

No. 63267-1-I

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

DANJEL ENTERPRISES, LLC,
a Washington state limited liability company,

Plaintiff/Respondent,

v.

FIDELITY NATIONAL TITLE COMPANY OF WASHINGTON, INC.,
a Washington corporation; and RUDOLPH U. VALDEZ and
JANE DOE VALDEZ, husband and wife
and the marital community composed thereof,

Defendants/Petitioners.

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**BRIEF OF RESPONDENT/PLAINTIFF DANJEL
ENTERPRISES, LLC**

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**RESPONSE TO PETITIONER'S BRIEF SEEKING ASSIGNMENT
OF ERROR**

I. IDENTITY OF RESPONDENT

Respondent, DANJEL ENTERPRISES, LLC, is a Washington Limited Liability Company.

II. STATEMENT OF RELIEF SOUGHT

The Respondent asks this Court to deny Petitioner's appeal because the trial court's order directing the Petitioner to deposit money into the registry of the court was not erroneous and is permitted under RCW should stand.

III. STATEMENT OF THE CASE

A. Statement of Facts.

Danjel owns property located at 16006—75th Place West, Edmonds, Snohomish County, Washington. CP 341. Danjel entered into a Residential Real Estate Purchase and Sale Agreement ("the Agreement"), dated May 15, 2007, to sell the property to Rudolph Valdez ("Valdez"). CP 341.

Pursuant to the Agreement, Valdez agreed to purchase the property for \$3,380,000.00. CP 342. Valdez was required to deposit \$150,000.00 as earnest money to the Closing Agent. *Id.* The Closing Agent to the transaction was Fidelity National Title Company of Washington, Inc.

(“Fidelity” or “Petitioner”). *Id.*

Fidelity was the escrow agent for the residential purchase and sale transaction and Fidelity assigned the transaction Escrow No. 05-07060223-JR. CP 341. By letter dated June 6, 2007 Fidelity’s closing agent, Jan Rohl, confirmed that escrow had been opened for the transaction. CP 341 Ex B 2 of 3. On June 11, 2007 Fidelity confirmed receipt of the \$150,000.00 earnest money by Incoming/Direct Deposit Confirmation. CP 341 Ex B 1 of 3. By facsimile dated June 12, 2007, Elayne Trujillo, assistant to Jan Rohl, advised the parties that Fidelity would need “written authorization from both authorizing the release of the earnest money to the seller.” CP 341 Ex B 3 of 3.

By email dated July 24, 2007, Scott Sayler, Assistant Vice President of Fidelity, stated that Fidelity was waiting for confirmation from the Buyer that the earnest money should be disbursed to the Seller, but if there was no agreement by August 3, 2007, “then the file will be turned over to our corporate legal department to appoint representation to begin the process to interplead.” CP 282.

Danjel demanded that Fidelity deposit the funds into the registry of the court and commenced an interpleader action. CP 342. In September 2007 Fidelity responded to the demand for interpleader and advised Danjel that it did not actually receive the earnest money. CP 341 Ex F.

B. Procedural History Pertinent to this Appeal.

After filing suit against Valdez and Fidelity and obtaining a default judgment against Valdez, Danjel moved for summary judgment against Fidelity on January 13, 2009 on the issues of breach of contract and violation of the CPA and asked the court to order Fidelity to pay \$150,000 plus 12% per annum interest into the court registry. CP 316-328. On February 13, 2009, the trial court ordered Fidelity to immediately deposit \$150,000 plus 12% per annum interest from June 21, 2007 until deposited into the court registry. CP 146-148.

There was no order that the funds be paid from the court registry to Danjel.

Fidelity brought a motion for reconsideration, which the trial court denied on March 2, 2009. CP 126-142 and 113-116. Fidelity still failed to pay the money to the court registry as ordered. Danjel brought a Motion for Contempt on April 20, 2009 due to Fidelity's blatant disregard of the court's order. CP 92-101.

On May 11, 2009, Fidelity filed a CR 60 motion asking the trial court to either vacate the summary judgment order as void, to modify the order to include interpleader from Valdez, or to stay enforcement of the order pending this discretionary review. CP 69-70. The Judge denied Fidelity's CR 60 Motion on May 29, 2009 and ordered that "the court's

order of February 13, 2009 is stayed pending appeal, and Fidelity shall post bond for \$150,000.00.” CP 27-28.

IV. ARGUMENT

A. **Under RCW 4.44.480, the trial court had the authority to order Fidelity to deposit money into the court registry.**

Pursuant to RCW 4.44.480, the court may order a party to deposit money into the court registry when it is admitted by the pleading or examination of the party, “that the party possesses or has control of any money, . . . which [is] the subject of the litigation, . . . is held by him or her as trustee . . . , or which belongs or is due to another party.” RCW 4.44.480. In other words, the Court cannot order a non-party to deposit an arbitrary amount of money into the court registry. The court may, however, order funds deposited when there is controversy over the right to the fund. *First Nat. Bank v. Baker*, 141 Wash. 672, 252 P.2d 105 (1927).

In this case, Fidelity repeatedly admitted and confirmed that it was in possession of the earnest money. For months Fidelity claimed it had the funds and on multiple occasions advised the parties that the funds would be interpleaded with the court.

The amount the court ordered Fidelity to deposit into the registry of the court is not an arbitrary amount. It is the amount that Fidelity repeatedly confirmed and represented that it was holding in escrow for the

parties. The amount is not arbitrary, Fidelity is a party to the suit, and Fidelity repeatedly admitted that it had the funds. Therefore, the order requiring Fidelity to place money in the court registry was valid under RCW 4.44.480.

Fidelity's reliance upon *Rainier Nat'l Bank v. McCracken*, 26 Wn. App. 498 (1980) is misplaced. Fidelity claims the *McCracken* case is "remarkably similar" to the present action. However, that case concerned a fraudulent conveyance, and the amount the court ordered placed in the court registry was an amount that had not been determined.

In *McCracken*, the trial court entered a pretrial order directing the transferee of a real estate sales contract to pay the proceeds into the registry of the court. At the time of the pretrial order the court had not determined that the transferee had been unjustly enriched. The appellate court concluded that "since that issue had not been judicially determined at the time, the order [to deposit money into the registry] was invalid." *McCracken*, 26 Wn. App. at 510.

In the case at bar, Fidelity was the escrow agent and had confirmed receipt of the earnest money a number of times. Fidelity was ordered to deposit the earnest money following a motion for summary judgment. Fidelity was able to respond to the motion and present evidence in its defense. The facts of our case are very different than those in the

McCracken case and warrant the Order requiring Fidelity to place the money in the court registry.

B. Petitioner's right to due process has not been violated.

Due process requires that Petitioner be afforded a hearing on the merits of Danjel's claims against it. Initially, Fidelity has been afforded that right. Fidelity had a hearing on the issue and presented copious amounts of evidence, documents and argument in its favor. The due process arguments are unfounded and seem to ignore the summary judgment hearing.

There was a hearing on this issue, Fidelity was able to offer all the evidence it had to refute Danjel's claim, the Court ruled in Danjel's favor, and the Order requiring Fidelity to place money in the court registry was valid under RCW 4.44.480.

Importantly, however, the trial court has not ruled that Fidelity forfeits the \$150,000. The money will be held pending final resolution of the case.

V. CONCLUSION

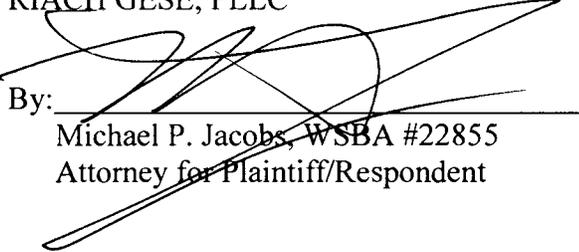
Danjel brought a Motion for Summary Judgment seeking the deposit of the funds into the registry of the court. The court's order directing Fidelity to place \$150,000 into the court registry pending the outcome of

the case is authorized by RCW 4.44.480. This appeal should be denied and the matter should proceed to trial for resolution of the case.

DATED this 11 day of Feb, 2010.

Respectfully submitted,

RIACH GESE, PLLC

By: 

Michael P. Jacobs, WSBA #22855
Attorney for Plaintiff/Respondent

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the State of Washington that on this date, I caused to be served in the manner noted below, a copy of the *Respondent's Response to Petitioner Fidelity National Title Company of Washington, Inc.'s Brief* on the following individuals:

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WASHINGTON

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- VIA FACSIMILE
- VIA FIRST CLASS MAIL
- VIA ELECTRONIC MAIL (per agreement with counsel)
- VIA MESSENGER

DATED this 12 day of February, 2010, at Lynnwood, Washington.



R. RENEE HOLLINSHEAD