

STATEMENT OF THE CASE

Judge Thompson specifically denied Susan Beck's motion for reconsideration on July 18, 2008. Attached to Beck's Motions in Court of Appeals. Beck presents no new facts to support her claims in this matter and indeed she cannot present any new claims because there are no new facts in this matter. After the Respondent filed his brief on July 30, 2008, Judge Pro Tem Donald Thompson conducted a hearing on September 12, 2008. Judge Thompson denied Rutledge and Thomas attorneys' fees, allocated the sale proceeds while reserving a portion for costs and rental claims and granted to Thomas writs of restitution and ejectment. See order attached to motion for emergency stay filed by Susan Beck 19 September 2008. Beck had never deposited the requisite \$120,000 bond to stay execution of the March 27, 2008, court orders. See decision of Court of Appeals dated 29 April, 2008, 26 June, 2008 and 27 June, 2008 and 22 September, 2008, together with mandate issued 12 July 2006 in Cause 32504-7-II. The orders granting summary judgment concluding the sale are the logical outcomes of the trial court's decisions to sell the property in a commercially reasonable matter which was affirmed on appeal. See decision of Court of Appeals in 32504-7-II dated 9 September 2005. Moreover, the Respondents Thomas, holders of a valid and enforceable contract with Beck and Rutledge, were permitted to intervene without objection by Beck. CP 498-500. The intervention was permitted on July 27, 2007, and no appeal was taken within 30 days of that order.

Confronted with no posted supersedeas bond to stay the sale, Judge Thompson did what this very court decided he should do, namely conclude the sale. See decision in

Court of Appeals Case 32504-7-II dated 9 September 2005. Beck never addresses the finding that this property was held in a joint tenancy and continues to insist that the property is hers alone. CP 347-353; 225-236; 397-437. Coupled with her other refusals to acknowledge the legal and factual realities in this case, Beck now wants this court to reverse its previous ruling calling for the sale of the property.

Beck never addresses the fact that she and Rutledge are now defending the claims of Thomas and that her actions placed Rutledge at risk for damages, attorney's fees and costs pursuant to the contract she signed and that this court ordered enforced. She blithely ignores the eight years in which she has never acknowledged Mr. Rutledge's interest in the property or her failure to take steps to fulfill her obligations. Having created this destructive trail of cost, attorney's fees and risk for Rutledge, she now seeks to increase his costs and risk without any consequences for her feckless and irresponsible financial behavior. All her motions should be denied.

RESPONSE TO SUPPLEMENTAL MOTIONS

The trial court did not abuse its discretion when enforcing the orders of the court. The trial court properly denied Beck's claims and confirmed the sale. The trial court did however, commit error in denying attorney's fees to Rutledge for having to defend against the claims of Thomas.

ARGUMENT

The abuse of discretion standard applies in this case. That abuse of discretion standard was fully discussed in Rutledge's Reply Brief filed with the court 30 July 2008. There are no new facts in this case. The trial court elected to assign some of the proceeds of the sale to Mr. Rutledge and returned the balance to Bryan Chushcoff. While the

record does not demonstrate an assignment by J.B. Properties, Inc. to Bryan Chushcoff individually, nevertheless, the court has ordered that any residual payments be made to him. Ms. Beck consented to this payment in open court on the record. There are no factual issues about the status of the order and therefore the court could not have abused its discretion in ordering the completion of the sale which this court previously found to be a reasonable and rational thing to do. Time and again Beck claims the property as her own without reference to the joint tenancy. This flies in the face of the court's ruling of 9 September 2005, together with the deed Beck herself signed. For these reasons, this court should summarily deny her request and let Judge Thompson determine the amount of rent owed to Mr. and Mrs. Thomas for Beck's use of the home now owned by Thomas.

Mr. Rutledge has endured several years of expense, complaints and been exposed to the risk of a third party claim by Thomas. The attorney's fees incurred in defending against this third party claim are clearly recoverable by Rutledge under the contract for sale of the property. It is the portion of the fees incurred in defending the claims of Thomas that are recoverable. The contract provides that if litigation is necessarily the parties may recover their attorney's fees. These fees are entirely different from the partition action and the enforcement of the partition action. The claims of Thomas were predicated on specific performance under a contract and therefore the contractual arrangement for attorney's fees would apply for Rutledge.

As Mr. Rutledge pointed out, what is to be done at this point? There are no facts that suggest that Ms. Beck has any more interest in the house than she did now nor are there any facts that suggest the contract is any less valid after review by a number of different courts. For these reasons this court should deny all of the relief requested by

Beck, grant Rutledge attorney's fees and dismiss this appeal. The travesty that she has created is inexcusable.

For the reasons stated in the Supplemental Reply Brief of Ryan and Julie Thomas, at page 2, Paul Rutledge joins in the request for attorney's fees under RCW 4.84.330 and RAP 18.1(a). The award of attorney's fees is mandatory according to the case law Sampson v. Ross, 108 Wn. 2d 723, 729, 742 P. 2d 1224 (1987). Pursuant to RAP 2.4(g) the court's decision denying attorney's fees is properly before this court and Mr. Rutledge request that the court address that issue. Mr. Rutledge will comply with RAP 18.1(d) upon the court's decision.

RESPECTFULLY SUBMITTED this 26th day of September, 2008.



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I declare under penalty of perjury under the laws of the State of Washington and
of the United States the foregoing to be true and correct.

DATED at Tacoma, Washington this 26th day of September 2008.

Stacey McKee
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