

65356-3-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE**

LUCIANO G. GIOVANNI, a single man, and PAUL GOOD and DIANE GOOD, husband and wife,

Appellants,

v.

DEUTSCHE BANK TRUST COMPANY AMERICAS AS TRUSTEE FOR RALI 2006QA11, its successors and/or assigns, THE FIRST AMERICAN CORPORATION, d/b/a FIRST AMERICAN TITLE INSURANCE COMPANY, a California corporation; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a corporation, UNITED PACIFIC MORTGAGE d/b/a AVENTUS, INC, a Nevada corporation, EXECUTIVE TRUSTEE SERVICES, LLC, a Delaware limited liability company, JOHN AND JANE DOES, 1 – 20

2011 MAR 10 11:28 AM
COURT OF APPEALS
DIVISION ONE

Respondents.

REPLY BRIEF OF APPELLANTS

Richard Llewelyn Jones, P.S.
Attorneys for Appellants
2050 - 112th Ave., N.E., Suite 230
Bellevue, WA 98004
425.462.7322
rlj@richardjoneslaw.com

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

REPLY 1

A. This is a Proper Appeal 1

 1. This Appeal is Timely as to all Three Orders. 1

 2. Giovanni is a Proper Party on Appeal. 2

 3. The Goods are Proper Parties on Appeal. 3

B. The Court Abused its Discretion by Setting Aside Commissioner Bradburn-Johnson’s Order and Refusing to Set Aside Commissioner Velategui’s Judgment. 7

 1. Judge Spector’s Orders Permit Deutsche Bank to Profit from Confusion it Created and from Violating Commissioner Watness’ Order. 8

 2. It was an abuse of Discretion to Deny the Goods their Day in Court to Present their Defenses. 12

 3. Fundamental Denial of Due Process 15

 4. Vacating Commissioner Bradburn-Johnson’s Order and Refusing to Vacate Commissioner Velategui’s Judgment is not Justified by Any Arguemen in the Brief of Respondent. 16

C. The Court Abused its Discretion by Awarding Sanctions Against Counsel for Giovanni/Goods and Refusing to Award Sanctions Against Counsel for Deutsche Bank. 19

1.	Sanctions against Mr. Jones.	19
2.	It was an abuse of Discretion to Deny Sanctions Against Deutsche Bank.	21
D.	Attorney's Fees.	22

DECLARATION OF SERVICE.

TABLE OF CASES AND AUTHORITIES

	Page
CASES	
<i>AMRESKO Independent Funding, Inc., v. SPS Properties</i> , 129 Wn.App. 532, 119 P.3d 884 (2005)	14
<i>Bryant v. Joseph Tree, Inc.</i> , 119 Wn.2d 210, 829 P.2d 1099 (1992).	19
<i>Dlouhy v. Dlouhy</i> , 55 Wn.2d 718, 349 P.2d. 1073 (1960).	4
<i>Duskin v. Carlson</i> , 136 Wn.2d 550, 965 P.2d 611 (1998)	12, 15
<i>Griggs v. Averbeck Realty, Inc.</i> , 92 Wn.2d 576, 599 P.2d 1289 (1979).	13
<i>In re Marriage of Littlefield</i> , 133 Wn.2d 39, 940 P.2d 1362 (1997)	7
<i>Ryan v. State</i> , 112 Wn.App. 896, 51 P.3d 175 (2002)	7, 15
<i>Sheets v. Benevolent & Protective Order of Keglers</i> , 34 Wn.2d 851 210 P.2d 690 (1949).	6
<i>State v. Taylor</i> , 150 Wn.2d 599, 80 P.3d 605 (2003).	2
 WASHINGTON STATE STATUTES	
<i>RCW 2.24.050</i>	10
<i>RCW 4.28.210</i>	4
<i>RCW 4.84.330</i>	22
<i>RCW 59.12.060</i>	5, 14
<i>RCW 59.18.370</i>	11
<i>RCW 61.24.030</i>	13

RCW 61.24.04014
RCW 61.24.0605, 14, 22
RCW 61.24.127(1)14

COURT RULES

RAP 2.4 1
RAP 3.1 2
RAP 5.2 1
RAP 5.3 6
CR 11 19, 20
CR 55(c) 13
CR 59(b) 1
CR 60 17, 18
KCLR 82(e)8, 9

A. This is a Proper Appeal

In his notation ruling of August 31, 2010, Commissioner Verellen passed to the panel “questions of standing, appealability and the scope of the appeal” *Sept. 1, 2010 Clerk’s Letter*, App. A. In response to Deutsche Bank’s arguments on standing, we want to assure the Court that this appeal is properly before it.

1. This Appeal is Timely as to all Three Orders

The orders on appeal are: (1) Order of March 19, 2010, setting aside the Order of Kent Commissioner Bradburn-Johnson, and imposing \$2,500 in sanctions against Mr. Richard L. Jones, attorney for defendants Giovanni and Good; (2) Order of March 23, 2010, denying Giovanni’s Motion to Vacate Commissioner Velategui’s Ex Parte Judgment, and request for Sanctions; and (3) Order filed April 16, 2010, Denying Motion for Reconsideration of (1) and (2) above. CP 784-97. The Motion for Reconsideration was filed March 29, within 10 days of both orders (1) and (2) above, CP 411, and therefore it tolled the appeal period. *CR 59(b)*; *RAP 5.2(e)*. The Notice of Appeal was filed May 6, 2010, well within the 30-day period after the April 16th denial of reconsideration, CP 784, and therefore this appeal brings all three orders before this Court. *RAP 2.4(a)*, *(f)*; *RAP 5.2(a)*, *(e)*.

2. Giovanni is a Proper Party on Appeal

The Complaint in this matter was filed October 6, 2009 – a full year after the October 3, 2008, recording of Giovanni’s Quitclaim to the Goods. CP 1129. Although it should have known better based on the record title, Deutsche Bank nonetheless chose to name Giovanni as a defendant in its Summons and Complaint. CP 1, 3. Deutsche Bank then obtained a Judgment against Giovanni, not only for possession of the premises, but also for \$1,252 in costs and attorneys’ fees. CP 73. Giovanni incurred the expense of hiring counsel, and tried to appear along with the Goods at the defectively-noticed Show Cause hearing, in order to straighten out the confusion as to title and present their defenses. CP 8, 23, 219-20. When this proved impossible, Giovanni moved to set aside the improperly-noticed Judgment, which motion was denied, and timely appealed by Giovanni. CP 243, 405, 784.

“Only an aggrieved party may seek review by the appellate court.”

RAP 3.1.

We have defined “aggrieved party” as one whose personal right or pecuniary interests have been affected. An aggrieved party is not one whose feelings have been hurt or one who is disappointed over a certain result.

State v. Taylor, 150 Wn.2d 599, 603, 80 P.3d 605 (2003) (citation omitted). Giovanni is aggrieved under this definition. Deutsche Bank

sued Giovanni – he did not ask to be a party here. He has suffered a monetary judgment against him, and expended attorney’s fees in defense. The simple fact that the defective Velategui Judgment awards monetary relief against Giovanni is enough to satisfy this requirement. Indeed, if Giovanni does not have standing, no appellant seeking review of an order refusing to vacate a judgment against him/her would have standing.

3. The Goods Are Proper Parties on Appeal

Deutsche Bank concedes that “the Goods . . . may have had standing to defend Deutsche’s unlawful detainer action” *Br. Resp.* at 23. This is uncontestable – the Goods lost their right to possession of their home, and are therefore “aggrieved” in the most serious sense of the word. Nonetheless, Deutsche Bank argues this terrible loss is irrelevant because “the Goods never appeared in the action,” *id.*, and “were not parties to Deutsche’s unlawful detainer action at any stage of the proceeding,” *id.* at 3 n.1. This is wrong both because it is inaccurate, and because it is legally irrelevant in light of the fact that the Goods claim title through Giovanni.

Deutsche Bank’s lawsuit was brought not just against Giovanni, but also against “Unknown Occupants of the Premises,” which it identifies as “27705 23rd Ave., South, Federal Way, King County, Washington.” CP 1, 3. The Goods’ sworn declaration states that, “We are the current occupants of the real property commonly known as 27705 23rd Ave.,

South, Federal Way, King County, Washington, which is at issue here.” CP 218. The Show Cause Order upon which the Velategui Judgment was based commands “Giovanni, *and any and all occupants of the premises,*” to appear at the King County Superior Court – Seattle – mail room, for the show cause hearing. CP 19 (emphasis added). Deutsche Bank itself made the Goods parties to this lawsuit and obtained an order commanding them into court, and its contrary claim cannot be squared with the record.

Deutsche Bank’s claim that “the Goods never appeared in the action” is likewise inaccurate. Although they did not file a formal written appearance, that is not required by law. “A defendant appears in an action when he answers, demurs, **makes any application for an order therein,** *or* gives the plaintiff written notice of his appearance.” *RCW 4.28.210* (emphasis added). The ways of appearing are stated in the disjunctive, and written notice is only one way to appear. Here, the Goods showed up in Court (both Seattle and Kent) on February 19, 2010, with counsel, and applied for and obtained an order from Commissioner Bradburn-Johnson, CP 76, 219-21. This satisfies the statute (“makes any application for an order therein”). In addition, “it is settled law that the statutory methods of appearance are not exclusive.” *Dlouhy v. Dlouhy*, 55 Wn.2d 718, 721, 349 P.2d 1073 (1960) (and cases cited). “Any action on the part of a defendant, except to object to the jurisdiction, which recognizes the case

as in court, amounts to a general appearance.” *Id.* “A litigant may now appear through an attorney, but that does not destroy the right of a party to appear in person.” *Id.* at 722.

Plainly, by appearing in person at King County Superior Court (both Seattle and Kent) on February 19th in attempted response to Deutsche Bank’s confusing Show Cause Order, the Goods *appeared* in this action. Thus, Deutsche Bank’s concession that the Goods would have standing if they had appeared, binds it on this issue.

Even without the concession, the record fact of possession is sufficient to create standing in this unlawful detainer. CP 218; *RCW 59.12.060* (party in actual occupation of premises is necessary defendant). In addition, Giovanni quitclaimed the property to the Goods on April 3, 2008, the Goods paid nearly \$17,000 in value to Deutsche Bank, and the quitclaim deed was recorded October 3, 2008. CP 1127, 1129. Therefore, the Goods’ standing is both as possessor, and as successor to title.

The statute relied on here by Deutsche Bank states:

The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the borrower and grantor under the deed of trust **and anyone having an interest junior to the deed of trust, including occupants who are not tenants**, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12, RCW.

RCW 61.24.060(1) (emphasis added). Since the Goods claim an interest junior to the deed of trust, they are proper parties here.

Although the Notice of Appeal is in Giovanni's name only, the Appellate Rules contemplate granting relief to parties who claim through the title of a timely appellant:

The appellate court will permit the joinder on review of a party who did not give notice only if the party's rights or duties are derived through the rights or duties of a party who timely filed a notice or if the party's rights or duties are dependent upon the appellate court determination of the rights or duties of a party who timely filed a notice.

RAP 5.3(i). As quitclaim transferees from Giovanni, the Goods' rights are "derived through the rights . . . of a party who timely filed a notice," and therefore this Court should permit their joinder in the appeal.¹

¹ Deutsche Bank cites *Sheets v. Benevolent & Protective Order of Keglers*, 34 Wn.2d 851, 210 P.2d 690 (1949), to support its argument that the Goods do not have standing, *Br. Resp.* at 3 n.1 – but in fact, it stands for the very opposite. In *Sheets*, the Supreme Court found that Grand Lodge (a corporation) was not a party to an underlying action brought by several of its trustee/directors against a competing lodge, and therefore it could not appeal from the judgment. *Id.* at 854-56. In so holding, the Court stated "that no one can appeal from the judgment, order, or decree, . . . unless he is a party to the proceedings below, or unless he is a legal representative of a party, **or his privity of estate, title, or interest appears from the record.**" *Id.* at 856 (emphasis added). While the Grand Lodge corporation was not in privity of title with its trustees, the Goods *are* in privity of title with Giovanni. Therefore, *Sheets* stands for the proposition that the Goods have standing to appeal.

B. The Court Abused its Discretion by Setting Aside Commissioner Bradburn-Johnson's Order, and Refusing to Set Aside Commissioner Velategui's Judgment

As stated in our opening Brief:

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997); accord, e.g., *Ryan v. State*, 112 Wn. App. 896, 899-900, 51 P.3d 175 (Div. 1 2002). "A decision based on a misapplication of law rests on untenable grounds." *Ryan v. State, supra*, 112 Wn. App. at 900.

Deutsche Bank attempts to turn this appeal into a case of "he said / she said," but the facts demonstrating abuse of discretion are plain upon the record even without regard to witness statements. As Judge Kallas found, "from this court's point of view there have been numerous irregularities in the proceedings on Deutsche Bank's part." VRP 16. By refusing to set aside an ex parte *Seattle Judgment* entered *the day after Giovanni answered the Complaint*, which was based on a Show Cause order directing the defendants to appear at *the Seattle Court's mail room* for a case which bore a "*KNT*" designation after Commission Watness

had *ordered that no further Show Cause Orders would be entered* until the *case assignment was amended to Kent*, the King County (Seattle) Superior Court made decisions which were (1) manifestly unreasonable; (2) based on untenable grounds; (3) outside the range of acceptable choices; (4) unsupported by the record; and (5) based on an incorrect standard. *See, Judge Kallas's Ruling, Br. App. at 26-28 (quoting VRP 4-7)*. The consequences are extremely serious: Although Giovanni and the Goods did their best to obtain their day in court, their home was taken away without even a fair chance to obtain a hearing. This is an abuse of discretion, and reversal is necessary.²

1. Judge Spector's Orders Permit Deutsche Bank to Profit from Confusion it Created, and from Violating Commissioner Watness's Order

Deutsche Bank started the confusion by filing an unlawful detainer on Federal Way property with a SEATTLE designation, which should have had a KENT designation. *KCLR 82(e)(3)(B)*; *see*, CP 1, 3. The Velategui Judgment that took away Giovanni and Good's property was

² Deutsche Bank's only acknowledgement of the devastating critique of its misdeeds by Judge Kallas is when it accuses Giovanni and the Goods of "creat[ing] further confusion . . . before Judge Paris Kallas on a nonparty's Motion to Quash Subpoena." *Br. Resp.* at 26. This is absurd. As the record demonstrates: (1) before Mr. Jones said anything about the merits, Judge Kallas stated that "it seems to me that Deutsche Bank has created confusion from the very beginning of this case," VRP 5; and (2) Deutsche Bank was represented at this hearing, VRP 4, and presumably was capable of countering any "confusion" created by Mr. Jones.

then obtained by flagrant violation of Commissioner Watness's order of December 16, 2009, which says:

This propose[d] show cause order would set a hearing in Seattle on a property that is in the case assignment area for the Maleng Regional Justice Center. Amendment of the case assignment is necessary before a Show Cause Order will be issued.

It is hereby ordered that the request is denied and the moving party shall resubmit the motion and order through the Clerk's Office A copy of this order must be included when you resubmit this matter.

CP 13.

In direct violation of this order, Deutsche Bank resubmitted its Show Cause request **without attaching Commissioner Watness's order**, and without making any reference to it. CP 14-18. In further violation of this order, Deutsche Bank requested a second Show Cause order **without taking any steps (by motion under KCLR 82(e)(4)(C)) to actually change the case assignment area** – which Commissioner Watness had already ruled was improper in Seattle. All that Deutsche Bank did was change the designation “SEA” in the caption to “KNT”, which does nothing to change the actual case assignment. Changing the case assignment area requires a **court order**. *KCLR 82(e)(2)*.

Deutsche Bank claims that on resubmittal of its Show Cause application, “[e]vidently the trial court determined the Seattle case

assignment area facilitated just and efficient administration. Accordingly, the trial court confirmed the order to show cause hearing for the King County Courthouse, as noticed.” *Br. Resp.* at 4-5. Again, this bespeaks a complete misunderstanding of what happens in King County. Who in the King County Superior Court made this phantom ruling? It was not within the power of the clerk’s office to overrule Commissioner Watness’s direct order that the case assignment was properly in Kent, and needed to be amended. Even if one Commissioner had the power to revise a ruling of another Commissioner (they do not – *RCW 2.24.050*), the 35-second *ex parte* hearing before Commissioner Velategui does not supply the phantom ruling. CP 684-85. The order he entered mentions nothing about case assignment or Commissioner Watness’s order. CP 73-75. Indeed, unlike the Show Cause Order on which it is based, CP 19, the Velategui Judgment bears an “SEA”, not a “KNT”, designation, so Commissioner Velategui would not have been alerted to a possible anomaly. CP 73. The 35-second *ex parte* hearing did not even afford Commissioner Velategui a chance to read the Judgment he signed, let alone to consider an issue of case assignment.

What likely happened is not that King County-Seattle decided the case assignment was proper, but that **by violating the part of the Watness order requiring that a copy of the order be attached to**

subsequent Show Cause applications, Deutsche Bank was able to *slip this improperly-designated matter* by the very busy King County Seattle Clerk's Office. In other words, Deutsche Bank deceived the Court – and so far, it has handsomely profited from its deception.

It was manifestly unreasonable and an abuse of discretion to fail to set aside such a defective order, and to instead set aside the order of Commissioner Bradburn-Johnson, which struck the improper Show Cause proceeding. But it gets worse.

The Show Cause Order – which bears a “KNT” designation – nonetheless commands appearance in Seattle. To add to the confusion, it commands appearance at “516 3rd Avenue, Room C-203, Seattle . . .”, to show cause why a writ of restitution should not be issued . . .” CP 19. Language setting forth the place of hearing is required by statute, which provides, “The order shall notify the defendant that if he or she fails to appear and show cause **at the time and place specified by the order** the court may order the sheriff to restore possession of the property to the plaintiff . . .” *RCW 59.18.370*. Clearly, under this Show Cause Order and this statute, **the one and only place that the Court was authorized to enter a judgment against defendants was the mail room**. As conceded by Deutsche Bank, *Br. Resp.* at 5, that's not where Velategui's Judgment was entered. As testified by Sarina Aiello, Caseflow and Court Clerk

Division Manager of the Department of Judicial Administration: “Room C203 of the King County Courthouse is the judges’ mailroom and has not ever been a hearing room or courtroom.” CP 432-33.

Parties cannot be put at risk for losing their property in some unnamed room somewhere in a 12-story multiple-courtroom large metropolitan courthouse. The Goods **did appear** at Room C203 of the King County Courthouse, which started them on the wild goose chase ending in Kent. CP 219-20. As stated by Judge Paris Kallas, “it’s so silly it’s even embarrassing to say that a motion was noted for the mailroom.” VRP 7. It is a violation of the Show Cause Order, the statute, and fundamental due process, to take a person’s home away based on a hearing held somewhere else in the building. *See, Duskin v. Carlson*, 136 Wn.2d 550, 557, 965 P.2d 611 (1998) (“Due process requires notice reasonably calculated, under all the circumstances, to [afford] interested parties . . . an opportunity to present their objections.”). Therefore, it was an abuse of discretion to refuse to vacate the Default Judgment entered by the Seattle *ex parte* division.

2. It was an Abuse of Discretion to Deny the Goods their Day in Court to Present their Defenses

Although not formally a default judgment, this highly abbreviated and one-sided proceeding essentially became one because SCOMIS was

down so the Commissioner did not have access to the answer filed the day before, and the defendants were running around trying to find the proper location of this inaccurately-noted hearing.

Default judgments are not favored in the law. A default judgment has been described as one of the most drastic actions a court may take to punish disobedience to its commands. The reason for this view is that “(i)t is the policy of the law that controversies be determined on the merits rather than by default.” *Dlouhy v. Dlouhy*, 55 Wn.2d 718, 721, 349 P.2d 1073, 1075 (1960).

* * *

The trial court should exercise its authority [to vacate default judgments] “liberally, as well as equitably, to the end that substantial rights be preserved and justice between the parties be fairly and judiciously done.” *White v. Holm, supra*, at 351, 438 P.2d at 584.

Griggs v. Averbek Realty, Inc., 92 Wn.2d 576, 581-82, 599 P.2d 1289 (1979) (some citations omitted).

In this case, justice is obviously not done by permitting this very flawed proceeding to result in a final, default-like judgment, taking away the Goods’ home without even giving them their day in Court.

Default judgments are routinely set aside upon “good cause shown”, *CR 55(c)(1)*, and the *ex parte Velategui* Judgment should be too. There is prima facie evidence of a defense in this case, based on the facts that: (1) no notice of default was given to Giovanni or the Goods, as required under *RCW 61.24.030*, thus vitiating Deutsche Bank’s claim to title, CP 27, 1064, 1081 (verification); and (2) no proof of service of the

Notice of Trustee's Sale has ever been produced as required under *RCW 61.24.040*, CP 61-63. Post-sale challenges to trustee's deeds are allowed only in a narrow range of circumstances, but a special circumstance applicable here is *prejudicial noncompliance with nonjudicial foreclosure statutes*. *RCW 61.24.127(1)(c)* (no waiver of post-sale challenge in cases involving "[f]ailure of the trustee to materially comply with the provisions of this chapter"); *accord, e.g., AMRESKO Independence Funding, Inc. v. SPS Properties, LLC*, 129 Wn. App. 532, 537-38, 119 P.3d 884 (Div. 2 2005).

The deed of trust statutes codified in chapter 61.24 RCW allow a trustee to sell a property without a judicial process. Because these statutes remove many protections borrowers have under a mortgage, lenders must strictly comply with the statutes, and courts must strictly construe the statutes in the borrower's favor.

Id. at 536-37 (citation omitted). While it is generally true that unlawful detainer is not used to litigate title, a statutory exception to this general rule applies to deed of trust foreclosure unlawful detainers where the defendants were not "given all of the notices to which they were entitled under [ch. 61.24, RCW]." *RCW 61.24.060* (emphasis added). Clearly, the right to possession upon which Deutsche Bank's entire Unlawful Detainer action is predicated, depends on whether or not it gave proper notices to Giovanni and the Goods under ch. 61.24, RCW. Since such notice

triggers all other rights to presale challenge of the nonjudicial foreclosure, the failure to give such notice is prejudicial.

The entire purpose of the defectively-noticed Show Cause hearing in this Unlawful Detainer was to give Giovanni “and any and all occupants of the premises,” CP 19, the opportunity to raise these and any other defenses they may have. Deutsche Bank’s numerous procedural violations prevented Giovanni and the Goods from raising these defenses at the Show Cause hearing on February 19th, and as a consequence their property was lost. It was an abuse of discretion to refuse to vacate this hasty, one-sided order.

3. Fundamental Denial of Due Process

Because “[a] decision based on a misapplication of law rests on untenable grounds,” for purposes of finding abuse of discretion, *Ryan v. State, supra*, 112 Wn. App. at 900, it must necessarily be an abuse of discretion to refuse to vacate an order that violates fundamental due process. “Due process requires notice reasonably calculated, under all the circumstances, to [afford] interested parties . . . an opportunity to present their objections.” See, *Duskin v. Carlson*, 136 Wn.2d 550, 557, 965 P.2d 611 (1998). A motion note to the Seattle mail room, where no judicial proceedings are held, in a matter properly in Kent, which has been ordered to be reassigned to Kent, and which bears a “KNT” designation in the

caption, did not afford Giovanni and the Goods a reasonable opportunity to present their objections. As a consequence, they missed the one hearing that resulted in their property being taken away. This violates due process, and it was an abuse of discretion to refuse to vacate this order.

4. Vacating Commissioner Bradburn-Johnson's Order and Refusing to Vacate Commissioner Velategui's Judgment is not Justified by Any Argument in the Brief of Respondent

Without denying the numerous irregularities causing confusion – or even denying its blatant violation of Commissioner Watness's order – Deutsche Bank's main response is to recite Judge Spector's reconsideration findings. *Br. Resp.* at 12-19. These are refuted in detail in our Opening Brief, pages 36-44, and we will not repeat that here. The main point is that, based on the indisputable record violations by Deutsche Bank in where and how this Show Cause was noted, and its direct violation of Commissioner Watness's order, serious abuses of discretion are established.

Without getting drawn too far into Deutsche Bank's unnecessary "he said / she said" approach, we note independent verification of the Goods' version of events by the Seattle *ex parte* Courtroom Clerk, Robert Unchur, quoted at page 38 of our opening brief. *See*, CP 430-31. Mr.

Deutsche Bank's only other arguments in support of the rulings on vacatur are based on alleged technical insufficiencies in Giovanni's *CR 60* motion. *Br. Resp.* at 20-22. If the Court is familiar with the Yiddish term "chutzpah," it certainly applies in this case, in which Deutsche Bank was responsible for multiple prejudicial irregularities in procedure.

The Bank's technical arguments are insufficient to save Judge Spector's orders. First, even if it were true (which we deny) that there were procedural flaws in **Giovanni's** motion sufficient to warrant denying it without looking at its merits, it would still be an abuse of discretion for the trial court to grant **Deutsche Bank's** *CR 60* motion, setting aside Commissioner Bradburn-Johnson's proper order, which struck the defective Show Cause. CP 76. At most, the trial court should have denied both motions, and given Giovanni a chance to cure the procedural defects.

Second, although Deutsche Bank complains that Giovanni's motion failed to comply with *CR 60(e)* show cause procedures, and was not served like original summons, *Br. Resp.* at 21-22, its own *CR 60* motion (filed 12 days before Giovanni's) was based on a simple Note for Motion, served by mail on Counsel who had already appeared, and therefore it's own motion was defective in the exact same way as Giovanni's. CP 93-94. Since Deutsche Bank had already noted up its *CR 60* before Judge Spector, it cannot complain that Giovanni noted up a

similar cross-motion in the same way before Judge Spector. Giovanni's motion was simply in the nature of a cross-motion seeking complete relief in connection with a motion already noted by Deutsche Bank. In addition, the fact that Giovanni's *CR 60* was in the nature of a cross-motion alleviates the concern – if any – that five instead of six court days' notice was given. Certainly, there was no prejudice, since a similar issue was already presented by Deutsche Bank's own motion.

This parallelism in procedure highlights a further abuse of discretion by Judge Spector. Although Judge Spector faults Giovanni for noncompliance with *CR 60(e)*, **she granted Deutsche Bank's *CR 60* motion with the same procedural flaws, and upheld it on reconsideration.** CP 93-94, 796-97. If the trial court is serious that these minor procedural flaws were the reason for denial, then it was an abuse of discretion not to also deny Deutsche Bank's *CR 60* motion. Either Deutsche Bank's motion was procedurally defective, in which case it was an abuse of discretion to grant it, or both motions were properly before the court.

The conclusion is inescapable that Deutsche Bank has shown no reason to excuse the plain abuse of discretion committed by the Seattle King County Superior Court, in setting aside Commissioner Bradburn-Johnson's order, and in refusing to set aside the Velategui Judgment.

C. The Court Abused its Discretion by Awarding Sanctions Against Counsel for Giovanni/Goods, and Refusing to Award Sanctions Against Counsel for Deutsche Bank

1. Sanctions against Mr. Jones

In her Order of March 19, 2010, Judge Spector rules that “Richard L. Jones is sanctioned \$2,500 for creating confusion among 2 judicial officers.” CP 421. We have already pointed out that this order is based on unwarranted speculation as to what occurred before Commissioner Bradburn-Johnson, and that it lacks the requisite finding of bad faith, or any analysis of “baselessness” under *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 829 P.2d 1099 (1992). *Br. App.* at 32-35. Even assuming that Mr. Jones represented to Commissioner Bradburn-Johnson that no one had appeared in Seattle at the time and place noted in the Show Cause, that would have been fully accurate – since the Show Cause was noted for the mail room. Furthermore, if he stated no one appeared at all in Seattle, that was true to the best of his knowledge, based on the reasonable efforts to find the correct hearing location detailed in the declaration of the Goods, CP 218-21, and therefore it satisfies the reasonable inquiry prong of *CR 11*. *Bryant, supra*, 119 Wn.2d at 220. And even assuming that Commissioner Bradburn-Johnson would not have stricken the “KNT”-captioned Show Cause noted for the Seattle mail room but for Mr. Jones’ arguments to her (unlikely), under the circumstances of this case the

argument to a Kent Commissioner that this preposterously-noted Show Cause, in direct violation of Commissioner Watness's order, should be stricken, must be deemed to be well-grounded in fact and warranted by law, and therefore **not sanctionable**. *See, CR 11*.

In a masterpiece of obfuscation, Deutsche Bank accuses Mr. Jones of failing to inform Commissioner Bradburn-Johnson "that both the Order and Note for Show Cause always indicated the ex parte would be held at the King County Courthouse in Seattle." *Br. Resp.* at 19. By throwing in the phrase "the ex parte" to refer to "the hearing," the Bank apparently hopes this Court will be confused into believing that the Note and Show Cause designated the Ex Parte Department at the King County Superior Court in Seattle. In fact, the Show Cause Order designated the Seattle mail room, CP 19, under a "KNT" designation, CP 19, and the Note for Commissioner's Calendar also has a "KNT" designation and states **no place for the hearing**, CP 18. If Mr. Jones had done as Deutsche Bank says he should have, he would have been misleading the Court.

Deutsche Bank argues that Judge Spector's \$2,500 sanction was based in part on this non-disclosure. *Br. Resp.* at 20. If this is true, that further demonstrates Judge Spector's abuse of discretion. It cannot be sanctionable to fail to convey **inaccurate information** to the court, and any sanctions order based on such conduct must be reversed.

2. It was an Abuse of Discretion to Deny Sanctions Against Deutsche Bank

It is inexplicable that the trial court sanctioned Mr. Jones for supposedly creating “confusion,” while at the same time denying an award of sanctions against Deutsche Bank – the party that actually created the confusion. *See*, CP 252-54, 405-06. It was Deutsche Bank, not Jones, that filed this matter in the wrong administrative district. It was Deutsche Bank, not Jones, that failed to move for reassignment after being ordered to do so. It was Deutsche Bank, not Jones, that submitted a second Show Cause without attaching a copy of the Watness order, in violation of that order. It was Deutsche Bank, not Jones, that put a “KNT” designation on a Show Cause order noted for Seattle. It was Deutsche Bank, not Jones, that noted its Show Cause order for the Seattle mailroom. It should have been Deutsche Bank, not Jones, that was sanctioned for this misconduct. But the trial court’s Alice-in-Wonderland order does the very opposite. As such, it is manifestly unreasonable and based on untenable grounds and untenable reasons, and it constitutes a plain abuse of discretion.

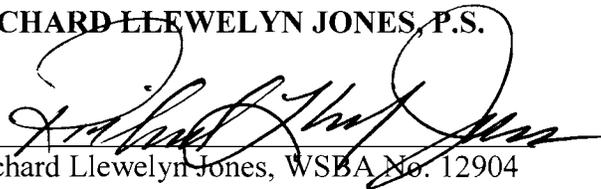
D. Attorneys’ Fees

Deutsche Bank claims that the Deed of Trust has “no relevance to Deutsche’s unlawful detainer action.” *Br. Resp.* at 26. But in the very next sentence it states that it was the purchaser at a trustee’s sale, *Br. Resp.*

Deutsche Bank claims that the Deed of Trust has “no relevance to Deutsche’s unlawful detainer action.” *Br. Resp.* at 26. But in the very next sentence it states that it was the purchaser at a trustee’s sale, *Br. Resp.* at 27 – and that’s the relevance. Unlawful Detainer lies in favor of the purchaser at a trustee’s sale upon giving the notices to which the borrower, grantor, and all junior to them, are entitled. *RCW 61.24.060(1)*. But for its claimed interest under the Deed of Trust, Deutsche Bank could not bring this action for Unlawful Detainer. Accordingly, Giovanni and the Goods should be awarded their attorneys fees on appeal under ¶26 of the Deed of Trust. CP 48; *see, RCW 4.84.330*.

RESPECTFULLY SUBMITTED this 12th day of April, 2011

RICHARD LLEWELYN JONES, P.S.



Richard Llewelyn Jones, WSBA No. 12904
Attorney for Appellants.

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

That on April 12, 2011, I arranged for service of Appellants' Reply Brief on the following parties:

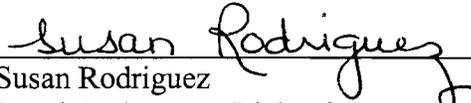
Office of the Clerk	<input type="checkbox"/>	Facsimile
Court of Appeals, Division I	<input checked="" type="checkbox"/>	Messenger
One Union Square	<input type="checkbox"/>	U.S. Mail
600 University St.	<input type="checkbox"/>	Overnight Mail
Seattle, WA 98101-4170		

Rochelle L. Stanford	<input type="checkbox"/>	Facsimile
Attorney at Law	<input checked="" type="checkbox"/>	Messenger
4375 Jutland Dr., Suite 200	<input type="checkbox"/>	U.S. Mail
San Diego, CA 92117-3600	<input type="checkbox"/>	Overnight Mail

Katrina Glogowski	<input type="checkbox"/>	Facsimile
Attorney at Law	<input checked="" type="checkbox"/>	Messenger
600 First Ave., Suite 501	<input type="checkbox"/>	U.S. Mail
Seattle, WA 98104	<input type="checkbox"/>	Overnight Mail

Jesse Baker	<input type="checkbox"/>	Facsimile
Attorney at Law	<input checked="" type="checkbox"/>	Messenger
14510 N.E., 20 th St., Suite 203	<input type="checkbox"/>	U.S. Mail
Bellevue, WA 98007-3747	<input type="checkbox"/>	Overnight Mail

DATED this 12th day of April, 2011.



 Susan Rodriguez
 Legal Assistant to Richard Jones

2011 APR 12 PM 3:23