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STATE OF WASHINGTON
BY
DEPUTY

COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

Case Number 39387-5-II
DEVON MCKENNA and CYNTHIA McKENNA,
husband and wife,
Appellant's
V.
COMMONWEALTH UNITED MORTGAGE a division of NATIONAL CITY BANK OF INDIANA, aka NATIONAL CITY MORTGAGE CO., An Ohio Corporation,
doing business in the State of Washington,
Appellees,

Appellant's REPLY BRIEF
TO RESPONDENT'S BRIEF

Devon and Cynthia McKenna,
c/o: Post Office Box 1056,
Rainier, Washington, 98576.

Table of Contents

Table of Authorities 1

1} ASSIGNMENTS OF ERROR 1

Assignments of Error of The Respondent's Brief 1

Issues Pertaining to Assignments of Error of The Respondent's Brief 2

2} STATEMENT OF THE CASE IN REPLY TO THE RESPONDENT'S BRIEF 4

3} Acts of Misrepresentation by Janaya L. Carter, WSBA Bar #32715. 4

4} SUMMARY OF ARGUMENT 6

5} ARGUMENT 6

6} CONCLUSION 14

Table of Authorities

Cases ..... **Pages**

Trinsey v. Pagliaro, D.C. Pa 1964, 229 F. Supp. 647 10

Cinco Enterprises, Ins. V. Benso, Okl., 890 P 2d 866 (1944). 11

Government Fin. Servs. One L.P. v. Peyton Place, 62 F.3d 767, 772-73 (5th Cir. 1995) 11

Department of Fisheries v. J-Z Sales Corp., 25 Wn. App. 671, 676, 610 P.2d. 390 (1980) 10, 12, 13

United States v. Beecroft, 608 F. 2d 753,757. (9th Cir. 1979) 14

Statutes

RCW 62A.3-103(a)(4) 10, 12, 13

Rules

LCR 59(2), ... 8

LCR 5(b)(2), ... 13

CR 42,. 8

Juridical Reasoning

Actori incumbit onus probandi. The burden of proof is on him who makes the claim.

1. ASSIGNMENTS OF ERROR

Assignments of Error of The Respondent's Brief

No. 1 The trial Court erred by failing to notify Appellants of consolidation.

No. 2 The trial Court erred by failing to answer request for findings of fact and conclusions of law.

No. 3 The trial Court erred by allowing counsel to enter and argue case without client present.

No. 4 The trial Court erred by not dismissing the Appellee's claim.

No. 5 Janaya L. Carter, WSBA Bar #32715, in Bad Faith, has knowingly and willfully mislead the trial court and the Appellate Court with False and misleading information.

No. 6 Objection to Janaya L. Carter, WSBA Bar #32715, in Bad Faith, for entering issues that DO NOT apply to this appeal. On Page 19 - 22 Janaya L. Carter, WSBA Bar #32715, has brought forward the altered deed of trust issues that the trial court has refused to hear to date.

No. 7 Whether the evidence on the record from the Appellee's Attorney is valid on its own merits. (CP- 9, 10)

Issues Pertaining to Assignments of Error of The Respondent's Brief

No. 1 On the Hearing of October 3, 2008, Judge Strophy ordered the Case Numbers 08-2-01425-5 and 08-2-02104-9 consolidated

without any prior notice. Appellant's counsel said to me after the hearing, *"I've never seen a judge do that before,"* Appellant's counsel then sent the order to the court for signing by Judge Strophy without the Appellant's knowledge or assent.

No. 2 The trial Court erred by failing to answer the request for findings of facts and conclusion of law, Janaya L. Carter, WSBA Bar #32715, in Bad Faith, says court did not err by failing to enter findings of facts and conclusion of law upon denial of Appellant's Motion for Reconsideration. A totally different scenario.

No. 3 The trial court erred by allowing counsel to enter and argue. Janaya L. Carter, WSBA Bar #32715, in Bad Faith, says there is no case law or Court Rule requiring that a client must be present in order for counsel to argue a Motion. We already provided case law which clearly states public policy.

No. 4 The trial court erred by not dismissing respondent's claim. Janaya L. Carter, WSBA Bar #32715, in Bad Faith, talks about a motion to dismiss not properly noted. We are clearly referring to Respondent's claim at the hearing of May 8.

No. 5 Janaya L. Carter, WSBA Bar #32715, in Bad Faith, has knowingly and willfully mislead the trial court and the appellate court with False and misleading information.

No. 6 Whether Janaya L. Carter, WSBA Bar #32715, should be allowed to enter any issue that has not yet been heard at the trial court level.

No. 7 Whether the evidence on the record from the Appellee's Attorney is valid on its own merits. (CP- 9, 10)

2. STATEMENT OF THE CASE IN REPLY TO THE RESPONDENT'S BRIEF

Janaya L. Carter, WSBA# 32715, in her "RESPONDENT'S BRIEF", "In Bad Faith", has knowingly and willfully misrepresented the facts with deceitful statements of half-truths, making false claims to mislead the court into believing many lies.

First and foremost is an Objection to Janaya L. Carter, WSBA Bar #32715, in Bad Faith, for entering issues that DO NOT apply to this appeal. On Page 19 through 22 of the Respondent's Brief, Janaya L. Carter, WSBA Bar #32715, has brought forward the MOTION TO DISMISS INVALID TRUSTEE SALE involving the altered deed of trust issues that the trial court has refused to hear to date.

Under docket # 81, in the trial court, "RESPONSE TO Janaya L. Carter, WSBA# 32715, REPLY TO SHOW CAUSE ORDER AND MOTION TO DISMISS WRIT OF RESTITUTION", Judge Strophy refused to hear this motion concerning the acts of "Bad Faith" by Janaya L. Carter, WSBA# 32715.

Janaya L. Carter, WSBA# 32715, has a history on knowingly and willfully misleading the court(s).

The Respondent's Brief, by Janaya L. Carter, WSBA# 32715, is just another attempt, "In Bad Faith", to misrepresent the facts and to distort the truth. The record reflects the violations against the Appellants.

3. Acts of Misrepresentation by Janaya L. Carter, WSBA

Bar #32715.

Janaya L. Carter, WSBA Bar #32715, in Bad Faith, has knowingly and willfully mislead the trial court and the appellate court with False and misleading information.

False, and Misleading Claim #1. On Page 7 of the Respondent's Brief. The Unlawful Detainer case started on September 9, 2008. Janaya L. Carter, WSBA Bar #32715, claims Appellant's former counsel entered notice of appearance on 6/23/08. How can Janaya L. Carter, WSBA Bar #32715, claim Appellant's counsel entered almost 3 months before the case started?

False, and Misleading Claim #2. On Page 8 of the Respondent's Brief. " respondent and appellant were both represented by counsel and present in court." Respondent has never appeared in court, only counsel. Appellant is the only party in interest to appear in court.

False, and Misleading Claim #3. On Page 10 of the Respondent's Brief. Janaya L. Carter, WSBA Bar #32715, says counsel was in court on 3/29/09 for a hearing when counsel found out the motion for reconsideration was struck. How did she come to know 2 months in advance that a motion for reconsideration would be dismissed? And claim she was not a party to the decision. When there was no hearing noted for 3/29/09 involving the appellant's case.

False, and Misleading Claim #4. In an act of bad faith, Janaya L. Carter, WSBA# 32715, changed the title of Case No. 08-2-01425-5, on the "ORDER FOR WRIT OF RESTITUTION", making her client the

plaintiff, without authority, motion or notification to the Court or the Plaintiff, in Case No. 08-2-01425-5.

False, and Misleading Claim #5. On Page 19 - 22 of the Respondent's Brief, Janaya L. Carter, WSBA Bar #32715, has brought forward the MOTION TO DISMISS INVALID TRUSTEE SALE, entering issues that DO NOT apply to this appeal.

False, and Misleading Claim #6. This is not a MOTION ON THE MERITS as stated at the footer on every page of the Respondent's Brief, but a frivolous, false and misleading Respondent's Brief.

4. SUMMARY OF ARGUMENT

The crux of the matters at issue in the Respondent's Brief is whether Janaya L. Carter, WSBA Bar #32715, should be allowed to continue, "In Bad Faith", to mislead the court(s) by distorting, twisting and manipulating the truth.

5. ARGUMENT

False, and Misleading Claim #1. On Page 7 of the Respondent's Brief. The Unlawful Detainer case started on September 9, 2008. Janaya L. Carter, WSBA Bar #32715, claims Appellant's former counsel entered notice of appearance on June 23, 2008. How can Janaya L. Carter, WSBA Bar #32715, claim Appellant's counsel entered almost 3 months before the case started?

This is a clearly false and misleading statement The record shows that the notice of appearance was entered on September 29, 2008.

False, and Misleading Claim #2. On Page 8 of the Respondent's Brief. Janaya L. Carter, WSBA Bar #32715, claims " respondent and appellant were both

represented by counsel and present in court." The Respondent has never appeared in court, only their counsel. The Appellant is the only party in interest to ever have appeared in court. There is nowhere in any court record that shows that the Respondent was ever present in court.

False, and Misleading Claim #3. On Page 10 of the Respondent's Brief. Respondent says she was in court on 3/29/09 for a hearing when she found out the motion for reconsideration was struck. How did she come to know 2 months in advance that a motion for reconsideration would be dismissed? And claim she was not a party to the decision. There was no hearing noted for 3/29/09 involving the appellant's case.

Appellant was in court on 5/29/09 and was unaware the hearing had been struck until clerk of court Doug Bales advised Appellant, he asked Appellant to wait and left the court room. When he returned he handed Appellant a copy of Tabor's letter opinion and order. After reading them Appellant left the court room. There was less than 5 minutes left before scheduled court starting, and Carter was unseen by the Appellant.

False, and Misleading Claim #4. In an act of bad faith, Janaya L. Carter, WSBA# 32715, changed the title of Case No. 08-2-01425-5, on the "ORDER FOR WRIT OF RESTITUTION", making her client the plaintiff, without authority, motion or notification to the Court or the Plaintiff, in Case No. 08-2-01425-5.

It is clear that Janaya L. Carter, WSBA# 32715, has an altered copy of the conformed "ORDER FROM HEARING" of October 3rd 2008, dated October 17th 2008, as purportedly prepared by E. Allen Walker, WSBA #19621, Appellant's former counsel. E. Allen Walker, WSBA #19621, Appellant's former counsel,

failed to notify the Plaintiff of this action to consolidate Case No. 08-2-01425-5 and 08-2-02104-9 into one case prior or after this action took place.

E. Allen Walker, WSBA #19621, Appellant's former counsel, and Janaya L. Carter, WSBA# 32715, are both officers of the Court and both had a responsibility to notify their clients of all actions prior to court hearing and after an Order is issued, including but not limited to the consolidation of both cases.

Appellant's counsel 'represented' the order to court. This action was unknown by Appellant, nor was Appellant informed at the time of his rights of objection and appeal.

The Plaintiff has responded on May 18th 2009, with the Motion For Reconsideration within the ten (10) days required of the "ORDER FOR WRIT OF RESTITUTION", entered on May 8th, 2009 in Cause No. 08-2-01425-5, LCR 59(2). There was no motion or hearing on the matter of consolidation and the Plaintiff was not given any notice of the action of consolidation and therefore the ten day rule does not apply when a motion/action was never pending before the court, CR 42 and furthermore, both the Plaintiff and the Defendant are against the consolidation.

False, and Misleading Claim #5. On Page 19 - 22 of the Respondent's Brief, Janaya L. Carter, WSBA Bar #32715, has brought forward the MOTION TO DISMISS INVALID TRUSTEE SALE, entering issues that DO NOT apply to this appeal.

Janaya L. Carter, WSBA# 32715, again acts in bad faith by bringing forward an issue not raised in the appeal. Counsel speaks of THE NOTICE AND DEMAND TO VACATE A VOID JUDGMENT AND AMENDED MOTION TO DISMISS INVALID TRUSTEE SALE, which is a motion that is filed and entered

into the trial court, but has NOT been heard by any judge as of yet.

The motion was timely filed when the evidence was discovered on April 15, 2009, and the motion was filed May 28, 2009, with the amended motion filed on June 15, 2009. Janaya L. Carter, WSBA# 32715, discussion of this yet to be heard motion is improper and misleading to the Appellate Court as counsel falsely claims that it is Appellant's fault that motion has not been heard.

Recently, on May 7, 2010 Judge McPhee stated that the trial court did not have authority to hear a motion while this appeal is still to be heard. A ruling from the Appellate court that the trial court may hear a motion was received on June 2, 2010, and a clarification of that ruling was requested on June 4, 2010, which has not yet been answered by the court. It has been the trial court's misunderstanding of their authority to hear a motion whilst an order is under appeal that has caused the delay.

In counsel's discussion of the motion, counsel deliberately fails to mention the three different Deeds of Trust that have been evidenced in the motion. Two of which came from Carter's office. Janaya L. Carter, WSBA# 32715, misleadingly rewords her acts of bad faith, which are a matter of record in the trial court. To set the record straight for the Appellate court, the complete list of acts of bad faith are presented here verbatim from the trial court motion:

"Acts of Bad Faith by Janaya L. Carter, WSBA# 32715,

False, Frivolous Claim Number1. Janaya L. Carter, WSBA# 32715, in Bad Faith, knowingly and willfully made the case number, "No. 08-2-01425-5 Consolidated with 08-2-02104-9", when according to the order, clearly stated just the opposite, that

08-2-02104-9 was Consolidated with 08-2-01425-5. On Friday, October 3, 2008, Judge Richard A. Strophy in his order stated, *"The Court ordered this case to be consolidated with 08-2-01425-5"*. See Exhibit CR-1. *Department of Fisheries v. J-Z Sales Corp., 25 Wn. App. 671, 676, 610 P.2d. 390 (1980). RCW 62A.3-103(a)(4).*

False, Frivolous Claim Number2. Janaya L. Carter, WSBA# 32715, in Bad Faith states, *"The Plaintiff again asks for the same relief despite that fact that the same matter and same issues were before the court on May 29, 2009."* And *" Thurston County Sheriff refused to complete lockout because Mr. McKenna had filed another motion with the exact same issues that were already decided."* **Absolutely False.** The Show Cause of May 18, 2009, by Judge Carol Murphy, was for the reconsideration of May 29, 2009 and stayed the writ of restitution pending the outcome of this cause number 08-2-01425-5 and should have still been in effect, except for Judge Gary R Tabor's, WSBA #8225, secret un-written purported rescinding of the stay, (Now on Appeal). The May 29, 2009 hearing was struck and the reconsideration dismissed by Judge Gary R Tabor, WSBA #8225. The issues before the court on May 29, 2009 was a reconsideration of the case and included **First;** for a reconsideration to consolidate Case No. 08-2-01425-5 and 08-2-02104-9 into one case, **Second;** the title of Case No. 08-2-01425-5 was changed without motion or notification to the plaintiff, **Third;** Janaya L. Carter, WSBA Bar #32715, statements' in Cause Numbers 08-2-01425-5 and 08-2-02104-9 are not evidence as statements of counsel in their briefs or arguments are not sufficient for purposes of granting an Adversary Proceeding in the form of a motion to dismiss or for summary judgment. *Trinsey v. Pagliaro, D.C. Pa 1964, 229 F. Supp. 647.* Unsupported contentions of material fact are not sufficient on motion for dismissal, but rather, material facts must be supported by affidavits and other testimony and documents that would be admissible in evidence at

trial. *Cinco Enterprises, Ins. V. Benso, Okl., 890 P 2d 866 (1944).* **Fourth;** Judge Gary R Tabor, WSBA #8225, rushed to judgment, in the hearing of May 8th 2009, through the Defendant's misrepresentation and constructive fraud and have with knowledge and forethought mislead the Court to obtain a summary judgment while at all times knowing a full disclosure of the request for accounting evidence existed which for the sake of justice required issue at trial. **Fifth;** Where there are no depositions, admissions, answers to interrogatories, or affidavits, the Defendant's motion for summary judgment by providing the court with information in the form of false and misleading information should not be considered. The Defendant' falsely represented the facts in collusion with Janaya L. Carter, WSBA Bar #32715, attorney representing the Defendant. **Sixth;** Judge Gary R Tabor, WSBA #8225, knowingly and voluntarily waived Devon McKenna and Cynthia McKenna's due process right to plead the case and for willful misleading of Material Facts. A summary judgment was premature when title is at issue. The show cause was for a stay. see *Government Fin. Servs. One L.P. v. Peyton Place, 62 F.3d 767, 772-73 (5th Cir. 1995).*

This Show Cause, is for a motion en-titled "MOTION TO DISMISS INVALID TRUSTEE SALE", and is for a dismissal based on a motion to dismiss in what appears to be fraud, through alteration of the deed of trust by the Defendant(s), therefore invalidating the purported trustee sale in this cause number 08-2-01425-5.

None of these issues are the same as Janaya L. Carter, WSBA# 32715, in Bad Faith, has so recklessly prescribed. *Department of Fisheries v. J-Z Sales Corp., 25 Wn. App.*

671, 676, 610 P.2d. 390 (1980). RCW 62A.3-103(a)(4).

False, Frivolous Claim Number3. Janaya L. Carter, WSBA# 32715, in Bad Faith stated Judge Tabor is the assigned judge in this case. No judge has been assigned to case 08-2-01425-5 nor was assigned to 08-2-02104-9. There have been no less than five(5) judges involved in these cases to date, Judge Richard A. Strophy, Judge Carol Murphy, Judge William McPhee, Judge Gary R Tabor, Judge Anne Hirsch, and now this motion has been noted for Judge Pomeroy. *Department of Fisheries v. J-Z Sales Corp., 25 Wn. App. 671, 676, 610 P.2d. 390 (1980). RCW 62A.3-103(a)(4).*

False, Frivolous Claim Number4. Janaya L. Carter, WSBA# 32715, in Bad Faith, referred to the May 29, 2009 order as a lockout, nowhere in Judge Gary R Tabor's order of May 29, 2009 is there any mention of a "lockout". *Department of Fisheries v. J-Z Sales Corp., 25 Wn. App. 671, 676, 610 P.2d. 390 (1980). RCW 62A.3-103(a)(4).*

False, Frivolous Claim Number5. Janaya L. Carter, WSBA# 32715, in Bad Faith, *spent considerable time and effort* to convince the sheriff to violate a valid stay issued on May 18, 2009, by Judge Carol Murphy. See Exhibit O-4. *Department of Fisheries v. J-Z Sales Corp., 25 Wn. App. 671, 676, 610 P.2d. 390 (1980). RCW 62A.3-103(a)(4).*

False, Frivolous Claim Number6. Janaya L. Carter, WSBA# 32715, in Bad Faith stated, *"Commonwealth has now learned that another Commissioner has stayed the writ of restitution…"*. Once again another false and frivolous claim meant to mislead this court for the purpose of damaging the Plaintiff. What Commissioner is Janaya L. Carter, WSBA# 32715, referring to? The order Janaya L. Carter, WSBA# 32715, is referring to was issued on June 8, 2009, by Judge Ann Hirsch. See Exhibit O-4. *Department of Fisheries v. J-Z Sales Corp., 25 Wn. App. 671, 676, 610 P.2d. 390 (1980). RCW*

Affidavit of Proof of Service By Devon McKenna

I, Affiant Devon McKenna, is competent to testify and is over the age of majority, and states that the facts contained herein are true and correct, to the best of Affiant's first hand knowledge under penalties of perjury.

This is the Affidavit of Proof of Service of Devon McKenna that I, the affiant, served by first class mail 1 copy of the documents listed below on Janaya L. Carter, WSBA Bar #32715, ROUTH CRABTREE OLSEN, P.S. 3535 Factoria Blvd. S.E. Ste 200, Bellevue, Washington 98006. Telephone (425) 458-2121, Facsimile (425) 458-2131.

A courtesy copy of:

1. Appellant's REPLY BRIEF TO RESPONDENT'S BRIEF.

The above Documents were served by first class mail on the above parties, on or about June 16th, 2010, by affiant, Devon McKenna.

FURTHER AFFIANT SAYS NAUGHT

Devon McKenna

Devon McKenna, authorized representative,
Actual christian lawful man, injured party,
Inhabitant resting on the soil of Washington,
Sui Juris.