

original

No. 36568-5-II
IN THE COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent,

v.

JAVIER QUIROZ CRUZ, Defendant,
FAIRMONT SPECIALTY INSURANCE, Respondent,
METRO CITY BONDS, LLC, Appellant,
MELISSA J. MCLACHLAN, Appellant.

FILED
COURT OF APPEALS
DIVISION II
08 JAN 17 PM 2:23
STATE OF WASHINGTON
BY COCKY
DEPUTY

APPELLANTS REPLY BRIEF
AND MOTION ON THE MERITS

Melissa J. McLachlan

Pro se appellant

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I. ARGUMENT IN REPLY TO RESPONDENT'S BRIEF

As anticipated, Mr. Cain, counsel for Respondent Fairmont Insurance, or for U.S. Fire & Casualty Company as he represented himself to the Superior Court on May 23, 2007 (Report of Proceedings – 5/23/07, page 3, line 15-16), is unable to cite any authority whatsoever to the appellate court, justifying the orders he obtained from the Superior Court. He cites general propositions for the fact that a court can order return of bail upon satisfaction of the conditions thereof, *State v. Paul*, 95 Wn. App. 775, 976 P. 2d 1272 (1999), and that the person posting the bail has standing to object to forfeiture, *State v. Ransom*, 34 Wn. App. 819, 664 P. 2d 521 (1983). Neither proposition is in dispute, and neither has any application to the issues before this court.

Perhaps in recognition of the Superior Court's lack of authority to decide the merits of his motion, Mr. Cain attempts to justify the "pay into court" order by stating at page 9 of his brief:

"Judge Stoltz merely stated that she wanted the money back in the court registry for later determination of property ownership, not that she was determining proper ownership of the refunded money"

This distinction is puzzling, given the fact that the money referred to had been disbursed eight months earlier, and was totally beyond the control of the defunct LLC, and certainly beyond the control of the individual Appellant, Melissa McLachlan. A judgment by the court decreeing that the money was owed to Respondent would have been less onerous, as Respondent, one can assume, would then be left to using lawful collection methods, rather than the unconstitutional imprisonment sanction sought by Mr. Cain. The provisional remedy ordered as ordered, was incapable of performance. Mr. Cain suggests that there is no evidence that Melissa McLachlan is incapable of complying with the order. He appears to suggest that the Court should presume that a person unable even to hire counsel has \$49,250 laying around, ready and able to deposit with the court, just in case Mr. Cain happens to prevail. Mr. Cain fails to even address the fact that the reimbursement check in this case, issued under a proper court order, has been negotiated, and the proceeds disbursed. Is he asking for the return of the check, or the proceeds of the check? Melissa McLachlan has neither in her possession.

There simply is no procedure known to Appellant whereby a potential defendant in a civil suit on an alleged unsecured debt must pay money into court, just in case the suit might be brought at a later time. Mr. Cain has filed no suit, despite the fact that it has been almost a year and a half since the Superior Court Clerk issued a check to Metro City Bonds, LLC and seven months have gone by since the Superior Court issued its erroneous order. A strong presumption should arise that Mr. Cain is avoiding civil litigation on this claim, having no desire to submit the issues to the proper forum, and risking entry of a counterclaim judgment in favor of Metro City Bonds, LLC or Ms. McLachlan.

Mr. Cain has accused Appellant of the unauthorized practice of law. It was Mr. Cain, however, who improperly dragged Ms. McLachlan, a non-liable member of an LLC, into the fray and convinced the Superior Court to enter an order against her personally, on what could not possibly be anything more than a corporate debt, at best. The confusion of the roles of the individual appellant and the corporate appellant are the product of Mr. Cain's misdeeds, and not of the lay Appellant.

Mr. Cain's desperate resort to the Holy Bible as his authority, and his name-calling and attempts to intimidate the pro se Appellant with threats of criminal prosecution reek of the impropriety so evident throughout this case. They are an abuse of the dignity of the Court, and should be disregarded in their entirety.

The Superior Court's orders, requiring the payment into court of money, should be reversed, vacated, and the Superior Court should be directed to refrain from further action in this criminal case.

II. MOTION ON THE MERITS

Pursuant to RAP 18.14, Appellant respectfully requests that the Appellate Court consider and grant, on the Court's own motion, a Motion on the Merits reversing the Superior Court, without oral argument, on the grounds set forth in Appellant's opening Brief and Reply Brief.

DATED this 12th day of January, 2008.


Melissa J. McLachlan, pro se

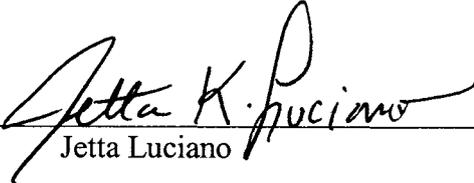
Additionally, one copy of the Appellants Reply Brief was forwarded to:

Pierce Co Prosecuting Attorney
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and

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DATED this 15th day of January, 2008.



Jetta Luciano