

NO.: 37022-1-II

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

WILLIAM A. LOONEY,
Appellant

v.

PIERCE COUNTY, a political subdivision of the State of Washington;
KEN MADSEN, Pierce County Treasurer, JOHN DOES AND JANE
DOE
Respondents,

v.

CLIFFORD M. BILLINGSLEA
Respondent.

**REPLY BRIEF OF APPELLANT WILLIAM A. LOONEY
IN RESPONSE TO BRIEFS OF RESPONDENTS BILLINGSLEA
AND PIERCE COUNTY**

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I. REPLY TO COUNTER-STATEMENT OF THE CASE

The statements of the case as alleged by both respondents Billingslea and Pierce County are misleading and misstate facts. This action involved property subject to a tax foreclosure by Pierce County. The listed owner of the property, Lorraine E. Lane, was deceased, a fact that was known to Pierce County during the foreclosure process. This was admitted by Sandra Moore, the tax foreclosure coordinator for Pierce County Assessor-Treasurer (CP 96). Prior to the foreclosure sale, Pierce County sent copies of the amended notice and summons regarding the foreclosure to Sheryl Garrett and Lee Ann Lane, two of the children of the decedent Lorraine Lane. (CP 96)

Mr. Looney subsequently purchased the interests of the four children and heirs of decedent Lorraine Lane of the subject real property, as evidenced by the quit claim deed the four daughters executed (CP 51). On Friday, December 2, 2005, Mr. Looney personally contacted the Pierce County Assessor-Treasurer's office and was given a payoff amount of \$4,796.33 in order to keep the property out of foreclosure. Mr. Looney then sent his employee, Lindsay Keeton, who took a cashier's check and a copy of the recorded deed showing the interest of Mr. Looney to the property to cure the arrearages. Pierce County refused the tender.

Mr. Looney upon learning of the refusal to accept the tender of the taxes, that same day on Friday, December 2, 2005, called prosecuting attorney Robert Dick on behalf of Pierce County. Mr. Dick made it clear that Pierce County would refuse a tender of the taxes from either Mr. Looney or any of the four daughters of decedent Lorraine Lane. (CP 48-49).

The sale was then held the following Monday, December 5th. Mr. Looney orally objected to the sale when the Assessor-Treasurer's office for Pierce County offered the property for sale. The property was thereafter bought by the defendant Billingslea for \$85,000. As of December 5th the necessary amount to satisfy the tax penalty, interest and foreclosure costs was \$4,968.09. (CP 35).

Mr. Looney thereafter filed suit against Pierce County on January 19, 2006. At the same time as Mr. Looney filed suit, he paid into the court registry the sum of \$5,000, which presumably at that time was sufficient to cover all delinquent taxes, interest, penalties and other charges (CP 3, 8).

II. ARGUMENT

A. Mr. Looney properly tendered the taxes.

Both respondents now allege the provisions of RCW 84.68.080, RCW 84.68.090 and RCW 84.68.100 were not followed by the plaintiff. Those

sections generally require that a plaintiff contesting a tax foreclosure sale to tender and plead that he or she has tendered all taxes, penalties, interest and costs that were justly due. RCW 84.68.080 provides:

Hereafter no action or proceeding shall be commenced or instituted in any court of this state for the recovery of any property sold for taxes, unless the person or corporation desiring to commence or institute such action or proceeding shall first pay, or cause to be paid, or shall tender the officer entitled under the law to receive the same, all taxes, penalties, interest and costs justly due and unpaid from such person or corporation on the property sought to be recovered.

It should first be noted that the trial court did not make any findings or conclusions that plaintiff Looney failed to comply with the provisions of RCW 84.68.080, RCW 84.68.090 or RCW 84.68.100, when it entered the order granting summary judgment to defendant Pierce County dismissing the claims of the plaintiff Looney. The reasons of the trial court dismissing the claims of Mr. Looney were on other grounds. Further, the claim by respondent Billingslea that Mr. Looney admitted his failure to comply with these requirements is wrong. In fact the record is to the contrary.

It should be noted that Mr. Looney tendered the then delinquent taxes, penalties, interest and costs of \$4,796.33 on December 2, 2005 to the Pierce County Assessor-Treasurer's Office, which was three days prior to the sale, and the same were refused by Pierce County (CP 48-49). When Mr. Looney's

complaint was filed approximately one month later contesting the sale, at that time he tendered into the registry of the court an amount sufficient to pay the taxes, interest and penalties owing on said parcel. He further alleged in his complaint the payment was made as a continuing tender for the payment of all delinquent taxes, interest, penalties and other charges (CP 3). The answer of Pierce County specifically admitted and acknowledged that Mr. Looney had tendered and paid into the court registry the sum of \$5,000 (CP 8). There is nothing else Mr. Looney could have done in light of the previous refusal of the Pierce County Treasurer to accept the tendered funds. Regardless, Mr. Looney complied with any requirement of the statute and specifically plead that he paid the taxes, penalties, interest and costs into the court registry.

If the issue of the respondents is the tender of Mr. Looney was not specific enough, the case of *Coughlin v. Holmes*, 53 Wash. 692, 694, 102 P.2d 772 (1909) dealt with the issue of the tender of taxes by a party attempting to set aside a tax foreclosure sale, where the party failed to so plead the tender. The court in that case held the tender itself was sufficient to meet the requirements of the statute requiring a party to specifically plead that they tendered the delinquent taxes, penalties, interest and costs. In this case Mr. Looney made a tender that was refused by Pierce County, then later did

deposit into the court registry the sum of \$5,000, which at that time was sufficient to cover any taxes, penalties, interest and costs. Finally, he plead that he tendered an amount sufficient to cover the taxes, penalties, interest and costs. (CP 3, 8).

The Supreme Court has interpreted the claim for recovery of property once a tax foreclosure sale has been held as one in equity, with any technical requirements of tendering the taxes, penalties, interest and costs met as long as any necessary tender is made prior to trial. See *Empey v. Yost*, 182 Wash. 17 at 22, 44 P.2d 774 (1935). In that case, the court ruled in favor of the plaintiff setting aside the tax foreclosure sale but conditioned it upon her payment to the clerk of the court the taxes, penalties, interest and costs paid by the purchaser of the property, as well as all subsequent taxes that were incurred. The defendant in *Empey v. Yost* made the same argument as respondents are making here that the plaintiff is required to pay all taxes, penalties, interest and costs paid by the purchaser. The plaintiff Looney actually did more than the plaintiff in *Empey v. Yost*, since the plaintiff Looney did specifically plead that he had tendered the taxes, penalties, interest and costs, and did pay the sum of \$5,000 into the court registry, which at that time appeared to be sufficient to cover such taxes.

B. Plaintiff Looney properly tendered the delinquent taxes prior to the foreclosure sale.

Both respondents make the argument Mr. Looney failed to comply with RCW 84.64.060, when he sent Lindsay Keeton, an employee of Mr. Looney, to the Assessor-Treasurer to pay the delinquent taxes. Ms. Keeton made the initial tender on behalf of Mr. Looney on Friday, December 2, 2005, which was three days before the sale. (CP 35, 48-49). The respondents also claim Ms. Keeton did not provide a notarized statement pursuant to RCW 84.68.060 showing her authority to pay the taxes on behalf of Mr. Looney. The only basis for this argument is a statement in the declaration of Sandra Moore on behalf of Pierce County (CP 35). However, Ms. Moore never indicates in her declaration that she personally met with Ms. Keeton that day, and any statement by her that Ms. Keeton provided no power of attorney to act on behalf of Mr. Looney is rank hearsay. Regardless, the reasons why the Assessor-Treasurer rejected the tender had nothing to do with the status of Ms. Keeton. Ms. Moore admits as much in her declaration stating “The Assessor-Treasurer rejected the tender, and asserted that no documents had been provided showing that Mr. Looney received any interest of record in the property from anyone shown to have a recorded interest to convey as required by RCW 84.64.060.” (CP 35).

Later that same day on Friday, December 2, 2005, after Ms. Keeton informed Mr. Looney that the Assessor-Treasurer's office refused the payment for delinquent taxes, the plaintiff Looney called attorney Robert P. Dick, of the Pierce County Prosecuting Attorney's Office. Mr. Dick is the prosecuting attorney for Pierce County who deals with tax foreclosure issues, as well as the attorney on behalf of Pierce County now arguing Mr. Looney failed to provide proof that Lindsay Keeton had the authority to tender the taxes on behalf of Mr. Looney. When Mr. Looney had his phone conversation with Mr. Dick on December 2, 2005, as stated in Mr. Looney's declaration, "I was informed by Mr. Dick that the treasurer would not accept tender from neither myself nor any of the four daughters of Lorraine E. Lane. I informed him that by statute I believed that the four daughters of Ms Lane had an interest in the property upon the death of their mother. Therefore, I had an interest in the property as they had deeded their interest to me. Based upon that I had the right to cure the delinquent taxes. He still refused to allow Pierce County to accept payment." (CP 49). There was no indication whatsoever by Mr. Dick that the reason for rejecting the tender was related to questions about the status of Lindsay Keeton acting on behalf of the plaintiff Looney.

It simply is not credible now for the respondents to argue Ms. Keeton did not provide any evidence of her agency on behalf of Mr. Looney, when there is no firsthand evidence of whether or not that occurred. It is not credible for respondents to attempt to use this as a basis for defeating the claims of the plaintiff, when the sole stated reason on December 2, 2005 for rejecting the tender of Mr. Looney, was that Pierce County was questioning whether Mr. Looney or the four daughters of Lorraine E. Lane had a legal interest in the property as is required under RCW 84.64.060.

The law also does not require a party to perform an unnecessary act. Mr. Dick made it clear to Mr. Looney on December 2, 2005, that Pierce County would not accept a tender made directly by Mr. Looney or any of the four daughters of Lorraine Lane.

At best, the respondents have raised a factual issue as to the reason why Pierce County rejected the tender. The case was decided by a summary judgment motion where the trial court granted the motion of respondent Pierce County dismissing the claims of the plaintiff. The party moving for summary judgment has the burden of showing the absence of any genuine issue of material fact. *Bruns v. Pac-car, Inc.*, 77 Wn. App. 201, 890 P.2d 469 (1995). Further, the court must consider the facts submitted and all

reasonable inferences from those facts in the light most favorable to the non-moving party. *Anica v. Wal-Mart Stores, Inc.*, 120 Wn. App. 481 84 P.3d 1231 (2004). Claims by the respondents though that Mr. Looney admitted he did not comply with the statute misrepresent the record before the court. Finally, the claim of respondents are wholly inconsistent with the reasons stated by both Ms. Moore and Mr. Dick of Pierce County as to why the Looney tender was rejected on December 2, 2005.

C. Mr. Looney had an interest in the property and was an owner of record as required by RCW 84.56.310 and RCW 84.64.060.

RCW 84.56.310 states any person “having an interest in an estate or claim to real property against which taxes shall have been unpaid may pay the same . . .” RCW 84.64.060 states that any person owning a recorded interest in lands may pay the taxes, interest and costs due at any time before the day the foreclosure sale is held. Respondents spend significant effort attempting to raise other issues as to why the Looney tender was rejected by Pierce County, but the real issue is whether Mr. Looney had an interest in the property pursuant to RCW 84.56.310 and RCW 84.64.060. Clearly if Mr. Looney had an interest in the property, any actions of Pierce County rejecting the tender of Mr. Looney of the taxes, penalties, interest and costs before the sale was wrongful.

Respondent Pierce County claims there was no evidence Lee Ann Lane, Shelly R. Cummings, Sheryl Lynn Garrett and Sandra Lee Teeter were beneficiaries of the estate of Lorraine Lane. That though disregards the evidence before the trial court. The four daughters of the decedent Lorraine E. Lane signed a deed which complied with all requirements by law. That deed and the specific language of it stated they were the heirs of Lorraine E. Lane and that they were conveying and quit claiming their interest in the property to William A. Looney. That deed as required by law in order to be valid, was notarized and verified and recorded with the Pierce County Auditor, recording number 200512020587 (CP 51). Under RCW 64.08.010, any deed executed and acknowledged according to law is legal and valid.

Respondent Pierce County admits it was provided a copy of the recorded and signed deed. The deed specifically identified the rights of the four daughters of Lorraine E. Lane as heirs, and reflected that Mr. Looney had a recorded interest in the property. (CP 35, 37). When Mr. Looney personally called attorney Robert Dick of the Pierce County Prosecutor's Office to discuss the situation, Mr. Dick and Mr. Looney had a discussion regarding the four daughters of the decedent (CP 49). Sandra Moore, the tax foreclosure coordinator for Pierce County Assessor-Treasurer, also admitted

that she was aware Lorraine Lane was deceased during the pendency of the foreclosure, and she became aware of the relatives by the name of Shelly Garrett and Lee Ann Lane (CP 96). So the respondent Pierce County clearly had knowledge that Lorraine Lane was deceased, knew the names of at least two of the heirs, both of whom show up on the legal and valid recorded deed to Mr. Looney that was presented to Pierce County prior to the foreclosure.

There was nothing submitted by either of the respondents contradicting any of this evidence that was before the trial court. Again, the standard in a summary judgment motion is that the party moving for summary judgment bears the burden of showing the absence of any material fact. The credible evidence before this court identifies that the grantors under the deed to Mr. Looney, were the heirs of decedent Lorraine Lane.

On the issue of what constitutes an interest in property and a recorded interest, under RCW 84.56.310 and RCW 84.64.060, Mr. Looney met this burden. The interest a person must have in order to redeem property from a tax sale certainly does not have to be a perfected interest. In *Kienbaum v. New Republic Company*, 139 Wash. 298, 46 P.925 (1926), the court upheld a tax redemption by a shareholder of a defunct corporation. The real property in question was in the name of the defunct corporation. The issue was

whether the shareholder had the right on his own personal behalf to pay the taxes. The court indicated the shareholder had that right stating at page 303:

It seems to us, that the words “owning an interest in,” as used in that section, cannot be held to evidence a legislative intent to restrict the right of redemption to those having some ownership in the fee, when read in the light of the provisions giving the redemptioner a lien upon the property for the amount he pays to effect the redemption, and the making of the redemption “inure to the benefit of the person having together, all but conclusively point to a legislative intent, as we think, to secure the right of redemption to protection of which he is entitled to look to the property in the hands of the legal or equitable owner thereof, and, by reason of such pecuniary interest, he is interested in having title remain unimpaired in the legal or equitable owner.

Tax redemption statutes are very generally liberally construed, favorable to the right of redemption.

[Emphasis added.]

The *Kienbaum* case is important because it shows the interest that a person has to have in order to step forward to cure a tax arrearage does not have to be a perfected interest. The right can be derived through another as in *Kienbaum* where a shareholder of a defunct corporation stepped forward and paid the taxes. Finally, “owning an interest in” also includes those having an equitable interest or an existing pecuniary interest in the property. The plaintiff Looney met all these requirements as evidenced by the recorded quit claim deed signed by the four daughters of the decedent Lorraine Lane,

especially since by law the tax redemption statutes are to be very liberally construed in favor of redemption.

A review of RCW 11.04.250 buttresses that the plaintiff Looney should have been allowed to redeem the property. That section under the probate code specifically states when a person dies owning lands, the title of such land shall vest immediately in his or her heirs or devisees. Respondents spend considerable argument attempting to claim despite the plain language of RCW 11.04.250, until a probate is filed no title passes. In support for this argument, the respondents claim later language in RCW 11.04.250 that, “no person shall be deemed a devisee until the will has been probated.” supports that position. The problem with that argument is it disregards the difference between an heir and a devisee. Under RCW 11.02.005(6) an heir is those persons who are entitled under the statutes of intestate succession, such as the four daughters of Lorraine Lane. A devisee though as defined in Black’s Law Dictionary, Fifth Edition (1979) “the person to whom lands or other real property are devised or given by will.” There is a fundamental difference between an heir, who is a lineal descendant, and a devisee, who inherits under a will, and may or may not be a lineal descendant or an heir. RCW 11.04.250 addresses those differences and distinguishes between an heir and a devisee.

The case law relied upon by respondents in interpreting RCW 11.04.250, actually supports the position of the plaintiff Looney. Respondent Billingslea claims *In re Estate of Jones*, 152 Wn.2d 1, 93 P.3d 147 (2004) and *In re Peterson's Estate*, 12 Wn.2d 686, 123 P.2d 733 (1942) stand for the assertion that heirs cannot treat estate real property as their own until the estate is closed. While that misses the point, further language *In re Peterson's Estate*, at page 734, states:

We do not deny that, upon the death of Lars Peterson, the *title* to the real property comprising the bulk of his estate vested in his son, L. A. Peterson.

While the court *In re Peterson's Estate* later stated that only after the estate was closed could the heirs truly treat the property as their own, it certainly does not stand for the proposition that the heirs have no interest in the property until the close of probate. The case actually stands for that title did vest in the son immediately upon the death of the decedent.

Respondent Billingslea's reliance on the case of *Balch v. Smith*, 4 Wash. 497, 30 Pac. 648 (1892) is also misplaced since it has been overruled. In discussing what the term to vest immediately means as well as the proviso language of a statute that was essentially identical to RCW 11.04.250, the

court stated *In re Schmidt's Estate*, 134 Wash. 525, 527-528, 236 Pac. 274

(1925):

Prior to the proviso, the statute says that, upon death, the title shall vest "immediately," "instantly." This is the substantive portion of the law, intended, manifestly, to change the rule announced in some of our earlier cases, such as *Balch v. Smith*, 4 Wash. 497, 30 Pac. 648. It deals with the title—the thing that is transmissible and inheritable. It vests immediately. The vesting of title is the existence of a fact, which is different from the proof of the fact. The proviso is intended to supply the latter.

The law in Washington has been consistent throughout time that an heir's interest in his ancestor's estate vests upon the ancestor's death. *In re Estate of Wiltermud*, 78 Wn.2d 238, 240, 472 P.2d 536 (1970). The issues raised by the respondents speak more to whether the interest conveyed to Mr. Looney was a perfected interest, whether he had rights of possession of the real property and similar issues. Nothing submitted by the respondents though disputes Mr. Looney had an interest through the four heirs of decedent Lorraine Lane pursuant to RCW 11.04.250, and that Mr. Looney had a right to redeem. Despite the claims of the respondents that the only evidence is Mr. Looney's self-serving testimony, that disregards the quit claim deed executed by the four daughters of Lorraine Lane, which identified that they were the heirs of Lorraine Lane.

D. The trial court erred in awarding attorney's fees and costs to Billingslea.

The trial court awarded attorney's fees and costs to respondent Billingslea under RCW 4.84.185, which has generally been called the frivolous lawsuit statute. In support of its position respondent Billingslea makes a number of factual assertions that quite simply are not borne out by the record. That includes a statement Mr. Looney admitted sending an agent for unpaid taxes without proof of representative's agency. There is nothing in the record where there was ever such an admission. In fact the record reflects the issue never came up the day Mr. Looney attempted to redeem. The record does reflect when Mr. Looney discussed the situation with Robert Dick of the Pierce County Prosecutor's Office on December 2, 2005, Mr. Dick told Mr. Looney that Pierce County would not accept a tender from Mr. Looney or any of the four daughters of decedent Lorraine Lane (CP 49).

Respondent Billingslea claims there never was a judicial determination as to the heirs or devisees of Lorraine Lane's estate. Neither of the respondents have put forth any law or case law that supports the proposition for the purposes of redemption, that it is necessary for a probate proceeding to be filed before an heir can tender the proceeds to redeem property from a tax foreclosure proceeding. In fact the law is to the contrary,

since RCW 11.04.250 indicates title vests immediately in the heirs of a person who dies owning lands.

The claim that Mr. Looney admitted there was no document of record showing who Ms. Lane's heirs or devisees is also false. Mr. Looney had a quit claim deed signed by four individuals who identified themselves in the document as the heirs of Lorraine Lane. This deed met all the requirements by law, which included that the signatures of the four heirs were notarized and verified by a notary public. There is also no dispute this document was presented to Pierce County in a timely fashion along with the proceeds to cure the tax arrearages.

The respondent Billingslea cites the case of *Forrester v. Pierce County*, 99 Wn. App. 168, 991 P.2d 687 (2000) in support of his position that Looney's position cannot be supported by rational argument of law or facts. That case reversed an award of legal fees and costs based on RCW 4.84.185 stating at page 183-184:

A lawsuit is frivolous when it cannot be supported by a rational argument on the law or facts. The statute also requires the action be frivolous in its entirety, i.e., if any of the claims asserted are not frivolous, then the action is not frivolous. Given the welter of statutes involved here, we cannot say the action is utterly frivolous. We reverse the order granting reasonable attorney fees.

Just as in *Forrester v. Pierce County*, there was no basis for the trial court to award Mr. Billingslea attorney fees and costs from Mr. Looney pursuant to RCW 4.84.185.

The remaining argument by Mr. Billingslea is a claim to entitlement for fees and costs from Mr. Looney under the ABC rule. The ABC rule is a doctrine of equity and the requirements are stated in *Dauphin v. Smith*, 42 Wn. App. 491, 494, 713 P.2d 116 (1986): (1) a wrongful act or omission by A toward B; (2) such act or omission exposes or involved B and litigation with C; and, (3) C was not connected with the initial transaction or event, viz., the wrongful act or omission of A toward B.

Breaking down the claim as alleged against Looney by Billingslea, the filing of the lawsuit against Pierce County in this action supposedly represents the wrongful act. No case in Washington has ever held the filing of a lawsuit constitutes the wrongful act required under the ABC rule.

In order for respondent Billingslea to have any claim under the ABC rule, he needs to show a wrongful act by Looney against Pierce County that precedes the lawsuit and involves Billingslea in the litigation. There was nothing wrongful in Looney's efforts to purchase the interests of the

daughters of decedent Lorraine Lane. There was nothing wrongful in Mr. Looney's attempt to redeem the property prior to the tax foreclosure sale.

If the court was to adopt the argument of Billingslea that it is entitled to legal fees and costs pursuant to the ABC rule, then anytime there are more than two parties in a lawsuit, if one of the parties prevails it would always be entitled to attorney's fees and costs from the losing party. No case has ever gone that far, and in fact the case cited by respondent Billingslea, *Manning v. Loidhamer*, 13. Wn. App. 766, 538 P.2d 136 (1975) rejected that argument. The court in that case denied legal fees and costs under the ABC rule holding at page 773-774:

The State emphasizes that the jury absolved it of negligence. This fact is not the determining consideration in allowing attorney's fees as damage by one defendant against another. If it were, every defendant found not negligent could recover attorney's fees against another defendant who was found negligent. We have been cited to no case which goes that far.

A good example of how the ABC rule works is in *Murphy v. Fidelity Abstract & Title Co.*, 114 Wash. 77, 194 Pac. 591 (1921). In that case the defendant title company provided an abstract of title report to the plaintiff, which was then used by plaintiff in a foreclosure action. The abstract of title report ended up having a significant omission which caused the plaintiff to end up in litigation with another party. Because of the incorrect title abstract

(the wrongful act) of the defendant title company, that caused the plaintiff to be in litigation with another party. The subsequent legal action could have been avoided if the title report had been accurate. Based on that the plaintiff was awarded legal fees and costs from the title company.

What *Murphy v. Fidelity Abstract & Title Co.* illustrates though is the wrongful act has to occur before the lawsuit and is something other than the filing of the lawsuit. In this case though the ABC rule is not applicable since there is no wrongful act of Mr. Looney that precedes the lawsuit.

E. Whether the respondents are entitled to fees and costs on appeal.

The respondent Billingslea is not entitled to reasonable fees and costs on appeal for the same reasons that he was not entitled to fees and costs as awarded by the trial court. The respondent Billingslea again makes statements though in his request for fees that at minimum are disputed by the record. He claims there is no evidence Mr. Billingslea had knowledge prior to his purchase of the property of Mr. Looney's claims and objections to the sale. There is evidence though that Mr. Looney attended the sale on December 5th and Mr. Looney announced his oral objections at the sale (CP 35). So it certainly is disputed whether or not Mr. Billingslea knew of Mr. Looney's claims before purchasing the property.

Respondent Billingslea also attaches to his brief a previous ruling of the appellate court in a different appeal of this action where the court denied discretionary review. The order denying discretionary review certainly was not a finding on the merits or the factual and legal issues between the parties.

In reference to the request of Pierce County for legal fees and costs pursuant to CR 11, that claim has no merit. Regarding the argument that the opening brief of the appellant does not address the issue of compliance under RCW 84.68.070-.100, it should be noted the order of the trial court on summary judgment never specifically addressed this as a reason for entering a summary judgment order dismissing plaintiff's claims.

The argument whether Mr. Looney initially sent an agent on his behalf on December 2, 2005 to cure the tax arrearages, cannot be made in good faith by Pierce County. Certainly it is understandable that Pierce County feels the need to defend its actions. In looking at the record, it is hard to understand why in the face of a valid and legal recorded deed which recited facts identifying who the heirs of Lorraine Lane were, why Pierce County rejected the tender by Mr. Looney. Arguments by Pierce County that Mr. Looney sent an agent attempt to obscure the real reason Pierce County rejected the tender by Mr. Looney. The rejection of the tender was based

solely on chain of title issues. This was made clear in the phone conversation between Mr. Looney and Mr. Dick on December 2, 2005, where Mr. Looney was told by Mr. Dick that Pierce County would not accept a tender from either Mr. Looney or any of the four daughters of Lorraine Lane. While it certainly is understandable Pierce County is attempting to justify its actions by avoiding the real reason why it rejected the tender of the taxes by Mr. Looney, the actions of Mr. Looney or the undersigned hardly give rise to a right of Pierce County for recovery of fees and costs pursuant to CR 11.

III. CONCLUSION

This court should find Pierce County wrongfully rejected the tender made by Mr. Looney of delinquent taxes on December 2, 2005, and the tax foreclosure sale held on December 5, 2005 should be rescinded. This matter should be remanded to the trial court to determine the remaining issues between the parties relating to the rescission of the tax foreclosure sale. In the alternative there were at minimum factual issues raised sufficient to defeat the summary judgment motion of the defendant Pierce County, and this should be remanded for trial. The court should also reverse the trial court's award of fees and costs to respondent Billingslea against Mr. Looney.

Respectfully submitted this 23rd day of May, 2008.

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**DECLARATION OF SERVICE OF
REPLY BRIEF OF APPELLANT**

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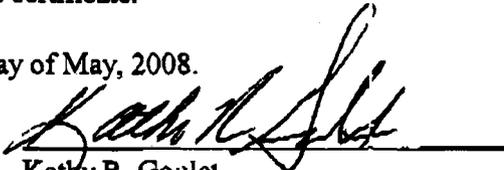
I, Kathy R. Goulet, certify that I had delivered a copy of the *reply brief of appellant William A. Looney in response to briefs of respondents Billingslea and Pierce County*, on behalf of appellant to:

Robert P. Dick, Esq.
Office of Prosecuting Attorney
Civil Division
955 Tacoma Avenue South, Suite 301
Tacoma, WA 98402-2160
Attorney for respondent Pierce County

Douglas N. Kiger, Esq.
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Attorney for respondent Billingslea

by delivering said document on May 23, 2008, to the aforesaid individuals on the date set out above in this certificate.

Dated this 23 day of May, 2008.


Kathy R. Goulet