

Appellate Court #. ~~64951-5~~-I 64951-5  
Superior Court #. 08-2-16279-6KNT

COURT OF APPEALS  
DIVISION I  
FOR THE STATE OF WASHINGTON

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MINI-DOZER WORK,  
WAYNE R. RICHARDSON, owner

Appellants,

vs.

LINH NGUYEN PYUNG

Respondent.

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APPELLANT'S FIRST BRIEF

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Wayne R. Richardson  
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TABLE OF CONTENTS

- 1. Introduction.....= 1, 2, 3, 4, 5, A-1
- 2. Assignments of Error.....=5, 6, 7

*Assignments of Error*

- No. 1.....=7, 8
- No. 2.....=8
- No. 3.....=8
- No. 4.....=8
- No. 5.....=8

*Issues Pertaining to Assignments of Error*

- No. 1
- No. 2

- III. Statement of the Case.....=8
- IV. Summary of Argument.....=9
- V. Argument.....=9, 10, Appendix
- VI. Conclusion.....=10, 11
- VII. Appendix.....=A1-D3

TABLE OF AUTHORITIES

Table of Cases

No.	Date	Case Name	Pages
1.	July 2009'	Faust v. Albertson 166 Wn.2d 653	10
2.	Oct. 2001	Guijosa v. Walmart Stores Inc. 144 Wn2d 907, 32 P.3d 250	9

Regulations and Rules

No.	Regulation name	Rule	Page
1.		LR 7(3)(a)	9

2.	CR 5(b)(2)	9
3.	CR 11	7, 8, 9
4.	CR 50	9

Other Authorities

No.	Authorities	Page
1.	Chapter 18.27 RCW	8
2.	Chapter 19.86 RCW	8, 9
3.	Chapter 60.04 RCW	8
4.	RCW 60.04.035	10

No.	Court Paper	Page	vbr	Page
1.	CP 3-12	9		
2.	CP 47	5		
3.	CP 49-53	6, 9		
4.	CP 54-55	9		
5.	CP 57	5		
6.	CP 67-68	6		
7.	CP 69-70	6, 7		
8.	Sub 46 06-16-2010	5, 7, 10, 11		

**1. Introduction**

The appellant, Mini-Dozer Work, through its owner, Wayne R. Richardson, appellant, filed this action against the respondent Linh Nguyen Phung, for scheming contractors to work on property she does/did not own or have a license under chapter 18.27 RCW. She has no U.B.I. number from the Washington State Tax licensing entity nor does she have a Federal I.D. number for business income taxes.

Mini-Dozer Work has maintained a U.B.I. number and Federal I.D. #. 91-6113857 since June 25, 1967. Appellant, Wayne R. Richardson, was called on the phone by the respondent after he had been hired by the respondent's dirt worker to operate a dozer to grade the front yard. The respondent dictated to Richardson how she wanted the front yard contoured. After the excavation was complete, the respondent asked the appellant to give her a price to install ecology blocks on the West edge of the property to increase the useable area of the lot. Arrangements were made for the appellant to return in approximately one week to measure the area of improvement and design the walls to determine the number of blocks. The number of blocks was 250. The respondent wanted to buy

the blocks and have the appellant move and install them. This is a red flag for the installer to be stung for the labor and hauling. There was no contract written for that work. The respondent had the appellant visit the job site three more times. Each time she wanted to buy the material and have the worker install the items. She was turned down each time.

Approximately two months later the respondent contacted the appellant claiming their contractor, AKC, made a claim against her for a large sum of money amounting to approximately \$17,000.00. AKC asked for an attrition hearing claiming the respondents insidious claims for more labor to correct improperly installed kitchen cabinets and other defects had not been paid. The appellant, while operating the dozer for the first dirt worker, had thwarted an unlicensed electrician from installing a power line on a weekend. That worker was hired by AKC. AKC moved off the site after that altercation. Thus, the respondent hired Mini-Dozer Work to witness against AKC at the attrition hearing and drove him there and back. The appellant through his business is licensed as a consultant and professional witness in contracting and passive solar design-build plus other land use practices. The appellant won his position against AKC at

the hearing. The respondent refused to pay for the time as a professional witness.

On or about May 1, 2007, the appellant was moving from his house in Skyway to an apartment two blocks away. The respondent visited the appellant stating he could save money for his furniture storage if he would store it in her three-car garage. She also stated he could store his truck, trailer and excavator in the open area front yard. She made no mention that AKC had filed a claim against her with a credit company in Lynwood for close to the previous \$17,000.00 that was denied earlier at the attrition hearing. Within a week after the furniture and equipment was in her position she again approached the appellant wanting him to write a claim against AKC. She was told to hire an attorney to her reply that she tried to hire one but he would not do her bidding.

A summons and complaint was drafted by her directions on what to say in the claim. A place at the bottom was made for her signature and her son's signature stating she or her son would have to appear in court and argue the pleadings. Another week passed when she came to the appellant's residence with the documents signed and dated. She wanted

the appellant to pay for the filing of the claim, its service of process and sundries of other requests. She was refused this request; to her reply; “How do I know I can trust you?” She was given the option to do the act herself or make out the checks to the proper authorities with her signature on the check and the appellant would do what was needed for proper service. When service was complete she would be charged for the time and distance traveled and the discovery needed to complete service on AKC. She agreed. A week later she again returned to the appellant stating AKC had hired a Japanese Attorney. She was told that is the way the ball bounced. She was also told that her last visit inside the appellant’s apartment that she stole some of the office documents on the previous visit. She went directly to her car and brought the documents back to the appellant. Three or four days later the appellant had successfully made a bid on some groundwork at a library remodel in Des Moines. He drove a friend to her residence where the truck and trailer were stored, called her on the phone asking her to come and open the gate. She refused stating she was owed \$350.00 a month for the storage of the equipment. She was given five minutes to either open the gate or the sheriff would be called to

escort the appellant in to retrieve his equipment. She opened the gate. The sheriff was called at her last visit to the appellant's apartment to order her to leave the premises and meet with the appellant at the Renton Library on the following Saturday. She complied with the order stating at the library that she would pay \$300.00 for the service of the Summons and Complaint. She made out a false name on the cashier's check that made it useless and left on the five o'clock plain to New York claiming she had to go there for some type health treatment.

After the respondent returned from the trip she contacted Rodney L. Kawakami, WSBA #7055, making false claims against the appellant; to which he made threatening drafts of letters claiming his client (the respondent) was going to dispose of the furniture stored in her house. The remainder of this introduction is referred to appendix attachment "A-1".

2. **Assignments of Error**

No. 1 the Honorable Jay White, King Co. Superior Court in the Regional Justice Center entered an Order to Show Cause regarding Dismissal of the respondent's claim against the appellant. (CP56-57) The respondent refused to comply with item "A. Exhibits" inclusive. (CP 47)

The appellant answered the respondent's Motion to Dismiss the appellant's claim in its entirety. (CP49-53) The court's Order to Show Cause was issued following the appellant's above answer. The respondent filed a declaration in answer to the Order to Show Cause and served it on the appellant. The appellant answered the defendant's declaration. (CP 67-68). The action was dismissed claiming the appellant had not submitted a declaration to support his position against the Order to Show Cause. (CP 69-70) The appellant's last answer/motion was a Motion for Proposed Order for more Discovery to enter the property with the sheriff for verification that the extorted furniture was still at the residence involved with this action. The order was to inspect the respondent's property to verify the appellant's extorted furniture had not been sold or trashed in 2008 after this summons and claim had been personally served on the appellant. The respondent set forth a convoluted declaration in support of her answer to the court's Order to Show Cause, but refused to answer appellant's Motion to inspect the property for the furniture.

The appellant had filed and paid for a demand for a jury trial, and had complied with the pretrial order by producing exhibits showing the

change of ownership of the property the respondent used to ransom the appellant's furniture. The dismissal of the appellant's demand for a jury trial was effectively denied for failure to place the word "declaration" on his Motion for further discovery. It stated the respondent failed to answer the appellant's motion and the respondent's Motion to dismiss was convoluted and not timely presented to the court. (CP 69-70)

The Motion asked for CR 11 sanctions that the complete dismissal effectively denied along with the request inspection of the property for the extorted furniture.

Question: Did the court abuse it's discretion for dismissing the plaintiff's demand for a Jury trial because he failed to present a declaration/affidavit in reply to a Court's order to Show Cause? The court had already stated the appellant had complied with the Order for Trial readiness by filing his list of exhibits to the court in a loose-leaf notebook. The respondent did not object to any exhibit as required by the Order for trial readiness.

**Issues pertaining to Assignments of Error.**

No. 1 did the court abuse it's discretion by claiming the appellant must file a declaration along with the aforementioned motions cited in the

introduction that effectively disposed of the respondent's counter claims?

No. 2 is/was the appellant entitled to Consumer Protection Act (chapter 19.86 RCW)?

No. 3 does an Order to Show Cause by the court transfer into a motion for a judgment as a matter of law?

No. 4 if item 3 above is yes and the order to show cause was directed to the respondent, why would it be necessary for the appellant to make a declaration/affidavit with his motion to dismiss the respondent's motion? Would not the Order to Show Cause be the defense for the appellant?

No. 5 is the appellant entitled to CR 11 sanctions against respondent's counsel for purposeful delay to allow his client to dispose of the extorted furniture per his original plan set forth in his letters before the suit was served and filed?

### **III. Statement of the Case**

This case was started to collect professional witness and consultant fees under chapters 18.27 RCW, 19.80 RCW, 19.86 RCW and chapter 60.04 RCW. It was further started to take control of the appellant's extorted furniture.

**IV. Summary of Argument no used.**

**V. Argument.**

The appellant interjects his “Plaintiff’s Motion to Deny Defendant’s Motion to Dismiss for Improper Service of Process Per LR 7(3)(a): LR 56 and CR 5(b)(2). Motion is Convolutd.” (CP 49-52) and his “(Proposed) Order Denying Motion To Dismiss & Granting CR 11 Sanctions for Counsel Refusing to Comply With Pre Trial Court Order.” The court dismissed the respondents “Motion to Dismiss” by separate court order. (CP 54-55) This effectively denied the appellant’s request for CR 11 sanctions and damages under chapter 19.86 RCW.

The appellant originally stated in the claim (CP 3-12) more than the five elements required for damages under the Consumer Protection Act. **GUIJOSA v. WAL-MART STORES INC. 144 Wn.2d 907, 32 P.3d 250 (Oct. 2001) @ 917**

The plaintiff/appellant complied with the pre trial court order that qualifies as the moving party for the jury trial that he demanded and paid the court fee. The appellant asked for sanctions against the opponent that is in essence a demand for a directed judgment under CR 50. The

respondent tried to dispose of the threat of a jury trial claiming misstatements and innuendoes against the moving party. **FAUST v.**

**ALBERTSON 166 Wn.2d 653 (July 2009) @ 657**

“In reviewing a ruling on a motion for a judgment as a matter of law, we engage in the same inquiry as the trial court. *Stiley v. Block*, 130 Wn.2d 486, 504, 925 P.2d 194 (1996). One who challenges a judgment as a matter of law “admits the truth of the opponent’s evidence and all inferences, which can reasonably be drawn [from it].” *Davis v. Early Construction Co.* 63 Wn.2d 252, 254, 386 P.2d 958 (1963). We interpret the evidence “against the [original moving party in a light most favorable to the opponent.” *Id.* A judgment as a matter of law requires the court to conclude, “as a matter of law, that there is no substantial evidence or reasonable inferences to sustain a verdict for the non-moving party.” *Indus. Indem. Co. of the Nw. v. Kallevig*, 114 Wn.2d 907, 915-16, 792 P.2d 520 (1990).”

The findings of fact and conclusions of law were incorporated into the proposed order that was served on the court and the respondent. It could not become a part of the documents filed with the clerk of the court because of no judge’s signature. Nevertheless, the above ruling states the appellate court uses the same inquiry as the trial court. Therefore the proposed order along with the exhibits presented to the court for trial is attached to this brief as an appendix.

**VI. Conclusion.**

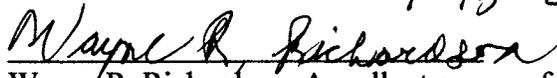
RCW 60.04.035 states:

“The legislature finds that acts of coercion or attempted coercion, including threats to withhold future contracts, made by a contractor or developer to discourage a contractor, subcontractor, or material or equipment supplier from giving an owner the notice of right to claim a lien required by RCW 60.04.031, or from filing a claim of lien under this chapter are matters vitally affecting the public interest for purposes of applying the consumer protection act., chapter 19.86 RCW. These acts of coercion are not reasonable in relation to the development and preservation of business. These acts of coercion shall constitute an unfair or deceptive act or practice in trade or commerce for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1992 c 126 § 3.]

The appellant states the court erred by not granting the proposed order submitted with the Motion to dismiss the respondent’s motion to dismiss the appellant’s cause of action. Further, that the court erred by stating the plaintiff’s action was dismissed because he did not file a declaration to support his position. The Order to Show Cause is the appellant’s defense in favor of the appellant’s served and filed exhibits for trial that the respondent had no defense against and did not deny any one exhibit as required by the Order for Trial readiness required.

Respectfully submitted by:

9-13-2010



Wayne R. Richardson, Appellant owner of Mini-Dozer Work