No. 323668-III
(Consolidated with No. 330257-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

CONSTITUTION PAGE

RULES AND STATUTES

A. INTRODUCTION

Appellant Helene M. Raun hereby submits her Reply to the Brief of Respondent John Gleesing.

At the outset, Mrs. Raun feels it is important to address and correct certain misstatements and errors appearing in the brief submitted by Mr. Gleesing.

In his brief, Mr. Gleesing asserts that "Raun and Mr. Baltins had been involved in extensive litigation on the same set of facts in an adversary proceeding in the United States Bankruptcy Court for the Eastern District of Washington." *See* Brief of Respondent John Gleesing ("Gleesing Brief"), at 6-7. However, as demonstrated below, to the extent this statement implies participation by Mr. Baltins in litigation prior to the filing of the Complaint for Damages ("Complaint") in the instant matter, it is an extremely misleading proposition. Further, to the extent that the statement implies that the issues in the instant appeal were previously litigated in other judicial forums, it is simply wrong.

Similarly, while Mr. Gleesing was named as the successor trustee under the Caudill Deed of Trust, it is untrue that his involvement was limited to a single averment in the Complaint. Gleesing Brief, at 9. In fact, Mr. Gleesing, along with the Caudill Group, is identified throughout

the Complaint as a participant in the acts and omissions giving rise to the various causes of action.

Mr. Gleesing's assertion that prior to the filing of his motion for summary judgment on November 7, 2013, Mrs. Raun was not affirmatively pursuing discovery is likewise false. Gleesing Brief, at 11. To the contrary, the record demonstrates that Mrs. Raun was actively seeking documents with a view towards scheduling depositions prior to the filing of the motions and that the discovery cutoff had not lapsed.

B. REPLY TO MR. GLEESING'S STATEMENT OF THE CASE.

Set forth below is a chronology of events summarizing the facts underlying Mrs. Raun's Complaint:

Date	Event
August 2, 2000	Chester E. Raun and Helene Raun enter into their Resident Agreement with Clare House Bungalow Homes, LLC, purchasing their bungalow, unit 2506, at Clare House Bungalow Homes ("Clare House"). Pursuant to the Resident Agreement, Mr. and Mrs. Raun could reside in their bungalow for the rest of their lives. CP 206, 214-224.

Date	Event
December 20, 2001	Mr. and Mrs. Raun record their Resident Agreement with the Spokane County Auditor. CP 207, 214-224.
November 24, 2004	The Caudill Group loans $400,000 to Clare House Bungalow Homes, LLC. A Deed of Trust securing this loan was recorded on November 24, 2004. CP 207, 228-232.
April 11, 2005	The Caudill Group loans $265,000 to Clare House Bungalow Homes, LLC. A Deed of Trust securing this loan was recorded on April 11, 2005. CP 207, 233-235.
April 2008	Clare House Bungalow Homes, LLC defaults on the loans. CP 207.
May 14, 2008	Mr. Gleesing, as trustee, commences foreclosure proceedings on the Clare House Deed of Trust. CP 207, 237-240.

Date	Event
October 29, 2008	Clare House Bungalow Homes, LLC files suit to restrain the trustee's sale in Spokane County Superior Court, *Clare House Bungalow Homes, LLC v. Caudill,* No. 08-2-04898-0. CP 207.
February 3, 2009	Clare House Bungalow Homes Residents Association files a Complaint to Quiet Title, Restrain Trustee's Sale and for Other Relief in Spokane County Superior Court, *Clare House Bungalow Homes Residents Association v. Clare House Bungalow Homes, LLC,* No. 09-2-00478-6. CP 208.
July 6, 2009	Mr. Gleesing issues an Amended Notice of Trustee's Sale. CP 208, 242-246.
August 20, 2009	Clare House files for Chapter 11 bankruptcy, *In Re Clare House Bungalow Homes, LLC*, No. 09-04651-PCW11. CP 208.
October 11, 2009	Mr. Raun passes away. CP 209.

Date	Event
November 18, 2009	The quiet title lawsuit is removed to Bankruptcy Court as an adversary proceeding under the Clare House bankruptcy, *Clare House Bungalow Homes Residents Association v. Clare House Bungalow Homes, LLC,* Adv. No. 09-80164-PCW11. CP 209.
April 19, 2010	Mr. Gleesing issues a Second Amended Notice of Trustee's Sale. CP 209, 258-262.
July 1, 2010	Mrs. Raun vacates her bungalow. CP 209-210, 269.
December 14, 2010	Memorandum Decision is issued in the adversary proceeding. CP 210, 271-280.
April 11, 2011	Memorandum Decision and Order and Judgment is entered in the Adversary Proceeding. CP 210, 282-294.
June 10, 2011	Mr. Gleesing issues the Third Amended Notice of Trustee Sale.
September 30, 2011	Clare House sold.
December 2011	First contact between Maris Baltins and Mrs. Raun. CP 1434.

Date	Event
March 29, 2012	Mr. Baltins makes his first appearance on behalf of Mrs. Raun in an on-going appeal taken from the Bankruptcy Court's Order and Judgment. Mr. Baltins' appearance occurred after all briefing was completed. CP 210, 302, 1246.
September 28, 2012	The Order and Judgment is affirmed by the United States District Court. CP 210, 296-314.

The timeline below sets forth the procedural events leading to this appeal.

Date	Event
September 27, 2012	Mrs. Raun files her Complaint for Damages.
November 14, 2012	A motion to dismiss is filed on behalf of Caudill Group and Mr. Gleesing. CP 153-156.
December 21, 2012	A hearing is held on the motion to dismiss. The motion is denied with respect to claims for the Tort of Outrage and Negligent Infliction of Emotional Distress. CP 326-330.
June 28, 2013	Mrs. Raun serves separate discovery requests upon Mr. Gleesing and the Caudill Group. CP 618-619.

Date	Event
July 29, 2013	The Caudill Group produce no documents in responding to Mrs. Raun's discovery requests. CP 619, 633-654.
August 6, 2013	The deposition of Lawrence S. Eastburn, MD is taken. CP 931, 940-970.
September 11, 2013	Mr. Gleesing responds to Mrs. Raun's discovery requests. CP 618, 628, 631.
October 31, 2013	Because the responses of the Caudill Group and Mr. Gleesing to Mrs. Raun's discovery requests were considered incomplete, letters were sent to their respective counsels requesting documents in conjunction with scheduling of depositions. CP 619, 656-661, 663-668.
November 5, 2013	Counsel for the Caudill Group refuses to provide additional requested information and provides no dates for Mr. Caudill's deposition. CP 619-620, 670-671.

Date	Event
November 6, 2013	Counsel for Mr. Gleesing contends that Mr. Gleesing's Answers and Responses to plaintiff's discovery requests were complete so no additional information would be produced, but indicates that Mr. Gleesing would be available for deposition on November 19 and 21, 2013. CP 620, 673.
November 6, 2013	Mr. Baltins issues notices of depositions, scheduling the depositions of John Caudill for November 20, 2013 and Mr. Gleesing for November 21, 2013. CP 620, 675, 677.
November 7, 2013	The Caudill Group and Mr. Gleesing file separate motions for summary judgment. CP 621.
November 7, 2013	Counsel for the Caudill Group requests voluntary dismissal of Mrs. Raun's claims. CP 1251.
December 20, 2013	Counsel for Mr. Gleesing requests dismissal of claims, indicates intent to seek sanctions under CR 11 and RCW 4.84.185. CP 1847-1848.
December 20, 2013	Discovery cutoff. CP 390.

C. ARGUMENT

1. The Trial Court's Order Denying Fees and Costs Under RCW 4.84.185 is Properly Before this Court for Consideration in Connection with the Imposition of CR 11 Sanctions.

Mr. Gleesing misapprehends Mrs. Raun's reference to the trial court's order denying fees and costs under RCW 4.84.185. First, the denial is part and parcel of the Order Granting Motion Finding CR 11 Violation and Denying Fees and Costs Per RCW 4.84.185 ("CR 11 Order"). CP 2023-2031. The motions filed by the Caudill Group and Mr. Gleesing underlying the CR 11 Order were heard on the same day and decided in tandem. Second, in specifically addressing Mrs. Raun's claim for negligent infliction of emotional distress, the trial court stated "I cannot say, the claim as a matter of law, is frivolous." RP 128. In other words, by finding the claim non-frivolous, the trial court had to have concluded that the claim for negligent infliction of emotional distress in fact *could* be supported by a rational argument based upon law and fact. Skimming v. Boxer, 119 Wn.App. 748, 756, 82 P.3d 707 (2004).

The trial court's conclusion significantly intersects the finding required to support a violation of CR 11 which requires *inter alia*, a finding that the complaint is baseless (i.e., not well grounded in fact and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law).

CR 11(a); Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 219-220, 829 P.2d 1099 (1992).

It is submitted that an inherent contradiction exists where, on the one hand, the trial court found that Mrs. Raun's claim for negligent infliction of emotional distress could be supported by a rational argument based upon law and fact and therefore not frivolous under RCW 4.84.185, while on the other hand, ruled that the same claim is not well grounded in fact and not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law. CP 2026-2027.

Mr. Gleesing attempts to obscure this contradiction by asserting that the order in which the trial court ruled makes a difference. Gleesing Brief, at 17-18. That is, because the trial court ruled on the CR 11 issue first followed by the RCW 4.84.185 issue, a distinction is created. If so, it is a distinction without a difference.

The trial court's ruling denying fees and costs under RCW 4.84.185 is contradicted by its ruling regarding CR 11 sanctions.

2. Mrs. Raun's Claims for the Tort of Outrage and Negligent Infliction of Emotional Distress Were Well Grounded in Fact and Warranted by Existing Law.

Underlying the trial Court's CR 11 Order is the notion that because the issuance of the various Notices of Trustee Sale were accomplished

pursuant to the Deed of Trust Act, RCW Chapter 61.24, no cause of action for the Tort of Outrage or Negligent Infliction of Emotional Distress could be brought against him as a matter of law. RP 122-123; CP 2026-2027. This is simply not true.

Mr. Gleesing, as trustee, considered all members of the Caudill Group his clients and acted as their representative in connection with the Clare House Deed of Trust. CP 791, 820. Under the Deed of Trust, Mr. Mr. Gleesing was the agent of the Caudill Group. Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83, 95-97, 285 P.3d 34 (2012).

In this regard, it is undisputed that Mrs. Raun recorded her Resident Agreement with the Spokane County Auditor's Office on December 20, 2001. CP 206, 214-224. The recording of the Resident Agreement gave her superior rights to occupancy of her bungalow over the Deeds of Trust subsequently recorded by the Caudill Group. CP 210, 271-280. Notwithstanding her recorded interest, in May of 2008, Mr. Gleesing, under direction from the Caudill Group, initiated nonjudicial foreclosure proceedings on Clare House, advising Mrs. Raun in the Notice of Trustee's Sale that the effect of the sale would be to deprive her of all interest in her bungalow. CP 207, 237-240. If Mr. Gleesing was unaware of the recorded Resident Agreement as he claims, he would certainly have been put on notice no later than February 3, 2009, when the Clare House

Bungalow Homes Residents Association filed their quiet title action. CP 208. However, Mr. Gleesing chose to ignore this information. At no time did Mr. Gleesing ever investigate the occupancy status of any of the residents, including Mrs. Raun, at Clare House. CP 822-823. Rather, Mr. Gleesing continued issuing Amended Notices of Trustee's Sale at the behest of the Caudill Group on July 6, 2009 and April 19, 2010 which threatened Mrs. Raun with summary eviction 20 days after the sale. CP 242-246, 258-262. Faced with the threatened loss of her home and life savings, Mrs. Raun's health was adversely affected, as documented by her medical records and ultimately causing her, under duress, to vacate her home. CP 195-204, 209-210, 269, 931-987. These allegations are set forth in Mrs. Raun's Complaint and are asserted not only against the Caudill Group but Mr. Gleesing as well. It is noted that each cause of action in the Complaint incorporates and realleges the previously alleged averments.

Under these facts, Mrs. Raun's claims for the Tort of Outrage and Negligent Infliction of Emotional Distress were well pled and did not constitute a violation of CR 11. As trustee, Mr. Gleesing had obligations to Mrs. Raun, the homeowner. Mr. Gleesing failed to conduct a reasonable and prudent inquiry into Mrs. Raun's occupancy rights to her Clare House bungalow even after knowledge of her recorded Resident

Agreement. CP 210, 289-290, 1435-1440. A trustee in a nonjudicial foreclosure has a duty to exercise "independent discretion as an impartial third party." Klem v. Washington Mut. Bank, 176 Wn.2d 771, 792, 295 P.3d 1179 (2013). Blind deference to a lender's desire to foreclose could constitute a breach of the trustee's duty of good faith. Id. In discussing the trustee's duty of good faith, the Washington Supreme Court noted:

> A foreclosure trustee must "adequately inform" itself regarding the purported beneficiary's right to foreclose, including, at a minimum, a "'cursory investigation'" to adhere to its duty of good faith. ... A trustee does not need to summarily accept a borrower's side of the story or instantly submit to a borrower's demands. But a trustee must treat both sides equally and investigate possible issues using its independent judgment to adhere to its duty of good faith.

Lyons v. U.S. Bank, NA, 181 Wn.2d 775, 787, 336 P.3d 1142 (2014).

In both Klem and Lyons, the Washington Supreme Court faulted the trustee for failing to investigate when confronted with information about irregularities in the nonjudicial foreclosure process. This is precisely what happened in this case.

In Lyons, the Washington Supreme Court acknowledged that "[c]onduct during foreclosure could support a claim for intentional infliction of emotional distress." Id., at 793. The fact that the Washington Supreme Court in Lyons found that the factual allegations were not sufficiently outrageous to support the Tort of Outrage claim does not mean no cause of action could be brought against the trustee. To the contrary,

the Court specifically recognized that such a claim was legally cognizable. Mrs. Raun's Complaint essentially alleges that Mr. Gleesing, through his actions, abused the nonjudicial foreclosure process by threatening an elderly woman in her 80's with loss of her home and life savings by failing to investigate the circumstances of her occupancy rights which were, in fact, superior to those held by his clients.

The claims for the Tort of Outrage and Negligent Infliction of Emotional Distress advanced by Mrs. Raun were well grounded in fact and supported by existing law. In this matter, Mrs. Raun demanded a trial by jury; she had a right to have these claims heard and determined by a jury. CP 387-389. Under the Washington Constitution, this right is "inviolate." WASH. CONST. art. 1, § 21. ("The right of trial by jury shall remain inviolate"); David v. Cox, 183 Wn.2d 269, 351 P.3d 862 (2015) ("At its core, the right of trial by jury guarantees litigants the right to have a jury resolve questions of disputed material facts."). The trial court's erroneous findings and conclusions that Mrs. Raun's claims for the Tort of Outrage and Negligent Infliction of Emotional Distress were not well grounded in fact and not warranted by existing law violates this Constitutional guarantee and should be reversed.

3. The Trial Court Abused its Discretion in Finding that Mrs. Raun's Counsel Failed to Conduct a Reasonable Inquiry into the Factual or Legal Basis for the Claims of the Tort of Outrage and Negligent Infliction of Emotional Distress.

The history of this case demonstrates that Mr. Baltins first became aware of Mrs. Raun's plight in December of 2011, when she sought legal assistance regarding the loss of her home. CP 1434. Mr. Baltins had no involvement in any of the legal proceedings which had transpired earlier. He was not involved when Mr. Gleesing commenced the nonjudicial foreclosure proceedings on May 14, 2008 with the issuance of his Notice of Trustee's Sale. He was not a participant in the lawsuit to restrain the trustee's sale filed on October 29, 2008. CP 207. He was not a participant in the Clare House Bungalow Homes Residents Association quiet title lawsuit filed February 3, 2009. CP 208. He was not involved in the Clare House bankruptcy filed on August 20, 2009. He did not participate in the Adversary Proceeding arising from the removal of the quiet title lawsuit when it was removed to the United States Bankruptcy Court.

Mr. Baltins first appeared on behalf of Mrs. Raun in the on-going appeal of the Bankruptcy Court's Order and Judgment on March 29, 2012. At the time of his appearance, all briefing had been completed. CP 210, 302, 1246.

The Summons and Complaint in this matter were filed on September 27, 2012. CP 1-32. During the nine month period between first meeting with Mrs. Raun and filing the Complaint, Mr. Baltins conducted an investigation including reviewing pleadings filed in the various lawsuits, interviewing individuals with knowledge related to Mrs. Raun's potential claims and conducting research regarding possible claims. CP 1433-1719.

From this investigation, the following facts, pertinent to Mrs. Raun's claims for the Tort of Outrage and Negligent Infliction of Emotional Distress, were discovered:

1. On August 2, 2000, Mr. and Mrs. Raun purchased their bungalow at Clare House pursuant to a Resident Agreement. CP 206, 214-224, 1439.

2. On December 20, 2001, Mr. and Mrs. Raun recorded their Resident Agreement with the Spokane County Auditor. CP 207, 214-224, 1439.

3. On May 14, 2008, Mr. Gleesing, at the direction of the Caudill Group, initiated nonjudicial foreclosure proceedings on Clare House by issuing a Notice of Trustee's Sale to Mrs. Raun and other residents of Clare House. CP 207, 237-240, 1439.

4. On February 3, 2009, Mrs. Raun, as a member of the Clare House Bungalow Homes Residents Association filed a quiet title lawsuit, challenging the nonjudicial foreclosure. CP 208, 1439.

5. Even after the filing of the quiet title lawsuit, Mr. Gleesing continued to issue Amended Notices of Trustee's Sale. CP 208, 209, 242-246, 258-262, 1439

6. The quiet title lawsuit was removed to the United States Bankruptcy Court on November 18, 2009 and heard as an Adversary Proceeding. CP 208, 1439.

7. On July 1, 2010, Mrs. Raun, under the stress and adverse health consequences caused by the continuing threats of eviction contained in the Notices of Trustee's Sale issued by Mr. Gleesing, vacated her bungalow. CP 209-210, 269, 1439, 1442-1445.

8. On April 11, 2011, the Bankruptcy Court issued a Memorandum Decision confirmed that Mrs. Raun's right to occupancy and possession in her bungalow was superior to that of the Caudill Group. In particular, the Bankruptcy Court stated:

> The Caudill Group obtained a title report on the property, which revealed the two recorded Resident Agreements, but the evidence at trial did not reveal that any inquiry was made regarding the existence of other Resident Agreements or even the terms of the recorded Resident Agreements. ... The evidence at trial did not reveal that any inquiry was made regarding the

> occupancy of the bungalows. Mr. Blanchat knew the real property constituted a retirement community which was at "full capacity." The evidence at trial did not reveal that any further inquiry was made.
>
> [The Caudill Group] had actual notice of the occupancy of the bungalows by residents. [The Caudill Group] had **a duty to make reasonable and prudent inquiry as to the terms of that occupancy** if the [Caudill Group] desired to obtain rights greater than the occupants. By failing to make any inquiry, **[the Caudill Group] is subject to the terms of the Resident Agreement to the extent the Resident Agreement grants rights in the real property**.

CP 210, 289-290, 1439 (emphasis added).

These eight points constitute the basis for Mrs. Raun's claims for the tort of Outrage and Negligent Infliction of Emotional Distress. They are objective and are basically undisputed. No documents or deposition testimony obtained during the course of discovery has contradicted these points. Significantly, the Bankruptcy Court's finding that the Caudill Group failed to make a reasonable and prudent inquiry as to the terms of Mrs. Raun's occupancy has never been challenged or otherwise modified. Mr. Gleesing, although aware of Mrs. Raun's occupancy, also never conducted any investigation. CP 822-823. In light of these facts, Mr. Gleesing provides no authority imposing an affirmative duty on the part of an investigating counsel to simply disregard a valid, enforceable judicial order.

The inquiry conducted by Mr. Baltins was objectively reasonable under CR 11 and the trial court's finding to the contrary was an abuse of discretion. Bryant, at 220.

4. The November 7, 2013 Letter from Counsel for the Caudill Group is Insufficient to Constitute Notice of Intent to Seek CR 11 Sanctions and Accordingly, the Trial Court Award of $25,627.83 in CR 11 Sanctions is an Abuse of Discretion.

For the reasons discussed above, CR 11 was not violated and accordingly, the trial court's Order Imposing CR 11 Sanction ("Sanctions Order") was error. However, assuming *arguendo* that imposition of sanctions was appropriate, the trial court's calculation of the amount of the sanctions ($25,627.83) was erroneous for the reasons set forth below.

Mr. Gleesing relies upon a letter dated November 7, 2013 prepared by counsel for the Caudill Group to bootstrap the notice requirement for CR 11 sanctions to a date prior to his letter of December 20, 2013. This letter was accepted by the trial court as notice. CP 2020. However, the letter merely requested voluntary dismissal with no reference of any intention to seek sanctions. CP 1251.

It is important to note that at this time, Mrs. Raun's two claims were proceeding to trial, as a result of the trial court's earlier denial of the motion to dismiss based upon substantially the same grounds asserted in Mr. Gleesing's motion for summary judgment. CP 326-330.

Furthermore, Mrs. Raun was still in the process of obtaining discovery which was requested months earlier. CP 618-619. Both the Caudill Group and Mr. Gleesing had not provided full disclosure requested by Mrs. Raun which was necessary for her to schedule depositions. CP 619, 656-661, 663-668. As of October 31, 2013, only the deposition of Dr. Eastburn had been taken by the defendants. CP 931, 940-970. Furthermore, the discovery cutoff of December 20, 2013 was still more than a month and a half away. CP 390. While other letters were written by Mr. Munding, only his letter of December 23, 2013 provides notice of an intention to seek fees and costs under RCW 4.84.185 and the ostensible basis for the sanction. CP 1256-1257.

Under these circumstances, the proposition advanced by Mr. Gleesing appears to be that Mrs. Raun should have voluntarily dismissed her two remaining claims without having received full discovery and without having taken depositions of the any of the defendants. This is untenable and the proposition should be rejected.

In the context of this case, Mr. Munding's letter of November 7, 2013 is nothing more than posturing in an attempt to pressure Mrs. Raun to dismiss her claims. Mr. Gleesing refers to the fact that the notice given in Bryant was done so in a reply brief on appeal. Gleesing Brief, at 25. The significance of this is unclear. What is significant is that the notice

which the Washington Supreme Court found sufficient stated the intent to seek CR 11 sanctions and the specific basis for the request (i.e., a motion to disqualify plaintiff's counsel on appeal). Bryant, at 224. By contrast, the boilerplate request for voluntary dismissal contained in Mr. Munding's letter should not have been accepted by the trial court as notice sufficient under Bryant, and to do so was an abuse of discretion, and resulted in an erroneous calculation of the amount of the sanctions. Id.

5. Mr. Gleesing's Motion for Attorney Fees and Costs Pursuant to RAP 18.9 Should be Denied.

RAP 18.9 provides the Court of Appeals may award terms or compensatory damages to a party when the appeal is frivolous. RAP 18.9. An appeal is frivolous if, considering the entire record and resolving all doubts in favor of the appellant, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that it is so devoid of merit that there is no possibility of reversal. Boyles v. Department of Retirement Sys., 105 Wn.2d 499, 506-07, 716 P.2d 869 (1986); Heigis v. Cepeda, 71 Wn.App. 626, 634, 862 P.2d 129 (1993).

No attorney fees and costs should be awarded to Mr. Gleesing under RAP 18.9. For the reasons discussed above, the trial court erred in finding the CR 11 violation, and its subsequent calculation of the amount

of the award was likewise in error under Bryant. The issues presented in this appeal present the kind of debatable issues upon which reasonable minds might differ, precluding a finding that the appeal is frivolous.

Mr. Gleesing's request for attorney fees and costs pursuant to RAP 18.9 should therefore be denied.

D. CONCLUSION

Mrs. Raun, having recorded her Resident Agreement, held a property interest in her bungalow which allowed her to reside there as long as she lived. Under RCW Chapter 61.24, a nonjudicial foreclosure pursuant to a deed of trust extinguishes all junior interests to that security. Beal Bank, SSB v. Sarich, 161 Wn.2d 544, 548, 167 P.3d 555 (2007).

However, even though the interest held by the Caudill Group was junior to the interest held by Mrs. Raun, the junior lienholder foreclosed on Mrs. Raun's superior interest. This result is improper under the nonjudicial foreclosure provisions of the Deeds of Trust Act and Mrs. Raun was entitled to pursue her remedies in court. CR 208, 248-250.

In the context of this case, the superior interest held by Mrs. Raun in her bungalow may be extinguished only by adverse possession. A claim of adverse possession requires the claimant to establish that the possession of the claimed property was (1) for 10 years, (2) exclusive, (3) actual and uninterrupted, (4) open and notorious, and (5) hostile. Chaplin

v. Sanders, 100 Wn.2d 853, 857, 676 P.2d 431 (1984), RCW 4.16.020. However, adverse possession does not apply in this case because: (1) the Caudill Group did not provide any proof of the elements of adverse possession, and (2) the trial court made no finding of adverse possession.

Instead, the trial court literally invented a new method of extinguishing Mrs. Raun's recorded interest in her bungalow based upon a theory of "abandonment" for which no precedent in this jurisdiction exists. In any event, the question of abandonment presented a question of fact which Mrs. Raun had a right to have a jury resolve, not the trial court.

As set forth above, Mrs. Raun sought to advance a good faith remedy to compensate Mrs. Raun for her damages based upon facts and existing law. Instead, the trial court sanctioned Mr. Baltins and fashioned a remedy for the Caudill Group and Mr. Gleesing by divesting Mrs. Raun of her recorded interest, even though she has a right to possession of her bungalow today. This result is not supported by the facts of this case or applicable law.

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

1. Reversing the trial court's CR 11 Order as to the portion finding a violation of CR 11.

2. Reversing the trial court's Sanctions Order in its entirety.

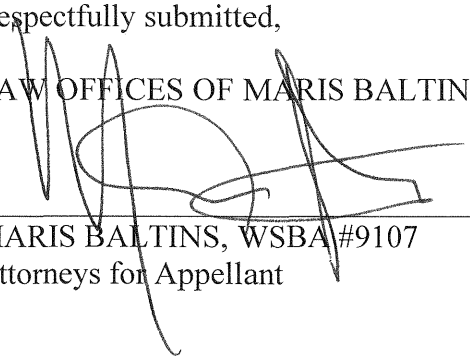
3. Denying Mr. Gleesing's motion for award of attorney fees and costs on appeal.

4. Remanding this case to the Superior Court for further proceedings.

DATED this 2nd day of November, 2015.

Respectfully submitted,

LAW OFFICES OF MARIS BALTINS, P.S.



MARIS BALTINS, WSBA #9107
Attorneys for Appellant

CERTIFICATE OF SERVICE

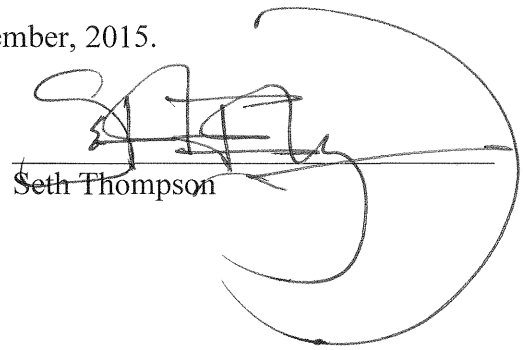
Seth Thompson hereby declares under penalties of perjury of the laws of the State of Washington that:

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 2nd day of November, 2015, 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 2nd day of November, 2015.



Seth Thompson