

NO. 35521-3-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

IN RE: THE PORT OF TAHUYA
A Washington Port District.

**PETITIONER BRAD CAREY'S
APPELLATE BRIEF**

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ASSIGNMENT OF ERROR

Petitioner asserts that the Trial Court erred by dissolving the Port of Tahuya [CP 504-506] pursuant to RCW Ch. RCW 53.48, without the Court having made an express finding of solvency or insolvency of said Port District, as required by RCW 53.48.040.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

May a Trial Court dissolve a Port District without an express finding of solvency or insolvency under RCW 53.48.040.

STATEMENT OF THE CASE

A. RELIEF SOUGHT.

Petitioner asks this Court to reverse the Court's Order of May 24, 2006 [CP 504-506] on the grounds that no finding of solvency has been rendered, as required by RCW 53.48.040, prior to the dissolution of the Port of Tahuya. The Court should then remand these proceedings to the Superior Court with instructions that the Court comply with RCW Ch. 53.48 with respect to the dissolution of this Port district.

B. STATEMENT OF FACTS.

On November 14, 2005, the Port of Tahuya (the "Port") filed a Petition [CP 549-559] for its dissolution pursuant to RCW 53.48.020.

Pursuant to RCW 53.48.030, Mason County Superior Court set a hearing for January 9, 2006 on the Petition, before the Honorable James B. Sawyer II, Mason County Superior Court Judge. The hearing resulted in an Order [CP 518-524] in which the Port was directed to "immediately commence the winding-up of its affairs, which shall include the following:" These actions included, *inter alia*, setting of a claims period after notice to creditors, consideration of said claims and additional claims, the addressing of outstanding public records requests, close out of leases, marshalling of assets and the assembly, organization and preparation of the Port's records for archiving. [CP 520-521]. The

January 9, 2006 Order¹ was entered after oral argument wherein Robert Goodstein, counsel for the Port, represented to the Court as follows:

And in addition, Mr. Carey has filed an order [sic] requiring systematic winding up prior to dissolution in which he asks certain tasks be accomplished. We believe that these are tasks that would be accomplished in the ordinary course of a wind up anyway. The difference here is that what Mr. Carey had asked for, as I understand it, is that the wind up occur prior to the dissolution. I believe we're accomplishing that task by having the Court indicate that it will dissolve the Port upon the completion of those tasks that he has called out. Those tasks include taking action on open claims, completing action on open lawsuits, gathering and archiving public documents consistent with rules of the State Archivist, responding to pending requests for public disclosure, closing out of any leases, and gathering and properly archiving or terminating existing policies of insurance.

[RP 3].

In response to Goodstein's statements, the Court ruled from the bench as follows:

So, that having been said, I will sign an order. I'm indicating that the Court will order the Port to be dissolved upon completion of the business as set forth, which means the processing of any open claims, the processing of any open lawsuits, the proper preparation for and completion of the archiving of the records of the Port of Tahuya, and any public disclosure requirements that may still be pending . . .

[RP 8].

The Court did not make a finding of solvency or dissolve the Port on January 9, 2006. The actions identified above were to occur *prior to*

¹ The Order was actually signed by the Court on January 23, 2006.

the dissolution of the Port [CP 520-521; RP 8]. The issue of solvency was not raised at the January 9, 2006 hearing [RP 1-14].² Indeed, because of the numerous outstanding claims [CP 113-333] against the Port, many of which are unliquidated *even today*, no finding of solvency could be possible. Without a finding of solvency, a Port District can not be dissolved. RCW 53.48.030.

The Court took this matter up again on May 24, 2006. That hearing was conducted not by Judge Sawyer, but by Judge Toni A. Sheldon. Notwithstanding Judge Sawyer's January 9, 2006 Order and ruling from the bench, and the lack of accomplishment of the directed actions, on May 24, 2006, Goodstein represented to Judge Sheldon:

So we don't believe there is any impediment to entering the dissolution order. The dissolution order, as you can see from the January 9th ruling of the Court, was **simply held in abeyance as a convenience to allow this Court to transfer Menard's Landing, which has occurred.** [emphasis supplied].

[RP 48].³

Based upon Goodstein's misrepresentation of Judge Sawyer's ruling, and notwithstanding the lack of a finding of solvency and the numerous outstanding, unresolved and unliquidated claims against the

² Petitioner did raise the issue of solvency *prior to* the January 9, 2006 hearing [CP 528-546; 547-548]. However, it was not raised at the hearing because Judge Sawyer did not rule on solvency.

³ Menard's Landing is the sole real property of the Port of Tahuya, consisting of a small park and boat launch in the city of Tahuya.

Port, Judge Sheldon entered an Order [CP 504-506] dissolving the Port.

The Order contains the verbiage:

2.2 By the agreed findings entered 1-23-06 [CP 518-524] from the 1-9-06 hearing, the Port of Tahuya was found to be solvent.

Judge Sheldon implied solvency [RP 84-85], but the problem is Judge Sawyer never ruling on solvency. There could be no finding of solvency because of the numerous outstanding unliquidated claims against the Port, claims that remain unliquidated even today!

Petitioner's subsequent Motion for Reconsideration [CP 502-503] on the issue of solvency was denied by the Court.

ARGUMENT

1. Statutory Rules of Construction.

In light of the lack of pertinent reported cases under RCW Ch. 53.48, it is incumbent upon the Court to review the plain wording of the statute, and make a ruling consistent therewith. Berrocal v. Fernandez, 155 Wash.2d 585, 599 (2005). Strained meanings and absurd results in interpreting statutes should be avoided. State v. Neher, 112 Wn.2d 347, 351 (1989). When interpreting statutes, courts are not required to abandon their common sense. Allison v. Housing Authority, 118 Wn.2d 79, 86 (1991) (quoting Price Waterhouse v. Hopkins, 490 U.S. 228 (1989)). A court must "give meaning to every word the legislature includes in a

statute, and . . . must avoid rendering any language superfluous.”

Fernandez, 155 Wash.2d at 599-600.

2. **RCW Ch. 53.48 requires an express finding of solvency or insolvency. None was rendered in this matter.**

RCW 53.48.040 states:

After said hearing the court shall enter its order dissolving or refusing to dissolve said district. A finding that the best interests of all persons concerned will be served by the proposed dissolution shall be essential to an order of dissolution. If the court find that such district is solvent, the court shall order the sale of such assets, other than cash, by the sheriff of the county in which the board is situated, in the manner provided by law for the sale of property on execution.

If the Port District is found to be solvent, its debts shall be paid, with any surplus paid to the local school district. RCW 43.48.050. If the Port District is found to be insolvent, there shall be a second hearing to “determine ways and means of retiring the established indebtedness of the district and paying all costs and expenses of proceedings hereunder. Such ways and means may include the levy of assessments against the property in the district as provided in RCW 53.48.080.” RCW 53.48.060.

After all claims are liquidated, it should be easy to enter a claim of solvency *or* insolvency, and proceed under either RCW 53.48.050 or .060. But if the Court were to distribute the Port’s assets *before* all claims are known and resolved, it would be left with the unenviable task of having to

recover the assets from the party to whom payment was made, if subsequent claims proved to exceed the assets of the Port.

The foregoing process was recognized by Port attorney Goodstein, who advised the Court on April 27, 2006 as to the outstanding claims:

“Clearly, the Court’s Order [of January 9, 2006] simply establishes May 9, 2006 as the claims bar date. In addition, claims received on that date would necessarily have to be resolved after that date, and other matters may also be resolved after that date. . . . In all likelihood, they will have to be resolved by the Court in evidentiary hearings, as contemplated by the Court’s January 9, 2006 Order, and by the Court’s April 10, 2006 order concerning the claim and lawsuit by former commissioner Cynthia Olsen.”

[CP 560-576]. The foregoing was in response to CP 510-513.

A finding of solvency or insolvency was never made. On both January 9, 2006 and May 24, 2006, numerous claims were still unliquidated [CP 113-333], and thus a finding of solvency or insolvency was not possible.

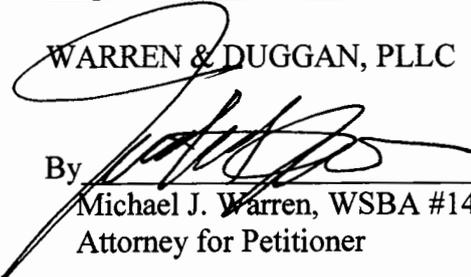
C. CONCLUSION.

This Court should reverse the Court’s Order of May 24, 2006 [CP 504-506] on the grounds that no finding of solvency has been rendered, as required by RCW 53.48.040, prior to the dissolution of the Port of Tahuya. The Court should then remand these proceedings to the Superior Court with instructions that the Court comply with RCW Ch. 53.48 with respect to the dissolution of this Port District.

DATED this 17th day of May, 2007.

Respectfully Submitted,

WARREN & DUGGAN, PLLC

By 

Michael J. Warren, WSBA #14177
Attorney for Petitioner

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DECLARATION OF SERVICE

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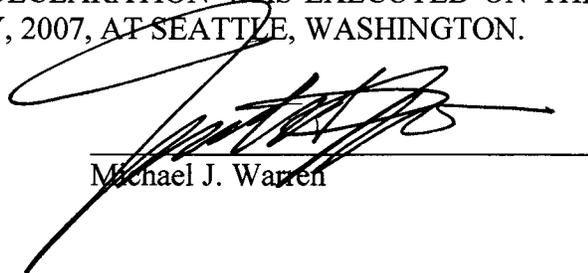
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Michael J. Warren hereby declares as follows: On May 17, 2007, I caused to be served via ABC regular messenger a copy of Petitioner Brad Carey's Appellant Brief on:

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I DECLARE UNDER PENALTY OF PERJURY THAT THAT THE FOREGOING IS TRUE AND CORRECT AND THAT THIS DECLARATION WAS EXECUTED ON THE 17th DAY OF MAY, 2007, AT SEATTLE, WASHINGTON.



Michael J. Warren