

23. FALSE WITNESS: FORM vs. SUBSTANCE

Before an attorney can sue, he must show that the defending party breached the agreement. The attorney needs a witness to give testimony that there is an agreement and that the agreement has been breached.

If Rich testifies in court that there was a loan when he knew that there was only an exchange of equal value, Rich would be giving false testimony and would be called a false witness.

In a normal court foreclosure, the lender does not come to court to give testimony. The bank attorney uses the alleged promissory note with the alleged borrower's signature as the witness in court to claim that there is an agreement, that there was a loan, that the lender fulfilled his agreement, and that the alleged borrower did not fulfill the agreement to repay the money. Instead of the attorney using Rich to give oral testimony, the attorney uses the promissory note as the witness and as the evidence to sue the alleged borrower.

There is a legal concept of form vs. substance. The form is the promissory note, which says that the lender lent money to the alleged borrower. The substance is the money trail-the bookkeeping entries. The substance shows that there were two loans exchanged, equal value for equal value. The borrower was required to repay his loan to the bank plus interest, but the bank never repaid the debt it owes. IOU was exchanged for IOU. The two newly created IOUs cancel each other.

Substance-true transaction-shows that the borrower was the lender to the bank. Then the bank repaid the loan from the borrower to the bank. The form-the alleged bank loan agreement-shows the opposite.

Example: You sign a paper that says you were lent \$10,000, but no one lent you one cent to obtain the promissory note. A thief stole \$10,000 worth of diamonds from you, sold them for cash, and returned the cash to you as a loan. The form says that there was a loan; your signature also says that there was a loan. The true transaction, though, proves that there was no loan. The substance-the money trail and the bookkeeping entries-proves that someone took something of value worth \$10,000 from you, exchanged it for a different asset of equal value, and returned your \$10,000 to you as a loan that you now have to pay off with interest. The attorney sues you, claiming that your signature proves that you received the loan. You hire an expert witness to prove that there was no loan, that the substance of the true transaction was an exchange, and that you were charged as if it were a loan.

Economically speaking, what is the difference if a stranger received your \$10,000 worth of diamonds for free, or if he got a \$10,000 lien on your property for free, or if he received \$10,000 of your future payroll checks for free? The substance of the transaction is the transferal of \$10,000 of property from you to the stranger for free. The transfer of wealth is precisely how bankers obtain liens on the nation's homes, cars, farms, and

businesses for free. If a robber were to use a gun to transfer your wealth, you would place him in prison. If a banker does the same thing by using "form," an attorney, a judge, and a sheriff, you think it is legal.

Does the attorney use the promissory note just like a witness to give false testimony in court, claiming that the lender lent money, cash, or cash equivalent to the alleged borrower? The attorney could be disbarred for bringing fraud into the court. The substance was an exchange of value for value. If the form and the substance disagree, one must rely on the substance over the form because substance always wins over form.

Example: You give Rich \$100 for five boxes of toys. Rich says, "Here are the five boxes. Sign this paper that says you received the boxes." You sign. Rich refuses to hand over the five boxes and claims that the form-the paper you just signed-says that you received the boxes. You would tell the judge that you acted in good faith by signing because you were told that you would receive the five boxes standing in front of you. After you had signed, Rich refused to let you have the boxes. The form-the paper-says that you received the boxes, but the substance-the true transaction-clearly shows you never received what you had bargained for. If the attorney uses the form (paper) in court to claim that you received the boxes when, in fact, he knew that you had never received them, the attorney brought fraud on the court to sue you. The form-the paper-would be a false witness against you.

Is the promissory note used as a false witness? The promissory note has the borrower's signature agreeing that the lender lent the borrower money.

Few people disagree that the one who provided the original funds to fund the bank loan check should be repaid the money. Few argue that we should have equal protection and full disclosure. The lender concealed the true substance in the agreement.

If a banker received \$10,000 of capital from Joe and deposits the funds into a checking account, should the bank return the \$10,000 to Joe? If all bankers agree that the answer is "yes," then all bank loans in America should be canceled tomorrow.

If the bank received \$10,000 from Joe and lent the same \$10,000 to Joe, should the bank return the \$10,000 to Joe? The foreclosure attorney must argue that the bank should not return the \$10,000 to Joe. Joe believed that the alleged borrower should repay the lender, and the lender should repay the one who funded the bank loan check. The foreclosure attorney must argue that the parties agreed to the terms and the one who funded the loan should never be repaid the money. How could the judge rule in favor of the bank, claiming that the one who funded the loan should never be repaid the money? Imagine faxing that ruling to everyone in the nation!

The attorney wants only the form-the promissory note with your signature-as a witness in court. You want the true substance-the true transaction-and the whole truth and nothing but the truth. Without the masses of the people joining, you will remain in debt, We need you to join in copying and in distributing the brochure. Keep in mind that the signature on the promissory note is always used as a witness against the borrower to create a situation in which the borrower automatically incriminates himself-self-

incrimination!

Some attorneys object to allowing the bookkeeping entries entered into court as evidence. The attorney must rely on the form and stop the substance. Extortion occurs when the court does not allow information into court for one's defense.

How does one get the substance into court? One needs a CPA expert witness to bring the substance into court. There are ways to get past financial statements of banks that have gone out of business even up to ten years ago. The CPA expert witness needs to use notices and bank financial statements to prove substance over form. Obviously, bankers may read this book, so the secret for the expert witness cannot be revealed here.

However, you can expect the judge and bank attorney to attempt to stop the CPA expert witness from testifying. I believe that the CPA's testimony could disbar the attorney. If your CPA testifies, the bank needs to bring in an expert witness itself to counter your expert. Now you have 600 questions from Volume II to ask the bank expert witness. I do not believe the bank expert will want to testify, knowing that you have 600 questions that he must answer.

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About the author

Tom Schauf has a diverse background. He graduated from Northern Illinois University with a Bachelor of Science with double majors in accounting and finance.

After graduation, he worked as a staff accountant for Motorola. He worked for a small certified public accounting firm, owned and operated his own business brokerage firm and certified public accounting practice.

Over a period of nearly ten years, he has testified in a number of cases as an expert witness in business valuation, and has taught the arts of business acquisition and negotiations to buyers, CPAs, and lawyers on a national level in colleges and major universities.

He has taught lawyers and thousands of CPAs the art of valuation and negotiations in his copyrighted course designed to meet continuing education requirements.

He has been a controller, and head of purchasing and personnel for a major manufacturing company. He was also a real estate broker and aircraft flight instructor (CFII).

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