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DIVISION ONE

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COURT OF APPEALS DIVISION
STATE OF WASHINGTON
2009 JUL - 8 PM 4:12

NO. 62222-6

**COURT OF APPEALS, DIVISION I,
STATE OF WASHINGTON**

Robert Carlson and Janet B. Carlson

Appellants/Cross Respondents

v.

James T. Staley and Sonja Staley, and their marital community;
John J. Hollinrake, Jr. and Karen E. Hollinrake, and their marital
community; Randal R. Jones and Vicki Jones, and their marital
community; John Does 1-20 and Jane Does 1-20;

and

The Innis Arden Club, Inc., a Washington Corporation

Respondents/Cross Appellants

**RESPONSE BRIEF AND BRIEF ON CROSS APPEAL OF
HOLLINRAKE AND JONES**

John D. Hollinrake, pro se Attorney for
Respondent John and Karen Hollinrake

Randal R. Jones, pro se Attorney for Respondent
Randal and Vicki Jones

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I. INTRODUCTION

The Carlsons filed suit against Hollinrake and Jones, claiming that Hollinrake and Jones clouded the title to the Carlsons' property by participating in the Club's covenant compliance process. The Carlsons' claims were premised upon three assertions: (i) that the View Preservation Covenant is not valid; (ii) that if the View Preservation Covenant is valid, that the defendant Hollinrakes cannot use it for their benefit because they live in a different subdivision than the Carlsons; and (iii) that the Compliance Procedures established by the Club in its Bylaws ("Compliance Procedures") pursuant to RCW 64.38 are not valid. These are not new issues and were all litigated in Innis Arden Club, Inc., et al. v. Binns, et. al., King County Cause No. 84-2-09622-5 and Court of Appeals opinion ("Binns") and/or Carlson v. Innis Arden Club, et al., King County Superior Court Cause No. 06-2-06819-0 SEA, Court of Appeals No. 59878-3-I ("Carlson I"). This Court should therefore affirm the trial court's order dismissing the Carlsons' complaint with prejudice based, inter alia, on *res judicata* and collateral estoppel. Hollinrake and Jones also respectfully request that this Court reverse the trial court's decision denying the motion of Hollinrake and Jones for attorney fees and sanctions and that this Court make such an award in connection with this appeal.

II. ASSIGNMENT OF ERROR ON CROSS APPEAL

A. Assignment of Error.

The trial court erred in denying the Respondents' Motion for Attorney Fees and Costs Under RCW 64.38.050, RCW 4.84.185 and/or CR 11.

B. Issue Pertaining to Assignment of Error.

Should the trial court have granted attorney fees and costs to Respondents, Hollinrake and Jones under RCW 64.38.050, RCW 4.84.185 and/or CR 11?

III. SUMMARY OF ARGUMENT

The trial court confirmed in its July 24, 2008 summary judgment orders that all of the Carlsons' claims and issues in this lawsuit are precluded by the doctrines of *res judicata* and collateral estoppel because the Carlsons already unsuccessfully litigated them in Carlson v. Innis Arden Club, Inc., et al., King County Superior Court Cause No. 06-2-06819-0 SEA ("Carlson I"). In short, the claims and issues the Carlsons asserted in this case are the very same claims and issues they already litigated and lost in Carlson I.

In Carlson I, both the trial court and Court of Appeals confirmed that the Club as the prevailing party was entitled to an award of attorney fees against the Carlsons pursuant to RCW 64.38.050. The same result should follow here: the Respondents Club, Hollinrake and Jones are entitled to their reasonable attorney fees pursuant to RCW 64.38.050.

In addition, an award of attorney fees is also appropriate under RCW 4.84.185. This lawsuit was frivolous and advanced without reasonable cause because *all* the claims and issues had already been decided against the Carlsons in Carlson I. Because *res judicata* and collateral estoppel clearly barred such re-litigation, the Carlsons had no colorable theory for pursuing this lawsuit and attorney fees are appropriate under RCW 4.84.185.

Finally, sanctions should be assessed in the form of attorney fees for Mr. Carlson's violation of Civil Rule 11. CR 11 was violated because, Mr. Carlson either knew or should have known (had he conducted a reasonable inquiry) that the Carlsons' claims and issues here were precluded by *res judicata* and/or collateral estoppel. Mr. Carlson should have known better and any reasonable inquiry would have demonstrated that this lawsuit (1) was not well grounded in fact, and (2) was not warranted by existing law or a good faith argument for the extension/modification of existing law.

Accordingly, the Respondents Hollinrake and Jones respectfully request that reasonable attorney fees and costs be awarded against the Carlsons and in favor of the Respondents Hollinrake and Jones pursuant to RCW 64.38.050, CR 11, and RCW 4.84.185.

IV. STATEMENT OF THE CASE

For the convenience of the Court and to avoid duplication, the facts set forth in the brief filed with this Court by the Club are hereby incorporated by reference, including facts relating to the Innis Arden Community and its covenants, Binns and Carlson I.

V. ARGUMENT

A. Dismissal of Claims With Prejudice Was Proper

Summary judgment is appropriate when the moving party has shown that there is no genuine issue as to any material fact. See Clements v. Travelers Indemnity Company, 121 Wn.2d 243, 248, 850 P.2d 1298 (1993); CR 56(c). In other words, the motion should be granted if, “from all the evidence, reasonable persons could reach but one conclusion.” *Id.*

The Carlsons asserted that the Tree Height Amendment is not valid and/or if it is valid that the defendant Hollinrakes cannot use it for their benefit because they live in a different subdivision than the Carlsons and that the defendants Hollinrake and Jones are not permitted to participate in the Compliance Procedures established by the Club. These issues were all litigated in Innis Arden Club, Inc., et al. v. Binns, et. al., King County Cause No. 84-2-09622-5 and Court of Appeals opinion (“Binns”) and/or Carlson v. Innis Arden Club, et al., King County Superior Court Cause

No. 06-2-06819-0 SEA, Court of Appeals No. 59878-3-I (“Carlson I”). Accordingly, all of the Carlsons’ claims are barred by collateral estoppel and/or *res judicata*.

Collateral estoppel precludes relitigation of issues decided in previous actions. A party asserting collateral estoppel as a defense must prove four elements: (1) the actions present identical issues; (2) the original action was resolved with a final judgment on the merits; (3) the party against whom the plea is asserted was a party to or in privity with a party to the prior action; and (4) the application of the doctrine does not work an injustice on the party against whom the doctrine is to be applied. Willapa Grays Harbor Oyster Growers Ass’n v. Moby Dick Corp., 115 Wn.App. 417, 62 P.3d 912 (2003). *Res judicata* prevents a second assertion of the same claim or cause of action. *See generally* Rains v. State, 100 Wn.2d 660, 665, 674 P.2d 165 (1983). *Res judicata* is focused on curtailing multiplicity of actions and harassment in the courts. The doctrine applies when a prior judgment has

a concurrence of identity with a subsequent action in (1) subject matter, (2) cause of action, *and* (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made.

Rains v. State, 100 Wn.2d 660, 663, 674 P.2d 165 (1983).

As in Carlson I, in Carlson II, the Carlsons again seek to challenge (1) the validity of the Tree Height Amendments, (2) the cross-enforceability of the Tree Height Amendments and (3) the validity of the Compliance Procedures adopted by the Club under RCW 64.38. The Carlsons' Complaint asserts two causes of action against Defendants Hollinrake and Jones: (1) an action "to quiet title and for declaratory judgment," which claims that Hollinrake and Jones have no legal or equitable right to enforce the View Preservation Covenant against the Carlsons; and (2) an action "to stay arbitration," which claims that the Club covenant compliance process is unlawful arbitration and, thus, that Hollinrake, Jones and Staley cannot utilize it. CP 9-10. Based on these claims, the Carlson II Complaint contains the following Prayer for Relief:

Wherefore, Plaintiffs pray that the Court enter judgment in Plaintiffs' favor and against Defendants as follows:

8.1 That the Court stay arbitration pursuant to RCW 7.04A.070(2) and RCW 7.24.190, and enter preliminary and permanent injunctions enjoining Defendants, and all those in active concert and participation with Defendants (a) from threatening or taking any action to arbitrate, or otherwise non-judicially decide disputes over the application of easements to the Carlson Property, specifically including those disputes referenced herein; and (b) from threatening or taking any action to secure assessment of fines or liens for any alleged violations of restrictive easements which may burden the Carlson property;

8.2. That the Court enter judgment quieting title to the Carlson Property, and pursuant to RCW 7.24.010 *et seq.*, enter judgment declaring:

a. That none of the Defendants are the real party in interest to assert any purported view preservation rights with respect to properties they do not own;

b. That none of the Defendants have any legal or equitable right to restrict the height of trees on the Carlson property;

8.3 That the Plaintiffs have their costs, expert witness fees, attorneys fees, and such other and further relief as the Court may deem just and proper.

CP 10-11.

The trial court in Carlson II correctly found that each of these claims were “were or could have been adjudicated in Carlson I” and were barred by the doctrines of *res judicata* and collateral estoppel.

In Carlson I, Judge Mertel ruled that:

“Plaintiffs [Carlsons] question on various grounds the validity of the View Preservation Amendment to the Innis Arden Restrictive Mutual Easements (“Covenants”) and assert that it is not enforceable across Innis Arden Subdivision boundaries. The issues Plaintiffs raise were or could have been adjudicated over a decade ago in Innis Arden, et al., King County Superior Court No. 84-2-09622-5 and the Court of Appeals Div I No. 20497-1-I, a class action lawsuit. Binns upheld the validity of the View Preservation Amendment as well as its enforceability across Innis Arden division boundaries.

Plaintiffs are, as a matter of law, in privity with parties to these prior adjudications. The doctrines of *res judicata* and

collateral estoppel apply to bar such re-litigation. Accordingly, Plaintiffs' various challenges to the validity of View Preservation Amendment and the cross-enforceability of the View Preservation Amendment across all Innis Arden Subdivision boundaries are hereby DISMISSED with prejudice. CP 562-563

This Court affirmed these rulings, stating that "the Carlsons' challenge to the validity and cross-enforceability of the view preservation amendments was barred by *res judicata* and collateral estoppel".

In Carlson I, regarding the validity of the Compliance Procedures, Judge Mertel ruled as follows:

"The Club is a homeowners' association pursuant to RCW 64.38 with inherent authority as a common interest community to enact The Club's Bylaw IV.6 Compliance Procedures. The Club's application of such Bylaws to plaintiffs is valid. Plaintiffs' Amended Complaint which alleged the invalidity of such Bylaw is hereby DISMISSED with prejudice." CP 562-563

This Court affirmed Judge Mertel's ruling that the Compliance Procedures are valid.

The Compliance Procedures specifically provide as follows:

"Complaints must be submitted in writing to the Compliance Committee. All complaints must provide as complete information as possible concerning an alleged violation and must be signed and submitted by a member/shareholder of the Club."

The Carlson's Opening Brief raises a number of irrelevant issues in an attempt to re-characterize the nature of the claims asserted in Carlson II. Despite these efforts, it is clear that the claims raised by the Carlsons are nothing more than an attack on the validity of the Club's Covenant Compliance Procedures adopted under RCW 64.38 and the right of individual member/shareholder of the Club to participate in that process. These issues have been addressed in prior litigation and this Court should affirm the trial court's order dismissing the Carlson's complaint with prejudice.

B. Cross-Appeal Should be Granted to Award Respondents Attorney & Fees and Sanctions.

1. RCW 64.38.050

RCW 64.38.050 provides:

Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party.

In Carlson I, Judge Mertel ruled that the Club was clearly entitled to award of attorney fees against the Carlsons pursuant to RCW 64.38.050 and rejected the Carlsons attempts to characterize their claims and issues as outside of the statute's ambit, explaining:

6. Plaintiffs have objected to many of the time entries of the Club's counsel and asserted, with

minimal explanation, that some entries are “unrelated” to the claims/issues arising under RCW Ch. 64.38. However, the claims/issues raised by Plaintiffs under RCW Ch. 64.38 were sweeping. Both of the causes of action asserted in the Amended Complaint against the Club clearly included RCW Ch. 64.38 components. And, the Club could not reasonably defend against such claims without engaging in core tasks associated with litigation, such as answering the Complaint and Amended Complaint, discovery, hearings, scheduling, etc.

7. The time entries challenged by Plaintiffs as “unrelated” are, in fact, related to the claims arising under RCW Ch. 64.38. For example, the Plaintiffs’ cloud on title claim focuses predominantly on the appropriateness of the compliance procedures utilized by the Club—procedures which Plaintiffs alleged violated RCW Ch. 64.38. Similarly, the Plaintiffs challenged the Club’s very status as a homeowners’ association under RCW Ch. 64.38. Accordingly, the Court will include time entries such as these in the fee award.

Exhibit C to Whited Declaration¹

The attorney fee award was affirmed on appeal and the Respondent Club was subsequently awarded its appellate attorney fees as well—all under the authority of RCW 64.38.050. As the Court of Appeals explained in its Carlson I opinion, the Respondent Club was entitled to an

¹ Declaration of Josh Whited in Support of Defendant Innis Arden Club, Inc.’s Motion for Award of Attorney’s Fees Pursuant to RCW 64.38.050, Civil Rule 11 and RCW 4.84.185 (“Whited Declaration”). The Whited Declaration has been listed in the Club’s supplemental designation of clerk’s papers and is sub number 124.

award of attorney fees pursuant to RCW 64.38.050 because it successfully defended against the claims and issues raised by the Carlsons:

The Carlsons argue that the trial court erred in granting attorney fees to the Club pursuant to RCW 64.38.050 because that statute authorizes a fee award only for aggrieved homeowners, not for homeowners' associations. The question of whether a party is entitled to attorney fees is an issue of law reviewed de novo. Tradewell Group, Inc. v. Mavis, 71 Wn.App. 120, 126-27, 857 P.2d 1053 (1993).

We disagree. RCW 64.38.050 states, "Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party." On its face, the statute does not limit an award of fees to aggrieved homeowners but does allow fees to the "prevailing party." This allows HOAs, which are funded by the community as a whole, to recoup expenses incurred in defending against nonprevailing homeowners.

See Appendix B at 21 to Club's Brief.

In this case, the trial court has already concluded that the Carlsons brought forward the same claims and issues that they previously litigated and lost in Carlson, and that such claims and issues are therefore precluded by *res judicata* and collateral estoppel. As such, the Respondent Club should be awarded its reasonable attorney fees pursuant to RCW 64.38.050.

If the Club is awarded its reasonable attorney fees under RCW 64.38.050, then Respondents Hollinrake and Jones, as prevailing parties, should similarly be awarded reasonable attorney fees. To determine otherwise would unfairly force individual homeowners to fund the defense of challenges to the covenants and rules of HOAs.

2. RCW 4.84.18S and CR11

The Respondents Hollinrake and Jones should have been awarded attorney fees to the Respondents under the authority of RCW 4.84.185 and CR 11.

RCW 4.84.185 provides, in relevant part:

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense.

Thus, where a lawsuit is, in its entirety, frivolous, the prevailing party is entitled to an award of attorney fees. *See, e.g., Quick-Ruben v. Verharen*, 136 Wn.2d 288, 903, 969 P.2d 64 (1998) (affirming attorney fee award pursuant to RCW 4.84.185 and CR 11 where litigant did not have standing and litigant knew or should have known he did not have standing).

With respect to CR 11, the Washington Supreme Court explained in Quick-Ruben v. Verharen, supra at 903:

CR 11 provides that by signing the pleading the party and/or attorney certifies: that to the best of the party's or attorney's knowledge, information, and belief, formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

The sanction for violation of CR 11 may include an award of reasonable attorney fees.

Filings which are not well grounded in fact and warranted by law include complaints precluded by collateral estoppel and *res judicata*. In Déjà Vu – Everett – Federal Way, Inc., v. City of Federal Way, Division 1 of the Court of Appeals held that an action that was barred by collateral estoppel and *res judicata* was frivolous and warranted imposition of CR 11 sanctions:

Considering the entire record and resolving all doubts in favor of Déjà Vu, we find the present action is not supported by any rational argument based on the law or the facts. It is frivolous to argue that our Supreme Court intended to breathe life into further challenges. Relitigation of the four-foot rule is a waste of time. We remand for an award of attorney fees in favor of Federal way for having to defend this suit below and on appeal.

Déjà Vu – Everett – Federal Way, Inc., v. City of Federal Way, 96 Wn. App. 255, 264, 979 P.2d 464 (1999) (internal citations omitted), *review denied by*, 139 Wn.2d 1027, 994 P.2d 844 (2000). The court was not alone in finding that the filing of complaints containing precluded claims deserves CR 11 sanctions, as the 9th Circuit has ruled similarly on numerous occasions. See Buster v. Greisen, 104 F.3d 1186, 1190 (9th Cir. 1997) (“‘Frivolous’ filings are those that are ‘both baseless and made without a reasonable and competent inquiry.’ The district court concluded that this suit was barred by the *res judicata* and collateral estoppel effects of the prior judgment. These findings are supported by the record, and a reasonable and competent inquiry would have led to the same conclusion.”) (“successive complaints based upon propositions of law previously rejected may constitute harassment under Rule 11.”); Estate of Blue v. County of Los Angeles, 120 F.3d 982, 985 (9th Cir. 1997) (“When a reasonable investigation would reveal that a claim is barred by *res judicata* or collateral estoppel, for example, Rule 11 sanctions may be imposed within the district court’s discretion.”);

Theater Corp., v. City of Portland, 897 F.2d 1519, 1527 (9th Cir. 1990) (“After a reasonable inquiry, West Coast’s counsel could not have had an objectively reasonable basis for any portion of the complaint. First, as mentioned earlier, West Coast raises issues precluded from relitigation by collateral estoppel.”).

The Carlsons’ lawsuit here was frivolous, advanced without reasonable cause and was not well grounded in fact or law. A reasonable inquiry would have revealed to Mr. Carlson that the claims and issues he

sought to raise here were precluded on *res judicata* and/or collateral estoppel grounds as a result of the adverse rulings he had already received in Carlson I. Mr. Carlson either knew (and did not care) or should have known (had he conducted a reasonable inquiry) that he could not relitigate the claims and issues he already lost in Carlson I.

Similar to the Quick-Ruben and Déjà Vu cases, the Carlsons had no colorable basis for pursuing this lawsuit. Nonetheless, the Carlsons (and Mr. Carlson in particular) pursued this lawsuit, filing document after document (complaint, supplemental complaint, motions for default) which sought to rehash issues and claims that had already been decided by Judge Mertel and later by the Court of Appeals. Each of these documents was signed in violation of CR 11 because, after a reasonable inquiry, Mr. Carlson could not have reasonably believed that he had the right to pursue these claims and issues again here.

These shortcomings, by themselves more than enough to warrant CR 11 sanctions, were aggravated by the just plain disingenuous manner in which Mr. Carlson proceeded. For example, with respect to the Staley default, it was bad enough that Mr. Carlson maneuvered to avoid the effect of this Department's ruling that his lawsuit could not proceed at all in the Club's absence. Worse, as this Department has already held, in the course of his end run in Ex Parte, Mr. Carlson completely withheld relevant background from the Commissioner, including the Carlson I holdings that would have made clear to the Commissioner why the ex parte relief Mr. Carlson sought could not properly be granted. *See* Order Granting Innis Arden Club, Inc.'s Motion to Set Aside, Vacate or Modify/Clarify the

Default Judgment Obtained Ex Parte by Plaintiff Carlson (“Mr. Carlson failed to provide important information which undoubtedly should have been provided.”). This was a blatant violation of the duty of candor imposed under the RPCs,² and, further, strongly suggests awareness that the adverse rulings in Carlson I would undercut his motion for default.

Despite substantial provocation, the Club went out of its way to try to persuade Mr. Carlson to turn back before he had to face the financial consequences of his actions. The Club’s counsel sent Mr. Carlson three separate written notifications that pursuit of this lawsuit was inappropriate under CR 11 in light of the rulings in Carlson I. Respondents Hollinrake and Jones also sent similar written notifications to Mr. Carlson³. And, as late as the end of May, the Club even offered not to seek attorney’s fees or sanctions if the Carlsons would just stand down:

On March 3, 2008, we wrote a letter informing you that the Club would seek sanctions against you for your actions related to the default judgment you obtained *ex parte* against Defendants Staley. We received no response to our letter.

In light of the recent Division I Court of Appeals opinion issued on May 19, 2008 in Carlson v. Innis Arden Club, et al., King County Superior Court Cause No. 06-2-06819-0 SEA (*Carlson I*), we are again writing to advise you that by continuing to pursue this lawsuit, *Carlson II*, you are exposing yourself to the very real possibility of CR 11 sanctions in addition to attorney fees.

² See RPC 3.3.

³ See Appendix A

If you take immediate action to rectify the situation by stipulating to the setting aside of the Staley default and by voluntarily dismissing with prejudice Carlson II, the Club will not pursue CR 11 sanctions or fees in connection with Carlson II. Otherwise, we reserve all rights.

Exhibit I to Whited Declaration (emphasis added).

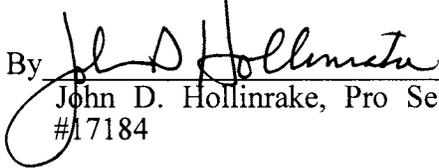
In sum, this entire action was premised on precluded claims and issues about which Mr. Carlson, an experienced litigator, should have known better. Any reasonable inquiry would have revealed that there was no colorable basis for this lawsuit: it was frivolous, it was advanced without reasonable cause and it was not well grounded in fact or law. The prior preclusive rulings were not entered so long ago as to be forgotten nor could they have been unknown to the Carlsons; the Carlsons brought this lawsuit on the heels of their dismissal by Judge Mertel in Carlson I and continued to pursue it even after the Court of Appeals resoundingly upheld Judge Mertel.

V. CONCLUSION

For all of the foregoing reasons, the Respondents respectfully request that the trial court's summary judgment order dismissing the Carlsons' Complaint with prejudice be affirmed and that the Carlsons' appeal be denied in its entirety. The Respondents further request that the Court of Appeals reverse the trial court's decision and grant attorney fees

and costs to the Respondents at the trial court level and similarly, award attorney fees and costs to Respondents with respect to this appeal.

Respectfully submitted this 2nd day of July, 2009.

By 
John D. Hollinrake, Pro Se, WSBA
#17184

John D. Hollinrake
1048 NW Innis Arden Drive
Shoreline, WA 98177
206-334-6026

By 
Randal R. Jones, Pro Se, WSBA
#17198

Randal R. Jones
17777 13th Ave NW
Shoreline, WA 98177
206-334-6026

APPENDIX A

Randal Jones
Attorney at Law
17777 13th Avenue NW
Shoreline, Washington 98177

Admitted in Washington

Telephone (206) 334-5922

September 11, 2007

Robert Carlson
1450 NW 186th Street
Shoreline, WA 98177

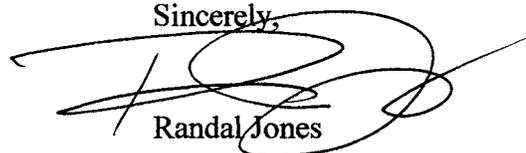
Re: ***Carlson v. Staley, et al***
King County Cause No 07-2-27685-8SEA
CR 11 and RCW 4.84.185 Sanctions

Mr. Carlson:

Pursuant to ***Biggs v. Vail***, 124 Wash.2d 193, 197, 876 P.2d 448 (1994), I am writing you to inform you that the complaint you filed naming my wife and I as defendants, violates the standards set forth in CR 11 and RCW 4.84.185. By filing this complaint you have ignored settled case law, misrepresented facts and filed a frivolous lawsuit. Your complaint lacks a factual and legal basis and it has been filed for an improper purpose.

Accordingly, I am asking that you dismiss the complaint against my wife and me immediately. If you do so, then we will not take any further action. If you do not dismiss the lawsuit we will be pursuing our remedies pursuant to CR 11 and RCW 4.84.185 against you and your firm.

Sincerely,



Randal Jones
Attorney at Law

John Hollinrake
Attorney at Law
1048 NW Innis Arden Drive
Shoreline, Washington 98177

Admitted in Washington

Telephone (206) 334-6026

September 11, 2007

Robert Carlson
1450 NW 186th Street
Shoreline, WA 98177

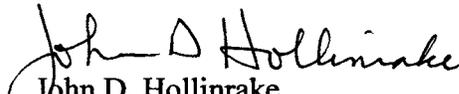
Re: ***Carlson v. Staley, et al***
King County Cause No 07-2-27685-8SEA
CR 11 and RCW 4.84.185 Sanctions

Mr. Carlson:

Pursuant to ***Biggs v. Vail***, 124 Wash.2d 193, 197, 876 P.2d 448 (1994), I am writing you to inform you that the complaint you filed naming my wife and I as defendants, violates the standards set forth in CR 11 and RCW 4.84.185. By filing this complaint you have ignored settled case law, misrepresented facts and filed a frivolous lawsuit. Your complaint lacks a factual and legal basis and it has been filed for an improper purpose.

Accordingly, I am asking that you dismiss the complaint against my wife and me immediately. If you do so, then we will not take any further action. If you do not dismiss the lawsuit we will be pursuing our remedies pursuant to CR 11 and RCW 4.84.185 against you and your firm.

Sincerely,


John D. Hollinrake
Attorney at Law

CERTIFICATE OF SERVICE

I do hereby certify that on this 8th day of July, 2009, I caused to be served a true and correct copy of the foregoing in the manner described upon the

following parties:

Robert Carlson
1450 NW 186th St.
Shoreline, WA 98177

John Hollinrake
1048 NW Innis Arden Drive
Shoreline, WA 98177

Via First Class Mail, postage pre-
paid

Via First Class Mail, Postage
Prepaid

Joshua Whited
Eglick Kiker Whited PLLC
1000 Second Avenue, Suite 3130
Seattle, Washington 98104

Brian Ritchie
2611 NE 113th St Ste 300
Seattle, WA 98125-6700

Via First Class Mail, postage pre-
paid

Via First Class Mail, Postage
Prepaid

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 8th day of July, 2009 at Seattle, Washington.



Randal R. Jones
17777 13th Ave NW
Shoreline, WA 98177
206-334-6026

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2009 JUL -8 PM 4:12

THE SUPREME COURT OF WASHINGTON

DAVID CUTTER and JILLIAN CUTTER,
husband and wife,

Respondents,

v.

ALEXANDER McLAREN,

Petitioner.

NO. 83092-4

ORDER

C/A No. 58611-4-I

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUL -8 AM 11:33

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst and Stephens, considered this matter at its July 7, 2009, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion for Discretionary Review is granted and the matter is remanded to the Court of Appeals, Division One, for reinstatement of Petitioner's appeal from the contempt order upon payment of the filing fee.

DATED at Olympia, Washington this 8th day of July, 2009.

For the Court

Henry J. Alexander
CHIEF JUSTICE

FILED
SUPREME COURT
STATE OF WASHINGTON
2009 JUL -8 A 8:53
BYRONA L. R. VAHLENTER
CLERK