

No. 65356-3-I

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

LUCIANO G. GIOVANNI,

Defendant/Appellant,

v.

DEUTSCHE BANK TRUST COMPANY AMERICAS  
AS TRUSTEE FOR RALI 2006QA11,

Plaintiff/Respondent.

2011 MAR 21 11:03:15  
COURT OF APPEALS  
DIVISION I  
CJ

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**BRIEF OF RESPONDENT**

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## I. RESTATEMENT OF ISSUES

1. Did the trial court abuse its discretion in issuing its March 19, 2010, Order Granting Deutsche's Motion to Set Aside [Commissioner's] Order and sanctioning Appellant's counsel \$2,500.00 for "creating confusion among (two) judicial officers." CP 398-399.

2. Did the trial court abuse its discretion in issuing its March 23, 2010, Order Denying Giovanni's Motion for Contempt and to Vacate Judgment. CP 405-406.

3. Did the trial court abuse its discretion in issuing its April 15, 2010, Order Denying Defendants Motion for Reconsideration and Denying Defendants Motion for Contempt and sanction Appellants' counsel \$500.00 "for filing an over length brief in violation of LCR 7(b)(5)(vi)." CP 706-724.

## II. STATEMENT OF THE CASE

A. Giovanni Appeared In Deutsche's Unlawful Detainer Action Claiming To Own And Be In Possession Of The Subject Property, And The Goods Did Not Appear.

Respondent Deutsche Bank Trust Company Americas as Trustee for RALI 2006QA11's ("Deutsche") is the current owner of the real property which is the subject of this action pursuant to a Trustee's Deed

recorded in the official records of King County on June 10, 2009, as Instrument no. 20090610001889. CP 367-379. Appellant Luciano G. Giovanni (“Giovanni”) was the trustor under the foreclosed Deed of Trust.

Deutsche filed a Complaint against Giovanni and John and Jane Doe, Unknown Occupants of the Premises, asserting they continued to occupy the property and refused to surrender possession to Deutsche. Giovanni answered the Complaint admitting he was in possession of the property. CP 367-379.

As now conceded in his Appellants Brief, Giovanni ceased to have any interest in the property in 2008, when he quit claimed the same to “Appellants” Paul Good and Diane L. Good (“Goods”) pursuant to a Quit Claim Deed. CP 367-379. Nonetheless, Giovanni appeared in Deutsche’s unlawful detainer action claiming not only to own the property but also to be in possession of it. Specifically, Giovanni filed an Answer, Counterclaim and Third Party Complaint for Wrongful Foreclosure, et. al. (“Answer”). CP 23-71. In his Answer, Giovanni:

A. Admitted “possession of the subject real property,” and

B. Claimed he was “the true and rightful owner” of the real property commonly known as 27705 23<sup>rd</sup> Ave., South, Federal Way, Washington 98003 and legally described as:

Lot 26 Scarborough Division No. 2,  
according to the plat thereof recorded in  
Volume 132 of Plats, Page(s) 47 and 48,  
records of King County, Washington.

CP 23-71.

There is no mention of the Goods in Giovanni’s Answer.<sup>1</sup>

B. Deutsche’s Motion for Order To Show Cause Was Noticed For And Heard At The Original Case Assignment Area Pursuant to LCR 82(e)(4)(C).

As a result of Giovanni’s Answer, Deutsche noticed an order to show cause hearing at the King County Courthouse. However, on

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<sup>1</sup> Giovanni is the only party to have appeared in the trial court, where he claimed to own and be in possession of the subject property; however, Giovanni’s counsel is prosecuting this appeal on behalf of the Goods as well, even though they did not appear in the trial court’s records until after the Judgment was entered on February 19, 2010. As the Goods were not parties to Deutsche’s unlawful detainer action at any stage of the proceeding, they are not authorized by Washington law to prosecute an appeal from any order of the trial court or the Judgment. See e.g., Sheets v. Benevolent & Protective Order of Keglers, 34 Wash.2d 851, 856 (1949).

December 16, 2009, Commissioner Watness issued a Minute Order indicating that amendment of the case assignment would be necessary. CP 362-366. Accordingly, Deutsche prepared a new Motion for Order to Show Cause and an Amended Case Assignment Designation and submitted the same for filing on or about January 29, 2010. The new motion noticed a hearing at the King County Courthouse on February 19, 2010, at 9:00 a.m. CP 362-366; 14-18. This was so because under the Local Rules, until the trial court actually entered an order of transfer, LCR 82(e)(2) and (e)(4)(D) required the case to proceed in the original case assignment area.

In this case, the trial court rejected the Amended Case Designation and docketed the order to show cause hearing for the King County Courthouse as noticed. CP 362-366. Under LCR 82(e)(C), “The Court on its own motion may assign or transfer cases to another case assignment area in the county whenever required for the just and efficient administration in King County.” Evidently, 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. CP 362-366.

C. Commissioner Carlos Velategui Issued A Judgment For Possession On 2/19/10.

The Goods filed a Declaration claiming they appeared for the order to show cause hearing. Specifically, the Goods claimed they actually were at the *ex parte* courtroom of the King County Courthouse February 19, 2010, from about 9:00 a.m. to 9:30 a.m. but “found no reference to the subject show cause hearing.” CP 218-231. The Goods further claimed they were informed by the *ex parte* clerk that “no one representing Plaintiff had checked in.” CP 218-231.

It is undisputed that Deutsche obtained a Judgment for possession of the property on February 19, 2010, in the *ex parte* courtroom of the King County Courthouse before Commissioner Carlos Velategui. CP 73-75. Seattle attorney Katrina Glogowski, engaged to appear on behalf of Deutsche at the order to show cause hearing, described the morning as follows:

On February 19, 2010, I arrived at the *ex parte* courtroom at the King County Courthouse at approximately 8:45 a.m. and waited for it to open. In the lobby area of the *ex*

*parte* courtroom the calendar for the day was posted showing which sub-room the cases would be heard. This case was clearly on the calendar for Commissioner Velategui pursuant to the court print out. Commissioner Velategui had an adoption proceeding that morning, so unless you were involved in the adoption, you could not enter the courtroom.

At approximately 9:20 a.m., Commissioner Velategui's courtroom opened. The case schedule was on a giant 5' x 5' peg board at the back of the room, which is up on an easel. Another large sign states "Check In With Clerk." I checked in with the clerk and confirmed the hearing was on the calendar. I provided the clerk my paperwork and waited for the case to be called. During that time, no one called out as being there for the Giovanni case. When the court clerk called the case, no one else responded. Commissioner Velategui commenced the hearing and entered a judgment, as opposing counsel

failed to appear. I was personally in the courtroom area  
from 8:45 a.m. until about 9:50 a.m., or so.

CP 360-361.

- D. After Leaving The King County Courthouse, The Goods Traveled To The Kent Courthouse And Obtained An Order From Commissioner Nancy Bradburn-Johnson After Their Counsel Represented Deutsche Failed To Appear In Either Seattle Or Kent.

Evidently, the Goods left the King County Courthouse and traveled to the Kent Courthouse, where they appeared *ex parte* without notice to Deutsche before Commissioner Nancy Bradburn-Johnson. Commissioner Bradburn-Johnson sanctioned Deutsche \$750.00 for failing to “appear in either Seattle or Kent” based upon Appellants’ counsel’s representation “he was in Seattle first and now appears in Kent - ECR is unavailable.” CP 76.

- E. Deutsche Moved Successfully To Set Aside Commissioner Bradburn-Johnson’s 2/19/10, Order; Giovanni Moved Unsuccessfully To Set Aside Commissioner Velategui’s 2/19/10, Judgment.

Deutsche filed a Motion to Set Aside Order under CR 60(b) before Judge Julie Spector, noted on her March 16, 2010, calendar. The motion established how the show cause hearing came to be docketed and confirmed for hearing at the King County Courthouse,

instead of Kent, and that Deutsche's show cause hearing was held and resulted in Commissioner Velategui's February 19, 2010, Judgment. CP 96-99; 100-107, 355-359, 360-361, 362-366 and 367-379.

Giovanni's response to Deutsche's motion essentially supported it. The March 10, 2010, Declaration of Paul Good & Diane Good, filed in support of Giovanni's Reply [sic] to Motion to Set Aside Order, actually admitted Judge Spector's "bailiff directed them to the *ex parte* department the Seattle Courthouse, located at 'W-320" and that they went there at about 9:00 a.m. and stayed until 9:30 a.m. CP 218-231. Accordingly, Judge Spector not only granted Deutsche's motion and set aside Commissioner Bradburn-Johnson's February 19, 2010, Order, but she also sanctioned Appellants' counsel \$2,500.00 "for creating confusion among 2 judicial officers." CP 398-399. Appellants appeal Judge Spector's March 19, 2010, Order Granting Deutsche's Motion to Set Aside Order.

After Deutsche filed its Motion to Set Aside Order, Giovanni filed a Motion for Contempt and to Vacate Judgment under CR 60(b), also before Judge Spector, noted on her March 23, 2010, calendar. CP 243-346. However, Deutsche's response established that Giovanni -

the only party who answered Deutsche's Complaint - was unable to set forth "facts constituting a defense to the action of proceeding," as required by CR 60(e)(1). CP 388-397. This is because while Giovanni answered Deutsche's Complaint alleging he was the owner, and in possession, of the property, his counsel's other clients, the Goods, filed the March 10, 2010, Declaration also claiming to be in possession of the property. CP 218-231. As now conceded the Appellants Brief, Giovanni ceased to have any interest in the property when he quit claimed it to the Goods in 2008. CP 367-379.

Citing her March 19, 2010, Order as vitiating Giovanni's motion, Judge Spector denied it. CP 405-406. Appellants appeal Judge Spector's March 23, 2010, Order Denying Giovanni's Motion for Contempt and to Vacate Judgment.

F. Deutsche Successfully Moved For Dismissal Of Giovanni's Counterclaim.

Deutsche filed a Motion to Dismiss Counterclaim Against Deutsche before Judge Spector, noted on her March 23, 2010, calendar. CP 112-115. Giovanni did not respond to Deutsche's motion. On March 23, 2010, Judge Spector granted the motion.

Appellants did not appeal the Order Dismissing Counterclaim against Deutsche.

G. Giovanni Unsuccessfully Moved For Reconsideration Of Judge Spector's 3/19/10 and 3/23/10 Orders.

Giovanni filed a Motion for Reconsideration under CR 59 before Judge Spector, noted on her April 13, 2010, 2010, calendar. CP 411-429. Giovanni's motion sought reconsideration of the Judge Spector's February 19, 2010, Order Granting Deutsche's Motion to Set Aside Order. CP 398-399. The motion also sought reconsideration of Judge Spector's March 23, 2010, Order Denying Giovanni's Motion for Contempt. CP 405-406. Giovanni's motion did not seek reconsideration of the portion of the Judge Spector's Order which denied reconsideration of his motion to vacate the Judgment.

Deutsche's response relied upon the files and evidence of record but again, the Goods filed the March 10, 2010, Declaration in particular. CP 218-231.

Judge Spector specially prepared a seven page order denying Giovanni's motion. CP 706-724. Appellants appeal Judge Spector's April 15, 2010, Order Denying Defendants Motion for Reconsideration and Denying Defendants Motion for Contempt.

Appellants claim Judge Spector abused her discretion regarding the aforementioned February 19, 2010, March 23, 2010, and April 15, 2010, Orders.

G. The Court Should Review The Evidence Under An Abuse Of Discretion Standard.

This appeal concerns the trial court's orders setting aside the Commissioner's Order against Deutsche, denying Giovanni's motion for contempt and to vacate the Judgment, and denying Giovanni's motion for reconsideration of the denial of his motion for contempt against Deutsche. Motions to vacate or for relief of judgment are addressed to the sound discretion of the trial court and will not be disturbed absent a showing of manifest abuse of discretion. Northwest Land and Investment, Inc. v. New West Federal Savings and Loan Ass'n, 64 Wash. App. 938, 942 (1992) (citations omitted). An abuse of discretion exists only when no reasonable person would take the position adopted by the trial court. Id. (citations omitted). Appeal from a denial of a CR 60(b) motion is limited to the propriety of the denial. Id. (citations omitted).

### III. ARGUMENT

A. The 2/19/10, Commissioner's Order Was Based, In Pertinent Part, On Appellants' Counsel Inaccurate Representations To The Court That Deutsche Failed To Appear At Its 2/19/10, Show Cause Hearing At The King County Courthouse In Seattle.

As set forth more fully in CP 706-724, Judge Spector, in her seven page April 15, 2010, Order, issued after review and consideration of the three motions at issue in this appeal, and the pleadings and records filed in the case, essentially found:

1. Deutsche noted the February 19, 2010, show cause hearing at the King County Courthouse in Seattle.
2. On February 19, 2010, Appellants' counsel appeared at the King County Courthouse in Seattle as noted.
3. The February 19, 2010, hearing was confirmed by the trial court's posted calendar on the easel board located outside of the courtrooms on the third floor of the King County Courthouse in Seattle, and by Ms. Llapitan, who confirmed the hearing and location. This finding was based on the Declarations of Katrina Glogowski, Esq. and Janet Llapitan. CP 360-361; 704-705.

4. On February 19, 2010, the Goods appeared for the show cause hearing at the King County Courthouse in Seattle along with Appellants' counsel. This finding was based on the Declaration of Paul Good and Diane Good, filed in support of Giovanni's Reply [sic] to Motion to Set Aside Order. CP 218-231.
5. Ms. Llapitan, the Supervisor of the Clerk's Office in Seattle instructed the Goods to report to the *ex parte* courtroom in Seattle, and Deutsche's show cause hearing was noted in Seattle and had always been noted in Seattle.
6. Mr. Unchur, the *ex parte* clerk in Seattle did not advise Appellants' counsel and the Goods to go to the Maleng Regional Justice Center, rather they chose to go there. This finding was based on the Declaration of Robert Unchur. CP 430-431. Judge Spector further found the record indicated the Goods never appeared at the Maleng Regional Justice Center before Commissioner Bradburn-Johnson.

7. Deutsche's February 19, 2010, show cause hearing was heard before Commissioner Velategui at the King County Courthouse in Seattle. This finding was based on the Declarations of Katrina E. Glogowski, Esq., Robert Unchur and Janet Llapitan, CP 360-361, 430-431 and 704-705, and Commissioner Velategui.
8. On February 19, 2010, the Seattle *ex parte* courtroom was closed from 9:00 a.m. to 9:20 a.m. during which time Commissioner Velategui conducted an adoption.
9. At 9:30 a.m., Commissioner Velategui entered Findings of Fact and Conclusions of Law in favor of Deutsche.
10. No answer or counterclaim had been confirmed by the court, even though Appellants' counsel had e-filed the Answer at 3:57 p.m. on February 18, 2010. Because Appellants' counsel failed to appear at the show cause hearing in Seattle, Commissioner Velategui entered the Findings of Fact and Conclusions of Law without being aware of the e-filed Answer.

11. Subsequently, Appellants' counsel appeared at the Maleng Regional Justice Center.
12. The record indicates that Appellants' counsel appeared before Commissioner Bradburn-Johnson at 9:58 a.m. at the Maleng Regional Justice Center.
13. Appellants' counsel engaged in a discussion with Commissioner Bradburn-Johnson on the record about the "KNT" versus "SEA" case designation. However, by that time, Commissioner Velategui had already entered Findings of Fact and Conclusions of Law at 9:30 a.m. at the King County Courthouse in Seattle.
14. Appellants' counsel also asserted before Commissioner Bradburn-Johnson that because of the "KNT" versus "SEA" designation, the case "would not track." Judge Spector found that was not true, as the show cause hearing had always been ordered and noted at the King County Courthouse in Seattle.
15. Appellant's counsel's misrepresentation to the trial court concerning the tracking of the case was factually

inaccurate. Judge Spector found that had Commissioner Bradburn–Johnson or the Clerk verified the hearing’s location through SCOMIS, either would have known that the hearing was noted property in Seattle. The February 19, 2010, show cause hearing was never noted or ordered to be at the Maleng Regional Justice Center.

16. Although EAR was down, SCOMIS indicated the correct location of the hearing. Judge Spector found that was confirmed by: 1) the note for the hearing, 2) the Order for the show cause hearing, 3) the postings on the easel located outside of the *ex parte* courtroom in the King County Courthouse in Seattle and 4) by Ms. Llapitan’s direction to the Goods outside of the *ex parte* courtroom in Seattle.

17. Without a legal or factual basis and with no notice to anyone, Appellants’ counsel somehow asked Commissioner Bradburn-Johnson to strike Deutsche’s show cause hearing and award sanctions against Deutsche.

18. Because of Appellants' counsel's inaccurate representations to the Court, Commissioner Bradburn-Johnson struck Deutsche's show cause hearing and sanctioned Deutsche's counsel \$750.00 in error.
19. Appellants' counsel's failure to be candid with Commissioner Bradburn-Johnson at the Maleng Regional Justice Center in Kent created the confusion, which resulted in Commissioner Bradburn-Johnson and Commissioner Velategui entering conflicting and contradictory orders.
20. Appellants' counsel also failed to acknowledge to Commissioner Bradburn-Johnson that he had only e-filed his Answer on February 18, 2010, at 3:57 p.m. the day prior to the show cause hearing.
21. It is undisputed that EAR was down. Judge Spector found that Commissioner Bradburn-Johnson and/or her Clerk in Kent did not verify the court docket through SCOMIS, and that SCOMIS did designate the case as a

Seattle case then (February 19, 2010) and it continued to be.

22. The *ex parte* calendar at the King County Courthouse in Seattle clearly identified that the hearing to show cause was in Seattle on February 19, 2010 at 9:00 a.m. Judge Spector noted the calendar is posted for the public on the easel board between the courtrooms.
23. Judge Spector noted that it was unfortunate that at approximately 10:16 a.m., Commissioner Bradburn-Johnson erroneously entered an order sanctioning Deutsche's counsel for failing to appear at the "hearing."
24. Judge Spector found that but for Appellants' counsel's actions, Commissioner Bradburn-Johnson would not have entered the order sanctioning Deutsche's counsel.
25. Judge Spector acknowledged Appellants' counsel's argument that because the wrong room number was on the show cause order of January 29, 2010, that somehow authorized him to go to the Maleng Regional Justice

Center and conduct an ex parte hearing without notice to anyone.

26. Judge Spector found the Note for Motion to Show Cause vitiated Appellants' counsel "fractured logic;" that he did not present to Commissioner Bradburn-Johnson the Note for Motion to Show Cause, rather he chose to discuss the "KNT" versus "SEA" designations. Appellant's counsel said on the record the order had the wrong room number, but failed to disclose that both the Order and Note for Show Cause always indicated the ex parte would be held at the King County Courthouse in Seattle.

A CR 60(b) motion is confined to matters extraneous to the final order or judgment, and is limited to the propriety of the denial, not the impropriety of the underlying orders. Bjurstrom v. Campbell, 27 Wash. App. 449, 450-51 (1980). Further, motions to vacate or for relief of judgment are addressed to the sound discretion of the trial court and will not be disturbed absent a showing of manifest abuse of discretion. Northwest Land and Investment, Inc. v. New West Federal Savings and Loan Ass'n, 64 Wash. App. at 942.

Based on the foregoing standards, Judge Spector's March 19, 2010, Order Granting Deutsche's Motion to Set Aside (Commissioner Bradburn-Johnson's) Order was based on the pleadings and records in the case and, thus, proper and not an abuse of discretion. Further Judge Spector's \$2,500.00 sanction against Appellants' counsel, "for creating confusion among 2 judicial officers," was based on both his inaccurate representations to Commissioner Bradburn-Johnson and also his failure to disclose relevant information to her. These orders were within the sound discretion of Judge Spector to issue, and should not be disturbed in the absence of any showing by Appellants of a manifest abuse of discretion.

B. The 3/23/10, Order Denying Giovanni's Motion for Contempt And To Vacate Judgment Was Based, In Pertinent Part, On His Failure To Comply With CR 60.

Deutsche opposed Giovanni's Motion for Contempt and to Vacate Judgment on the grounds: 1) it was filed without proper notice, 2) without following proper procedure and 3) it failed to state a single, credible ground for vacation of the Judgment, particularly where Giovanni lacked standing to defend the unlawful detainer action as a result of his 2008 transfer of the property.

1. Giovanni's Motion Was Procedurally Defective And Failed To Give Deutsche Sufficient Notice.

Giovanni's motion was not timely filed in accordance with LCR 7(b)(4), which provides that the "moving party shall serve and file all motion documents no later than six court days before the date the party wishes the motion to be considered." The motion was filed and served March 15, 2010. CP 243-346. The Notice for Hearing set a hearing date of March 23, 2010, but CR 6(a) clearly states that when computing any period of time under the rules that the "day of the act, event, or default, from which the designated period of time begins to run shall not be included." Applying these rules, Deutsche and the trial court were only provided with **five** court days notice of the motion, and no service days. The Giovanni motion was therefore not in compliance with LCR 7(b)(4).

2. Giovanni's Motion Was Procedurally Defective For Failing To Comply With Standards Governing Vacation of Judgment.

Giovanni's motion was also procedurally defective for failing to comply with the procedures set forth in CR 60(e) for vacation of a judgment. CR 60(e) provides for an application by motion for an order to show cause. If granted, the Court "shall enter an order fixing the

time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.” CR 60(e)(2). The motion and order to show cause “shall be served upon all parties affected in the same manner as in the case of a summons in a civil action . . .” CR 60(e)(3). Applying these rules, it was clear Giovanni made no attempt to comply with the standards governing vacation of the Judgment.

3. Giovanni Had No Standing To Defend The Unlawful Detainer Action, And Paul And Diane L. Good May Have Had Standing But Never Appeared In The Unlawful Detainer Action.

A motion for vacation of judgment by a defendant shall set forth “facts constituting a defense to the action of proceeding.” CR 60(e)(1). However, Giovanni never had standing to defend the unlawful detainer action.

As now conceded in the Appellants Brief, Giovanni ceased to have any interest in the property in 2008, when he quit claimed the same to the Goods pursuant to a Quit Claim Deed. CP 367-379. Nonetheless, Giovanni appeared in Deutsche’s unlawful detainer action

by filing an Answer claiming not only to own the property but also to be in possession of it. CP 23-71.

Based on Giovanni's recent concession, he never had standing to defend Deutsche's unlawful detainer action. "A person has standing to challenge a court order or other court action if his protectable interest is adversely affect thereby. The interest shown cannot be simply [an] abstract interest . . ." Vovos v. The Honorable William J. Grant, Judge of the Spokane County Juvenile Court, 87 Wash. 2d 697, 699 (1976).

As for the Goods, they may have had standing to defend Deutsche's unlawful detainer action, as persons claiming to be the occupants, but the Goods never appeared in the action. In any event, Giovanni was the moving party, and as such, he could not satisfy the requirement of CR 60(e)(1) that he set forth a defense, because he ceased to have any interest in the property upon which to claim a aright to possession of it.

As set forth more fully in CP 706-724, Judge Spector's seven page April 15, 2010, Order, essentially found:

1. Giovanni's Motion for Contempt and to Vacate Judgment failed to comply with the notice requirements of LCR 7(b)(4).
2. Giovanni's Motion for Contempt and to Vacate Judgment Pursuant to 60(a) did not relieve him from the Judgment because CR 60(a) states that "Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative."
3. Giovanni's Motion for Contempt and to Vacate Judgment failed to comply with the procedures set forth in CR 60(e) for vacation of a judgment.
4. Giovanni lacked standing to defend the unlawful detainer action based upon his transfer of the property prior to the trustee's sale and, therefore, did not satisfy the requirements of CR 60(e)(1) applicable to vacation of a judgment that he set forth facts constituting a defense to the action or proceeding.

5. Lastly, Judge Spector found Appellants' counsel failed "again" to follow local court rules by filing an over length brief in the matter without having previously requested authority to do so, and she confirmed her March 23, 2010, sanction against Appellants' counsel and imposed an additional sanction of \$500.00 for violation of LCR 7(b)(5)(vi).

Again, a CR 60(b) motion is confined to matters extraneous to the final order or judgment, and is limited to the propriety of the denial, not the impropriety of the underlying orders. Bjurstrom v. Campbell, 27 Wash. App. at 450-51. In connection with Giovanni's Motion for Contempt and to Vacate Judgment, Judge Spector found multiple, repeated violations of the court and local court rules, and the orders were within her sound discretion to issue.

- C. The 4/15/10, Order Denying Giovanni's Motion For Reconsideration Was Based Upon Giovanni's Failure To Satisfy CR 59.

Giovanni's Motion for Reconsideration was simply a rehashing of his prior motions. In is undisputed Giovanni's defense team was in the right place at the right time for Deutsche's February 19, 2010, show

cause hearing, and offered no credible explanation for not appearing. The totality of Appellants' efforts to gather evidence was without any regard for relevance or ability to affect Giovanni's lack of standing to defend the unlawful detainer action, which was required to obtain vacation of the Judgment. This was particularly so, where Appellants created further confusion at the hearing before Judge Paris Kallas on a non-party's Motion to Quash Subpoena (CP 444-473) which had nothing to do with Deutsche. Accordingly, Judge Spector issued her seven page, April 15, 2010, Order, which was based upon the evidence in the record and correct application of appropriate authorities, and it was within her sound discretion to make the findings therein.

D. The Deed Of Trust Does Not Provide A Basis For Attorneys' Fees Between Appellants and Respondent.

Giovanni's Deed of Trust is neither of record nor relevant to Deutsche's unlawful detainer action. Neither is there any record that the Goods became a party to the Deed of Trust by assumption or otherwise. Indeed, the Goods were not even parties to the unlawful detainer proceeding. Rather, CP 48 appears to be a document filed by a Third Party Defendant. It has no relevance to Deutsche's unlawful detainer action.

Deutsche was the purchaser of the property at a trustee's sale. Deutsche's action was for possession of the property, not to enforce the terms of Giovanni's foreclosed Deed of Trust. Giovanni's Counterclaims against Deutsche have been dismissed, and Deutsche is no longer a party to the pending third-party action. Giovanni's foreclosed Deed of Trust does not provide authority for an award of attorneys' fees to any party to the instant appeal.

#### IV. CONCLUSION

For all of these reasons, the Court should affirm the trial court's February 19, 2010, March 23, 2010, and April 15, 2010, Orders.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of March, 2011.

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