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.

APPELLANT'S OPENING BRIEF

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A. INTRODUCTION

This is the second of two appeals brought by Appellant Helene M. Raun from orders entered in *Raun v. Caudill, et al., et ux.*, Spokane County Superior Court Cause No. 12-2-03834-6. The Complaint filed by Mrs. Raun alleged seven causes of action against the named Respondents, consisting of the Caudill Group[1] and John P. Gleesing. The causes of action included: (1) Unlawful Eviction; (2) Violation of RCW 59.18.290; (3) Continuing Trespass; (4) Violation of RCW 4.24.630; (5) Tort of Outrage; (6) Negligent Infliction of Emotional Distress; and (7) Conversion. All causes of action arose from the wrongful dispossession of Mrs. Raun from her home, which she and her late husband, Chester E. Raun, purchased with their life savings in 2000. The claims asserted that damages sustained by Mrs. Raun were caused by the Caudill Group and Mr. Gleesing.

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[1] As used herein, "Caudill Group" refers collectively to Respondents 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, Earl L. Boettcher and Mary C. Boettcher, as Trustees for the Boettcher Living Trust dated May 12, 1992, Belva M. Williams, Larry Loutherback and Shanna Loutherback, as Trustees of the Loutherback Living Trust dated February 9, 2001, and Dale Walker and Carol Walker. Named Respondents Dirk A. Caudill and Lauren C. Caudill, as Trustees of the Caudill Family Trust dated December 11, 2002, were never served and are not a party to this appeal.

On February 4, 2013, the trial court dismissed Mrs. Raun's claims for unlawful eviction, violation of RCW 59.18.290, continuing trespass, violation of RCW 4.24.630 and conversion on the sole basis that Mrs. Raun had abandoned her residence and thereby had no interest left to claim in her bungalow. On February 7, 2014, the trial court dismissed the remaining two causes of action. The trial court dismissed the tort of outrage on the grounds that the "service of notice [did] not amount to intolerable and outrageous conduct." The claim for negligent infliction of emotional distress was dismissed as to Mr. Gleesing on the grounds that he had fulfilled the duties of a trustee and as to the Caudill Group on the grounds that the claim was barred by the statute of limitations.

An appeal was taken from these two orders on March 7, 2014. The appeal has been briefed.

The instant appeal is taken from two post-judgment orders entered by the trial court.

In the first order, entered on November 25, 2014, the trial court ruled that the claims for the tort of outrage and negligent infliction of emotional distress asserted against Mr. Gleesing were not well grounded in fact, not warranted by existing law, and did not make a good faith

argument for the extension, modification, or reversal of existing law or the establishment of new law, and therefore violated CR 11.[2]

On November 25, 2014, the trial court entered a second order imposing CR 11 sanctions against counsel for Mrs. Raun in the amount of $25,627.83. This amount represented all attorney fees and costs incurred by Mr. Gleesing in defending the two claims from November 7, 2014.

Mrs. Raun's Notice of Appeal of these two orders was filed on December 22, 2014 and has been consolidated with the initial appeal.

B. ASSIGNMENTS OF ERROR

1. The trial court erred in finding that Mr. Gleesing's reliance on a title policy issued in 2004 and procurement of a Trustee Sale Guarantee constituted reasonable care in determining potential interest of parties entitled to receive notice of the nonjudicial foreclosure. (CP 2036).

2. The trial court erred in finding that Mrs. Raun and her counsel knew, or reasonably should have known, that based upon the evidence known to them, the Complaint could not support a factual or legal basis for claims based upon the tort of outrage and negligent infliction of emotional distress. (CP 2026).

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[2] A motion filed by the Caudill Group seeking an award of attorney fees and costs pursuant to RCW 4.84.185 was denied.

3. The trial court erred in finding that the claims for the tort of outrage and negligent infliction of emotional distress against Mr. Gleesing were not well grounded in fact and not warranted by existing law. (CP 2026-2027).

4. The trial court erred in finding that there was no good faith argument for the extension, modification, or reversal of existing law or the establishment of new law which could potentially support the causes of action of the tort of outrage or negligent infliction of emotional distress against Mr. Gleesing. (CP 2026-2027).

5. The trial court erred in finding that CR 11 had been violated. (CP 2028).

6. The trial court erred in determining that the November 7, 2013 letter prepared by counsel for the Caudill Group and their interests constituted notice to Mrs. Raun to support imposition of CR 11 sanctions. (CP 2020; RP 154:4-10, 21-23).

7. The trial court erred in determining CR 11 sanctions in the amount of $25,627.83. (CP 2020-2021).

C. ISSUES PRESENTED

1. Whether Mrs. Raun and her counsel violated CR 11 by advancing claims of the tort of outrage and negligent infliction of emotional distress against Mr. Gleesing.

2. Whether there was a factual or legal basis for claims based upon the tort of outrage and negligent infliction of emotional distress.

3. Whether Mrs. Raun's counsel made a reasonable inquiry into the factual and legal basis of the claim.

4. Whether CR 11 sanctions in the amount of $25,627.83 were properly determined.

D. STATEMENT OF THE CASE

This litigation was commenced by Mrs. Raun on September 27, 2012 with the filing of a Complaint in Spokane County Superior Court. The Complaint asserted seven causes of action against the Caudill Group and Mr. Gleesing: (1) Unlawful Eviction; (2) Violation of RCW 59.18.290; (3) Continuing Trespass; (4) Violation of RCW 4.24.630; (5) Tort of Outrage; (6) Negligent Infliction of Emotional Distress; and (7) Conversion. (CP 4-32). Mrs. Raun demanded a jury trial on these claims. (CP 387-389).

The claims alleged that Mrs. Raun had been wrongfully dispossessed of her home by the actions of the Caudill Group and Mr. Gleesing. The home in question was a bungalow which was a unit in Clare House Bungalow Homes, a retirement community marketed to senior citizens 55 years and older. Harry A. Green was the Manager of Clare House. (CP 791, 798-799). Mrs. Raun and her late husband,

Chester E. Raun, purchased their bungalow in 2000 using most of their life savings, when Mrs. Raun was 75 years old. (CP 206, 2004).

Mrs. Raun's counsel, Maris Baltins, was admitted to the practice of law in the State of Maryland in 1973, Washington, D.C. in 1977, and the State of Washington in 1979. Mr. Baltins first met Mrs. Raun in December of 2011. (CP 1434).

Prior to filing the Complaint, Mr. Baltins undertook an investigation regarding Mrs. Raun's occupancy at Clare House Bungalow Homes. At the time of initial contact, Mrs. Raun was 86 years old. Mrs. Raun's husband, Chester Raun, had passed away on October 11, 2009 at age 86. (CP 1434).

After interviewing Mrs. Raun and reviewing the documents provided by her, Mr. Baltins contacted John R. Zeimantz, of the law firm Feltman, Gebhardt, Greer & Zeimantz, P.S. Mr. Zeimantz had represented the Clare House Bungalow Homes Residents Association ("Residents Association") in foreclosure litigation involving Clare House Bungalow Homes in Spokane County Superior Court, the United States Bankruptcy Court for the Eastern District of Washington and the United States District Court for the Eastern District of Washington. Mr. Baltins consulted with Mr. Zeimantz regarding these State and Federal matters. During the

investigation, Mr. Baltins also obtained and reviewed pleadings filed in these respective cases, including, but not limited to:

1. The Memorandum Decision Re: Defendants' Motion for Summary Judgment and Respective Joinders and Plaintiff's Motion for Summary Judgment entered by the Bankruptcy Court in the Adversary Proceeding on December 14, 2010.

2. The Certified Verbatim Transcript of Proceedings Held January 24, 2011 in the Bankruptcy Court Adversary Proceeding.

3. The Order on Appeal entered by the United States District Court on September 28, 2012.

(CP 1434-1435).

In addition, prior to filing the Complaint, Mr. Baltins conducted research in the area of property rights, recording and priority of interests. (CP 1435).

Mr. Baltins also interviewed Lawrence S. Eastburn, MD, Mrs. Raun's treating physician, regarding all adverse health issues she experienced. (CP 1435).

As a result of the investigation, Mr. Baltins learned the following pertinent facts regarding this case:

1. That Clare House Bungalow Homes was a retirement community located at 4827 S. Palouse Highway in Spokane, Washington.

The individual units, called bungalows, were marketed to senior citizens 55 years and older.

2. That in August of 2000, Mrs. Raun and her husband bought into Clare House Bungalow Homes, pursuant to the terms of a Resident Agreement. Under the terms of the Resident Agreement, Mr. and Mrs. Raun paid an occupancy fee of $132,500 to the developer, Clare House Bungalow Homes, LLC ("Clare House"). This payment gave Mr. and Mrs. Raun exclusive rights to occupy their bungalow, Unit 2506, for the rest of their lives or until they became unable to reside there independently. The Resident Agreement further provided that upon termination, 80% of the occupancy fee would be refunded to Mr. and Mrs. Raun. The occupancy fee paid to Clare House represented the majority of Mr. and Mrs. Raun's life savings.

3. On or about December 20, 2001, Mr. and Mrs. Raun recorded their Resident Agreement with the Spokane County Auditor's Office.

4. In 2004 and 2005, Clare House received hard money loans from the Caudill Group totaling $665,000. These loans were secured by Deeds of Trust on the property. In April of 2008, Clare House had defaulted on the loans. As a result of the default, the Caudill Group initiated foreclosure proceedings.

5. On or about May 14, 2008, Mr. and Mrs. Raun received a notice signed by defendant John P. Gleesing, as Trustee under the Deed of Trust, giving them notice that a Trustee's Sale would be held on November 7, 2008. The notice advised Mr. and Mrs. Raun that the effect of the sale would be to deprive them of all interest in their bungalow.

6. On October 29, 2008, Clare House filed a suit in Spokane County Superior Court, *Clare House Bungalow Homes, LLC v. Caudill, et al., et ux.*, Cause No. 08-2-04898-0, seeking to restrain the Trustee's Sale. On November 6, 2008, the Superior Court entered an Order restraining and enjoining the Trustee's Sale until March 9, 2009.

7. On February 3, 2009, Mr. and Mrs. Raun, as members of the Clare House Bungalow Homes Residents Association, filed 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, et al., et ux.*, Cause No. 09-2-00478-6.

8. On or about July 6, 2009, Mr. and Mrs. Raun received an Amended Notice of Trustee's Sale signed by Mr. Gleesing, advising them that a Trustee's Sale would be held on August 21, 2009. In the amended notice, Mr. and Mrs. Raun were advised that after the 20th day following

the Trustee's Sale, they would be subject to summary eviction under the Unlawful Detainer Act, RCW 59.12.

9. On August 20, 2009, Clare House filed a Voluntary Petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of Washington, *In Re Clare House Bungalow Homes, LLC*, No. 09-04651-PCW11 and an automatic stay was issued pursuant to 11 U.S.C. § 362. As a result of the automatic stay, the Trustee's Sale was continued to October 23, 2009.

10. On October 11, 2009, Mr. Raun passed away.

11. On October 23, 2009, Mr. Gleesing continued the Trustee's Sale to December 18, 2009.

12. On November 18, 2009, the Clare House Residents Association lawsuit, Spokane County Superior Court Cause No. 09-2-00478, was removed to the United States Bankruptcy Court pursuant to 28 U.S.C. § 1452, where it was heard as an adversary proceeding under the Clare House bankruptcy, *Clare House Bungalow Homes Residents Association v. Clare House Bungalow Homes, LLC, et al,* Adv. No. 09-80164-PCW11.

13. On April 19, 2010, Mrs. Raun received a Second Amended Notice of Trustee's Sale signed by Mr. Gleesing, giving notice that a Trustee's Sale would be held on June 11, 2010. In the second amended

notice, Mrs. Raun was again advised that after the 20th day following the Trustee's Sale, she would be subject to summary eviction under the Unlawful Detainer Act, RCW 59.12.

14. On June 11, 2010, Mr. Gleesing continued the Trustee's Sale to July 16, 2010 and on July 16, 2010, continued the Trustee's Sale to October 8, 2010.

15. On July 1, 2010, Mrs. Raun, under the stress of what seemed to be a constant stream of threats of summary eviction by the Caudill Group and the Trustee, moved out of her bungalow. At the time, Mrs. Raun was 84 years old. Mrs. Raun notified Mr. Green of her intention to vacate and reasons for doing so in a letter.

16. Meanwhile, in the Adversary Proceeding, the Clare House Residents Association filed a Motion for Summary Judgment on the issue of whether the Clare House residents held rights which were superior to the Caudill Group.

17. On April 8, 2011, the Bankruptcy Court, after trial in the Adversary Proceeding, issued a Memorandum Decision which held that all Clare House residents held rights to occupancy and possession superior to those 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**.

18. The Bankruptcy Court's Order and Judgment was appealed to the United States District Court for the Eastern District of Washington. On September 28, 2012, the District Court issued its Order on Appeal, affirming the Bankruptcy Court.

19. The Trustee's Sale was finally held on September 30, 2011, and the bungalows, including Mrs. Raun's bungalow, were sold to the Caudill Group.

(CP 1435-1440).

These facts obtained by Mr. Baltins constituted the factual basis for causes of action for (1) Unlawful Eviction; (2) Violation of RCW

59.18.290; (3) Continuing Trespass; (4) Violation of RCW 4.24.630; and (5) Conversion as set forth in the Complaint. (CP 1440).

In his investigation, Mr. Baltins determined that causes of action were also supported by the testimonies of Harry A. Green, John P. Gleesing and John H. Caudill during the trial in the Adversary Proceeding held on January 24, 2011. His review of the Certified Verbatim Transcript of Proceedings confirmed the following facts:

1. In 2004, Harry A. Green, the Manager of Clare House, was interested in obtaining a loan for Clare House and approached Ron Webster, a loan broker, to assist him in finding a lender. Through Mr. Webster, Mr. Green was introduced to defendant John H. Caudill. (CP 1439, 1562-1563, 1564-1568).

2. Mr. Green provided Mr. Webster with a package containing the following information about Clare House Bungalow Homes: (1) a cover sheet; (2) an appraisal; (3) information regarding monthly maintenance fees; (4) tax returns; and (5) a copy of a Resident Agreement to establish the structure of the business model. (CP 1440, 1637, 1640).

3. Mr. Green has never received a loan without putting together a loan package. (CP 1440, 1639).

4. Mr. Green met with Mr. Caudill on the grounds of Clare House Bungalow Homes, gave him a tour of the premises and explained to

Mr. Caudill the nature of the Residency Agreement, pursuant to which the residents of Clare House Bungalow Homes were entitled to live in their bungalows for the term of their lives or until they could no longer live there. (CP 1440, 1569-1572).

5. After the initial meeting, Mr. Green provided Mr. Caudill with a copy of a Resident Agreement. (CP 1440, 1572).

6. Mr. Gleesing was Trustee under the Deed of Trust securing the Caudill Group's loan. (CP 1440, 1582).

7. Mr. Gleesing represented all members of the Caudill Group. He did not represent Clare House. (CP 1440, 1584).

8. Mr. Gleesing performed no investigation on behalf of the Caudill Group in connection with the loans. (CP 1441, 1586-1587).

9. Mr. Gleesing believed that the residents of Clare House Bungalow Homes were renters. (CP 1441, 1588-1589).

10. Mr. Green told Mr. Caudill that the bungalows were residences for seniors to live in. (CP 1441, 1601).

11. Mr. Caudill never requested or received any documents from Mr. Green. (CP 1441, 1607-1609).

12. Mr. Caudill knew the bungalows were occupied. (CP 1441, 1610).

13. Mr. Caudill never requested information from Mr. Green regarding the operations of Clare House Bungalow Homes. (CP 1441, 1610-1611).

14. Mr. Caudill visited the Clare House Bungalow Homes property approximately three times before the loan closed. (CP 1441, 1613-1617).

15. Mr. Caudill never spoke to any of the residents of Clare House Bungalow Homes. (CP 1441, 1620).

16. At the time the Caudill Group made the loan to Clare House, Mr. Caudill understood that Clare House Bungalow Homes was an elderly community. (1441, 1626).

17. The Caudill Group loan to Clare House was a joint venture, pursuant to the terms of an Agreement Among Lenders signed by the Caudill Group defendants. (CP 1442, 1583-1585).

18. When the loans went into default, Mr. Caudill directed Mr. Gleesing to foreclose. (CP 1442, 1619-1620).

(CP 1440-1442).

From his interview with Dr. Eastburn, Mr. Baltins learned of the following facts regarding Mrs. Raun:

1. That Dr. Eastburn was aware that Mr. and Mrs. Raun resided in the Clare House Bungalow Homes.

2. That during the course of his treatment of Mrs. Raun, Dr. Eastburn became aware in 2008 that certain issues had arisen regarding their residency at Clare House Bungalow Homes; specifically, that Clare House Bungalow Homes was facing the threat of foreclosure and Mrs. Raun had received notices that upon foreclosure, they would have 20 days to find a new residence. Dr. Eastburn noted that both Mr. and Mrs. Raun were apprehensive and concerned about their future.

3. That over the course of the next year and a half, Dr. Eastburn observed Mr. and Mrs. Raun to experience increasing anxiety and worry. Dr. Eastburn himself spoke to Mr. and Mrs. Raun about their situation, attempting to alleviate their concerns.

4. That in Dr. Eastburn's opinion, the fear and uncertainty experienced by Mr. and Mrs. Raun were negatively impacting their general physical well-being.

5. In subsequent discussions with Mrs. Raun, it appeared to Dr. Eastburn that Mrs. Raun was becoming increasingly confused, anxious and fearful as to what course of action she should take, now that her husband was gone.

6. That Mrs. Raun's perception of summary eviction, in light of the notices she was continuing to receive, finally caused her to decide to vacate Clare House Bungalow Homes.

7. That in Dr. Eastburn's opinion, the stress and duress Mrs. Raun experienced from 2008 to the decision to vacate Clare House Bungalow Homes was substantial and had physical consequences, including elevated blood pressure and modification of Mrs. Raun's diabetes medication. Additionally, the emotional distress experienced by Mrs. Raun contributed to a decline in her overall health by exacerbating her diabetic and asthmatic conditions.

8. That Mrs. Raun's medical records contained information confirming the emotional duress that Mrs. Raun experienced.

(CP 1443-1444).

Dr. Eastburn confirmed these facts in two Declarations filed in this matter, the first on December 10, 2012 and the second on December 30, 2013. (CP 1444, 1657-1666, 1668-1704).

The research and investigation conducted by Mr. Baltins occurred over a period of nine months. The facts derived therefrom formed the basis for the causes of action asserted in Mrs. Raun's Complaint. The Complaint was structured based upon two categories of damages:

1. The loss of Mrs. Raun's bungalow into which she and her husband had invested their life savings. This loss occurred as a result of the improper interference with her exclusive rights to occupancy of her bungalow by the Caudill Group and Mr. Gleesing, by failing to conduct

proper due diligence regarding Mr. and Mrs. Raun's residency at Clare House Bungalow Homes. This failure was supported by the Memorandum Decision of the Bankruptcy Court as well as the testimony of Mr. Green, who indicated that the Caudill Group had been given a copy of the Resident Agreement signed by each resident of Clare House Bungalow Homes, including Mr. and Mrs. Raun. Mrs. Raun's letter to Mr. Green confirmed that stress and pressure forced her to leave.

2. The emotional distress Mrs. Raun experienced which was caused by the defendants' negligence in failing to ascertain the true occupancy rights of the residents, including Mrs. Raun, and subjecting a group of extremely vulnerable elderly individuals to years of litigation and stress regarding their status as residents of Clare House Bungalow Homes. With respect to Mrs. Raun, the stress, anxiety, frustration and worry which were directly caused by the actions of defendants, reached a point where, on July 1, 2010, Mrs. Raun felt that she had no option left but to seek new living arrangements. The degree and impact of the emotional distress and physical manifestations suffered by Mrs. Raun were confirmed not only in her written Declarations and contemporaneous documents such as her letter to Mr. Green, but also by her physician, Dr. Eastburn, and the medical records of Mrs. Raun.

(CP 1445).

On November 14, 2012, the Caudill Group and Mr. Gleesing filed their Motion to Dismiss for Failure to State a Claim Upon Which Relief May be Granted and Affirmative Defenses ("Motion to Dismiss"). (CP 153-156). At this time, Mr. Gleesing was represented by attorney John D. Munding. On February 22, 2013, attorney Patrick W. Harwood substituted in as attorney for Mr. Gleesing. (CP 352-354). Dismissal was sought upon three grounds: (1) the doctrine of collateral estoppel; (2) the doctrine of res judicata; and (3) failure to state a claim upon which relief may be granted under CR 12(b)(6). (CP 134-152).

The Motion to Dismiss was heard on December 21, 2012. Because both plaintiff and defendants presented matters outside the pleadings which were not excluded by the Court, the Motion to Dismiss was treated as one for summary judgment under CR 56. (CP 326-330).

After hearing arguments of counsel, the Court rendered an oral ruling finding that none of the causes of action were barred by either the doctrine of collateral estoppel or the doctrine of res judicata. (RP 22:14-23:11). The trial court then divided the causes of action into two groups. The first group, "property tort claims," included the 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 First, Second, Third, Fourth and Seventh causes of action). The second group

consisted of emotional distress torts, which included claims for: (1) Tort of Outrage; and (2) Negligent Infliction of Emotional Distress (the Fifth and Sixth causes of action). (RP 23:17-22).

With respect to the property tort claims, the trial court reasoned that while the Bankruptcy Court and the Federal District Court had determined Mrs. Raun had a right of occupancy which was superior to that of the Caudill Group, Mrs. Raun had "made the choice to leave" her bungalow on July 1, 2010. (RP 24:4-11). Accordingly, the trial court ruled that because Mrs. Raun's "choice [affected] all of the property tort claims," dismissal solely on this basis was appropriate. (RP 24:11-13; CP 326-330).

However, the trial court ruled that the remaining claims for emotional distress and outrage would be allowed to proceed to trial. In this regard, the trial court rejected the Caudill Group's and Mr. Gleesing's contention that all they did was send the statutory notice, noting that, as found by the Bankruptcy Court, "[t]hey really did not do due diligence before … serving all these notices." (RP 24:23-24; CP 210, 289-299, 326-330).

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 was entered on February 4, 2013. (CP 326-330).

On November 7, 2013, the Caudill Group and Mr. Gleesing again filed separate Motions for Summary Judgment, again seeking dismissal on similar grounds. (CP 398-401; 482-484). Both motions sought dismissal of the tort of outrage claim on the ground that the conduct of pursuing foreclosure under Chapter 61.24 could not, as a matter of law, amount to outrageous conduct. (CP 475-478, 491-494). As to the negligent infliction of emotional distress claim, while the Caudill Group contended that no duty was owed to Mrs. Raun and Mr. Gleesing contended that the only duty owed to Mrs. Raun was compliance with RCW Chapter 61.24, both contended that: (1) neither of them breached any duty owed to Mrs. Raun; and (2) there was insufficient medical evidence to support the claim. (CP 468-474, 494-501). Additionally, as to both claims, the Caudill Group asserted the statute of limitations as a partial bar to claims arising prior to September 27, 2009. (CP 478-479). Mr. Gleesing subsequently joined in this argument. (CP 737-741).

Prior to the hearing on the Motions for Summary Judgment, depositions were taken of: (1) John H. Caudill on December 12, 2013, (2) John P. Gleesing, on December 17, 2013, (3) Dale Walker on December 18, 2013, (4) Larry Loutherback on December 18, 2013, (5) Wanell J.

Barton on December 19, 2013, and (6) Helene M. Raun on December 20, 2013. (CP 1840-1841). Mrs. Raun was also in the process of obtaining files from both the Caudill Group and Mr. Gleesing. (CP 617-623).

Both Motions for Summary Judgment were heard on January 10, 2014. After hearing arguments from counsel, the trial court dismissed the remaining two causes. As to the cause of action for the tort of outrage, the trial court predicated dismissal 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). As to the claim for negligent infliction of emotional distress, the trial court dismissed the claim as to Mr. Gleesing on the finding that he had fulfilled the duties of a trustee. (RP 77:4-17). The trial court also dismissed the claim as to the Caudill Group, finding that, because the first notice received by Mrs. Raun was in May of 2008, the statute of limitations had run as of May 2011. (RP 77:18-81:22). 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 was entered on February 7, 2014 (CP 1218-1222).

Mrs. Raun filed her Notice of Appeal on March 7, 2014 as to the orders of dismissal entered on February 4, 2013 and February 7, 2014 (CP 1286-1299).

On March 5, 2014, the Caudill Group filed their Motion for Costs, Including Attorney Fees, Under RCW 4.84.185. (CP 1223-1226). On March 7, 2014, Mr. Gleesing filed his Motion for Fees and Costs Re: CR 11 and RCW 4.848.185. Mrs. Raun opposed both motions, contending that neither RCW 4.84.185 nor CR 11 supported imposition of an award to either the Caudill Group or Mr. Gleesing. (CP 1405-1432). Both motions came on for hearing on April 4, 2014. (RP 84-131). At the conclusion of the hearing, the trial court denied the motions brought by the Caudill Group and Mr. Gleesing to the extent they were based upon RCW 4.84.185. (RP 125:16-128:21). However, the trial court granted the motion brought by Mr. Gleesing for sanctions under CR 11 on the grounds that the claims for the Tort of Outrage and Negligent Infliction of Emotional Distress were not well grounded in fact or warranted by existing law. (RP 122:5-125:15). The trial court's Order Granting Motion Finding CR 11 Violation and Denying Fees and Costs Per RCW 4.84.185 was entered on November 25, 2014 (CP 2023-2031).

Also on November 27, 2014, the trial court held a hearing to determine the amount of the CR 11 sanction. In his Memorandum in Support of Determination of CR 11 Sanction, Mr. Gleesing sought recovery of *all* attorney fees and costs incurred since the appearance of Mr. Harwood as his attorney. (CR 1835). These fees and costs totaled

$44,089.56. Mrs. Raun objected to the requested amount and contended that while she believed no sanctions were warranted, notice of intent to seek CR 11 sanctions had to be provided. (CP 1956-1963). By Mr. Gleesing's own admission, no such notice was given until December 20, 2013, after he had taken the deposition of Mrs. Raun. (CP 1841, 1847-1848). During the hearing, although Mr. Gleesing conceded the necessity of notice, instead of relying on his December 20, 2013 letter, he suggested a letter prepared by Mr. Munding dated November 5, 2013 on behalf of the Caudill Group should control. (RP 144:22-143:3). In pertinent part, that one page letter, discussing document production and deposition scheduling, stated "[a]gain, I request at this time that your client voluntarily dismiss the remaining two (2) claims, especially in light of Dr. Eastburn's testimony." (CP 1251). The trial court, in determining the amount of CR 11 sanctions, used that statement in the letter to justify the award of CR 11 sanctions in the amount of $25,627.83. (RP 154:10, 21-23; CP 2018-2022).

On December 22, 2014, Mrs. Raun filed her Notice of Appeal from the two orders entered on November 25, 2014. (CP 2033-2050). The two appeals were consolidated on February 27, 2015.

E. ARGUMENT

1. Standard of Review.

A trial court's decision to impose CR 11 sanctions is reviewed for abuse of discretion. Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 338, 858 P.2d 1054 (1993).

A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. A trial court necessarily abuses its discretion if it based its ruling on an erroneous view of the law. Id., at 339.

2. The Complaint Was Not Frivolous Under RCW 4.84.185.

At the outset, it is noted that both the Caudill Group and Mr. Gleesing sought an award of attorney fees and costs pursuant to RCW 4.84.185 on the grounds the Complaint was frivolous. That motion was denied by the trial court as to both Mr. Gleesing and Mr. Caudill. (RP128:22-24; CP 2027-2028). While that determination is not the subject of this appeal, the trial court's reasoning is enlightening on the issue of whether a CR 11 violation was properly found. RCW 4.84.185 provides that a trial court may award attorney fees to the prevailing party if the action "was frivolous and advanced without reasonable cause." RCW 4.84.185. "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." Skimming v. Boxer, 119 Wn. App. 748, 756, 82 P.3d 707 (2004). In order to find a lawsuit frivolous, the movant must establish that "'it cannot be supported by any rational argument based in fact or law.'" Id., *quoting* Tiger Oil Corp. v. Dep't of Licensing, 88 Wn. App. 925, 938, 946 P.2d 1235 (1997). Furthermore, this standard applies to the action "in its entirety; if **any** of the asserted claims are not frivolous, the action is not frivolous." Id. (emphasis added).

In its oral ruling, the trial court predicated its denial of the request for attorney fees and costs under RCW 4.84.185 on the grounds Mrs. Raun had presented medical evidence on her claim for negligent infliction of emotional distress which precluded a finding that the claim was frivolous. (RP 127:14-128:21). This reasoning, applicable to both the Caudill Group and Mr. Gleesing, contradicts the imposition of CR 11 sanctions based upon the finding that the negligent infliction of emotional distress claim against Mr. Gleesing was not well grounded in fact and not warranted by existing law. (CP 2026).

3. Imposition of Sanctions Under CR 11.

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, at 757. "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). 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." Id. at 19-20. 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. The threshold for imposition of CR 11 sanctions is high. Skimming, at 755.

4. The Trial Court Erred in Ruling that the Tort of Outrage and Negligent Infliction of Emotional Distress Claims Against Mr. Gleesing Were Not Well Grounded in Fact and Not Supported by Existing Law.

In this case, it is undisputed that Mr. and Mrs. Raun purchased their bungalow from Clare House in August of 2000 for $132,500. That purchase was controlled by a Resident Agreement between Clare House and Mr. and Mrs. Raun. That Resident Agreement was subsequently recorded with the Spokane County Auditor's Office on December 1, 2001, giving notice to the world of their interest in the property. The Resident Agreement conveyed a unique interest to Mr. and Mrs. Raun insofar as they were not mere tenants or renters at Clare House Bungalow Homes; they were homeowners with a legitimate property interest in their bungalow.

While the Caudill Group and Mr. Gleesing disclaim any knowledge of Mr. and Mrs. Raun's Resident Agreement, the investigation conducted by Mr. Baltins indicated that such information had been provided to at least the Caudill Group in 2004. (CP 1440, 1637, 1640). At the very least, it cannot be denied that the Caudill Group and Mr. Gleesing had knowledge of the Resident Agreement by February 3, 2009,

when the quiet title lawsuit, *Clare House Bungalow Homes Residents Association v. Clare House Bungalow Homes, LLC, et al., et ux.*, Cause No. 09-2-00478-6 was filed. (CP 1436). Yet they nevertheless chose to persist in their effort to foreclose on Mrs. Raun's interest in her bungalow. In either event, it doesn't matter. Under Washington law, the undisputed facts alone are sufficient to trigger a duty to inquire as to the property rights of the residents living in the Clare House bungalows:

> It is a well-settled rule that where a purchaser has knowledge or information of facts which are sufficient to put an ordinarily prudent man upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question, the purchaser will be held chargeable with knowledge thereof and will not be heard to say that he did not actually know of them. In other words, knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed.

Peterson v. Weist, 48 Wash. 339, 341; 93 P. 519 (1908) (citation omitted); Casa del Rey v. Hart, 110 Wn.2d 65; 750 P.2d 261 (1988).

This duty of inquiry applies even to situations where the record shows title to be in the name of someone else. As the Washington Supreme Court stated:

> But it seems to us that the law is well established that, where a party is in possession of land, even where the public records show the title to be in someone else, the purchaser cannot rely entirely upon the record testimony, but he must take notice also of the rights of those who are in possession.

Oliver v. McEachran, 149 Wash. 433, 439; 271 P. 93 (1928).

It is submitted that it is this duty of inquiry that the Caudill Group and Mr. Gleesing, in particular, as trustee representing all members of the Caudill Group, failed to discharge. (CP 1440, 1582).

In this case, the Caudill Group, through their representative, Mr. Gleasing, were pursuing a nonjudicial foreclosure on Clare House Bungalow Homes. The authority under the Washington Deed of Trust Act, RCW Chapter 61.24 conveys great authority to a trustee. However, that authority is not unbridled; as noted by the Washington State Supreme Court:

> The power to sell another person's property, often the family home itself, is a tremendous power to vest in anyone's hands. Our legislature has allowed that power to be placed in the hands of a private trustee, rather than a state officer, but common law and equity requires that trustee to be evenhanded to both sides and to strictly follow the law.

Klem v. Washington Mutual Bank, 176 Wn.2d 771, 789, 295 P.3d 1179 (2013). Under RCW 61.24, "a trustee is not merely an agent for the lender or the lender's successors. Trustees have obligations to all of the parties to the deed, **including the homeowner**." Bain v. Metro. Mortg. Grp., Inc. 175 Wn.2d 83, 95-97, 285 P.3d 34 (2012).

Here, Mr. and Mrs. Raun were the homeowners of Unit 2506 of Clare House Bungalow Homes. The obligation was the duty to inquire, and Mr. Gleesing failed to discharge this duty.

That such a failure occurred was specifically found by the Bankruptcy Court in the Adversary Proceeding where the Honorable Patricia C. Williams found the Caudill Group had failed to conduct a reasonable and prudent inquiry as to Mrs. Raun's occupancy rights to her Clare House bungalow. (CP 210, 289-290, 1435-1440). Mr. Gleesing, the acknowledged representative of the Caudill Group in the foreclosure, is subject to the same duty and same failure.

The fact Mr. Gleesing obtained a title policy in 2004 and a Trustee Sale Guarantee in 2008 does not, it is submitted, demonstrate reasonable care so much as it establishes the fact Mr. Gleesing was under a duty to correctly identify the property interests affected by the foreclosure.[3] Mr. Gleesing, in his deposition taken on December 17, 2013, acknowledged the purpose of the trustee Sale Guarantee was primarily for his protection:

> Q. Okay. And I'm not following you there. What title policy told you to send it to the occupants?
>
> A. Trustee sale title policy.
>
> * * *

[3] No expert evidence was presented to support that Mr. Gleesing exercised reasonable care in proceeding with the foreclosure against Mrs. Raun.

Q. Tell me about that title policy. When did you obtain that?

A. I obtained it prior to sending out the notice of trustee sale.

Q. Who is that with?

A. First American Title Company.

Q. And that policy protects who against what?

A. **It protects the trustee**.

Q. Against mistakes?

A. **Against whatever the title company doesn't put in the title policy.**

(CP 1444, 1717) (emphasis added).

Furthermore, Mr. Gleesing, in his deposition, conceded that he would have handled the matter differently had he known about Mrs. Raun's Resident Agreement:

Q. Was the residents' agreements in this transaction identified in the title policy?

A. No.

* * *

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

* * *

A. Yes.

(CP 1444, 1717-1718).

This evidence was completely misunderstood by the trial court in deciding whether Mrs. Raun's claims for the tort of outrage and negligent infliction of emotional distress were well grounded in fact and supported by existing law. It appears that, in rendering its decision, the trial court was overly preoccupied with the irrelevant consideration of the effect upholding Mrs. Raun's claims would have on the *legal profession.* In ruling on the CR 11 matter, the trial court stated:

> The analysis under CR 11 requires an objective standard. I must consider whether or not **the lawyer**, Mr. Gleesing, objectively fulfilled his duties.
>
> * * *
>
> I think to interpret Judge William's decision and say a **closing lawyer** has a duty to look behind the title policy, would put an extraordinary **duty on lawyers** who do foreclosure as trustees in foreclosure sales. That extraordinary duty is not supported by the statute. In effect, such a duty would make the **closing lawyer**, or the **lawyer who is going to be the trustee**, a guarantor to the title insurance company.

RP 122:17-18, 124:23-125:6.

With all due respect, the fact that Mr. Gleesing is an attorney should have had no bearing on the issue before the trial court. Mr. Gleesing, in this matter, was a trustee operating under RCW Chapter 61.24 who owed Mrs. Raun a duty to conduct a reasonable and prudent inquiry as to Mrs. Raun's occupancy rights. The title report and Trustee Sale

Guarantee Mr. Gleesing purchased were for his protection and if the title company was incorrect, Mr. Gleesing still bears ultimate responsibility.

If protection of the legal profession was the driving consideration underlying the trial court's decision to find a CR 11 violation, that decision is manifestly unreasonable, based on untenable grounds and reflects an erroneous view of the law.

When considered against the trial court's decision regarding RCW 4.84.185, the trial court's bottom line appears to be that although the claim for negligent infliction of emotional distress was not frivolous, Mrs. Raun can't sue the lawyer.

The fact Mrs. Raun's claims for the tort of outrage and negligent infliction of emotional distress were not dismissed on December 21, 2012 is also significant. At that time, Mr. Gleesing, represented by Mr. Munding, sought dismissal of these claims contending that all Mr. Gleesing did was send out the statutory notice. (CP 149-151) This argument was rejected by the trial court. (RP 24:14-25:12, CP 326-330).

The tort of outrage and negligent infliction of emotional distress were therefore allowed to proceed until January 10, 2014. In arguing for dismissal, Mr. Gleesing again contended his actions of sending out statutory notices could not support the two claims. Although Mr. Gleesing presented essentially the same argument advanced in the December 21,

2012 hearing, on this occasion, the trial court granted dismissal of both claims, finding, as to the tort of outrage, the "service of notice [under RCW Chapter 61.24 did] not amount to intolerable and outrageous conduct." (RP 73:19-74-11). The claim for negligent infliction of emotional distress was dismissed as to Mr. Gleesing on the grounds that he had fulfilled the duties of a trustee. (RP 77:4-17).

The trial court observed the denial of summary judgment on December 21, 2012 "did not put an imprimatur on the" claim as a "good claim." (RP 150:23-151:5) Nevertheless, it is submitted that, given the similarities between the arguments advanced, the denial on December 21, 2012 and dismissal on January 10, 2014 certainly supports the proposition the claims advanced by Mrs. Raun were not baseless.

For the reasons stated above, Mrs. Raun's claims for the tort of outrage and negligent infliction of emotional distress were well grounded in fact and supported by existing law. The trial court abused its discretion in ruling that CR 11 had been violated and should be reversed.

5. The Trial Court Erred in Failing to Find That Mrs. Raun's Counsel Failed to Make a Reasonable Inquiry into the Factual and Legal Basis of the Claims for the Tort of Outrage and Negligent Infliction of Emotional Distress Against Mr. Gleesing.

Evidence presented to the trial court on April 4, 2014 at the CR 11 hearing included the Declaration of Maris Baltins, which outlined the

investigation he conducted prior to filing the Complaint. (CP 1433-1719). The facts of his investigation are uncontested and demonstrate this is simply not a case where Mr. Baltins met Mrs. Raun on Monday and filed the Complaint on Tuesday. To the contrary, the Complaint was the product of an investigation extending 9 months before it was filed on behalf of an individual whom the Caudill Group and Mr. Gleesing had wrongfully injured.

Mr. Baltins, prior to submitting the Complaint, contacted and interviewed pertinent individuals and reviewed an extensive amount of documentation, including pleadings filed in State Court and Bankruptcy Court. (CP 1433-1719).

In this regard, the trial court failed to make any finding that Mr. Baltins failed to conduct a reasonable inquiry into the factual and legal basis of the claim as required by law. Bryant. at 220 (italics in original).

The trial court's failure requires that the Order Granting Motion Finding CR 11 Violation and Denying Fees and Costs Per RCW 4.84.185, entered on November 25, 2014 be reversed.

6. The Trial Court Erred in Imposing CR 11 Sanctions in the Amount of $25,627.83.

In light of the foregoing, Mrs. Raun does not believe that the imposition of sanctions for violation of CR 11 were warranted. However,

assuming *arguendo* sanctions were warranted, the sanction imposed totaling $25,627.83 was excessive and improperly determined.

The reasonable inquiry conducted by Mr. Baltins prior to filing the Complaint, disclosed that Mrs. Raun, an 85 year old widow, had lost the home she and her late husband had purchased in 2000. The investigation revealed Mrs. Raun was dispossessed of her home due to the stress and pressure inflicted by the actions of the Caudill Group and Mr. Gleesing. Their repeated threats of eviction forced Mrs. Raun to vacate her bungalow. In this regard, it is significant to note the actions of the Caudill Group and Mr. Gleesing to acquire her property interest in her bungalow were ultimately found to be meritless based upon the utter failure of the Caudill Group and, it is submitted, Mr. Gleesing to perform a reasonable and prudent inquiry. But for these actions, Mrs. Raun would still be living in her bungalow. This much at least was revealed from the investigation conducted by Mr. Baltins.

This lawsuit was initiated to right that wrong, by holding the Caudill Group and Mr. Gleesing accountable for their actions and by so doing, afford a measure of justice to Mrs. Raun. The trial court erred in dismissing Mrs. Raun's complaint, erred in finding a violation of CR 11 and for the reasons set forth below, erred in determining the amount of the sanctions.

The imposition of CR 11 sanctions implicates due process. Bryant, at 224. Accordingly, a party seeking sanctions under CR 11 should give notice to the court and the offending party promptly upon discovery of a basis for doing so. Id.

In his Memorandum of Authorities in Support of Determination of CR 11 Sanctions, Mr. Gleesing attempted to skirt the notice issue by claiming *all* fees and costs from February 20, 2013 through April 4, 2014 totaling $44,089.56, essentially using CR 11 as a prohibited fee-shifting mechanism. (CP 1837-1890). However, it is undisputed it was not until December 20, 2013 that Mr. Gleesing counsel indicated his intent to seek CR 11 sanctions. (CP 1841, 1847). In this letter, Mr. Harwood requested dismissal of Mr. Gleesing from the litigation, identified the basis for the request, and stated:

> Based upon Mrs. Raun's deposition testimony, there is not a factual or legal basis to support the causes of action of outrage or negligent infliction of emotional distress against Mr. Gleesing. The dismissal of Mr. Gleesing with prejudice prior to December 26, 2013, is Mrs. Raun's opportunity to avoid a motion for fees and costs under CR 11 and/or RCW 4.84.185.

(CP 1847).

This was the first and only notice where Mr. Gleesing indicated his intent to seek CR 11 sanctions. Indeed, at the hearing on November 25, 2014, Mr. Harwood explained the genesis of his letter as follows:

> I think that after the deposition of Mrs. Raun and her testimony on that day, December 20, 2013, it became very crystal clear to me that through her own deposition testimony, very candid, there were no facts that could possibly be conceived to support the legal elements of outrage or negligent infliction of emotional distress.
>
> And that afternoon, that's why I e-mailed and I mailed to Mr. Baltins outlining those facts which came out during her deposition testimony that simply could not sustain those legal elements. And I requested if you dismiss Mr. Gleesing now, we will not bring a motion for CR 11 fees and fees under the statute.

(RP 145:8-19).

However, in order to maximize the fee-shifting effect of the sanction, Mr. Harwood argued that an earlier letter written by Mr. Munding to Mr. Baltins on November 7, 2013 should be used to establish the date of notice. (RP 1443-5, 145:19-21, 146:3-8). The trial court agreed with Mr. Harwood and calculated the amount of the sanctions from November 7, 2013. (CP 154:21-23).

The paucity of Mr. Harwood's argument and resulting error by the trial court is that Mr. Munding's letter of November 7, 2013 *gave no notice of any intent to seek CR 11 sanctions or the basis for doing so* as required by law. Mr. Munding's letter to Mr. Baltins of November 7, 2013 discussed three matters. First, scheduling the deposition of John Caudill. Second, production of Mr. Caudill's complete file. Third, a request for voluntary dismissal, stated as follows:

> Again, I request at this time that your client voluntarily dismiss the

> remaining two (2) claims, especially in light of Dr. Eastburn's testimony.

(CP 1251).

This statement is simply not a legally sufficient notice of intent to seek CR 11 sanctions and the basis for doing so.

In this case, the date a legally sufficient notice was given is significant. The first Motion to Dismiss was heard on December 21, 2012. From that time until November 7, 2013, limited activity occurred in the case. From November 8, 2013 through December 20, 2013 activity increased, including motions practice related to the motions for summary judgment, and taking depositions of: (1) John H. Caudill on December 12, 2013, (2) John P. Gleesing, on December 17, 2013, (3) Dale Walker on December 18, 2013, (4) Larry Loutherback on December 18, 2013, (5) Wanell J. Barton on December 19, 2013, and (6) Helene M. Raun on December 20, 2013. (CP 1840-1841). In addition, Mrs. Raun was also in the process of obtaining files from both the Caudill Group and Mr. Gleesing. (CP 617-623).

Under these circumstances, it financially behooved Mr. Harwood to extend the notice period back as far as possible to maximize the fee-shifting effect of the CR 11 sanctions. However, to contend that Mr. Munding's November 7, 2013 statement was legally sufficient to

constitute notice of an intention to seek CR 11 sanctions and the basis for doing so is disingenuous on the part of Mr. Harwood. To then have this statement adopted as notice is simply error by the trial court and constitutes a clear abuse of discretion and a violation of due process.

In addition, given the fact the Complaint was not found to be frivolous under RCW 4.84.185, the amount of sanctions, $25,627.83, is excessive and would effectively "chill an attorney's enthusiasm or creativity in pursuing factual or legal theories." Bryant, at 219.

Based upon the foregoing, the trial court's determination of the amount of the sanction should be reversed.

F. MOTION FOR ATTORNEY FEES AND COSTS

In her Complaint, Mrs. Raun asserts a violation of RCW 4.24.630. Pursuant to RAP 18.1, Mrs. Raun requests an award to recover her attorney fees and expenses incurred in this appeal as allowed RCW 4.24.630 which provides:

> Every person who goes onto the land of another and who removes timber, crops, minerals, or other similar valuable property from the land, or wrongfully causes waste or injury to the land, or wrongfully injures personal property or improvements to real estate on the land, is liable to the injured party for treble the amount of the damages caused by the removal, waste, or injury. For purposes of this section, a person acts "wrongfully" if the person intentionally and unreasonably commits the act or acts while knowing, or having reason to know, that he or she lacks authorization to so act. Damages recoverable under this section include, but are not limited to, damages for the market value of the

> property removed or injured, and for injury to the land, including the costs of restoration. In addition, the person is liable for reimbursing the injured party for the party's reasonable costs, including but not limited to investigative costs and reasonable attorneys' fees and other litigation-related costs.

RCW 4.24.630.

Mrs. Raun further moves for an award of costs allowed pursuant to RAP 14.3.

G. CONCLUSION

Accordingly, based upon the foregoing, it is respectfully requested this Court enter an Order:

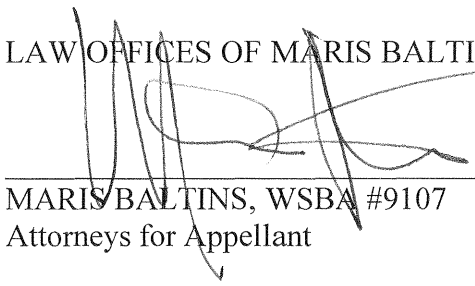
1. Reversing the trial court's Order Granting Motion Finding CR 11 Violation and Denying Fees and Costs Per RCW 4.84.185, entered on November 25, 2014 as to the portion finding a violation of CR 11.

2. Reversing in its entirety the trial court's Order Imposing CR 11 Sanction, entered on November 25, 2014.

DATED this 28th day of August, 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 28th day of August, 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 28th day of August, 2015.

Seth Thompson