

NO. 36487-5-II

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION II

AMEDEO NAPPI,
APPELLANT

V.

CRISTY A. GUNDERSON and JOHN DOE GUNDERSON, husband and wife;
MICHAEL J. ROGERS and NANNETTE B. ROGERS, husband and wife;
EAGLE HOME MORTGAGE, INC; HERITAGE SAVINGS BANK; and
JAMES E. BRAZIL and JANE DOE BRAZIL, husband and wife,
Respondents.

APPEAL FROM DISMISSAL OF PETITION BY
THE TRIAL COURT ON MOTION FOR SUMMARY JUDGMENT
IN THE SUPERIOR COURT FOR THURSTON COUNTY

THE HONORABLE CHRIS WICKHAM

APPELLANT'S BRIEF

Amedeo Nappi
Appellant, In Proper Person

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ASSIGNMENTS OF ERROR

1. The trial court erred in issuing an order denying appellant's motion for reconsideration on May 8, 2007.
2. The trial court erred in issuing an orders for summary judgment dismissing appellant's petition on November 3, 2006.
3. The trial court erred in issuing orders for attorney fees against petitioner on November 3, 2006.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Where the trial court issued an order denying appellant's motion for reconsideration of the summary judgment orders, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 1.
2. Where the trial court issued an order for summary judgment to dismiss appellant's petition, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3.
3. Where the trial court issued an order for award of attorney fees, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3.
4. Where the trial court issued an order to join the Brazils as necessary parties, did the trial court abuse its discretion in the face of case

law and the evidence in the record? Assignment of Error No. 2 and 3.

5. Where the trial court erred in ruling that the appellant's filing of his Land Purchase Sale Agreement was untimely, did the trial court abuse its discretion in the face of case law and evidence in the record?

Assignment of Error No. 2 and 3.

6. Where the trial court issued an order continuing the trial date, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3.

7. Where the trial court refused to issue an order for sanctions, under CR 11, against the Respondents Gunderson for knowingly making numerous denials and false and misleading statements in their answer to appellant's Petition of Right of Way of Necessity and their affidavits and declarations, that a site for an easement existed on the Brazil property, when in fact Respondents Gundersons had previous personal knowledge and by public record that no site existed on the Brazil property, did the trial court abuse its discretion in the face of case law and evidence in the record?

Assignment of Error No. 3.

8. Where the trial court refused to issue an order for sanctions, under CR 11, against the Respondents Gunderson attorneys Jennifer A. Pearson and Daniel Tiffany for knowingly supporting numerous denials and false and misleading statements in their clients' answer to appellant's

Petition of Right of Way of Necessity and their clients' affidavits, that a site for an easement existed on the Brazil property, when in fact attorney Pearson and Tiffany had previous personal knowledge and by public record that no site existed on the Brazil property, did the trial court abuse its discretion in the face of case law, and the evidence in the record?

Assignment of Error No. 2 and 3

9. Where the trial court erred in ruling that the appellant was conclusively barred by law from using the respondents Rogers' and Gunderson's properties for an easement of right of way of necessity, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3.

10. Where the trial court refused to issue an order for sanctions, under CR 11, against the Respondents Gunderson and Respondents Gunderson's attorney Jennifer A. Pearson for knowingly alleging, under oath, that the Respondents Brazils were necessary parties, when in fact they had prior knowledge that the Brazils were not necessary parties, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3

11. Where the trial court misinterpreted the requirements of RCW 8.24.015, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3.

12. Where the trial court erred in sanctioning the appellant under CR 11 for attorney fees, did the trial court abuse its discretion in the face of case law, and the evidence in the record? Assignment of Error No. 2 and 3.

13. Where the trial court erred in ruling that the appellant's filing of his Land Purchase Sale Agreement was untimely, did the trial abuse its discretion in the face of case law, and the evidence in the record? Assignment of Error No. 2 and 3.

14. Where the trial court erred in ruling that appellant was not the legal record owner of the property that appellant petitioned the court for an easement of right of way of necessity when the appellant file his petition, did the trial court abuse its discretion in the face of case law, and the evidence in the record? Assignment of Error No.2 and 3.

15. Where the trial court erred in granting respondents Gunderson's order to Amend/join the respondents Brazil as necessary parties on January 21, 2005, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3.

16. Where the trial court erred in issuing an order continuing the trial date on January 21, 2005, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No.2 and 3.

17. Where the trial court erred in refusing to issue an order for

sanctions, under CR 11, against Respondents Gunderson and Ms. Pearson for knowingly making numerous false and misleading statements in their answer to appellant's Petition of Right of Way of Necessity and their affidavits, that a site for an easement existed on the Brazil property, when in fact no site for an easement existed on the Brazil property, did the trial court abuse its discretion in the face of case law and the evidence in the record? Assignment of Error No.2 and 3.

18. Where the trial court erred in not issuing an order for the appellant to use the legally recorded easement described in CDP No. 70-Exhibit B, from judicial admissions by respondents Gunderson and Mr. Tiffany on the record, did the trial abuse its discretion in the face of case law and the evidence in the record. Assignment of Error No. 2 and 3.

19. Where the trial court erred in issuing an order for the appellant to use the legally recorded easement described in CDP No. 70-Exhibit B, from judicial admissions by respondents Gunderson and Mr. Tiffany on the record, did the trial abuse its discretion in the face of case law and the evidence in the record. Assignment of Error No. 2 and 3.

20. Where the trial court erred in following the case law and the evidence in the record, were the actions of the trial court towards the appellant bias, impartial and prejudicial? Assignment of Error No. 2 and 3.

21. Where the respondents Gunderson moved the trial court to

amend the appellant's petition to join the respondents Brazil an abuse of process, in the face of case law and the evidence in the record? Assignment of Error No. 2 and 3.

STATEMENT OF THE CASE

In February 1983, petitioner/appellant and ex-wife purchased ten (10) acres located near the Capital Forest off of Waddell Creek Road, Olympia, Thurston County, Washington. Clerk's Designation of Papers No. 20, herein CDP, Exhibit B.

On June 18, 1987, an Order for Permanent Injunction, under Rogerson v. Nappi, Case No. 85-2-00666-3, was issued by the Thurston County Superior Court, prohibiting appellant from trespassing or crossing over the Rogersons' property (now the Rogers property) "except other than the legally described easement which is the 30 foot wide easement (which is still undeveloped) that runs north on the easterly most border of the Rogersons' property." See CDP No. 70, Exhibit B, page 1, line 32 and page 2, lines 1 and 2.

In February 1994, appellant became divorced and the parties ten (10) acres was partitioned into two five (5) parcels, the appellant acquiring the back five (5) acres and appellant's ex-wife acquiring the front five (5) acres (now the Brazil property). See CDP No. 20, Exhibit C.

In January 1999, appellant's property became "landlocked" by the sale of appellant's ex-wife's property to respondent Brazil and by failure of appellant's ex-wife to inform respondent Brazil of appellant's claim to an implied easement across her property.

In January 2000, appellant commenced a lawsuit naming respondents Brazil, and respondents Brazil joined appellant's ex-wife regarding an implied easement over the Brazil property, Nappi v. Brazil, Case No. 00-2-01365-2.

On January 10, 2003, the court issued an order, Order Granting Defendant Brazil's Motion for Partial Summary Judgment, dismissing appellant's suit against respondent Brazil for a implied easement. See CDP No. 70, Exhibit D.

On September 9, 2003, the court signed an agreed order, Order and Judgment Quieting Title and Granting Easement, giving appellant a 30 foot by 30 foot easement, over the southeast corner of respondents Brazils' property (to the undeveloped existing recorded easement crossing over the respondents Gunderson's and Rogers' properties) and except for the easement granted above the appellant and his successors in interest have no right to easement on defendant Brazil's property for any purpose. See CDP No. 70, Exhibit E.

On September 22, 2003, appellant mailed letters to respondents Gunderson and Rogers, containing certified checks for payment to use the existing undeveloped recorded easement crossing their properties. See CDP No. 87.

Respondents returned the appellant's checks and informed the

appellant they would rather litigate the matter if necessary to prevent the appellant from using the existing undeveloped recorded easement to access appellant's property. See CDP No. 87, letters dated September 25, 2003 and October 2, 2003.

Respondents Gunderson and Rogers owned properties which an undeveloped existing recorded easement runs across, from the county road to the Krockers' property, adjacent to the length of respondent Brazil's southern property boundary line which the appellant petitioned the court to use to access his landlocked property. See CDP No. 20, Exhibit C.

On February 13, 2004, appellant filed a Petition of Appropriation of Right of Way of Necessity, herein Petition, pursuant to RCW 8.24, with the Thurston County Superior Court Clerk under Case No. 04-2-00305-6. See CDP No. 4.

Respondents Gunderson appeared and answered the appellant's Petition, through Jennifer A. Pearson, of Dittleson-Rodgers-Dixon, of Olympia, Washington, and respondents Rogers appeared and answered appellant's Petition pro se. Herein, respondents Rogers echoed the same argument as respondents Gunderson in their answers but failed to file anything more. Respondents Gunderson's answer to the Petition denied each paragraph of the Petition. See CDP No. 34. The remaining respondents appeared but did not answer or wish to litigate the matter.

On January 30, 2004, Ms. Pearson reviewed the file provided by Legal Research, Nappi v. Brazil, Case No. 00-2-01365-2. See CDP No. 98, Detailed Transaction File List, herein DTFL, page1, Transaction Date 01/30/2004.

On February 2, 2004, Ms. Pearson did legal research regarding action for quiet title regarding and had a phone discussion with client Gunderson regarding review of research and steps to take if litigation is commenced by appellant. See CDP No. 98, DTFL, page1, Transaction Date 02/02/2004..

On February 24, 2004, attorney Pearson, by memorandum, stated personal knowledge of the Nappi v. Brazil case. See CDP No. 19, at page 2, lines 9-16,

In a February 24, 2004 affidavit, Respondents Gunderson, by affidavit, affirmed their personal knowledge of the Nappi v. Brazil case prior to appellant's petition being filed and of the orders issued and settlement in said case. CDP #18, Affidavit of C. Gunderson , page 2, paragraph No. 6.

Respondent Gunderson's affidavit, dated February 24, 2004, alleged that there were numerous other routes for the court to consider for an easement for the appellant to access his property from and, specifically, named the respondents Brazils' property as having at least three possible

sites for an easement. During the case, respondents Gunderson continued to state at least 4 other alternate routes existed over neighboring properties through numerous affidavits, declarations, and answers to interrogatories filed in the action. See CDP No. 18, paragraphs Nos. 8,9, and 12; CDP No. 43.1, paragraph No. 3; CDP No. 46, paragraphs Nos. 2, 5, and 6; CDP No. 47.

On August 12, 2004, respondents Gunderson named the respondent Brazils as fact witnesses.

On August 24, 2004, the respondents Gunderson stated that even before hiring Ms. Pearson to research the Nappi v. Brazil case, they were aware of said action. See CDP No. 87, Answer to Interrogatory No. 9.

In December 2004, respondent Gunderson moved the court to join necessary parties, (the Brazils) and for a continuance of trial supported by an Affidavit of Jennifer Pearson. Therein, attorney Pearson reaffirms that respondent Brazils' property might contain a site. See CDP No. 46, page 2, paragraph 2; page 3, paragraphs No. 5 and No. 6.

On December 30, 2004, respondent Gunderson filed with the trial court a declaration in Support of Motion and Affidavit to Amend Petition of Right of Way of Necessity and for Continuance of trial that exactly states the complete terms and conditions of the settlement in the Nappi v. Brazil case except the condition that "plaintiff Nappi and his successors in interest

have no right to an easement on defendant Brazil's property for any purpose. See CDP No. 47; CDP No. 70, Exhibit E, page 2, paragraph 3..

In January 21, 2005, the court granted the respondents Gunderson's motion for an order amending/joining respondents Brazil as necessary parties and continuing the trial date over the objections of the appellant. See CDP No. 67, page 3, lines 22-25; CDP No. 52.1.

In June 2006, respondents Brazils were served with the an Amended Petition and joined as parties.

On October 6, 2006, the court heard respondents Gunderson's motion for summary judgment and for attorney fees. The court dismissed the respondents Brazil as parties and appellant's petition and continued the issued for attorney fees to November 3, 2006.

On or about November 3, 2006, the court sanction the appellant, under Civil Court Rule 11, for filing his Petition because the issues in appellant's Petition for an easement had already been litigated regarding the respondents Brazil, Gunderson, and Rogers and ordered judgment for attorneys fees in favor of respondents Gunderson and Brazil against appellant and ordered appellant's Petition dismissed. See CDP No. 99 and CDP No. 100.

On or about November 13, 2006, appellant moved the court to reconsider its order of November 3, 2007 dismissing appellant's petition

and award of attorney fees. See CDP No. 101.

On or about June 8, 2007, the court signed an order denying appellant's motion for reconsideration. See CDP No. 106.

On or about June 29, 2007, the appellant filed a notice of appeal with the court and served the respondents. See CDP No. 107.

STANDARD FOR REVIEW

Summary judgment should be granted if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." CR 56(c).

The appellate court reviews summary judgment decisions de novo, engaging in the same inquiry as the trial court. Hartley v. State, 103 Wn.2d 768, 774, 698 P.2d 77 (1985) ; Wilson v. Steinbock, 98 Wn.2d 434 656 P.2d 1030 (1982).

The trial court's factual findings on summary judgment are entitled to no weight, and the appellate court reviews the record de novo. Facts most favorably to the party resisting the motion. Even if the facts are undisputed, if reasonable minds can draw different conclusions, summary judgment is improper. Sheriff's Association v. Chelan County, 1019 Wn.2d 282, 745 P.2d 1 (1987).

ARGUMENT SUMMARY

On February 13, 2004, appellant, under the provisions of Article 1, Section 16, as amended by Amendment No. 9 of the Washington Constitution, as implemented by RCW 8.24.010, petitioned the court for a right of way of necessity over and across an existing undeveloped recorded

easement, which crosses over the respondents Gunderson's and Rogers' properties, to provide access to and from appellant's landlocked property to the county road, Waddell Creek. See Clerk's Designation of Papers and Exhibits, herein CDP, No. 4.

A complete and detailed statement of the law applicable here is set out in Brown v. McAnally, 97 Wn.2d 360, 644 P.2d 1153, (see CDP No. 5) as follows:

THE PRIVATE WAY OF NECESSITY

“Although the Washington Constitution generally prohibits the taking of private property for private use, such property may be taken for the creation of a ‘private way of necessity’. Const. Art. 1, section 16 (Amendment 9). Since the constitutional provision is not self-executing, RCW 8.24 fleshes out the constitution and more fully declares the conditions under which private property may be condemned for a ‘private way of necessity’. RCW 8.24.010 provides for in pertinent:

“An owner, or one entitled to the beneficial use of land which is so situated the respect to the land of another that it is necessary for its proper use and enjoyment to have and maintain a private way of necessity...may condemn and take lands of such other sufficient in necessity...The term “private way of necessity”, as used in this chapter, shall mean and include a right of way on, across, over or through the land of another for means of ingress and egress, and the construction and maintenance thereon of roads...”

There is no dispute on the record that appellant's land is landlocked and appellant filed a Petition for Appropriation of Right of Way of Necessity, herein Petition, with the court for an easement of necessity for the use of an easement over an existing undeveloped recorded easement,

legally described in appellant's petition, of his neighbors, respondents

Gunderson and Rogers.

"Const. Art. 1, section 16 (Amendment 9) and RCW 8.24.010 declare a public policy against rendering landlocked property useless. An owner or one entitled to the beneficial use of landlocked property may condemn a private way of necessity for ingress in the ordinary sense of a 'way', i.e., a mere right of passage over land." State ex rel. Polson Logging Co. v. Superior Court, 11 Wn.2d 545, 562-63, 119 P.2d 694 (1941); State ex rel. Huntoon v. Superior Court, 145 Wn. 307, 312, 206 P. 527 (1927).

RCW 8.24.010 authorizes private condemnation of land for right of way for the construction of roads, ditches or other structures necessary for the proper use and enjoyment of landlocked property. See CDP No. 103. Sorenson v. Czinger, 70 Wn.App 270, 852 P.2d 1124, 1127 (1993) citing Beeson v. Phillips, 41 Wn.App. 183, 187, 702 P.2d 1244 (1985).

Appellant's Petition legally described and requested the use of an existing undeveloped recorded easement crossing over the northerly boarder of the respondents Gunderson's and Rogers' properties and running adjacent and parallel to the southerly boarder of the respondents Brazil's property to the county road, Waddell Creek Road. See CDP No. 4.

On October 6, 2006, the honorable Judge Wickham heard respondents Gunderson's motion for summary judgment and dismissal and respondents Brazil's motion for dismissal and arguments of the parties and dismissed the appellant's case.

On a motion for summary judgment, the trial court must consider all facts submitted and all reasonable inferences from them in the light most favorable to the nonmoving party. Wallace v. Lewis County,

(2006) 137 P.3d 101, 134 Wn.App. 1, corrected.

On October 6, 2006, the court had in its hands orders and judgments from the Nappi v. Brazil case, Order Granting Defendant Brazil's Motion for Partial Summary Judgment and Order & Judgment Quieting Title and Granting Easement, herein OJQT, filed by respondents Gunderson's and Brazil's attorneys. See CDP No. 70, Exhibits D and E; and CDP No. 77, Exhibit's A and B. And from the Rogerson v. Nappi case Order for Permanent Injunction, herein OPI. See CDP No. 70, Exhibit B.

The OJQT, at page 2, paragraph No. 3, lines 35-37 states the following:

"3. Except as provided herein, plaintiff Nappi and his successors in interest have no right to easement on defendant Brazil's property for any purpose."

On October 6, 2006, the court chose to ignore the plain language in Rogerson's Permanent Injunction Order and Brazil's Order for Quieting Title and Granting Easement made the following finding of fact, R6, page 24, lines 18-23:

"What is most persuasive in this court is the prior litigation involving the two parcels, which border Waddell Creek Road. And because of those orders, Mr. Nappi is 'conclusively barred' from the proceeding either over the Gunderson, Brazil or Rogerson-now-Rogers properties."

The court was correct that appellant was conclusively barred from establishing another easement on the respondents Brazil's property.

The court absolutely erred in its fact finding and conclusion, as stated herein above, with regard to appellant being “conclusively barred” from proceeding over the respondents Gunderson’s and Rogerson’s properties and completely ignored the abundance of evidence as to the facts of this case as stated in the record and herein this brief. There is “no” evidence in the record of respondents Gunderson ever being a party to a previous lawsuit with the appellant and there is “no” mentioned of respondents Gunderson in either the Rogerson v. Nappi case or the Nappi v. Brazil case and “no” mention of the respondents Gunderson in any of the orders and judgments from those cases filed with the court and in the record. And therefore, there is “no” order or injunction “conclusively barring” or prohibiting the appellant from proceeding over the respondents Gunderson’s and Rogerson’s properties that would prohibit the court from granting the appellant’s Petition over the legally described easement on the respondents Gunderson’s and Rogerson’s properties. See CDP No. 70, Exhibit A-E and CDP No. 77, Exhibit A and B.

This error by the court would represent a material fact existed and evidence overwhelming supported the appellant’s right for a trial by jury to hear the matter.

The court utterly erred in its fact findings and conclusions as stated herein with regard to appellant being “conclusively barred” from proceeding

over the respondents Rogers' property. There is no evidence in the record to support the court's finding and conclusion that appellant is "conclusively barred" from proceeding over the respondents Rogers' property. See CDP No. 70, Exhibit B, page 1, lines 31-32, page 2, lines 1-2, states the following:

"This injunction prohibits Amedeo Nappi and Christine Nappi from traveling on a road that crosses the Rogersons' (now Rogers) property, "other than" the legally described easement which is the 30 foot wide easement that runs north on the easterly most border of the Rogersons' (now Rogers) property."

The plain simple wording in CDP No. 7 clearly provides the average individual of clear notice that the appellant is not "conclusively barred" from proceeding over the respondents Rogers property but just the opposite.

The "other than" legally described easement mentioned in the Rogerson v. Nappi order, CDP No. 70, is the same undeveloped recorded easement the appellant petitioned the court to use for a right of way of necessity to access his landlocked property. See CDP No. 4.

The court in Sidis v. Brodie/Dohmann, Inc., stated that the general rule in their approach to statutory construction was clear:

"Plain words do not require construction" Sidis v. Brodie/Dohmann, Inc., 117 Wn.2d 325, 815 P.2d 781 (1991); Snohomish v. Joslin, 9 Wn.App. 495, 498, 513 P.2d 293 (1973); McFreeze Corp. v. State Dept. of Revenue, 102, Wn.App. 196, 6 P.3d 1187, 1189 (2000).

Again, the court in Sidis v. Brodie/Dohmann, Inc., stated that the

general rule in their approach to statutory construction was clear:

“This court will not construe unambiguous language. Sidis, 117 Wn.2d 325, 815 P.2d 781 (1991), Vita Food Prods., Inc. v. State, 91 Wn.2d 132, 134, 587 P.2d 535 (1978); King County v. Taxpayers of King County, 104 Wn.2d 1, 5, 700 P.2d 1143 (1985).

There is no ambiguity in the wording of the Rogersons' Permanent Injunction Order. The words are in simple everyday plain language. There was only one way for a reasonable person to interpret the Rogerson's OPI, CDP No. 70, Exhibit B, and that is the appellant “is not” prohibited from crossing over the legally described easement which is the 30 foot wide easement that runs north on the easterly most border of the Rogersons' (now Rogers) property.”

Written instrument is “ambiguous“ when its terms are uncertain or susceptible to more than one meaning. Harding v. Warren, 30 Wn. App 848, 639 P.2d 750 (1982).

Generally courts give words in a written agreement their ordinary, usual and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. McCausland v. McCausland, 129 Wn.App. 390, 118 P.3d 944 (2005).

When interpreting contracts, court give undefined terms their plain, ordinary, and popular meaning, which may be ascertained by reference to standard English dictionaries. Wm. Dickson Co. v. Pierce County, 128 Wn.App 488, 116 P.3d 409 (2005).

The court speaking to attorney Tiffany, respondents Gunderson's new attorney, R6, page 4, lines 15-22, as follows:

“Let me make sure I understand. Your position is that there has been litigation for the Brazil and Rogerson-now-Rogers parcels, and

he, Nappi, is barred by collateral estoppel to assert an easement over those properties, and the only way he gets to Waddell Creek Road over your client's property is through one or the other of those; is that right?"

The court, R6, page 5, lines 9-10, speaking to Mr. Tiffany regarding the legally described easement in the OPI:

"So you're agreeable to any order from this Court leaving that issue open?"

Mr. Tiffany makes his first judicial admission in his response to the court, R6, page 4, lines 23-25 and page 5, lines 1-8:

"That is exactly right, your honor. The only point that Mr. Nappi tries to bring up is that there is a 30 - foot easement. I don't know how long it has been in existence, but let's just say it has always been there. But it's on the very border of my client's property, as well as Michael Rogers' property. There is no road there. However, if Mr. Nappi chose to build a road, he probably does have that right."

Tiffany was in error in explaining to the court with regard that appellant was barred by "collateral estoppel" to assert an easement over those properties, collateral estoppel will be argued completely below. Mr. Tiffany with his explanation to the court offered a "judicial admission", a "judgment by consent", which was made by the Gunderson's attorney was conclusive and binding on respondents Gunderson and that the appellant could use the legally described easement over the respondents Gunderson's property.

Mr. Tiffany contradicted himself regarding the appellant being

barred by collateral estoppel when he proceed to clearly informed the court that appellant had a right to use the “legally described easement”, even to build a road over it. If appellant has the right to build a road over the “legally described easement” than Mr. Tiffany’s argument that the appellant is “barred by collateral estoppel” from asserting an easement over those properties, Gunderson and Rogers, was not true or factual.

And that Mr. Tiffany agrees with the facts stated by the appellant, that appellant has not been barred or prohibited by the Rogerson’s OPI from using the undeveloped “legally described recorded 30 foot easement” that appellant has petitioned the court for a right of way necessity over the respondents Gunderson’s and Rogers’ properties.

When the motion of respondents for dismissal of the action was heard, appellant’s counsel stated to the trial court that he had no defense to the motion. That judicial admission made by appellant’s attorney is conclusive and binding on her. The order granting the motion for dismissal was in effect a judgment by consent and, as we said in Winton Motor Carriage Co. v. Blomberg, 84 Wn. 451, 147 P.21, 23, “Judgments by consent are valid as between the parties, and in the absence of fraud or mistake will not be review on appeal.” Seely, v. Gilbert, 16 Wn.2d 611, 134 P.2d 710, 712 (1943).

The court responded to Mr. Tiffany’s judicial admission, R6, page 4, lines 9-10, as follows:

“So you’re agreeable to any order from this court leaving that issue open”?

Mr. Tiffany’s second “judicial admission” was in his response to the

court's statement above, R6, page 5, lines 11-16 and page 5, lines 1-8, as follows:

“Absolutely, your honor, I think that all the Gunderson are interested in and I can't speak for Mike Rogers for the Brazils. They have their attorney here-but all they (Gundersons) are concerned about is the road that they use for access to their property.”

Here Mr. Tiffany made a second judicial admission to the court and made no objection to the court with regard to appellant's right to use the “legally described easement” mentioned in the Rogerson's case OPI. And the record contains no evidence that the appellant did not have a right to build a road over the “legally described easement.”

The failure of the trial court to enter judgment for plaintiff for an amount admitted by defendant to be due, and tendered in court, is error. Mace v. Gaddis, 3 Wn. Terr. 125, 13 P. 545 (1887).

The record contains the Affidavit of Cristy Gunderson, dated February 24, 2004, which provides evidence of further “judicial admissions” with regard to appellant having the right to use the “legally described easement” crossing over the Rogers and Gunderson properties, see CDP No. 18, paragraph no. 8, as follows:

“8. The Petitioner should not be allowed to condemn our land when there is an existing, albeit undeveloped, easement which can be developed. Attached hereto as Exhibit “A” is a true and correct copy of a portion of a survey performed by Bracy and Thomas, P.S., which depicts the relevant parcels of real property and this easement.”

“This easement”, “undeveloped easement” specifically mentioned by

respondent Gunderson in CDP No. 18, paragraph 8, and shown on Exhibit “A”, labeled as “EASEMENT FOR INGRESS AND EGRESS”, is the same easement that is described in OPI as “other than the legally described easement which is 30 foot wide easement that runs north on the easterly most border of the Rogersons’ property.”

Ms. Pearson pointedly directs the court’s attention to respondents Gunderson’s affidavit, CDP No. 18, page 4, lines 1-6, in her Memorandum of Authorities of Respondents Gunderson, dated February 24, 2004, CDP No. 19, and again, makes a judicial admission with regard to appellant’s right to use the “legally described easement” over the respondents Gunderson and Rogers properties as follows:

“In this case, an easement already exists that would serve the Petitioner’s land. (See Affidavit of Cristy Gunderson, page 3, paragraph 8.) Although undeveloped, the presence of such an easement negates the necessity requirement under RCW 8.24.010...

Finally, the court while addressing Mr. Tiffany, acknowledged the judicial admissions of Mr. Tiffany and his clients, and inquired as to why the appellant prefers to use the respondent’s driveway instead of the “legally described easement” in the OPI, CDP No. 70-Exhibit B, as follows:

R6, page 15-16, lines 24-25, 1: “Mr. Tiffany indicated that his client had no objection to you continuing to assert rights over this easement that is set out on the map, and what is wrong with you doing?”

Appellant responded to the court’s question as follows:

R6, page 16, lines 2-7: Secondly, it is extremely expensive. "I would have to move a whole mountain. It is 35 feet to one side. I would have to fill it all the way down. That is down about 200 or 300 feet maybe to get it to level out from the top down."

Appellant and the court had a drawn out discussion with regard to clarifying the difference between "original-legally described easement" and the road the respondents Gunderson use to access their property. See R3, page 13, lines 22 through-page18 line 6.

The court: What about the argument that the only way you could have a right-of-way over the Gunderson property was to go onto the Brazil property?

Mr. Nappi: No. Brazil was never that necessity. The road runs right through Rogers and Brazils, I mean the Rogers and --

The court: How about the Rogers property then?

Mr. Nappi: Rogers property is next to the Brazils. Both of them are adjacent in line.

The court: I understand, but the argument is the only way you could end up with some type of right-of-way over the Gundersons' was to then go over the Rogers' property.

Mr. Nappi: Yeah, through the original easement that is recorded. That is recorded.

The court: But you weren't asking to use something else.

Mr. Nappi: No. I asked for original easement and stated that in my petition with further information dealing with the prescription easements, easement by prescription existing driveway,

The court: You were asking to use the existing driveway, if you will, on the Gunderson property.

Mr. Nappi: I was asking to use the original easement in my petition.

The court: When you say "original," do you mean the one --

Mr. Nappi: Recorded.

The court: -- that shows up on the map?

Mr. Nappi: There are two on the map, three actually. What the recorded easement is the one that is adjacent to the property line of the Brazils and the Rogers and the Gundersons. That is the original request.

The court: Actually, what you told me at the last hearing was that you didn't want to use that because it was too expensive, and that's why you wanted to use the driveway that was in place on the Gundersons.

Mr. Nappi: I think what you asked me was why I would rather use the other one. You said why would rather use that one than the legal easement. I said because the legal easement is extremely expensive to construct, not that I wouldn't use it. I said it's easier to use the other one because it's the only existing easement. (End page 15.)

The court: So this case was about your right to use the existing driveway?

Mr. Nappi: Right. As I said, I did further research into the case. I'm not a lawyer, but I had some issue about easement by prescription, and since that easement has been there and not used, it is still on record, but the other one now, which they created in '71 and they have used since '87 they move there, which is documented y the affidavits and few things in the record.

I see some cases law that says you can use an existing easement, and I'm saying that that became the actual legal easement because it was used for a period of time, which would quality it.

I'm saying that is the same as the one I'm not using. My theory was that that easement is in, is the one that is adjacent that is not

being used. There is one adjacent to the other side that Rogers uses to go to his house, which goes right to the top of the hill and on his property. It doesn't show on the (end page 16) map.

The court: But you were restrained from using an easement on the Rogers property in another case.

Mr. Nappi: No, I wasn't restrained from using the easement. The original easement I can use.

The court: I'm not talking about the one that is on the map. I'm talking about the driveway that the Rogers and the Gundersons were using, you were restrained from using that.

Mr. Nappi: At the point, but the issue is that was before they bought the property.

The court: Does that make a difference?

Mr. Nappi: It makes a difference now, because the access still becomes a prescription, becomes a legal easement. If I can use the legal easement, except for , and that didn't qualify. It was never addressed a d being a legal easement for time prefaces.

So, I'm saying -- may be a novel idea. I don't know yet, I haven't tried it -- but research says it is an existing roadway. It (end page 17) became a legal easement because of the time. It qualify as recorded easement because it has been used, but I am saying I have the right to any respect to still use the recorded easement. And that even though it was litigated, I had not been prohibited from using that.

So the court had several alternatives to discuss and consider. So there is no CR 11 sanction against me. I didn't relitigate anything that wasn't already done. I could use that. I'm not prohibited against it. That is what I filed in my petition.

The court erred by not accepting Mr. Tiffany's judicial admission at the summary judgment hearing which should have been considered a

“judgment by consent” settling the issue of the appellant’s Petition at that time and the court should have granted an order for appellant’s Petition to use the “legally described easement.”

The appellant sought to expand case law and the court did not agree but the court again ignored appellant’s right to use the original “legally described easement” which appellant had petitioned the court for, which was not abandoned or amended. The court having the knowledge that the respondents Gunderson had no objection to appellant using the undeveloped recorded easement, “the legally described easement“, from Mr. Tiffany and no objections from the other respondents also. Based on the court’s own statement, the court erred in dismissing appellant’s Petition.

On October 6, 2006, Mr. Tiffany’s “judgment by consent” was twice before the court and the court chose to ignore them and erred in granting a dismissal of the appellant’s Petition.

Consent that a judgment maybe entered dispenses with the necessity of proof. Winton Motor Carriage Co. v. Blomberg, 84 Wn. 451, 147 P.21, 23.

The court itself informed the appellant of Mr. Tiffany’s judicial admission, R6, page 15, lines 23-25, page 16, lines 1:

“Mr. Tiffany indicated that his client had no objection to you continuing to assert rights over this easement that is set out on the map, and what is wrong with you doing”?

Even with the judicial admissions of Mr. Tiffany having been stated

to the court, “if Mr. Nappi chose to build a road, he probably does have that right”, and that Mr. Tiffany having offered no objection to the court regarding the same, and the court having again raised Mr. Tiffany’s judicial admission, the court continued to ignored these important facts and erred in its findings and conclusions of the facts before it with regard to appellant’s right to use “the legally described easement.”

Only where there is no genuine issue of material fact, and reasonable people could reach but one conclusion from all of the evidence, is summary judgment appropriate. In re Estate of Black, 153 Wn.2d 152, 102 P.3d 796 (2004).

If reasonable minds can differ, the question of fact is one for the trier of fact, and summary judgment is not appropriate. Owen v. Burlington Northern and Santa Fe R.R. Co., (2005) 108 P.3d 153, Wn.2d 780, reconsideration denied.

Ms. Stickler interprets from the OJQT (CDP No. 70, Exhibit E, page 2, paragraph no. 3) to the court with regard to appellant’s right to any easement over respondents Brazil’s property, R6, page 9, lines 19-22, as follows:

But, basically, except for provide therein, the order reads, “Nappi and his successors-in-interest have no right to easement on defendant Brazil’s property for any purpose.”

The words used in respondents Brazil’s OJQT are plain simple words which are not vague or ambiguous and whose terms are not uncertain or susceptible to more than one meaning and do not need any interpretation

other than their plain meaning.

Reasonable men reading the respondents Brazil OJQT would not differ as to the order's meaning.

Ms. Stickler argued to the court regarding "res-judicata" and "collateral estoppel", regarding respondents Brazil being joined as necessary parties, R6, page 8, lines 20-25 and page 9, lines 2-5, as follows:

Jim Brazil has moved to dismiss based on res-judicata and/or collateral estoppel. There was a case-- you have been provided the orders from that case--2000, and partial summary judgment was entered in favor of defendant Brazil and then later a final order and judgment.

Defendant Brazil's Motion for Partial Summary Judgment on the issue of ingress and egress is granted,," in other words denying any order for an easement across the property.

"Doctrine of collateral estoppel precludes parties from relitigating issues which have been actually and necessarily contested and determined in prior actions between same parties." Peterson v. Department of Ecology, 596 P.2d 285, 97 Wn.2d 306 (1979). "Res judicata, or claim preclusion, bars the relitigation of claims and issues that were litigated, or might have been litigated, in a prior action." Brown v. Scott Paper Worldwide Co., 989 P.2d 1187, 98 Wn.App. 349 (1999).

The Court enter into the following conversation with Ms. Stickler with regard to the location of the undeveloped legally described easement in the OPI (CDP No. 70-Exhibit B, page lines 31-32 & page 2, lines 1-2), see R6, page 10, lines 4-, lines 10, as follows:

The Court: So that easement is on the two adjoining properties?

Ms. Stickler: Yes, your honor.

The court: And I see that, it is --

Ms. Stickler: Do you need a map or want it?

The court: No. I have it. Thank you.

The court has no excuse that it was not aware or confused as to the exact location of the “legally described easement” mentioned in the OPI (CDP No, 70-Exhibit B) from the discussions that took place above.

Ms. Stickler argued again to the court regarding her client, respondents Brazil, being misjoined by respondents Gunderson as a necessary party to the action, R6, page 22, lines 16- 23, and requested CR 11 sanctions against respondents Gunderson and their attorney:

“Again, these issues have been litigated to him (Brazil). He was misjoined under CR 21 and should never have been a necessary party to this case. Both parties should have known that. Mr. Nappi obviously knew, and the other side or the Gunderson’s attorney should have known at least. So the Brazils have also requested that attorney fees be awarded under CR 11 for there being no factual basis to join them as a party.”

Ms. Stickler specifically memorialized and enumerated each procedural step that the respondents Gunderson and their attorney took before and after joining the respondents Brazil in this action in demanding CR 11 sanctions against respondents Gunderson and Ms. Pearson, respondents Gunderson’s attorney, in Brazil’s Amended Motions RE Attorney Fees or Sanctions on Motion to Dismiss and Memorandum which

particularly pointed out that the respondents Gunderson were responsible for misjoining respondents Brazil . See CDP No. 92, page 3, paragraphs nos. 2 and 3.

Under CR 11 (a):

“...The signature of a party or 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 cause unnecessary delay or needless increase in the cost of litigation; and
- (4) the denials of factual contentions are warranted on the evidence...or are reasonably based on a lack of information or belief.”

Ms. Stickler again directed the court for CR 11 sanctions against respondents Gunderson and their attorney were liable to respondents Brazil for attorney fees, under either the relevant statute, Chapter 8.24 RCW, CR 11, or both, having forced respondents Brazil’s joinder with knowledge that the matter was res judicata as to an easement across his property. See CDP No. No. 92, page 6, lines 16-23 and page 7, lines 3-6.

Appellant and Ms. Stickler cited Kennedy v. Martin, to the court with regard to attorney fees pursuant to RCW 8.24.030. Ms. Stickler provided a lengthy explanation of the Kennedy case to the court. See CDP

No. 96, page 9 and CDP No. 71, page 5, lines 7-28 and page 6, lines 1-3.

“There is nothing in the language of RCW 8.24.030 or in the case law that prevents court from requiring the party responsible for involving the party seeking reimbursement of his attorney fees to pay those fees.” Kennedy v. Martin, 115 Wn.App. 866, 63 P.3d 866, 871 (2003).

“In this case, Kennedy brought an action against the Martins, who brought a third party complaint against the Cammacks. RCW 8.24.030 allows attorney fees “in any action.” Kennedy, at 871

“The trial court did not abuse its discretion when it ordered the Martins, a condemnee, to pay the attorney fees of a potential condemnee, the Cammacks, under RCW 8.24.030, and we affirm.” Kennedy v. Martin, 115 Wn.App. 866, 63 P.3d 866, 871 (2003).

There is no evidence in the record that Mr. Tiffany presented any objection to Kennedy v. Martin, therefore, Kennedy is the law of the case.

The court erred in ignoring the analysis in the Kennedy case by sanctioning appellant to pay respondents Brazil’s attorney fees instead of ordering the respondents Gunderson and Ms. Pearson, the parties responsible, for not only joining respondents Brazil, but misjoining the respondents Brazil.

The court had notice on numerous occasions of the Nappi v. Brazil case having been previous litigated and settled prior to the respondents Gunderson’s motion to amend/join the respondents Brazil and that there could be issues of “res judicata” and “collateral estoppel” but the court fail to inquire from respondents Gunderson and Ms. Pearson, responsible for

moving the court to join the respondents Brazil, as to what issues had been previously litigated in the Brazil case. The case record contains many declarations, affidavits, memorandums, and other documents that notified any reasonable person that the respondents Gunderson and Ms. Pearson were aware of the issues of “res judicata” and “collateral estoppel” with regard to the Nappi v. Brazil case, and particularly the fact that respondents Brazil’s property did not contain a site for an alternate easement by which appellant could obtain by law to access his property. See CDP No. 7; CDP No. 18, page 2, paragraph nos. 7, 9; CDP No. 19, page 2, lines 9-12; CDP No. 21; CDP No. 46; CDP No. 47; CDP No. 61, page 2, lines 3-22; CDP No. 70, Exhibit’s A-E; and CDP No. 71.

Overwhelming evidence filed in the record by Ms. Pearson and respondents Gunderson leaves no doubt to reasonable minds that both knew before moving the court to join the respondents Brazils as necessary party that respondents Brazil’s property did not by law, RCW 8.24.015-see CDP No. 103, contain a possible site for appellant to petition the court for an easement to access his property.

The court heard and granted Ms. Pearson’s motion to join the respondents Brazil and was aware of the Ms. Pearson’s Affidavit, dated December 30, 2004, CDP No. 47, which contained numerous references to previous litigation between appellant Nappi and respondent Brazil but chose

to ignore them and not inquire as to the issues settled or request a copy of the orders of settlement be filed with the court and therefore, the court erred in granting an order to join the respondents Brazil as necessary party.

CDP No. 47, page 2, paragraph no. 2, states:

2. It is my opinion that the key evidence in support of my clients' case is the court's evaluation of the adjacent real property owned by James E. Brazil and "Jane Doe" Brazil, the owners of real property contiguous to that of the Petitioner and Respondents Gunderson.

CDP No. 47, page 3, paragraph no. 5, states:

5. However, as Ms. Gunderson-Meadows Declaration (CDP No. 46) indicates, unless Mr. Brazil is joined in this Petitioner, it will create an extreme hardship to my clients because my clients assert that the most reasonable point of access to the Petitioner's landlocked parcel is, in fact, the easement drawn on the county map (See Exhibit "A" attached to the Declaration of Cristy Gunderson, filed concurrently), which is directly along the boundary of the Brazil and Rogers/Gunderson properties.

CDP No. 47, page 3, paragraph no. 6, states:

6. My clients expect the evidence to show that a direct route exists to the Petitioner's property across the Brazil property and that the Gunderson property, based upon an existing easement route that burdens the Brazil and Gunderson properties more equitably than the Petitioner proposes.

CDP No. 47, page 3, paragraph no. 7, states:

7. Based upon this hardship, my clients have authorized me to seek an amendment to the current Petition to include the owners of the contiguous real property and continuance of the trial to the most reasonable new trial date available to allow the Court to consider the land contiguous to the property of the Petitioner might contain a site for the private way of necessity may be joined as a party.

The record, CDP No. 70-Exhibit E, page 2, paragraph 3, completely contradicts Ms. Pearson's affidavit, that respondents Brazil's property might contain a site for the private way of necessity and should be joined as a party. Ms. Pearson with the knowledge of the Brazil OJQT moved the court to joint respondents Brazil by filing her affidavit which was replete with false facts and statements stating that respondents Brazil were a necessary party.

Respondents Gunderson filed a declaration, dated December 30, 2004, see CDP No. 46, in support of Ms. Pearson's motion to join the respondents Brazil as a necessary party to the lawsuit. Respondents Gunderson's declaration specifically and particularly recited every condition of the Nappi v. Brazil case OJQT, except for one condition.

CDP No. 46, page 2, paragraph no. 2, states:

2. I personally searched prior litigation involving Amedeo Nappi, the Petitioner in the above cause ... Superior Court of Thurston County, Washington was filed Case Number 00-2-01365-2. This case, Nappi was the Petitioner vs. James E. Brazil...

CDP No. 46, page 2, paragraph no. 4, states:

4. It appears that in the prior litigation, First American Title...and Prudential Premier Properties had liability to the situation and that money was exchanged between FAT and Brazil. The case was ultimately settled via "order and judgment quieting title and granting easement" on Sept. 9, 2003. As part of this, Brazil did give Nappi easement, however it was only for 30 ft. by 30 ft. section in Brazil's SE corner....

No where in respondents Gunderson's declaration did she inform the court of the last condition listed in the Brazil case, OJQT, page 2, paragraph no. 3, but continued to state in her declarations and affidavits that the respondents Brazil be joined, included, and considered necessary party to this action. See CDP No. 46, page 2-3, paragraph nos. 10, 11, 12 and 13.

The Brazil case, OJQT, page 2, paragraph no. 3, states:

3. Except as provided herein, plaintiff Nappi and his successors in interest have no right to easement on defendant Brazil's property for any purpose.

Mr. Tiffany filed his Memorandum in Support of Defendant Gundersons' Motion for Summary Judgment, herein MSDGMDJ, dated August 7, 2006, still arguing res judicata to the court and specifically and accurately citing the terms in the Brazil case OJQT and Rogerson case OPI.

CDP No. 71, exhibit page 2, lines 1-3;

This injunction prohibits Amedeo Nappi and Christine Nappi from traveling on a road that crosses the Rogerson property, other than the legally recorded easement which is the thirty (30) foot wide easement that runs north on the easterly most boarder on the Rogersons' property.

CDP No. 71, page 5, lines 1-7

3. Except as provided herein, plaintiff Nappi and his successors in interest have no right to easement on defendant Brazil's property for any purpose.

Respondent Gunderson having knowledge of the Brazil OJTQ filed her declaration, CDP No. 47, with the court which was replete with false

and untrue statements.

RCW 8.24.015, see CDP No. 103, states:

Joinder of surrounding property owners authorized

“In any proceeding for the condemnation of land for a private way of necessity, the owner of any land surrounding and contiguous to the property which land might contain a site for the private way of necessity may be joined as a party.”

The words in RCW 8.24.015 are plain and simple, it contains no vague or ambiguous words or phrases. The words in the statute should be given their ordinary meaning. The statute has but one requirement which must be met before one can join an surrounding or contiguous land owner. That the land of the surrounding or contiguous land owner “might contain a possible site for the private way of necessity.”

The evidence in the record, CDP No. 70-Exhibit E, when read would bring reasonable men to only one conclusion that respondents Brazil’s property did not contain a possible site for the private way of necessity for the appellant to use by law to access his landlocked property.

Therefore, reasonable men would have concluded that respondents Brazil were not a necessary party to be joined in the Nappi v. Gunderson case.

The court ignored the one requirement stated in RCW 8.24.015 and used its own interpretation, of the statute’s requirement as follows:

R6, Page 23, lines 1-10: “One of those property owners is here against their will on the basis of a previous order of this Court requiring them to be joined under the legal authority that says that, in a matter such as this, all adjacent property owners need to be part of the proceeding. So to a certain extent, the reason why they were here had nothing to do with the merits of Mr. Nappi’s case against them. It was a requirement so that complete justice could be done in this case.”

The court’s interpretation is in error and contradicts the statute because it lacks the only requirement of the statute to join any surrounding or contiguous land owner is “that the land of the surrounding or contiguous land owner might contain a site for the private way of necessity may be joined as a party.”

Again, reasonable men reading the Brazil case OJQT would have come to only one conclusion that “the respondents Brazils were not a necessary party because the respondents Brazil’s land did not contain a possible site and therefore, were not a necessary party.”

The court having been presented this same evidence many times chose to blatantly ignore it and erred in dismissing the appellant’s petition and sanctioning the appellant for the respondents’ attorney fees.

Respondents raised the issue of whether the appellant was the legal owner of the property appellant petitioned the court for an easement of right of way by necessity. The appellant stated to the court that he was the legal owner in open court. See R6, page 13, lines 4-9.

The record shows that appellant filed his "Land Purchased Sale Agreement", herein LPSA, with the court on November 2, 2006. See CDP No. 94. The document is signed by the seller and purchaser and is notarized which meets the requirements of the statute of frauds. There were no objection from the respondents or evidence in the record that the CDP 94 is fraudulent or in violation of the statute of frauds.

Reasonable men examining "Land Purchased Sale Agreement" document would come to only one conclusion, "that the appellant is the owner of the property he petitioner the court for the easement of right of way of necessity. See CDP No. 94.

The court inquired of the appellant if he had proof of ownership of the property appellant petitioned the court for the easement of right of way of necessity. See R3, page 20, lines 1-25. The appellant stated he filed the document with the court. See R3, page 21, lines 1-4

The court found the "Land Purchase Sale Agreement" in the court's file. See R3, page 21, lines 14-15.

The court then ruled not to accept appellant's ownership document, the LPSA, as being untimely. See R3, page 22, lines 2-3.

The question before the court: Was the appellant the owner of the property that the appellant had petitioned the court for the easement of right of way of necessity at the time the appellant filed his Petition? The LPSA

filed in the record resolved that issue before the court.

The court consider documents filed by Ms. Stickler that showed on September 23, 2005 that the appellant was not named as the owner of the real property. See CDP No. 92.

Ms. Stickler made the following statement to the court as follows:

R3, page 10, lines 6-9: "Our research as we came for the Motion to Dismiss had shown that the property had been sold at a sheriff's sale on November 4, 2003."

RCW 6. 23.020, in part states:

"(1) Unless redemption rights have been precluded.....the judgment debtor...may redeem the property at any time.....(b) otherwise within one year after the date of sale."

Appellant's property was sold at Sheriff's Auction on November 14, 2003. Under the statute for redemption, the owner of the auctioned property holds the title to the property and the right to redeem his auctioned property for one year from the date of sale. Thus, appellant maintained an ownership interest in the property for the redemption period of one year and therefore, had the right and legal standing to file his Petition presently before the court on February 13, 2004, three months after the sheriff's auction of the property.

During the statutory one-year period for redemption from the execution sale, judgment debtor retains legal title to the property sold. Provident Mutual Life Insurance Co. v. University Evangelical Lutheran Church, 90 F.2d 385 (1937).

The court did not inquire into the statutory rights of the appellant as owner of said property and the fact was not raised at anytime and the court stated, the following:

R3, page 26, lines 19-25: "There also is the issue as to whether or not Mr. Nappi was the record owner at the time he filed his petition. Ms. Stickler, on behalf of the Brazils, has presented evidence that he was not. Mr. Nappi for the first time this morning is advising the court of materials"

R3, page 27, lines 1-7: " that he says allegedly conclude that he is the record owner. Because those materials were not served on opposing parties prior to today. I am disregarding those materials, but I don't think I need to get to that issue, necessarily, in order to decide the issue before me this morning."

The court then states that it will rule against appellant on the ground of appellant not being the property owner:

R3, page 27, lines 8-13: "Under either ground, either Mr. Nappi not being record owner or him being permanently restrained from access over the Brazils' or Rogers' property, he had no basis to believe that this court could give him the legal right to right-of-way over the Gunderson property."

The court erred in not accepting the appellant's LPSA and ruling that the appellant was not the record owner of the property in question on February 13, 2003, the record , facts and statute, RCW 6.23.020, contradict and support that the appellant was the owner of record and was at the time appellant filed his Petition and the owner at the hearing.

Considering the above facts and the court record, reasonable mean would conclude that the appellant was the owner of the property in question

on February 13, 2004, the date appellant filed his Petition which was less than three (3) months after the sheriff's sale of appellant's property and the legal owner of record on November 3, 2006..

The court erred in its decision not to consider the appellant's filing of the LPSA because the LPSA was a legal document filed in the court record by the appellant and the LPSA was not contested by the respondents on the record and clearly identified the appellant as the owner of the property.

Respondents Gunderson filed an answer to the appellant's Petition containing a blanket denial to the Petition having personal knowledge through the public records that their denials were not true. See CDP No. 34.

Respondents Gunderson's answer denied the following in CDP No.

4:

PETITION PART I: that appellant was a resident of Thurston County, WA; that said property that said property was located in Thurston County, WA; property was landlocked, and that it required an easement to access the proper.

PETITION PART II: that is was not necessary for a easement over respondents property for the proper use and enjoyment of appellant's property.

PETITION PART III: that each and every landowner, encumberancer that had any interest in the condemned property was named in the petition.

CR 8 states:

“All denials must be in good faith, and the obligations of Rule 11 apply to the person signing the pleadings. Denials can be made on the basis of information and belief, but such denials are available only if made in good faith. They are not available, for example, if the fact averred is a matter of public record, or is otherwise within the responding party’s knowledge.” Editorial Comments to CR 8, Washington Court Rules Annotated, 2d Edition, page 67.

Respondents Gunderson and Ms. Pearson had personal knowledge at the time they filed their answer of blanket denials to the Petition the following:

Appellant’s address. See CDP No. 4; . Appellant’s property is located in Thurston County WA: See CDP No. 18, paragraph No. 3, 6 and exhibit A. CDP No. 20, exhibits B-E: Public records at the Thurston County Treasurer’s Office records and Thurston County Superior Court records; Thurston County Auditor’s Office records. CDP No. 39.

CR 8 states the following with regard to pleadings:

“Pleadings on Information and Belief. Although pleadings are often made on the basis of information and belief, this practice must be reconciled with Rule 11, which provides for sanctions against an attorney or party if the action is not well grounded in fact or warranted by existing law. Rule 11 imposes an affirmative duty to make a ‘reasonable inquiry’ to determine if an argument made in a pleading, motion, or memoranda is grounded in fact and warranted by existing law or a good-faith argument for its extension, modification or reversal.” Editorial Comments to CR 8, Washington Court Rules Annotated, 2d Edition, page 66.

Respondents Gunderson actions of answering the appellant’s Petition were in violation of CR 8 and CR 11. The actions of respondents

Gunderson and Ms. Pearson were deliberate to caused delay and further unnecessary expenses of attorney fees with the knowledge that appellant would be responsible for said attorney fees under RCW 8.24.030.

RCW 8.24.030, in part states:

“In an action brought under the provisions of this chapter for the condemnation of land for a private way of necessity, reasonable attorneys’ fees and expert witness costs may be allowed by the court to reimburse the condemnee.”

Respondents Gunderson and Ms. Pearson failed to comply with CR 33 and CR 34 through evasive and incomplete answers, fabrications, delays in answering, and denying certain documents existed. Respondents Gunderson violations of CR 33, CR 34, and CR11 are outlined in CDP No. 96 which is supported by CDP Nos. 8; 39; 52.1; 61; 64; 70; 71; 87; 89; 92; 94; 95; and 98.

On November 3, 2006, the court issued an order for attorney fees, pursuant CR 11, against the appellant awarding the same to the respondents Gunderson and Brazil. The court supported its ruling for the order on the facts that both the Rogerson v. Nappi and Nappi v. Brazil cases had both been litigated and that barred appellant from bringing those same parties into court for the same issues and that appellant joined the respondents Brazil in this action. The court’s reasoning and memory is in error with regard to appellant joining the respondents Brazil as necessary parties in this

action. The record clearly states that respondents Gunderson moved the court in December 2004, to amend the appellant's Petition and join the respondents Brazil as necessary party. See CDP Nos. 46; 47; 52.1; 67; 92; and CDP No. 98, page 5, Transaction Date 12/30/04.

The court, stated, the following:

R3, page 25, lines 7-13: "This court has already ruled on the merits of that petition and dismissed it. But along the way, as the case was being scheduled for trial, the defendant Gundersons indicated that one of the problems with setting it for trial was the failure to join the Brazils, who were an adjacent property owner."

R3, page 25, lines 14-25: "This court, in considering the motion to continue the trial, considered implicitly a motion to join the Brazils, as well, although my recollection is that the Gundersons had not specifically made that motion, but I was persuaded, in looking at the case and hearing that there had been the possibility of other litigation, that the only way that this court could grant complete relief to the parties would be to join the Brazils. So I take some responsibility for the fact that the Brazils are here \$1,285 later."

" 'Doctrine of collateral estoppel' provides that judgment in prior suit precludes relitigation of subsequent action of issues actually litigated and necessary to outcome of first action." Anderson v. Janovich, 543 F. Supp. 1124 (1982).

Appellant opposed the respondents Gunderson's motion to amend the appellant's Petition and join the respondents Brazil as necessary party and continuing the trial date. See CDP No. 52.1.

"Failure to join the owner of property over which a proposed alternative route would pass does not absolutely preclude consideration if evidence shows it is otherwise feasible." Sorenson v. Czinger, 70 Wn.App. 270, 851 P.2d 1124, 1128 (1993); Dreger v. Sullivan, 46 Wn.2d 36, 38, 278 P.2d 647 (1955).

The records reflects that the respondents Brazil did not meet the requirement of being a necessary party, pursuant to CR 19 and that the respondents Brazil's land failed to meet the requirement of RCW 8.24.015, that it might contain a possible site, and CDP No.s 18; 19; 46; 47; and 98, presents no doubt that Ms. Pearson and respondents Gunderson had knowledge a year prior to moving the court to join respondents Brazil as a necessary party.

The court ignored the evidence in the record and erred in joining the respondents Brazil and continuing the trial.

The actions of respondents Gunderson and Ms. Pearson of joining the respondents Brazil as a necessary party was an "abuse of process."

The elements of abuse of process are:

(1) the existence of an ulterior purpose-to accomplish an objective not within the proper process-and (2) an act in the use of legal process not proper in the regular prosecution of the proceedings. Fite v. Lee, 11 Wn.App. 21, 27-28, 521 P.2d 964 (1974).

"In abuse of process cases, the crucial inquiry is whether the judicial system's process, made available to insure the presence of the defendant or his property in court, has been misused to achieve another, inappropriate end." Gem Trading Co. v. Cudahy Corp., 92 Wn.2d 956, 963, n.2, 603 P.2d 82 (1979).

To constitute abuse of process, "there must be an act after filing suit using legal process empowered by that suit to accomplish and end not within the purview of the suit." Batten v. Abrams, 28 Wn.App. 737, 748, 626 P.2d 984 (1981).

Ms. Stickler informed the court at two hearings and just before the court made its decision on awarding attorney fees in person and through the filing of her amended motion for attorney fees and sanctions that the respondents Gunderson joined the respondents Brazil. See R6; R3, page 7, lines 8-14; R3, page 8, lines 1-11; CDP 92, page 3, paragraph no. 3.

The appellant directed to the court that the respondents Gunderson had joined the respondents Brazils. See R3, page 24, lines 12-20.

The court ignored the filed documents in the record and statements of the appellant and Ms. Stickler that the respondents Gunderson had joined the respondents Brazil and was in error with regard to the respondents Gunderson not joining the respondents Brazils as necessary parties.

The court in awarding attorneys' fees to the respondents Gunderson seemed to completely ignored the documents in the record numerous CR 8 and CR 11 violations and that respondents Gunderson's and Ms. Pearson's actions in the case with regard to previous knowledge of the Nappi v. Brazil case before the respondents Gunderson moved the court to join the respondents Brazil. Both appellant and Ms. Stickler continually pointed this fact out to the court. See CDP Nos. 86; 92; and 96; R6 and R3.

Mr. Tiffany's "Affidavit of Fees and Costs", CDP No. 98, page 1, Transaction Date 1/30/2004, lists the following:

"300.00 Review file provided by client: Legal Research at Thurston

County Superior to review Nappi v. Brazil, et al. GUNDERSON-
MEADOWS/CRISTY CIVIL MATTER”

Respondent Gunderson answers to discovery requests, Respondent’s
Supplemental Answers to Petition’s First Set of Interrogatories and
Requests for Production, CDP No. 87, page 2, Answer to Interrogatory No.
9:

“Previous to the complaint filed against us, we were aware that Mr.
Nappi had been involved in litigation with the Mr. Brazils. To gain
more knowledge regarding the action against the Brazils, we went to
the Thurston County Superior Clerk and requested to see
the file.”

Respondent Gunderson’s “Declaration of Cristy A. Gunderson-
Meadows in Support of Motion and Affidavit to Amend Petition of Right of
Way of Necessity and for Continuance of Trial, CDP No. 47, page 2,
paragraph 2:

“2. I personally researched prior litigation involving Amedeo Nappi,
the Petitioner in the above cause (hereafter “Nappi”), and found that
previously, in the Superior Court of Thurston County, Washington
was filed Case Number 00-2-01365-2. In this case, Nappi was the
Petitioner v. James Brazil and Jane Doe Brazil (defendants and 3rd
party plaintiff, hereafter ”Brazil”) v. Campany/First American Title
Insurance.....”

The above documents clearly proves that the court erred in awarding
the respondents Gunderson attorney fees after January 30, 2004, because
respondents Gunderson and Ms. Pearson clearly were aware of orders and
settlement terms in the Nappi v. Brazil.

On October 26, 2004, Ms. Pearson moved the court, ex parte, for motion to shorten time, CDP No. 41, order to show cause, CDP No. 42, motion for protective order, CDP No. 43 and which was supported by Declaration of Cristy Gunderson, CDP 43.1. Ms. Pearson presented the above documents to the Honorable Paula Casey, Judge of the Thurston County Superior Court who signed the order. See CDP 42.

On February 17, 2004, the record shows that the appellant filed a "Affidavit of Prejudice" against Judge Casey. See CDP No. 12.

Appellant having timely filed a affidavit of prejudice, pursuant to RCW 4.12.050, with the court, Judge Casey could not hear or sign and orders with regard to the present case.

"Affidavits of Prejudice" are means by which litigants can prevent judge who they perceive to be biased from hearing their case. LaMon v. Butler, 112 Wn.2d 1193, 770 P.2d 1027 (1989).

Therefore, any research fees and/or attorney fees Ms. Pearson billed the respondents Gunderson with regard to documents prepared and presented to Judge Casey should not be granted.

"Affidavit of Fees and Costs", CDP No. 98, page 4, Transaction Date 10/25/2004, the following:

"300.00 Legal Research: Draft pleadings regarding Motion and Declaration for Protective Order, Order to Show Cause, Motion and Declaration for Order Shortening Time; Order Shortening Time"

"Affidavit of Fees and Costs", CDP No. 98, page 4, Transaction

Date 10/26/2004, the following:

“100.00 Review and amend draft regarding Shorten Time Motion and Order, Obtain Judge’s signature regarding Order Shorten Time, Show Cause for Protection Order; (Courtesy Discount)

Appellant had to move the court for an order to compel prior to respondent Gunderson providing answers to appellant’s discovery request. And further demand answers from respondent Gunderson for her evasive answers and received respondents Gunderson’s supplemental answers to discovery. Finally, after numerous contacts and written communications, respondent Gunderson produced the production of documents, exhibit A with alternate routes drawn in. See CDP No. 39.

The court ignored the following documents and statements in awarding attorneys’ fees. See CDP Nos. 39; 80; 81; 86; 87; 92; 94; 96; and 98.

CDP No. 98, presents no doubt that Ms. Pearson and respondents Gunderson had knowledge of the Nappi v. Brazil case a year prior to moving the court to join respondents Brazil as a necessary party. Thus, any attorney fees related to the respondents Brazil should not have been awarded to the respondents Gunderson.

From the commencement of this action, the respondents Gunderson and Ms. Pearson have conspired under oath through declarations, affidavits, etc., and knowingly fabricated the existence of many alternative routes

which they pleaded to the court to consider for appellant to use to access his land locked property. See CDP No. 18, page 3, paragraph nos. 8, 9, 12; CDP No. 19, page 4, lines 3-4; CDP No. 46, page 3, paragraphs nos. 5, 6, and 7; CDP No. 64. Exhibit A; CDP No. 52.1, Exhibit A, Answer to Interrogatory No. 2.

CDP No. 52.1 provides evidence that respondent Gunderson and Ms. Pearson conspired to fabricated the availability of alternative routes named in the documents listed herein above and in the case record.

CPN No. 52.1, Exhibit D, Answer to Interrogatory No. 2, dated August 24, 2004, five months before moving to join respondents Brazil as a necessary party:

ANSWER TO INTERROGATORY NO. 2:

We have done no research to determine alternate routes for Mr. Nappi to access his property. We consider this action Mr. Nappi's responsibility since he is the one that reached an agreement in his case with the Brazils to forfeit his right to easement across Brazil's property for monetary settlement, thus voluntarily "landlocking" himself.

Respondents Gunderson's answer, in CRP No. 52.1, Exhibit D, Respondent's Supplemental Answers to Petitioner's First set of Interrogatories and Requests for Production, herein RSAP. is under oath and with the knowledge of Ms. Pearson. This is compelling evidence that respondents Gunderson and Ms. Pearson knowingly conspired in their

actions in violation CR 11.

Respondents Gunderson admit that “We have done no research to determine alternate routes for Mr. Nappi to access his property.” The respondents Gunderson’s statement would cause reasonable men to believe that the respondents Gunderson and Ms. Pearson have knowingly, with intent, made false statements in their documents, affidavits, declarations, etc., to delay, harass or cause unnecessary expense and cost in violation of CR 11.

Respondents Gunderson admits to knowledge that appellant’s property is landlocked, but denied the same in her answer to appellant’s Petition. See CDP No. 34, Response, paragraph 1.2.

THE COURT SHOULD TAKE NOTICE: Respondents Gunderson clearly admits knowledge of the Nappi v. Brazil case. And more importantly makes the following admission:

We consider this action Mr. Nappi’s responsibility since he is the one that reached an agreement in his case with the Brazils to forfeit his right to easement across Brazil’s property for monetary settlement...”

The above statement clearly provides no doubt to a reasonable man that respondents Gunderson and Ms. Pearson understood the plain wording of agreement that respondents Brazil’s property did not contain a site for a possible easement to meet the requirement of RCW 8.24.015 and that

respondents Brazil were not a necessary party to this action because appellant Nappi had “reached an agreement with Brazil”, and appellant Nappi had “forfeited his right to easement across Brazil’s property.”

On August 24, 2004, respondent Gunderson was able to interpreted the plain wording in the Brazil case OJQT, page 2, paragraph 3, agreement in her own words which express the fact that appellant lost his right to an easement on the respondents Brazil’s property. Reasonable men would agree that respondents Gunderson understood that appellant never had a lawful right to an easement over the Brazil property because of the OJQT.

The court failed to sanction respondent Gunderson and Ms. Pearson as requested, in several of appellant’s documents, after the court was personally appraised and notified of the respondents Gunderson’s actions violating CR 11.

The above information before the court, the court chose to ignore it and erred in denying the appellant’s motion for reconsideration; dismissing the appellant’s Petition; awarding attorney fees to respondents Gunderson; ruling appellant violated CR 11; awarding attorney fees against appellant for respondents Brazil; granting respondents Gunderson’s motion to amend/.join respondents Brazil as necessary party; ruling appellant LPSA was untimely, etc.

The evidence in this case overwhelmingly supports no award of

attorney fees to the respondents Gunderson for their continued violations of CR 11. And that respondents Gunderson and Ms. Pearson should be sanctioned for their actions in this case.

Attorney fees may be awarded if a losing party's conduct constitutes "bad faith." Ying Li v. Tang, (1976) 557 P.2d 342, 87 Wn.2d 796.

The court made the following statement:

R6, page 19, lines 14-17: "I'm going to allow Mr. Nappi to argue his case any way he wants. I'm going to base my decision on the record before me and the law....."

The test for determining whether the judge's impartiality might reasonably be questioned is an objective test that assumes that a reasonable person knows and understands all the relevant facts. In re Marriage of Davison, 112 Wn.App. 251, 48 P.3d 358 (2002).

The court failed to understand or ignored the law under "res judicata" and "collateral estoppel" exempted the respondents Brazil from being joined as a necessary party to have to relitigated the same issues again.

What particular part of the wording did the court not understand in the Nappi v. Brazil case OJQT, CDP No. 70-Exhibit E, page 2, paragraph no. 3, condition of :

"3. Except as provided herein, plaintiff Nappi and his successors in interest have no right to easement on defendant Brazil's property for any purpose."

It is apparent from the record that the respondents Gunderson understood every word in of the Nappi v. Brazil case OJQT, page 2,

paragraph no. 3, from respondents Gunderson's interpretation of the of it in CPN No. 52.1, Exhibit D, Answer to Interrogatory No. 2, dated August 24, 2004.

The standard for recusal is whether reasonable person with knowledge of all facts would conclude that judge's impartiality might reasonably be questioned. Keyter v.230 Government Officers, 372 F. Supp. 604, affirmed 182 Fed. Appx. 684 (2005).

The court stated its opinion as to the parties in the case:

R3, page 29, lines 2-21: "I see both the Gundersons and the Brazils as innocent parties here who are only here by virtue of the geography and history, and although deeply regret the fact that the Brazils have had to incur fees to get to this place, I again have to say that their presence was necessary to this Court to come up with complete relief for the parties in this case, and hopefully this will end this series of litigation for all parties.'

Apparently, the court chose to ignore any evidence the appellant provided to the court in coming to his opinion that the respondents Gunderson were innocent parties in this action.

Due process, appearance of fairness, and Code of Judicial Conduct require a judge to recuse himself where their is bias against a party or where impartiality can be questioned. State v. Leon, 133 Wn.App. 810, 138 P.3d 159 (2006).

The court made the following finding:

R3, page 28-29, lines 1 and lines 1-11: "Now, the Brazils are also asking for statutory attorney fees against the Gundersons, and they cite case law in this regard, and I agree with counsel's interpretation of the case law that the court does have discretion to grant attorney fees, and if I felt that the Brazils have been brought into this case by some misconduct on the part of the Gundersons or attempt to avoid responsibility on the part of the Gundersons, I would be sympathetic

to that, but I don't see that in this case.”

The court above stated that it would have sanctioned the respondents Gunderson's “if it thought that there was some misconduct on the part of the respondent Gunderson's.”

Trial's court's decision regarding imposition of sanctions under Rule 11 is reviewed for an abuse of discretion. Wood v. Battle Ground School Dist., (2000) 107 Wn.App 550, 27 P.3d 1208.

The court close its eyes to the actions of the respondents Gunderson and the numerous attempts and notices by the appellant and Ms. Stickler to the court of the respondents Gunderson's and Ms. Pearson's CR 11 violations, supported by the record, of undisputed objective facts in this case and the court ignore the case law presented to it with regard to res judicata, collateral estoppel, the actual requirements of joining a party under CR 19, and the specific requirement of RCW 8.24.015, attorney fees, etc.. The court failed to follow any known precedent in joining the respondents Brazil in this action. Appellant numerous times specifically pointed out and described acts of perjury, lying, evasiveness, and fabrication on the part of Gunderson to the court which the court failed to consider and act on, under CR 8 and/or CR 11 or commented on. The court's actions thus demonstrated its blatant bias and prejudice towards the appellant, Mr. Nappi.

Reasonable men would conclude from the case record and the

statements from the court on the record that the court chose only to see and hear certain facts and decided the case on only those facts.

The court made the following statement:

R3, page 26, lines 10-19: “Once the full picture became clear as to the prior litigation, it also became clear that Mr. Nappi knew or should have known that there was no way that this court could legally grant him a right of way by necessity over the Gunderson property, because to do so would have required continuing on over either the Brazil or the Rogers properties, and he was specifically restrained from that by prior litigation.

Again, the court demonstrates its complete bias against the appellant and lack of understanding the terms and conditions set down in the prior orders in the Nappi v. Brazil and Rogerson v. Nappi cases.

The test for whether a judge should disqualify himself where his impartiality might reasonably be questioned is an objective one. State v. Leon, 133 Wn.App. 810, 138 P.3d 159 (2006).

Reasonable men would conclude from the evidence in the record compared to the court’s statements that the court was either totally biased against the appellant or that the court did not have the experience to hear a case such as this.

A trial court’s findings of fact “will be accepted as verities on appeal as long as they are supported by substantial evidence in the record.” Guarino v. Interactive Objects, Inc., 122 Wn.App. 95,108, 86 P.3d 1175 (2004).

The documents filed in the record speak plainly as to the evidence and facts in the case, particularly highlighting CR 11 violations of the

respondents Gunderson and Ms. Pearson, and the facts and case record do not support the court's opinions, findings, conclusions, and orders.

Due process, the appearance of fairness, and the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality might reasonably be questioned is an objective one that assumes that a reasonable person knows and understands all the relevant facts. Smith v. Behr Process Corp., 113 Wn.App. 306, 54 P.3d 665 (2002).

Reasonable men viewing the case record supporting the objective facts in the above case would conclude that the court acted with bias, impartiality, and prejudice towards the appellant, by ignoring the substantial evidence in the record which supported the facts specifically presented to the court of the respondents Gunderson's actions and continued CR 11 violations.

Reasonable men viewing the case record case would conclude that the respondents Brazil after being joined as a necessary party to the case by the respondents Gunderson and then, dismissed by the court in the summary judgment hearing were never a necessary party.

The evidence in the record clearly support the facts that respondents Gunderson and Ms. Pearson actions constituted an abuse of "process" which the court continued to ignore.

The evidence in the record clearly supports the facts, by the admissions of the respondents Gunderson and Ms. Pearson, they had

personal knowledge of Nappi v. Brazil case prior to appellant filing his Petition.

The evidence in the record clearly supports the facts, by the admissions of the respondents Gunderson and Ms. Pearson, that respondents Gunderson and Ms. Pearson had personal knowledge that respondents Brazil were not a necessary party to this action by reason of “res judicata” and “collateral estoppel” and that respondents Brazil’s property did not contain a possible site for an easement as required by RCW 8.24.015.

The evidence in the record clearly supports objective facts, by the admissions of the respondents Gunderson and Ms. Pearson, that respondents Gunderson and Ms. Pearson had personal knowledge of and understood the plain and simple language of the terms and conditions in the orders of the Nappi v. Brazil and Rogerson v. Nappi cases before moving the court to join the respondents Brazil as a necessary party.

The evidence in the record clearly supports objective facts, by the admissions of the respondents Gunderson and Ms. Pearson, that respondents Gunderson and Ms. Pearson had personal knowledge that the documents, affidavits, declarations, pleadings, etc., they filed in the record contained fabrications and untruths, that were used to delay, harass and cause unnecessary expense and costs in violation of CR 11.

The evidence in the record clearly supports objective facts that the

court erred in its finding of facts, rulings, conclusions, ruling appellant to be in violation of CR 11, awarding attorney fees to respondents against appellant for respondents Gunderson and Brazils and dismissing the appellant's Petition, .

The evidence in the record clearly supports objective facts that the court acted with bias, prejudice, and impartiality towards the appellant with complete disregard to existing case law, CR 11 requirements, the evidence in the record, and notices from appellant and the undeniable facts established in the case with regard to his ruling, findings, conclusions, and orders.

CONCLUSION

The above argument has provided sufficient evidence that material facts exist and to reverse the trial court's orders of dismissal and awards of attorney fees and to remanded for a new hearing on the issue of appellant's Petition, attorney fees, etc, and that the remand of this case be set before a different judge for the reasons stated herein.

Respectively submitted this ~~24~~²⁷ day of October, 2007.



Amedeo Nappi, appellant/petitioner

IN THE COURT OF APPEALS FOR WASHINGTON STATE
DIVISION II

AMEDEO NAPPI,

Plaintiff,

) NO. 36487-5-II

v.

) (Thurston County No.04 2 00305 6)

CRISTY A. GUNDERSON and JOHN DOE GUNDERSON,) DECLARATION OF SERVICE
Husband and wife; MICHAEL J. ROGERS and NANNETTE)
B. ROGERS, Husband and wife; EAGLE HOME)
MORTGAGE, INC; HERITAGE SAVINGS BANK;)
JAMES E. BRAZIL and JANE DOE BRAZIL, Husband and)
wife,)
Respondents.)

07 OCT 25 AM 9:55
STATE OF WASHINGTON
BY [Signature] DEPUTY
COURT OF APPEALS
DIVISION II

I DECLARE:

1. I am over the age of 18 years, and I am not a party to this action.
2. I served HERITAGE SAVINGS BANK with the following for the above-entitled cause:
[X] A true copy of Appellant's Brief
3. The date, time and place of service were
Date: October 24, 2007 Time: 4:20 p.m.
Address: 201 5th Avenue S.W., Olympia, WA 98501
4. Service was made pursuant to RAP Rule 5.4(b):
[X] by fax delivery to Blake Lindskog, Senior Vice President of Heritage Savings Bank, Olympia Washington branch, and authorized to accept legal service for the defendant.

I declare under the penalty of perjury under the laws of the Washington State that the foregoing is true and correct.

Dated this 24th day of October, 2007.

Amedeo Nappi

Amedeo Nappi

IN THE SUPERIOR COURT OF WASHINGTON FOR THRUSTON COUNTY

AMEDEO NAPPI,

Plaintiff,

NO. 04 2 00305 6

v.

CRISTY A. GUNDERSON and JOHN DOE GUNDERSON,) DECLARATION OF SERVICE

Husband and wife; MICHAEL J. ROGERS and NANNETTE)

B. ROGERS, Husband and wife; EAGLE HOME)

MORTGAGE, INC; HERITAGE SAVINGS BANK;)

JAMES E. BRAZIL and JANE DOE BRAZIL, Husband and)

wife,)

Respondents.)

07 OCT 25 AM 9:53
STATE OF WASHINGTON
BY DEPUTY

COURT OF APPEALS
DIVISION II

I DECLARE:

- I am over the age of 18 years, and I am not a party to this action.
- I served EAGLE HOME MORTGAGE, INC., with the following for the above-entitled cause:
 A true copy of Appellant's Brief
- The date, time and place of service were
Date: October 24, 2007 Time: 4:40 p.m.
Address: 10150 NE Northup Way #300, Kirkland, WA.98033
- Service was made pursuant to RAP Rule 5.4(b):
 by delivery by fax to Jean Knight, Compliance Supervisor of Eagle Home Mortgage, Inc., that stated she was authorized to receive legal service for the respondent.

I declare under the penalty of perjury under the laws of the Washington State that the foregoing is true and correct.

Dated this 24th day of October , 2007.



Amedeo Nappi

IN THE SUPERIOR COURT OF WASHINGTON FOR THRUSTON COUNTY

AMEDEO NAPPI,

Plaintiff,

) NO. 36487-5-II
) (Thurston Co. No. 04 2 00305 6)

v.

v.

CRISTY A. GUNDERSON and JOHN DOE GUNDERSON,) DECLARATION OF SERVICE
Husband and wife; MICHAEL J. ROGERS and NANNETTE)
B. ROGERS, Husband and wife; EAGLE HOME)
MORTGAGE, INC; HERITAGE SAVINGS BANK;)
JAMES E. BRAZIL and JANE DOE BRAZIL, Husband and)
wife,)
Respondents.)

FILED
COURT OF APPEALS
DIVISION II
07 OCT 25 AM 9:53
STATE OF WASHINGTON
BY _____
DEPUTY

I DECLARE:

- 1. I am over the age of 18 years, and I am not a party to this action.
- 2. I served MICHAEL J. ROGERS and NANNETTE B. ROGERS, with the following for the above-entitled cause:

A true copy of Appellant's Brief

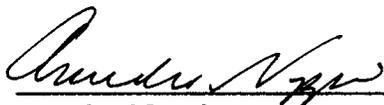
- 3. The date, time and place of service were

Date: October 24, 2007 Time: 4:50 p.m.
Address: 11700 Waddell Creek Rd. SW, Olympia, WA 98512
2823 29th SW, Suite A, Tumwater, WA

- 4. Service was made pursuant to RAP Rule 5.4:
 by delivery by fax to (360) 943-5868

I declare under the penalty of perjury under the laws of the Washington State that the foregoing is true and correct.

Dated this 24th day of October, 2007.



Amedeo Nappi

IN THE COURT OF APPEALS FOR WASHINGTON STATE
DIVISION II

AMEDEO NAPPI,)
)
 Plaintiff,) NO. 36487-5-II
 v.) (Thurston Co. No. 04 2 00305 6)
)
 CRISTY A. GUNDERSON and JOHN DOE GUNDERSON,) DECLARATION OF SERVICE
 Husband and wife; MICHAEL J. ROGERS and NANNETTE)
 B. ROGERS, Husband and wife; EAGLE HOME)
 MORTGAGE, INC; HERITAGE SAVINGS BANK;)
 JAMES E. BRAZIL and JANE DOE BRAZIL, Husband and)
 wife,)
)
 Respondents.)

I DECLARE:

- 1. I am over the age of 18 years, and I am petitioner in this action.
- 2. I served Daniel Tiffany with the following for the above-entitled cause:
[X] A true copy of Appellant's Brief
- 3. The date, time and place of service were

Date: October 24, 2007 Time: 3:40 p.m.
Address: 324 West Bay Drive NW Olympia, WA 98502
- 4. Service was made pursuant to RAP Rule 5.4(b):
[X] delivery by fax to (360) 352-8501 for Ditlevson Rogers Dixon.

FILED
COURT OF APPEALS
DIVISION II
07 OCT 25 AM 9:53
STATE OF WASHINGTON
BY _____
DEPUTY

I declare under the penalty of perjury under the laws of the Washington State that the foregoing is true and correct.

Dated this 24th day of October, 2007.



Amedeo Nappi