RECEIVED
SUPREME COURT
STATE OF WASHINGTON
Jul 30, 2012, 8:13 am
BY RONALD R. CARPENTER
CLERK

313395

COURT OF APPEALS DIV III OF THE STATE OF WASHINGTON

RECEIVED BY E-MAIL

**BEDREDDIN IMAN and SAMEER HATEM, Appellants,**

**and**

**MUSLIM AMERICA, Appellant,**

**v.**

**TOWN OF SPRINGDALE, Respondent.**

---

CORRECTED MUSLIM AMERICA'S OPENING BRIEF

---

JEFFRY K. FINER
WSBA No. 14610
35 W. Main, Suite 300
Spokane, WA 99201
(509) 464-7611

ORIGINAL

313395

COURT OF APPEALS DIV III OF THE STATE OF WASHINGTON



**BEDREDDIN IMAN and SAMEER HATEM, Appellants,**

**and**

**MUSLIM AMERICA, Appellant,**

**v.**

**TOWN OF SPRINGDALE, Respondent.**

---

CORRECTED MUSLIM AMERICA'S OPENING BRIEF

---

JEFFRY K. FINER
WSBA No. 14610
35 W. Main, Suite 300
Spokane, WA 99201
(509) 464-7611

## TABLE OF CONTENTS

TABLE OF AUTHORITIES

ASSIGNMENTS OF ERROR

STATEMENT OF THE CASE

ARGUMENT

I. THE INDIVIDUAL PETITIONERS HAD STANDING ..... 8

II. JOINDER OF MUSLIM AMERICA AS A NECESSARY PARTY WAS ERROR ..... 15

III. THE SUPERIOR COURT ERRED IN DETERMINING THIS ACTION WAS "FRIVOLOUS" SO AS TO AWARD THE TOWN COSTS AND FEES AGAINST MUSLIM AMERICA ..... 24

CONCLUSION

## TABLE OF AUTHORITIES

### Washington State Cases

*Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150 (1970) ..... 11

*Aungst v. Roberts Construction Co.*, 95 Wn.2d 439 (1981) ..... 19, 20

*Biggs v. Vail*, 119 Wash.2d 129 (1992) ..... 23

*Burchell v. Thibault*, 74 Wn.App. 517 (1994) ..... 10

*City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633 (2009) ..... 22

*Department of Labor and Industries v. Wendt*, 47 Wn.App. 427 (1987) ..... 10

*Forster v. Pierce County*, 99 Wash.App. 168 (2000) ..... 23

*Gildon v. Simon Property Group*, 158 Wn.2d 483, 493 (2006) ..... 14

*Havsy v. Flynn*, 88 Wash.App. 514, 521, 945 P.2d 221 (1997) ..... 23

*Hein v. Freedom from Religion Foundation*, 551 U.S. 587 (2007) ..... 11

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) ..... 8

*Marchioro v. Chaney*, 90 Wn.2d 298 (1978) ..... 10

*Omnipoint Communications Inc. v. White Plains*, 202 F.R.D. 402, 403-04 (S.D.N.Y 2001) ..... 13

*School Dist. of Abington v. Schempp*, 374 U.S. 203 (1963) ..... 11

*Skimming v. Boxer*, 119 Wn.App. 748 (Div. 3 2004) ..... 23

*State v. Glenn*, 115 Wn.App. 540 (2003) ..... 10

*State v. WWJ Corp.*, 138 Wn.2d 595 (1999) ..... 11

*Suarez v. Newquist*, 70 Wash.App. 827 (1993) ..... 23

*Suquamish Indian Tribe v. Kitsap County*, 92 Wn.App 816 (1998) ..... 7

*Tiger Oil v. Dept of Licensing*, 88 Wash.App. 925 (1997) ..... 22, 23

*United States v. Hays*, 515 U.S. 737 (1995). ..... 8

**Rules & Statutes**

Washington State Constitution, Article I, § 11 ..... 10

CR 19(a) ..... 16-18

CR 19(b) ..... 19-20

RCW 4.84.185 ..... 23-25

RCW 7.16 ..... 4

RCW 7.16.260 ..... 25

RCW § 19.27.042 ..... 22

RCW § 19.27.042(1)(b) ..... 18, 21

RCW § 19.27.042(1)(c) ..... 21

RCW §19.27.050 ..... 3

42 U.S.C. 21C §2000cc ..... 4, 12, 24

42 U.S.C. 21C § 2000cc5-5 ..... 13

## ASSIGNMENTS OF ERROR

1. The Superior Court erred in determining that the original petitioners lacked standing.
2. The Superior Court erred in joining Muslim America as a "necessary party" to this action.
3. There was insufficient evidence to support the Superior Court's findings in support of involuntary joinder under Rule 19 and in support of the finding of "frivolousness."
4. The Superior Court erred in determining this action was "frivolous" so as to award the Town "reasonable expenses" against Muslim America.

### Issues Pertaining to Assignments of Error

1. Did the original petitioners suffer a particularized imminent and redressable harm sufficient to confer standing for their petition regarding property rights in the cottage? (Assignment of Error 1).
2. Did the petition require Muslim America as a necessary party as required under Rule 19? (Assignments of Error 2 & 3).

3. Was the underlying action, brought by the original petitioners Iman and Hatem "entirely frivolous" and "advanced without reasonable cause" so as to allow the Superior Court to award "reasonable expenses" against Muslim America under RCW 4.84.185? (Assignment of Errors 3 and 4)

4. May a judgment for frivolous action lie against an involuntary party that has advanced no claim whatsoever? (Assignment of Error 4).

## STATEMENT OF THE CASE

This case arises in response to actions brought by the Town of Springdale ("Town") against petitioners Dawud Ahmad, Bedreddin Iman, and Sameer Hatem to prohibit their recognized religious practice of providing housing for indigent persons in a cottage owned by the nonprofit corporation of their religious assembly, Muslim America. The Town sought a non-judicial summary eviction of Iman from a cottage located on Muslim America's property. CP 12 § 10, 11. Iman and Ahmad contended that the Town's action was inconsistent with State law, CP 208, insofar as the Town refused to act under the Washington State Building Code, RCW §19.27.050. CP 12 § 10, 11. The Town threatened to remove or demolish the cottage, CP 31, issued a Notice of Violation clarifying unequivocally the Town's prohibition of Iman's residency in the cottage, CP 68, and issued Notices of Infraction to Muslim America, CP 46-48, as well as to a non-corporate fiduciary office of the religious assembly, CP 49-50, for failure to obtain a business license. Ahmad and Iman, pro-se petitioner-appellants proceeding in forma pauperis, CP 1-6, sought to invoke the equity jurisdiction of the Superior Court to protect their religious practice. CP 7.

Ahmad and Iman applied for a statutory Writ of Prohibition pursuant to Chapter 7.16 of the Revised Code, CP 8-31, against the Town's enforcement action pursuant to the Town's Ordinance, alleging *inter alia* that the Town did not have enforcement jurisdiction under the Washington State Building Code for its proposed action, and that the enforcement action violated preemptive federal law, specifically the Religious Land Use and Institutionalized Persons Act of 2000, codified as 42 U.S.C. §2000cc. CP 164-175.

The Town refused to adopt an Ordinance implementing its enforcement jurisdiction under the State Building Code. CP 51-52, 361-362. Consequently, Ahmad and Iman filed their Amended Application, CP 37-39, additionally sought a Writ of Mandamus directing the Town to adopt such an ordinance. CP 33-52, 59-68.

On April 26, 2010, the Town issued a Notice of Infraction to petitioner Sameer Hatem for violation of the Town's Building Code Ordinance 343, CP 150, but failed to file it with the Stevens County District Court. The Town shortly thereafter withdrew the Infraction, CP 151, leaving opportunity for its re-issuance pending the outcome of this action.

The Superior Court denied the appellants' request, CP 139-141 for a ruling on jurisdiction but failed to make a record of its denial. CP 495-500. The lower court then denied appellants' standing to apply for the Writs. The Court first revealed this during its January 7, 2011 hearing. According to the lower court, Iman and Ahmad had no standing to seek relief:

> [T]he parties that were listed as plaintiffs really had no standing to bring either of these issues before the court.

RP 1/7/11, at 19:21-23.

The Town contended that only Muslim American, as owner of the property that was the subject of the lawsuit, had standing to apply for a Writ and accordingly moved for joinder. CP 104-106. The Superior Court ordered Muslim America joined as a plaintiff, CP 252-253, despite argument in opposition, RP 5/25/10, at 14:3 to 17:7, an offer of proof that Muslim America's refusal was based on religious prohibition, CP 123-124, that Muslim America lacked a justiciable interest in the action, CP 122, and the assertion that complete relief could be obtained through the issuance of the requested Writs, CP 123.

Following Muslim America's joinder, the Superior Court set July 9, 2010, for a "hearing on the Application for the Writ." RP 6/11/10, at 42:5-18. Muslim America presented argument on it religious prohibition

against joining this action. CP 254-256. Advancing appellants' Motion to Reconsider Joining Muslim America, Mr. Ahmad reiterated the subject matter of the Application: the Town's disturbance of appellants' religious exercise of providing sanctuary for indigent persons. CP 282-285, 286. The motion was denied. CP 296.

The Town sought dismissal of the action for appellants' failure to state a claim upon which relief may be granted. CP 305-317. Five days after expiration of the 90-day period within which a decision must be rendered, the Court entered its decision denying appellants' application for the requested writs. CP 381-383.

The Town moved for Costs and Attorneys' Fees for frivolous litigation, CP 406-477, arguing that appellants knew they had advanced their case without reasonable cause. CP 415. The Superior Court, granting the Motion, entered a Judgment and Order awarding the defendant Town the sum of $23,916.66 in reasonable expenses against the original plaintiffs and the involuntary-joined plaintiff Muslim America, jointly and severally. CP 562-566, RP 1/7/11, at 19:5 to 21:15. Appellants then filed their Notice of Appeal. CP 488-494.

Mr. Ahmad passed away on May 1, 2012. Surviving appellants Iman and Hatem now continue his work.

## ARGUMENT

### I. THE INDIVIDUAL PETITIONERS HAD STANDING

**Standard of Review.** When standing has been determined by summary judgment procedure, review should be guided under the summary judgment standard. See, *Suquamish Indian Tribe v. Kitsap County*, 92 Wn.App 816, 827 (1998).

The lower court's principal error with respect to Muslim America arose from its failure to accord standing to the individual Petitioners (Ahmad and Iman). From this original premise, the lower court determined in error that only Muslim America was the proper party to assert equitable claims against the Town. The lower court's fundamental misunderstanding begins with the concept of standing itself.

In general, to challenge the constitutionality of government action, a petitioner must establish standing as follows:

> First, the plaintiff must have suffered an injury in fact — in invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of — the injury has to be fairly traceable to the challenged action of the [respondent], and not the result of independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative that the injury will be redressed by a favorable decision.

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citations omitted); see also *United States v. Hays*, 515 U.S. 737 at 742-45 (1995). Each element of the *Lujan* test is analyzed, below.

**1. Injury in Fact**

There was no dispute in the record that the Town was seeking to terminate the use of the cottage in which appellant Iman and, later, Hatem lived. There is no dispute that the Town was seeking to tear down the cottage. CP 12 (eviction), 31 (remove/demolish), 46-48 (infraction notices), 68 (notice of violation of ordinance), 150 (infraction notice).

A review of these records fully supports the conclusion that for Appellants Iman and Hatem the Town's threatened acts constituted "concrete," "particularized" and "imminent" adverse actions.

**2. Causation**

Next, the cited record shows that the government's threatened conduct was not accountable to the actions of a third party. No other entity was threatening to demolish the cottage. No other entity was seeking to evict the cottage tenants. The injury — loss of habitation provided under the formal eleemosynary precepts of Muslim practice — was directly threatened by the Town and no other entity.

### 3. Likelihood of Redress

The final test is whether a favorable decision is likely to result in the redress requested. In other words, is the manner of relief sought likely to impact the mischief complained of. Here, the mischief was the Town's refusal to adopt the State's Building Code, which includes a religious exemption provision modeled after federal statutory law, and the Town's efforts to terminate the use of the cottage as sanctuary for indigent Muslim tenants. The original individual petitioners arguably sought relief under the State and federal constitutions, as well as federal statute, all of which confer private standing for individuals who complain of government infringement in religious practices.

#### a. State Constitution

Article I § 11 of the Washington State Constitution provides protection to individuals, asserting a religious conviction, who act under their tenets consistent with the peace or safety of the state:

> Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to **every individual**, and **no one** shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

Washington State Constitution, Article I, § 11, in part. (emphasis added). This provision is not enforceable by the State, which has been found not to have clear standing to bring a free exercise claim. *State v. Glenn*, 115 Wn.App. 540 (2003). In contrast, however, an individual does have standing to raise constitutional questions when "he or she has a personal stake in the outcome of the controversy." *Glenn*, 115 Wn.App. at 553 (citing *Marchioro v. Chaney*, 90 Wn.2d 298, 303 (1978). In *Marchioro*, the petitioners sought standing for equitable relief in a matter alleging deprivation of constitutional rights. This Court readily found that the petitioners had standing based upon their direct personal interest in the outcome. *Id.,* at 303-04; and distinguish *Burchell v. Thibault*, 74 Wn.App. 517, 522-23 (1994) (lack of standing where petitioner has only an incidental relationship to the government's enforcement of an order in conflict with religious principles).

Redress for the unconstitutionality of governmental action affecting property and constitutional rights is thus well established in Washington. See also, *Department of Labor and Industries v. Wendt*, 47 Wn.App. 427, 430 (1987) (interpreting art. 1, § 11 in case of individual action challenging the state's payment of industrial insurance funds; finding standing despite the fact that the petitioners did not pay industrial injury

insurance taxes but who nevertheless had rights directly affected) (overruled on other grounds in *State v. WWJ Corp.*, 138 Wn.2d 595 (1999).

**b. Federal constitution**

In religious rights cases, the first amendment has consistently been held insufficient to confer standing on individuals challenge *taxing* authority. E.g., *Hein v. Freedom from Religion Foundation*, 551 U.S. 587 (2007) (noting narrow exception to general constitutional rule prohibiting taxpayer standing). Nevertheless, individuals do have a plain right of redress under the first amendment "Free Exercise" clause where they challenge government actions that have direct consequences on particularized beliefs, even in the absence of an economic harm. See, e.g., *Association of Data Processing Service Organizations v. Camp*, 397 U.S. 150, 154 (1970) ("[a] person or a family may have spiritual stake in the First Amendment values sufficient to give standing to raise issues concerning the Establishment Clause and the Free Exercise Clause"); and see *School Dist. of Abington v. Schempp*, 374 U.S. 203, 225 (1963) (holding that family with children had standing to bring Free Exercise and Establishment claims where they were "directly affected by

the laws and practices against which their complaints are directed. These interests surely suffice to give the parties standing to complain.")

Thus, the federal constitution is a source of redress for the original petitioners.

**c. RLUIPA (42 U.S.C. § 2000cc)**

The relevant portion of the statute reads as follows:

> 42 U.S.C. 21C § 2000cc. – Protection of land use as religious exercise
>
> (a) Substantial burdens
>
> (1) General rule
>
> No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise **of a person**, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that **person**, assembly, or institution –
>
> a) is in furtherance of a compelling governmental interest; and
>
> b) is the least restrictive means of furthering that compelling governmental interest.

42 U.S.C. § 2000ee (emphasis added).

Standing in a RLUIPA land-use case requires an additional statutory element: a property interest in the affected parcel.

The Act specifically references the term "land use regulation" in its definitional section, 42 U.S.C. § 2000cc-5(5), wherein a potential claimant under the Act must show that:

> The clamant has an ownership, leasehold, easement, servitude or other property interest in the regulated land…

*Id.* The record does not challenge the individual petitioners' claim to a possessory (property) interest in the cottage. Both residents, in particular, have a possessory interest by virtue of their residing in the cottage. Distinguish, *Omnipoint Communications Inc. v. White Plains*, 202 F.R.D. 402, 403-04 (S.D.N.Y 2001) (synagogue had no standing under RLUIPA because its claim of detrimental effect related to a cell tower located upon *neighboring* property).

The original petitioners here were not incidental spectators or bystanders. They were not neighbors. They lived on the affected property. It was Ahmad's religious duty to provide shelter, if possible, to indigent members of the faith; it was Iman's right under that same faith to receive eleemosynary benefits.

In sum, the original petitioners had particularized imminent and redressable claims — and thus standing — to vindicate their property interests in the cottage. The original petitioners' petition for relief under

the State and federal constitutions, as well as RLUIPA, conferred standing.

## II. JOINDER OF MUSLIM AMERICA AS A NECESSARY PARTY WAS ERROR

**Standard of Review**. Considering the nature of the balancing and factual inquiry required by Rule 19, this Court has determined that the standard of review is "abuse of discretion," "with the caveat that any legal conclusions underlying the decision are reviewed de novo." *Gildon v. Simon Property Group*, 158 Wn.2d 483, 493 (2006).

### A. Limitations on joinder

1. Muslim America's religious prohibition

Following Respondents' Motion to Join Necessary Party Muslim America, appellants' filed their Opposition, explaining in detail the reasons underlying Muslim America's objection to joinder:

> A sovereign muslim polity is absolutely prohibited by the religious law from interfering in the sovereign administration of another sovereign polity that has not initiated and continued an aggressive attack on the muslim polity using organized armed forces as the instrument of that attack. All of the members of any such muslim polity are also bound by this prohibition. This is precisely analogous to the First Amendment's prohibition of official interference in the administration of a religious organization, * * * ... The religious law does not allow

> muslims, or Muslim America, to demand that another sovereign polity allow it free exercise of religion. * * *
>
> Plaintiffs may prosecute their cognizable interests subject to the jurisdiction of Washington law; **they may not call upon Muslim America to join any such prosecution**, absent an independent interest of Muslim America subject to the jurisdiction of Washington law, in violation of the religious prohibition against interference in the sovereign affairs of the State of Washington.

Memorandum in Support of Plaintiffs' Opposition to Motion to Join Necessary Party Muslim America. CP 123-124 (emphasis added)

Currently, Muslim America proceeds in this action because of the Superior Court's judgment awarding the Town a substantial levy of costs against Muslim America for a suit in which Muslim America never sought involvement. Having been coercively haled into court and now facing the prospect of substantial costs (which alone interferes with Muslim America's ability to provide charitable work) Muslim America now finds itself compelled — against its religious prohibitions — to plead its case in this Court.

The Superior Court's rationale for joining Muslim America as a "necessary party" was predicated upon its understanding that the subject matter of this case was Muslim America's property *per se*, rather than appellants' religious practice of providing sanctuary:

> It appears to me that the **owner** of the building is – that is at issue, that is the subject of this request – request for a writ

– absolutely a necessary party, even without looking at the statute.

RP 5/25/10 at 21:7-10 (emphasis added).

More to the point, there was insufficient evidence that demonstrating that joinder of an involuntary plaintiff was required in order to "permit complete relief" or that Muslim America claimed an interest in the subject of the action such that its absence might impede its ability to protect that interest, or that its absence would create a risk of multiple obligations to an existing party. Joinder of Muslim America was superfluous to the claims brought by the individual petitioners.

**B. Conditions for CR 19(a) joinder unfulfilled**

The civil rules provide conditions for joining necessary parties:

> (a) Persons To Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of his claimed interest. CR 19(a).

1. The Superior Court's did not have sufficient evidence before it to make the necessary findings under CR 19.

From the outset of the Superior Court proceedings, appellants clearly identified their cause of action and the subject matter of their Application: the Town's enforcement actions seeking to prohibit their exercise of religion. CP 38. In the same Application, appellants Ahmad and Iman identified their respective beneficial interests as the "free exercise of religion" and the "continued occupancy of emergency shelter" predicated upon that free exercise. CP 38. The subject of the request for a writ was directed neither towards the building occupied by Iman, per se, nor against Muslim America's ownership of the building. The subject was Ahmad's exercise of a religious obligation to provide chartable relief and Iman's need for sanctuary in a Muslim setting. Muslim America's ownership of the cottage was an incidental matter. The obligation does not inhere with Muslim America or with the cottage. It resides within the individuals who petitioned the court. By misperceiving the matter upon which appellants' sought relief, the lower court's could not make a fair and proper analysis.

2. Muslim America's absence would not deprive parties of complete relief.

Both appellants and respondent could have been accorded complete relief without Muslim America's joinder. The petitioners could have been accorded relief by the Town's passage of an ordinance

adopting the State's building code, thus acquiring a plain, speedy and adequate means of establishing a means (updated building code) to petition for a waiver allowing use of the cottage per RCW § 19.27.042(1)(b), thus facilitating appellants' right to the free exercise of their religion. The Town could have its relief from suit by an order resolving Ahmad's and Iman's petition. Muslim America's participation was not necessary.

4. Muslim America claimed no interest in the subject of this action.

There is nothing in the Superior Court record to indicate that Muslim America claimed any interest relating to the subject of this action (that is, compliance with Muslim law regarding the necessity to provide shelter for indigent members of the faith). In its Opinion filed on October 12, 2010, the Superior Court itself confirmed that "Muslim America has not declared an interest in the proceeding...", thereafter citing "the failure of Muslim America to prove they have a beneficial interest." CP 383. Since Muslim America never met the first condition of CR 19(a)(2) at any time during the Superior Court proceedings, its failure to meet an evidentiary standard of "beneficial interest" is a tautology.

C. "The equity and good conscience test" of CR 19(b)

The lower court gave no consideration to the infeasibility of Muslim America participating. For the lower court, the owner of the property was invested with the sole responsibility of its use, the individual petitioners voiceless and without standing. Having rejected infeasibility, the lower court never addressed the equitable portion of Rule 19.

> Whenever joinder of a party is not feasible, the court must determine whether in "equity and good conscience" the action should proceed or be dismissed. ...
>
> In applying the "equity and good conscience test," the court is directed to consider (1) to what extent a judgment rendered in the party's absence might be prejudicial to it or those already parties; (2) the extent to which the prejudice can be diminished in the judgment; (3) whether a judgment rendered in the parties' absence will be adequate; and (4) whether the plaintiff will have an adequate remedy if the action is dismissed. CR 19(b).

*Aungst v. Roberts Construction Co.*, 95 Wn.2d 439, 443 (1981).

In *Aungst*, this Court reviewed a trial court decision dismissing the plaintiffs' complaint alleging violations of the Consumer Protection Act and the Securities Act of Washington "for failure to state a claim and for failure to join an indispensable party." Because one of the purportedly indispensable parties was the Tulalip Indian Tribe, the trial court ruled that the Tribe was not subject to the trial court's jurisdiction and,

consequently, the action could not proceed. *Id.*, 95 Wn.2d 439, 441, 625 P.2d 167 (1981). According to the lower court, the indispensability of the Tribe was determined by virtue of its contractual rights in an action where plaintiffs sought, *inter alia,* a judgment of rescission and rescission was not possible against the tribe. *Id.*, at 444.

In applying the "equity and good conscience" test, this Court reversed the trial court's judgment:

> CR 19(b), however, directs the court to also consider the extent to which prejudice can be attenuated by the potential judgment and whether the plaintiffs will have an adequate remedy if the action is dismissed. ...
>
> **Regardless of their status as contracting parties, we hold that neither the Tribe nor the camping club must be joined as parties under appellants' allegations.** It would seem a judgment rendered against Roberts, if such is found to be appropriate, would be adequate even if limited to those remedies available through the statutes alleged to have been violated. Rescission, in this instance, is not available to appellants because of the prejudice to nonjoinable parties, the Tribe, and the camping club. Thus, if the facts so warrant, it is possible in this case for the court to shape a judgment which would minimize any prejudice flowing to the Tribe or camping club from this litigation.
>
> After considering all the factors included in CR 19(b), we hold there is no reason in equity and good conscience to dismiss appellants' complaint. It follows that the Tribe and the camping club are not indispensable parties to this action.

*Id.* (Emphasis added)

While dissimilar to the immediate case in myriad ways, *Aungst* remains instructive. Just as this Court found that the Tribe's contractual rights did not necessitate its indispensability upon considering the adequacy of appellants' remedy in the event of dismissal, Muslim America's property rights should not determine its indispensability with respect to Appellants' Iman and Hatem's obtaining complete relief from the Town's ongoing enforcement actions. Muslim America's unambiguous refusal to declare an interest in the trial court proceedings, CP 280-281, also acts as a waiver, providing any court with dispositive evidence that it acquiesced to being absent from the petitioner's action.

D. RCW § 19.27.042(1)(c) did not necessitate joining Muslim America

At the May 25, 2010 hearing, the Superior Court asserted that Muslim America's joinder was compelled by the provisions of RCW § 19.27.042(1)(c):

> The statute, of course, 19.27.042, does indicate that the building that is contemplated to be exempted from the building code would need to be a building owned or administered by a public agency or a nonprofit corporation.
>
> Certainly the owner of the building is a party to a court's determination of whether or not a building code - indigent individuals to live inside of it - would certainly be a necessary party.

RP, 5/25/10, at 21:7-8. The trial court was acting prematurely. The petitioners were not seeking to litigate a provision of RCW 19.27.042. Petitioners were seeking to cause the Town to adopt the provision. Further, in its own pleadings, the Town has already confirmed that Muslim America is the owner of the property upon which the cottage is situated. CP 112-113, 115-116. Finally, the question of the non-profit status of the owner is a matter of public record and would not require Muslim America's being made a party.

The general right of the appellants to an exercise of religion is also an equitable right, protected by the Washington State Constitution, Article I § 11; and the specific religious purpose that is the object of this action, providing housing for indigent persons, has been particularized in Washington State statutory and decisional law as a Constitutionally-protected religious exercise. See e.g., RCW 19.27.042 and *City of Woodinville v. Northshore United Church of Christ*, 166 Wn.2d 633 (2009).

## III. THE SUPERIOR COURT ERRED IN DETERMINING THIS ACTION WAS "FRIVOLOUS" SO AS TO AWARD THE TOWN COSTS AND FEES AGAINST MUSLIM AMERICA

Decisions under RCW 4.84.185 are reviewed for abuse of discretion. *Tiger Oil v. Dept of Licensing*, 88 Wash.App. 925, 937-38 (1997).

Frivolous actions must be frivolous in their entirety. The statue and case law are clear.

> RCW 4.84.185 authorizes the trial court to award to the prevailing party "the reasonable expenses, including fees of attorneys, incurred in opposing" a frivolous action. Sanctions against a party, not that party's attorney, are available under RCW 4.84.185.

*Havsy v. Flynn*, 88 Wash.App. 514, 521 (1997). The statute is designed to discourage abuses of the legal system by providing for an award of expenses and legal fees to any party forced to defend against meritless claims advanced for harassment, delay, nuisance, or spite. *Suarez v. Newquist*, 70 Wash.App. 827, 832-33 (1993). It is not, however, a substitute for more appropriate pretrial motions, CR 11 sanctions, or complaints to the bar association. *Biggs v. Vail*, 119 Wash.2d 129 (1992).

"A lawsuit is frivolous when it cannot be supported by any rational argument on the law or facts." *Tiger Oil*, 88 Wash.App. 925, 938 (1997). It must be frivolous **in its entirety**; if any of the asserted claims are not frivolous, the action is not frivolous. *Biggs,* 119 Wash.2d at 136-37; *Forster v. Pierce County*, 99 Wash.App. 168, 183-84 (2000); *Skimming v. Boxer*, 119 Wn.App. 748, 756 (Div. 3 2004) (emphasis added).

a. The lower court did not have sufficient evidence to declare the entire suit "frivolous."

In this instance, the Town recognized that the appellants were genuine in their attempt to seek legal redress. The central justiciable issue brought by the individual appellants in their Applications for Writs of Prohibition and Mandamus was raised in argument during the merits hearing of July 9, 2010:

> MR. AHMAD: The Town could not take any enforcement action that would burden the plaintiffs' exercise of religion without showing a compelling state interest and that the means of satisfying that interest were the least restrictive means, and prohibition of that exercise would be unlawful under state and federal law ...

RP 7/9/10 at 14:19-25. The Court asked counsel for the Town, Mr. Nathan Smith, to address Ahmad's assertion:

> MR. SMITH: Your Honor, I'll briefly speak to that, but I think that the procedural issues are tantamount to the issuance of the writ – of prohibition and a writ of mandamus.
>
> But I will say that the Town is certainly not questioning the claimed intent of the application – the applicants to use the structures for religious purposes. That's not the issue here.

RP 7/9/10 at 33:17-24.

Article I, § 11 of the Washington State Constitution provides that "no one shall be molested or disturbed in person or property on account of religion." Appellants alleged that the respondent's actions unlawfully infringed upon their religious liberty as protected by the

Washington State Constitution, the first amendment to the United States Constitution, and RLUIPA. They only sought application of well-grounded protections to these particular circumstances.

Finally, while RCW § 7.16.260 provides that the applicant for a writ of prohibition or a writ of mandamus is entitled to fees and costs should he prevail and the writs are ordered by the trial court, the statute does not provide an award of costs and fees for a defendant in such cases should the court deny the application. As such, there is no statutory basis for a pro-forma award of costs and fees in this action.

**b. The absurdity of penalizing Muslim America**

The irony is manifest: Muslim America filed no application with the Court, resisted being made a party, and claimed no interest in the outcome of the action. CP 180, 280-281. Thus, the Superior Court's determination that it endure a punitive burden for "advancing a frivolous" action imposes a bizarre injustice.

Muslim America seeks to reverse the Superior Court's Order Granting Defendant's Motion for Award of Reasonable Expenses Including Fees of Attorney Under RCW § 4.84.185, - as well as reverse its Judgment and Order Joining Muslim America as a Necessary Party. There is no other cause for Muslim America's participation and any

appearance to the contrary arises as a consequence of its coerced joinder, which has compelled it to appeal in order to obtain relief from the lower court's rulings.

## CONCLUSION

For the foregoing reasons, Muslim America respectfully prays the Court (1) reverse or vacate the Superior Court's Judgment and Order Joining Muslim America as a Necessary Party and (2) reverse or vacate the Superior Court's Judgment and Order Granting Defendant's Motion for Award of Reasonable Expenses Including Fees of Attorney Under RCW § 4.84.185.

Dated this 27th day of July, 2012.

s/ Jeffry K. Finer
On brief for Muslim America

## OFFICE RECEPTIONIST, CLERK

**To:** Jeffry Finer; ngs@witherspoonkelley.com
**Cc:** Bedreddin Iman
**Subject:** RE: Opening brief by Muslim America in case # 85417-3

Rec. 7-30-12

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Jeffry Finer [mailto:Jeffry@finer-bering.com]
**Sent:** Friday, July 27, 2012 10:11 PM
**To:** OFFICE RECEPTIONIST, CLERK; ngs@witherspoonkelley.com
**Cc:** Bedreddin Iman
**Subject:** Opening brief by Muslim America in case # 85417-3

Please file the attached *Opening Brief of Muslim America* in case 85417-3 (*Iman/Hatem, Muslim America v. Town of Springdale*) on behalf of:

Jeffry K. Finer
WSBA No. 14610
telephone - (509) 464-7611
email jeffry@finer-bering.com

This email and its attachment have been sent to opposing counsel, as shown by the address field, with a copy also sent to the individual Plaintiff-Appellants.