

65844-1

65844-1

NO. 65844-1

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION I

J. PHILLIP RHODES,
Plaintiff/Respondent,

v.

ALEXANDER MCLAREN,
Defendant/Appellant.

BRIEF OF RESPONDENT AND MOTION FOR DISMISSAL OF
APPEAL

2012 MAY 21 AM 11:59
COURT OF APPEALS DIV I
STATE OF WASHINGTON

Attorney for Respondent:

Alan R. Souders

913 Seventh Street
Anacortes, Washington

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Kelly v. Schorzman pp. 2, 8
3 Wash.App. 908 (1970)

Lewis Pacific Dairymen's Assoc. v. Turner . pp.2, 8
50 Wn.2d 762 (1957)

Mathison v. Anderson. pp. 3, 7
107 Wash. 617 (1919)

Lindsay v. Scott pp. 3, 7
56 Wash. 206 (1909)

Cohen v. Stingl. p. 10
51 Wn.2d 866 (1958)

RAP 2 pp. 3, 6, 8

RAP 5 pp. 6, 7, 8

CR 5 p. 7

CR 58 p. 7

A. INTRODUCTION AND MOTION FOR DISMISSAL

Appellant introduces his brief with a self-serving recitation of supposed events that is without support and without any listing of authority or reference. Respondent will not comment further, except to note that this brief will follow the same format and divisions as used by Appellant in his brief. Because Appellant's appeal is untimely, Respondent moves for its dismissal.

B. ASSIGNMENTS OF ERROR

Appellant states eighteen Assignments of Error. Each and every one of those Assignments of Error are wholly invalid and must be dismissed on jurisdictional grounds.

Assignment of Error 1 is based upon an Order Granting Equitable Relief dated March 15, 2007. Assuming that the Order was even appealable, the Assignment of Error is untimely in that the Notice of Appeal here was filed on August 6, 2010. The

date of this appeal is thus three years, four months and twenty-two days after the Order was entered. A Notice of Appeal must be filed within thirty days of entry of an appealable order, or the court of appeals will be without jurisdiction to consider the order. Kelly v. Schorzman, 3 Wash.App. 908, 911 (1970). When no timely appeal is prosecuted from order granting injunction pendent lite, the appellate court has no jurisdiction to review it. Lewis Pacific Dairymen's Assoc. v. Turner, 50 Wn.2d 762, 770 (1957).

The remaining Assignments of Error - numbers 2 through 18 - are untimely in that they all refer to findings of fact and conclusions of law entered on March 11, 2010, Enclosure (1), and on a judgment also entered entered on March 11, 2010. Enclosure (2). As noted above, this appeal was filed on August 6, 2010, four months and twenty-six days [or one hundred and forty-eight days] after the judgment. A final judgment is

appealable, regardless of whether the judgment reserves for future determination an award of attorney fees or costs. RAP 2.2(a)(1). The time for taking an appeal commences to run from the time judgment is filed. Mathison v. Anderson, 107 Wash. 617, 618-619 (1919). The time for taking appeal from a final judgment runs from the date of entry of the judgment, and an appellant is chargeable with notice of that date. Lindsay v. Scott, 56 Wash. 206, 207 (1909).

C. STATEMENT OF THE CASE IN RELEVANT PART

This case does concern a real estate purchase and sale contract and its breach. As Appellant states in his brief, the contract provided that in the event of suit, the prevailing party is entitled to reasonable attorneys' fees and expenses.

Appellant Brief p. 6; Trial Ex. 3.

The trial court concluded that the Defendant [Alexander McLaren] breached the contract by not removing an encroachment within a reasonable

period of time. Conclusion of Law 4.3. The trial court also concluded that the encroachment breached the contract between the parties by not removing the encroachment when the encroachment prevented the Plaintiff [J. Phillip Rhodes] from obtaining a building permit. Conclusion 4.11. The trial court concluded that the Plaintiff [J. Phillip Rhodes] was entitled to a judgment for Defendant's [Alexander McLaren's] breach of contract. Conclusion 4.12. The trial court concluded that as the net prevailing party, Plaintiff [J. Phillip Rhodes] was entitled to attorney fees and costs for Defendant's [Alexander McLaren's] breach of his contract. Conclusion 4.14. The trial court made and entered findings of fact and conclusions of law on March 11, 2010. Enclosure (1).

Consistent with its findings and conclusions, and noting that it had entered such findings and conclusions, the trial court entered judgment on March 11, 2010. That judgment stated the

entitlement of the Plaintiff [J. Phillip Rhodes] to payment of his taxable costs and attorney fees, in accordance with the contract, in an amount to be determined separately and included in a supplemental judgment. Judgment for Plaintiff, Enclosure (2), p. 3.

A Supplemental Judgment for Attorney Fees and Costs was entered on July 9, 2010. Enclosure (3). The Supplemental Judgment noted that Judgment for the Plaintiff was entered on March 11, 2010, reserving the amount of attorney fees and costs. Enclosure (3), p.2.

D. SUMMARY OF ARGUMENT

Appellant Alexander McLaren's appeal should be dismissed, because it was untimely filed. Respondent J. Phillip Rhodes moves for dismissal of this appeal on that basis.

E. ARGUMENT

Respondent will be somewhat brief in his argument, as the thrust of the argument is jurisdictional. Because of this focus on jurisdiction, virtually all of the Appellant's arguments and citations can and will be ignored.

RAP 2.2 clearly states which decisions of the Superior Court may be appealed. Specific to this case is a Final Judgment. The final judgment in any action or proceeding is appealable, *regardless of whether the judgment reserves for future determination an award of attorney fees or costs.* RAP 2.2(a)(1), emphasis added.

Disregarding exceptions not relevant to this case, a notice of appeal must be filed in the trial court within 30 days after the entry of the decision which the party filing the notice wants reviewed. RAP 5.2(a).

The date of entry of a trial court decision is determined by CR 5(e) and 58. RAP 5.2(c). The filing of pleadings and other papers shall be made by filing them with the clerk of the court. CR 5(e). Judgments shall be deemed entered for all procedural purposes from the time of delivery to the clerk for filing. CR 58(b). The provisions of CR 5(e) and CR 58(b) are reinforced by the long-standing case law of Mathison v. Anderson and Lindsay v. Scott that the time for taking an appeal runs from the date of entry of judgment and the appellant is chargeable with notice of that date.

Reviewing the relevant dates, there is no issue or question that judgment in the trial court was entered on March 11, 2010. Enclosure (2). There is also no question that Supplemental Judgment was entered on July 9, 2010. There is no question that this appeal was taken by a notice of appeal filed on August 6, 2010.

As for the contents of the judgments, the Judgment of March 11, 2010 determined the case. The only issue it reserved was the amount of costs and fees to be awarded to the Plaintiff [J. Phillip Rhodes]. The award of costs and fees was not to be determined later, only the amount of those fees and costs. Thus, the judgment of March 11th was a final judgment in this action. It falls under the clear language of RAP 2.2 (a)(1) as to what is appealable. It was the final judgment in the action, and was appealable, regardless of the fact that the judgment reserved for future determination the amount of attorney fees or costs.

When did the judgment of March 11, 2010 have to be appealed? Such an appeal must be taken within 30 days of its entry, per RAP 5.2(a). Under the rules of Kelly v. Schorzman and Lewis Pacific Dairymen's Assoc. v. Turner, unless a notice of appeal is filed within thirty days of entry of an appealable order, the appellate court is without

jurisdiction to consider the order. The thirty days for appeal of the March 11, 2010 judgment ran out on April 10, 2010. The notice of appeal was filed August 6, 2010. It is too late.

The court is without jurisdiction to consider an untimely appeal and it should be dismissed. The court may not permit an extension of time for taking an appeal in any direct or indirect manner, so as to evade express jurisdictional requirements that an appeal must be taken within a certain time. Cohen v. Stingl, 51 Wn.2d 866, 868 (1958).

The argument above is jurisdictionally conclusive as to the judgment of March 11, 2010. Is that judgment what is being appealed here? Because it must be admitted that Appellant [Alexander McLaren] did file a timely notice of appeal as to the Supplemental Judgment of July 9, 2010.

Reading the Appellant's brief shows with certainty that it is the judgment of March 11th which he

wants reviewed. The entire argument of Appellant's brief [in his section E - Argument] is addressed to the basic decision of the trial court. None of the argument of Appellant's section E [except for a very few words] addresses the amount of attorney fees and costs which the trial court awarded to the Plaintiff [J. Phillip Rhodes]. All of the argument concerns *whether* fees and costs should have been awarded to the Plaintiff. But that matter of whether was determined in the March 11th judgment. And as to that, the Appellant is too late to raise the point.

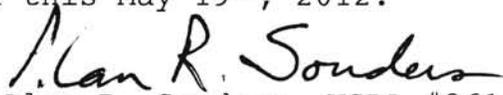
Because Appellant [Alexander McLaren] presents no argument or evidence that the amount of costs and attorney fees awarded to Respondent [J. Phillip Rhodes] was inappropriate, his appeal as to that amount should be dismissed.

F. CONCLUSION

Because Appellant Alexander McLaren did not file his appeal of the Skagit County Superior Court Judgment of March 11, 2010 within thirty days of entry of that judgment, his appeal of any issues in that judgment is untimely and should be dismissed.

Because Appellant submits no evidence or argument that the amount of costs and attorney fees awarded to Respondent [J. Phillip Rhodes] by the Skagit County Superior Court's Supplemental Judgment of July 9, 2010 was inappropriate, his appeal as to that amount should be dismissed.

Respectfully submitted this May 19th, 2012.


Alan R. Souders, WSBA #26192
Attorney for Plaintiff-
Respondent J. Phillip Rhodes

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SUPERIOR COURT OF THE STATE OF WASHINGTON, SKAGIT COUNTY

J. Phillip Rhodes)
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 Plaintiff)
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 v.)
)
 Alexander McLaren,)
)
 Defendant)
 _____)

No. 07-2-00019-7

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

I. CASE AND TRIAL BACKGROUND

1.1 This matter for Trespass, Easement, Breach of Contract and Nuisance as against Alexander McLaren was tried to the Court without a jury on August 12th and 13th, 2008 and November 3rd, 4th, 24th and 25th, 2008, with Judge David Needy presiding at the trial.

1.2 The plaintiff J. Phillip Rhodes appeared at the trial personally and by and through his attorneys of record, Alan R. Souders and John P. Livingston. The defendant Alexander McLaren appeared personally at trial and by and through his attorney, Richard J. Hughes.

1.3 Plaintiff claimed that the continuing existence of the old house on the seller's lot breached a provision of the parties' purchase and sale agreement that required removal of the house in its entirety. Plaintiff also claimed Defendant's failure to timely remove an encroachment onto plaintiff's lot breached the purchase and sale agreement and that encroachment constituted a trespass. Plaintiff also claimed defendant's neighboring lot and house constituted a nuisance. Plaintiff further claimed that he was owed an easement to access his property from the west.

1.4 Defendant moved for a Directed Verdict to dismiss all of plaintiff's claims. The Court dismissed plaintiff's major breach of contract claim for removal of the entirety of the house on the grounds that the claim was inconsistent with the

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

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ORIGINAL

ENCLOSURE (1)

1 express terms of the parties' agreement and precluded by the Parol Evidence
2 Rule. The Court deferred determination of the plaintiff's breach of contract claim
3 to remove a portion of the house that was encroaching on the plaintiff's property
4 and expressly discussed in the parties' agreement.

5 1.5 The Court dismissed the plaintiff's claim regarding removal of the debris
6 from seller's lot because it was not alleged in the plaintiff's initial or amended
7 complaints.

8 1.6 The Court dismissed the plaintiff's claim for trespass on the grounds that
9 the duty to remove an encroachment was expressly stated in the purchase and
10 sale agreement and therefore barred by the Economic Loss Rule.

11 1.7 The Court dismissed the plaintiff's easement claim on the grounds that an
12 easement was not expressly conveyed to the plaintiff, was not a part of the parties'
13 agreement, and was not implied or necessary under plaintiff's circumstances as he
14 had alternative direct access to his lot and it was not prescriptively granted or
15 otherwise available to plaintiff.

16 II. EVIDENCE PRESENTED

17 2.1 The following witnesses were called and testified:

- 18 (a) For the plaintiff: Alexander McLaren, J. Phillip Rhodes, Paul Monohon,
19 Candace Cooper, J. Randy Cox, Frank Jeretzky, Scott Reed, David
20 Parsons, Dr. David Fewings, Brian Youngquist and Don Measamer.
21 (b) For the defendant: Alexander McLaren and Roberta Galloro.

22 2.2 The exhibits listed on the attached exhibit list were offered and admitted
23 into evidence.

24 III. FINDINGS OF FACT

25 Based on the evidence presented at trial and pursuant to CR 52, the Court finds:

26 3.1 Plaintiff owns the real property at 101 Fifth Street in the City of Anacortes,
27 Skagit County, Washington.

28 3.2 Plaintiff's property is lot 1 of the Packard Estates, shown by survey
recorded under Skagit County Auditor's file number 200406210184.

3.3 Plaintiff purchased lot 1 of the Packard Estates from Defendant in
December of 2005 under a written Purchase and Sale Agreement.

1 3.4 Defendant owns the real property at 107 Fifth Street in the City of
2 Anacortes.

3 3.5 Defendant's property is lot 2 of the Packard Estates, as shown by the
4 survey noted above.

5 3.6 Plaintiff's south property line adjoins the north property line of Defendant's
6 north property line.

7 3.7 Plaintiff's west property line adjoins a portion of Defendant's northeasterly
8 property line.

9 3.8 Defendant's property includes an abandoned residential structure,
10 referred to hereinafter as the Packard House.

11 3.9 The Packard House encroached onto the Plaintiff's property at lot 1 by an
12 area approximately six feet by eight feet.

13 3.10 The Packard Estates consist of five residential lots and one shared lot of
14 tidelands, which are available for use by the five residential lot owners.

15 3.11 The Packard Estates include a twenty-foot wide access easement for use
16 by the residential lot owners.

17 3.12 The access easement is in the shape of a "U" with the closed end of the
18 U facing south and the two ends of the U connecting to Fifth Street, a public street.

19 3.13 Defendant's property at lot 2 includes a portion of the twenty-foot wide
20 access easement, running north and south across the westerly portion of his
21 property.

22 3.14 The access easement runs through the center of a panhandle shaped
23 portion of Defendant's property, at the northwesterly side of that property.

24 3.15 To connect to the access easement from the west side of Plaintiff's
25 property, it is necessary to cross a portion of Defendant's lot 2, through which the
26 access easement runs. However, Plaintiff has alternate access to his property from
27 a public street.

28 3.16 The plans for the Packard Estates envisaged a driveway from the garage
on the west side of Plaintiff's lot 1 which would cross Defendant's lot 2 to connect to
the U shaped access easement.

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3.17 Subsequent to the sale of lot 1 to Plaintiff, Defendant provided plans for a house on lot 1 showing a garage facing west, toward the panhandle of lot 2, and with a driveway crossing lot 2 to connect to the U shaped access easement.

3.18 Lot 1 adjoins a public street - Fifth Street - and so does not require use of the U-shaped easement for access to the property.

3.19 Plaintiff and Defendant made a written contract on December 20, 2005, by which Plaintiff would purchase lot 1 from Defendant for \$550,000.

3.20 The terms of the contract noted the encroachment of the Packard House onto lot 1, by an Addendum. The language of that addendum was as follows:

Buyer acknowledges that the existing house, an historic Anacortes mansion, situated on the adjacent Lot 2 possibly encroaches on the easement running between Lots 1 and 2 by approximately three feet (less than the 10 foot boundary setback requirement for Lot 1), and hereby accepts such encroachment until said house is removed by Seller who is actively engaged in its removal. If the house should encroach to such extent as to prevent Buyer from obtaining a building permit, Seller agrees to remove that portion of the house that encroaches to such extent as to prevent issuance of the building permit.

3.21 The terms of the contract Addendum noted that the Defendant was actively engaged in moving the Packard House from the Packard Estates.

3.22 The terms of the contract Addendum noted that the encroachment of the Packard House onto lot 1 would be removed by Defendant if that encroachment prevented issuance of a building permit for lot 1.

3.23 The encroachment of the Packard House onto lot 1 did prevent the issuance of a building permit for lot 1.

3.24 Defendant was obligated to remove the Packard House from the Packard Estates by his contract with Plaintiff.

3.25 Defendant never took any action to comply with his contract obligation to remove the encroachment.

3.26 Plaintiff was damaged by Defendant's failure to remove the encroachment.

3.27 Trial Exhibit 38, while not a complete representation of all events, shows a time line for important events of the dispute which led to the trial of this action.

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3.28 The testimony of the Plaintiff and that time line show that letters from the Plaintiff to the Defendant in November of 2006 effectively gave notice to the Defendant that the Packard House encroachment onto lot 1 was preventing the issuance of a building permit for that lot. The specific effective date is November 17, 2006.

3.29 Nothing in the contract between the parties required that the Packard House encroachment be the only factor preventing issuance of a building permit for lot 1.

3.30 The encroachment of the Packard House onto Plaintiff's lot 1 and Defendant's failure to remove that encroachment delayed the Plaintiff from commencing construction until June 30, 2007, when Plaintiff removed the encroachment under authority of an order from this court.

3.31 The direct cost to Plaintiff for removal of encroachment: **\$1,025.00**

3.32 David R. Fewings, MBA, Ph.D., testified for the Plaintiff regarding monetary damages incurred by the Plaintiff due to the Defendant's Packard House encroaching onto Lot 1. The Court finds that the Defendant delayed Plaintiff's construction between November 17, 2006 and June 30, 2007. This delay cost the Plaintiff \$32,900 due to a number of factors, including:

- (a) The need for additional financing of the property due to expired financing: \$5,055
- (b) Additional property taxes for the seven-month delay: \$3,194
- (c) Increased construction costs, due to Inflation: \$9,534
- (d) Additional carrying costs of Plaintiff's loan payments (principal & interest): \$15,117

3.33 The December 2005 contract between the parties did not obligate the Defendant to remove the entire Packard House from its present location.

3.34 The contract between the parties provided for attorney fees to the prevailing party if suit was brought to enforce the contract.

3.35 Plaintiff is the prevailing party for enforcement of this contract action. Defendant is the prevailing party on Rhodes' contract claim for duty to remove the house in its entirety.

3.36 Plaintiff has incurred attorney fees and costs in bringing and maintaining this lawsuit.

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- 3.37 The Packard House is abandoned and in very poor condition.
- 3.38 The Packard House is derelict.
- 3.39 The Packard House is beyond effective repair.
- 3.40 The Packard House has been vandalized.
- 3.41 The Packard House has broken windows which have not been boarded up or repaired.
- 3.42 The Packard House condition is unhealthy for habitation.
- 3.43 The Packard House is unsafe for persons on the property and potentially to neighboring properties in case of fire. However, a previous minor fire at the Packard House failed to cause any personal injury or damage to adjoining property owners.
- 3.44 The Packard House and its grounds contain significant debris.
- 3.45 The Packard House's condition distresses and reduces the value of the neighboring properties.
- 3.46 The Packard House grounds have not been maintained.
- 3.47 The Packard House has been damaged by a fire in an upstairs room.
- 3.48 The Packard House has had standing water in its basement from time to time.
- 3.49 The Packard House has extensive mold and mildew on the walls and ceilings in its interior.
- 3.50 The Packard House has no water service.
- 3.51 The Packard House has no sewer service.
- 3.52 The Packard House has no electric service.
- 3.53 The Packard House has no telephone service.
- 3.54 The Packard House has no gas service.

- 1 3.55 The Packard House attracts vagrants.
- 2 3.56 No use is being made of the Packard House.
- 3
- 4 3.57 The Packard House shows evidence of drug use by persons who have
broken into the house.
- 5 3.58 The Packard House is not set back from its side lot lines in accordance
6 with zoning requirements.
- 7 3.59 The Packard House is approximately 6-8 feet away from the house to its
8 immediate south [on lot 3].
- 9 3.60 The Packard House is approximately 5 feet away from the house under
construction on Plaintiff's lot 1.
- 10 3.61 The condition of the Packard House and its close proximity to the Rhodes
11 house pose a fire hazard to the Rhodes house.
- 12 3.62 The Packard House encroaches onto and prevents full use of ten-foot
13 wide easements located on the property lines between lots 1 and 2 and lots 2 and 3.
- 14 3.63 By encroaching onto those easements, any person using the easements
15 must use the five feet of the easements which lie on lot 1 and on lot 2.
- 16 3.64 Neighbors in the vicinity of the Packard House have complained to the
City of Anacortes about its condition and sought its removal.
- 17 3.65 The presence of the Packard House is offensive, inconvenient and
18 annoying, however, it does not constitute a nuisance under Washington law.
- 19 3.66 The Packard House is a permanent feature, and the effect on the
20 Plaintiff's property at lot 1 is permanent, not temporary.
- 21 3.67 The presence of the Packard House has decreased the value of Plaintiff's
22 property.
- 23 3.68 While Plaintiff only prevailed on one of his causes of action, he is the net
24 prevailing party in this action, entitled to his reasonable attorney fees and costs in
25 accordance with his contract with Defendant McLaren for the action on
26 which he prevailed. Defendant McLaren may submit his attorney's fees for the
issues on which he prevailed for possible offsetting against the Plaintiff's attorney
fees.

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CONCLUSIONS OF LAW

In accordance with the findings above and again pursuant to CR 52, the court makes the following conclusions of law:

4.1 This court has jurisdiction to decide this matter, pursuant to RCW Section 2.08.010. Jurisdiction over the parties is proper because the Plaintiff and Defendant are Washington residents.

4.2 Venue is proper under RCW 4.12.010, because this action affects title to real property in Skagit County. Venue is also proper under RCW 4.12.025, because Defendant McLaren is a resident of Skagit County.

4.3 The encroachment of the Packard House belonging to Defendant onto Plaintiff's lot 1 was a breach of contract when not removed in a reasonable period of time after Plaintiff acquired lot 1.

4.4 The damages for the Packard House encroachment are governed by the December 2005 contract between the parties.

4.5 Plaintiff's breach of contract claim for removal of the entirety of the house is denied on the grounds that the claim is inconsistent with the express terms of the parties' agreement and precluded by the Parol Evidence Rule.

4.6 Plaintiff's breach of contract claim for removal of the debris in defendant's lot is denied because it was not pled.

4.7 While the layout of the Packard Estates envisaged a driveway from the garage on lot 1, where that driveway would cross lot 2 to connect to the twenty-foot wide access easement on lot 2, Plaintiff did not rely on such access under the terms of the December 2005 contract between the parties and an easement across lot 2 was thus not implied.

4.8 Plaintiff's claim in tort for trespass is denied and barred based on the Economic Loss Rule.

4.9 Plaintiff's breach of contract claim for easement is denied based on the Parol Evidence Rule and Statute of Frauds because defendant never promised to grant an easement in the parties' agreement nor has plaintiff otherwise acquired an easement by prescription, necessity or otherwise.

4.10 Plaintiff's claim in tort for nuisance is denied for the following reasons: The Packard House and lot, while not aesthetically pleasing, are not a nuisance as a matter of law. That lot contains debris, in large part, caused by removal of the

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encroachment. While the Packard House is structurally sound, the facts set forth in the findings pertaining to its unappealing condition do not meet the nuisance standard in Washington statute and case law. Specifically, neither the adjacent house nor its lot physically invade or create any emanation that physically invades, encroaches, or otherwise disturbs the use of the plaintiff's lot.

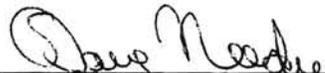
4.11 Defendant breached his contract with Plaintiff by not removing the encroaching part of the Packard House from lot 1, when that encroachment prevented Plaintiff from obtaining a building permit.

4.12 Plaintiff is entitled to a judgment for damages for Defendant's breach of that contract.

4.13 Pursuant to RCW 7.48 and per the court's review of the applicable case law, the condition and location of the Packard House cannot be found to constitute a nuisance as a matter of law, despite the potential diminution in value to Plaintiff's property that such condition causes.

4.14 As the net prevailing party, Plaintiff is entitled to attorney fees and costs for Defendant's breach of his contract, subject to possible offset of defense attorney fees for those actions on which he prevailed.

Done this 11 day of March, 2010.

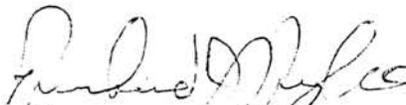


David Needy, Judge

Respectfully presented:


Alan R. Souders, WSBA No. 26192
Attorney for the Plaintiff

Approved as to form:

 # 77897
Attorney for Defendant

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 9

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SUPERIOR COURT OF THE STATE OF WASHINGTON, SKAGIT COUNTY

J. Phillip Rhodes

Plaintiff

v.

Alexander McLaren,

Defendant

No. 07-2-00019-7

SUPPLEMENTAL JUDGMENT
FOR PLAINTIFF FOR
ATTORNEY FEES & COSTS

JUDGMENT SUMMARY

JUDGMENT CREDITOR:	J. Phillip Rhodes
ATTORNEYS FOR JUDGMENT CREDITOR:	Alan R. Souders & John P. Livingston
JUDGMENT DEBTORS:	Alexander McLaren
PRINCIPAL AMOUNT OF JUDGMENT:	\$ none
PREJUDGMENT INTEREST at 12%:	\$ none
ATTORNEY FEES:	\$36,423.00
COSTS OF ACTION:	\$ 503.00
TOTAL JUDGMENT:	\$36,926.00
POSTJUDGMENT INTEREST RATE:	12%

Supplemental Judgment for Plaintiff - 1

Law Office of Alan R. Souders
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Anacortes, Washington 98221
360-299-3060

ENCLOSURE (2)

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THIS MATTER was tried by the Court without a jury in sessions of August 12th and 13th, and November 3rd, 4th, 24th, and 25th, 2008, the Honorable David Needy presiding. Findings of Fact and Conclusions of Law were entered on March 11, 2010. Judgment the Plaintiff in the principal amount of \$32,900 was entered on March 11, 2010 with a supplemental judgment for attorney fees and costs reserved at that time.

Plaintiff having presented a supplemental judgment for those attorney fees and costs and submitted a cost bill, and the Court finding those appropriate under the circumstances, the Court enters a supplemental judgment as follows:

As the prevailing party, Plaintiff is entitled to payment of his taxable costs, and to attorney fees, in accordance with the contract between the parties, in the amounts laid out above.

The Court also considered McLaren's responsive pleadings + declarations and the arguments of counsel at a hearing on July 9, 2010. ARS RSN

Done this 9 day of July, 2010.

David Needy

David Needy, Judge

Respectfully submitted:
Alan R. Souders
Alan R. Souders, WSBA No. 26192
Attorney for Plaintiff

Approved as to Form:
Richard J. Hughes #77897

Supplemental Judgment for Plaintiff - 2

AP

Law Office of Alan R. Souders
913 Seventh Street
Anacortes, Washington 98221
360-299-3060

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SUPERIOR COURT OF THE STATE OF WASHINGTON, SKAGIT COUNTY

J. Phillip Rhodes

Plaintiff

v.

Alexander McLaren,

Defendant

No. 07-2-00019-7

JUDGMENT FOR PLAINTIFF

JUDGMENT SUMMARY

JUDGMENT CREDITOR:	J. Phillip Rhodes
ATTORNEYS FOR JUDGMENT CREDITOR:	Alan R. Souders & John P. Livingston
JUDGMENT DEBTORS:	Alexander McLaren
PRINCIPAL AMOUNT OF JUDGMENT:	\$ 32,900.00
PREJUDGMENT INTEREST at 12%:	\$ none
ATTORNEY FEES:	\$ to be determined separately
COSTS OF ACTION:	\$ to be determined separately
TOTAL JUDGMENT – Principal only:	\$ 32,900.00
POSTJUDGMENT INTEREST RATE:	12%

Judgment for Plaintiff - 1

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ORIGINAL

ENCLOSURE (3)

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THIS MATTER was tried by the Court without a jury in sessions of August 12th and 13th, and November 3rd, 4th, 24th, and 25th, 2008, the Honorable David Needy presiding. Plaintiffs and Defendants appeared personally and through their attorneys of record, Alan R. Souders and John P. Livingston for the Plaintiff and Richard J. Hughes for the Defendant.

The Court received the evidence and testimony offered by the parties, considered the pleadings filed in the action and heard the oral argument of the parties' counsel. At the outset of the trial, upon motion of the Defendant, the Court determined that the contract at issue between the parties did not require the complete removal of a certain house from the Defendant's property. In the course of trial the Court determined that any damages for trespass would be governed by the contract between the parties. The Court further found that no express or implied easement existed in favor of the Plaintiff across the Defendant's property. At the conclusion of trial, the Court rendered an oral decision in favor of the Plaintiff on the matter of breach of contract but denied Plaintiff's claim for nuisance. The Court has made and entered findings of fact and conclusions of law on March 11, 2010.

Consistent with its findings and conclusions, the Court enters Judgment as follows:

Judgment for Plaintiff - 2

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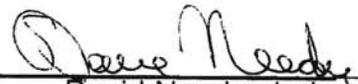
(1) Plaintiff is entitled to damages of \$32,900.00 for Defendant's breach of the contract involved in this action.

(2) As the prevailing party, Plaintiff is entitled to payment of his taxable costs, and to attorney fees, in accordance with the contract between the parties, in an amount to be determined separately and included in a supplemental judgment.

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(3) Other provisions:

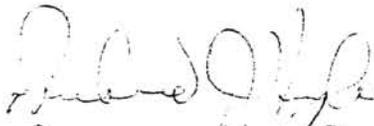
Done this 11th day of March, 2010.



David Needy, Judge

Respectfully submitted:


Alan R. Souders, WSBA No. 26192
Attorney for Plaintiff

Approved as to form:

Attorney for Plaintiff

Judgment for Plaintiff - 3

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