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No. 72735-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

Karl Benz and Catherine Riley,
Appellants,

v.

Town of Skykomish, a municipal corporation,
Respondent.

ON APPEAL/REVIEW FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY
No. 12-2-06975-1 SEA

BRIEF OF RESPONDENT

David S. Carson, WSBA# 13773
Holly M. Shannon, WSBA# 44957
CARSON LAW GROUP, P.S.
3113 Rockefeller Ave.
Everett, WA 98290
(425) 493-5000
Attorneys for Respondent

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COURT OF APPEALS DIVISION I
STATE OF WASHINGTON

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I. INTRODUCTION

Appellants, Karl Benz (“Benz”) and Catherine Riley (“Riley”) have appealed a trial court order denying their motion to vacate a judgment entered against them for sanctions, a trial court order holding them in contempt for failure to truthfully and completely answer interrogatories in supplemental proceedings, and a trial court order finding Benz and Riley vexatious litigants and imposing pre-filing sanctions against them.

This case began as a simple nuisance action brought by the Respondent, Town of Skykomish (“Town”) against entities owned by Benz and Riley. The Town sought to abate the nuisance caused by the Skykomish Hotel which had been abandoned for years, was a danger to the public and was rapidly deteriorating. Through a series of misrepresentations to the Superior Court regarding a lienholder on the property Benz and Riley intentionally delayed the proceedings and sought to harass the Town. After being granted summary judgment as to the nuisance claim against the Skykomish Hotel, the Town sought and was granted sanctions against Benz and Riley, individually, for their improper conduct.

Almost a year later, on September 15, 2014 Benz and Riley filed a Motion to Vacate the Judgment for Sanctions. The motion was denied and is the partial subject of this appeal.

The Town opened supplemental proceedings to collect on the judgment against the Skykomish Hotel, LLC. The Town sought financial information from Benz and Riley as well as the Skykomish Hotel, LLC. After months of attempted discovery the Town sought a finding of contempt against Benz and Riley for failing to respond to the discovery requests. On October 31, 2014 the Court found Benz and Riley in contempt for providing false and incomplete answers to interrogatories and requests for production. Benz and Riley are appealing the finding of contempt and the sanctions imposed.

After three years of protracted litigation including findings of contempt, sanctions, dismissal of counterclaims, multiple law suits, and bar complaints, the Town moved for sanctions against Benz and Riley to have them deemed vexatious litigants and pre-filing restrictions. On January 2, 2015 the trial court granted the Motion for Sanctions, found Benz and Riley to be vexatious litigants based on the record and imposed pre-filing limitations on them individually. They are appealing this order.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Benz and Riley assign error to 1) the trial court's refusal to grant their motion to vacate the 2013 order of Civil Rule 11 sanctions against them because the judge's discretion was manifestly unreasonable in that the

decision was prejudiced, biased, and impartial because she vacated the judgment of sanctions against their previous attorney and not them individually; 2) the trial court's 2014 finding of contempt for violations of Civil Rule 37 was an abuse of discretion because the Town failed to provide sufficient evidence that Benz and Riley did not comply with the discovery orders and the Court made no findings as to their objections; 3) the trial courts 2015 finding of them as vexatious litigants and imposing pre-filing limitations against them because the record does not reflect a history of vexatious litigation, the trial court ignored the facts and arbitrarily granted the motion based on an insufficient and non-existent record; and 4) the trial court's decision to deny oral argument as to Benz and Riley regarding the vexatious litigants order was a violation of their right to due process.

This court should affirm the trial court's orders denying vacation of the trial court's sanctions; affirming the order of contempt and affirming the order granting sanctions and pre-filing limitations against Benz and Riley as vexatious litigants.

The Town reformulates the issues as follows:

A. Whether the trial court's denial of Benz and Riley's Motion to Vacate Was an Abuse of Discretion Where the Record Was Complete with Findings of Their Sanctionable Behavior and the Court's Denial of the Motion to Vacate Was Not Manifestly Unreasonable?

- B. Whether the Trial Court's Finding of Contempt Was an Abuse of Discretion Where Benz and Riley Failed to Truthfully and Completely Answer the Interrogatories and Requests for Production Propounded by Town After Being Given Multiple Opportunities to do so?**
- C. Whether the Trial Court's finding of Benz and Riley as Vexatious Litigants Was an Abuse of Discretion Where the Record Was Replete With Findings that Their Conduct Was Sanctionable Because it Was Imposed for Improper Purposes, to Delay and for Harassment, and Where Lesser Sanctions Were Unlikely to Deter the Conduct?**
- D. Whether the Court's Refusal to Allow Benz and Riley Oral Argument at the Hearing on the Motion for Sanctions Denied the Parties Their Right to Due Process Where Benz and Riley Failed to Motion the Court to Appear Telephonically, The Provided Written Responses to the Court, of Which the Court Acknowledged as Having Considered, and Where Benz and Riley Had the Option to Appear in Person and Give Oral Argument but Failed to do so?**

III. FACTUAL BACKGROUND

The Town of Skykomish filed a lawsuit to abate a public nuisance building owned and/or managed by Benz and Riley's entities on February 24, 2012. (CP 2-20). The defendants in that King County matter, entities owned or controlled by Benz and Riley, filed counter claims in the matter against the Town of Skykomish. (CP 1375-1396). The Town prevailed on a summary judgment motion on its claims against the entities therein on April 19, 2013. (CP 1399-1402)

For almost the first two years of litigation Benz and Riley purposefully and intentionally delayed the proceedings by asserting a necessary party, Evergreen Property, LLC, a Florida corporation, had not been included. (CP 29, 54, 120, 1375). The Defendant entities, and Benz and Riley individually, asserted Evergreen Properties was a bona fide “lender” of record and the Town failed to include them in the administrative proceedings. (CP 1381). Between April 2013 and August 2013 the Town attempted to discover the facts of the alleged relationship, eventually having to bring a motion to compel discovery. (CP 29). The Town received a copy of a promissory note, deed of trust, request for full reconveyance, and the full reconveyance. (CP 30). In August 2013, Antonio Alvarez, owner of Evergreen Properties and Cate Riley’s ex-spouse, filed a declaration stating that he had never loaned any money to or received repayment from the hotel and therefore was not a lender of record and that Benz and Riley’s attorney, Dickson, was aware of this fact. (CP 46).

As a result the Town brought a Motion for Sanctions against Benz, Riley, the Skykomish Hotel, LLC and their attorneys of record. (CP 23-48) On September 9, 2013 the King County court granted CR 11 sanctions against Benz and Riley individually, against their entities and their attorneys of record finding that Benz and Riley filed a verified answer with the court

that was not true, they filed affidavits in support of pleadings that were not grounded in fact and for the purpose of delay; and that their actions appeared to have been done for the purpose of delaying administration of the case and for harassing and intimidating the Town. (CP 104-109) On October 7, 2013 judgments were entered against the entities and against Benz and Riley personally and against the entity's attorney for the sanctions ordered in the amount of \$37,661.158. (CP 144) Those entities did not appeal the sanctions or judgments. (RP #1, page 45, lines 20-72)

Prior to the granting of sanctions and throughout the months leading up to and after the Motion for Sanctions was heard by the trial court, the entities' attorney, Thomas Dickson ("Dickson") had sought to withdraw on numerous occasions. (CP 49, 221, 502, 1403). The Town objected to the withdrawal unless substitute counsel was found. (CP 222) Dickson eventually sought discretionary review in this Court of Appeals. (CP 1403-1411) This Court accepted discretionary review and in a Commissioner's ruling found that it was probable error in not allowing Dickson to withdraw. (CP 196-208).

Dickson then brought a motion in the trial court as to why his withdrawal should be granted. (CP 490-502) In his Brief Supporting his Motion to Withdraw he also sought to have the sanctions against him

vacated. (CP 491). At the hearing Dickson claimed the Rules of Professional Conduct mandated his withdrawal. (CP 497) The trial court judge heard *in camera* testimony as to the facts mandating his withdrawal. (CP 170) After the *in camera* review the trial judge granted the withdrawal *nunc pro tunc* and because of that also vacated the judgment of sanctions against Dickson. (CP 168-69) The Town objected to the removal of sanctions on the basis that Dickson had engaged in the behavior and while he was allowed to withdraw *nunc pro tunc* the sanctions should have remained. (CP 162-167) The Court did not agree for reasons not disclosed by the Judge Spector. (CP 168-69) In her oral ruling, the judge specifically held that the sanctions still applied against Benz and Riley, individually, for their specific conduct. (CP 211) The judge then decided that after the testimony she had heard in the *in camera* review, in order to not even hint at the appearance of bias or impartiality, she had to recuse herself from the case. (CP 170).

On January 21, 2014 the Town began supplemental proceedings in King County Superior Court to enforce the judgments against, the Skykomish Hotel, LLC, and Benz, and Riley as judgment debtors. (CP 381-385) As part of that process, in ordinary course, the Town's legal counsel attempted service of the supplemental proceedings on Benz and Riley

individually, and as the registered agent for the Skykomish Hotel, LLC. (CP 454) Unable to effectuate in-person service of the supplemental proceedings, the Town motioned the court for an order to serve Benz, Riley and the Skykomish Hotel, LLC via email. (CP 394-402) The court granted the motion and the parties were served via email. (CP 403-404)

In the meantime, in a separate action, and based on the attempted service in the King County supplemental proceedings, Benz and Riley, individually, filed a suit in Snohomish County Superior Court against the Town's attorneys, Peter C. Ojala and Carson Law Group, P.S., and the process server, John Rashleigh alleging conspiracy, perjury and a consumer protection act claim. (CP 562-572) Benz and Riley sought over five million dollars in damages. (CP 572) These claims were dismissed with prejudice and found to have been brought for an improper purpose, to interfere with the attorney client relationship and as forum shopping. (CP 274-277) The dismissal was affirmed by this Court under Case No. 7222-5-5-I on July 27, 2015 in an unpublished opinion.

Back in the Supplemental proceedings in King County, Benz, Riley and the Skykomish Hotel, LLC hired attorney Ken Berger who specially appeared to object to jurisdiction of the court based on personal service. (CP 463-64) During the course of this special appearance, the attorney for

Benz, Riley and the Skykomish Hotel, LLC signed a stipulation agreeing to drop all objections to jurisdiction of the court if the Town allowed the judgment debtors to provide answers to interrogatories rather than appear in court to answer financial questions. (CP 460-62) The judgment debtors sought to have this stipulation vacated three months later but the court denied their Motion to Vacate and affirmed the order directing them to provide answers to interrogatories. (CP 520-541, 644-46)

Benz and Riley provided answers to interrogatories on July 2, 2014. (CP 747-975) The interrogatories were not completely nor truthfully answered. (CP 747-975) They contained vague objections to almost every single question as overly broad, unduly burdensome and unlikely to lead to discoverable evidence. (CP 747-975) Benz and Riley produced no documents relating to their financial condition with the exception of the complaint filed against the Town's attorney in the separate action for damages where they sought over five million dollars. (CP 742) The Town sent a deficiency letter to Benz and Riley requesting supplemented answers and production of documents. (CP 740-975). Benz and Riley replied by objecting to the scope of the discovery and making vague assertions that the Town was in exclusive possession of all of the documents requested. (CP 740-975) The Town sent a second deficiency letter to the judgment debtors

requesting supplemented answers. (CP 1096-1101) The judgment debtors supplemented their answers with additional objections and assertions that all documents were in the exclusive possession and control of the Town. (CP 1141) The few answers they did provide were vague and incomplete. (CP 1141)

On October 9, 2014 the Town filed a Motion for Contempt and Sanctions for failure to completely and truthfully answer interrogatories. (CP 740-975) The Town provided proof that the Hotel had received substantial sums of moneys over the period of time requested but had denied doing so in their answers. (CP 740-975) Benz and Riley responded with a vague three sentence explanation for how the monies were spent, to wit, attorney fees, a marital settlement payoff, medical expenses, and debt. (CP 1113)

The Town also sought a receiver to be appointed because Benz and Riley were failing to make a good faith effort to satisfy the judgments against them and the Town was getting nowhere tracing the financial resources of the judgment debtors. (CP 740-975) The Town sought to prove this by showing that the hotel, which was the original subject of these proceedings in a nuisance action, and by all accounts needs a complete remodel, was listed for sale by Benz and Riley at \$350,000 two years ago

and then this summer the price was changed to \$750,000. (CP 952) The Town sought to show that no good faith efforts were being undertaken to sell the hotel evidenced by such a grossly inflated asking price. (CP 952) The Town sought sanctions against the judgment debtors for failure to make discovery under CR 37. (CP 740-975) On October 31, 2014 the court found Benz and Riley in contempt but reserved on ordering sanctions against them. (CP 1146-1148) The court ordered the judgment debtors to provide complete answers and produce documents requested by November 21, 2014. (CP 1146-1148) Benz and Riley have appealed this order finding contempt. (CP 301-309)

On November 21, 2014 Benz and Riley provided what they considered supplemental answers to the interrogatories. (CP 1159-1251) Benz and Riley again stated that the records were located in the Skykomish Hotel. They further alleged that the Town had exclusive access to the Skykomish Hotel. (CP 1159-1251) The Mayor of the Town of Skykomish filed an affidavit with the court that the key to the Hotel had been given, at Riley's direction, to the Hotel's agent in the spring of 2014 and the key had never been returned. (CP 1087-1095) In addition, Benz and Riley did not even attempt to justify why they had never physically attempted to access their hotel or the documents inside. (CP 1364, RP #2, page 21, lines 10-12)

Instead, Benz and Riley claimed that the Town's attorney, David Carson, had violated the RPC's by disclosing the amount of monies they received in court documents. (CP 1195-1197) Benz and Riley did not seek to have the documents sealed.

Benz then filed a bar association complaint against David Carson for violating a non-disclosure agreement. (CP 1195-1197) The complaint also alleged a state wide conspiracy to take the hotel from Benz. (CP 1195-1197) In explaining the changes in the listing price of the hotel in the pleadings the Town's attorney had sought a real estate listing from a local real estate agent. (CP 1208) The listing provided was unintentionally a broker's sheet which are not supposed to be disclosed to the public. (CP 1208) The listing sheet provided no confidential information. (CP 1208) All the information was readily accessible on multiple different websites through a cursory internet search. (CP 1208) Nonetheless Benz not only alleged that Carson was part of a larger conspiracy to deprive him of his very valuable property but so was the real estate agent and her husband and numerous of his business partners. (CP 1251-91, 1295) Benz then went on to file a complaint against the individual real estate agent with the North West Multiple Listing Service. (CP 1276-1278) The NWMLS declined to pursue disciplinary action against the agent. (CP 1286)

As a result of Benz and Riley's continued failure to supplement discovery, the Town brought a Motion for Sanctions against Benz and Riley and the Skykomish Hotel, LLC for the contempt. The Motion also sought an order seeking to have them deemed vexatious litigants and have a pre-filing order entered against them. (CP 1149-1251) The Town provided a listing of all the sanctions already against Benz and Riley where the court determined their conduct had been for an improper purpose. (CP 1149-1251) The Town also alleged that a lesser sanction had no effect on the conduct of Benz and Riley, evidenced by their continued vexatious behavior and willingness to ignore court orders and rules. (CP 1149-1251) On January 2, 2015 the court imposed sanctions of \$10,000 for contempt and found Benz and Riley to be vexatious litigants. (CP 1368-1371) The court order put limitations on why, how or when Benz and Riley could file further lawsuits within the state of Washington against the Town of Skykomish, Carson Law Group, P.S., or based on the same or similar facts. (CP 1368-1371) Benz and Riley have appealed this order. (CP 1538-1545)

On February 26, 2015 this Court consolidated the above appeals.

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IV. ARGUMENT

This Court reviews the denial of a motion to vacate under Civil Rule 60 for abuse of discretion. *Larson v. Department of Labor & Industries*, 174 Wash. 618, 25 P.2d 1040 (1933); *Lasell v. Beck*, 34 Wn.2d 211, 208 P.2d 139 (1949); *State v. Santos*, 104 Wn.2d 142, 702 P.2d 1179 (1985). This Court reviews a finding of contempt for failure to make discovery under Civil Rule 37 for abuse of discretion. *State v. Mak*, 105 Wn.2d 692, 702, 718 P.2d 407 (1986); *Mayer v. Sto Industries, Inc.*, 156 Wn.2d 677, 132 P.3d 115 (2006); *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 41 P.3d 1175 (2002). The standard of review for sanctions under Civil Rule 11 is abuse of discretion. *Biggs v. Vail*, 124 Wn.2d 193, 876 P.2d 448 (1994). A court abuses its discretion where its discretion is manifestly unreasonable, based on untenable grounds or on untenable reasons. *State v. Junker*, 79 Wn.2d 12, 482 P.2d 775 (1971).

“A discretionary decision rests on ‘untenable grounds’ or is based on ‘untenable reasons’ if the trial court relies on unsupported facts or applies the wrong legal standard; the court’s decision is ‘manifestly unreasonable’ if ‘the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take.’” *Mayer*, at 684 (citing *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)).

The primary issues in this matter are 1) whether or not the trial court abused its discretion in denying a motion to vacate an order of sanctions where the judge made specific findings as to the sanctionable behavior of the appellants and the record was replete with instances of their behavior including filing of false documents; 2) whether the trial court abused its discretion in a finding of contempt for failure to truthfully and completely answer interrogatories and produce documents where the appellants were ordered by the court to comply, had additional chances to provide answers and produce documents; and still failed to provide truthful and complete answers instead making vague objections and false accusations; 3) whether the trial court abused its discretion in imposing sanctions against Benz and Riley and finding them to be vexatious litigants where the record was replete with their vexatious behavior and no lesser sanction would deter the behavior; and 4) whether Benz and Riley were denied due process when the court did not allow telephonic oral argument but did receive and consider Benz and Riley's written responses to the court and Benz and Riley declined the opportunity to appear in person and present oral argument.

Because the record contains ample evidence of the trial court's reasoning and findings of sanctionable behavior the trial court did not abuse its discretion by denying the motion to vacate the judgment on sanctions.

Additionally because the record was replete with the multiple chances the judgment debtors had to provide truthful and complete answers to interrogatories and requests for production in the supplemental proceedings the trial court did not abuse its discretion by finding the judgment debtors in contempt for failure to make discovery. The court did not abuse its discretion by finding Benz and Riley vexatious litigants based on the record of their improper behavior and imposing sanctions against them by limiting their ability to abuse the justice system in the future. The Court did not deny Benz and Riley their due process rights when they were given ample notice of the hearing and an opportunity to respond.

A. The trial court's denial of Benz and Riley's Motion to Vacate a Judgment for Sanctions Was Not Manifestly Unreasonable Where the Record Was Complete with Findings of Their Sanctionable Behavior and There Were No Exceptional Circumstances Relating to Irregularities Extraneous to the Proceedings Nor Irregularities in the Proceedings.

i. Benz and Riley's Assignments of Error Are Not the Proper Subject of an Appeal of A Motion to Vacate As They Assert Legal Error

Benz and Riley's assignments of error ignore the order appealed from, the denial of their motion to vacate, and instead assert numerous deficiencies in the decision to grant sanctions against them. An appeal from

the denial of a motion for relief from the judgment is not a substitute for an appeal and is limited to the propriety of the denial, not the impropriety of the underlying order. *In re Dependency of J.M.R.*, 160 Wn. App. 929, 249 P.3d 193 (2011); *Barr v. MacGugan*, 119 Wn. App. 43, 78 P.3d 660 (2003). Benz and Riley argue that extraordinary circumstances exist because the order results in unjust enrichment to the Town, that Judge Spector was impartial in vacating the judgment against their attorney and not vacating against them, and that both Judges were biased and impartial by deciding against them. These issues are not the proper subject of this appeal.

Benz and Riley sought to vacate the order of sanctions against them through a motion to vacate under Civil Rule 60 (b)(11) which provides that upon motion and upon such terms as are just the court may relieve a party from a final judgment for a list of enumerated reasons and then subsection eleven (11) allows vacating for any other reason justifying relief from operation of the judgment. The court has interpreted this to mean “extraordinary circumstances relating to irregularities extraneous to the action or irregularities in the proceedings.” *Barr* at 660. Errors of law are not correctable through CR 60. *State v. Keller*, 32 Wn. App. 135, 647 P.2d 35 (1982). In *State v. Keller*, at issue in the motion to vacate was the meaning of a juvenile court rule. The court held this was a legal issue and

the proper remedy after the dismissal was entered was appeal. *Id.* at 141. The same can be applied to the appeal at hand.

Benz and Riley provide no explanation of what they consider an “extraordinary circumstance as a result of extreme and unexpected situations constituting irregularities extraneous to the proceeding.” (Appellant’s Brief p. 32). Benz and Riley state that the Town has been unjustly enriched through receiving duplicative judgments and through receiving their hotel property when executing upon those judgements.

A person has been unjustly enriched when he has profited or enriched himself at the expense of another contrary to equity. *Dragt v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 576, 161 P.3d 473 (2007) (citing *Farwest Steel Corp. v. Mainline metal Works, Inc.*, 48 Wn. App. 719, 731-32, 741 P.2d 58 (1987)). “Enrichment alone will not trigger the doctrine; the enrichment must be unjust under the circumstances and as between the two parties to the transaction.” *Id.* Three elements must be established for unjust enrichment: (1) there must be a benefit conferred on one party by another; (2) the party receiving the benefit must have an appreciation or knowledge of the benefit; and (3) the receiving party must accept or retain the benefit under circumstances that make it inequitable for the receiving

party to retain the benefit without paying its value. *Id.* Benz and Riley have failed to prove all elements in this matter.

Firstly, there was no benefit conferred on one party by another. There were judgments entered by the court jointly and severally against Benz and Riley individually and as against the Skykomish Hotel, LLC. The Town executed on the judgements as to the entity, the Skykomish Hotel, LLC, the record owner of the real property and not the judgments individually against Benz and Riley. Therefore, no benefit was conferred on the Town by Benz and Riley. As the first element is not satisfied, the analysis need go no further.

As to the claimed value of the property as executed upon, the hotel property has been abandoned for years, it has holes in the roof and is growing copious amounts of mold and plant life inside the hotel. By all reasoning and the admittance of Benz and Riley it needs a complete remodel. (CP 952) This hotel which Benz and Riley suggest is valued at over \$500,000.00 was put up for public auction to satisfy the total \$147,000 in judgments. Not one person bid on the sale above the \$147,000 and so the Town is the *defacto* purchaser. This did not result in unjust enrichment to the Town but created the additional burden of what to do with the nuisance property. Additionally, the Skykomish Hotel, LLC, as the

judgment debtor, has a statutory one-year period to redeem the property for the amount of the judgments.

The assertions made by Benz and Riley as to why the order should have been vacated do not constitute extraordinary circumstances nor unjust enrichment. There was no abuse of discretion when the trial court denied Benz and Riley's motion to vacate the sanctions against them.

ii. There Were No Extraordinary Circumstance Where Judge Spector Found that the Sanctions as Against Benz and Riley Would Remain in Place Based on their Individual Conduct but Vacated the Judgment Against Their Attorney for Perpetuating the False Statements of his Clients After Granting His Leave to Withdraw *Nunc Pro Tunc*

Benz and Riley claim it was an extraordinary circumstance that Judge Spector admitted she erred in granting the sanctions and for this reason the motion to vacate should have been granted. Benz and Riley also state that the findings against them were unfounded. Benz and Riley misstate the facts and the trial court's decision here.

Judge Spector granted a hearing on why Dickson should be allowed to withdraw as counsel for Benz and Riley's entities. Dickson argued that the Rules of Professional Conduct mandated his withdrawal. Part of the hearing took place *in camera*. After returning to the court room the Judge granted Dickson's withdrawal *nunc pro tunc* and removed the judgment for

sanctions against him as the conduct occurred after his withdrawal was effective. The appropriateness of Judge Spector's decision to remove the judgment against Dickson is not at issue here today. When Judge Spector removed the sanctions against Dickson she specifically found that the sanctions would stay as to Benz and Riley for their intentional conduct. (CP 211). The courts have upheld vacating sanctions against an attorney while upholding them against a party. See In re Cooke, 93 Wn. App. 526, 969 P.2d 127 (1999)(holding sanctions against party rather than his attorney where warranted where only the party prepared, signed, and filed statements justifying sanctions). Whatever reason Dickson gave to Judge Spector is not a matter of the record. However, as mentioned above, the propriety of Judge Spector's decision to vacate sanctions against Dickson is not before the court today. The courts order on sanctions made specific findings as to the sanctionable conduct of Benz and Riley.

Judge Spector then said that after receiving the statement from Dickson *in camera*, she was recusing herself so as to avoid the appearance of bias or impartiality going forward.

Benz and Riley's Motion to Vacate was heard in King County Superior Court by Judge Barbara Linde. Judge Linde took the case over after Judge Spector's recusal. After review of the motion, case file, and

pleadings, and hearing oral argument, Judge Linde denied the motion to vacate. Judge Linde did not abuse her discretion by doing so. An order of sanctions may be upheld where the order is supported by sufficient findings. See Lee v. Kennard, 176 Wn. App. 678, 310 P.3d 845 (2013)(finding sanctions at issue were adequately supported by explicit findings of bad faith).

The order granting sanctions lists all the findings of fact and conclusions of law which led to the order of sanctions. The Court found that Benz and Riley filed a verified Answer, Affirmative Defenses and Counterclaims under penalties of perjury that were in fact untrue and filed for the purpose of delaying the proceedings in the case; that they filed affidavits in support of their Response containing untrue assertions and was filed for the purpose of delaying the proceedings; that the actions of Benz and Riley resulted in the Town expending a considerable amount of money toward the payment of attorney's fees; and that the actions of Benz and Riley were taken for the purpose of delaying the administration of the case, for the purpose of harassing and intimidating the Town and the proceedings were in fact delayed as the result of their actions. (CP 104-109)

Judge Spector's decision made explicit findings as to the improper purposes Benz and Riley's sanctionable conduct resulted in. Judge Linde's

decision not to vacate the order was supported by the facts and did not adopt a view that an unreasonable person would take. It was not manifestly unreasonable to deny the motion to vacate based on the record.

It was also not manifestly unreasonable for Judge Linde to deny the motion to vacate when the record clearly reflects the sanctionable conduct of Benz and Riley independent from any conduct of their previous attorney. Contrary to Benz and Riley's assertions¹, the court did not at any time make a finding that Benz and Riley had not engaged in the sanctionable conduct at issue. The court specifically found that the sanctions against Benz and Riley would stay. (CP 211) Judge Linde's decision was not an abuse of discretion as it was not based on untenable grounds or reasons nor manifestly unreasonable.

¹ Benz and Riley state in their brief that the underlying judgments against them were confirmed as invalid. They cite to Dickson's Brief which is not a court order or ruling. There are multiple instances throughout the Brief of Appellants where they allege a specific fact and incorrectly cite to the record as affirming their statement. In addition to the above example there are incorrect statements on the following: page 33 where they state that the Town accepted as satisfactions all of the judgments the sale of the subject property; page 35 that the court admitted it erred in granting the underlying CR 11 sanctions judgment; page 42 that no pleadings filed by Benz and Riley as individuals have ever been found to be filed as improperly or for purposes of harassment or delay nor have been stricken from the record; they incorrectly quote the courts oral ruling on page 21 (cite to RP #2, pg 21, lns 3-9);

In addition to incorrectly quoting and citing the clerk's papers and reports of the proceedings, the Town has found numerous occasions where case law was incorrectly cited or quoted in support of Appellant's argument. In the interest of limiting the use of footnotes, specific references will not be included herein.

iii. There Were no Extraordinary Circumstances When Judge Spector, After an In Camera Review on the Withdrawal of Counsel, Recused Herself so as to Avoid the Appearance of Impartiality or Bias towards Benz and Riley

Benz and Riley have asserted that Judge Spector's refusal to vacate the sanctions against them is evidence of her bias and prejudice to which she admitted. Benz and Riley have misrepresented the facts again and taken Judge Spector's words out of context. Judge Spector specifically stated that after her *in camera* review with the attorney, Dickson, she wanted to avoid all appearance of bias or impartiality going forward and would recuse herself. (CP 210-213). Judge Spector did this specifically because she did not want even the appearance of impartiality or bias to taint this case after Dickson disclosed whatever it was he disclosed *in camera*. “[A] party asserting a violation of the [appearance of fairness] doctrine must produce sufficient evidence demonstrating bias, such as personal or pecuniary interest on the part of the decision maker; mere speculation is not enough. *Tatham v. Rogers*, 170 Wn. App 76, 96, 283 P.3d 583 (2012)(quoting *In re Pers. Restraint of Haynes*, 100 Wn. App. 366, 996 P.2d 637 (2000)). Benz and Riley have provided no evidence of bias. Benz and Riley's basic contention is that because Judge Spector ordered sanctions against them and Judge Linde refused to vacate it was unfair and the judges were biased.

Judge Spector recused herself as to avoid the appearance of impartiality as per the judicial code of conduct after hearing *in camera* testimony which mandated the withdrawal of an attorney. This act negates Benz and Riley's assertion that the Judge Spector was biased and impartial.

Benz and Riley also assert that Judge Linde was biased and impartial in refusing their motion to vacate but they provide no evidence of personal or pecuniary interest on behalf of Judge Linde. They cite no case law to support their assertion. They simply state that Judge Linde's denial was "arbitrary, unreasonable, not based on facts and constitutes an abuse of discretion." (Appellant's Brief, pg. 36). These allegations are all based on the fact that Judge Linde denied their motion to vacate.

Throughout this matter Benz and Riley have repeatedly shown a lack of respect for the judicial system and the judiciary in particular, for example stating the following in their opposition to entry of judgment filed with the court (CP 1300-1301, lines 22-24, 1-9):

While Courts certainly possess discretion, with discretion comes responsibility. Remedies that ignore the spirit of the law, along with the substitution of justice and rule of law by endless process that enriches the legal profession and benefits the politically connected, at the expense of others, allows even the most abominable acts to appear legitimate. A thin veneer of legality is no substitute for justice. When does 'technically legal' become nothing more than a cover for reaching predetermined, desired, lawless outcomes? Are

we to believe a judiciary covering themselves with legalisms and black robes is equivalent to living under a rule of law?

What is presently passing for justice is profoundly troubling and part of a time tested formula for societal disaster of epic proportions. When the judiciary loses the consent of the governed, the very foundation of civil society becomes threatened. If unchecked, the current governing paradigm could be tossed out, along with privileged ruling elites. If overt rebellion is to be avoided, the courts must perform as intended, expected and demanded.

Benz and Riley expect the courts to perform as “demanded.” Based on the above it is not unreasonable to see that when decided against Benz and Riley will claim bias yet regardless of their impassioned general statements they were unable to provide any evidence of bias or impartiality.

It was not biased or impartial of Judge Linde to refuse to vacate the sanctions. It was not manifestly unreasonable for Judge Linde, after reviewing the record, including the unofficial transcript of the hearing, and finding no extraordinary circumstances, to deny the motion to vacate. Benz and Riley’s allegations are not grounded in fact, they misstate the record and have failed to show that Judge Linde abused her discretion in denying their motion to vacate the sanctions against them.

B. The Trial Court Did Not Err in Finding Benz and Riley in Contempt for Failure to Make Discovery Under CR 37 Where Benz and Riley Provided Incomplete and Factually Incorrect Answers to Interrogatories on Two Separate Occasions and After a Court Order Affirming Their Obligation to Answer

Benz and Riley failed to provide complete and truthful answers to the interrogatories and requests for production from the Town. It was not manifestly unreasonable to find that Benz and Riley failed to answer the interrogatories or produce documents as requested by the Town.

Civil Rule 33 provides that each interrogatory shall be answered separately and fully in writing under oath. In addition CR 33(b) provides that “an interrogatory otherwise proper is not objectionable merely because the propounding party may have other access to the requested information ...” Civil Rule 37(d)(3) provides that failure to answer an interrogatory or request for production is sanctionable by the court. It also provides that failure to make discovery may not be excused on the ground that discovery sought is objectionable unless the party failing to act has applied for a protective order and a misleading or evasive answer is considered a failure to answer.

A trial court exercises broad discretion in imposing discovery sanctions, and its determination will not be disturbed on appeal absent a clear abuse of discretion. *Mayer* at 684. If a party refuses to answer any interrogatory he may be proceeded against for contempt. *Lawson v. Black Diamond Coal Min. Co.*, 4 Wash. 26, 31, 86 P. 1120 (1906). Discovery is

intended to be broad so any party wishing to assert a privilege may not simply keep quiet about the information it must seek a protective order if it does not wish to comply. *Cedell v. Farmers Ins. Co. of Washington*, 176 Wn.2d 686, 696, 295 P.3d 239 (2013). A motion seeking the imposition of sanctions is sufficient if it provides a factual basis for granting relief which conforms to the grounds for imposing sanctions. *Pamelin Industries v. Sheen-U.S.A.*, 95 Wn.2d 398, 622 P.2d 1270 (1981). The Town's motion for sanctions included copies of all the interrogatory answers as provided by Benz and Riley. Benz and Riley allege that the court "ignored pertinent facts" and "lacked sufficient evidence" to make a ruling of contempt based on Civil Rule 37.

On March 6, 2014 an agreed order was entered with the court whereby Benz and Riley agreed to answer interrogatories and requests for production in the supplemental proceedings in lieu of personally appearing in court. (CP 460-62) The deadline for production was July 2, 2014. Benz and Riley then sought to vacate the agreed order. (CP 520-541) The court denied the motion to vacate, affirmed the stipulation and agreed order, and ordered that the judgment debtors answer the interrogatories under oath. (CP 644-646).

Benz and Riley provided discovery answers on July 2nd. Benz and Riley were asked to provide information on all monies received for previous six (6) years. Benz and Riley answered that they had received no income or monies for the past several years. As an illustrative example, when asked to identify the amount and source of any income received between January 1, 2008 and current, Benz answered “*Objection: overly broad and burdensome. Without waiving the objection, my only source of income for the last four years has been my monthly Social Security check.*” (CP 776). Benz and Riley completely failed to mention any money received between 2008 and 2010.

The Town had discovered that between 2008 and 2010 Benz and Riley had received over \$600,000 as a settlement from Burlington Northern Santa Fe Railroad regarding the environmental remediation in the Town of Skykomish. Other interrogatories relating to financial information were first objected to as “overly broad, burdensome and unlikely to lead to discoverable evidence” and then answered in vague and evasive language stating they had not been employed for “several years” due solely to the Town’s actions or that any and all records were in exclusive possession of the Town. (CP 740-975).

Benz and Riley produced a total of three “financial” documents. They provided copies of the Snohomish County Superior Court case against the Town’s attorneys as evidence of accounts receivable.² Additionally Benz and Riley provided one bank statement and one credit card statement without any identifying information as to the name of the banking institution or even the names on the accounts. (CP 790). The majority of their Responses to interrogatories and requests for production were also answered with a statement that the Town remained in exclusive possession of Benz and Riley’s property and any and all information was in the exclusive possession of the Town. They also alleged a greater conspiracy among multiple parties across the state of Washington to deprive them of their property, the Skykomish Hotel.

It was not abuse of discretion for the trial court to find Benz and Riley in contempt for failure to respond appropriately to discovery requests. Benz and Riley refused to fully or truthfully answer the Town’s interrogatories and requests for production. They provided blanket objections and where answers were provided they were vague and

² Benz and Riley sought over five million dollars in damages. This court affirmed dismissal of Benz and Riley’s action on July 27, 2015 in an unpublished opinion under Case No. 7222-5-5-I.

untruthful. Benz and Riley lied about what monies they had received over the previous six years. They completely failed to disclose the settlement they received from BNSF. The Courts decision was supported by facts. It was not manifestly unreasonable for the court to find them in contempt for failure to make discovery.

Benz and Riley allege that the Court failed to address Benz and Riley's objections to the discovery and that the information provided by the Mayor of the Town was untrue. The bulk of the objections stated that the Town remained in exclusive possession of the documents sought. The Mayor of the Town of Skykomish provided a declaration that more than a year prior the Town had to enter the Hotel for an inspection and so replaced one of the five exterior doors. (CP 1087-1095) The Town did not bar access to the other exterior doors. In the spring of 2014 the Town gave the key to that one door to the agent of the Hotel who did not return it. *Id.* Benz and Riley provided no information to refute this except to state that the mayor was lying.

Civil Rule 37 provides in pertinent part failure to act described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by rule 26(c). "If a party disagrees with the scope of

production, or wishes not to respond, it must move for a protective order and cannot withhold discoverable materials. A party's failure to comply with deposition or document production rules may not be excused on grounds that the discovery sought is objectionable.” *Johnson v. Jones*, 91 Wn. App. 127, 133-34, 955 P.2d 826, 830-31 (1998). Benz and Riley did not seek a protective order from the court and therefore their behavior was not excused.

Regardless of their failure to seek a protective order, the Court did consider their objections. The Court weighed the evidence as presented and did consider their objections. In the hearing on contempt, the court stated “The answer in almost all of these is, ‘Well the Town has our stuff, and we would provide it if the Town wasn’t the bad guy here.’ And the evidence just doesn’t bear that out.” (RP #1, p. 46, lines 5-10). The Court went on to say “[a]nd feeling like you don’t want the other side to have your personal information is not a basis to withhold it.” *Id.* at lines 13-15. The Court further stated “This is properly requested information and the reasons for withholding it are not proper or appropriate reasons.” *Id.* at lines 21-23.

The Court also addressed their objections in the hearing on Sanctions. Judge Linde specifically stated that “there has been nothing by way of declaration from [Benz and Riley] indicating why they haven’t

sought to go the place they believe the records are and get them.” (RP #2, p. 21, lines 10-12). The court did not find Benz and Riley’s accounts as credible and made a finding of fact. This decision was not based on untenable grounds or unsupported by the facts. It was not an abuse of discretion to hold Benz and Riley in contempt for failure to fully and truthfully answer their discovery.

C. It Was Not Manifestly Unreasonable to Find Benz and Riley to be Vexatious Litigants Where the Record Was Replete With Findings that Their Conduct Was Sanctionable Because it Was Imposed for Improper Purposes, to Delay, and for Harassment and Lesser Sanctions Were Unlikely to Deter the Conduct

After an adequate review of the record which reflects the vexatious history of this case and Benz and Riley’s behavior the Court entered an order determining Benz and Riley to be vexatious litigants. This order was not an abuse of discretion as it was not based on untenable grounds, untenable facts, or manifestly unreasonable.

Our courts have the right, in equity, to limit the right of a litigant access to courts. *In re Marriage of Giordano*, 57 Wn. App. 74, 77, 787 P.2d 51 (1990). “The requirement that litigation proceed in good faith and comply with court rules has always been implicit in the right of access to the courts. *Id.* at 77. “A court may, in its discretion, place reasonable

restrictions on any litigant who abuses the judicial process.” *Id.* at 78. Our legislature has vested our courts with this right in RCW 2.28.010(3) which provides that every court has the power to “provide for the orderly conduct of proceedings before its officers.” In addition, our court rules are in place to “secure the just, speedy, and inexpensive determination of every action.” Civil Rule 1. The order at issue provides a reasonable restriction on Benz and Riley to limit their abuse of the judicial system.

The Ninth Circuit has outlined a four part test for whether a pre-filing order is valid: 1) the litigant must be provided with notice and an opportunity to be heard before it was entered; 2) the record must be sufficiently developed to show the abuse of the judicial system; 3) the order must include substantive findings of the litigants vexatious behavior; and 4) the order must be narrowly tailored. *DeLong v. Mansfield*, 912 F.2d 1144 (9th Cir. 1990). In *DeLong* the plaintiff filed a motion to vacate after being imprisoned for contempt in a meritless action. The Plaintiff was enjoined from filing any further action with the court. The 9th Circuit vacated the order finding that he plaintiff was not provided with notice of the order, the record did not include any indication of the numerous or abusive filings alleged, the court made no substantive findings and the order had no boundaries.

Similarly, in *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (2007) the Ninth Circuit again reviewed a vexatious litigant order. In that case, the plaintiff was a paraplegic who filed over 400 lawsuits in the federal district courts in California alleging ADA complaints. Evergreen sought an order declaring Molski a vexatious litigant with pre-filing restrictions. The Court upheld the order. The court held that Molski had the opportunity to oppose the motion both in writing and at a hearing therefore due process was served. *Id.* at 1058. See also, *Pacific Harbor Capital, Inc. v. Carnival Air Lines, Inc.*, 210 F.3d 1112, 1118 (9th Cir. 2000)(holding that an “opportunity to be heard does not require an oral or evidentiary hearing on the matter.”). The record included a complete list of cases filed by Molski and the complaints therein. *Molski* at 1059. The order had a list of the substantive findings including harassment, asserting false and/or grossly exaggerated facts. *Id.* at 1060-61. In addition the order was narrowly tailored because it did not deny the plaintiff access to court on any claim that was not frivolous. *Id.*

Our courts recognized these concepts as early as 1928. In *Burdick v. Burdick*, 148 Wash. 15, 22, 267 P. 767 (1928) the court held “the power of injunction to stay a pending lawsuit should be . . . sparingly used. Yet it is a vital right to those sought to be brought before the court, and one which

in a proper case should not be denied because of its frugal use.” In *Burdick* after successive cases resolving the same issues between a father and son, the father brought another suit regarding the same or similar issues. The trial court enjoined the father from filing another suit. The Supreme Court held that “the court correctly enjoined a suit brought purely for vexatious purposes in an endeavor to compel a litigant to do that which the court had repeatedly held he was not required to do.” *Id.* at 23. See also, *In re Marriage of Giordano*, 57 Wn. App. 74, 787 P.2d 51 (1990).

The pre-filing order against Benz and Riley passes the test as enumerated in *DeLong* and *Molski*. The due process requirement was satisfied as Benz and Riley received adequate notice of the hearing. They had the opportunity to motion the court to appear telephonically and did not. They did file a written response with the court and it was considered. The court denied Benz and Riley the right to oral argument telephonically. Throughout the case Benz and Riley alleged they were out of state and unavailable to appear in court. Yet at no time have they ever provided their residence address. Benz and Riley requested to be able to appear telephonically at the hearing on sanctions in their response to the motion for sanctions but never motioned the court to do so. The Town, having been tolerant of their failure to appear on previous occasions objected to their

appearing telephonically. Benz and Riley provided no response. The Court agreed that they had provided no reason for appearing telephonically and so although they were allowed to appear telephonically they did not get oral argument. Benz and Riley's claims that the proceedings lacked due process are discussed further in this brief.

The second prong of the test was satisfied where the record listed all cases and motions filed by Benz and Riley. The Town's Motion for Sanctions includes the following list: (CP 1149-1251)

- Benz and Riley filed counterclaims which were dismissed for having no merit;
- Benz and Riley had sanctions imposed upon them for filing pleadings in this matter for improper purpose, to delay proceedings, for harassment, and for actually delaying proceedings;
- Benz and Riley filed an action in Snohomish County Superior Court against the Town's counsel, Carson Law Group, P.S. for perjury and conspiracy relating to service of process in the supplemental proceedings in this case. Benz and Riley's claims were dismissed as being brought for an improper purpose to interfere with the attorney client relationship and as forum shopping. They were dismissed without merit and the dismissal was recently affirmed by

this Court as noted previously.

- Benz and Riley have been made aware multiple times that they cannot represent their entities pro se yet they continue to file, and have struck as improper, pleadings on behalf of their entities;
- Benz and Riley filed an appeal of an order in this case on behalf of their entities. This court entered a notation ruling that it was improper as they were pro se. The appeal was subsequently withdrawn.
- Benz and Riley filed two bar complaints against the Town's attorney, David Carson. The first was dismissed as without merit. The second regards the filing of information relating to monies received by the Skykomish Hotel which were under a protective order. To date Benz has refused to avail himself of the legal process by asking the court to seal the information instead resorting to personal attacks on the Town's attorney.
- Benz filed a complaint against a third-party real estate agent with the Northwest Multiple Listing Service for inadvertently providing a broker's sheet to Carson Law Group regarding the sale of the hotel. None of the information on the broker's sheet was confidential. It was all available on multiple other websites. Benz alleged a wider

conspiracy involving the agent, her husband, her husband's business partners and Carson Law Group to deprive Benz of his hotel property. The NWMLS declined to reprimand the agent.

- Benz filed six (6) FOIA requests with the Town seeking information alleging David Carson was not qualified to represent the Town during the Burlington Norther Santa Fe environmental remediation project. These requests were akin to interrogatories and not actually document requests.

The above list as included in the order is an adequate record for the court to conclude that Benz and Riley are vexatious litigants. "At the very least, the record needs to show, in some manner, that the litigant's activities were numerous or abusive." *DeLong* at 1147. The record shows that Benz and Riley's activities were numerous and abusive both inside and outside the judicial system. Benz and Riley were repeatedly held in contempt and sanctioned and yet those sanctions did not cease nor deter the vexatious conduct.

The third prong was satisfied where the order finds that the record was full of substantive findings as to the frivolous and harassing nature of the litigant's actions

specifically, that Benz and Riley have been found in contempt for failure to completely and truthfully

answer interrogatories on multiple occasions, Benz and Riley have been found in contempt for filing pleadings for the improper purpose of harassment and delay, have been found to have actually caused delay and harassment, filed untrue statements which created judicial waste, filed an action for the purpose of forum shopping; filed claims which have no merit, continued to file pleadings on behalf of their entities even though they are fully aware that state law prevents them from representing their entities pro se. This court finds that Karl Benz and Catherine Riley have engaged in a pattern of vexatious litigation including additionally filing of attorney bar complaints, complaints against third party real estate agents and FOIA requests. (CP 1370).

These are substantive findings as to the frivolous and harassing nature of Benz and Riley directly out of the order.

The pre-filing order is not overly broad and is narrowly tailored to curb the abusive behavior and as such satisfies the fourth and final prong. In DeLong the order was found overly broad because it had no boundaries. In contrast, the order against Benz and Riley is limited. It orders that Benz and Riley may not file a lawsuit on behalf of their entities without first being represented by an attorney. This is the law in the state of Washington and the United States. See *Rowland v. Cal. Men's Colony, Unit II Men's Advisory Council*, 506 U.S. 194, 202, 113 S.Ct. 716, (1993); *Dutch Vill. Mall v. Pelletti*, 162 Wn. App. 531, 256 P.3d 1251 (2011). This does not limit Benz and Riley's access to the judicial system.

The order prohibits Benz and Riley, as individuals or on behalf of

their entities, from filing any new action out of or related to the same facts or cause of action in this matter, or against the Town of Skykomish, Carson Law Group, P.S. without seeking approval of the court. The order does not prevent their access but provides that they must seek permission from the court prior to filing any such action and explain why it has merit, does not arise out of the same action and/or is against the same parties. As in *Molski*, the “order is narrowly tailored because it will not deny [them] access to courts on any ... claim that is not frivolous, yet it adds a valuable layer of protection ... for the courts and those targeted by [their] claims.” at 1161. The pre-filing order strikes the right balance between limiting the vexatious behavior of Benz and Riley and continuing to allow their access to the courts.

It was not an abuse of discretion for the Court to order sanctions against Benz and Riley in the form of a pre-filing order. The record reflects the frivolous and harassing nature of Benz and Riley’s actions in this and related matters. The order passes the *DeLong* four part test as described above. The court order was not “malicious” or done “arbitrarily” but was entered after a careful review of the record. The courts order was not based on untenable grounds nor was it manifestly unreasonable given the history of this case.

D. The Court's Refusal to Allow Benz and Riley Oral Argument at the Hearing on the Motion for Sanctions did not Deny the Parties Their Right to Due Process Where Benz and Riley Failed to Motion to Court for the Option to Appear Telephonically, They Provided Written Responses to the Court, of Which the Court Acknowledged as Having Considered, and Where Benz and Riley had the Option to Appear in Person and Give Oral Argument.

The Courts decision to deny Benz and Riley oral argument at the hearing on sanctions was not a violation of their fundamental right to due process. Due process includes the right to notice and a meaningful opportunity to be heard. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542 (1985). Benz and Riley were given ample notice of the contempt and sanctions hearings. They were found in contempt and the court reserved on sanctions pending their compliance with the court order. They failed to comply with the court order compelling discovery. They received notice that the Town was bringing a motion for sanctions based on their failure to comply.

An opportunity to be heard does not require an oral hearing on their issue. *Pacific Harbor* at 1118. The opportunity to brief the issue fully satisfies due process requirements. *Id.* Benz and Riley were provided a meaningful opportunity to be heard. Benz and Riley provided a written response to the court. There is no guaranteed right to oral argument in our

courts. Benz and Riley were provided an opportunity to be heard through their written motion. They had the opportunity to appear in person at the hearing. Benz and Riley did not motion the court to appear telephonically or provide a declaration as to why they should be allowed to appear telephonically and so they were denied the right to oral argument, but not the right to appear. (RP #2, p. 4, lines 4-14).

Instead, they requested telephonic appearance without giving any reason as to why. The Town objected. The Town had not objected to such appearances previously as a courtesy to Benz and Riley, who then refused to fully and truthfully participate in the discovery process. Throughout this matter Benz and Riley purposefully avoided any court appearances and attempts at personal service. The Court, in its oral ruling, upon discussing the relative sophistication of Benz and Riley in their ability to get information before the court, stated “And so for that reason, their lack of information about why they are not here to make their arguments is really troubling to the Court.... And this was scheduled for oral argument and again there was no basis given for not being here.” (RP #2, p. 19, lines 1-7, 9-11). The Court found that Benz and Riley could attend the hearing telephonically but would not be given the right to oral argument. (RP #2 p. 4-5, lines 2-28, 1-8).

Benz and Riley were given due process. The order specifically states that the court read and considered the response provided by Benz and Riley. They were given full due process through notice and a meaningful opportunity to provide their response. They had the opportunity to appear in court personally and would have been granted oral argument. They chose not to appear personally. Therefore, they were granted the right to appear telephonically but not to oral argument. There was no abuse of discretion or violation of the appearance of fairness doctrine in refusing to allow telephonic oral argument where no good reason was provided as to why they could not appear in person and where Benz and Riley submitted a written response which the court considered.

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V. CONCLUSION

The trial court's order granting sanctions and judgment against Benz and Riley; order finding Benz and Riley in Contempt for failure to make discovery; and the order finding Benz and Riley to be vexatious litigants and imposing pre-filing limitations upon them should be affirmed. This case should be remanded for entry of attorney fees and costs. If reversed, the matter should be remanded to the trial court.

Dated this 13th day of August, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Carson", written over a horizontal line.

David S. Carson, WSBA #13773
Holly M. Shannon, WSBA #44957
Carson Law Group, P.S.
Attorneys for Respondent

DECLARATION OF MAILING

Dawn Misawic declares as follows:

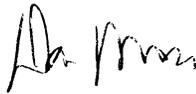
I am an employee of Carson Law Group, P.S., a United States citizen, over the age of eighteen (18) years, and am competent to testify to the matters set forth herein.

I certify that on August 13, 2015, I mailed by U.S. First-Class Mail, postage prepaid copies of the above BRIEF OF RESPONDENT to the following:

Karl Benz and Catherine Riley
2885 Sanford Ave SW #29339
Grandville MI 49418
(U.S. Mail)

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Dated at Everett, Washington on August 13, 2015.



Dawn Misawic, Legal Assistant