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COURT OF APPEALS  
DIVISION ONE  
SEP 26 2016

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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MOUNTAIN HIGH ASSOCIATION OF HOMEOWNERS,

Plaintiffs/Respondents

VS

SAMUEL D. TURNER AND LILLIAN L. RAMBUS, ET AL,

Defendants/Appellants

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APPEAL FROM KING COUNTY SUPERIOR COURT

THE HONORABLE JUDITH H. RAMSEYER

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REPLY BRIEF OF APPELLANTS

74529-8

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COURT OF APPEALS  
STATE OF WASHINGTON

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## I. INTRODUCTION

The Plaintiff initiated these proceedings in the Superior Court and in the course of the proceedings filed a motion for summary judgment, under **Rule 56, CRCP**. On November 6, 2016, these Defendants sufficiently motioned the Court for a continuance and Judge Judith H. Ramseyer granted the continuance of the motion and re-scheduled the hearing, from November 6, 2015 to December 11, 2015, under **Rule 56 (f), CRCP**. At the request of the Plaintiff's Counsel, Mark Phelps, the Court also ruled to deny these Defendants the opportunities for filing anything additional in the record, in opposition to the Plaintiff's motion. The Record of the Proceeding succinctly states the discourse as follows, (**PR Page 3, Line 16 thru Page 4, Line 12**):

“MR. PHELPS: . . . This motion was continued at the Defendant's request and part of that continuance was that the timelines for the original motion were -- were -- were kept for response. And obviously, that, whatever that was, is untimely. We object to any consideration of that.”

“THE COURT: Yes. Well, that is true that – Ms. Rambus, this was originally set for early November.”

--

“MS. RAMBUS: Right.

THE COURT: -- was supposed to be in before That November --

MS. RAMBUS: Absolutely.

THE COURT: -- time.”

The Superior Court then entered summary judgment in favor of the Plaintiff and against the Defendants, without considering anything in opposition.

## II. REPLY ARGUMENT:

This appellate court applies the *de novo standard of review*, to a ruling on a motion for summary judgment and to an order of summary judgment from a Superior Court, **Hulbert v Port of Everett**, 159 Wn. App. 389, 245 P.3d 779 (2011), engaging in the same inquiry as the superior court and construing all facts and reasonable inferences in the light most favorable to the non-moving party, these Defendants in this appeal. It is undisputed that the Superior Court has the discretion to rule on a motion for summary judgment under **Rule 56, CRCP**. It's also undisputed that the court has the discretion to rule on a motion for continuance under **Rule 56 (f), CRCP**. Most importantly here, the ruling of the superior court on a motion for continuance is reversible by the appellate court only for manifest abuse of discretion, as here and in , ***Coggle v Snow***, 56 Wn. App. 499, 784 P.2d 554 (1990), another "timeline" issue case.

What's disputed here is that the Superior Court's manifest abuse of discretion. The Court abused its judicial discretion not by its grant of the order of continuance, but by the order denying these defendants the function, purpose and benefit of the continuance, contrary to Rule 56 (f), CRCP, and its function and purpose. Here, by order of the court, the Defendants were to complete their filing on November 6, 2015, the same date of the ruling. Hence, they were not given any time whatsoever to discover, locate, collect, prepare and present to the Superior Court the proof of their payments, credits and other offsets which would have opposed or debased the Plaintiff's claim for judgment.

The prevailing rule in Washington is that judicial discretion is abused by a ruling if it is exercised on untenable grounds or for untenable reasons considering the purpose for which the Court is exercising discretion. **Coggle v Snow, supra.** Here the discretion was exercised on untenable grounds and for untenable reasons. The ruling feigned justice and object fairness, considering of the reasons communicated by the Defendants for the continuance. The timeline in the ruling thwarted the very purpose of the continuance, with another of the “**Draconian Timelines**” found in, **Coggle v Snow, supra.**, contrary to such purposes as fairness, justice and long standing case precedent. The ruling accomplished nothing whatsoever for the Defendants. It neither allowed for the collection of opposing material evidence nor completing the record, consistent with Rule 56 (f), CRCP, after consideration of the Defendants reasons for having made the motion for continuance. The ruling was clearly untenable and clearly a “**manifest abuse**” of judicial discretion.

A continuation of the summary judgment hearing is the most common relief requested and granted under Rule 56 (f), CRCP, which is intended to allow the opposing party additional time to go out and discover, locate, collect, prepare and present further evidence essential to opposing the motion. **10B Charles Alan Wright, et al, Federal Practice and Procedure, Section 2740 (3d ed. 2010).** The recognized purpose and function of **Rule 56 (f)** relief, is to make a provisions in the judicial (trial) process for giving a party the additional opportunity to locate and gather additional evidence to present in opposition to the motion for summary judgment, in favor of a judgment on the merits. This was not done here.

In, the decision of *Coggle v Snow, supra*, the Court of Appeals held as follows;

“the court has a duty to give the party a reasonable opportunity to complete the record before ruling on the case ... we note that the modern trend is to interpret the court rules and statutes to allow decision on the merits of the case.....”

Consequently, the Superior Court’s ruling was a “manifest abuse of discretion”, *Lewis v Bell*, 45 Wn. App.192, 742 P.2d 425 (1986),

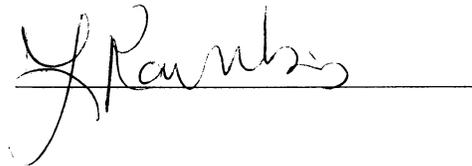
The Superior Court’s untenable ruling, also meant that the Plaintiff failed to meet its burden of proof, by demonstrating the absence of any genuine issue of material fact, as required under **Rule 56 (c), CRCP. Coggle v Snow, supra.** With the Plaintiff seeking to limit the Defendants’ production of evidence in opposition to the motion and the Superior Court’s ruling barring the production and consideration of other evidence that would offset, reduce or otherwise debase the Plaintiff’s judgment claim the burden could not be met. The Superior Court erred in ruling that there were no genuine issue of material fact, when such had been barred by the ruling. The primary consideration in the Superior Court’s decision should have been justice for all of the parties. **Coggle v Snow, supra.**

III. CONCLUSION:

In conclusion, these Defendant's request that this Court of Appeals reverse the decision and vacate the judgment of the Superior Court and remand this matter for trial.

Respectfully submitted,

Dated: 9/26/16

A handwritten signature in cursive script, appearing to read "J. Rumbos", written over a horizontal line.

Dated: 9-26-16

A handwritten signature in cursive script, appearing to read "Jim J. [unclear]", written over a horizontal line.