No. 323668-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

HELENE M. RAUN,

Plaintiff-Appellant,

vs.

JOHN H. CAUDILL and LUCILLE J. CAUDILL, as Trustees for the CAUDILL LIVING TRUST dated November 1, 2000; WANELL J. BARTON, as Trustee for the WANELL J. BARTON FAMILY TRUST dated May 7, 1998 and any amendments; DIRK A. CAUDILL and LAUREN C. CAUDILL, as Trustees of the CAUDILL FAMILY TRUST DATED September 11, 2002; EARL L. BOETTCHER and MARY C. BOETTCHER, as Trustees for the BOETTCHER FAMILY TRUST dated May 12, 1992; BELVA M. WILLIAMS, a single woman; LARRY LOUTHERBACK and SHANNA LOUTHERBACK, as Trustees of the LOUTHERBACK LIVING TRUST dated February 9, 2001; DALE WALKER and CAROL WALKER, husband and wife; and JOHN P. GLEESING, as Successor Trustee under the Caudill Deed of Trust, JOHN AND JANE DOES 1 THROUGH 10; JOHN DOE CORPORATIONS 1 THROUGH 10 and OTHER JOHN DOE ENTITIES 1 THROUGH 10,

Defendants-Respondents.

REPLY BRIEF OF APPELLANT HELENE M. RAUN

MARIS BALTINS
LAW OFFICES OF MARIS BALTINS, P.S.
Attorneys for Appellants
7 S. Howard St., Suite 220
Spokane, WA 99201
Telephone: (509) 444-3336

TABLE OF CONTENTS

TABLE OF AUTHORITIES

A. INTRODUCTION

Mrs. Raun hereby submits her Reply to the Brief of Respondents filed by the Caudill Group and the Brief of Respondent John P. Gleesing.

At the outset, Mrs. Raun takes issue with several statements contained in the Introduction to the Caudill Brief as several statements therein are misleading and factually unfounded.

Contrary to the assertion by the Caudill Group, this litigation can in no way be construed as a relitigation of previously decided claims. Even the trial court, in ruling on the Motion to Dismiss filed by both the Caudill Group and John P. Gleesing, expressly rejected that claim. RP 22.

Whether or not Mrs. Raun "voluntarily abandoned" her home is the key issue with respect to the dismissal of Mrs. Raun's claims for (1) unlawful eviction; (2) violation of RCW 59.18.290; (3) continuing trespass; (4) violation of RCW 4.24.630; and (5) conversion. In this regard, ample evidence was in fact presented to the trial court that Mrs. Raun did not "voluntarily abandon" her home but instead, left under duress due to the actions of Mr. Gleesing and the Caudill Group. This evidence included her letter to Harry A. Green, written contemporaneously with her departure from the premises.

Caudill Group's assertion, that Mrs. Raun was represented by counsel "[a]t all times" is also untrue. Caudill Brief, at 2. Mrs. Raun was

a member of Clare House Bungalow Homes Residents Association, which challenged the Caudill Group's foreclosure in Spokane County Superior Court and subsequent bankruptcy proceedings. John R. Zeimantz was the attorney for the Residents Association, not Mrs. Raun.

The Caudill Group's claim that the present litigation stems from an "unfavorable decision" from the Bankruptcy Court is likewise factually inaccurate. In fact, the Bankruptcy Court found that the Caudill Group had failed to conduct a "reasonable and prudent inquiry into Mrs. Raun's occupancy rights" and further, that Mrs. Raun had a right of occupancy to her bungalow superior to that claimed by Caudill Group.

The Caudill Group's claim that they are not liable for Mrs. Raun's damages because they had "zero communications or contact" with Mrs. Raun is also misleading and factually incorrect where the chain of events forcing Mrs. Raun to leave her home were initiated by the Caudill Group and implemented through their agent, Respondent John P. Gleesing.

Turning now to the Brief of Respondent John P. Gleesing ("Gleesing Brief"), while Mr. Gleesing may be a "licensed Washington State attorney for over 37 years," this lawsuit is not being brought against him as an attorney, but rather his conduct as Trustee in the foreclosure proceedings he brought at the request of the Caudill Group. In this regard, Mr. Gleesing's status as an attorney should in no way be considered as

relevant in whether he is liable for the damages suffered by Mrs. Raun resulting from his utter failure to correctly ascertain the true possessory rights of Mrs. Raun in her bungalow prior to proceeding with the foreclosure, in effect, misusing the nonjudicial foreclosure process under the Washington Deeds of Trust Act, RCW Chapter 61.24.

B. OBJECTION TO CAUDILL GROUP RESTATEMENT OF THE CASE.

RAP 10.3(b) provides that a brief submitted by the Respondent must comply with RAP 10.3(a). RAP 10.3(a)(5) provides, in relevant part, that a brief contain "[a] fair statement of the facts and procedure relevant to the issues presented for review, *without argument*." RAP 10.3(a)(5). (italics added).

The Restatement of the Case contained in the Caudill Brief offends this provision. Included in the Restatement of the Case are the following unsupported, offensive and argumentative statements, the most egregious of which are set forth below:

> This Continuance, and request to conduct further discovery, appeared calculated, not to actually discover pertinent evidence to support Plaintiff Raun's claims, but rather, to put additional pressure on the Defendants Caudill Investors, in an attempt to force settlement.
>
> However, the Caudill Investors did not succumb to the Plaintiff's meritless tactics ....
>
> * * *

> Since September 27, 2012, the Caudill Investors have been defending claims asserted against them by Plaintiff Raun. Plaintiff Raun, unhappy with the previous litigation in the United States Bankruptcy Court, brought meritless claims against the Defendants, as secured lenders, they were undoubtedly viewed as a deep pocket.

Caudill Brief, at 10-11.

Additionally, no reference to the record is made in support of these statements in derogation of RAP 10.3(a)(5). Mrs. Raun objects to these statements and moves that they be stricken.

C. ARGUMENT

1. REPLY TO CAUDILL BRIEF

a. The Trial Court's February 4, 2013 Order

With respect to Mrs. Raun's claims for (1) unlawful eviction; (2) violation of RCW 59.18.290; (3) continuing trespass; (4) violation of RCW 4.24.630; and (5) conversion, the trial court, designating these claims as "property tort claims," ordered dismissal on the grounds that Mrs. Raun, by vacating her bungalow on July 1, 2010, "made the choice to leave" and therefore dismissal was appropriate. (RP 23:17-22; 24:11-13; CP 326-330). The issue of whether Mrs. Raun voluntarily vacated her bungalow or was forced out by the actions of the Caudill Group and Mr. Gleesing has been briefed in Mrs. Raun's Opening Brief.

To the extent that the Caudill Group appears to reargue the legal sufficiency of Mrs. Raun's claims, the following Reply is provided.

i. Mrs. Raun's Claim for Unlawful Eviction

Pursuant to the Resident Agreement signed by Mr. and Mrs. Raun, they held exclusive occupancy rights to unit 2506 for life or until they became unable to live independently or with the aid of another resident or caregiver or otherwise elected to terminate the Resident Agreement. (CP 206-207, 214-224). Mr. and Mrs. Raun recorded their Resident Agreement with the Spokane County Auditor, providing "notice to the world" of their interest in the property and were actually residing on the premises at the time the Caudill Group issued their Notice of Trustee's Sale. (CP 207, 214-224).

The Caudill Group, had a duty "to make reasonable and prudent inquiry as to the terms of that occupancy." (CP 210, 289-290 (emphasis added)). The Caudill Group breached this duty.

The Notice of Trustee's Sale dated July 14, 2008, Amended Notice of Trustee's Sale dated July 6, 2009 and the Second Amended Notice of Trustee's Sale dated April 19, 2010, all advised Mr. and Mrs. Raun that they would lose all rights to their home and would thereafter be subject to "summary proceedings under the unlawful detainer act, chapter 59.12

RCW" 20 days following the Trustee's Sale. (CR 207-209, 237-240, 242-246, 258-262).

While the threats of eviction were ultimately found by the Bankruptcy Court to be without basis, they were the driving force coercing Mrs. Raun to vacate her bungalow. (CP 209-210, 269, 271-280, 282-290).

The failure of the Caudill Group and Mr. Gleesing to correctly ascertain the nature of Mrs. Raun's occupancy rights in her bungalow set in motion the process by which Mrs. Raun was wrongfully evicted. Both the Caudill Group and Mr. Gleesing should be held liable for the results of their conduct.

ii. Mrs. Raun's Claim for Violation of RCW 59.18.290

The Caudill Group seeks to avoid liability for their violation of RCW 59.18.290 by claiming that they were not the "owners of Clare House Bungalow Homes until more than a year after Plaintiff had vacated and abandoned Unit 2506." Caudill Brief, at 18.

This argument is patently absurd, seeking to ignore the fact that, having failed to conduct a reasonable and prudent inquiry into the terms of Mrs. Raun's occupancy, they set in motion the foreclosure proceedings through Mr. Gleesing, acting as the agent of the "landlord" within the meaning of RCW 59.18.030(9); RCW 59.18.290.

The Caudill Group's reliance on the Stipulation permitting the Trustee's Sale is a misguided "red herring". The Stipulation, by its terms, has absolutely no effect on Mrs. Raun's right to pursue the causes of action asserted in her Complaint.

The Caudill Group, through Mr. Gleesing, issued the Notices of Trustee Sale containing the summary eviction notices in clear derogation of its duty to conduct a reasonable and prudent inquiry into Mrs. Raun's occupancy rights of which they had actual notice. As a direct result of the failure to make such an inquiry, Mrs. Raun was involuntarily and wrongfully dispossessed of her home.

iii. Mrs. Raun's Claim for Continuing Trespass

Incredibly, the Caudill Group asserts that "[p]laintiff has not set forth any allegations that Defendant Caudill Investors have at any time entered and remained on the property possessed by the Plaintiff, nor can any reasonable inference be drawn from the allegations made by Plaintiff." Caudill Brief, at 19-20. This statement is directly contradicted by its admission that "Defendant took ownership of the subject property" after Mrs. Raun was forced to vacate her bungalow. Caudill Brief, at 8.

The damages sustained by Mrs. Raun was the wrongful loss of her home. This was directly caused by the Caudill Group and Mr. Gleesing.

iv. Mrs. Raun's Claim for Violation of RCW 4.24.630

The "defense" raised by the Caudill Group to the cause of action for statutory trespass, that the Caudill Group has not "*gone onto the land of the Plaintiff*," is simply nonsensical. There is no question that, because of the improper actions of the Caudill Group and Mr. Gleesing, the Caudill Group became the owners of Mrs. Raun's bungalow. That "ownership," wrongfully obtained, continues to this very day.

The damage caused to Mrs. Raun by the Caudill Group's violation of RCW 4.24.630 is obvious; the loss of her bungalow.

v. Mrs. Raun's Claim for Conversion

The Caudill Group's defense to Mrs. Raun's claim for conversion is based upon the bald assertions that "[i]nterference with one's right to occupy real property, without more, is not conversion as a matter of law." The Caudill Group cites absolutely no authority for this proposition.

Further, the Caudill Group contends that "Plaintiff has failed to allege that the Defendants have interfered with any personal property to which the Plaintiff is entitled." This contention is meritless.

Stated plainly, the Caudill Group committed an unjustified, willful interference (or even more plainly, destroyed) Mrs. Raun's right to occupancy and possession of her bungalow. This leasehold interest is recognized in the State of Washington as "tangible personal property." In

re Estate of Barclay, 1 Wn.2d 82; 95 P.2d 393 (1939) (leasehold interests are chattel real).

The Caudill Group cites no authority contradicting this rule of law.

b. The Trial Court's February 7, 2014 Order

The remaining two claims for the torts of outrage and negligent infliction of emotional distress were dismissed on February 7, 2014. (CP 1218-1222). The trial court dismissed Mrs. Raun's tort of outrage claim on the grounds that the "service of notice [under RCW Chapter 61.24 did] not amount to intolerable and outrageous conduct." (RP 73:19-74-11). The trial court further dismissed Mrs. Raun's claim for negligent infliction of emotional distress based upon the statute of limitations.

i. Mrs. Raun's Tort of Outrage Claim

The Caudill Group's attempt to justify the trial court's reasoning in dismissing Mrs. Raun's tort of outrage claim is without merit. In Kloepfel v. Bokor, 149 Wn.2d 192, 195, 66 P.3d 630 (2003), the trial court (the *same* trial court rendering the dismissed in this appeal), found that "350 phone calls that this man [the defendant] made to this woman [the plaintiff] amounted to behavior "that just is not tolerable." (RP 73:19-74:11). This trial judge was affirmed by the Court of Appeals. Id., 203.

The evidence in this case presents a situation where the Caudill Group and Mr. Gleesing, by failing to make any reasonable or prudent

inquiry as to Mrs. Raun's occupancy rights in her bungalow, continually threatened Mrs. Raun as well as the other elderly residents of Clare House Bungalow Homes with summary eviction under the Unlawful Detainer Act (RCW Chapter 59.12). It does not take much to imagine the mental and physical toll these circumstances inflicted upon Mrs. Raun, which ultimately coerced her into vacating her home and losing her life savings. Parenthetically, although not required to support a claim for the tort of outrage, evidence presented by Mrs. Raun's personal physician, Lawrence S. Eastburn, MD, confirmed the negative medical impact to Mrs. Raun. (CP 195-204, 931-987).

The Caudill Group and Mr. Gleesing, threatening Mr. and Mrs. Raun with the loss of their home and life savings, constituted significantly more than "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Grimsby v. Samson, 85 Wn.2d 52, 59, 530 P.2d 291 (1975). With all due respect, the evidence in this case should be regarded as intolerable in a civilized community, certainly significantly more so than the harassment caused by 350 phone calls.

In making its initial determination as "gatekeeper" the trial court erred in concluding that the conduct at issue herein was not "sufficiently extreme and outrageous so as to warrant a factual determination by the

jury" and should be reversed. Robel v. Roundup Corp., 148 Wn.2d 35, 51, 59 P.3d 611 (2002).

ii. Mrs. Raun's Negligent Infliction of Emotional Distress Claim

It is somewhat curious that on appeal, the Caudill Group now contends that the trial court's dismissal of Mrs. Raun's claim for negligent infliction of emotional distress should be affirmed based upon the three year statute of limitations.

As noted in Mrs. Raun's Opening Brief, the Caudill Group originally argued that the statute of limitations would bar recovery for events occurring prior to September 27, 2009 based upon Cox v. Oasis Physical Therapy, PLLC, 153 Wn.App. 176, 222 P.3d 119 (2009). (CP 478-479). The claim for negligent infliction of emotional distress was a continuing one and Mrs. Raun is entitled to pursue her claim so long as it continued and was not otherwise barred by the statute of limitations, including any claim for damages for the emotional distress she suffered by being coerced to leave her home prior to September 27, 2009. On this issue, the trial court managed to misinterpret Cox. The complete dismissal of Mrs. Raun's claim for negligent infliction of emotional distress is simply not supported by Cox.

The tort of negligent infliction of emotional distress requires proof of duty, breach, proximate cause, and damage or injury, including objective symptomatology. Hunsley v. Giard, 87 Wn.2d 424, 434, 553 P.2d 1096 (1976). At summary judgment stage, evidence adduced by Mrs. Raun sufficient to establish those elements based upon the foregoing:

1. While the Caudill Group may have been secured lenders, they failed to conduct a reasonable and prudent inquiry into Mrs. Raun's occupancy rights to her bungalow.

2. Based upon this failure, the Caudill Group, through Mr. Gleesing, initiated foreclosure proceedings which targeted Mrs. Raun and all elderly residents of the Clare House Bungalow Homes.

3. The foreclosure proceeding dragged these residents through 3 years of continual litigation.

4. It was subsequently determined by the Bankruptcy Court that Mrs. Raun held a superior right of occupancy to her bungalow than the Caudill Group.

5. The foreseeable result of the actions of the Caudill Group and Mr. Gleesing was the infliction of emotional distress on Mrs. Raun to a degree where she left her home under duress.

6. Dr. Eastburn confirmed the existence of objective symptomatology supporting Mrs. Raun's claim for negligent infliction of emotional distress. (CP195-204, 931-987).

The law imposes a duty on the Caudill Group and Mr. Gleesing to avoid the negligent inflection of mental distress on others. Id. at 435. Both the Caudill Group and Mr. Gleesing breached this duty and should be held accountable for their actions.

The trial court's dismissal of Mrs. Raun's claim for negligent infliction of emotional distress should be reversed.

c. Imposition of CR 11 Sanctions

As noted in Mrs. Raun's Opening Brief, on April 4, 2014, the trial court heard Mr. Gleesing's Motion for Fees and Costs Re: CR 11 and RCW 4.84.185. While denying the fees and costs under RCW 4.84.185, the trial court did grant the motion as to CR 11 sanctions. (RP 125: 7-15, 128:22-129:3). As of the date of this Reply Brief, no written order has been entered. A presentment and hearing to determine the amount of the CR 11 sanctions is scheduled for November 21, 2014.

CR 11 permits an award of fees "against an attorney or party for filing pleadings that are not grounded in fact or warranted by law or are filed in bad faith for an improper purpose." Truong v. Allstate Property and Casualty Insurance, 151 Wn.App. 195, 207, 211 P.3d 430 (2009);

Skimming v. Boxer, 119 Wn.App. 748, 754, 82 P.3d 707 (2004). "The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system." Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219, 829 P.2d 1099 (1992); Skimming at 754. The threshold for imposition of CR 11 sanctions is high. Skimming, at 755. By definition, "[c]omplaints which are 'grounded in fact' and 'warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law' are not 'baseless' claims, and are therefore not the proper subject of CR 11 sanctions." Bryant, at 219-320.

Even if a Court finds that a complaint lacked a factual or legal basis, CR 11 sanctions could not be imposed unless the Court "also finds that the attorney who signed and filed the complaint failed to conduct a *reasonable inquiry* into the factual and legal basis of the claim." Id. at 220 (italics in original). "Courts should employ an objective standard in evaluating an attorney's conduct and the appropriate level of pre-filing investigation is to be tested by 'inquiring what was reasonable to believe at the time the pleading, motion or legal memorandum was submitted.'" Biggs v. Vail, 124 Wn.2d 193, 197, 876 P.2d 448 (1994), *quoting* Bryant, at 220. CR 11 "is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories." Bryant, at 219. The fact

that a complaint does not prevail on the merits is not enough to support imposition of CR 11 sanctions. Id., at 220; Truong, at 209.

In this instance, plaintiff's counsel conducted a 9 month investigation which included:

1. Interviews with Mrs. Raun.

2. Interviews with Mr. Zeimantz.

3. Interviews with Dr. Eastburn.

4. Review of State and Bankruptcy Court pleadings regarding the foreclosure of Clare House Bungalow Homes.

5. Review of documents received from Mrs. Raun.

6. Legal research regarding issues pertaining to Mrs. Raun's property interests.

(CP 1433-1740).

From this investigation, counsel determined that Mrs. Raun had causes of action for two categories of damages:

1. For the loss of her bungalow into which she and her husband had invested their life savings.

2. For the emotional distress Mrs. Raun experienced which was caused by the negligence of the Caudill Group and Mr. Gleesing in failing to ascertain the true occupancy rights of Mrs. Raun, and subjecting a group of extremely vulnerable elderly individuals, including Mrs. Raun,

to years of litigation and stress regarding their status as residents of Clare House Bungalow Homes.

(CP 1444-1445).

Although no final order has been entered as to this issue, Mrs. Raun points out that:

1. The Motion to Dismiss filed by both the Caudill Group and Mr. Gleesing sought dismissal of *all* claims advanced by Mrs. Raun. (CP 134-156).

2. The trial court's Order of February 4, 2013 only dismissed the "property tort claims" based upon a finding of abandonment. (RP 24:4-13; CP 326-330)

3. The remaining claims for the tort of outrage and negligent infliction of emotional distress were allowed to proceed. (CP 326-330).

4. At the April 4, 2014 hearing on the motions for sanctions filed separately by the Caudill Group as well as Mr. Gleesing, the trial court observed, with respect to the claim for intentional infliction of emotional distress that, but for its dismissal based upon the statute of limitations, the claim would have otherwise been determined by a jury. (CP 14-24).

Although the claims were dismissed by the trial court, the reasoning of the trial court expressed in these hearings contradict any

finding that the causes of action were not grounded in fact or warranted by law.

d. The Caudill Group's Motion for Attorney Fees and Costs on Appeal

The Caudill Group's motion for an award of attorney fees and costs is predicated on alleged CR 11 violations. Caudill Brief, at 35. For the reasons stated above, addressing the imposition of CR 11 sanctions by the trial court, it is submitted that no grounds exist to warrant imposition of sanctions under CR 11 against Mrs. Raun or her counsel in this appeal.

2. REPLY TO GLEESING BRIEF

Mr. Gleesing notes that he has been a Washington State attorney who has been practicing for 37 years. However, as noted above, this lawsuit not brought against Mr. Gleesing as an attorney. It is brought against Mr. Gleesing in his capacity as Trustee for damages caused by his failure to ascertain Mrs. Raun's occupancy rights to her bungalow.

Mrs. Raun believes that her reply to arguments advanced in the Caudill Brief regarding (1) unlawful eviction, (2) violation of RCW 59.18.290, (3) continuing trespass, (4) violation of RCW 4.24.630, (5) conversion, (6) the tort of outrage, (7) negligent infliction of emotional distress adequately, (8) imposition of CR11 sanctions and (9) motion for award of fees and costs on appeal adequately address the same arguments

presented in the Gleesing Brief. Accordingly, the arguments set forth below attempt to address arguments which are specific to Mr. Gleesing.

a. Mr. Gleesing's Duty

Mr. Gleesing seeks to avoid liability in this matter by asserting that the only duty he owed to Mrs. Raun was to provide her the Notices of Trustee's Sale. Mrs. Raun respectfully disagrees. As stated by the Washington Supreme Court:

> An independent trustee who owes a duty to act in good faith to exercise a fiduciary duty to act impartially to fairly respect the interests of both the lender and the debtor is a **minimum** to satisfy the statute, the constitution, and equity.

Klem v. Washington Mut. Bank, 176 Wn.2d 771, 790, 295 P.3d 1179 (2013). That Mr. Gleesing may have adhered to the minimum standards of conduct under the Washington Deeds of Trust Act does *not* mean that, under the facts and circumstances of this case, he did not violate duties owed to Mrs. Raun, including duties of non-interference with her right to possess her bungalow:

> While the legislature has established a mechanism for nonjudicial sales, neither due process nor equity will countenance a system that permits the theft of a person's property by a lender or its beneficiary under the guise of a statutory nonjudicial foreclosure.

Id. Through Mr. Gleesing's negligence, such an injustice is precisely what occurred in this case.

Mr. Gleesing himself acknowledged that Mrs. Raun's occupancy rights would have affected his actions:

> Q. (By Mr. Baltins) Had the residents' agreement been properly identified, would you have taken a different kind of action?
>
> * * *
>
> A. Yes.

(CP 791, 922).

Mr. Gleesing, although denying any duty to investigate, he nevertheless contends that any such duty was discharged by obtaining a policy of title insurance from First American Title Insurance Company. Which, according to Mr. Gleesing, did not disclose Mrs. Raun's recorded Resident Agreement. Gleesing Brief, at 22-23.

Assuming arguendo that this this is true, no question exist that such an omission would be an error and if Mr. Gleesing relied upon the policy, this reliance should not allow him to disavow responsibility for his actions. He is still the Trustee. If anything, based upon Mr. Gleesing's argument, he should assert a claim against First American Title.

Mr. Gleesing then seeks to avoid the implication of the Memorandum Decision issued by the United States Bankruptcy Judge, the Honorable Patricia C. Williams on March 11, 2011, by claiming that he had no knowledge that the "Caudill Group obtained a title report on the property, which revealed the two recorded Resident Agreements ...."

Gleesing Brief, at 24. Further, Mr. Gleesing contends that the Bankruptcy Court's Memorandum Decision was "in error." Gleesing Brief, at 14. The untenable conclusion Mr. Gleesing seeks to have this Court accept is that, since *he* has determined that the Bankruptcy Court's Decision was in error, it should be ignored. The fact however, is that the Bankruptcy Court found a duty to investigate existed and that the Caudill Group and Mr. Gleesing, acting on their behalf, breached that duty.

b. The Notices of Trustee's Sale

Mr. Gleesing's contention that nothing in the various Notices of Trustee's Sale could be construed as a threat of eviction is less than forthcoming. Gleesing Brief, at 25-27. There is no dispute that the Notices contained the following language:

> After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.

(CP 208, 242-246).

It is submitted that a reasonable person, reading this provision and ascribing the usual and customary meaning to these words, would no doubt regard it as a threat of dispossession. Mrs. Raun certainly did.

c. Imposition of CR 11 Sanctions

Contrary to Mr. Gleesing's assertion, there is nothing in the Certified Verbatim Transcript of Proceedings countervailing the proposition that Mrs. Raun's causes of action against Mr. Gleesing were factually and legally supported. If anything, the points extracted from the transcript by Mr. Gleesing only serve to highlight the fact that, although he knew the Clare House bungalows were occupied, he did nothing to ascertain the occupancy of the residents. Simply stated, he knew but did nothing and just followed orders. This, Mr. Gleesing contends, exonerates him from liability. Mrs. Raun disagrees. In truth, under Washington law, Mr. Gleesing had both actual and constructive knowledge of Mrs. Raun's occupancy rights prior to initiating foreclosure and elected to proceed anyway. RCW 65.08.070; Ellingsen v. Franklin County, 117 Wn.2d 24, 27, 30, 810 P.2d 910 (1991).

Mr. Gleesing's further argues, that because *he* had determined Judge Williams Memorandum Decision to be incorrect, the Decision should be treated as a nullity and cannot provide any basis for finding a breach of duty. Mr. Gleesing cites no authority for this patently absurd proposition. Significantly, the Caudill Group never challenged or otherwise appealed this aspect of Judge Williams' Decision.

The investigation conducted by Mrs. Raun's attorney, including the evidence reviewed, was a reasonable inquiry which revealed both a legal and factual basis to believe that the asserted claims were, in fact meritorious. (CP 1433-1740). The trial court's imposition of CR 11 sanctions, on the basis of the facts and circumstances of this case constituted an abuse of discretion and should be reversed.

d. Mr. Gleesing's Motion for Attorney Fees and Costs on Appeal

For the reasons stated above, no attorney fees and costs should be awarded to Mr. Gleesing.

D. CONCLUSION

Based upon the foregoing, it is respectfully requested that the Court of Appeals enter an Order:

1. Reversing the trial court's Order Granting in Part and Denying in Part Defendants' Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted and Affirmative Defenses, entered on February 4, 2013.

2. Reversing the trial court's Order Granting: (1) the Caudill Investors' Motion for Summary Judgment; and (2) Defendant John P. Gleesing's Motion for Summary Judgment, entered on February 7, 2014.

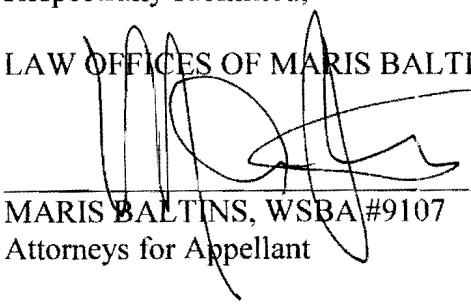
3. Denying the Caudill Group's motion for award of attorney fees and costs on appeal.

4. Denying Mr. Gleesing's motion for award of attorney fees and costs on appeal.

DATED this 12th day of November, 2014.

Respectfully submitted,

LAW OFFICES OF MARIS BALTINS, P.S.



MARIS BALTINS, WSBA #9107
Attorneys for Appellant

CERTIFICATE OF SERVICE

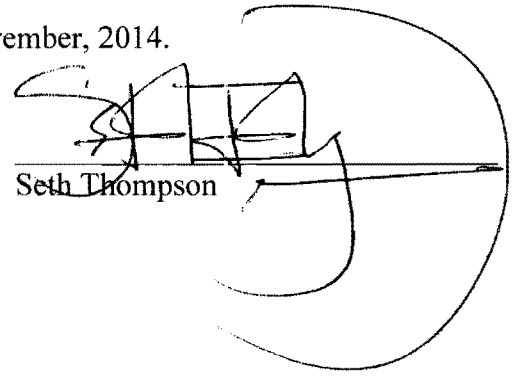
Seth Thompson hereby declares under penalties of perjury of the laws of the State of Washington that:

1. I am and at all times hereinafter mentioned was a citizen of the United States and a resident of the State of Washington, over the age of 18 years and not a party to this action.

2. On the 12th day of November, 2014, I caused to be served a true and correct copy of the foregoing document, by the method indicated below, upon the following parties:

Paul L. Kirkpatrick Patrick W. Harwood Kirkpatrick & Startzel, P.S. 1717 S. Rustle, Suite 102 Spokane, WA 99224	[ ] First Class Mail, Postage Prepaid [ ] Federal Express [x] Hand Delivery [ ] Facsimile Transmission:
John D. Munding Crumb & Munding, P.S. 1610 W. Riverside Ave. Spokane, WA. 99201	[ ] First Class Mail, Postage Prepaid [ ] Federal Express [x] Hand Delivery [ ] Facsimile Transmission:

DATED this 12th day of November, 2014.



Seth Thompson