association could not reallocate the assessments. It was precluded by a provision of the Colorado Common Interest Ownership Act, C.R.S. 35-33.3-217(d). *Francis v. The Aspen Mountain Condominium Association.*

25. The correct rate was the previous ("old") amount for assessments.

26. The Trust learned that the Association was claiming it could apply the assessments to its claimed attorney fees, interest and attorney fees and therefore the Trust was in default on the interest payments.

27. A hearing was held on January 29, 2018 in 2010CV201 regarding whether or not the Trust was in default on the payment of the assessments.

28. Four exhibits were introduced at the said hearing which showed the total amounts of the assessment payments made by the Trust, the amount of the interest charged, the late fees charged, and the attorney fees claimed by the Association. **Exhibit 1**.

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33. The Defendant Benjamin Wegener has recently filed a request with the Colorado Supreme Court to enjoin the Plaintiffs from prosecuting this case. Said request was filed on behalf of all of the Wegener defendents.

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(Against All Defendants for Negligence)

34. The Trust incorporates by reference herein all of those allegations contained in paragraphs 1 through 33, inclusive, as though re-alleged and fully set forth in this claim for relief and every other claim for relief hereinafter.

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41. Had he told the truth it would have established that the Trust had paid all assessments for 2010 in increased amounts, had made all of its payments for the year 2013 at the increased amount, had made all the payments for 2011, at the increased amount, had paid the full amount of the assessments do at the increased amount, through the first quarter of 2017, had paid a total amount of approximately 68000, that the three smaller units did not have a limited element and it was the existence of The Limited element that produced the difference in the assessments assess to the units, that the reallocation was not an attempt to be "fair."

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45. As alleged above, Mr. Wegener owed a duty of care to the Trust and to Mr. Francis, individually and as the sole beneficiary of the Trust to respond truthfully in his representations to the Court of Appeals.

46. He breached that duty of care by negligently misrepresenting the facts as alleged hereinbefore.

47. The so-called "litigation privilege" does not apply when the actor has an independent duty to the injured party, as do the defendants. *See*.

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(Of the Plaintiffs Against All Defendants for Misrepresentation)

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56. At all times relevant hereto, the Trust was a member of the Aspen Mountain Condominium Association.

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58. They breached that duty as alleged herein.

59. The breach caused damage to the plaintiff as alleged heroin.

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63. During the oral argument the panel asked a question "is there a credibility issue in this case."

64. Mr. Wegener was present when that statement was made.

65. Mr. Wegener's oral argument occurred after the making of that statement.

66. Upon information and belief, the question referred to the conclusion expressed by Judge Lynch in her order regarding assessments that Mr. Francis had lied.

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69. Nevertheless, the defendants offered as a defense to this case that Judge Lynch was correct in concluding that Mr. Francis lied.

70. The defendants knew or should have known that restrictive covenants were appended to all payments.

71. The president of the Association and the Defendent, Mr. Steve Daubenmeir, testified at the hearing that he had personally seen the restrictive covenants.

72. Accordingly, during Mr. Francis' testimony Mr. Daubenmeir knew that Mr. Francis did not lie.

73. His knowledge of that fact is imputed to the defendant Association.

74. In addition, Mr. Francis sent communications to the defendant Association in which he specifically advised the Association that the payments were made to pay assessments and that further payments would be made "with reservation of all rights." **Exhibit 3**.

75. All of the assessment payments were delivered to the agent of the Association, Aspen Resort Accommodations, and the restrictive covenants associated with each payment were readily apparent.

76. The knowledge of Aspen Resort Association concerning the existence of the restrictive covenants was imputed to the Association.

77. The representations to the Court of Appeals by Mr. Wegener were in direct contradiction to the facts as known by his client.

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79. The representations were, at best, negligent and made in bad faith.

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(Third Party Claim of the Aspen Mountain Condominium Association Against The Wegner Defendants)

80. The condominium declaration of the Aspen Mountain Condominiums

WHEREFORE the Trust prays for the following relief:

1st. For an award of damages against both defendants, jointly and severally, for the negligence of Mr. Wegener;

2nd. For damages against both defendants, jointly and severally, for the misrepresentations of Mr. Wegener;

3rd. For damages against both defendants, jointly and severally, for their breach of good faith.

4th. For punitive damages against Mr. Wegener his actions as alleged herein;

5th. For damages jointly and severely against both defendants for defamation *per se*;

6th. For interest on any amounts found to be owing, costs, attorney fees and such further relief as may be deemed appropriate;

Dated this 6nd day of April, 2021.

/s/ Robert A Francis

THE PLAINTIFF REQUESTS A TRIAL BY A JURY OF SIX

STATE OF COLORADO)
)ss
COUNTY OF PITKIN)

Robert A. Francis
Individually and as
the sole beneficiary of the
Judi B. Francis Trust

On April 6, 2021 before me personally appeared Robert A. Francis who proved to me on the basis of satisfactory evidence to be the person(s) whose name is subscribed to the within instrument and acknowledged to me that he/she/they executed the same in their authorized capacities and that by his/her/their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under penalty of perjury under the laws of the state of Colorado that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary Public

CERTIFICATE OF SERVICE

I certify that I have served the foregoing upon the defendants by deposition in the U.S. Mail this 2nd day of April, 2021 addressed as follows:

Benjamin Wegener
743 Horizon Court, Suite 200
Grand Junction, Colorado 81506

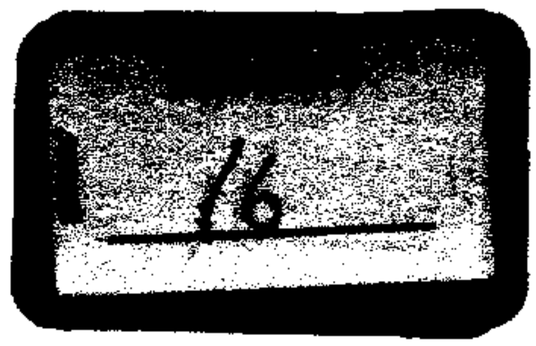
Younge and Hockensmith
743 Horizon Court
Grand Junction, Colorado 81506

Wegener, Scarborogh, Younge, and Hockensmith
743 Horizon Court, Suite 200
Grand Junction, Colorado 81506

42. By way of background, the Parent Case was commenced on June 8, 2010. Throughout the pendency of the underlying District Court action, numerous plaintiffs and third party plaintiffs appeared, wearing a variety of different hats, and the subject property was repeatedly transferred from one party/entity to another. The common denominator, related to all parties, is Mr. Francis, who initiated the action on behalf of Plaintiff in the present action.

43. Mr. Francis alleged he was acting at times as a Trustee for various parties, although, as discussed in more detail below, he has claimed many different identities over the course of the litigation of numerous cases filed in a variety of jurisdictions, aimed at challenging judgments entered in Pitkin County District Court Case No. 2010CV201 or attempting to usurp jurisdiction of that Court in one manner or another. The cases filed are:

1. United States District Court Case No. 15-CV-00945-MSK-NYW. Dismissed.
2. United States District Court Case No. 13-CV-03519-RM-MJW. Dismissed.
3. Colorado Court of Appeals Case No. 2018CA772. Closed.
4. Colorado Court of Appeals Case No. 2015CA1776. Closed.
5. Pitkin County District Court Case No. 2019CV30126 (this matter).
6. Pitkin County District Court Case No. 2019CV30123. Open.
7. Pitkin County District Court Case No. 2019CV30075. Open.
8. Pitkin County District Court Case No. 2019CV30054. Open.
9. Pitkin County District Court Case No. 2019CV30036. Closed.
10. Pitkin County District Court Case No. 2019CV30032. Open.
11. Pitkin County District Court Case No. 2018CV30016. The Complaint is nearly identical to that filed and dismissed in Case No. 2017CV30066. The Court dismissed by Order on Motion to Dismiss.
12. Pitkin County District Court Case No. 2017CV30093. The Court dismissed by Orders dated November 28, 2017 and December 15, 2017.



DISTRICT COURT, PITKIN COUNTY, STATE OF COLORADO
Court Address: 506 E. Main Street, Aspen, CO 81611
Phone Number: (970) 925-7635

ROBERT A. FRANCIS, as Trustee of the JUDI B. FRANCIS IRREVOCABLE TRUST, and as Trustee of the ROBERT A. FRANCIS IRREVOCABLE FAMILY TRUST, LESLEE K. FRANCIS, and JUDI B. FRANCIS, as Trustee of the J. LEE BROWNING BELIZE TRUST,

Plaintiffs.

v.

THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, a Colorado Corporation, and DONALD MILLER, BRUCE LYNTON, AND STEVE DAUBENMIER, in their capacity as members of the Board of Directors of the Aspen Mountain Association, Inc.,

Defendants.

and

THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, INC., A Colorado Corporation.

v.

THE JUDI B. FRANCIS IRREVOCABLE FAMILY TRUST, THE ROBERT A, FRANCIS IRREVOCABLE FAMILY TRUST, LESLEE K. FRANCIS, and THE J. LEE BROWNING BELIZE TRUST

▲ COURT USE ONLY ▲

Case Number 10 CV 201
Div.: Ctrm.:

1 The Francis Children's Trust ("the Trust) understands that the two Francis Family Trusts have no interest in this action and should not be named as Parties. Their interest in the subject matter was acquired by the J. Lee Browning Belize Trust, and the Belize Trust was substituted for the two Family Trusts, or was supposed to be.

and **THE FRANCIS CHILDREN'S TRUST, by ROBERT A. FRANCIS TRUSTEE f/k/a THE LUCILLE J. GLASGOW sub-TRUST, Third Party Plaintiff,** **v.** **DAVID M. FRANCIS, BRUCE LYNTON, Individually, STEVE DAUBENMIER, Individually, DON MILLER, Individually, A. RONALD ERICKSON, Individually, and THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, a Colorado Corporation, Third Party Defendants.1**	
Attorney or Party without attorney: George Allen, *attorney for all Plaintiffs and Robert A. Francis* Trustee of the Francis Children's Sub-Trust. Phone Numbers: (970) 948-6061 (Francis) and (970) 369-1000 (Allen), Fax Number: (970) 925-1062 E-mail: Aspenraf@comcast.net, and yxqeo@yahoo.com	

MOTION FOR PARTIAL SUMMARY JUDGMENT

COMES NOW the Francis Children's Trust, a Colorado Trust ("the Trust"), by its Trustee, and moves for partial summary judgment as follows:

I

The Original Declaration for the Aspen Mountain Condominiums ("the Condominiums," or "Aspen Mountain") says in Paragraph 29 (A):

> All owners shall be obligated to pay the estimated assessments imposed by the Association to meet the common expenses. *Except*

> *for insurance premiums*, the assessments shall be made pro rata according to each owner's percentage interest in and to the general common elements. *Assessments for insurance premiums shall be based upon that portion of the total premiums that the insurance carried on a particular condominium unit bears to total coverage.* [Emphasis supplied] Pitkin County Public Records, Book 239, Page 317.

As the Court is aware, one of the issues in this litigation is whether the Aspen Mountain Condominium Association ("the Association") properly adopted the Colorado Common Interest Ownership Act ("CCIOA"). Condominiums older than July 1, 1992, as the Condominiums are, must conform to a special procedure to be subject to CCIOA. The Association did not follow that procedure. The Condominiums are, therefore, not subject to CCIOA, but still subject to the original Documentation.

Nevertheless, Section 38-33.3-315 of CCIOA provides:

> . . . . assessments shall be made no less frequently than annually and shall be based on a budget adopted no less frequently than annually by the association.
> . . . .
>
> (c) The cost of insurance shall be assessed in proportion to risk, and the cost of utilities shall be apportioned according to usage.

Section 38-33.3-207 further provides that:

> (1) The declaration must allocate to each unit:
>
> (a) In a condominium a fraction or percentage of undivided interests in the common elements in the common expenses of the association, and to the extent not allocated in the by-laws of the association, a portion of the votes in the association;
>
> . . . . (2) The declaration must state the formulas used to establish allocations of interests. Those allocations may not discriminate in favor of units owned by the declarant or affiliates of the declarant.

An "affiliate of a declarant" is defined as:

38-33.3-103 (1): "Affiliate of a declarant" means any person who controls, is controlled by, or is under common control with a declarant. A person controls a declarant if the person: Is a general partner, officer, director, or employee of the declarant; directly or indirectly, or acting in concert with one or more other persons or through one or more subsidiaries, owns, controls with power to vote, or holds proxies representing more than 20 % of the voting interests of the declarant; controls in any manner the election of a majority of the directors of the declarant; or has contributed more than 20 % of the capital of the declarant. A person is controlled by the declarant if the declarant: Is a general partner, officer director, or employee of the person; directly or indirectly, or acting in concert with one or more persons or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest of the person; controls in any manner the election of a majority of the directors of the person; or has contributed more than 20% of the capital of the person. . . . .

There have been four budgets adopted by the ostensible Board of Directors of the association which purport to assess the common expenses. Attached hereto is a sample of one of those budgets. None of the budgets has complied with either CCIOA and the Original Declaration for the Condominiums in that they merely lump an item in for both utilities and insurance and fail to apportion among the units.

Thus, it was a violation of the controlling law and Documentation for Aspen Resort Accommodations to propose the budgets it did, a breach of the alleged Board of Directors to place the budgets before the Membership, a breach to recommend passages, and their votes (and the votes of the proxies they held), and the votes of the entire Membership were all invalid and void.

The annual assessments are billed according to the adopted budgets. Each unit pays its assigned percentage of the total budget. Since the votes for all four budgets were a nullity, the assessments for 2010, 2011, 2012 and 2013 were a nullity. The Trust is entitled to a determination that the lien which purports to stand in front of the Trust, is also a nullity. Moreover, the recording of the lien was frivolous under the circumstances. The Board knew or should have known they were invalid. A Board is charged with knowing its own documentation.

II.

Previous filings in this case discuss the fact that the realignment of the assessments resulted in a *lowering* of assessments to the three purported Board of Directors and a *raising* of the supposed assessments of the three ground floor Units. That attempted realignment occurred at the annual meeting in February 2010.

At that time the three Directors were in partnership in a second Unit with a person who had a 25% interest in that Unit. That person was married to a person who was a trustee of a Trust which owned a fifth Unit. CCIOA would define all those persons as "affiliates" of the declarant. *See* the definition above. Affiliates are prohibited from participating in a vote that will benefit the Affiliate.

Also at that meeting the Association attempted to adopt CCIOA. It did so by the recording of a "Declaration." It is therefore a Declarant. The three Directors, the fourth partner, and his wife, are all, therefore, "affiliates" of the Association-the Declarant.

As noted above, it is prohibited for an affiliate to participate in a vote that will work to the benefit of the affiliate. It is stunning to consider what occurred in this instance: The Condominium has 11 Units. Eight had a higher assessment than three. All three directors and the other two affiliates had the votes of five units. Four of those five votes were necessary to vote to realign the assessments in favor of the affiliates. CCIOA prohibits all five from voting.

It is also noteworthy, that the Directors did not disclose their obvious conflict of interest imposed by the law, common, statutory, and established by the Documentation either beforehand or at the meeting (the minutes are devoid of any mention of their conflict and the fact that four of the affiliates had just a few weeks before become partners in a unit).

The Owners of Unit 1-A have previously asserted that the vote to realign the assessments was not binding on them because they did not get notice. A notice of a meeting at which there is proposed a change in the Condominium

Declaration, By-Laws and other Documentation requires not only that a description of the changes be furnished together with a copy of the documentation, but a notification of the conflict of interest of the persons proposing the change (that would be required for no less a reason that proxies are sent to Members who will not be attending) must be disclosed. Since the proposers of the change were affiliates, that disclosure was absolutely required.

Had the Owners of 1-A received such a notice, they would have had a representative at the meeting (the Court may recall that they were out of the Country) would have taken action to communicate with the Membership, would have solicitude proxies, taken legal action, etc.

For all of these reasons the vote to realign was a nullity, a violation of the Board's duty of good faith, a breach of the Board's fiduciary duty, a breach of ARA's duty of good faith and fiduciary duty, all in violation of both the Documentation and CCIOA. The attempt to realign was simply a naked attempt to benefit the affiliates (and the balance of the majority) at the expense of the minority.

Dated this 2nd day of April, 2013.

The Francis Children's Trust, a Colorado Sub-Trust

By /S/ Robert A. Francis
Trustee

CERTIFICATE OF SERVICE

I hereby certify that I have, this 3 day of May, 2013, severed a copy of the above on counsel set forth below by the means of service set forth below:

Electronic via email where applicable, USPS where applicable

Counsel Served:

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Cummins & Krulewich
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s/Shannon Francis-Pienaar

DISTRICT COURT, PITKIN COUNTY, STATE OF COLORADO Court Address: 506 E. Main Street, Aspen, CO 81611 Phone Number: (970) 925-7635	Δ COURT USE ONLY Δ DATE FILED: July 2, 2013 12:49 PM FILING ID: 63105C8874A0D CASE NUMBER: 2010CV201
ROBERT A. FRANCIS, as Trustee of the JUDI B. FRANCIS IRREVOCABLE TRUST, and as Trustee of the ROBERT A. FRANCIS IRREVOCABLE FAMILY TRUST, LESLEE K. FRANCIS, and JUDI B. FRANCIS, as Trustee of the J. LEE BROWNING BELIZE TRUST, **Plaintiffs.** **v.** **THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, a Colorado Corporation, and DONALD MILLER, BRUCE LYNTON, AND STEVE DAUBENMIER, in their capacity as members of the Board of Directors of the Aspen Mountain Association, Inc.,** **Defendants.** **and** **THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, INC., A Colorado Corporation.** **v.** **THE JUDI B. FRANCIS IRREVOCABLE FAMILY TRUST, THE ROBERT A. FRANCIS IRREVOCABLE FAMILY TRUST, LESLEE K. FRANCIS, and THE J. LEE BROWNING BELIZE TRUST** **and** **THE FRANCIS CHILDREN'S TRUST, by ROBERT A. FRANCIS TRUSTEE f/k/a THE LUCILLE J.**	Case Number 10 CV 201 Div.: Ctrm.:

GLASGOW sub-TRUST, Third Party Plaintiff, **v.** **DAVID M. FRANCIS, BRUCE LYNTON, Individually, STEVE DAUBENMIER, Individually, DON MILLER, Individually, A. RONALD ERICKSON, Individually, and THE ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION, a Colorado Corporation, Third Party Defendants.1**	
Attorney or Party without attorney: George Allen, attorney for all Plaintiffs and Robert A. Francis Trustee of the Francis Children's Sub-Trust. Phone Numbers: (970) 948-6061 (Francis) and (970) 369-1000 (Allen), Fax Number: (970) 925-1062 E-mail: Aspenraf@comcast.net, and yxgeo@yahoo.com	

MOTION FOR DETERMINATION OF QUESTION OF LAW PURSUANT TO C.R.C.P., 56(h)

COMES NOW, the Francis Children's Trust ("the Trust") by and through Robert A. Francis, its Trustee, and, pursuant to C.R.C.P., Rule 56(h), moves for a determination of law, as follows:

CERTIFICATION OF CONFERRENCE

1 The Francis Children's Trust ("the Trust) understands that the two Francis Family Trusts have no interest in this action and should not be named as Parties. Their interest in the subject matter was acquired by the J. Lee Browning Belize Trust, and the Belize Trust was substituted for the two Family Trusts, or was supposed to be.

The Trust has been informed that since it is not represented by Counsel that it is not required to confer over the filing of a dispositive motion. However, the Trust represents that it has discussed the substance of this motion with Ms. Foley, and she appears to misapprehend the question of law which this motion is about. Presumably, she will oppose the motion, although this motion is compellingly clear.

ARGUMENT

January 1, 2006, the Colorado Legislature amended CCIOA by pronouncing that it was against "public policy" for any Homeowner's Association to have a Condominium Declaration with a vote percentage necessary to amend a Condominium's documentation of more than 67%.

The Aspen Mountain Condominium Association ("the Association") contends that this pronouncement automatically applied to all common interest communities in the State, whether the association adopted the Colorado Common Interest Community Act ("CCIOA") or not.

As of January 1, 2006, the Aspen Mountain Condominium's governing documentation ("the documentation") provided that all amendments to the documentation required an 85% affirmative vote, and that any vote to realign the percentages of the assessments required the "consent of all owners" (100%). It said:

> . . . . that the percentage of the undivided interests in the general common elements appurtenant to each apartment unit, as expressed in this Declaration, *shall have a permanent character* and shall not be altered without the consent of all of the condominium owners as expressed in a duly recorded amendment to this Declaration. [Emphasis supplied]2

The Association contends that on January 1, 2006, Paragraph 28 was automatically

---

2. Original Declaration, Paragraph 28, Book 289, Page 317, Pitkin County Records. The documentation which was purportedly adopted at the annual meeting on February 18, 2010 was not "duly recorded," as Paragraph for its validity. That failing will be the subject of another yet-to-be-filed dispositive motion. However, for purposes of this motion it may be assumed that it was duly recorded.

amended to read . . . . "without the consent of at least 67% of the condominium owners . . . . , " and that at the meeting of February 18, 2010 more than 67% of the owners did gave "consent" to "alter" the undivided interests in the common elements.

The Association omits one critical fact. The provision it relies upon, CCIOA Section C.R.S. 38-33.3-217 simply does not apply to the Aspen Mountain Condominiums. Subsection (4)(a) specifies:

> Except to the extent expressly permitted or required by other provisions of the article, no amendment may create of increase special declarant rights, increase the number of units, or change the boundaries of any unit *or the allocated interests of a unit* in the absence of a vote . . . . to which at least sixty-seven percent of the votes of in the association . . . . are allocated, ***or any larger percentage the declaration specifies.*** [Emphasis added]

The Association contends that the Legislature simply replaced the "consent of all owners" requirement on January 1, 2006 with the 67% ceiling. For purposes of this motion, it may be assumed that that is exactly what happened. However, the legislature carved out an exception with respect to several issues, *including when the issue involves a reallocation of the assessment percentages.* CCIOA kept the 100% the Declaration required; it took the consent of all the Aspen Mountain Owners to reallocate the assessment percentages when the vote was held on February 18, 2010. CCIOA expressly preserved the Original Declaration in that regard when the 2006 amendment was adopted.

That result also makes perfect sense. Historically declarations reserved the requirement of 100% unanimity with respect to a number of changes to interests in real property. Moreover, that requirement ran with the land and existed in perpetuity.

In the case of the Aspen Mountain Condominiums there are 8 Units with a higher % of the expenses than 3 Units. The percentage of the vote attributable to the higher assessment Units just happens to fall just above 67%.

The Association argues that the Legislature's action allows the higher assessment Units to shift their burden onto the shoulders of the lower-assessment, minority, Units, thereby paying less than their share and forcing the lower Units to pay more.

The Association has flatly overlooked the exceptions to the 67% floor. The law does not allow shifting of the assessment burden without the complete consent of all Aspen Mountain Owners. The exception contained in 38-33.3-217(4)(a) plainly ensures that.

WHEREFORE THE Trust prays that this motion be granted, and the Court determine that as a matter of law, the Association needed the consent of all Owners to reallocated the percentages among the Owners.

Dated this 1st Day of July, 2010.

The Francis Children's Trust

By s/s Robert A Francis, Trustee

CERTIFICATE OF SERVICE

I hereby certify that I have, this 2 day of July, 2013, severed a copy of the above on counsel set forth below by the means of service set forth below:

Electronic via email where applicable, USPS where applicable

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Email: rcumminslaw@aol.com

s/Shannon Francis-Pienaar

VECTRABANK

SUMMARY ACCOUNTS BILL PAY TRANSFERS Messages Prefs Help Log Out SERVICES

Balances Activity eStatements/eNotices Search

View Transaction

Use this screen to view a cleared transaction.

Transaction Information

Description: CHECK
Account: Deposit Account - xxx-xx168-2
Transaction: Check 3342
Date Cleared: 12/31/2012
Amount: $ 10.00

Date Initiated: 12/31/2012
FI Reference ID: 20130101125431648 22

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by calling Customer Support from the number below. In order to maintain this service, there is scheduled maintenance every Saturday at 11:00 PM MT and on the last day of each month at 7:00 PM MT. During this time, which typically lasts about six hours, your images may not be available. We apologize for the inconvenience this may cause.

Transaction Image

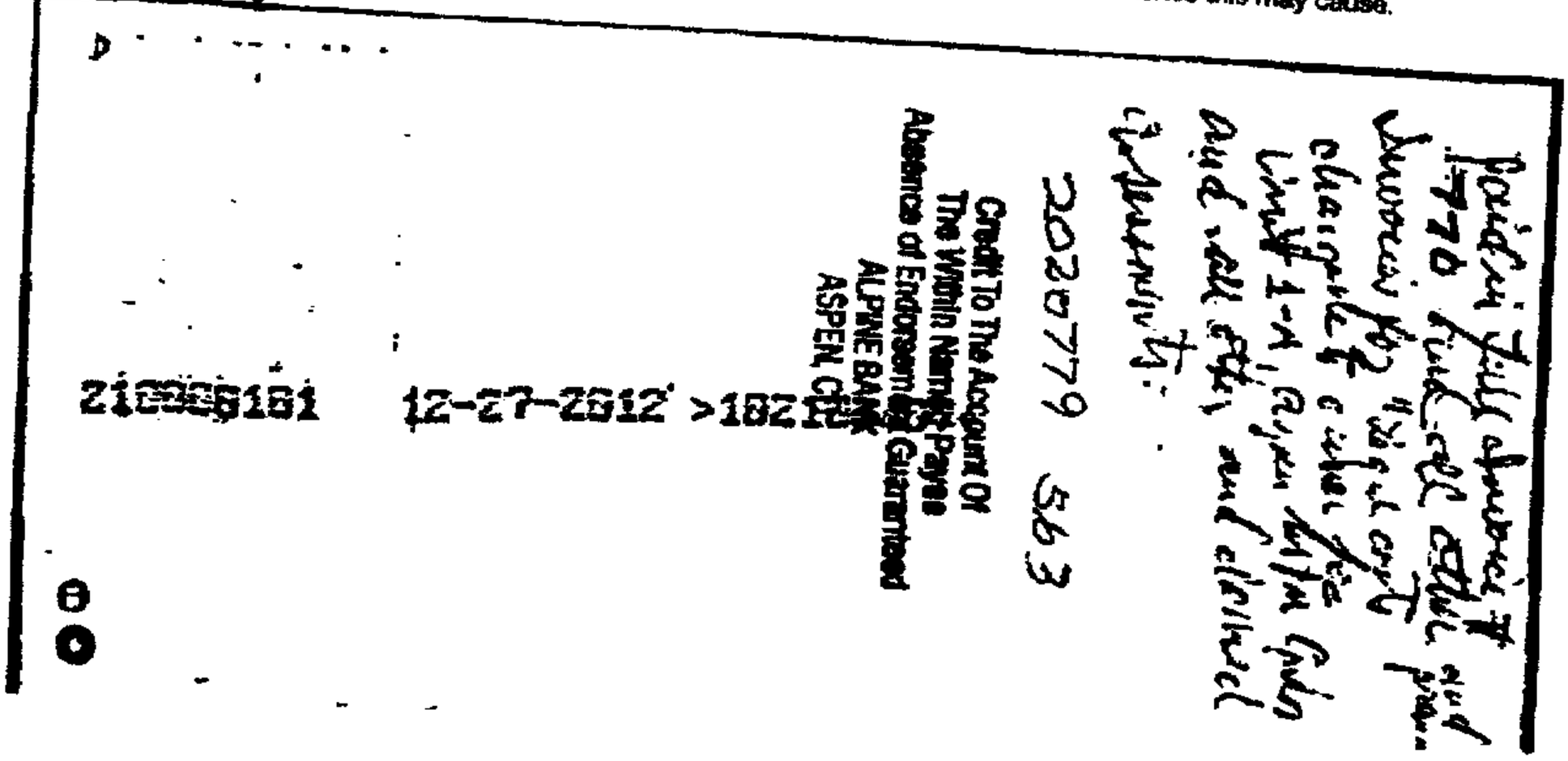


EXHIBIT 6

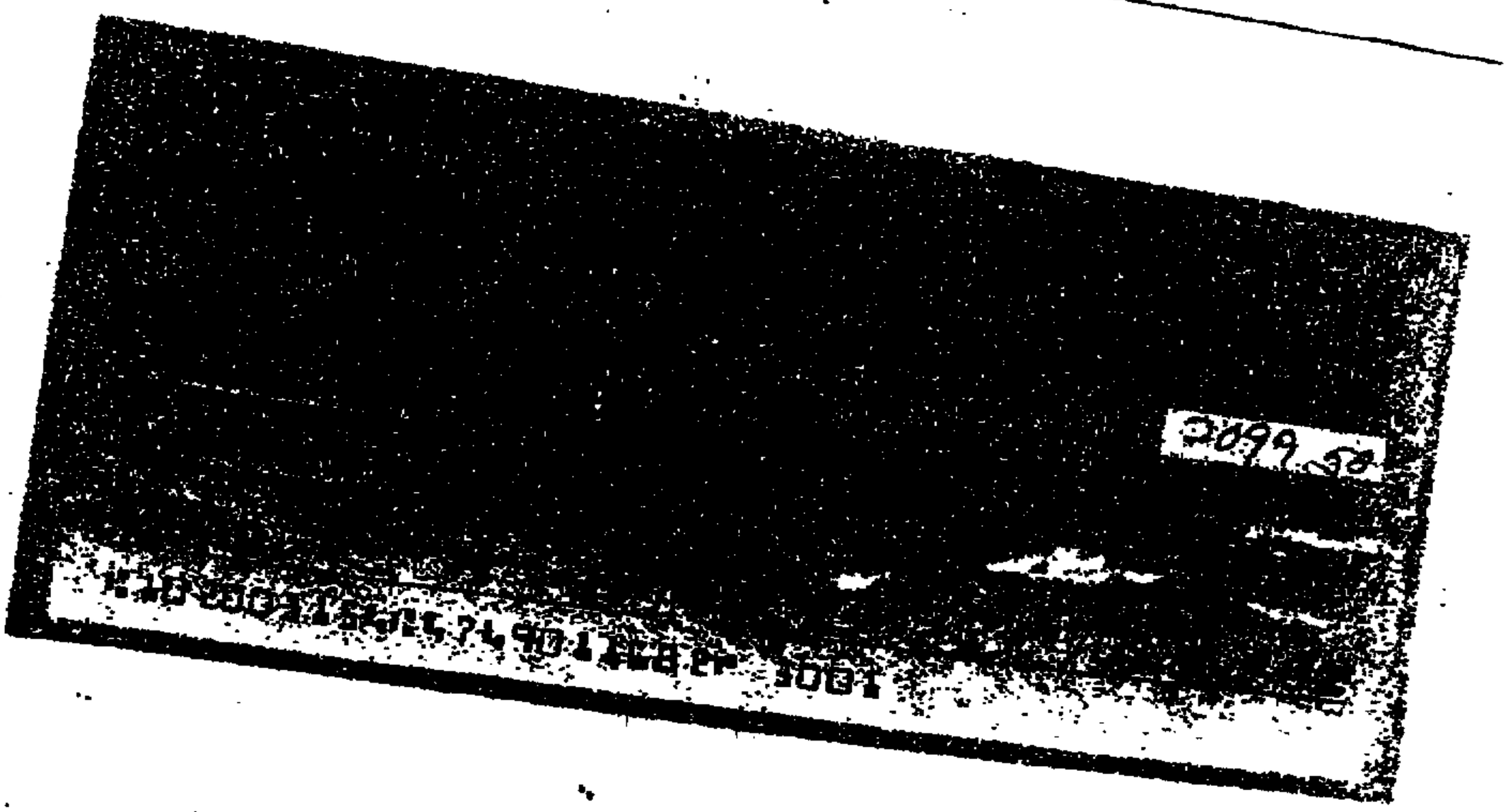
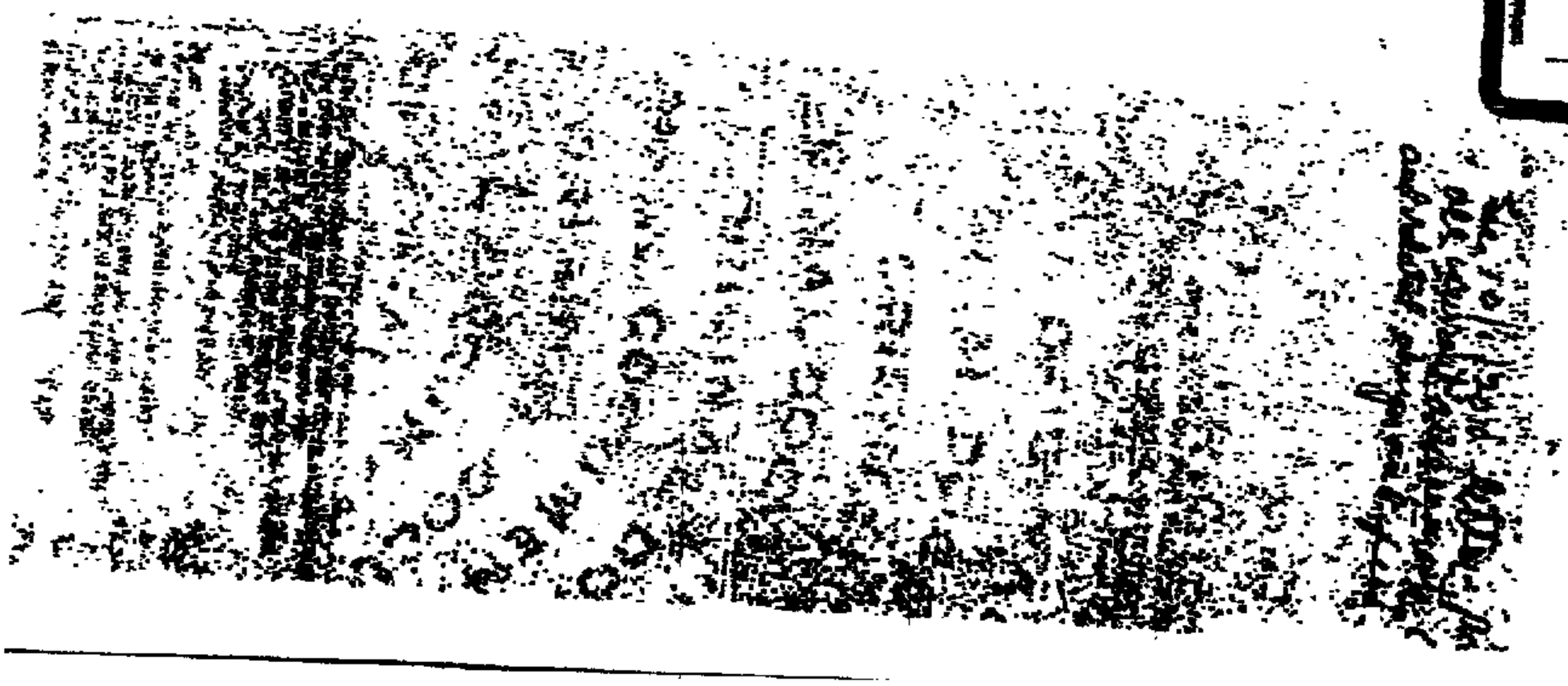


EXHIBIT
7



View Transaction - Vectra Bank

VECTRABANK

SUMMARY ACCOUNTS BILL PAY Messages Posts Help Log Out

Balances Activity eStatementsSearch TRANSFERS SERVICES

View Transaction

Use this screen to view a cleared transaction.

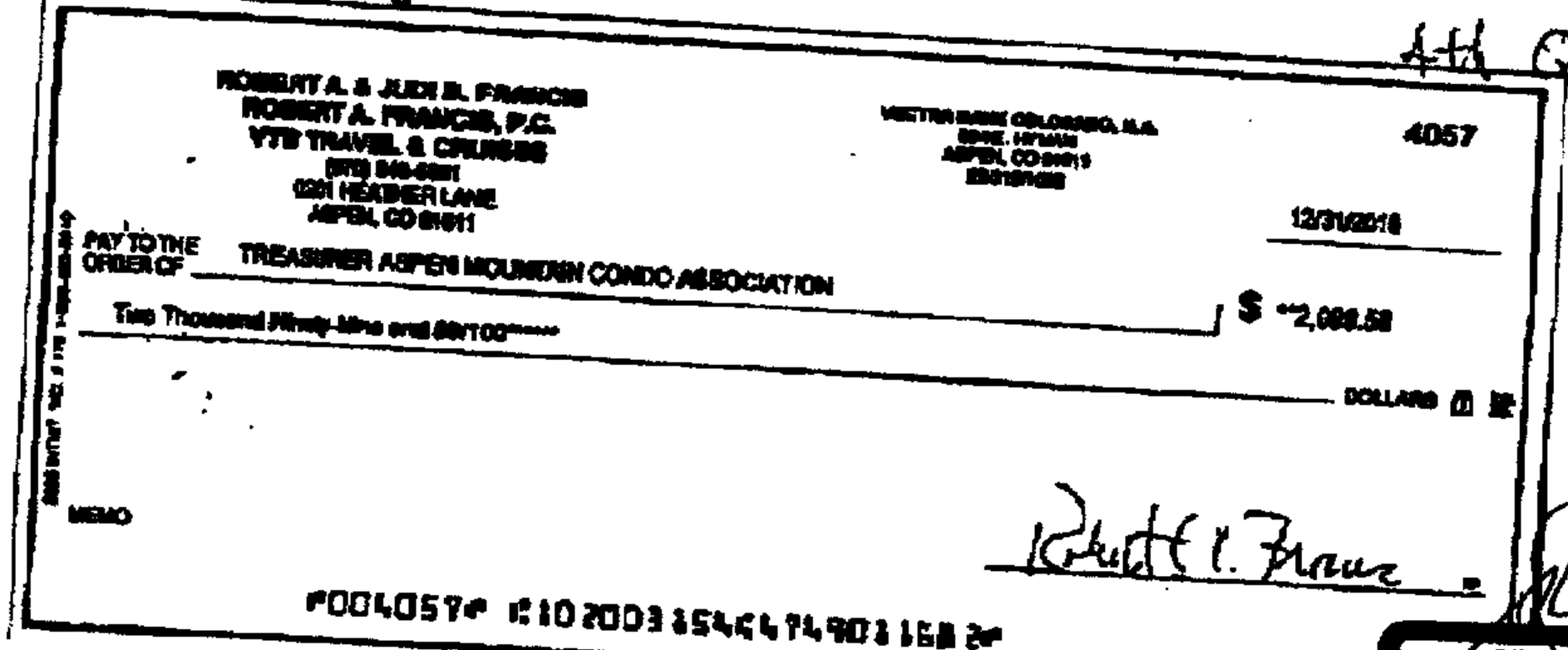
Transaction Information

Description: CHECK
Account: Deposit Account - xxx-xx168-2
Transaction: Check 4057
Date Cleared: 01/20/2011
Amount: $ 2,099.58

Date Initiated: 01/20/2011
FI Reference ID: 20110121024941771 00

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by calling Customer Support from the number below. In order to maintain this service, there is scheduled maintenance every Saturday at 11:00 PM MT and on the last day of each month at 7:00 PM MT. During this time, which typically lasts about six hours, your images may not be available. We apologize for the inconvenience this may cause.

Transaction Image


ROBERT A. & JUDI B. FRANCIS
ROBERT A. FRANCIS, P.C.
VTB TRAVEL & CRUISES
0201 HEATHER LANE
ASPEN, CO 81611

4057

12/31/2010

PAY TO THE ORDER OF TREASURER ASPEN MOUNTAIN CONDO ASSOCIATION

Two Thousand Ninety-Nine and 58/100*****

$ **2,099.58

DOLLARS

MEMO

Robert A. Francis

⑈004057⑈ ⑆102003854⑆ 74903168⑈

EXHIBIT

JUDI B FRANCIS
ROBERT A FRANCIS
[illegible]
201 HEATHER LANE
ASPEN CO 81611

3191

3/20/2012
Date

Pay to the Order of: Treasurer Aspen Metro [illegible] $ 2099.53

Two thousand ninety nine and 53/100 Dollars

VECTRABANK

Invoice # 699

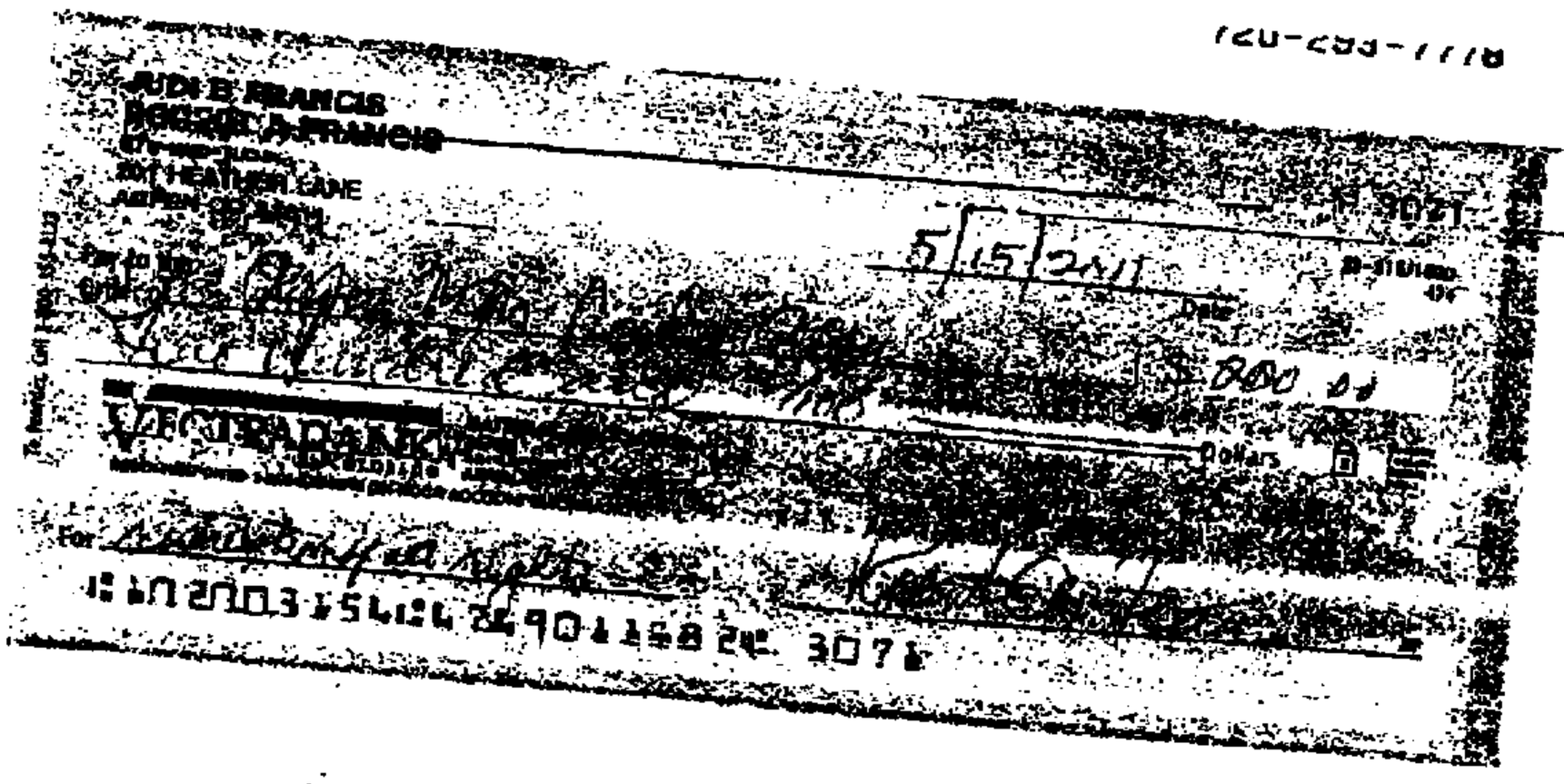
For: 2nd Quarter 2012

Robert A. Francis

⑆102003154⑆ [illegible] 3191

EXHIBIT

9



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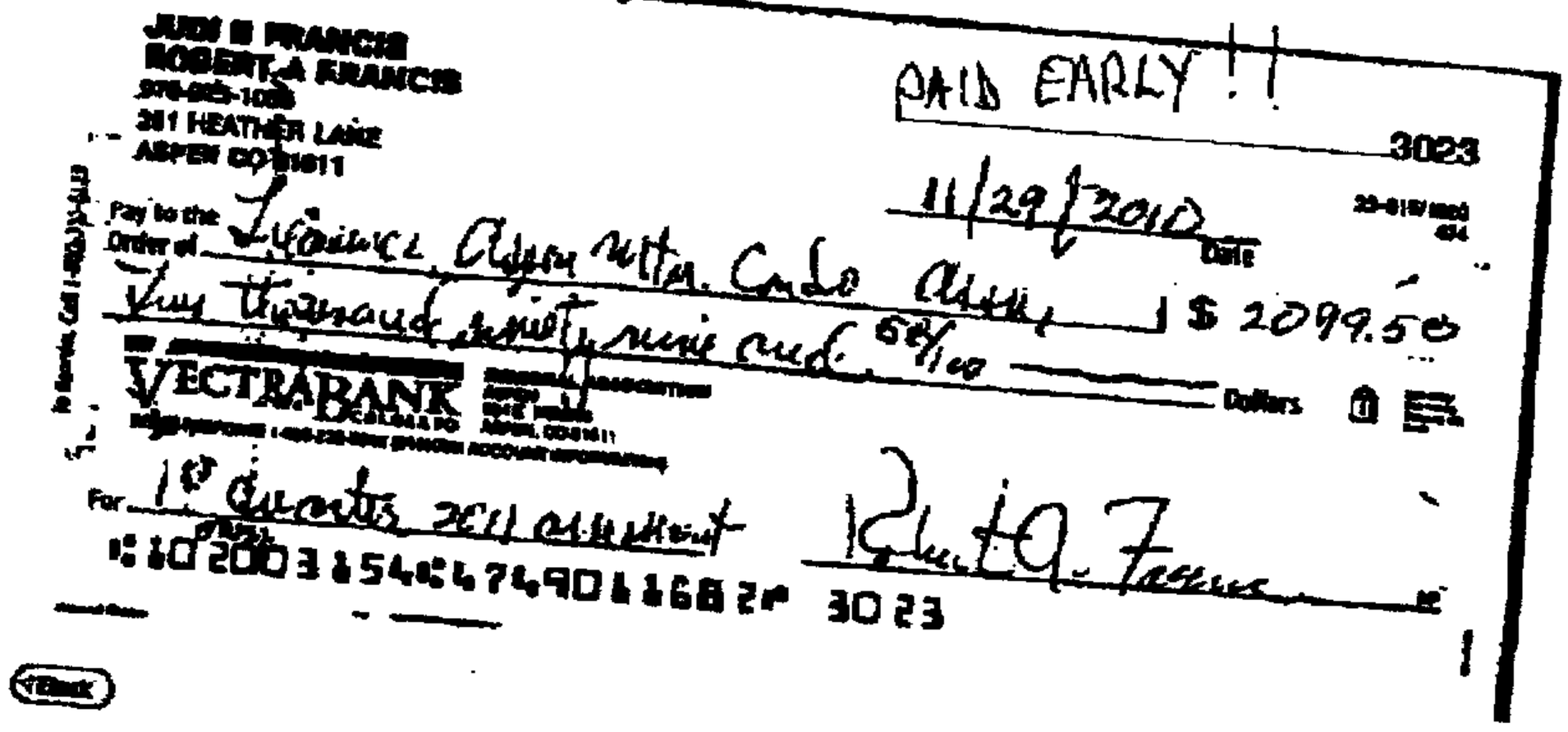
10


JUDI M FRANCIS
ROBERT A FRANCIS
[redacted]
311 HEATHER LANE
ASPEN CO [redacted]11

PAID EARLY!!

3023

11/29/2010
Date

Pay to the Order of Aspen Mtn. Condo Assn. $ 2099.50

Two thousand ninety nine and 50/100 Dollars

VECTRABANK COLORADO

For 1st Quarter 2011 assessment

Judi M. Francis

1:10200354:4749016827# 3023

EXHIBIT
11

View Transaction - Vectra Bank

View Transaction

Use this screen to view a cleared transaction.

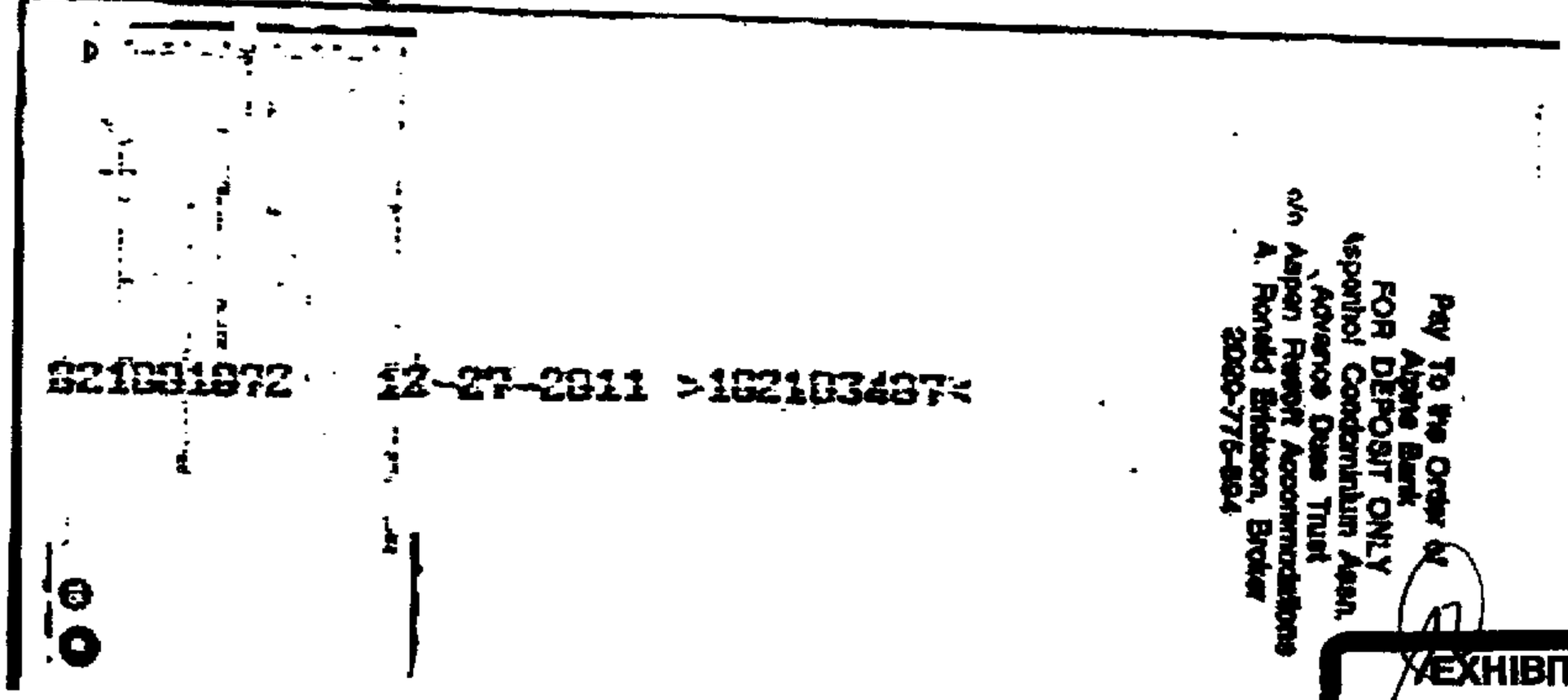
Transaction Information

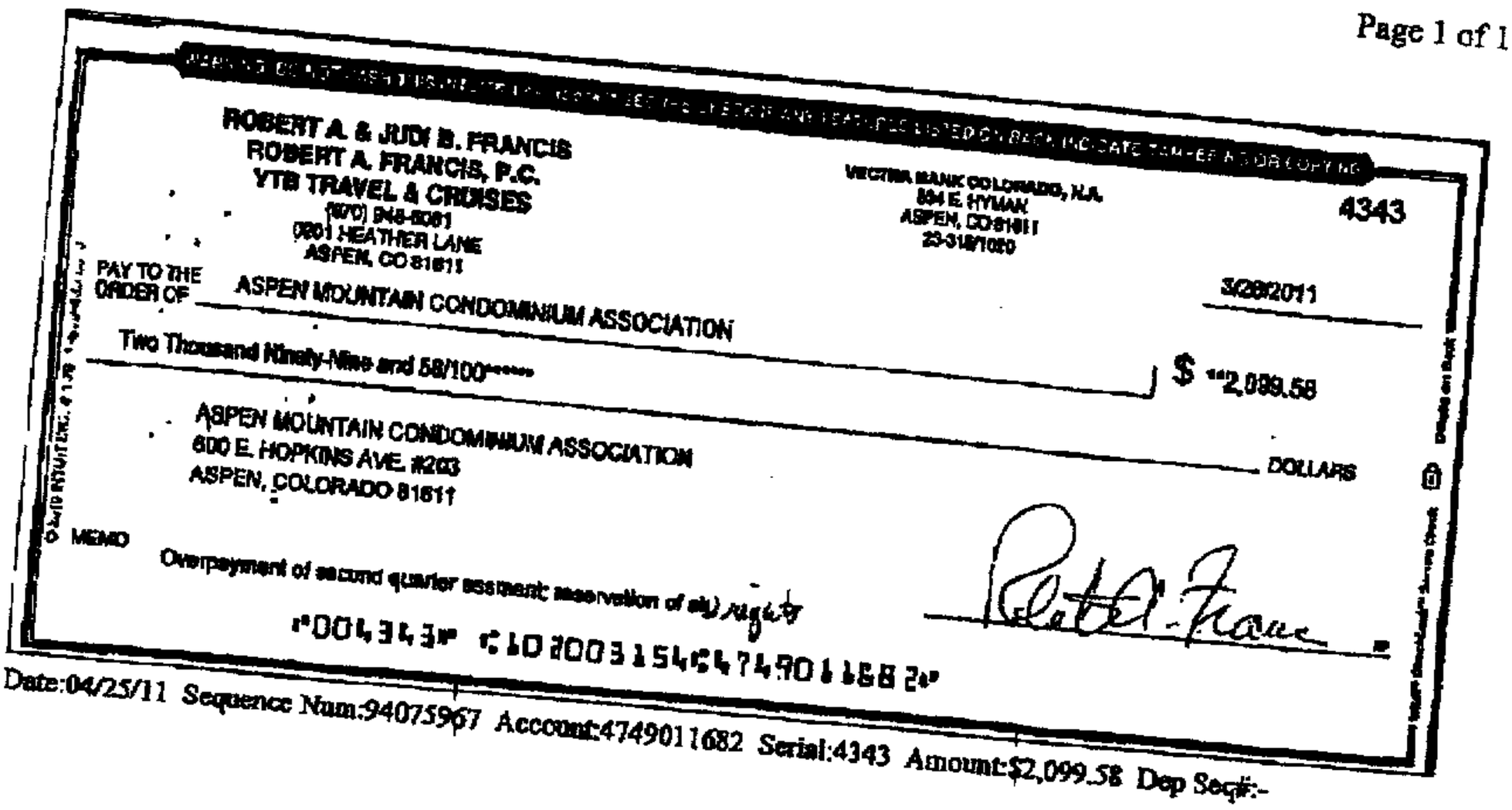
Description: CHECK
Account: Deposit Account - xxx-xx168-2
Transaction: Check 3163
Date 12/28/2011
Cleared:
Amount: $ 2,099.58

Date Initiated: 12/28/2011
FI Reference ID: 20111229125219221O3

Note: Check and Deposit images older than 180 days are not available online, but can be obtained by calling Customer Support from the number below. In order to maintain this service, there is scheduled maintenance every Saturday at 11:00 PM MT and on the last day of each month at 7:00 PM MT. During this time, which typically lasts about six hours, your images may not be available. We apologize for the inconvenience this may cause.

Transaction Image





ROBERT A. & JUDI B. FRANCIS
ROBERT A. FRANCIS, P.C.
YTB TRAVEL & CRUISES
(970) 925-5061
0001 HEATHER LANE
ASPEN, CO 81611

VECTRA BANK COLORADO, N.A.
534 E. HYMAN
ASPEN, CO 81611
23-31/1020

4343

PAY TO THE ORDER OF ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION

3/28/2011

Two Thousand Ninety-Nine and 58/100****** $ **2,099.58

DOLLARS

ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION
600 E. HOPKINS AVE. #203
ASPEN, COLORADO 81611

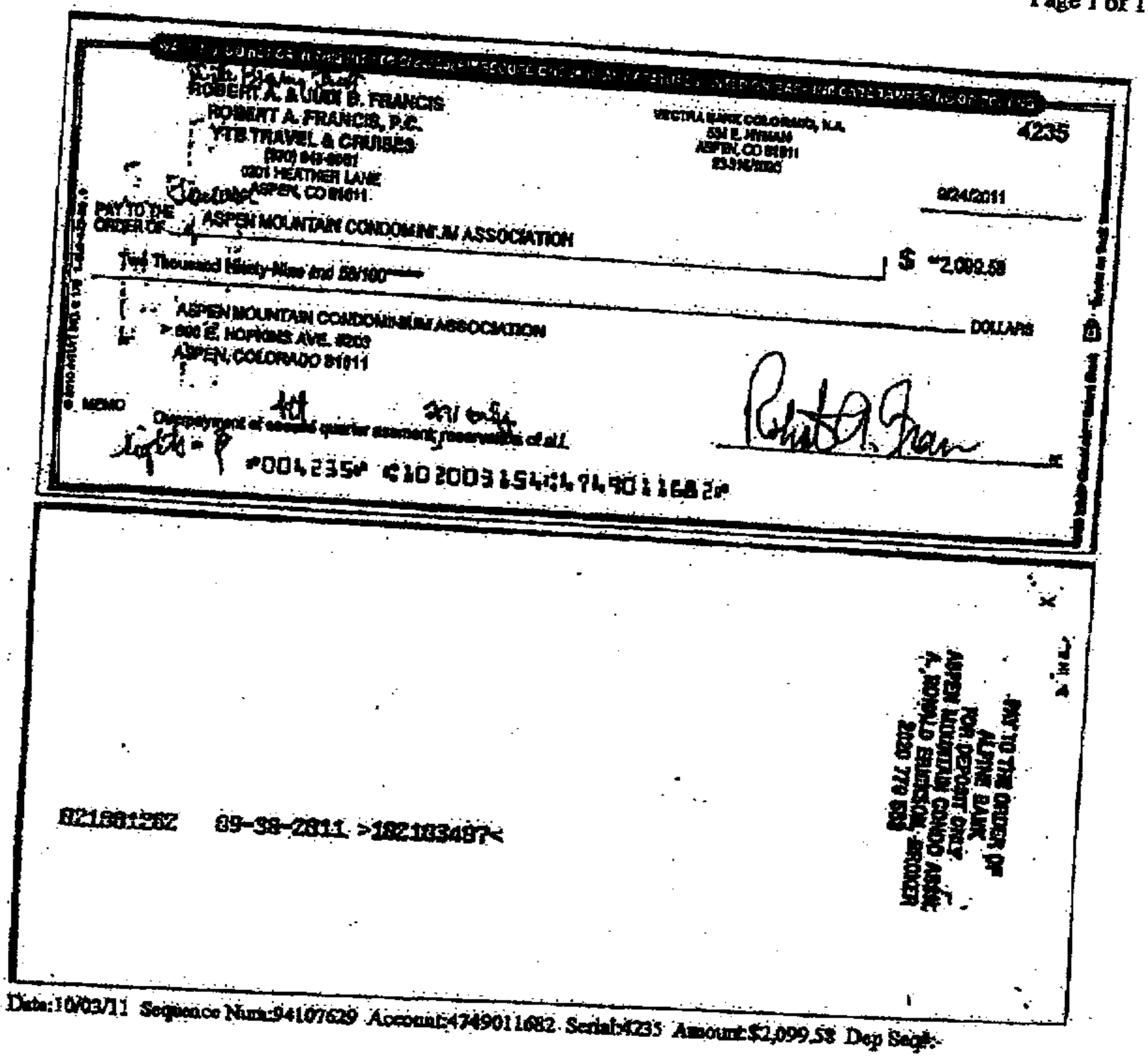
MEMO Overpayment of second quarter assment; reservation of all rights

Patel Fam

⑈004343⑈ ⑆102003154⑆4749011682⑈

Date:04/25/11 Sequence Num:94075967 Account:4749011682 Serial:4343 Amount:$2,099.58 Dep Seq#:-

EXHIBIT 13


ROBERT A. & LORI B. FRANCIS
ROBERT A. FRANCIS, P.C.
YTB TRAVEL & CRUISES
[970] 948-8981
0201 HEATHER LANE
ASPEN, CO 81611

VECTRA BANK COLORADO, N.A.
534 E. HYMAN
ASPEN, CO 81611
[970] 925-2200

4235

9/24/2011

PAY TO THE ORDER OF ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION

Two Thousand Ninety-Nine and 58/100 $ **2,099.58

ASPEN MOUNTAIN CONDOMINIUM ASSOCIATION
600 E. HOPKINS AVE. #203
ASPEN, COLORADO 81611

DOLLARS

MEMO Dues/payment of second quarter assessment/reservation of all

Robert A. Fran

⑈004235⑈ ⑆102003154⑆ 4749011682⑈

R218612682 09-38-2811 >182183497<

PAY TO THE ORDER OF
ALPINE BANK
FOR DEPOSIT ONLY
ASPEN MOUNTAIN CONDO ASSOC
A. RONALD EISEMAN CONDO ASSOC
600 E HOPKINS
ASPEN CO 81611

Date:10/03/11 Sequence Num:94107629 Account:4749011682 Serial:4235 Amount:$2,099.58 Dep Seq#:

EXHIBIT
14

[illegible] LTD
[illegible] LANE
ASPEN, CO [illegible]

PAY TO THE ORDER OF Garfield County District Ct.

9/29/2013
DATE

109

$ 2350.00

Two thousand three hundred fifty and 00/100 DOLLARS

Alpine Bank

FOR [illegible]

[illegible] payment of assessment: Reservation of all rights

[illegible] 2212012344 0109

EXHIBIT

16

HAND DELIVERED

November 30, 2010

Aspen Mountain Condominium Association:
C/O Aspen Mountain Board of Directors
C/O Bruce Lynton, Don Miller, Steve Daubenmier
731 South Mill, Units 2-A, 2-C, and 2-B, respectively.
Aspen, Colorado 81611

Re: *Unit 1-A*

Gentlemen:

Enclosed please find a check in the amount of the purported 1st Quarter, 2011 assessment relative to the above. Such payment is made with reservation of all rights.

This communication is for the Aspen Mountain Condominiums Board of Directors only and is not to be shared with Aspen Resort Accommodations, Ron Erickson, and/or Scott Harper. It is patently obvious that ARA, Erickson and Mr. Harper have a conflict of interest in this matter, and are, therefore, disqualified from advising you with regard to any occurrences in this matter whatsoever. The Owners of Unit 1-A ("the Owners") believe that, even though the Board is represented by separate counsel, that Erickson and Mr. Harper have been working with the Board outside the lawsuit and directing the Board in Erickson's, ARA's and Harper's own interests. Accepting and acting upon Mr. Harpers/Erickson's advice would be a violation of the CCIOA's admonition for the Board to act "in good faith," and a violation of the Board's fiduciary duty.

As you may be aware, because of the afore-mentioned conflict, the Owners have recently sent all correspondence to the Board with a clear admonition that the correspondence be opened "only by the Board." You may also be aware that mail expressly intended to be opened by a specific person, which is opened by someone other than that person is a federal crime. If this letter is opened by anyone other than a Board member, appropriate action will be taken. Please confirm that the Board and its individual members have not in fact opened any correspondence addressed to the Board in the last several months. This request is made because the Owners have requested an address specifically for the Association and *not* merely the address for ARA (which is required by CCIOA).

As you know, the billing for the 3rd and 4th quarters for Unit 1-A has been inaccurate

in several particulars. The Owners have repeatedly advised the Board of several aspects of the billing which are clearly in error. Presumably the Board is unaware of the billings sent by ARA (which, incidentally, are only sent to one of the Owners), and, therefore, are unaware that the billings are inaccurate. It is the desire of the Owners to fully pay all legitimate assessments. However, unless and until the Board properly adjusts the billing, the Owners are prevented from doing that.

Aspects of the billing which are undisputedly in error are:

- Apparently, the 2nd and 3rd quarter billings included approximately $400 each, which amount was attributable to an increase in the Unit's % of the common area. Whether such increase was legal (and CCOIA says it's not), the increase would not in any event have become effective until the 4th quarter, as the "amended" declaration was not effective until *after* those billings.

- Both CCOIA and our Declaration apparently require that any insurance coverage which is paid out of the common assessments be apportioned among the units according to each units' share of the risk. That has not been done—ever. Since Unit 1-A is smaller than most of the other units, and has a different occupancy pattern than all of the other units, the Owners have most-likely been over-assessed for 13 years. Assuming that the over-assessment would be, say, $20 per month, the Unit has been over-assessed more than $3000.

- As you know, the Unit suffered a constructive eviction in the fall of 2009. The duration was approximately three weeks, so another approximately $400 (or more) should have been credited.

- CCOIA and the Declaration require that improvements to the common elements which benefit specific units must be billed to those units. The Owners are aware that there have been improvements which have been billed to all, yet only benefit a few. Determining the precise amount is impossible without the bills being itemized, which the law and the Declaration both require, and which the Owners have repeatedly requested.

- The Owners have requested (and paid for) pursuant to the Declaration a statement of assessments due, something the Owners have the right to. This request has been ignored.

- There are probably more credits to which the Owners are entitled, but cannot be determined unless the Board complies with CCOIA and the Declaration by furnishing the data to which the Owners are entitled. Nevertheless, the known credits total well over $4000, an amount in excess of the total of the 2nd and 3rd quarters. In other words, the enclosed check

greatly overpays the legitimately due assessments for the 2nd through 4th quarters.

Months ago, the Owners requested, pursuant to CCOIA to be allowed to inspect the financial records of the Association. They have the absolute right to do so, yet have been denied that right. Please comply; the Owners wish to resolve this issue.

Sincerely,
The Judy B. Francis Trust

By _____
Trustee

The Robert A. Francis Trust

By _____