

No. 38676-3-II

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

JAMES J. O'HAGAN, et ux,

Respondents,

v.

KENYON K. KELLEY, et ux, et al,

Respondents.

NORTHWEST FARM CREDIT SERVICES, FLCA,

Appellant.

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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DEPUTY

APPEAL FROM THE SUPERIOR COURT FOR PACIFIC COUNTY
THE HONORABLE DOUGLAS E. GOELZ, JUDGE PRO TEM

REPLY BRIEF OF APPELLANT NORTHWEST FARM CREDIT
SERVICES, FLCA

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I. REPLY ARGUMENT

A. Why FCS is Appealing This Matter.

Appellant Northwest Farm Credit Services, FLCA (“FCS”) has been subject to vexatious, frivolous litigation by Respondent Mr. James J. O’Hagan for more than six years. (Mr. O’Hagan is referred to hereinafter by name or as “Respondent.”) The thrust of Mr. O’Hagan’s litigation activities has revolved around his judgment against his neighbor, Mr. Kenyon Kelley (hereinafter “Mr. Kelley”), and specifically Mr. O’Hagan’s inability to execute on his judgment against Mr. Kelley’s real property (“Kelley Property”). Mr. O’Hagan is unable to execute on the Kelley Property because the lien of his judgment was avoided in Mr. Kelley’s Chapter 7 Bankruptcy. (CP 142, 179-181)

Mr. O’Hagan moved to vacate the Order to Void Liens and Abandon Property three separate times: in December, 2004, in December, 2005 and in January, 2007. Each time his motion was denied by the Bankruptcy Court. (CP 142, 183-184; 185-186 and 168¹)

1 Exhibits G and O of the Declaration of Counsel in Support of motion of Northwest Farm Credit Services, FLCA, for an Order Quashing the Summons Filed on May 8, 2008, for Dismissal, and For Other Relief, Clerk’s Papers 120-188, were inadvertently switched. Exhibit G, CP 168, is the Order on Motion to Reopen, dated February 7, 2007, which denied Mr. O’Hagan’s third motion to vacate the order voiding his lien against the Kelley Property. Exhibit O, CP 187-188, is Judge Brandt’s order denying Mr. O’Hagan’s motion to vacate the judgment of

Because he has been unsuccessful in vacating the Bankruptcy Court order voiding his judgment lien against the Kelley property, Mr. O'Hagan has directed his efforts to the Pacific County Superior Court. As the record makes abundantly clear, and as pointed out in Appellant's brief, FCS has spent the past several years defending itself from Mr. O'Hagan's spurious claims, including the attempted vacation of FCS' Judgment and Decree of Foreclosure against the Kelley Property. (CP 208-210, 372-374)

Mr. O'Hagan refuses to acknowledge that: 1) his judgment lien against the Kelley property was voided by the Bankruptcy Court order (CP179-181) ; and 2) FCS has no duty to him (CP 135-164). Further, even if Mr. O'Hagan had a valid judgment lien on the Kelley Property, Mr. O'Hagan's interest has been adjudged inferior to that of FCS in FCS' mortgage foreclosure case. (CP 128-134, 372-374)

Mr. O'Hagan is upset because FCS has not sold the subject property at Sheriff's Sale. (CP 121) As discussed below, FCS is not obligated to sell the property at Sheriff's sale. The reasons FCS has not sold the property are because of environmental concerns, the value of the property, and because of Mr. O'Hagan's litigiousness. (CP 293) Although

dismissal in the adversary proceeding.

there is no obligation or duty for FCS to sell the property at Sheriff's sale, there is no question that any efforts by FCS to do so would be met by further litigation and claims by Mr. O'Hagan. As evidenced by his actions and in his respondent's brief, Mr. O'Hagan has made it clear that litigation will not stop with a sale, and any buyer other than himself will be subject to it.

FCS has brought this appeal to stop Mr. O'Hagan's litigation against FCS, and to request the court to confirm that he has no judgment lien on the Kelley Property.

B. Appellant's Notice of Appeal Was Timely Filed.

Mr. O'Hagan has alleged that FCS failed to file its Notice of Appeal in a timely manner. (Respondent's Brief, p. 15-16) This is incorrect. The Order Denying Writ of Execution (hereinafter the "Order on Appeal") was entered by the Honorable Douglas Goelz, Judge Pro Tem, Pacific County Superior Court, in the case of Respondent James J. O'Hagan, et al, v. Kenyon Kelley, et al, Pacific County Cause No. 94-2-00298-0, on November 20, 2008. (CP 404) Appellant filed its Notice of

Appeal on December 17, 2008, (CP 406-408) within the 30 day time period allowed for filing a notice of appeal pursuant to RAP 5.2.

C. The Fact that FCS Did Not Appeal Certain Underlying Orders Does not Prevent FCS from Appealing Portions of Said Orders.

Mr. O'Hagan argues, at pages 15-16 of his respondent's brief, that this Court cannot consider portions of prior orders in connection with its review of the Order on Appeal.

Mr. O'Hagan's contention is incorrect. The Court of Appeals may consider prior orders in reviewing the Order on Appeal. RAP 2.4(b) governs the extent to which additional orders not designated in the notice of appeal are subject to review by the appellate court. RAP 2.4(b) provides in pertinent part:

(b) Order or Ruling Not Designated in Notice. The appellate court will review a trial court order or ruling not designated in the notice, including an appealable order, if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review.

In assessing whether a previous order can be reviewed in connection with appellate review of an order designated in a notice of appeal, Division II of the Court of Appeals has held that a:

[P]revious order prejudicially affects the order designated in the notice of appeal if the order appealed cannot be

decided without considering the merits of the previous order. This requires some connection between the two other than that the appealed order would not have occurred if the earlier order had been decided differently. The issues in the two orders must be so entwined that to resolve the order appealed, the court must consider the order not appealed.

Right-Price Recreation, LLC, v. Connells Prairie Community Council, 105 Wash.App 813, 819, 21 P.3d 1157 (2001) [emphasis added].

In this instance, the issues relating to the Order on Appeal are so entwined with certain portions of two of Judge Goelz' previous orders, referenced below, that they remain subject to review by the appellate court in this appeal. The entwinement is readily seen in the Appellant's Assignment of Errors section of its Appellate Brief. The Order on Appeal states that once Respondent complies with the execution statutes, then "the issue of the validity of any alleged superior lien on the property at issue may be litigated". (CP 404)

In the Court's prior order entered on October 9, 2008, (Supplemental Order Regarding Northwest Farm Credit Services) the Court stated that "...this order shall not be interpreted to limit, in any way, the Plaintiff's right to foreclose on Defendant's property or to obtain a writ of execution on Defendant's property". (CP 306-307) And finally, in its Memorandum Decision dated September 12, 2008, (CP 208-210) the

Court stated that “RCW 6.32.270. NWFS is a proper entity to be made a party pursuant to this statute. They have the right to sell property from which Mr. O’Hagan seeks to satisfy his judgment. The court rejects the argument by NWFS that O’Hagan cannot foreclose on the subject property at all. Nothing in the Bankruptcy Code mandates this result and it is contrary to RCW 6.13.110(3) and Miller v. Coltian (sic), 110 Wash.App. 883 (2002)”. (CP 209)

It is clear that the Order on Appeal cannot be decided without considering the merits of portions of these two previous orders. (CP 404)

D. Respondent James J. O’Hagan Does Not Dispute That Full Faith and Credit Must be Given to the Bankruptcy Court Order That Voided His Judgment Lien Against the Kelley Real Property.

Nowhere in respondent’s brief does Mr. O’Hagan claim that full faith and credit should not be given to the U. S. Bankruptcy Court’s Order to Void Liens and Abandon Property, which remains in effect. (CP 179-181) By not disputing the order or its effect, Mr. O’Hagan is apparently asking the Court simply to ignore it. But it exists in fact, and full faith and credit requires that it be given effect by the Courts of the State of Washington. This order, in plain language, voids Mr. O’Hagan’s judgment lien against the Kelley Property. As such, Mr. O’Hagan has no interest in the Kelley real property, or any ability to execute his judgment

against it. Mr. O'Hagan also complains that there is no full faith and credit given to the order denying Mr. Kelley's discharge in bankruptcy. (CP 182) FCS has never, and does not here dispute the existence of this order, or its effect. However, the order denying discharge did not change or modify the order which voided Mr. O'Hagan's judgment lien. (CP 179-181) As noted previously, Mr. O'Hagan moved to vacate the order voiding his lien three separate times in the bankruptcy court, all of which motions were denied. (CP 183, 185-186, 168)

E. The Purpose of RCW 6.32.270 Is Not to Allow Relitigation of the Same Issues and Claims in Perpetuity.

Chapter 6.32 RCW is entitled "Proceedings Supplemental to Execution." These proceedings are available to a judgment creditor in aid of execution on the judgment debtor's property. All of the sections and provisions of Chapter RCW 6.32 provide for, assume, and pre-suppose that a judgment creditor has a valid judgment upon which execution can be brought.

RCW 6.32.270 gives a court the power (post judgment) to adjudicate claims of third parties in real and personal property of a judgment debtor which are subject to execution. The statute applies in circumstances where:

In any supplemental proceeding, where it appears to the court that a judgment debtor may have an interest in or title to any real property, and such interest or title is disclaimed by the judgment debtor or disputed by another person, or it appears that the judgment debtor may own or have a right of possession to any personal property, and such ownership or right of possession is substantially disputed by another person....

RCW 6.32.270 [Emphasis added.]

All of the Washington cases referencing RCW 6.32.270 or its predecessors involve a supplemental proceeding, where a judgment creditor has utilized RCW 6.32.270 to determine the issue of ownership of property. (See, e.g., *Junkin v. Anderson*, 12 Wn. 2d 58, 120 P.2d 548 (1941); *opinion supplemented on rehearing by* 12 Wn. 2d 58, 123 P.2d 759 (1942), regarding the determination of ownership of a vehicle which had been transferred by the judgment debtor; *Knettle v. Knettle*, 164 Wash. 468, 3 P.2d 133 (1931), regarding determination of community versus separate property of the judgment debtor; and *Rawleigh Company v. McLeod*, 151 Wash. 221, 275 P. 700 (1929), regarding whether beneficial interest in trust held by judgment debtor could be reached by judgment creditor.)

Because Mr. O'Hagan has no valid judgment lien against the Kelley Property, and no executable interest in the Kelley Property as a

judgment creditor, he simply cannot invoke RCW 6.32.270 for his own frivolous, vexatious purposes. To hold otherwise would mean that any person can bring a supplemental proceeding to litigate the ownership of real property for no good reason. Also, Mr. O'Hagan may not use RCW 6.32.270 as an "end run" to relitigate claims and issues which have already been decided, and which decisions should be given res judicata and/or collateral estoppel effect.

F. *Robin L. Miller Construction v. Coltran* Does Not Support Respondent's Argument.

Mr. O'Hagan argues that his RCW 6.32.270 action was "...an enforcement of judgment action and must be considered as one by the court." (Respondent's Brief, p. 4) Further, Mr. O'Hagan argues that he may litigate with FCS in perpetuity based on the decision of Division I of the Court of Appeals in *Robin L. Miller Construction v. Coltran*, 110 Wn. App. 883, 43 P.3d 67 (2002), because res judicata and collateral estoppel do not apply to an "enforcement of judgment action." (The *Miller Construction* case was also cited along with RCW 6.13.110(3) by the Superior Court in its Memorandum Decision dated September 12, 2008. (CP 209)) However, Mr. O'Hagan's reliance on the *Miller Construction*

case for the proposition that the principles of res judicata and collateral estoppel do not apply is misplaced.

First, *Miller Construction* does not address RCW 6.32.270.

Second, *Miller Construction* dealt with the question of whether after a first writ of execution under a judgment had been quashed, the holder of the judgment could obtain a second writ of execution against the same property, or was the holder of the judgment barred by the doctrine of res judicata arising from the quashing of the first writ. In holding that the issuance of the second writ was not barred under the facts of that case, the *Miller Construction* court held that:

In short, res judicata or claim preclusion principles prevent a party from bringing the same cause of action against the same person for the same subject matter. *Kuhlman v. Thomas*, 78 Wash.App. 115, 120, 897 P.2d 365 (1995). An attempt to execute a judgment lien, however, is not a cause of action. Rather, it is an enforcement proceeding to collect upon a previously obtained judgment. RCW 6.17.020. Because an attempt to execute a judgment lien is not a cause of action, we find that res judicata principles do not apply to this case.

110 Wn. App. at 892 [Emphasis added.]

As argued in Appellant's brief, the decision of the court in *Miller Construction* does not apply to this case and does not change the res judicata and collateral estoppel effect of matters which are determined in

separate causes of action. The avoidance of Respondent's judgment lien against the Kelley Property was entered by an order of the Federal Bankruptcy Court in the Kelley Bankruptcy. (CP 179-181) This bankruptcy was a separate cause of action. Further, the priority of FCS' lien against the Kelley Property over Respondent's judgment lien was established in FCS' Foreclosure Case, another separate cause of action. (CP 121, 128-134) Unlike, *Miller Construction*, these rulings were all made in separate causes of action and are now all final and non-appealable.

Miller Construction does not support Respondent's attempts to use RCW 6.32.270 carte blanche to relitigate claims that have already been made and failed in the Bankruptcy Court and in the Superior Court.

G. Mr. O'Hagan's Numerous Claims Have Been Dismissed With Prejudice by Final Orders of Separate Courts.

The respondent's brief submitted by Mr. O'Hagan proves his intent: 1) to continue to attack FCS' judgment against Kenyon Kelley; 2) to continue to personally attack FCS, at least one of its employees, and its counsel; and 3) to continue to engage FCS in frivolous litigation in perpetuity. Although his claims have been dismissed by two separate courts, he continues to attempt to re-litigate his failed claims.

1. Judge Snyder Ruled Against Mr. O'Hagan's Claims in His Adversary Proceeding, and All of Mr. O'Hagan's Claims Were Dismissed With Prejudice.

In a separate adversary proceeding in the Kelley Bankruptcy, Mr. O'Hagan sued FCS. (CP 121) Mr. O'Hagan made numerous claims against FCS within that case, amended his complaint several times, and joined several other defendants. (CP 121) Upon motion for summary judgment, the Honorable Judge Paul B. Snyder ruled that Mr. O'Hagan's numerous claims against FCS had no merit. (CP 135-164) Mr. O'Hagan's adversary case was fully dismissed on December 22, 2005, by order entitled Judgment of Dismissal as to All Claims and All Parties. (CP 165-166) Mr. O'Hagan's subsequent appeal of the dismissal of his adversary proceeding against FCS to the U. S. District Court was dismissed with prejudice. (CP 167) After that, Mr. O'Hagan moved in the Bankruptcy Court to "reopen" the adversary proceeding and vacate the judgment of dismissal, which motion was denied. (CP 168, 187-188²) His subsequent appeal to the U. S. District Court of the denial of his motion to vacate was also dismissed. (CP 169-177)

In his ruling dismissing Mr. O'Hagan's claims, Judge Snyder found that FCS has no duty to Mr. O'Hagan:

² See footnote 1.

Lastly, the Plaintiff has cited no authority that the Defendant has a duty to protect the Plaintiff in circumstances as presented to this Court. There is no evidence of record that would establish that the Defendant knowingly conspired with the Debtor in this case to deprive the Plaintiff of property rights to which he was entitled. (CP 154-155) [Emphasis added.]

Judge Snyder's Ruling in the adversary proceeding and the subsequent dismissal of all claims with prejudice in the adversary proceeding are binding on this Court. These judgments and orders are res judicata and may not be litigated or relitigated in this proceeding. In essence:

--FCS has no duty to sell the Kelley Property.

--FCS has no duty to obtain a receivership on the Kelley Property.

--FCS has no duty to take care of the Kelley Property.

--FCS has no fiduciary duty whatsoever to Mr. O'Hagan.

Further, FCS is also not obligated to go forward with a Sheriff's sale of the Kelley Property, and Mr. O'Hagan still has provided no authority to the contrary. FCS has not brought a Sheriff's sale because of environmental concerns, the value of the property, and because of Mr. O'Hagan's litigiousness. (CP 121, 293)

Further, in the Adversary Proceeding, Judge Snyder ruled that NWFCFS had no duty to sell the Kelley Property at Sheriff's sale:

Moreover, the existence of a 10-year statute of limitations to execute a judgment, which is RCW 6.17.020, indicates that a creditor is not required to immediately proceed to a Sheriff's sale after obtaining a decree of foreclosure. (CP 154)

The fact that FCS has not arranged for a Sheriff's sale of the Kelley Property is not evidence of fraud, misrepresentation or misconduct by FCS. FCS is not obligated to go forward with a Sheriff's sale. FCS has no duty to do so.

Judge Snyder's Ruling in the adversary proceeding, the subsequent dismissal of all claims with prejudice, and the judgments on appeal, are binding on this Court. These judgments and orders of the Federal Bankruptcy Court are res judicata, and may not be litigated or relitigated in the State Court.

2. All Claims Brought By Mr. O'Hagan Against FCS in This Case Have Been Dismissed With Prejudice.

Judge Goelz entered his Order Quashing Summons Issued to Northwest Farm Credit Services, FLCA, Filed on May 8, 2008, for Dismissal, and for Other Relief, wherein he found and ordered:

The Court has issued its Memorandum Opinion on September 12, 2008, which is on file herein. In accordance with said opinion, the Court finds and concludes that the relief sought by FCS should be granted because: 1) making FCS a party, or joining FCS as a party to this proceeding under RCW 6.32.270 would be a useless act;

2) all of the Petitioner's (Plaintiff James J. O'Hagan's) claims against FCS were fully litigated in Federal Bankruptcy Court in an adversarial proceeding brought by Plaintiff, all of which were denied; 3) Plaintiff presented all the evidence in the adversary proceeding which he now seeks to submit to State Court; 4) Plaintiff seeks a second bite at the same apple and the law does not allow it; and 5) based on the doctrines of res judicata and collateral estoppel, Plaintiff may not now summon or join FCS as a party.

Based on the foregoing, it is hereby

ORDERED that: 1) the Summons issued and directed to FCS in this case filed on May 8, 2008 is hereby quashed and joinder of FCS in this proceeding is denied; 2) said Summons shall be of no further force or effect; 3) FCS is hereby dismissed from this proceeding pursuant to CR 12(b)(6) with prejudice; and 4) FCS shall not be made a party to any further proceedings in this lawsuit.

(CP 302)

On the same date, Judge Goelz entered a Supplemental Order Regarding Northwest Farm Credit Services. (CP 306-307) In the Supplemental Order Regarding Northwest Farm Credit Services, the Court found that "...any further pleadings directed at Northwest Farm Credit Services requiring a response would constitute an abuse of process." (CP 306)

Finally, in the Order Denying Defendant James J. O'Hagan's Motion for Reconsideration or Relief under CR 60, also entered on

October 9, 2008, in the 2001 FCS foreclosure case (CP 372-374) Judge Goelz ordered that:

1) Defendant O'Hagan's motion for Reconsideration or for Relief from judgment is denied with prejudice; and 2) all motions by Mr. O'Hagan which may be pending, which in any manner seek to challenge the validity of Plaintiff's judgment are denied with prejudice. (CP 373)

(See also Judge Goelz' combined Memorandum Opinion (CP 209)

Again, like the Federal Court orders, the above referenced State Court orders are res judicata, and the law of the case.

H. Mr. O'Hagan Cannot Reassert His Failed Claims Against FCS in This Appeal.

Although all of his claims have been dismissed with prejudice by two different courts, as his respondent's brief makes clear, Mr. O'Hagan continues to attempt to re-litigate his failed claims against FCS in this appeal. He cannot do so. The order dismissing with prejudice FCS from this proceeding was entered on October 9, 2008 (CP 301-303). Mr. O'Hagan filed a notice of appeal of this order on November 6, 2008 (CP 371-395). However, on December 30, 2008, Mr. O'Hagan filed a notice withdrawing his appeal. (CP 409-414). This Court then dismissed Mr. O'Hagan's appeal of the order dismissing FCS with prejudice via a Ruling Dismissing Appeal entered on January 15, 2009.

In addition to dismissing his own appeal, with respect to this appeal, Mr. O'Hagan did not file a timely notice of cross appeal in accordance with RAP 5.2(f). As such, Mr. O'Hagan is not entitled to any of the affirmative relief against FCS which he seeks in his brief. RAP 2.4(a) provides, in pertinent part:

The appellate court will grant a respondent affirmative relief by modifying the decision which is the subject matter of the review only (1) if the respondent also seeks review of the decision by the timely filing of a notice of appeal or a notice of discretionary review, or (2) if demanded by the necessities of the case.

A party must seek review of a court's order before the appellate court will entertain an appeal arising from that order. *North Coast Electric Company v. Selig*, 136 Wn.App. 636, 647, 151 P.3d 211 (2007); *Wagner v. Beech Aircraft Corporation*, 37 Wn.App. 203, 213, 680 P.2d 425 (1984); *Ortblad v. State of Washington*, 88 Wn.2d 380, 561 P.2d 201 (1977). As the *Ortblad* court stated:

Plaintiffs sought damages and costs, including reasonable attorney' fees. The trial court denied the plaintiffs' claims, but they reassert it here. Plaintiffs, as respondents, did not seek review of the trial court's denial. The issue is not before this court. RAP 2.4(a).

88 Wn.2d at 385 [emphasis added].

Likewise, the affirmative relief against FCS sought by Mr. O'Hagan in his brief is not before this Court. As noted above, all of his claims against FCS have been dismissed with prejudice by two different courts. They cannot be reasserted in this appeal.

I. Mr. O'Hagan's Request for Motion Based on RCW 2.44.030 Should Be Denied; Mr. O'Hagan's Allegation that FCS' Counsel Violated RPC 3.3(a)(2) is Unfounded.

Mr. O'Hagan, in his respondent's brief, has attached a pleading entitled RCW 2.44.030 Motion. In it, he asks the court to determine whether or not a "...RCW 2.44.030 motion is properly before the court. If the court determines an RCW 2.44.030 Motion can be brought before it, respondent O'Hagan asks the court to review the documents attached to this motion and determine if they warrant the issuance of the subpoenas attached to this motion."

Although Mr. O'Hagan refers to three exhibits attached to said motion, there are no exhibits attached.

Mr. O'Hagan's request to this court to is not properly brought as a RAP 17 motion, and it is another example of his tactics of harassment and vexatious litigation. Appellant asks the Court to deny Mr. O'Hagan's request for a hearing under RCW 2.44.030. If the Court believes that a motion is necessary, then Appellant requests that it be given time to

respond. If the Court needs assistance in determining whether a RCW 2.44.030 motion is warranted, then Appellant offers the following to assist the Court.

After FCS was dismissed from the action below, Mr. O'Hagan asked the Superior Court for the same proceeding on the same issues under RCW 2.44.030, essentially to determine "who George Benson represents." FCS and counsel for FCS responded to Mr. O'Hagan's allegations in the affidavit of George Benson. (CP 441-450) FCS also submitted argument and briefing in a responsive memorandum. (CP 431-436)

Mr. O'Hagan has no basis for his allegations, and no basis to ask the court to conduct a hearing under RCW 2.44.030.

Mr. O'Hagan also alleges that counsel for FCS has violated RPC 3.3 (a)(2) at page 11 of his respondent's brief. RPC 3.3(a)(2) states that:

(a) A lawyer shall not knowingly:

.....

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client unless such disclosure is prohibited by Rule 1.6.

There is no evidence in the record to support Mr. O'Hagan's allegation, and there is no requirement to argue against fabrications or flights of fantasy by an adverse litigant. Furthermore, even if Mr.

O'Hagan's allegations were true, the facts concerned are not material. The material fact in this case is that Mr. O'Hagan has no judgment lien against the Kelley Property.

J. Mr. O'Hagan Mis-Cites Numerous Pleadings, and Cites to Pleadings Which are Not in the Record, and He Should Be Sanctioned by the Court.

Mr. O'Hagan in his response brief, incorrectly cites to numerous documents and pleadings, some of which are not part of the record. Clerk's Papers designated by Appellant were submitted to this Court on February 13, 2009. The record contains 450 pages, as well as a transcript of proceeding.

On the other hand, Mr. O'Hagan did not submit a record on appeal, nor has he supplemented the Appellant's record.

Although Mr. O'Hagan's brief was accepted by the Court, the Court should sanction him for improper citations pursuant to RAP 10.7. RAP 10.7 states:

Submission Of Improper Brief

1. If a party submits a brief that fails to comply with the requirements of Title 10 of these rules, the appellate court, on its own initiative or on the motion of a party, may (1) order the brief returned for correction or replacement within a specified time, (2) order the brief stricken from the files with leave to file a new brief within a specified time, or

(3) accept the brief. The appellate court will ordinarily impose sanctions on a party or counsel for a party who files a brief that fails to comply with these rules.

As sanctions, the Court may also strike or refuse to consider portions of Mr. O'Hagan's brief. See, *State v. Young*, 62 Wn.App. 895, 899-900, 802 P.2d 829, (1991) *opinion modified on reconsideration*, at 812 P.2d 412 (1991) (granting motion to strike cited materials not part of record); and *In re Marriage of Stern*, 57 Wn.App. 707, 789 P.2d 807, (1990) (sanctions include refusal to consider claimed errors). The Court may also sanction Mr. O'Hagan monetarily.

II. CONCLUSION

Based on Appellant's brief and the foregoing Appellant's reply brief, Appellant requests the following clear and specific relief from the Court:

1. To reverse the Order on Appeal to the extent that it implies that Mr. O'Hagan can execute his judgment against the Kelley Property, and provides that once Respondent complies with the execution statutes, then "the issue of the validity of any alleged superior lien on the property at issue may be litigated"; (CP 404)

2. To reverse that portion of Judge Goelz' Supplemental Order Regarding Northwest Farm Credit Services wherein it is ordered that "...this order shall not be interpreted to limit, in any way, the Plaintiff's right to foreclose on Defendant's property or to obtain a writ of execution on Defendant's property"; (CP 306-307)

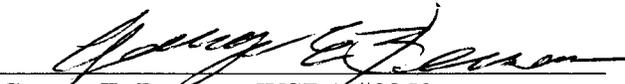
3. To reverse that part of Judge Goelz' Memorandum Decision wherein it is found that "RCW 6.32.270. NWFS is a proper entity to be made a party pursuant to this statute. They have the right to sell property from which Mr. O'Hagan seeks to satisfy his judgment. The court rejects the argument by NWFS that O'Hagan cannot foreclose on the subject property at all. Nothing in the Bankruptcy Code mandates this result and it is contrary to RCW 6.13.110(3) and Miller v. Coltian (sic), 110 Wash.App. 883 (2002)"; (CP 209)

4. To rule: 1) that the Order to Void Liens and Abandon Property, entered in the Kelley Bankruptcy on September 21, 2001, Case No. 00-35769, shall be given full faith and credit and collateral estoppel effect in the Pacific County Superior Court; 2) that said order voided the judgment lien of Mr. O'Hagan against the Kelley Property; and 3) that Mr. O'Hagan shall not execute on the Kelley Real Property; (CP 142, 179-181)

5. To rule that the Judgment and Decree of Foreclosure entered on April 8, 2002, in favor of FCS in the case of FCS v. Kenyon K. Kelley and James J. O'Hagan, et al, under Pacific County Cause No. 01-2-00332-3, (FCS Foreclosure Case) be given res judicata and collateral estoppel effect in the Pacific County Superior Court; (CP 121, 128-134) and

6. To rule: 1) that the Ruling of Judge Snyder entered on February 8, 2005, (CP 135-164); and 2) that the Judgment of Dismissal as to All Claims and All Parties entered on December 22, 2005, (CP 165-166), in the adversary proceeding in the Kelley Bankruptcy, O'Hagan v. Northwest Farm Credit Services, FLCA, et al, Case No. 04-04253-PHB, shall be given full faith and credit and res judicata effect by the Pacific County Superior Court.

Dated this 17 day of February, 2010.



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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on February 17, 2010, I arranged for service of the original and one copy of the Reply Brief of Appellant Northwest Farm Credit Services, FLCA, by delivery to the Court on February 19, 2010, by ABC Messenger Service, addressed as follows:

Office of the Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

FILED
COURT OF APPEALS
DIVISION II
FEB 18 PM 2:03
STATE OF WASHINGTON
DEPUTY

That on February 17, 2010, I arranged for service of a copy of the Reply Brief of Appellant Northwest Farm Credit Services, FLCA, to counsel and to the parties to this action by U. S. Mail, First Class (Priority Mail), postage prepaid, addressed as follows:

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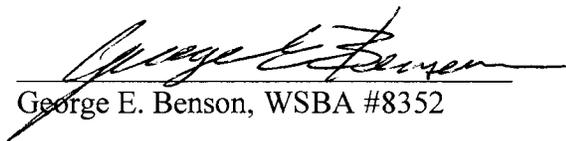
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Dated at Snohomish, Washington, this 17 day of February, 2010.


George E. Benson, WSBA #8352