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STATE OF WASHINGTON

BY _____
DEPUTY

No. 38744-1-II

DIVISION II OF THE COURT OF APPEALS

FOR THE STATE OF WASHINGTON

LARRY STOUT

Appellant,

vs.

CARL J. WARREN & JANE DOE WARREN, *et.al.*,

Respondents.

APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR PIERCE COUNTY

Cause No. 04-2-09770-9

BRIEF OF ~~APPELLANT~~ RESPONDENTS

Wayne C. Fricke
WSB #16550

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ORIGINAL

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I. ASSIGNMENTS OF ERROR

1. The court properly granted Defendant Johnson's motion for summary judgment on the issue of liability.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether Defendants Johnson are liable for the acts of an unrelated third party? (Assignments of Error 1)

2. Whether bail recovery is an inherently dangerous activity? (Assignments of Error 1)

III. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

On August 12, 2004, plaintiff/petitioner in this action filed an amended complaint alleging, amongst other causes of actions, that CJ Johnson, et. al. was liable for damages suffered by Larry Stout, who was a fugitive, having missed a court appearance in Pierce County Superior Court. CP 1-6. After the amended complaint was filed, CJ Johnson filed an answer, denying any responsibility for the damages suffered by Larry Stout. CP 7-10.

After engaging in discovery, defendant Johnson moved for partial summary judgment on liability, which was denied. CP 11-20. This motion was renewed. CP 118-129. Plaintiff moved for an order requesting that the court hold that bail recovery was inherently dangerous. CP 200-201. This request was denied.

However, after renewing the motion, and after further discovery, the court granted defendant Johnson's motion for summary judgment and entered an order on December 12, 2008, which has subsequently been appealed by plaintiff Larry

Stout. CP 238-243. As part of its order, the court found that "fugitive recovery" is not an inherently dangerous occupation and that defendants Johnson were not responsible for the actions of the independent contractor, Carl Warren and/or Michael Golden. CP 243.

B. FACTS

CJ Johnson is the owner and proprietor of CJ Johnson's Bailbonds (hereinafter CJ's). CJ's is in the business of writing bonds in state and federal court. Johnson Declaration at 1-2. CP 306-307. When the court orders a defendant to post bail, that defendant can contract with CJ's to post a bond in lieu of posting the entire bail. CP 307. If the defendant fails to appear, the court may then order CJ's to forfeit the entire bail. Johnson Declaration at 1-2. CP 306-307.

On or about May 1, 2002, CJ's contracted with Larry Stout to post bail on Pierce County Cause No. 02-1-00468-9 (this bond was filed on May 30, 2002 with Pierce County Superior Court). CP 308. Mr. Stout missed court appearances on 04/22/2002 and 05/22/2002. CJ's Declaration at 3. CP 308. The Court notified CJ's in a letter dated May 23,

2002 and received on May 30, 2002, that it intended to revoke the bond and require CJ's to pay the entire bail. See Exhibit "B" to Declaration of Kenneth Blanford. CP 304.

CJ's then contracted with Michael Golden to return Mr. Stout to the Pierce County Correctional Facility. See Exhibit "A" to Declaration of Kenneth Blanford. CP 301. On July 1, 2002, a contract was agreed upon between CJ's and Michael Golden. Attachment to Declaration of CJ Johnson. CP 310-312. The contract acknowledged that Mr. Golden was an independent contractor and CJ's would not provide tools, instrumentalities, or a place to work. CP 310-312. CJ's did not retain supervisory control over Michael Golden. The contract also acknowledged that Mr. Golden would not earn his fee if Mr. Stout was apprehended by other individuals. CP 310-312. The contract required in part that:

> ... INDEPENDENT CONTRACTORS SHALL KEEP ITSELF FULLY INSURED AGAINST ALL LIABILITY THAT MAY ARISE IN THE COURT OF ITS CONDUCT, INCLUDING BUT NOT LIMITED TO, INDUSTRIAL INSURANCE ON ITSELF AND ALL AGENTS OR EMPLOYEES . . . INDEPENDENT CONTRACTOR IS SPECIFICALLY INSTRUCTED TO TAKE ALL STEPS NECESSARY TO INSURE THAT PERSONS OR PROPERTY WILL

NOT BE INJURED IN THE PERFORMANCE OF ITS DUTIES UNDER THIS CONTRACT.

CP 310-312. The contract was signed by Mike Golden as an agent of C.C.S.R., bail bond recovery company.

On July 16, 2002, Plaintiff Larry Stout's vehicle was intentionally rammed by Defendant Warren, after the above contract was entered into. As a result of this intentional act, by Defendant Warren, Plaintiff's vehicle left the roadway and collided head on into a tree located at the Northwest corner of 360th Street and 62nd Avenue South, Pierce County, Washington. Plaintiff's Amended Complaint. CP 1-6.

Defendant Warren was neither an employee nor an agent of CJ's at the time of the collision. Mr. Johnson provided a declaration explaining that although he had contracted with Defendant Warren in the past, Mr. Johnson did not approve of Defendant Warren's tactics and no longer contracted with him. CP 309. Mr. Moore echoed Mr. Johnson's comments. Moore's Declaration at 2. CP 249. No evidence was presented that CJ's had any connection to Mr. Warren at the time of Mr. Stout's apprehension.

Additionally, plaintiff's expert ultimately testified in a deposition that fugitive recovery is not inherently dangerous. Reid Deposition at 33:4-8. See Appendix "A". In this situation, agents rarely use firearms. Reid Deposition at 33:23-25. See Appendix "A". He also testified that out of approximately 20,000 bail bonds, for which he was responsible, he had a total of, maybe, five fights. Out of that 20,000, 7,000 were fugitives. In none of those situations, was firearm used and only one time was a taser used. Reid Deposition at 37:3-38:1-20. See Appendix "A". Moreover, he indicated that the fugitive recovery agent is the individual who actually controls the dangerousness of the situation, not the fugitive. Reid Deposition at 42:13-18. See Appendix "A".

Reid was not the only expert retained by the plaintiff who could not testify to inherently dangerous situations. Specifically, Louise Workman, another plaintiff's expert testified by way of declaration, that it was an inherently dangerous activity. CP 224. However, she testified that she had only worked on the recovery of a fugitive on ten separate times for CJ Johnson

during the time that she worked for him. Workman Deposition 16:4-13. CP 318. She also stated that, in those situations, all it took to get the fugitive to come in was knocking on the person's door and just indicating that they missed a court date. Workman Deposition at 19:21-25. CP 319. She acknowledged that they were not all dangerous situations. Workman Deposition at 21:1-6. CP 319. In fact, she was presented with no dangerous situation when she worked for CJ Johnson. Workman Deposition at 20:1-12. CP 319. Additionally, CJ, himself, testified that it is normally done safely. CP 315. Based upon this, the court granted defendant's motion.

IV. ARGUMENT

A. BECAUSE NO ISSUES OF MATERIAL FACT EXIST AS TO DEFENDANTS' ACTIONS, SUMMARY JUDGMENT WAS PROPER AS TO CJ JOHNSON.

The appellate court engages in the same inquiry as the lower court. Nielson v. AgriNorthwest, 95 Wn.App. 571, 977 P.2d 613, review denied 112 Wn.2d 1027 (1999); Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995).

> A summary judgment motion under CR 56(c) may be granted if the pleadings, affidavits, and depositions before the trial court establish that there is no

> genuine issue of material fact and that as a matter of law the moving party is entitled to judgment.

Ruff v. County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). The court must assume facts most favorable to the non-moving party. Id. "A material fact is of such a nature that it affects the outcome of the litigation." Id.

The court must accept the non-moving party's evidence as true and must consider all the facts and all reasonable inferences therefrom in the light most favorable to him. Fairbanks v. J.B. McLoughlin Co., Inc., 131 Wn.2d 96, 929 P.2d 433, 435-36 (1997). An inference is a process of reasoning by which a fact or proposition sought to be established is deduced as a **logical consequence** from other facts, or a state of facts, already proved or admitted. Id. (Emphasis in original). It is not the court's function to resolve existing factual issues nor can the court resolve a genuine issue of credibility such as is raised by reasonable contradictory or impeaching evidence. Id. at 436. A summary judgment motion should be denied if reasonable persons may reach different

conclusions. Wood v. Seattle, 57 Wn.2d 469, 358 P.2d 140 (1960).

Importantly, any doubt as to the existence of a material fact should be resolved against the moving party. Burback v. Bucher, 56 Wn.2d 875, 355 P.2d 981 (1960). The movant is required to negate even the existence of admissible evidence that might raise a material issue of fact when attempting to prove the absence of a genuine issue of material fact. Klossner v. San Juan County, 21 Wn.App. 689, 586 P.2d 899 (1978) aff'd 93 Wn.2d 42, 605 P.2d 330 (1980).

In this instance, the trial court granted defendant's motion for summary judgment because if found that bail recovery is not an inherently dangerous activity and CJ's was not responsible for the actions of an independent contractor.

Plaintiff does not dispute the court's ruling that Golden was an independent contractor, but only that the court found that the activity was not inherently dangerous. This court should affirm the trial court.

1. Bail Recovery is not an Inherently Dangerous Activity.

As the courts in this state have routinely stated, an individual is not liable for the actions of an independent contractor under most circumstances. See Thompson- Cadillac Co. v. Matthews, 173 Wash 353, 356 (1933). As stated therein:

> The general rule is that, where an individual or corporation contracts with another individual or corporation exercising an independent employment, the employer is not liable for the wrongful or negligent acts of the contractor or of his servants, employees, or agents.
>
> . . .
>
> But this general rule is subject to well settled exceptions. One of these is that, where the work to be done is inherently or intrinsically dangerous in itself, and will necessarily or probably result in injury to third persons unless measures are adopted by which such consequences may be prevented, an employer cannot evade responsibility by entering into an independent contract with another person for the doing of the work. In Kendall v. Johnson, 51 Wash. 477, 99 P. 310, it said: "Where the work is inherently or intrinsically dangerous in itself and will necessarily or probably result in injury to third persons, unless measures are adopted by which such consequences may be prevented, and in other like cases, a party will not be permitted to evade responsibility by placing an independent contractor in charge of the work."

Thompson-Cadillac Company, 173 Wash. at 356-357.

(emphasis added).

The key to the exception, then, is not only that the occupation itself is inherently dangerous, but that it will also probably result in injuries to third persons. Washington courts have been reluctant to find that any activity fits this definition. For instance, in Kendall v. Johnson, 51 Wash. 477, 99 P. 310 (1909), the plaintiff was struck by a rock thrown by an explosion created by the defendant's employees and the court refused to find liability.

In so holding, the court again stated:

> ... where the work is inherently or intrinsically dangerous in itself, and will necessarily or probably result in injury to third persons, unless measures are adopted by which such consequences may be prevented; and in other like cases--a party will not be permitted to evade responsibility by placing an independent contractor in charge of the work.

Id. at 481. Despite the use of explosive materials the court found that the activity was not inherently dangerous because it was not likely to injure third persons based on when the work was performed. Id. This analysis has continued into the present.

In Tauscher v. Puget Sound Power and Light Co., 96 Wn.2d 274, 276, 635 P.2d 426 (1981), the decedent was alone on a power pole working within two feet of the energized high voltage line without any protective barriers to cover and insulate the line in violation of safety rules. In addition, although an apprentice, he was performing a journeyman's task and was without adequate supervision. He died when he came in contact with the power line. Although electrical work is considered by most to be an inherently dangerous activity, it is not necessarily inherently dangerous to experienced linemen. Tauscher v. Puget Sound Power and Light Co., 96 Wa.2d 274, 635 P.2d 426 (1981), *citing* to Humphreys v. Texas Power & Light Co., 427 S.W.2d 324, 330 (Tex.Civ.App. 1968). As such, it was not an inherently dangerous situation that could not be made safe.

Hickle v. Whitney Farms, Inc., 107 Wn.App. 934, 941, 29 P.3d 50 (2001) provides direction in determining when an activity is inherently dangerous. As stated therein, activities are inherently dangerous because they can never be

made safe. Hickle v. Whitney Farms, Inc., 107 Wn.App. at 941.

In Hickle, the issue of inherently dangerous revolved around dumping. The defendant excavated a large hole and drop the debris in the hole, covering it with dirt. As a result of spontaneous combustion the debris began to smolder and burn, reaching a temperature of over 500 degrees Fahrenheit.

The plaintiff came onto the property to hunt quail, and, while hunting he walked across one of the smoldering debris piles and fell through burning off his legs and severely burning his arm. Despite the loss of limbs the court found that this was not an inherently dangerous activity, holding:

> The substances it dumped are not toxic. The activity of hauling pomace or diatomaceous earth does not impose any immediate danger. And if properly disposed of, the waste materials pose no dangers to third parties.

Hickle v. Whitney Farms, Inc., 107 Wn.App. 934, 941, 29 P.3d 50 (2001).

For the same reasons, bail recovery is not inherently dangerous. In determining that it is not, the court should consider the great leeway

the legislature has given bail agents. Pursuant to Title 18.185 bail bond agencies are allowed to contract with a "bail bond recovery agent" to locate, apprehend, and surrender a fugitive criminal defendant for whom a bail bond has been posted. An agent is given broad powers in the common law and by statute to recover a fleeing felon.

Indeed, the only limitation in the State of Washington in recovering a fleeing felon is that, prior to doing a "planned forced entry" the agent most notify an "appropriate law enforcement agency in the local jurisdiction in which the apprehension is expected to occur." See RCW 18.185.300. A "planned forced entry" does not include a situation where the person is giving imminent chase and, in fact, only includes "a premeditated forcible entry into a dwelling, building, or other structure without the occupant's knowledge or consent for the purpose of apprehending a fugitive criminal defendant subject to a bail bond." See RCW 18.185.010(12).

Otherwise, pursuant to RCW 10.19.160 a surety on a bond is allowed to return to custody a person

in a criminal case under the surety's bond. As noted in Johnson v. Kittitas, 103 Wn.App. 212, 217-18, 11 P.3d 862 (2000):

> "When bail is given, the principal is regarded as delivered to the custody of his sureties. Their dominion is a continuance of the original imprisonment. Whenever they choose to do so, they may seize him and deliver him up in their discharge; and if that cannot be done at once, they may imprison him until it can be done. They may exercise their rights in person or by agent. They may pursue him into another State; may arrest him on the Sabbath; and, if necessary, may break and enter his house for that purpose. The seizure is not made by virtue of new process. None is needed. It is likened to the re-arrest by the sheriff of an escaping prisoner. "

Taylor v. Taintor, 83 U.S. 366, 371, 21 L.Ed. 287, 16 Wall.366 (1872).

Consequently, the bail officer may use force to effectuate an arrest. See RCW 10.31.050 (an officer may use all necessary means to affect the arrest of an individual who is fleeing or forcibly resisting arrest) as did the agent here.[1] As

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[1] In that regard, this court, as did the trial court, should consider the United States Supreme Court's decision in Scott v. Harris, 530 U.S. 372, 127 S.Ct. 1769, 167 L.Ed.2d 686 (2007). In Scott, as is the situation here, the police officer was in pursuit of a fleeing felon. The Court held that summary judgment was proper for (continued...)

testified by every individual, whether provided by the plaintiff or defendant, bail recovery is not always dangerous because it can, and is, conducted safely in a great percentage of cases. Indeed,

---

[1](...continued)
the police officer in looking at the reasonableness of his actions where the respondent suffered serious injuries after being run off the road. In its decision, the Court stated:

> "So how does a court go about weighing the perhaps lesser probability of injuring or killing numerous bystanders against the perhaps larger probability of injuring or killing a single person? We think it appropriate in this process to take into account not only the number of lives at risk, but also their relative culpability. It was respondent, after all, who intentionally placed himself and the public in danger by unlawfully engaging in the reckless, high-speed flight that ultimately produced the choice between two evils that Scott confronted. Multiple police cars, with blue lights flashing and sirens blaring, had been chasing respondent for nearly 10 miles, but he ignored their warning to stop. By contrast, those who might have been harmed had Scott not taken the action he did were entirely innocent. We have little difficulty in concluding it was reasonable for Scott to take the action that he did."

Scott v. Harris, 530 U.S. at 384.

most of the time it takes no more than a phone call to bring the fugitive in.

Plaintiff relies on the Restatement (Second) of Torts § 520, which indicates that in determining whether an activity is abnormally dangerous, the court should consider the following factors:

(a) existence of a high degree of risk of some harm to the person, land, or chattels of others;

(b) likelihood that the harm that results from it will be great;

(c) inability to eliminate the risk by the exercise of reasonable care;

(d) extent to which the activity is not a matter of common usage;

(e) inappropriateness of the activity to the place where its carried on; and

(f) extent to which its value to the community is outweighed by its dangerous attributes.

Initially, there is a difference between abnormally dangerous activity and that which is "inherently dangerous", which is the standard in Washington[2]. Nevertheless, when applying these

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[2] Hayes v. Goldstein, 120 Ohio.App. 3d 116, 697 NE 2d 224 (1997) contained no analysis as to this issue, merely stating that the occupation is inherently dangerous.

factors in the situation here, none are applicable. As the witnesses testified, this type of activity is not always, and in fact, very seldom, creates a high degree of risk of harm to anybody, therefore, sections (a) - (c) are not applicable. Moreover, the legislature had given the bail bond recovery agents wide latitude, and therefore, it cannot be said that it is inappropriate to carry on this activity in all parts of the county and state. Additionally, with the legislature weighing in on the issue, it obviously has made a determination that the value to the community is not outweighed by its dangerous attributes.

Moreover, the "inherently dangerous" exceptions are designed to protect third persons who might be injured by such activity, not those who participate in them. Rogers v. Irving, 85 Wn.App. 455, 465, 933 P.2d 1060 (1997). Here, Larry Stout is more akin to a participate than a third person, who should not be able to even claim this exception, such as an innocent bystander.

In sum, bail bond recovery can be performed safely. While bail recovery could potentially

present some risk given the wrong circumstances, it cannot be said that it will probably result in injuries to those persons. However, just as with the cases cited herein, the activity itself is not inherently dangerous and most often is considered safe.

V. CONCLUSION

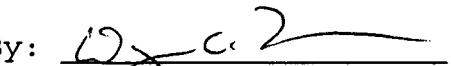
Based on the files and records herein, respondent requests that this court affirm the trial court.

VI. APPENDIX

Appendix "A" - Defendant Johnson's Motion and Declaration for Renewed Summary Judgment - attachment - Deposition of Paul Reid

RESPECTFULLY SUBMITTED this 23rd day of February, 2010.

HESTER LAW GROUP, INC. P.S.
Attorneys for Respondent

By: 
Wayne C. Fricke
WSB #16550

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CERTIFICATE OF SERVICE

Lee Ann Mathews, hereby certifies under penalty of perjury under the laws of the State of Washington, that on the day set out below, I delivered true and correct copies of brief of respondent to which this certificate is attached, by United States Mail or ABC-Legal Messengers, Inc., to the following:

Robert Helland
Attorney at Law
960 Market Street
Tacoma, WA 98402-3604

C. J. Johnson
C. J. Johnson Bail Bonds
620 South 11th Street
Tacoma, Washington 98405

Signed at Tacoma, Washington this 23rd day of February, 2010.

Lee Ann Mathews

HONORABLE THOMAS FELNAGLE

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SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

LARRY STOUT, Plaintiff, vs. CARL J. WARREN and JANE DOE WARREN, Husband and Wife; CLARENCE JOHNSON and SALLY DOE JOHNSON, Husband and Wife, dba "CJ JOHNSON BAIL BONDS; MIKE GOLDEN and JANE DOE GOLDEN, Husband and Wife, d.b.a. C.C.S.R. FUGITIVE RECOVERY, Defendants.	No. 04-2-09770-9 DEFENDANT JOHNSON'S MOTION AND DECLARATION FOR RENEWED SUMMARY JUDGMENT

COMES NOW Defendant Johnson, by and through his undersigned counsel of record, and moves this Court to grant his Motion for Renewedl Summary Judgment.

This Motion is based upon the laws of the State of Washington, CR 56, Declaration of Wayne C. Fricke in Support of Motion for Renewed Summary Judgment, authorities cited therein. the deposition of Paul Reid, specifically pages 34:3-35:2; 37:3-25; 42:13-19; 22:1-25:25; 33:4-8, the records and files herein and the following previously filed pleadings as well as the attachments thereto:

1. Motion for Partial Summary Judgment on the Issue of Liability for Intentional Acts and the Issue of Joint and Several Liability;
2. Declaration of Kenneth W. Banford in Support of Defendant Johnson's Motion for Partial Summary Judgment;

EXHIBIT
A
tabbies

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LAW OFFICES OF
MONTE HESTER, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
TACOMA, WASHINGTON 98405
(253) 272-2157

3. Declaration of Reinie E. Moores in Support of Motion for Summary Judgment;
4. Declaration of C.J. Johnson in Support of Motion for Partial Summary Judgment

LAW OFFICES OF
MONTE E. HESTER, INC., P.S.

By _____
WAYNE C. FRICKE, WSBA #16550
Attorney for Defendant Johnson

DECLARATION OF WAYNE C. FRICKE

I , WAYNE C. FRICKE, declare as follows:

I am the attorney for the Defendants, Clarence J. Johnson, Jr. and Sally Doe Johnson, husband and wife dba "CJ" Johnson Bail Bonds, and make the following statements based upon my personal knowledge. I am over the age of eighteen (18) and am competent to testify as to the matters contained herein. I am making this declaration in support of Defendants' Motion for Renewed Summary Judgment.

Attached hereto is the deposition of Paul Reid taken on October 7, 2008 and the records and files herein.

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

DATED this 23 day of October, 2008. at Tacoma, Washington.

_____
WAYNE C. FRICKE

LAW OFFICES OF
MONTE HESTER, INC., P.S.
1008 SOUTH YAKIMA AVENUE, SUITE 302
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PIERCE COUNTY SUPERIOR COURT, STATE OF WASHINGTON

LARRY STOUT

Plaintiff(s),

vs.

CARL J WARREN

JANE DOE WARREN

Defendant(s).

Case No. 04-2-09770-9

NOTE FOR MOTION DOCKET

TO THE CLERK OF THE SUPERIOR COURT:

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	TACOMA WA 98402-3605	PHONE	(253) 572-2684

(Please note additional attorneys on an attached page)

Please take notice that the undersigned will bring on for hearing a motion for:

Motion - Renewed Summary Judgment

The hearing is requested to be held during the regular motion calendar on:

DATE REQUESTED FOR HEARING/MOTION	
November 21, 2008	at 9:00 am

Nature of Case: Tort Motor Vehicle

Dated: October 23, 2008 Signed: [signature]

NAME	Wayne C. Fricke	WSB#	16550
ADDRESS	1008 S. Yakim AVe. #302	ATTORNEY FOR	Defendant Johnson
	Tacoma, Wa. 98405	PHONE	253-272-2157

THE ABOVE INFORMATION MUST BE COMPLETED AND SIGNED

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PIERCE COUNTY SUPERIOR COURT, STATE OF WASHINGTON

ADDITIONAL ATTORNEYS

Case No. 04-2-09770-9 **NOTE FOR** Motion Docket

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

LARRY STOUT,	)
Plaintiff,	) No. 04-2-09770-9
and	)
CARL J. WARREN and JANE DOE WARREN, husband and wife; CLARENCE JOHNSON, JR., and SALLY DOE JOHNSON, husband and wife, DBA "CJ" JOHNSON BAIL BONDS; MIKE GOLDEN and JANE DOE GOLDEN, husband and wife, DBA GCSR FUGITIVE RECOVERY,	)
Defendants.	)

DEPOSITION OF PAUL M. REID
October 7, 2008
Tacoma, Washington

Byers & Anderson, Inc.
Court Reporters/Video/Videoconferencing

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

LARRY STOUT, Plaintiff, vs. CARL J. WARREN and JANE DOE WARREN, Husband and Wife; CLARENCE JOHNSON, JR. AND SALLY DOE JOHNSON, Husband and Wife, D.B.A. "CJ" JOHNSON BAIL BONDS; MIKE GOLDEN and JANE DOE GOLDEN, Husband and Wife, D.B.A. C.C.S.R. FUGITIVE RECOVERY, Defendants.	No. 04-2-09770-9 DECLARATION OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that I am not an interested party to the above-entitled action and am competent to be a witness herein.

I further certify that on the 24th day of October, 2008 I enclosed, in a sealed envelope, a true and correct original of Note for Motion Docket, Defendant Johnson's Motion for Renewed Summary Judgment & Dposition of Paul Reid addressed to Michael Golden at 1630 Mesa St. Redding, CA. 96001and on said date deposited the same in the United States Mail, with postage prepaid thereon.

DATED this 24th day of October at Tacoma, Washington.

Kathi A. Comstock

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