

## ARGUMENT

- I. Whether the District Court erred in finding Defendant Robex Inc. in wrongful possession of property and concluding that Wells Fargo Bank Had right to replevin of property of Robex Inc. and personal property of Rebecca Adams.
  1. District Court erred finding that security agreement was authentic.
  2. District Court erred in finding that Bank properly identified personal equipment and property.
  3. District Court erred disregarding Rodney Stubbs and Ronald Adams testimony that certain property seized belongs to them.
  4. District Court failed to recognize that Wells Fargo Bank did not follow SBA rules when identifying property to be considered collateral in the Robex Inc. loan.
  5. District Court failed to find Wells Fargo could not account for (exhibit 10) disbursements claimed or prove a default in the loan.

**Bank's Exhibit 10** clearly shows that the SBA loan funds for **Robex Inc.** were overcharged. The **Bank** has concocted settlements sheets that show payments to Wells Fargo **Bank** and/or Robex exceeding 200,000.00 that the **Bank** did not verify where these funds were applied. The **Bank** has never verified what this money was applied to. Transcript 10-21-03 Page 39 lines 20-25. Wells Fargo **Bank** Minnesota to date has not accurately accounted for these funds that they were in solely in control of entirely. The **Bank** would withdraw funds from the loan account fund. These funds were then to be then applied and credited to the **Robex** checking account. The **Bank** was to then deduct the loan payments from the **Robex** checking account. (See **Bank's Exhibit 10**, page 25) (See the transcript testimony 10-21-03 Adams page 34 lines 10-25, page 35 lines 4-8, page 39 lines 22-25, page 41 line 20, page 42 lines 20-25) **Adams** did not understand exactly how the **Bank** did this accounting. **Adams** had never seen the majority of the Settlement sheets

the **Bank** had created in its exhibit 10. (see transcript page 36 lines 19-21) (Transcript 10-21-03 pages 30 through 44 **Adams** is questioned about settlement sheets) **Adams** had not seen the majority of these Settlement sheets prior to the questioning.

**Adams** was not at any time served by the **Bank** with a formal notice of a default by the **Bank** so she could know what needed exactly to be cured. (See transcript 10-21-03 page 108 line 9 Muewissen's testimony) **Adams** was not given any accurate statements of the loan account so she could determine if there was true a default. (transcript 10-23-22 page 123 lines 14-17) **Adams** depended on what the **Bank** had reported to her verbally concerning the **Robex** loan account. A replevin Petition was filed and then the **Bank** claimed default. The **Bank** failed to prove a default of the loan prior to replevin. The **Bank** did not serve defendants with any notice of a default on the **Robex** loan prior to replevin to give Adams an opportunity to cure the purported default. (Transcript testimony of Paul Loveless, page 76 lines 12-15) (Transcript testimony Adams page 44) The loan payments were directly withdrawn out of the Robex checking account by the **Bank** after the **Bank** would make a deposit from the SBA loan funds.) (See page 25 of **Bank Exhibit 10**)

Greg Muewissen refused to identify to **Adams** where and how the **Bank** had applied these working capital funds. The Bank failed to verify in District Court where and how these funds were applied. Verified expenditures in **Bank Exhibit 10** deducted from the **Robex Inc.** loan funds amount to 410,255.96 for equipment expenditures and equipment parts. *Iowa Code 554.1203. "Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement."*

However, in Greg Muewissen's testimony at the trial held in the District Court on October 21, 2003, he did not know how much money **Robex Inc.** owed on this loan. (see

transcript dated 10-22-03) The specific amount of a purported default was not given in the Settlement sheets created by the **Bank**. The **Bank** acted in an unconscionable manner by over charging the Robex loan account then claiming a default when in actuality there was no default.

The **Bank** only provided one checking account statement query (**Exhibit 10** page 25) to the District Court. This query that verifies 20,000.00 and 5,000.00 was deposited to the **Robex** checking account. Page 25 of exhibit 10 also shows the **Bank** took loan payments directly from the **Robex** checking account.

The SBA approval allocations of funds show the amount of funds to be applied to equipment expenditures, amounts to be applied to inventory, an exact amount of cost for closing and an amount of funds are allocated for working capital (loan payments) (**Defendants Exhibit H** page 3 paragraph G.)

The **Bank's** (exhibit 10 page 111) shows \$119,613.32 paid to Wells Fargo **Bank**. Yet the **Bank's Exhibit 10** pages 45 – 51 show only \$48,750.00 of verified expenses for the bridge loan equipment. Pages 100 –110 verify only \$28,678.00 equipment purchases of the bridge loan amounts. The bill of laden charges (**Exhibit 10** pages 50 and 101) \$2,250.00 charge is added into the **Bank's** evidence twice. This \$2,250.00 was one charge and one check written #1021 for the delivery of the KEC blade and the Caterpillar 966 loader from Idaho and Utah. These items were delivered on the same load as one billing. One load from Idaho and Utah one charge. The **Bank's Exhibit 10** total charges of **bridge loan** equipment purchased that is verified with the checks written from the **bridge loan** is only \$77,428.00. Clearly from the records provided in the **Bank's Exhibit 10** there is an overcharge deducted from the **Robex Inc.** SBA loan funds for equipment. It would seem

that the **Bank** over paid itself for these **bridge loan** equipment purchases. This overcharge by the documents submitted in Bank's exhibit 10 have a discrepancy. \$42,185. 32

Greg Muewissen's Affidavit In Support Of Immediate Possession shows 605,712.02 owing on the **Robex** loan. The 605,712.02 Greg Muewissen reported in the replevin petition filed in the District Court on September 25, 2002 is not correct.

The specific amount of claimed default was not given due to the confusion and overcharges in the settlement sheets created by the Bank. *U.S.C Title 18 Chapter 25, Sec. 513, (2)* “..contains a false addition thereto or insertion therein....” The **Bank** acted in an unconscionable manner by over charging the **Robex** loan account on previously blank signed Settlement sheets, then claiming a default in a replevin petition when there was actually no default.

**Adams** also tried to pay the **Bank** the insurance settlement check from Bituminous Insurance Company in October 2001. (Transcript testimony 10-21-03 of Paul Loveless page 102 lines 1-6.) The insurance proceeds would have either paid payments for at least ten months or taken the principal of the loan down substantially.

The **Bank** required Rebecca **Adams** to sign a note modification. (See **Bank's Exhibit 14**) to increase the “Note” amount to cover the excessive cost that were created by the **Bank** on the **Robex Inc.** SBA loan fund disbursement sheet as shown in (See **Bank Exhibit 10**- page 2) This unconscionable action is prohibited in **Iowa Code 554**. The **Bank** used creative accounting in their settlement sheets and in the disbursement sheet for the **Robex Inc.** SBA loan. The **Bank** failed to prove a default or a right to claim equipment from **Robex Inc.** and equipment of others by replevin or otherwise. Further the **Bank** had no right to take any personal property that did not belong to **Robex Inc.**

**Robex Inc.** did not submit the completed Settlement Sheets to the **Bank** as stated on by the District Court on page 183, lines 16 through 23 of the 10-22-03 transcripts. The lower Court erred in it's Finding Of Facts. Testimony provided throughout the trial by the **Defendant** and the **Defendants Exhibit D** clearly demonstrates the opposite of Court's statement. The previous blank documents Adams was required to sign blank (**Bank's Exhibit 10**, letter from Marlis Tooze **Defendants Exhibit D**) are **Bank** created documents. These blank signed Settlements sheets do not provide factual or credible evidence that **Robex Inc.** provided them. The **Bank** provided these documents by fabricating them.

It is evident on closer examination of **Bank's Exhibit 10**. (Paul Loveless's testimony 10-21-03 page 60 lines 1-18, page 76 lines 4-7) (Adams testimony 10-21-03 pages 30 through 45.) **Robex Inc.** did not receive the funds from the **Bank** under the terms of the "Note" (See Transcript 10-22-03 lines 24, 25, pg 183). The **Bank** refused to give an accurate accounting of what the **Bank** did with the rest of the **Robex Inc.** SBA loan funds. These fund disbursements were entirely internally and solely controlled by **Bank**. The **Bank** clearly did not act in "good faith" as provided for in the "Note". Creative accounting by the Bank in changing the amount of disbursements for Equipment and Working Capital Funds is not a good faith effort. These types of documents are prohibited by

U.S.C Title 18, Chapter 25 Part I Section 513 (c) for the purposes of this chapter—  
(2) the term "forged" means a document that purports to be genuine but is not , because it has been falsely altered, completed, signed, or endorsed, or contains a false addition therein, or is a combination of parts of two or more genuine documents.

The second page of the **Bank's Exhibit 10**, of their disbursement sheet clearly demonstrates that **Robex Inc.** still had funds available when the time **Bank** claimed **Robex Inc.** in default in the replevin petition filed on September 2002. This disbursement sheet is a **Bank** a fabricated document asserting that the **Bank** had released funds to **Robex Inc.** which were supposed to pay for equipment and working capital expenses (loan payments) (transcript 10-21-03, page 42 line 20-25). In accordance with the SBA loan guarantee approval **Defendants Exhibit H**. The **Bank Exhibit 10** fails to support the allegation that **Robex Inc.** defaulted on the contract "Note". Misreporting on the disbursement sheet created from inaccurate Settlement sheets the **Bank** fabricated do not create a default. This is not a "good faith" effort. By the **Bank** using misreported Settlement sheets for deductions in the disbursement of this **loan fund**.

Please compare page 2 of **Bank's Exhibit 10** with the page 54, an internal **Bank** query of exhibit 10. Note the amounts do not agree with amounts being claimed on page 54 as disbursed on page 2 for the same time frame. Page 54 of **Bank Exhibit 10** shows a disbursed amount of \$463,607.60 and it is dated on the bottom 2/8/01. The disbursement sheet shows that on 3/9/01 that \$474,604.09 has been disbursed. The Settlement sheet of 3-9-01 shows that \$496,420.83 has been disbursed. It would appear the correct amount that had been disbursed from the **Robex Inc.** loan fund as of 3-9-03 would most likely the \$463,607.60 on page 54. Page 54 denotes an internal audit type document. There is a \$32,813.23 difference in reported funds between the audit type document on page 54 that says \$463,607.60 has been disbursed and the Settlement sheet dated 3-9-01 claiming \$496,420.83 had been disbursed. These documents show a conflict of payments

made from the **Robex** loan fund to **Robex** working capital and equipment funds that have been disbursed in the amount of \$32,813.23.

Creative accounting practices to for inventing a default is not a valid cause for replevin. *Iowa Code 554.1203 Obligation of good faith.* **Adams** signed voucher sheets blank as the **Bank** because the **Bank** demanded that she sign these in their letter to her. SBA required Adams to sign all necessary documents that the **Bank** requested. **Adams** could not know that the **Bank** would not keep proper accounting. *U.S.C. Title 15, Chapter 2A Section 77q. (2)*, Prohibits these type of alterations.

It is a major objective of the United States Small Business Administration is to assist small business enterprises in creating viable business concerns in rural communities. See *U.S.C. Title 15, Chapter 14 A, Section 636, (11)*, in part, *“emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployment or low income individuals or owned by low income individuals.”*

Adams felt secure in allowing the **Bank** to loan **Robex Inc.** money on an SBA loan. In “good faith” she trusted that the **Bank** would also act in “good faith.” **Adams** was unaware that the **Bank** had misreported the **Robex** funds it had disbursed on the loan. **Adams** was unaware that the documents that (**Bank**) Bret Pugh had solicited from her would be changed and altered from their original contents. **Adams** was unaware of the changing, adding to and altering the settlement sheets in an attempt to show **Robex Inc.** in default.

*See U.S.C. Title 18 Chapter 25, Part 1, sec. 513 (c) for the purpose of this section –*

*(1) the term “counterfeit” means a document that purports to be genuine but it is not, because it has been falsely made or made in its entirety;*

*(2) the term “forged” means a document that purports to be genuine but is not because it has been falsely altered, completed, signed, or endorsed, or contains a false addition thereto or insertion therein, or is a combination of parts of two or more genuine document;*



(3) the term “security” means—

(A) a note, stock certificate, treasury stock certificate, bond, treasury bond, debenture, draft, warrant, debit instrument as defined in section 916 (c) of the Electronic Funds Transfer Act, money order, travelers check, letter of credit, warehouse receipt, negotiable bill of lading, evidence of indebtedness, certificate subscription, transferable share, investment contract, voting trust certificate, or certificate of interest in tangible property;

(B) an instrument evidencing ownership of goods, wares, or merchandise;

(C) any other written instrument commonly known as a security;

U.S.C. Title 18, Part I, Chapter 42, Sec. 894, (a)(2) to punish any person for the nonrepayment thereof.

U.S.C. Title 18, Part I, Sec. 891 Definitions and rules of construction

(3) The term “debtor”, with reference to any given extension of credit, refers to any person to whom that extension of credit is made, or to any person who guarantees the repayment of that extension of credit, or in any manner undertakes to indemnify the creditor against loss resulting from the failure of any person to whom that extension of credit is made to repay the same.

(5) To collect an extension of credit means to induce in any way any person to make repayment thereof.

(6) An extortionate extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person.

The Defendants request that the Supreme Court correct the record of stated as facts in the findings by the District Court. **Robex** did not deliver **Bank**’s altered Settlement sheets **Exhibit 10** to the **Bank**. U.S.C. Title 15, Chapter 2A Section 77q. (2),

“to obtain money or property by any means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statement made, not misleading, in light of the circumstances under which they were made, not misleading; or” (3) “to engage in any transaction, practice, or course of business which operates or would operate as a fraud or a deceit upon the purchaser.”

**Defendant** will reiterate that at no time did **Adams** give authorization by signature or otherwise to change and alter the UCC-1 attachment “A” document that the **Bank** presented to the court known as **Bank’s Exhibit 3** or to change the any of the loan closing documents **Adams** signed on September 5, 2000 as the **Robex Inc.** representative. **Robex** did not deliver this document in it’s altered state to the **Bank**. See again please **Defendants Exhibit E**, page 2 requirement of paragraph number 2 of the SBA form.



Douglas Daggett objected to the entry of this altered document. This attachment "A" on the UCC-1 filing is not an authentic document. It was added to the UCC-1 without **Adams** knowledge or authorization. **Adams** had never seen the alterations that were made to the UCC-1 filing prior to September 25, 2002. (See *U.S.C. Title 18 Chapter 25 Part 1, sec. 513(2).*) Any alterations changes additions create a forged or counterfeit document. Page 54, on lines 14-20 Paul Loveless is asked who created the attachment to the UCC-1 filing. Transcript 10-21-03 page 55 lines 4-7, Douglas Daggett objected to this document being submitted as "an authentic copy of what she signed." See *Iowa Rules of Evidence 5.901*.

Transcript of 10-21-03 pages 15 through page 23, specifically page 23 lines 13-14. **Bank's Exhibit 2** the security agreement is a counterfeit of what **Adams** truly signed on September 5, 2000. Again Douglas Daggett objected to this document its authenticity is not proven by the Bank. *U.S.C. Title 18 Chapter 25Part 1, sec. 513(1) (2) (3).*

**Adams**, testimony October 21, 2003 on page 15, line 16, "This document, no sir." Referring to exhibit 2. The security agreement dated September 12, 2000. Page 17, lines 16- 24, pg. (Paul Loveless testimony page 50, lines 15-20, no specific date was given in September, 2000) Paul Loveless was not at the signing of **Bank's Exhibit 2**, or other documents on September 5, 2000 or any other documents. (see page 52, lines 3 -10 of 10-21-03 transcript) Clearly **Adams** did not wish to wait another 2 weeks after The **Bank's** representative Paul Loveless sent documents down documents to Bret Pugh on September 1, 2000. **Adams** had the **Bank's** bridge loan to contend with that was very short term that Bret Pugh (the **Bank**) had convinced Adams and Stubbs to sign. Then the **Bank** had **Adams** resign and resign again. Please see **Defendants Exhibit Z** emails from

Paul Loveless and Bret Pugh. (Transcript 10-21-03 Adams testimony page 15 lines 3-16, page 16 through page 20, on page 20 specifically line 20.

The stamp of September 15, on the cover page of the "Note" should verify **Adams** was sent a separate document in one day mail as she testified. **Adams** could not tell if the signature on the **Bank Exhibit 1** was truly hers. After so many documents changed and altered from the original form and date of September 5, 2000. How would one now if the document was the actual one **Adams** signed. The only thing **Adams** could go by was the **Bank** stamp. She knew that she had mailed the one-day package back to Loveless the week after Bret Pugh came with the original loan documents. **Adams** mailed the document back the day after she received it. Loveless had sent to her this the week after Bret Pugh came to see her and have her sign documents. So the **Bank** stamp would be on the front page of the document she actually signed when the **Bank** received it back. **Adams** signed the document and sent it directly back as instructed. Please see **Adams** evidence in resistance to summary judgment July 16, 2003. The date shown on the **Bank's Exhibit 1** is September 15, 2000. (Transcript 10-21-03 page 23 lines 1-4) Please notice this **Bank's Exhibit 1** is not signed by any **Bank** representative.

The **Bank's representative** Bret Pugh gave **Adams** the SBA document "A" "SCHEDULE OF COLLATERAL" from the **Bank** and the closing letter from the **Bank**. **Defendants Exhibit I**. These items were given to **Adams** by the **Bank** to show Adams what was the **collateral** for this loan. Bret Pugh told **Adams** the equipment purchased with loan funds would be the loan collateral. The **Bank** failed to give **Adams** a copy of the original security agreement. Bret Pugh told her that he would mail her copies but failed to

do so. (Testimony 10-21-03 page 17 lines 14 –25. Page 18, page 19 specifically lines 17-19, page 23 lines 13-14) *U.S.C. Title 15, Chapter 14 A Section 636,*

(15) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

**Robex Inc.** was a new business concern. The incorporation was a requirement the **Bank** placed on **Adams**. **Adams** was told the **Bank** needed her to create the corporation to established who they were loaning money to. The **Bank** did not loan **Stubbs or Adams** money personally. The loan was to establish a processing plant called **Robex Inc.** Bret Pugh told her this was to separate personal property from what would be the property of **Robex Inc.** (Testimony 10-21-03 page 51, lines, 1, 2, 3 Paul Loveless verifies "startup business") (Loveless testimony page 74 lines 16-24 verifies the requirement for incorporation)

Please take notice of the emails **Defendants Exhibit Z**. The **Bank**, Paul Loveless sent the closing package out to Bret Pugh to bring to **Adams**. See *Iowa Code 554.1203* These emails establish a clear time of when these closing documents with the original UCC-1 and security agreement were actually signed.

Paul Loveless was not at the signing of **Bank Exhibit 1**. Objection is made to the submission of this **Bank's Exhibit 1** by Douglas Daggett line 11 – 14 page 52) The page following of line 53 objection is made to the counterfeit exhibit security agreement **Bank's Exhibit 2**.

Please take notice of page 96 lines 16-19 Paul Loveless testimony on 10-21-03. Page 55, lines 14-17 Please note **Bank Exhibit 6** appears to be an alteration of **Bank Exhibit 26**. Page 56, lines 17-24 Paul Loveless, line 18 "I'm guessing that one of our loan

officers wrote "Equipment List" on that prior to putting it in the loan file." **Adams** was not aware of the **Bank's** "guessing" on what would be equipment for collateral in this loan. The **Bank** gave Adams SBA documents. The SBA document exhibit "A" is specifically clear what collateral is, there is no "guessing". The **Bank** gave **Adams** a closing letter which describe specific collateral. Then the **Bank** changed the UCC-1 filing by adding a different attachment that had been shown to **Adams** after **Adams** signed it. There was no "guessing" in what the **Bank** gave and showed **Adams** was going to be collateral. The SBA form specifically clarifies the requirements for collateral list, so there is no "guessing".

On page 24 and 25 of the 10-21-03 transcript the **Bank's** attorney questions **Adams** about the Bank Exhibit 6. **Bank Exhibit 6** has been altered. Paul Loveless confirmed that there were changes to **Bank's exhibit 6**. **Adams** did not deliver the altered document exhibit 6 to the **Bank** in its altered form. The District Court erred *U.S.C. Title 18 Chapter 25 Part I Sec. 513, (2)*. does not allow any exception to alterations.

**Bank Exhibit 6** is an altered document. It is a portion of an original document that the **Bank** added equipment numbers, asterisks and "Equipment list". **Adams** testimony of the alterations on this document (see transcripts page 24, lines 11-25, page 25 lines 1-5, 10-21-03). **Exhibit 6** appears to be derived from portions of the **Bank's Exhibit 26** with alterations and changes added to it. Note **Exhibit 26** does not contain the SBA required exhibit "A" label of what an equipment list is supposed to be and it must be signed. (**Defendants Ex. E** page. 2 par. No. 8). An exhibit label is required by SBA for an attachment of what an equipment list are supposed to be to prevent any confusion, misrepresentation and misleading information by either party to these loans. **Bank Exhibit 26** is missing its signature page. **Bank Exhibit 6** is a portion of a document. These **Bank**

**Exhibits 26 and 6** were not signed by **Adams** or authorized by **Adams** as additional collateral this loan. *Iowa Code 554.2202* Final written expression "*may not be contradicted by evidence of any prior agreement*" These Exhibits were not even a prior agreement for the purposes of collateral. It was a business plan **Adams** typed the year previous to the **Bank** soliciting this loan.

A document taken out of context in after it was created is not allowed to be added to another instance or circumstances for which it was not originally intended or created. *Iowa Code 554.1103*, Is applicable as a general principal of law, *Iowa code 502.405*, *Misleading filings* should be applied to this case. See *U.S.C. Title 18 Part I Sec. 513, (2)*, *U.S.C. Title 15 Chapter 14A Section 636. (15)*, Shows personal property of owners is not to be considered as criteria for the SBA loan. Bret Pugh copied of what **Adams** had previously typed up in 1999 in connection with a grant program offered by the State of Iowa when he asked for a business plan. The **Bank** did not reveal to **Adams** that they would be using a portion of the business plan she had wrote the prior year as collateral to this loan.

**Adams** wrote **Bank's Exhibit 26** the year prior to meeting the **Bank** representative Bret Pugh. Bret Pugh took Adams file documents without disclosing to **Adams** that the **Bank** would be claiming them as collateral list. (transcript 10-22-03 page 146 lines 11-13. See page 144 lines 19-22)At no time was **Adams** or Stubbs asked to convey or transfer this personal property into property of **Robex Inc.** The **Bank** didn't have authority to transfer personal property **Adams** or Stubbs and others into **Robex Inc.** without their knowledge. Just because the Bank wanted it. *Iowa Code 554.9625*.

*If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section Iowa Code 554.9210, the secured party may claim security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.*

**Exhibits 6 and 26** were not **Robex** incorporated documents. Prior to Bret Pugh's visit February 2000 **Robex Inc.** of Iowa did not exist.

Please take notice of the transcript dated 12-27-03 page 6 lines 1 – 15. The **Bank** did not have serial numbers for equipment Stubbs and **Adams** owned prior to seizure by virtue of replevin. The replevin was for the "convenience for the" **Bank** could get access to equipment that was not **Robex Inc.** equipment.

No prior notification had been given to **Adams** that the **Bank** would be adding a separate list other than what she was shown on the actual SBA exhibit "A" (**Defendant's Exhibit J**) and the closing letter (**Defendants Exhibit I**). The **Bank** provided nothing to **Adams** that the **Bank** would later make demand for Stubbs and **Adams** privately owned equipment. Iowa Code 554.1103,

The **Bank** gave no list and did not make a request for a list to be signed at any time prior to the Replevin for the after acquired equipment **Robex Inc.** purchased in the **Banks Exhibit 10**. The **Bank** had two years to notify **Adams** of these changes, additions and alterations they were making to this loan. *US Code. Title 15 Chapter 14A Section 636. Iowa Code 554.9635.*

*If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section Iowa Code 554.9210, the secured party may claim security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.*

Concerning **Bank's Exhibit 7**, Adams was never shown this document. (Transcript page 58, lines 21-25, and page 59, line 1 through 4 address the **Bank Exhibit 7**) Paul Loveless "I did not physically myself send out a copy of it." **Adams** was not made aware that plaintiff's exhibit 7 existed until the hearing on 10-21-03. (Testimony page 26,

lines 14-15, page 28 lines 17-24) *Iowa Code 554.1203, "Every contract or duty within this chapter imposes an obligation of good faith in its performance or enforcement."*

Please notice on page 6 paragraph 6 of **Exhibit 7**, this is an expert that the **Bank** did not bring into the court so he could be questioned. On paragraph 9 it clearly states "No investigation has been made into the title to the property....". On page 7 paragraph 4 line 2 "Any publication without the written consent of both the addressee and the appraiser..." **Adams** is not the addressee on this document. **Adams** and Stubbs were not shown this document or given any opportunity to deny this document as being a part of the loan consideration. When **Adams** agreed to take the obligation for this loan for **Robex Inc.**, *US Code, Title 15 Chapter 2A Section 77q (2)*. **Adams** paid the **Bank** to properly administer this loan. She was solicited to purchase a service from the **Bank**.

**Adams** testified about the closing letter (**Defendants Exhibit I**) brought down to her by Bret Pugh on September 5, 2000. **Adams** testified as to what collateral she pledged for her loan. (See transcript 10-21-03- page 19, line 17) "I would agree that, yes, my mortgage on our house --- on Rod's and I's house here in Leon was put up and we did identify what equipment was put up, sir." Note **Defendants Exhibit "J"** and Adams' accompanying testimony on pages 19 – 24 of the 10-21-03 transcript. **Adams** is questioned extensively on the forged security agreement (See **Bank's Exhibit 2**).

*Iowa Code 554.1103 Supplementary general principles of law applicable. Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating cause shall supplement its provisions. Iowa Code 554.1103, Iowa Code*



*554.1203, "Every contract or duty within this chapter imposes and obligation of good faith in its performance or enforcement."*

Please refer to **Defendants Exhibit Z**. Testimony pages 116 through 119 dated 10-22-03 which clearly establishes the true dates that the loan documents were signed.

In the transcript **Adams** is questioned about **Bank's Exhibit 10** that **Bank** claimed were for expenditures. **Adams** never saw the majority of these completed Settlement sheets prior to 10-21-03. Exhibit 10 of the transcript, pages 30- 42. Specifically, notice line 22 of the transcript dated 10-21-03. **Adams** testified "That just—I don't know how they do that. I'm sure that that was just put in to keep the payments going and stuff. It says' "see copy of advance ticket attached." The **Bank** retained sole control of the funds and the deposits and withdraws for the loan payments. (Transcript dated 10-21-03, Paul Loveless, page 60, lines 5-8. See also page 60, lines 22-25 and page 61, line 1 and also page 66, lines 1-9) The **Bank** was solely accountable for keeping track of any the funds the **Bank** disbursed. (See transcript, dated 10-21-03, page 14, lines 11-19. *Iowa Code 554.1103* *"misrepresentation"*)

Please take note of Plaintiff's claim of a default in the replevin Petition and the attached waiver that the **Bank** requested **Adams** to sign. (See transcript dated 10-21-03, page 45 and transcript dated 10-22-03) (See also, **Defendants** Resistance dated 7-16-03. Items 37. 38. and 39)

**Adams** is question about **Bank's Exhibit 7**. page 26, line 16. "I've never seen these pages here, sir. Again on page 27, line 8 "Sir, these are not what I saw that Craig Hilpipe sent me when I asked him to send me a list of what he had." Again page 28, line 19., line 24.(10-21-03) Testimony of Rodney Stubbs (10-21-03). By not disclosing to **Adams** a

specific list of equipment that was being claimed by the **Bank** as a part of this loan, the **Bank** utilized misleading method of acquiring her signature. This is not appropriate behavior as noted in *Iowa Code 502.405* , *U.S.C. Title 15 Chapter 2A Section 77q. (2)* , *Iowa Code 554.1103*.

The **Defendants** had no prior knowledge of the EMA appraisal shown in **Bank Exhibit 7**. The **Bank** made this documentation and added this to the loan without the **Defendants** knowledge or approval. Pages 149-151, 10-21-03 **Adams** testimony. Please notice that this document is not signed by **Adams**. It is not labeled exhibit "A" as required by SBA documentation standards in **Defendants Exhibit E** requirement 2. on page two. It was not given to **Adams** or revealed to Adams. The **Bank** did not bring in this apparent expert for questioning on how this document was created and exactly when this information was acquired by the Plaintiff. The EMA appraiser/ Hilpipe auctioneer was absent and could not be questioned in the District Court about the personal property seized that did not belong to **Robex Inc.** Nor how and when he acquired the serial numbers on this equipment after it was seized by sheriff Burt Muir. The EMA / Hilpipe document is not signed by **Adams** or documented as exhibit "A" as required by SBA.(See **Defendants Exhibit E** page two requirement 2.) Paul Loveless verified that he did not send **Adams** a copy of this document. Loveless and Pugh failed to reveal that they would be claiming this additional equipment as collateral for this loan. (transcript page 59 line 1-4 Loveless "I did not personally send out a copy of it") (transcript **Adams** concerning **Bank's Exhibit 7** transcript 10-21-03 page 26 line 14-16 "I've never seen these pages here, sir." Testimony continues through to page 27 line 8-10 "Sir, these are not what I saw that Craig Hilpipe sent to me when I asked him to send me a list of what he had.") *Iowa Code 554.2202*

**Adams** signed particular documents that the **Bank** presented to her for collateral. If a complete and accurate equipment list had been supplied to **Adams** she could have signed it. (Testimony Paul Loveless 10-21-02 page 91 line 17-21) The **Bank** did not tell **Adams** it would be claiming her husband and others equipment for collateral in this loan. (transcript Adams testimony 10-22-03 page 102 lines 5-11, page 93 line 8-12 ) The **Bank** never requested **Adams** or Stubbs to sign any release to the personal equipment, machinery or property the **Bank** seized by replevin. (the exact opposite is stated on the SBA forms) (transcript 10-22-03 page 75 line5, page 102 line 11, page 93 line 12, page 86 lines 6-10). (transcript page 61 line 8, page 63 line 3) The **Bank** did not reveal their full intentions of this loan to Adams. (the UCC-1 filing claiming the mine property) (transcript 10-22-03 page 76 lines 5-7) First telling **Adams** she had to incorporate a business to separate personal property. Then supplying **Adams** the SBA form exhibit "A" and the closing letter. Then after having **Adams** sign the UCC-1 then making an additional attachment 'A' that was never shown to **Adams**. *Iowa Code 554.1103, Iowa Code 554.9210*

**Bank's Exhibits 2, 3, 4, 6, 10, 26**, are altered document as described in *U.S.C. Title 18, Chapter 25, Part I, Section 513*.

The security agreement **Bank's Exhibit 2** was not authenticated by the debtor.  
Page 185, lines 17-24 (10-22-03). As required in

*Iowa Code 554.9625 Remedies for a secured party's failure to comply with Article 7. Limitation of security interest—non compliance with section 554.9625 If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 554.9210, the secured party may claim security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by failure.*

The only listed equipment was the closing statement given to **Adams** is the Komatsu loader, the 1992 Dodge pickup, the 1995 Ford pickup and the 1987 International dump truck. *Iowa Code 554.2202 "Final written expression"*

The debtor did not authenticate a list of Collateral I nor provide **Bank** with this equipment list, transcript page 186, lines 7-10. (10-22-03), page Greg Muewissen created this list in September of 2002, pages 180, line 10-16, page 181, lines 3-6 (10-22-03). The **Bank** did not ask **Adams** to authenticate **Bank's Exhibit 5** list. The **Bank** chose replevin knowing **Adams** could not adequately defend them due to the financial hardships the **Bank** helped create. *U.S.C Title 18, Chapter 42 Part 1, Sec. 513, U.S.C. Title 18, Chapter 25, Sec. 514, (a) (2).*

See Testimony from **Rebecca Adams** in answer to Mark Rice's questioning. (transcript 10-21-02 page 14, lines 24-25) Q. "...if note was paid off in full?" A. "It wasn't paid off in full, sir." **Adams** signed the SBA Authorization agreeing to a ten year loan not a two year loan. (See **Bank Exhibit 13** dated 10/21/03). **Adams** had every intention of paying this loan off in full. (See Adams testimony on transcript 10-22-03)

In August of 2002, at the time of the visit by Greg Muewissen, the only **Bank** representative to ever inspect or view the sand pit facility, personally viewed **Robex Inc.** pledged collateral the Komatsu loader, the dump truck and the two pickups or **Adams** and Stubbs house and shop property was Bret Pugh the initial **Bank's** loan packager.

The **Bank** singularly and solely prepared and delivered **Robex Inc.** loan by utilizing telephone calls, e-mails, faxes, letters and photographs while relying on **Adams** previous payment history, paperwork and credit worthiness to base the loan on. The **Bank** had no knowledge or previous experience to contribute on Wells Fargo **Bank's** behalf concerning a

mining operation for sand and gravel of this magnitude. The **Bank** did not possess a realistic scope of the **Defendant's** operation and did in fact absolutely under-fund the note. Then worse shorted the funds of the loan in improper accounting. *U.S.C. Title 18 Chapter 42 Part 1, Sec. 513 (2)*. In an attempt to conceal these facts and to disguise the **Bank's** total lack of good faith and wrong doings, the **Bank** did then initiate a replevin action placing blame on Adams for the **Bank's** inability to adequately and fully finance **Robex, Inc.**. The **Bank** essentially 'bailed out' of the loan after acting unilaterally and in conflict with SBA standards of operating procedure.

**Adams** was screening rock that she and her husband had already washed at the time of (**Bank's** Loan Support) Greg Muewissen's initial visit to the mine site in August of 2002. Both Adams and her husband had worked for weeks to get a pile of rock washed with the little Eagle screw that Rodney Stubbs purchased in 1998. **Adams** and Stubbs both were waiting for the totaled Scorpion machine that was being repaired by Dennis Shawler to be repaired and returned so this pile of rock could be screened and sold. (See Transcript dated 10-21-03, page 109, lines 6, 7 and 8). Dennis Shawler was himself waiting on parts that he had ordered for the Scorpion screen plant to be delivered to his shop from a hydraulic engineer and specialist in Omaha, Nebraska.

Paul Loveless testimony confirmed the **Bank's** requirement that **Adams** incorporate her sand and gravel production business. (See transcript dated 10-21-03, Loveless testimony, page 74, lines 16- 23) This concerns the requirement placed upon **Adams** by the **Bank** for incorporation. Also, please take notice of the testimony of Paul Loveless in this same transcript that changes from page 76 where Loveless gives one answer to a totally opposite answer on page 79.(See transcript dated 10-21-03). Paul Loveless directly

changed his testimony throughout this line of questioning on 10-21-03. Loveless testimony conflicts throughout this line of questioning. Note the testimony of Paul Loveless on pages 89 through 91 of the same 10-21-03 transcript concerning a landlord waiver and a fixtures and equipment list. Please note pages 74, 75, & page 76 lines 5, 6, 7 of Rebecca's testimony on 10-22-03. Page 92 and 93 on lines 11- 25. **Bank** representative Paul Loveless is confirming that there was a closing letter that **Bank** representative Bret Pugh delivered to Rebecca **Adams** on September 5, 2000 (Reference: Defense **Exhibit Z**. of Defendants **Exhibit I**). The date these documents were signed is confirmed by the emails that Loveless sent Adams.

(See: Testimony of Paul Loveless, Page 94 lines 1-6) This confirms the SBA requirement for the **Bank** to provide a "Complete list of collateral to include serial numbers of items valued in excess of \$500.00." Defendants **Exhibit J** reflects a portion of the list of collateral that Adams had in fact, pledged to the bank.

On page 95, line 17-19 dated 10-21-03, Paul Loveless' statement concerning an SBA form that was given to **Adams** (SCHEDULE OF COLLATERAL, SBA exhibit A and also marked DEFENDANTS **EXHIBIT J**). Loveless testified that, "This would usually be an attachment to the application. I do not believe this would be part of the loan closing package." Loveless is admitting that **EXHIBIT J** was not a part of the loan closing documents. SBA required this labeled exhibit "A" for collateral Defendant Exhibit J.

Please take notice of Defendant's **Exhibit E**, U.S. Small Business Administration APPLICATION FOR BUSINESS LOAN. It is the only known complete and original loan application pertaining to **Robex, Inc.**. Rebecca S. **Adams** signed it as President of **Robex Inc.** Please notice on Page 2 of this exhibit in the left hand lower half of the page at

paragraph 2 where it specifically states; 2. If your collateral consists of (A) Land and Building, (B) Machinery and Equipment, (C) Furniture and Fixtures, (D) Accounts Receivable, (E) Inventory, (F) Other, please provide an itemized list (labeled exhibit A) that contains serial and identification numbers for all articles that had an original value greater than \$500. Include a legal description of Real Estate offered as collateral. **Bank** has failed to properly perfect a security interest in the property listed in DEFENDANTS EXHIBIT E by virtue of the fact that the bank never attached a proper legal description of this particular piece of Real Estate. A mere Rural Route mailing address does not qualify nor satisfy the SBA requirement of a legal description. Yet the **Bank** attempted a full legal description on their added cut and paste attachment 'A' to the UCC-1 filing of property not owned by Adams. *U.S.C. Title 18 Chapter 42 Part 18 Sec. 513*

Please notice on page 3 of this same **Defendants EXHIBIT E** at the top of the page,

"ALL EXHIBITS MUST BE SIGNED AND DATED BY THE PERSON SIGNING THIS FORM".

Item 8 on page three of the SBA document **Exhibit E** requires an attachment of label exhibit "G" for any machinery or equipment to be purchased with loan money. It specifically says, "Attached as exhibit G" for any after acquired equipment to be purchased. Note SBA attachment exhibit "A" that was specifically required by SBA to be filed with the Plaintiff's Chapter 9, UCC-1 filing. Page one of this application requires an attachment "A" to list collateral. Again, **Bank** must specifically identify by make, model and serial number of any equipment for the loan. The **Bank Exhibit 3** attachment "A" does not have **Adams** signature anywhere as is also required by the SBA form submitted to the District Court as



shown in Defendant's **Exhibit E**. Adams would never have signed such an agreement that would have attached land that she did not own.

The Defendants **EXHIBIT J** and the letter of closing EXHIBIT D, the SBA Attachment "A" that was given by the **Bank** representative Bret Pugh to **Adams** is the only true and correct attachment list that belonged with the UCC-1 filing that Adams signed for her SBA Guaranteed Loan.

*Iowa Code 554.2202 Final written expression – parole or extrinsic evidence. Terms with respect to which the conformity memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are include therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented.*

The note modification Adams signed on May 2001 was signed under duress and Adams was ignorant of the Bank's overcharges in their own accounting procedures. (See **Bank Exhibit 10**) **Adams** could not have known that the **Bank** had deducted more funds than **Robex, Inc.** or Adams had used in the bridge loan purchases. **Adams** relied on the **Bank** to provide her with accurate accounting concerning the **Robex loan fund**. Adams was plagued with equipment that came from the factory that was inoperative and non working in October of 2000. Adams was under an extreme amount of stress due to taking such a large loan obligation and not having any of the **Robex Inc.** income to pay the payments. She relied on the **Bank** to provide her with accurate and truthful accounts concerning any of the **Bank** disbursements. Adams took on a tremendous amount of work in her art business to make up for the **Bank's** purported lack of expense funds for **Robex Inc.** The **Bank** took advantage of Adams situation and misreported the actual funds that had been disbursed by the by the **Bank** to her. (See **Bank's Exhibit 10**) The letter from Marlis Tooze dated December 12, 2000, required **Adams** to sign blank disbursement

sheets. (See Defendant's Exhibit D) (**ref- Iowa Code 554.13108 Unconsionability**) Being ignorant of these misreported disbursements, **Adams** assumed the **Bank** was acting in "good faith" and did business as usual with **Robex, Inc.** accordingly unaware of the **Bank's** actions being used to her detriment. (**ref - Iowa Code 554.1203**) also ( See transcript dated 10-22-03, page 138, lines 14-17) **U.S.C Title 15, Chapter 2A, Sec. 77q. (2)**

**Paul Loveless** (the **Bank**) sent one day delivery to **Adams Defendants EXHIBIT A** in December of 2000. Between the non- working manufacturer's equipment, her numerous computer crashes and the wreck that her husband had been in on December 13, 2000, Adams was overworked and overburdened by events and had not been able to complete her own accounting. Adams computer had been crashed twice and she did not get the **Robex Inc.** accounting re-entered into her computer after several of these computer crashes. Adams followed Paul's instructions to copy the balance sheet that he had prepared and faxed it as instructed. **Adams** was again acting on an assumption that the **Bank** was acting in "good faith". Paul Loveless's testimony (See transcript dated 10-21-03; page 77, lines 6-12 and page 78, lines 5-15. (**ref - Iowa Code 554.13108 nconsionability, Iowa Code 554.1203**)

On 2-22-01 Adams received another fax from Paul Loveless. He asked her to sign and date these papers. Paul Loveless's testimony 10-21-03 page 77 lines 6-12, page 78 lines 5-15. **Defendants Exhibit B.** Again, Adams followed Loveless's instructions as he requested. (**ref- Iowa Code 554.13108 Unconsionability, Iowa Code 554.1203**)

**The Bank** then required a note modification in May of 2001. (See **Plaintiff's Exhibit 14**) Adams, under duress and in her ignorance of any prior misreported fund

disbursements by the **Bank**, signed this note modification. (See testimony of Paul Loveless; transcript dated 10-21-03. page 97; lines 19-25, page 98; lines 1-25) The note modification and deferrals. (*ref- Iowa Code 554.13108 Unconsionability, Iowa Code 554.1203*)

Paul Loveless granted **Robex Inc.** a payment deferral for 6 months. **Adams** continued throughout the year of 2001 fully unaware of what the **Bank** had done in its accounting of funds and disbursements and in altering the loan closing documents.

On the morning of September 11, 2001, **Robex Inc.** suffered yet another mishap. This time it concerned equipment that **Robex, Inc.** had purchased for processing materials. The Scorpion screening plant collapsed and fell over on its side as it was being fed with a loader. This happened as **Robex Inc.** was filling its first large road contract. **Adams** attempted to make payment to the **Bank** by paying an insurance settlement that had been paid by her insurance carrier for the current value of the screening plant. **Adams** made three efforts to give this check to the **Bank**. Paul Loveless declined to accept these funds. (See transcript dated 10-21-03; pages 101 & 102) Adams relied on the **Bank** for all allocation decisions concerning **Robex Inc.** funds. **Adams** provided the **Bank** with all the receipts of equipment that she had purchased and the equipment repair expenditures for the machines. **Adams** allowed the **Bank** to make all the necessary payment withdrawals out of the **Robex Inc.** checking account. Again the **Bank** had complete control over all deposits and withdrawals to and from the **Robex Inc.** checking account for payments to be made for the **SBA loan**. In the interim, the **Bank** failed to give accurate and truthful accounting of disbursements as recorded in bank settlement sheets and their respective disbursement sheets. False and misleading reports concerning account fund do not validate or substantiate a claim of default on a loan. **Bank Exhibit 10**

In late October of 2001, the newly manufactured wash-plant (Kolman screw) was destroyed by its manufacturer's personnel. Adams followed Paul Loveless's instructions and deposited the insurance check from Bituminous for the damaged Scorpion screening plant into the **Robex Inc.** checking account allowing loan payments and expenses to be withdrawn from the account. (Please note the disbursement sheet in **Bank's Exhibit 10**; page 2) It reveals that there are still funds listed in the **Robex, Inc.** loan account. Not that this is accurate, but it was unknown to **Adams** that any funds were still showing in the loan fund account. **Adams** depended on the **Bank** to report the correct amount of funds available to **Robex Inc.**

In February of 2002, Paul Loveless sent Adams another note modification to sign. (See **Plaintiff's Exhibit 15**) Adams again signed this document under duress as the insurance proceeds (Bank loan payments were withdrawn by the Bank from this account) were depleted by February of 2002 from the Scorpion machine falling over on September 11, 2001. In July of 2002, **Adams'** insurance company still had not paid for the damage to the twin screw wash plant that had been damaged by the manufacturer's personnel in October of 2001. **The Bank** reported to Adams that the entire loan fund had been disbursed. Again, **Adams** had depended on the **Bank** to give her an accurate accounting of her loan funds. (ref - *Iowa Code 554.13108.*, *Iowa Code 554.1203*)

**Adams** had deposited the insurance check for \$74,134.18 into the Robex, Inc. checking account allowing the **Bank** to take out loan payments back in October of 2001. (See transcript; testimony of Paul Loveless, pages 100 to 103)

Please notice Paul Loveless's testimony on page 97 lines 19-22. "I mean there were two periods where we deferred payments for three months and then another one for

six months entirely.” These **Bank** elected deferrals and modifications were made in 2001 and then again in 2002. At that time, **Robex Inc.** still had funds available to it on the **Bank’s** books and these funds had not been disbursed to **Robex, Inc.** (See **Bank Exhibit 10**; page 2) **The Bank** required **Adams** to sign these loan modifications when there was money still left in her loan account fund. (*ref - Iowa Code 554.1310*) (*ref - Iowa Code 502.405*) (*ref - Iowa Code 554.1103*) (*ref - Iowa Code 554.1203*)

Plagued with destroyed equipment, an insurance company that was failing to pay its obligations for the Kolman twin screw (the wash-plant), both Adams and Stubbs attempted to get the rock washed and screened that had been piled up during the filling of the road contract for sand. Stubbs had asked Adams to purchase back the Scorpion from the insurance company for him. Stubbs had loaned Adams money when she fell short on the expenses at the sand and gravel operation and also for extra expenses she incurred on equipment for her **Robex Inc.** company in October of 2000. **Adams** discussed this with Paul Loveless to see if this was ok with the **Bank** for Stubbs to purchase the Scorpion machine. (10-21-03 transcript page 102 lines1-6)

Stubbs thought he knew why the newly manufactured equipment (Scorpion screen plant) had failed to run properly from the factory. He purchased the machine from Bituminous and spent the winter, of 2001-2002 having the structure of this portable machine rebuilt. Throughout 2002, Stubbs shipped the machine to hydraulic experts throughout Iowa to find the exact cause of the hydraulic failures and to have these causes documented. With this machine repaired, he could let Adams use the machine to screen her rock. In July of 2002, Stubbs sent the machine to Denny’s Hydraulics in Creston, Iowa.( See transcript dated 10-22-03; page 97, lines 1-4) Dennis Shawler called in a hydraulic

expert from Omaha. The machine would be ready for to use to screen rock as soon as the parts came that the expert from Omaha ordered for Denny's. (Transcript 10-22-03 page 4, line 11-25, page 6 lines 11-12 by Dennis Shawler) (transcript 10-22-03 Adams testimony page 125, concerning rock being prepared for sale in August 2002)

**Adams** calls **Paul Loveless** to give him a report of the status of the operations.

**Paul Loveless** tells **Adams** he will no longer be her contact. **Adams** is led to believe that **Loan Support** will be helping her to work through the financial problems the broken wash-plant has made for **Robex Inc.** Paul Loveless testimony 10-21-03 page 99 lines 5-16.

When Paul Loveless tell Adams Loan support will help her Adams feels relieved. Adams friends and family have had the burden of helping her through the excessive cost and these expensive **Bank** payments without income that this non working equipment has created for her. Family and friends helped her make the **Robex** loan **Bank** payments and carried the burden of expenses throughout these periods of the broken equipment and non working equipment. (testimony of Adams 10-22-03 page 167 lines 2-9.)

In regards to testimony of Greg Muewissen's visit at mine operations in August of 2002. (**The Bank**) Greg Muewissen did not give **Adams** a demand for payment. The **Bank** did not send a letter giving **Adams** a right to cure a claimed default on the **Robex** loan. (transcript 10-21-03 page 108 line 9 Muewissen's) (transcript 10-22-03 Adams testimony page 165 lines 4-6)".. the people that had loaned the money to make payments throughout the year were out of funds at that moment too."

Greg Muewissen's testimony concerning the **Bank's** collateral I list the he created. The transcript of 10-22-03 page 180 lines 10-12, **Bank Exhibit 5** "The date I was at the pit **Schedule I** did not exist. So I could have not faxed that to Ms. **Adams** prior to my visit on

August 1<sup>st</sup>) This August 2002 that Adams was contacted by Greg Muewissen. Adams had taken Greg Muewissen through the operations to show him the rock she and her husband were preparing for sale. As soon as the machine from Denny's Hydraulics was returned to screen the rock Adams had a buyer. (See transcript 10-22-03 page 125 through pages 136 describes **Defendants Exhibit V.**)

Paul Loveless testified, "I believe we had run out our number of deferrals that the SBA would grant ". Testimony 10-21-03 Page 98 lines 21-22. This is not true SBA wishes to preserve small business concerns.

*US Code. Title 15 Chapter 14A Section 636. (7) The Administration may defer payments on principal of such loan for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.*

*(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 631 © (FOOTNOTE 2) of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low income individuals or owned by low income individuals.*

Testimony Paul Loveless, Page 99, lines 17-23 (10-21-03), equipment needed to continue as a going concern. The construction equipment Stubbs owned was needed to stay a viable going concern also for Stubbs and Adams personal income. Taking away Stubbs personal equipment took away the means to meet obligations made or even have an income to live on or pay obligations.

Greg Muewissen's liquidation agreement was waiver that Adams refused to sign even after threat of legal remedies by him. (10-21-03, pages 113, lines 14-20). Adams was unwilling to sign a release of the Bank's liability for wrongful actions. Adams simply could not understand why the Bank would want her to sign a release unless they did something



wrong. She had told Greg Muewissen about the hostility of the local sheriff towards her and wanted to sign a release on the Bank's collateral to prevent any problems. At that time she was unaware of the Bank's papers she had never seen. *U.S.C. Title 18 Chapter 42, Part 1, Sec. 89,(a)(2) (3) (5) (6)* . Fully aware of the previous threats of the sheriff towards Adams the Bank asked the court to empower him to seize property. Hilpipe did not assist the sheriff in gathering what belonged to Robex Inc. Please note **Bank's** replevin collateral list (**Bank Exhibit 5**) Muewissen created did not have serial numbers or even the correct serial numbers for the newly manufactured equipment of the items the **Bank** had the sheriff seize and then the **Bank** claimed it and identify it after the **Bank** had possession. Please review the Defendants resistance submitted to the court on July, 16, 2003. Affidavits of Adams daughter and the note from Art Wells concerning a conveyor seized. **Adams** was not in Iowa at the time of seizure due to the threats she had received.

Pages 145 through 146 into page 147 of (10-21-03) The **Bank** failed to use a **Bank** representative per the court order of the District Court. The **Bank** used the sheriff as the **Bank** representative to identify and seize equipment. Make, Model and Serial numbers were not used to make identification, seizure was for the **Bank** could get Make, Model and Serial numbers.

Please take notice the transcript from the hearing of 12-27-02. The **Bank's** attorney Mr. Norton's statement, page 6, lines 3 through 18. "However the replevin here is not requiring specific identification," This is in conflict with the requirement for having make, model and serial as required in Iowa Code for replevin. This is also in conflict with what Judge Needles said in chambers the **Bank** could seize, only what the **Bank** had make, model and serial numbers for.

Then please take notice of the 10-21-03 transcript page 132, lines 17 – 18. page 149, line 10, 11. Transcript page 12, line 8, 9, 10, Ronald Adams testimony (10-21-03) The **Bank** made no demand for equipment or notify Ronald Adams either. Page 44 lines 22-25, and page 45, 10-21-03. The **Bank** did not notify Ronald Adams they would be breaking into his property. Sheriff Burt Muir's testimony 10-21-03 page 135, lines 20 – 22. Robex Inc. did not own real property.

The **Bank** gave **Adams** a default notice within the replevin petition. No prior notice was ever given by the **Bank** would claim equipment other than what was stated on the closing letter of September 5, 2000. (The **Bank** would not give **Adams** a correct accounting of the **Robex SBA loan** funds.) Paul Loveless testimony page 88, page 89 lines 6-12. page 89. **The Bank** failed to give notice of right to cure any claimed default **Robex Inc. or Adams. Defendants Exhibit H.** page 4, 1. a. "written notice of default and a reasonable opportunity to cure the default." Loveless's testimony (10-21-03, page 75 line 15), Every contract imposes a duty to both parties of the contract under,

*Iowa Code 554.9402 Definitions and index of definitions. C. "Account debtor" means a person obligated on account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.*

A security agreement is a chattel paper. Adams was a guarantor of the loan.

*Iowa Code 554.9108 Sufficiency of description. 3. Super generic description not sufficient. A description of "all the debtors assets" or "all the debtors personal property" or using words of similar import does not reasonably identify the collateral.* 554.2202 Final written expression – parole or extrinsic evidence. *Terms with respect to which the conformity memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are include therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented.*

In a replevin action such as this the plaintiff-secured party has the burden to prove that the debtor-defendant has the title to the personal property alleged to be subject to a security agreement. *State Savings Bank v. Allis Chalmers Corp.*, 431 N.W.2d 383, 386 (Iowa App. 1988). See generally, *Martin Bros. Co. v. Lesan*, 129 Iowa 573, 105 N.W. 996 (1906). The Bank at no time proved Robex had the right to transfer personal property of Adams or others into assets of Robex Inc. The fact of ownership are contrary the Bank transferred without Adams or Stubbs knowledge these assets to Robex Inc. The Bank was not given right to transfer personal property of Adams and Stubbs into Robex Inc. The Bank gave no notification to Adams (as a obligee for the loan for Robex Inc.) or Stubbs (Adams husband) that the Bank was making these transfers of property without their knowledge.

Before seeking replevy of personal property on the basis of a security agreement, the plaintiff in replevin must provide the defendant with a demand for delivery. See *Varvaris v. Varvaris*, 255 Iowa 800, 804, 124 N.W.2d 163, 165 (1963). Furthermore, where the possession is sought by reason of the debtor's default and the secured party has a history of forbearing delinquency, the secured party must provide the defendant with a written notice of default prior to seeking possession of the property. See *C&H Farm Service Co. Farmers Savings Bank*, 449 N.W.2d 866, 871 (Iowa 1989) (*holding that a course of dealing waiver by a secured party may be ended by written notice to the debtor of such fact.*) No notice was provided to Robex Inc. or Adams.

Iowa law sets out statutory requirements to establish an Article Nine security interest in personal property. If statutory requirements are not met, the security interest is not enforceable against the debtor or third parties. **Iowa Code 554.9203 & (2) (2003).**

The scope of requirements for this loan were very specific in the SBA forms that established the Bank requirements for list of secured property Robex Inc. would collateralize for this loan. The forms and the federal law is very specific about an business owners personal property is not be considered as criteria for these loans. Every contract within the scope of these Iowa codes sections 554 requires a contract be establish and enforced in "good faith". Forcing requirements on to a contract obligation after the fact or without a debtor's (Robex Inc.) or guarantors knowledge is not acceptable as a matter of law or "good faith". **Iowa codes, 544.1203, 554.1103, 554.9108, 554.9402, 554.2202.**

Conditions for Iowa Code 554.9203 (c) were not met by the Bank. The Debtor (Robex Inc.) did not authenticate a security agreement that the **Bank** submitted to the District Court. The false security agreement the Bank provided the Court did not have a description of property attached to it or a description of property that belonged to Adams and Stubbs personally. Nor did the **Bank** provide an authentic list of equipment for **Robex Inc.** The UCC-1 filing was an altered document with a false **Bank** created added attachment. *U.S.C. Title 18 Part 1 Chapter 25 Sec. 514, U.S.C. Title 18 Chapter 25 Part 1, Sec. 513.* The Bank's attachment 'A', UCC-1 filing provided no list as required by SBA form documentation required.

### **Relief requested**

The Defendant requests that the Supreme Court of Iowa enter judgment in favor of the Defendant and find that the District Court erred in its decision to grant the bank the right to permanent possession of the collateral.