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COURT OF APPEALS,
DIVISION II
OF THE STATE OF WASHINGTON

L.S., an individual,

Respondent and Cross-Appellant,

vs.

TITUS-WILL FORD SALES, INC., a Washington Corporation, et. al.,

Cross-Appellants;

RICHIE CARTER,

Cross-Appellant;

MICHAEL R. DOLAJAK,

Appellant.

BRIEF OF CROSS-APPELLANT TITUS-WILL FORD, et. al.,

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ORIGINAL

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I. ASSIGNMENTS OF ERROR

1. Whether the trial court erred in denying these defendants' attorney's fees in responding to plaintiff's procurement of a Default order and Default Judgment?
2. Whether the trial court erred in entering default judgments against Carter and Dolajak?
3. If what occurred below was a trial as argued by plaintiff, whether the trial court erred in ignoring the jury demand that was timely made?
4. Whether the trial court erred in not vacating the default judgment against Dolajak?

II. ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Whether plaintiff sought, and was granted, a Default order and a Default judgment.
2. Whether a 2.5 million dollar judgment procured via a 5 minute hearing can be called a "trial" when: (a) the trial was properly and timely noted to be a jury trial and yet no jury was present, (b) plaintiff offered no evidence to be marked, (c) no evidence was marked, (d) no evidence was admitted as evidence, (e) no witnesses were called, and (f) the bench entered judgment without a jury.
3. Whether the court may disregard a jury demand timely made when the relief sought by the plaintiff is entirely legal in nature, not equitable.
4. Whether the actions of plaintiff in the procurement of her Default order and Default judgment, and her defense of it, subject her to an award of CR 11 costs and fees to these defendants and whether fees and costs should be awarded pursuant to RAP 18.9 on appeal.

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III. OVERVIEW

A jury trial in this matter was timely demanded, and the case as called was to be tried to a jury. Despite that, after a 5 minute bench hearing with no jury, plaintiff left the court room (metaphorically speaking, as plaintiff was not even present in the court house at the time) with a 2.5 million dollar judgment.

The plaintiff clearly and unequivocally asked for, and was granted, first a “*Default Order*,” and based on that, a “*Default Judgment*.”

Plaintiff indicated no less than 11 times during the very short 5 minute hearing that she was asking for a *Default* order and *Default* judgment.

The court clearly indicated twice that it was issuing a “*Default*” order and a “*Default*” judgment.

The orders themselves, as prepared by plaintiff, were clearly captioned as a “*Default Order*” and “*Default Judgment*,” and between them used the term “*default*” three times in the body of the orders, and invoked the specific rule on *Default* orders, CR 55, three times.

After it was brought to her attention that she did follow the non-discretionary requirements of CR 55(f)(2)(a) to obtain a Default order or judgment, plaintiff tried to recharacterize the relief she sought and was granted, as being something else: a trial.

A trial with no testimony.

A trial with no evidence marked, offered, or entered as evidence.

A trial that was clearly noted up to be a jury trial, and yet there was no jury present.

Although plaintiff utilizes brisk argument, these are not close questions.

There were substantial irregularities in the proceedings below. And by those irregularities, plaintiff defended the *Default* order and judgment she sought and received.

These parties seek review of the trial court's denial of an award of their attorney's fees in responding to plaintiffs' procurement of a default judgment, and plaintiff's defense of that judgment when the error of it was brought to her attention. These defendants submit the need for briefing by them in light of the orders obtained by plaintiff was not simply foreseeable, but indeed demanded, by the argument and rhetoric employed by the plaintiff below.

IV. FACTS

A. Facts In Support Of Appeal

For the sake of judicial economy, these defendants respectfully adopt herein by cross-reference, the facts as cited by Mr. Dolajak regarding the *material* facts of the proceedings below.

In addition, defendants offer the following.

The trial below was noted as a jury trial. CP 419. No motion was made, nor order signed, striking that jury demand.

No jury trial took place. That is evident from the Report of Proceedings.

As stated above, plaintiff asked no less than 11 times for a *default* order and/or a *default* judgment. RP 4, 9 (4 times), 10 (3 times), 11, 12 (2 times), 15.

Plaintiff cited the rule on default, CR 55, no less than 5 times. RP 4, 9, 10, 11, 12.

Plaintiff clearly made a motion, she did not proceed with a trial; even her attorney at the motion, called it a motion:

These defendants have had an opportunity to appear and defend the case. They have elected not to do so, *thus our motion.*

RP 14, lines 17 – 18. (italics added).

The court indicated no less than two times that it was entering a *default* order and *default* judgment. RP 9, 10. As the court articulated:

I (will) enter a default against Mr. Carter and Dolajak.

RP 10, line 10.

And of course, the actual orders themselves were clearly identified as a *default* order and *default* judgment. CP 11, and 12 – 14.

Indeed, what occurred below was so clearly not a trial, that the Superior Court below could not even call it a trial when it ruled on the post-judgment motions – instead calling it a “hearing on the merits.” RP II, 34. With the greatest respect to the trial judge, a “hearing on the merits” is not a trial. It is most certainly not a jury trial: if even the trial judge could not bring itself to call what occurred below a trial, how can this court.

If it was a trial the court believed it was conducting, then the same order should have been entered against Gordon because like Carter and Dolajak, he did not show the first day of “trial” either.

Notably, plaintiff does not assign as error the trial court’s not entering the same order against Mr. Gordon.

This, it is submitted, is a catch-22 in plaintiff’s argument which reveals her gyrations to be just so much post-hoc confabulation.

The court and plaintiff’s counsel discussed the fact that even plaintiff admitted she received an answer from Gordon. RP 9. Plaintiff, apparently realizing her error in seeking a default against an answering party, amended her request to only seek a “default” against Carter and Dolajak - but not Gordon who filed an answer. Id. She did not agree to “dismiss” Gordon, as Mr. Dolajak submits on appeal. The record is clear she simply appreciated the court was not going to enter a default against

an answering party, and moved on.

If the court is disinclined to enter judgment against, or the *motion for default* against Broderick Gordon, we could still request that *entry of default* against Mr. Carter and Mr. Dolajak.

RP 9.

But if plaintiff was correct in her position on appeal, that what occurred below was a “trial,” she would not have changed her request to not have judgment entered against Gordon. And, she should have assigned as error the court’s refusal to enter the same order against Mr. Gordon.

Merely filing an answer is not a defense to a trial – but it is a defense against a default order being entered. If what occurred below was really a trial, and an order of judgment following a trial, then the same order should have been entered against Gordon. But it was not a trial, so no judgment was entered against Mr. Gordon and plaintiff assigns no error to that decision.

It is submitted it is impossible, absent a declaration for the Superior Court judge, to have a more clear indication as to the court’s state of mind of what it did the day when the orders were signed than the following back and forth between plaintiff’s counsel and the court. Clearly, despite what the court said on the subsequent motion, it knew on

the day in question that it was issuing a default order and judgment:

Mr. Beauregard: ... And pursuant to CR 55 if they had answered, they still aren't here to defend their case, so we would move for the default.

The Court: I can't enter a default if they answered (referring to Gordon), and I don't see anything from Mr. Carter or Mr. Dolajak...

RP 9. If the court thought it was conducting a trial, then it would have entered the same judgment against Gordon as he clearly did not defend a "trial" – but he did "answer" the complaint which prevented the court from entering a default against him; a fact the court itself acknowledged as cited immediately above. RP 9.

Plaintiff's not assigning error to the court's rejection of her request to also enter judgment against Gordon is, for the purpose of appeal, her acceptance of that action as proper - it was proper to refuse to enter the order below (a default order) against a party who filed an answer.

Assuming what occurred below was a trial, it would have been improper, and error should have been assigned, to the trial court's not entering judgment against Mr. Gordon as well. Plaintiff's failure to assign as error the trial court's not entering judgment against Gordon, is an acceptance of that decision which can only be harmonized by viewing the proceeding below to actually be what plaintiff and the court called it approximately 15 times: a default motion.

B. Factual Allegations To Which Defendants Will Not Respond

Response will not be made to Mr. Dolajak's and plaintiff's blaming the undersigned for plaintiff's obtaining a judgment, default or otherwise. Defendants' counsel was not at fault for plaintiff's failure to provide either Mr. Dolajak or Mr. Carter notice of her intent to request a default after more than one year had elapsed after her service of a summons and complaint on them. That is the only operative fact on this appeal. Non-material facts are not addressed for that reason alone, not as an acceptance of the arguments made.¹

Nor will response be made regarding the enormous amount of factual assertions made by plaintiff with no support of the record regarding her interpretation of discovery, motions to compel, summary judgment, experts, or other matters below that occurred before the default judgments were entered.

Suffice it to say, two wrongs do not make a right and that plaintiff would engage in such argument and rhetoric without support in the record as required by RAP 10.4(f), would not excuse these defendants from

¹ These defendants had no opportunity to develop any meaningful record or defend such allegations below. Those issues have not been litigated and as such, there is no record for these defendants to cite to in response. If the court deems to give such arguments weight, that may be within its discretion. However, those other defendants' coloring an argument to justify setting aside a default is quite another thing from these defendants responding to such claims on their ultimate merits. Failure to argue those issues here is not acquiescence or agreement, it is merely the acknowledgment there is no record to cite in response and unlike the plaintiff, these defendants will not make argument in violation of the RAPs outside of the record.

replying in kind.

It is sufficient to say: (1) defendants *strongly, strongly, strongly* disagree with plaintiff's impressions, (2) her arguments are without support of the record, and (3) none of the arguments plaintiff makes without support in the record are material to the questions before this court even if accurate.

Finally, reply will not be made to the tone employed, and personal attacks made, by plaintiff in her brief. It would seem plaintiff is more concerned with convincing this court the undersigned is a bad person, than defending the issues on appeal. Such personal attacks have no place in briefing and are beneath the dignity of these proceedings.

However, note should be taken as to one of plaintiff's arguments as it is illustrative of the irregular procedure employed by her below. Specifically, plaintiff argues this court should "*take into consideration in relation to the ultimate disposition of this appeal*" and thus determine the fate of Mr. Dolajak and Mr. Carter because, in plaintiff's counsel's impression, the undersigned is the most "irresponsible, self-serving, disrespectful, incompetent, and arguably unethical" attorney he has "encountered" in his less than 5 years of practice (see plaintiff's memo, page 29, footnote 46). Plaintiff utilizes similar rhetoric and makes similar

arguments throughout her brief, and did similarly below as well.²

Such argument is striking. Plaintiff is actually asking this court to determine an appeal, not on its merits or the applicable law, but instead to “take into consideration” plaintiff’s counsel’s impression that the undersigned was “disrespectful” toward him. It is that same type of irregularity of proceedings whereby plaintiff procured the orders that are now on appeal, arguing to the court it should disregard the rules and give her a judgment more by the nature of her allegation itself than the adherence to established civil procedure. RP 13-15.

As one example of irregular procedure employed below, while the motions were pending plaintiff’s counsel threatened to sue these defendants’ attorney if he advised the trial court of the facts relating to his (plaintiff’s counsel’s) notice regarding his taking a non-suit. CP 17 and 22. The email from plaintiff’s counsel is worthy of reading. CP 22.³

Initially defendants gave thought to moving to strike the portions of plaintiff’s brief referenced above as they do not appear to conform to either RAP 10.4(f), or RPC 3.4(e) or RPC 3.5(d). These defendants will not make such a motion. Whether this court permits or condones such

² A commissioner of this court has already denied plaintiff’s request to file an internet article she apparently recently found, as additional evidence. Such would appear to be part and parcel of the same method of argument by plaintiff.

³ It is not practical to outline the other irregularities here. They are, however, manifest and identified at CP 21 – 50 and CP 15 – 20, as well as throughout the record below.

attacks, particularly on matters that are not even before this court, is an issue better left to the sound discretion of this court on its own initiative.

Perhaps it is better that such arguments remain unstricken. That plaintiff would undertake to engage in that form of strategy here, serves as illustration of the irregular procedure by which she obtained her orders below.

C. **The Proceedings Below Were Tainted By Plaintiff's Irregular Conduct**

On the eve of trial, plaintiff told both the court and these defendants' attorney that she intended on taking a nonsuit against Dolajak, Carter, and Gordon. CP 21-22, 30, 32. Plaintiff's counsel conceded that at CP 359.

Thus, those were not mere musings of "strategy," mulled internally, as implied by counsel. Plaintiff clearly indicated to the court and these defendants' attorney that she was taking a nonsuit as to Carter's, Dolajak's, and Gordon's claims.

When the first day of trial came, plaintiff protested that although she told both the court and defense counsel she was taking a nonsuit, that she did not file the nonsuit and demanded a default against those same individuals she had just told these defendants' attorneys and the court she was taking a nonsuit of. CP 16, RP 20. It is undisputed she did not advise

the three defendants of her intent to request a default judgment, nor of her change of mind to not go forward in that regard. Id.

When the undersigned pointed out to the court that answers had been filed by at least two of those defendants, plaintiff was – it will simply be said – less than entirely “candid” in “her” representation to the court of what she received from those defendants by way of answers.

The trial court found in the file (on its computer) the pro se answer filed by Mr. Gordon. RP 8. (Gordon’s and Carter’s answers are CP 76 and 74). The court told the plaintiff she considered Mr. Gordon’s “statement” an answer. RP 8.

And yet, despite the court directly telling plaintiff it considered (and properly so) the answer from Mr. Gordon an answer, plaintiff persisted in telling the court she had not received an “answer” from Mr. Carter although she did. RP 9. The “answer” of Mr. Carter’s was not in any way materially different than Mr. Gordon’s. The undersigned told the court repeatedly that Carter had filed an answer, RP 8, and plaintiff continued to represent she had not.

As an issue of fact, it may be taken as undisputed that if plaintiff had properly discharged her duty of candor to the court and told it she had received the same type of answer/statement/document from Mr. Carter as Mr. Gordon which the court had just told plaintiff constituted an answer,

that the court would not have entered a default judgment against Carter either. Instead, relying on plaintiff's representation that no "answer" had been made by Carter, and unable to find it by scanning the document names assigned by the clerk LINX, the court determined that no answer was filed by Carter and thus entered a default against him.

When this was discussed on the subsequent motion, plaintiff's counsel's justification for not advising the court of that material fact he was aware of, was that it was not in his client's best interest to do so. CP 16 - 17. It is not believed a party's monetary interest, nor an attorney's contingent fee interest, trumps an attorney's duty of candor to the court.

A further irregularity was plaintiff's argument she was not required to advise either Carter or Grodon of anything because neither had appeared. RP 7. Plaintiff admitted on the record she provided none of those three defendants with notice of her intent to request default orders. RP 7.

While plaintiff attempts to minimize what she received from Gordon and Carter as not constituting "answers," she admits she received notices from them denying liability. RP 4, 9.

Thus, even if plaintiff is to be taken at face value (which it is submitted should not be done) and that she did not believe those documents constituted "answers," they were certainly *appearances* if

nothing else. And yet, she failed to provide either defendant notice of any of her intended actions. She admits this explicitly. RP 4.

A further irregularity lays in the amount of the judgment. Plaintiff asked for and was given a 2.5 million dollar default judgment against *both* Carter and Dolajak for their combined alleged misconduct. RP 15. But, not for the conduct of Mr. Gordon – no default had been entered against him. Id. The court indicated that it was Gordon and Carter that she was awarding damages against. RP 16-17.

And yet, on the subsequent motion when the court set aside the default that had been entered against Mr. Carter once the Court acknowledged Mr. Carter filed an answer, the court kept in place that 2.5 million dollar award against Mr. Dolajak *alone* at plaintiff's request. That, despite the fact the 2.5 million dollar judgment had been originally awarded for the alleged misconduct of *both* Carter and Dolajak.

V. ARGUMENT AND AUTHORITY

A. CR 11 Requires A Good Faith Basis In Fact And Law For The Position Taken By A Party In Litigation

It is not believed this court requires these defendants to set forth in great detail the fundamentals of CR 11. Therefore, a hornbook discussion of CR 11 will not be provided here. Instead, these defendants respectfully point the court to MacDonald v. Korum Ford, 80 Wn.App. 877 (1996)

which has similarities to the case at bar.

MacDonald arose out of sexual harassment claim. The defendant brought a motion for sanctions for a lack of factual basis of plaintiff's claim, both in its original filing and in light of information obtained by the plaintiff's attorney during the course of the litigation that demonstrated there was no good faith factual basis for continuing the claim. Id at 882. It appears the court did not find the plaintiff's attorney violated CR 11 in the original filing of the lawsuit, although it implied the investigation and facts were thin. Id.⁴

However, at plaintiff's deposition she admitted facts that precluded recovery. Id. Despite that, plaintiff's attorney persisted in pursuing the claim. Id.

Upholding the trial court's award of CR 11 fees, Division Two held plaintiff's attorney could not ignore information he learned at his client's deposition, indicating she had no ability to recover on her claims. See id. at 890-891. Or stated another way, even if a course of conduct might have appeared proper when initiated, if facts are later discovered that demonstrate the course of conduct is without a proper basis in fact or law, the continued prosecution of it, is its own violation of CR 11.

⁴ On the other hand it appears to indicate plaintiff's attorney's pre-filing investigation violated CR 11 as well.

Ultimately, the court remanded for a calculation of fees incurred by defendant after that deposition which revealed to plaintiff's counsel that the original course of conduct (the lawsuit itself) was without good faith basis in fact or law. Id. at 892 – 893.

So as to not be susceptible to a claim that these defendants are giving CR 11 short shrift, CR 11 is clear:

...The signature of a party or of an attorney constitutes a certificate by the party or attorney that the party or attorney has read the pleading, motion, or legal memorandum, and that to the best of the party's or attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) it is well grounded in fact ; (2) it is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief. If a pleading, motion, or legal memorandum is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or legal memorandum is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or legal memorandum, including a reasonable attorney fee.

The issuance of costs under CR 11 is clearly discretionary.

However, the court is to be guided by the principal that an award should

be considered when deterrence is needed:

The purpose of the rule is to deter baseless filings and curb abuses of the judicial system.

Skimming v. Boxer, 119 Wn.App. 748, 754 (2004).

Sanctions are also to be considered when the court can discern the claim is motivated out of a harassing or vexatious motive: a cost award was upheld when the court determined the claim “lacked any basis in law or fact, and (was) brought solely for the purpose of harassing” the party.

McNeil v. Powers, 123 Wn.App. 577, 591 (2004).

B. The Trial Court Erred In Not Awarding Defendants’ Fees

Even if plaintiff’s error in requesting the default judgment in the first place can be excused by a mistaken understanding of CR 55 (which is not conceded), once the issue was brought to plaintiff’s attention not only should she not have opposed the motions filed to vacate the default order and judgment, she should have moved to vacate them herself.

Her opposition to the motions to vacate those orders was without a good faith basis in fact or law and as will be described below, is no different than the plaintiff’s persisting in her lawsuit in the MacDonald case. CR 55 was clear enough initially, and she clearly lacked a good faith basis in fact or law to seek default orders and judgments, having provided no notice to those defendants of her intent to do so.

However, after the orders were obtained it was even more clear, as after the plaintiff's deposition in Macdonald, that the orders were without basis in fact or law but she persisted in the claim anyway trying to recharacterize what occurred as a "trial," necessitating extended motion practice by all parties.

1. PLAINTIFF OBTAINED A DEFAULT ORDER AND JUDGMENT BELOW – THERE WAS NO “MINI-TRIAL”

Perhaps the plainest example of plaintiff's violation of CR 11 is her post-hoc attempt to recharacterize her seeking a default order and judgment below as a "mini-trial." Parenthetically, these defendants are unaware of any civil rule providing for a "mini-trial." Either a trial is a trial, or it is not. And if a proceeding is not a trial, it can only be one other thing: a motion.

As discussed above, plaintiff made a "motion for default," presented a "*default* order," and after obtaining an "order of *default*," requested a "*default* judgment," and was given a "*default* judgment."

The plaintiff indicated explicitly, no less than 11 times, that she was seeking a "*default*" judgment and order and the trial court indicated no less than twice that what it was issuing were "*default*" orders.

Extended argument could be made but it is submitted to be unnecessary. It is novel indeed for the plaintiff to allege what occurred

below was a trial, “mini” or otherwise. She sought a *default* order and *default* judgment. She was granted a *default* order and *default* judgment. She cannot reach back through time, and call what happened on that day, something other than what it clearly was.

There was simply no good faith basis for the plaintiff to persist in the face of opposition that what occurred was not a default order and judgment, or for her to argue that it was a “trial.” Her persistence on appeal in denying that what occurred were default orders and a default judgment is similarly frivolous on appeal. See RAP 18.9.

The case of Marriage of Daley, 77 Wn.App. 29 (1994) is directly on point. In Daley, just as the plaintiff did here, the plaintiff failed to put on a trial when the defendant did not appear for trial. Id. at 31-32. Just as the plaintiff did here, when the defendant failed to appear at trial, plaintiff presented an order and judgment on default. Id. Just as the plaintiff did here, the plaintiff did not provide any notice of an intent to take a default despite notice being required. Id. Just as in Daley, the default must be vacated for failure to provide notice:

The situation would certainly have been different had Linda proceeded with her case. Specifically, if she had proceeded to trial and presented evidence on the record, then the trial court would have had the authority under CR 52 to enter findings, conclusions, and judgment without notice to Dan. The record does not reflect, however, that the trial court had evidence before it at the time it entered judgment.

Therefore, the only applicable rule was CR 55. Because Dan failed to receive the 5 days' notice required by that rule, the order of default was void and the trial court should have granted Dan's motion to vacate.

Id. at 32 – 33.

The plaintiff in this case providing the court a declaration of her own is not “evidence” at a trial. Declarations may be considered on some hearings and motions. See CR 56. Declarations are not testimony at trials, particularly not jury trials as this case was noted to be. And the court below clearly did not make findings of fact and conclusions of law sufficient to sustain a bench trial, much less support entry of a 2.5 million dollar judgment.

When even the court below could not bring itself to call what occurred a trial, but instead a “hearing on the merits,” RP 34, there can be no issue but that what occurred below was not a trial. It was, in the words of the trial court, a “hearing.” A hearing on a *default* motion. Not a trial.

This case was clearly decided by an order of default. That is how the orders were captioned. That is how the findings of the orders read. The plaintiff asked for a default under CR 55. She did not ask for findings on the merits under CR 52. Her choice of remedy, a default, required her to conform the mandates of the rule she sought relief under. She clearly failed to do so. Daley makes it clear the plaintiff's including in her

proposed judgment, language that Mr. Dolajak did not appear for trial is of no import. He was entitled to 10 days notice of plaintiff's intent to request a default order as more than one year elapsed since service. See CR 55(f). Indeed, the rule is clear the court "shall" not even consider such a request until the moving party has filed proof of service of notice of the impending default. Id.

In regard to Mr. Carter, he filed an answer so CR 55(f) does not apply to him. However, CR 55(a)(3) clearly does, and it required he be given 5 days of notice before plaintiff sought a default as he too had been served in excess of one year before plaintiff requested a default order and default judgment.

Further evidence that what occurred below was a default proceeding and not a trial is the fact this case was clearly noted and called for a jury trial. CP 419. A jury demand was timely filed on September 12, 2005. Id.

Once the case was noted for a jury trial, a jury trial had to take place absent all parties agreeing that there would not be a jury trial:

When trial by jury has been demanded as provided in rule 38, the action shall be designated upon the docket as a jury action. The trial of all issues so demanded shall be by jury, unless (A) the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury or (B) the

court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist under the constitution or statutes of the state.

CR 39(a)(1) (underline added).

Once a jury demand is filed, all parties have the right to rely that the case will be tried by a jury as no party may simply unilaterally withdraw a demand for a jury. See Graves v. P. J. Taggares Co., 94 Wn.2d 298, 305 (1980). The fact plaintiff filed the jury demand is of no import. It is the filing of the demand that sets in motion the wheels of CR 39 – wheels which once rolling, must continue to roll unless and until all parties agree otherwise. See id.

The right to a jury trial in the state of Washington for legal claims is constitutional. See Washington State Constitution, Art. 1, s 21. The right to a jury trial is so sacrosanct that even in lawsuits primarily seeking equity, if there is any question as to the propriety of a jury, “deference should be given to the constitutional nature of the right and a jury trial should be allowed.” S. P. C. S., Inc. v. Lockheed Shipbuilding and Const. Co., 29 Wn.App. 930, 934 (1981).

In this case, there is no dispute but that a jury demand was properly filed. CP 419. Upon that occurring, all parties to the litigation had the right to rely that the case would be tried by a jury. Mrs. Carter and Dolajak were clearly “parties.” By plain operation of CR 39, the jury

could not be stricken without their consent. There is no condition within CR 39 that the “party” have answered – although Carter clearly did.

If the plaintiff was entitled to obtain default orders and default judgments against parties who did not appear and answer, the filing of a jury demand would not disturb that right. However, if she was seeking something other than a default order and judgment, then trial was required to be by jury. See CR 39(a)(1).

These defendants loathe having to make this issue this complicated. It is submitted the issue is in fact as simple as the undisputed fact that plaintiff requested default orders, and the court indicated it was granting default orders.

However, to look at this question in a slightly more complicated fashion, if what occurred below was not the granting of a default order but instead a trial, that trial had to be by a jury.

Thus, the plaintiff is in a Catch-22: either she obtained a default order and judgment (which clearly she did), or she sought relief by a trial. In either case, her resistance to the attempt to vacate the orders was in violation of CR 11

Plaintiff’s default orders were defective on their face as default orders because she obtained them in violation of CR 55; she failed to provide notice to Mr. Dolajak of her intent to seek a default order 10 days

before she did so, and she failed to provide Mr. Carter notice 5 days before her seeking a default order against him.

As a trial, there clearly was no trial as there was no jury trial which was required under CR 39 as a timely jury demand had been made. The lack of a jury trial is particularly offensive to civil procedure concepts as there is no dispute but that Mr. Carter had an answer on file and yet still the plaintiff obtained a \$2.5 million damage award against him, without judgment of a jury.

However, even if the court desires to put CR 39 aside, (although it is submitted CR 39 is not a discretionary rule, but for the sake of argument however), what occurred below was not even a bench trial. The five-minute hearing with no witnesses called, no exhibits marked or offered, nor proper findings of fact and conclusions of law made to support of 2.5 million dollar judgment are present; this was not even a bench trial. This is perhaps the very law school definition of what constitutes a motion. Whatever plaintiff desires to call it, it was clearly not a “trial.” Again, even the court below acknowledged that what occurred below was a “hearing,” RP 34, not a trial. There is no such thing as a “mini-trial” as plaintiff argues this was. Daley makes that clear.

2. THE TRIAL COURT ERRED IN NOT AWARDING FEES

This conclusion largely inheres in the foregoing. At the risk of repetition, the plaintiff had no good-faith basis in fact or law to request a default order or default judgment. At the outset, her action violated CR 11.

However, even if this court desires to overlook that initial error, it is submitted there can be no reasonable dispute but that her continued argument that she was entitled to the orders entered was a clear violation of CR 11. Once the issue was brought to a head, just as the plaintiff's attorney in MacDonald, there could be no pretense there was a good faith basis to continue on that course of action.

Instead of simply coming to the bar and acknowledging the error in obtaining the orders by failing to provide proper notice, the plaintiff on the motion below, and here on appeal, mischaracterizes what occurred on the day she obtained her default order and judgment. As explained in MacDonald, that compounds the original violation.

These defendants absolutely do not ask this court to decide the merits of this appeal over personalities, as the plaintiff does in her brief. The propriety of the orders below as to Mr. Carter and Mr. Dolajak must rise and fall on CR 39 and 59.

However, when this court evaluates the trial court's failure to award fees under CR 11, its gaze should be cast slightly wider. As noted above, the plaintiff's brief is as much an attempt to malign the character of the undersigned as defend the orders at issue.

Plaintiff steps far out of her way to make assertions without support in the record regarding her impression of how discovery went forward below, issues regarding summary judgment, and equally irrelevant matters. Such argument does not defend the orders below. Such argument is intended only to harass the undersigned and to distract this court from the merit (or lack thereof) of the orders at issue. It is difficult to reconcile the plaintiff's explicitly asking this court to decide the merits of this appeal simply because plaintiff's counsel has such dislike for him, as anything other than the very definition of dilatory practice, and argument without good faith support of fact or law.

The irregularities of plaintiff below also demonstrate CR 11 costs should have been awarded: (1) advising both the trial court and the undersigned she intended on taking a nonsuit of those claims and then appearing on the first day of trial to the surprise of everyone the court included (CP 6), to say she had not filed her notice and instead demanded a default judgment, (2) her failure to advise the court of the fact she received an answer from Mr. Carter, (3) her failure to provide notice of an

intent to present a default order and judgment as she did, and (4) the very argument she employs on appeal itself arguing in footnotes that the undersigned should be “collaterally estopped” from arguing he is at fault for the default judgments (clearly making her bed for her later attempt to take an assignment, which is what it appears she was attempting all along by the confusion she confabulated below) while on the other hand arguing the defendants have no standing here, is submitted to be the very definition of “vexatious” litigation.

Whether plaintiff actually believes she has an ability to retain the default order and judgment and to seek an assignment, or whether this entire process is for the purpose of harassment, is not known. However, when an attorney would actually utter the things that were written in the plaintiff’s brief, clearly something is going on other than simply litigating the case. This case would appear to present a textbook example of the need for deterrence, in the words of Skimming, supra.

Deterrence to not be less than fully candid with the court over what plaintiff’s counsel knew was in the court file, and her own file, regarding Carter’s answer.

Deterrence to not be less than fully candid in telling both the court and these defendants’ counsel that plaintiff was taking a non-suit of the three other defendants only to show-up later, seeking default orders.

Deterrence from the repetitive argumentation outside of the record of this court. (Admitted, an issue more properly addressed by RAP 18.9).

And deterrence against the inappropriate ad hominem argumentation employed in plaintiff's briefing in this court.

These defendants, as much as they may be tempted to do so, will not rise to the bait dangled by the plaintiff with her ad hominem attacks. They will simply state that this court may assume these defendants are similarly unhappy with the conduct of plaintiff's counsel below, and leave it at that.

Defendants respect strong and aggressive advocacy. But it will be observed that sometimes attorneys – particularly those newer to the practice - confuse aggressive advocacy, with offensive advocacy. It is believed the RPCs, as well as the very oath of attorney whereby all swear to refrain from “offensive personalities,” would appear to speak to such tactics better than these defendants can. See APR 5(e).

Perhaps a certainly level of thick “skinnedness” is required to practice this profession these days. However, we remain a profession, and hopefully at the end of the day professionals. It is respectfully submitted that plaintiff's actions below amount to more than a mere lack of cordialness, but instead well cross the line drawn by CR 11.

These defendants respectfully ask that this court remand this

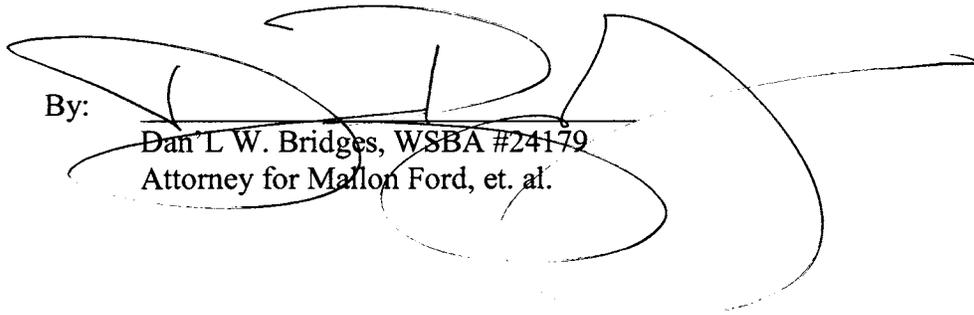
matter to the trial court for a determination of these defendants' reasonable attorney's fees. That these defendants would have to file a response and take action below in light of plaintiff's conduct was not simply directly foreseeable by plaintiff, but called for as a party to the litigation with knowledge of material facts directly bearing on the issues at hand and the irregular tactics employed below. .

These defendants also ask for an award of their attorney's fees on appeal, based on RAP 18.9, as an outgrowth of the fees which should have been awarded below. The positions and arguments taken by plaintiff on appeal have no more basis in fact or law than when made below.

DATED this 6th day of November, 2007.

McGAUGHEY BRIDGES DUNLAP, PLLC

By:



Dan L. W. Bridges, WSBA #24179
Attorney for Mallon Ford, et. al.

VI. APPENDIX



05-2-07726-9 27514188 VRPTCF 05-17-07

FILED
IN COUNTY CLERK'S OFFICE
A.M. MAY 17 2007 P.M.
PIERCE COUNTY WASHINGTON
KEVIN STOCK, County Clerk
BY W DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

L.S., a single woman,)
)
Plaintiff,)
)
vs.)
)
TITUS-WILL FORD SALES, INC., a)
Washington Corporation, d/b/a)
MALLON FORD, BILL HANFORD,)
HENRY KREBBS, RICHIE CARTER,)
BRODERICK LaDRAE GORDON, and)
MICHAEL R. DOLAJAK,)
)
Defendant.)
)

ORIGINAL

Cause No. 05-2-07726-9

VERBATIM REPORT OF PROCEEDINGS

The above-entitled matter came on regularly for trial before the Honorable Vicki L. Hogan, Superior Court Judge for the State of Washington, County of Pierce, on May 7, 2007.

A P P E A R A N C E S

FOR THE PLAINTIFF:

LINCOLN C. BEAUREGARD
Law Offices of John R. Connelly
2301 North 30th
Tacoma, Washington 98403

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A P P E A R A N C E S

(CONTINUED)

FOR THE DEFENDANTS:

DAN'L WAYNE BRIDGES
Attorney at Law
325 118th Avenue SE
Suite 209
Bellevue, WA 98005-3539

* * * * *

1 Monday Morning Session,

2 May 7, 2007.

3
4 THE COURT: The first matter I have on my trial
5 docket this morning is L.S. v. Carter, et al, 05-2-07726-9.

6 Mr. Beauregard is here representing the Plaintiff.
7 Mr. Bridges is here representing the Defendants. We did
8 receive a notice of settlement that the parties had
9 settled. It only addressed two of the named defendants.

10 MR. BEAUREGARD: Three.

11 THE COURT: I have Titus-Will Ford and Henry
12 Krebbs.

13 MR. BEAUREGARD: It should also be Bill
14 Hanford.

15 THE COURT: And Mr. Hanford?

16 MR. BEAUREGARD: Yes, Your Honor.

17 THE COURT: It does include Mr. Hanford.

18 Then what about the remaining named defendants, Richie
19 Carter, Broderick LaDrae Gordon and Michael Dolajak?

20 MR. BEAUREGARD: Certainly, Your Honor. With
21 respect to Mr. Bridges' clients, we have settled and the
22 notice of settlement is accurate in reflecting that.

23 With respect to the other defendants, Richie Carter,
24 Michael Dolajak and LaDrae Gordon, those individuals have
25 not defended the case. They have not been involved in the

1 litigation, but I do have confirmation or declarations of
2 service of the summons and complaint which I will present
3 to the Court in case the Court wants to take a look at them
4 that indicated they did receive notice of these
5 proceedings. They were served with a summons and complaint
6 in accordance with the civil rules, and at no point in time
7 have they chosen to appear before the court and defend
8 themselves.

9 There are no formal answers on record. They have
10 never been involved in the litigation, and so at this point
11 what we would do is move pursuant to rule 55 to enter an
12 order of default against them.

13 THE COURT: All right.

14 MR. BRIDGES: I think I should note, even
15 though my clients are not actively a party, I think they
16 have all entered answers, whether Mr. Dolajak entered an
17 answer, I am not entirely sure. I am positive Mr. Carter
18 has, and Mr. Gordon, I am getting that confused. I know
19 for a fact two of them have. I have seen it on the LINX
20 system.

21 MR. BEAUREGARD: That's not accurate. I
22 checked LINX this morning. None of them have filed a
23 formal answer. One of them filed a document that's called
24 a statement, which was not an answer, and either way, none
25 of them have appeared, none of them have defended the case,

1 none of them are here for trial this morning.

2 THE COURT: All right. Mr. Bridges, anything
3 further on that?

4 MR. BRIDGES: Well, I think you will just have
5 to look at the answers yourself. I looked at them. They
6 say they denied the claims. I think that's more than
7 sufficient under CR 8 for a pro se. They denied the
8 claims.

9 Although, I will say this: Counsel filed, or
10 Mr. Connell filed a notice of non-suit last week against
11 those three people, or even better, served on them a notice
12 of non-suit.

13 MR. BEAUREGARD: Served on you, Mr. Bridges.

14 MR. BRIDGES: All right. Whatever. On those
15 three people. And I communicated that to those three
16 people. And I am not sure exactly why counsel thinks that
17 appropriate it is appropriate to file a notice of a
18 non-suit, and then try to take a default against those
19 people. That sends a little bit mixed message to those
20 three people.

21 THE COURT: All right. If is a non-suit filed,
22 and I am going to see whether or not that was in fact
23 reflected in LINX. If it was filed Friday, I may not have
24 it.

25 MR. BEAUREGARD: There wasn't a non-suit filed,

1 Your Honor.

2 THE COURT: There was not?

3 MR. BEAUREGARD: Procedurally we were deciding
4 how to proceed with the case. We served Mr. Bridges with a
5 motion for non-suit, and then we resolved the litigation
6 prior to the time for which those briefings and
7 documentation in relation to that particular motion and
8 additional documentation pertaining to Mr. Bridges' client.
9 We didn't file that documentation because we chose to
10 proceed in this manner. We never served the motion for
11 non-suit upon the individual pro se defendants that
12 Mr. Bridge doesn't represent.

13 In addition to that, we never filed the motion because
14 we settled with Mr. Bridges clients as a matter of
15 litigation strategy and we elected to go this route, Your
16 Honor. A motion for non-suit is not an order for non-suit.
17 The defendants had to appear. They needed to be part of
18 the litigation. We can't expect that because Mr. Bridges
19 has represented that these individuals are not acting in
20 the scope of employment for his clients, that all of a
21 sudden they are going to decide not to participate in the
22 litigation because Mr. Bridges gives them a phone call.

23 MR. BRIDGES: Well, strategy is one thing, and
24 fairness is something else. If counsel is telling the
25 Court that he sent me a notice of non-suit and not other

1 parties that filed an answer, I think the Court ought to be
2 wondering why as a matter of procedure that was not served
3 on everyone in these consolidated cases. I just find that
4 a little bit irregular.

5 MR. BEAUREGARD: I am not required to serve
6 them because they haven't appeared. And in addition to
7 that, Mr. Bridges --

8 THE COURT: Wait. Give me the number of the
9 consolidated case, if you have it, Mr. Beauregard. Not the
10 05-2-07726-9. The other case.

11 MR. BEAUREGARD: Well, I am afraid the only
12 cause number that I have with me is the 05, and the
13 declarations of service are from that particular cause
14 number.

15 MR. BRIDGES: It's an 06 filing, Your Honor. I
16 don't have the cause number either.

17 THE COURT: All right. I have got it.
18 Obviously, the consolidated case is where the answers may
19 or not be, that's why I need to go over and look there now.
20 It appears the case has been settled. I don't see any
21 answers in the consolidated case, or the original case. So
22 at this time --

23 MR. BRIDGES: I saw them with my own eyes on
24 LINX.

25 THE COURT: In the 06 case?

1 MR. BRIDGES: I will be honest with you. I was
2 told that they were in the wrong cause number, so I can't
3 remember right now which cause number. I thought that it
4 was on the one -- the long one.

5 THE COURT: The wrong cause number was the 05,
6 and your staff was inserting an 02. But in the matter
7 06-2-07675-9 there is no answer filed there.

8 And so going back to the cause number here is
9 05-2-07726-9.

10 MR. BRIDGES: I definitely saw them on the last
11 couple of documents filed, and the one with all of the
12 longer, the longer docket filed most recently, Your Honor.
13 It's absolutely on top of the docket, like in the last
14 couple of documents filed in this case.

15 THE COURT: Well, I have a statement of
16 Broderick Gordon filed April 24th, 2007.

17 MR. BRIDGES: Right.

18 THE COURT: And answer of Mallon Ford, Bill
19 Hanford and Henry Krebbs filed April 19th, 2007. They are
20 the ones that have settled out.

21 MR. BRIDGES: I think there are two in there
22 for Mr. Carter. I couldn't quite figure out what happened.
23 It almost seemed like the clerks office had typed something
24 for him based on a handwritten statement.

25 THE COURT: I guess the issues becomes where

1 they are answers or not, and I don't see anything for
2 Mr. Carter yet. But that's doesn't mean that it's not
3 there.

4 Today is the day of trial. I didn't see anything for
5 Mr. Carter.

6 MR. BEAUREGARD: To elaborate as to the
7 procedural confusion, we received letters, for example,
8 from Carter saying, I didn't do this, but we never received
9 anything that we considered to be a pleading or an answer.
10 As the Court has reviewed the top of that, the only
11 statement on record was the one who I believe that was from
12 Mr. Gordon, and I couldn't find a formal answer either.

13 And pursuant to CR 55 if they had answered, they still
14 aren't here to defend their case, so we would move for the
15 default.

16 THE COURT: I can't enter a default if they
17 have answered, and I don't see anything from Mr. Carter or
18 Mr. Dolajak. But they are not here to defend, and so all I
19 have is April 24th, 2007 statement of Broderick Gordon. So
20 I don't know what you want to do now, Mr. Beauregard.

21 MR. BEAUREGARD: If the Court is disinclined to
22 enter judgment against, or the motion for default against
23 Broderick Gordon, we could still request that entry of
24 default against Mr. Carter and Mr. Dolajak.

25 THE COURT: All right. Mr. Bridges, anything

1 further on that?

2 MR. BRIDGES: I have a limitation of not being
3 able to look at your computer. I will tell you as an
4 officer of the court, I am positive I saw Mr. Carter's
5 answer filed, but there is only so much that you can do,
6 Your Honor, right now. I appreciate that.

7 THE COURT: Well, I have reviewed the entries.
8 Unless there is something else that you see, Ms. Wolfe?

9 THE JUDICIAL ASSISTANT: I don't.

10 THE COURT: I would enter a default against
11 Mr. Carter and Dolajak.

12 Obviously, and I appreciate that, Mr. Bridges, as an
13 officer of the court if you recall seeing it, I just don't
14 see it in the LINX entries from the date of filings 5/10/05
15 through everything that came in on the objections to the
16 motions that everyone had filed for today.

17 What does the plaintiff want to do with regard to
18 Mr. Gordon, Mr. Beauregard?

19 MR. BEAUREGARD: With regard to Mr. Gordon,
20 Your Honor, our next step with regard to the case would
21 probably take care of that matter. At this point I have an
22 evidentiary basis upon which to move for a default judgment
23 against Mr. Carter and Mr. Dolajak. Pursuant to CR 55 we
24 would move for default of judgment as to these two
25 remaining defendants.

1 I have before the Court a declaration of my client
2 explaining what was a very vicious assault and battery upon
3 her, also known as a gang rape, by the defendants.

4 With respect to Mr. Gordon, should the Court agree and
5 enter a default judgment against these other two
6 defendants, they can sort it out to the extent that the
7 other two defendants want to pursue Mr. Gordon for a
8 contribution in a subsequent proceeding.

9 And so what I will present to the Court, and for
10 Mr. Bridges I have a copy, is the declaration of my client
11 which I was referring to, and the sexual assault nurses'
12 evaluation of my client after the assault in question.

13 The evidence presented to the Court is presented
14 pursuant to CR 55(b)(2) with respect to amounts uncertain
15 with respect to default judgment. This evidence has
16 already been seen by Mr. Bridges clients and is already of
17 record in the ER 904's or other court records. The
18 evidence supports the fact that my client was sexually
19 assaulted by the defendants, supports the fact that she was
20 viciously assaulted by the defendants, and the nurses
21 evidentiary documentation, the medical records, show that
22 she had lacerations to her private areas. And there is
23 also evidence in the record which was submitted by
24 Mr. Bridges' clients in the form of medical records,
25 extensive medical records, documenting her history from the

1 treating physician over an extended period of time,
2 demonstrating that she had extreme emotional distress as a
3 result of being sexually violated by these three
4 individuals.

5 And based upon this evidentiary record in accordance
6 with CR 55(b)(2), we would respectfully request that the
7 Court enter default judgment against Mr. Carter and
8 Mr. Dolajak. I have prepared a default judgment, and
9 respectfully request the judgment in the amount of
10 \$2.5 million be entered against these other two
11 individuals.

12 THE COURT: All right. Mr. Bridges, I am not
13 certain if you represent these folks technically.

14 MR. BRIDGES: I do not.

15 THE COURT: All right.

16 MR. BRIDGES: It's not an unusual situation I
17 find myself in right now, someone coming in trying to get a
18 default. I would just respectfully ask this Court to keep
19 in mind that no judge should simply rubber stamp any
20 request by the plaintiff, whether or not there is someone
21 formally in the dock trying to defend against the
22 allegation.

23 I would suggest, Your Honor, that if you are going to
24 enter any amount, you ought to take it under advisement.
25 Simply signing off on \$2.5 million, or maybe you have over

1 the weekend already, since you thought this case may have
2 been going to trial, already looked at those documents.
3 There are substantial mitigating factors in this case,
4 including multiple stories by the Plaintiff to the Tacoma
5 Police Department.

6 This lady is certainly -- we are -- well, she
7 certainly deserves all of our sympathy. She is a very
8 sympathetic person. Three weeks before this event
9 allegedly happened, she had already express major
10 depression, and she had a hard life. And there are a lot
11 of psychological issues that we would have been presenting
12 at trial, even assuming liability would have been
13 established.

14 I think asking for \$2.5 million is simply asking to
15 sign off on a blank check, and I would respectfully suggest
16 to your court, Your Honor, that even with the default on
17 liability, that it's still incumbent upon the Court to
18 render an amount that is just, and not simply a punishment
19 because a party is not here.

20 THE COURT: All right. Thank you, Mr. Bridges.

21 Anything further, Mr. Beauregard?

22 MR. BEAUREGARD: Yes, Your Honor. Mr. Bridges'
23 clients, again, are obviously no longer parties to this
24 action. The defense they have offered -- part of the
25 defense that they have offered throughout this litigation

1 is that because my client was attracted to one of the
2 salesmen initially, that because she had an encounter with
3 him, it was now okay for these three defendants to violate
4 her, to violate her sexually. We contend that that is not
5 a defense to rape, under no circumstances, or under any
6 circumstances where a woman says, I don't consent, or where
7 she says, no, no, no, as is reflected in her declaration,
8 which was already in the court record. Under any
9 circumstances where somebody says no, you have a battery,
10 you have a rape. That's what occurred in this case.

11 So the argument being d bags offered by Mr. Bridges
12 with respect to changing stories, the defense that she
13 consented to being raped, is not nonsensical and not
14 supported by the record.

15 In addition to that, we see no reason for delay of
16 this matter. We filed this case in '05. These defendants
17 have had an opportunity to appear and defend the case.
18 They have elected not to do so, thus our motion.

19 Mr. Bridges' clients are no longer parties to this
20 case. I don't know why we are going to delay proceedings
21 so that the Court can, obviously, make its own judgment how
22 the court wants to proceed. But this isn't a contended
23 matter. There is no reason for extended delay. My client
24 wants justice. She wants closure. A judgment in the
25 amount that is far less than she deserves for what she has

1 been through, but representative of an amount of some
2 quantification of her emotional distress damages. And in a
3 case with emotional distress damages aren't just about the
4 money. They are about vindication. They are about
5 closure. We think that the evidence of record, we think
6 that the defendants opportunity to appear in this matter
7 and their failure to do so, we think all the procedural and
8 substantive affects of this particular matter have been --
9 all the loops have been closed.

10 So I have here a prepared judgment. I have modified
11 it slightly for default against Mr. Richard Carter and Mr.
12 Michael Dolajak. Again, we would respectfully request in
13 the amount of \$2.5 million. Should the Court elect a
14 different amount, we are prepared. We have an actual empty
15 judgment which we would defer to the Court, but we do think
16 that in this matter this would be a just amount in light of
17 what my client has been through.

18 In addition, on the proposed judgment I have
19 interlineated findings of fact that my client was battered
20 by the defendants.

21 THE COURT: The named defendants in this
22 judgment?

23 MR. BEAUREGARD: The named defendants.

24 THE COURT: Because I think what I am hearing
25 Mr. Bridges' concern is, although he does not represent any

1 of the three individuals we have been speaking about, and
2 one in reviewing the documents I have considered to be an
3 answer, and thus excluding Mr. Gordon, is: What is the
4 impact on the settlement that is already achieved? It's
5 independent, and is not to affect the settlement that you
6 have already achieved with regard to the other named
7 defendants.

8 MR. BEAUREGARD: That certainly does not.

9 THE COURT: All right. You can go ahead and
10 send your materials forward. Clearly by the time I got
11 everything read, and then the word that the case had
12 settled. The Court is prepared at this time, and I
13 reviewed again in LINX, Mr. Bridges, because I was
14 concerned about whether or not there was something from
15 Mr. Carter and Mr. Dolajak, and there is not, unless it's
16 captioned something other than a statement or an answer.
17 So at this time I am going to enter judgment.

18 I have reviewed the materials, and I am going to
19 require Mr. Beauregard, that having entered this judgment
20 against these two defendants, and it does not affect the
21 other individuals who are no longer in the case due to the
22 settlement.

23 MR. BRIDGES: Three, Your Honor.

24 THE COURT: I keep forgetting Mr. Hanford.
25 That you must notify the two defendants effected here that

1 they have now a judgment entered against them.

2 Today is the day of trial and they did not appear and
3 that way they have notice of the judgment that has been
4 entered.

5 MR. BEAUREGARD: Certainly, Your Honor.

6 THE COURT: It's very clear that it's relative
7 only to these two defendants, Mr. Bridges, and it doesn't
8 effect the settlement with regard to your client.

9 MR. BRIDGES: Thank you, Your Honor.

10 THE COURT: All right. Then that will be
11 filed.

12 Then anything else on this case, Mr. Beauregard?

13 MR. BEAUREGARD: Not from the plaintiff, Your
14 Honor.

15 THE COURT: Mr. Bridges?

16 MR. BRIDGES: No, Your Honor. Thank you.

17 THE COURT: All right. Thank you. Then that
18 concludes both matters.

19 MR. BEAUREGARD: Thank you, Your Honor.

20 MR. BRIDGES: Thank you for your time, Your
21 Honor.

22 (RECESS TAKEN.)
23
24
25

COURT OF APPEALS
NOV 7 1993
STATE OF WASHINGTON
BY: *[Signature]*
DEPUTY

COURT OF APPEALS, DIVISION TWO
IN AND FOR THE STATE OF WASHINGTON

L.S.,

Respondent, Cross-Appellant,

vs.

TITUS-WILL INVESTMETNS, INC., et.
al.

Cross-Appellant,

DIVISION TWO NO.
366449-2-II

DECLARATION OF
SERVICE

I, Dan'L W. Bridges hereby declare under penalty of perjury
that the following statements are true and correct:

1. I am over the age of 18 years, not a party to the within
cause, and the attorney of record for TITUS-WILL INVESTMETNS,
INC., above captioned.

ORIGINAL

2. On November 7, 2007 I caused to be filed the original of Cross-Appellant's brief and one copy with the above captioned court, and copies of that brief to the attorneys identified below, via ABC legal messengers.

For L.S.:

Lincoln Beauregard
Law Offices of John Connelly, Sr.
2301 North 30th Street
Tacoma, WA 98403

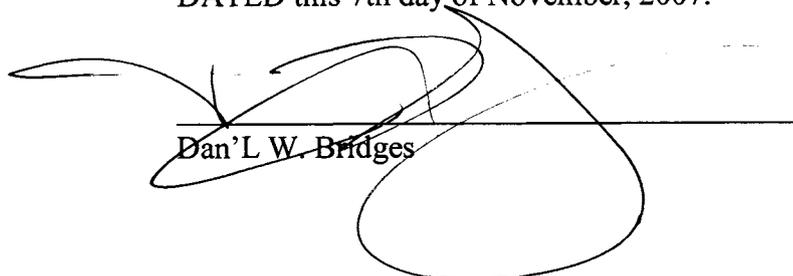
For Richie Carter:

Edward S. Windkill
Davies Pearson, PC
920 Fawcett
Tacoma, WA 98401

For Michael Dolajak

Zenon Peter Olbertz
1008 South Yakima Avenue, Suite 302
Tacoma, WA 98405

DATED this 7th day of November, 2007.



Dan L W. Bridges