

TABLE OF CONTENTS

Table of Cases..... ii

Table of Authorities.....iv

I. Assignment of ErrorsPg. 1

II. Issues Pertaining to Assignment of ErrorsPg. 1

III. Statement of the Case (Background).....Pg. 3.

IV. Statement of the Case (issues specific to contempt)Pg. 8

V. Argument A (A. specific to criminal v. civil contempt)Pg. 21

Argument (B. Specific to whether a contempt finding was
Appropriate at all)Pg. 32

VI. ConclusionPg. 40

TABLE OF CASES

Armstrong v. May 33 Wash.2d 112,
204 P.2d 510 WASH. 1949.....Pg. 30,39

Graves v. Duerden 51 Wash.App. 642,
754 P.2d 1027 Wash.App.,1988.....Pg. 35, 37, 40

In re Detention of D.F.F. 144 Wash.App. 214, 183 P.3d 302
Wash.App. Div. 1, 2008..... Pg. 22

International Longshoremen's Ass'n v. Philadelphia Marine Trade
Ass'n, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967).....Pg. 35

Johnston v. Beneficial Management Corp., 96 Wash.2d 708,
712-13, 638 P.2d 1201 (1982).....Pg 35, ,37, 40

King v. Department of Social and Health Services 110 Wash.
2d 793, 756 P.2d 1303Wash., 1988.....Pg. 24,26

Pacific Manufacturing Co. v. Brown,
8 Wash. 347, 36P.273,275.....Pg. 30

Seattle v. Crumrine, 98 Wash.2d 62,
653 P.2d 605 (1982).....Pg. 28

Smith v. Whatcom County Dist. Court 147 Wash.2d 98,
52 P.3d 485 Wash.,2002.....Pg. 25

South Kitsap Family Worship Center v. Weir 135 Wash.
App. 900, 146 P.3d 935 Wash.App. Div. 2,2006.....Pg.30,39

State v. Boatman, 104 Wash.2d 44, 46, 700
P.2d 1152 (1985).....Pg. 26, 28

State v. Breazeale, 144 Wash.2d 829, 842, 31
P.3d 1155 (2001).....Pg. 26

State v. John 69 Wash.App. 615, 849 P.2d 1268
Wash.App. Div. 3,1993.....Pg. 26

State v. International Typographical Union
57 Wash.. 2d. 151,158,356 P.2d 6 (1960).....Pg.35

TABLE OF STATUTES

. U.S.C.A. Const.Amend. 6;.....Pg.22

RCW Const. Art. 1, §10.....Pg.22,28

RCW 4.28.328Pg. 30, 31,39

RCW 7.21.010.....Pg. 26, 34,40

RCW 7.21.030.....pg. 24,

RCW 7.21.040.....Pg, 1, 21, 23, 24, 25, 26, 27, 40,

RCW 7.21.050 Pg. 25

CR 60 (b)Pg. 27

I. ASSIGNMENT OF ERRORS

1. The trial court erred as a matter of law when it entered an order that sanctioned appellant John J Hadaller (Hadaller)\$10,000.00, as a fine resulting from a summary finding of contempt, without providing him his right to a trial, nor making findings supporting the Courts use of its inherent power to fine a larger amount than statute provides.

2. The Trial Court erred by finding Hadaller in contempt of the June 18, 2010 order, on August 6, 2010 and also the August 6, 2010 order on September 3, 2010.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

1. Should the Trial Court's \$10,000 sanction as a fine for past, summarily assumed, actions be reversed because the contempt statutes of RCW 7.21.040, which states such fine may only be brought by that statute and the well settled authority provides one accused of contempt a trial prior to imposing the sanction. (assignment of error #1)

2. Should the Trial Court have made findings that

concluded the statutory \$5,000.00 fine was an insufficient fine /sanction to punish Hadaller for the summarily alleged actions that caused the Trial Court to find him in contempt.? (assignment of error #1)

3. Did the fact Hadaller was unable to obtain or borrow the greatly increased financing amount required, which became necessary due to the June 18, 2010 orders, create a condition of contempt?

4. Was Hadaller in contempt of the June 18, 2010 order when he argued to use one of his assets over another asset to indemnify the amount of financing necessary to pay the offset amount before the Court even made a finding of how that debt was to be provided for? (assignment of error #2)

5. That the facts of : On June 18, 2010 the Rockwood's were forcing a new purchase and sale agreement, which the Trial Court found that the new purchase and sale agreement was to read, that Hadaller was to agree with an amount that stated the original sale amount, less the court ordered offsets, equals net price of property. (RP 6/18/10 Pg6 line 12-Pg 7 L. 10 & Pg 8 L.8- Pg 9 L. 8) (CP 172-173) Then immediately thereafter the Rockwood's insisted on a purchase and sale agreement which simply stated Hadaller agreed to the net price as the sales price for the price,

which Hadaller objected to, then went back into court for that and a plan of how the offset amount was to be paid. Did that warrant contempt?

(assignment of error #2)

III. STATEMENT OF THE CASE

(BACKGROUND)

The issues of this appeal resulted from a boilerplate option to purchase leased real estate contract Dean and Pam Rockwood (Rockwood's) entered into with Hadaller for the home at 104 Virginia Lee Lane Mossyrock, Wa., legally known at that time as lot 4 of short plat 02-00010 ,which is the subject property in this suit.

A summary of the facts of the option agreement are:

In January 2004, Hadaller, a building contractor, had just erected a 1680 square foot manufactured home and shop on a 4 acre parcel of, Mayfield Lake access, land that was sub-dividable after September 28, 2008. Hadaller desired to find a tenant who would become a buyer/owner of 1.51 acres of that parcel, designated as one of the future lots when it would be further subdivided..

Dean Rockwood answered an advertisement and worked on the shop with Hadaller parts of two days while they discussed the property

ownership possibilities. The first considered terms were that the property would sell for \$120,000.00 and the property would be leased for \$750.00 per month, with a principle balance declining comparable to a 30 year mortgage @ 7%, thus, when the property was subdividable and able to pass title to the lot and home there would be sufficient amount owing to pay the closing costs and underlying mortgage Hadaller placed on the mortgage on the property to pay the development cost of that property and some of the future development of Mayfield Cove Estates. On January 31, 2004 Dean Rockwood and John Hadaller sat down and lengthily negotiated and concluded that the original deal, just previously described, would be risky for the Rockwood's because they would have to provide a substantial down payment at the time of election of the option in the future. To offset that, they discussed and agreed that they would increase the sales price to equal the expected appraised value of \$135,000.00 then Hadaller would allow a reduction of the principle amount of \$375.00 per month for 60 months thus there would be \$22,500.00 equity paid into the home shown after sixty months. That would easily provide the substantial down payment required to obtain financing without providing more down payment at closing. The other factor that had to be addressed and agreed upon was the fact the property was to be short

plated after September 28, 2008. The additional time required for that process was estimated at several months to over a year. The time for that process was provided for in the boilerplate option agreement by an asterisk in the left margin of the option agreement next to the time at which the option could be exercised. That asterisk referred to a right to continue the lease clause in the available space lower in the contract, for exceptions. Both parties agreed to those terms and formed and acknowledged a contract. They were equally content they each received a good deal. Hadaller had reasonable security of the mortgage payment until the property was sold and it would be sold as soon as it could be divided. The Rockwood's had a very easy path to home ownership and the ever elusive American dream.

55 months later, In September 2008, per agreement Hadaller began the short plat subdivision of the property. The Rockwood's exercised their option in November of 2008. In the winter of 2009, Hadaller and the Rockwood's met at the Rockwood's first attorney's discussed the sale. At that time they were in agreement the contract provided for the platting process time and the property was going to be sold as soon as the plat was completed, in the interim Hadaller did not object to ending the \$375.00 per month after the 60 months had tolled as a good faith showing for diligence. However in a May of 2009

letter, Hadaller proposed an increase in the lease to cover the increased tax and interest expenses Hadaller had suffered the previous years.

Instead of an answer Hadaller received a summons from the Rockwood's. David Lowe¹, their new attorney that desired an easement through the subject property, had propositioned them that he could reduce the option price of the property in exchange for the easement. Their complaint contained an altered form of the lease that did not contain the asterisk referring to the continuation clause.

Summary judgment was held on August 6, 2009 The Rockwood's were seeking breach of contract, specific performance, attorney's fees and damages and falsely argued the continuation clause was not for continuation, but a clause that stated Hadaller had the option to terminate the lease if the Rockwood's chose not to exercise the option.

Hadaller argued the true facts as stated above and that genuine issues of material fact (the continuation clause) existed to the term of

¹ The same David Lowe that bought three lots in Mayfield Cove Estates from Hadaller in October 2007 under false pretenses, Bought a six acre parcel of ground in the middle of the development that Hadaller held a right of refusal on, then created a homeowners association, becoming president, then hired himself as the home owners association's attorney, Then illegally traded easements within the plat then sued Hadaller claiming the Association owns the water systems, which is appeal No. 40426-5-II. His obvious goal is to own Hadaller's personal 3.32 acre waterfront property which would provide a great value to his other properties. So far he is approaching \$200,000.00 of fees and costs in the Trail court to Hadaller from four suits he is operating in. The trial Court appears to be his partner.

the option contract that precluded the sale until the plat was recorded. The Court summarily concluded the lease was ambiguous and construed it against Hadaller, the monthly rent would not change and Hadaller was to divide the property and sell it as soon as it could be done. Hadaller was doing **exactly that already**, The Trial Court reserved ruling on fees or damages until after December 30, 2009, stating it would help prevent an appeal.

On August 21, 2009 Hadaller filed an appeal of the summary judgment order, the Appellate Court ruled it was an interlocutory order and Hadaller did not pursue the discretionary review opting to wait until the final order was entered to appeal.

The short plat was physically complete and submitted to the county for their approval by December 30, 2009, leaving the County agencies work to be completed. On January 11, 2010 the Rockwood's moved the court to hire the surveyor as a third party agent at Hadaller's expense. The agent was the surveyor already under contract with Hadaller so Hadaller hardly objected to that, other than to any additional cost. The Rockwood's attorney, David Lowe, slipped a \$100.00. per day penalty into the order without notice in the motion nor was it raised at the hearing. Hadaller overlooked that, did not sign

the order as usual, and realized it when the Rockwood's moved for attorney fees and damages and claimed they were also owed \$8,000.00 for a first time home buyers credit from the IRS² on April 23, 2010. Hadaller moved for, but the Court refused to vacate the \$100.00 per day penalty and awarded the Rockwood's additionally \$18,336.50 in attorney fees and costs.

IV. THE EVENTS SPECIFICALLY CONCERNING THIS CONTEMPT APPEAL BEGIN AT THIS POINT.

The county completed their approval process of the plat on May 17, 2010³ and Hadaller recorded the plat that day, which allowed the property to be sold as per the original agreement in January of 2004. At that time the Rockwood's did not have their financing in place and stated they needed a new purchase and sale agreement that confirmed Hadaller was in agreement with the reduced offset net sales amount less the fees and costs. Hadaller did not approve of the language in the proposed new purchase and sale agreement of the proposed closing documents and insisted to use the original exercised option agreement,

² The first time home buyers credit was not offered by the government yet at the time the option agreement was entered into in 2004. Nor at the time the option was exercised, 2008. It was in effect at the time the sale closed. If they did not receive it should not be Hadaller's fault.

³ This law suit only slowed the process, with attorney David Lowe breathing down the county's neck they were nervous as a cat under a rocking chair and sent every decision for review through the prosecutor's office, that only slowed it down.

which served the needs of the closing agent but apparently not Rockwood's lender. Also at that time the Rockwood's were insisting upon receiving the \$8,000.00 penalty /damages of first time home buyers credit from the government from Hadaller. That had not been definitely awarded by the court and Hadaller objected to paying it when Rockwood's presented it to him.

The Rockwood's scheduled a hearing, to compel Hadaller to sign their new purchase and sale agreement, for June 18, 2010. At that hearing, during argument, THE COURT stated to Hadaller:

"This Court is going to sign an order that mandates either that you sign the ... the document that says this is the bottom line as determined by the Court for with the sale to close, or as far as I'm concerned the order is going to do the job by itself. As I mentioned earlier." RP

6/18/10 Pg7 L. 5-10

The Trial Court concluded that issue that day by finding: *"You are not agreeing to sell this Property for \$67,000.00 and you are not being asked to sign a document that says that. You are being asked to sign a document that says: The original sale price was \$135,000.00, here's the credits, and here's what the Court determined are the credits and offsets, therefore, the bottom line is the \$67,000. That's not the same as signing a*

voluntary agreement to sell the property for \$67,000, so that's apples and oranges".

Hadaller's response to that was : "*I would have no problem signing an order under the description you just stated, but it was my interpretation of the order ... er , the contract, that he stated to be otherwise, that I was jeopardizing my right to appeal and that was my argument.*" (RP 6/18/10 Pg 8 Line 15- 25)

The Court: "*No you are not*".

Mr Hadaller:"*As long as we're clear on that I have no problem. It was my interpretation I was agreeing with these terms.*" [That Hadaller was being forced to sign a document the agreed sales price was something other than the original agreed price.] (RP 6/18/10 Pg 9 Line 6-8)

At that hearing the Trial Court also awarded the Rockwood's the \$8,000.00 first time home buyers government stimulus credit at Hadaller's expense, additional damages and fees totaling to \$17,797.00 which increased the total fees costs and damages to \$36, 133.00. That increased offset meant Hadaller would have to provide \$40,417.90 in cash to close the sale transaction in order to pay off the underlying mortgage on June 30, 2010. (CP 171-173) (RP 6/18/10 Pg.7 L. 5- Pg 9 L. 1)

Hadaller's bank refused to loan that much on his by then over mortgaged properties and his diminishing income. On June 30, 2010 the bank called and on July 3, 2010 Hadaller received a loan denial letter. Hadaller's father was also attempting to borrow some money for Hadaller but refused to get involved after the June 18, 2010 hearing.

On June 25, 2010 Hadaller received an e-mail from Bonnie Woodruff, title officer for Cascade Title Company, the closing agent, providing the closing documents. The new proposed, purchase and sale agreement read.:

"This agreement is made between John J. Hadaller ("Seller") and Dean and Pam Rockwood (" Buyer") Seller agrees to sell and Buyer agrees to buy the following described real property together with all improvements and fixtures and the personal property together with all improvements and fixtures and the property described below: Street address: 104 Virginia Lee Lane, Mossyrock, Washington 98564

Purchase Price: The purchase price to be paid is:" (CP 186)

No mention of the Court ordered \$135,000 minus offsets to arrive at the \$67,000.00 Bonnie Woodruff also stated in the e-mail with the closing documents she had not received the loan documents confirming

Rockwood's financing at that point and tentatively assumed a closing schedule of either Monday or Tuesday. Accordingly, Hadaller waited to hear from her confirming the closing.

On Tuesday June 29, 2010 @ 4:40 p.m. Bonnie Woodruff e-mailed Hadaller stating she expected to close the sale the next day, on June 30 2010. (CP 17)

Hadaller e-mailed her back at 7:37 a. m. the next morning, stating that according to her previous statement, which stated she had not received the loan documents from the Rockwood's lender, Hadaller assumed she would confirm the receipt of them and would set a definite date for closing.. He also informed her at that time he had not obtained financing to pay the offset amount. (CP 17)

Hadaller was relying on at least one of two loans being applied for, by himself and his father at the time to finance the offset amount pending the inevitable appeal. His father, upon learning of the Courts June 18, 2010 findings, avoided getting involved with this suit.

On June 30, 2010 Hadaller e-mailed Bonnie Woodruff that he could not obtain the funds necessary to close the sale. (CP 17)

Hadaller was relying on his loan from Sterling savings to come through, which was finally denied on July 1, 2010. By that letter, on July 3, 2010 Hadaller became aware for the first time he could not provide cash for the offset amount on demand.(CP 7)

On July 1, 2010 Lowe was duly informed of the Hadaller/Lowe⁴ real estate contract assignment to Deborah Reynolds by a letter from the contract collection department of Security State Bank. (CP 188)

On July 3, 2010 Hadaller informed Lowe he could not obtain the loan to finance the Rockwood's sale offset.

By e-mail on the following dates Lowe and Hadaller discussed the cause and solutions of the problem as this:

On July 13, 2010 Lowe e-mailed Hadaller in regards to financing the Rockwood offset: David Lowe Proposed: *“For one, we can ask that the Court force the fire sale of the two new lots, both to secure a cash deposit for the security and sufficient cash to meet your obligations on the Rockwood closing (hopefully they would provide sufficient funds).*

⁴ Hadaller carried a real estate contract on two lots for \$110,000.00 with a balance of approximately \$79,000.00 with David and Sherry Lowe. Before the time of the Rockwood sale closing, Hadaller assigned the contract to his assistant Deborah Reynolds whom he owes money for several years labor by agreement dated in 2005 under which she invested money and labor into Hadaller's property. David Lowe had garnished it several times and it was unreliable to pay his bills. It was obvious from Lowes actions his intent was to use as much of it as he could from law suits he created against Hadaller it was a worthless paper to Hadaller, but has value t one Lowe has no ability to sue.

Another option is to settle the installment contract with the Lowes. For a discounted amount it may be possible to secure sufficient additional funds to meet the closing funds requirements. That is something the Lowes may be willing to consider.

In any event, let us know right away or we will note another hearing on this issue. (CP 22)

On July 14, 2010 Hadaller e-mailed Lowe stating that the Contract was assigned. In that E-mail discussion of on or about July 14, 2010:

“As you should have been already informed the remaining payments due after July 5th 2010 are now owned by a previous debtor of mine. All remaining payments are to be paid however they have instructed you to pay .Our relationship of that contract is now finished.” (CP 22)

Based on those discussions Hadaller in his response to Rockwood’s July 14, 2010 motion for contempt, proposed the Rockwood’s offset should be attached to the remaining \$79,000.00 equity in 110-16 and 110-20 Virginia Lee Lane, which are two recreational lots Hadaller has developed and Lowe has tied up preventing sale, by lawsuits involving the plats. Those lots had a currant appraisal of \$72,000.00 each and a title report showing only a \$65,000.00 supersedeas stay in the form of a deed of trust made benefitting Mayfield Cove Estates Homeowners Association against the title.(CP 1- 4 L. 9) (R P. 8/6/10 Pg. 18 L. 9 – Pg 22 L. 12)

The Rockwood's moved for contempt of the June 18, 2010 order scheduling the hearing for August 6, 2010.

At the August 6, 2010 hearing Lowe misled the Trial Court by

stating: "*Mr. Hadaller has never provided the Rockwood's with any evidence or the Lowes with any evidence that this contract – real estate contract has been assigned to someone else. Nothing*". (RP 8/6/10 Pg. 22 L. 15-18) (CP 22)

At the August 6, 2010 hearing Hadaller pled the use of another valuable asset to indemnify the Rockwood's offset, that being the equity in 110-16 and 110-20 Virginia Lee lane lots , which are contiguous with the Rockwood's property. (CP 3 L.8 – CP 4 L. 9) (R P. 8/6/10 Pg. 18 L. 9 – Pg 22 L. 12)

He also pled he could not control the debt he had nor the lack of ability to finance the required offset. He pointed out the issue had not been raised prior as to how the offset was to be financed, and his inability to acquire necessary financing from a lender had just manifested. Hadaller also argued the proposed new purchase and sale agreement was not drafted as the Court ordered it to be on June 18, 2010. The proposed purchase and sale agreement failed to mention the original price less the court ordered offset amounts. It simply stated the agreed amount was the net left over

from the law suit and Hadaller agreed to that as if it was the original sales price. (CP 1 -36) Hadaller was not in agreement of the PSA without the offsets listed.

The Court summarily ordered the Lowes had the authority to pay Hadaller's debt with cash from the contract Hadaller had assigned to Deborah Reynolds and Hadaller was in contempt of Court for assigning it, even though he offered other assets, by not obeying the June 18, 2010 order. The Court found that Hadaller was fined \$10,000.00 and could purge himself of that fine if he followed the August 6, 2010 order. Which provided Hadaller was to sign the closing documents on or before August 13, 2010, or if he did not sign the closing documents the order was to provide for an attorney in fact could sign in his place.(RP 8/6/10 Pg. 25 L. 13-Pg 27 L. 13)

On August 10, 2010 at 2:42 p.m. Bonnie Woodruff, closing agent for Cascade Title insurance Co., e-mailed Hadaller requesting informed of if he was going to sign the closing documents. (CP 40 L. 4- 7)

At 8: 19 a.m. on August 11, 2010 Hadaller returned Ms. Woodruff's e-mail and scheduled a 4:00 p.m. appointment, and requested copy of the

closing documents to preview. Which were provided at 10: 37 a.m. At 2:26 p.m. Hadaller phoned Ms. Woodruff and explained he was not in agreement of the purchase and sale agreement, it was the same as was proposed **before** the June 18, 2010 hearing, which the Court stated should include identification of the court ordered offsets, and asked if the attorney in fact could close the documents by the 13th of August for him. Ms. Woodruff confirmed he could. Hadaller requested that to be done. On August 12, 2010 the attorney in fact signed the closing documents. (CP 40 L. 8- CP 40 L. 19) (CP 134 -138) (CP 56 , 57) (CP 59)

On the afternoon of August 12, 2010 Deborah Reynolds, acting alone in her own interest, petitioned the Court for a TRO to prevent the Lowes from using her real estate contract to finance Hadaller's debt. That was denied.

On the afternoon of August 12, 2010 Hadaller filed a notice of appeal and a *lis pendens* against the Rockwood's property to protect his expected position on appeal. That *lis pendens* was filed at that specific time intentionally because it was too late to stop the sale from closing, thus complying with the order and soon enough to place Hadaller before the lender to protect his rights to collect subsequent awards of relief expected from his appeal.

On August 13, 2010 the deed from Hadaller to Rockwood was filed with the Auditors office and the terms of the August 6, 2010 order were accomplished.

On August 18, 2010 the Rockwood's filed a motion to dismiss the appeal as untimely, stating the final judgment was crafted as the April 23, 2010 order awarding attorney fees. The motion was granted and the appeal was dismissed on September 2, 2010. Hadaller received notice of that, by mail, the afternoon of September 3, 2010. That was after the September 3, 2010 contempt hearing. That ruling left only the contempt orders appealable. Hadaller at that time lost his expected privilege to review whether it was frivolous to create this law suit and obtain what has become \$67,000.00 in damages, costs and fees for something that was already happening according to contract and continued so, the only difference was, it was slowed by the process of this suit and Lowe obtained an illegal easement that was recorded in Lewis County Auditor's office on August 17, 2010⁵ and the Rockwood's now have a mortgage for less than half of the original agreed upon amount. Hadaller has lost his credit that he relied upon for the last 30 years as a contractor, and is about

⁵ in violation of LCC16.10230 and how many Rulules of professional conduct ?

to lose his status as a homeowner. That for providing the possibility to the dishonest Rockwood's to become homeowner's⁶

The Rockwood's set a hearing reporting contempt for September 3, 2010. A complaint was that Hadaller failed to personally sign the closing documents on August 12, but instead had the Attorney in fact do so in his place. Their position was that furthered the contempt. Hadaller responded that he did not sign them and used the provision of the August 6, 2010 order providing the attorney in fact or him to sign the documents. (RP 9/3/10 Pg 12 L. 22 – Pg 16 L. 7) (CP 174-177)

On the September 3, 2010 hearing, the Rockwood's and David Lowe complained that a *lis pendens* was filed on the Rockwood's property, the Reynolds TRO and a money judgment was placed against Hadaller in early August 2010 on behalf of Winston Quarry , by their attorney James Buzzard, for rock supplied to complete the short plat, which Hadaller was unable to pay because of the law suits. The judgment was required to be paid to close the sale. Hadaller was totally unaware that Buzzard had obtained a default judgment behind his back. That was contrary to what

⁶ At the time of entering into the lease option the Rockwood's were being forced to move from Mrs. Rockwood's mother's home. They had no credit . Pam's parents provided the \$2,000.00 down payment. Hadaller felt good a bout helping someone like he had been helped by others to become a homeowner. That won't happen again.

Hadaller and Bart Lyons, owner of Winston Quarry, had planned, Hadaller pled so at the hearing. (RP 9/3/10 Pg. 8 L. 6 – Pg 12 L. 10) (CP 43 ¶ 2.16- 2.17) (CP 145- 150) He also pointed out he had a legal right of the *lis pendens* upon filing the appeal and the *lis pendens* was recorded at the Auditors office after the documents were signed and that action did not prevent the sale from closing, nor was it meant to. (RP. 9/3/10 Pg. 20 L. 6 - Pg 22 L. 23)

The Court summarily found Hadaller had not purged himself of contempt and sanctioned him \$10,000.00 to be paid by December 2, 2010. Hadaller objected.(RP 9/3/10 Pg 25-29) (CP 72-74)

Since October 2010 Hadaller has been a full time self defender to protect his private real property rights, that have been attacked by Lowe and Randy Fuchs and caused by the Fortman trust, since October. He has been subsisting on monthly loans from his father that has paid half his bills. That will continue until these cases are settled one way or another. At which time Hadaller must make up for the bills and loans from his father either by a successful outcome of these cases or by his construction work, later. Hadaller does not have the means to pay his regular monthly bills and has not the means to pay the \$10,000.00 fine in a lump sum.

The Rockwood's set a hearing scheduled for December 17, 2010 requesting more fees and claiming further contempt. (CP 130 -132)

In response to the motion for the December 17, 2010 hearing, Hadaller pled the contempt sanction as a fine had become punitive upon the entry of the September 3, 2010 order. Hadaller argued he was deprived of his right to due process to a trial and he did not waive that right. Thus the \$10,000.00 sanction should be dismissed and if the Rockwood's or Court felt it necessary they should follow RCW 7.21.040 and request the prosecutor to file the complaint. (CP 151- 162)

The Court found that Hadaller was in contempt and the sanction as a fine is still owing but the court could not further the contempt.(RP 12/17 10 Pg. 10L. 8 – Pg. 11 L. 22)

Hadaller's understanding of the law is that his right to a trial was violated and he insists upon a trial by jury before being found in what amounts to criminal contempt. Accordingly he respectfully requests this review.

V. LEGAL AUTHORITY AND ARGUMENT

- A. With regards to assignment of error #1. The Trial Court erred when it summarily found Hadaller in contempt and sanctioned him \$10,000.00 as a fine .

The question of whether a contempt is civil or criminal is a question of law reviewed de novo.

See *In re Detention of D.F.F.144* Wash.App. 214, 183 P.3d 302 Wash.App. Div. 1, 2008.

“Whether a trial court procedure violates the right to a public trial is a question of law that an appellate court reviews de novo, and this standard applies to civil as well as criminal appeals. U.S.C.A. Const.Amend. 6; RCW Const. Art. 1, § 10”

On August 6, 2010 the court, based substantially on Plaintiffs attorney’s typically false statements as confirmed in paragraphs above, found Defendant Hadaller in civil contempt of the June 18,2010 order. David Lowe and the Rockwood’s were aware the Hadaller/ Lowe real estate contract had been assigned to a third party weeks before the August 6, 2010 hearing that decided which asset would be used to indemnify the Rockwood’s,. (CP 31 L 1-3) (CP 4 L. 3-9) CP 22 ¶ 3) (CP 154 L. 18-25) (CP 188-194) Hadaller had two other assets that would have done that, one was proposed . Lowe stood before the Trial Court and lied that he was not informed that asset was no longer in Hadaller’s control.(RP 8/6/10 Pg. 22 L. 15-21) (CP 32 L. 18- Cp 34 L. 2) 1 -4 L. 2) His statement, Hadaller had cashed the contract payment checks were also known to be false (RP 8/6/10 Pg. 22 L. 22- Pg 23 L. 6) CP 21 identifies the address Lowe’s bank has been and continued to directly deposit his

monthly payments into Hadaller's account. Hadaller did not cash those checks he proved he immediately forwarded the monthly payment to Deborah Reynolds. Lowes testimony was typically seriously obfuscated to false. With that false testimony, the court ordered a \$10,000.00 fine (RP 8/6/10 Pg. 27 L. 2-7) as a remedial sanction to coerce him to close the sale of 104 Virginia Lee Lane Mossyrock, Wa., now legally known as Lot 1 of short plat 08-00010. On June 18, 2010 the Court (RP 6/18/10 pg. 7 L. 5-10) (CP 172,173 ¶ C.) and the June 18, 2010 order, which Hadaller was found in contempt of (CP 171-173) also provided that if Hadaller did not sign the closing documents an attorney in fact could sign them in his place. At the June 18, 2010 hearing the Trial Court expressly provided the order itself would work as the purchase and sale agreement if Hadaller did not sign the purchase and sale agreement. (RP 6/18/10 Pg7 L. 5-10)(RP 6/18/10 Pg 8 Line 15- 25)

The sale was closed on August 12, 2010 and the coercive effect of the fine was satisfied, the fine should have been purged. When the issue was raised, by the Rockwood's that it was not purged, that contempt sanction as a fine (RP 8/ 06/10 Pg. 27 L. 2-7) (RP 9/3/10 Pg. 28 L.23 – Pg. 29 L. 2) became a criminal procedure by law which could only be raised under RCW 7.21.040 only.

See: *King v. Department of Social and Health Services* 110 Wash. 2d 793, 756 P.2d 1303 Wash., 1988. “Civil contempt sanction is coercive and remedial, and is typically for benefit of another party; criminal contempt sanction is punitive and is imposed for purpose of vindicating authority of the court.”

“Purpose of criminal contempt sanction is to punish for past behavior; purpose of civil contempt sanction is to coerce future behavior that complies with court order”.

“Although court has statutory as well as inherent power to impose civil contempt sanction, it may not impose criminal contempt sanction unless contemnor has been afforded those due process rights extended to other criminal defendants”

RCW 7.21.030 grants the Court the authority to find Hadaller in contempt and apply a remedial coercive sanction. Any, if there was any, existence of civil contempt ceased on August 12, 2010 when Hadaller called the escrow closing officer on August 11, 2010 and arranged for the closing documents to be signed, then they in fact were signed on August 12, 2010 the coercive (civil) contempt was legally purged. (CP 39-41) (CP48-66) (CP 134-144) Once the act being coerced, closing the sale, occurred the civil contempt was purged and whether the \$10,000.00 punitive fine is owed must be settled by the findings through due process of criminal procedure under RCW 7,21.040, Hadaller was not provided the due process the state constitution and Statute provides..(RP 9/3/10 Pg 28 L. 23-Pg 29 L. 29)

Instead the Court, without any evidenciary hearing, findings, or any due process, to allow Hadaller to demonstrate he did not cause the several actions the Plaintiff complained of, the Trial Court summarily found that Hadaller should be sanctioned, as a fine, the \$10,000.00 for the actions that occurred. (RP 9/03/10 Pg. 25- 29) (CP 72-74) That finding was based on the Courts belief and even if the courts belief weighs heavily, that became a punitive sanction in the form of a \$10,000.00 fine. However, that was an error that is contrary to RCW 7.21.040 which provides:

“ Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

The alleged contempt was not in the presence of the court thus RCW 7.21.050 does not apply here.

RCW 7.21.040 also provides:

If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment for not more than one year, or both.

RCW 7.21.040 also provides:

“An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed”

David Lowe brought the motions for contempt, he is not a member of the Lewis County prosecuting attorney office, he must have the prosecutor file a complaint, hold a trial , by jury, which would have to find Hadaller guilty to fine him. Hadaller did not and does not waive any of those rights.

Citing: Smith v. Whatcom County Dist. Court 147 Wash.2d 98, 52 P.3d 485 Wash.,2002.Chapter 7.21 RCW, “to which RCW 10.01.180 refers, concerns contempt of court. It defines “contempt” inter alia as “intentional ... [d]isobedience of any lawful judgment.” RCW 7.21.010(1)(b). “Contempt may be criminal or civil.” State v. Breazeale, 144 Wash.2d 829, 842, 31 P.3d 1155 (2001). “The primary purpose of the civil contempt power is to coerce a party to comply with an order or judgment.” Id. **A civil contempt sanction is allowed as long as it serves coercive, not punitive, purposes.** In re Pers. Restraint of King, 110 Wash.2d 793, 802, 756 P.2d 1303 (1988). **Criminal contempt is punitive.** Id. at 800, 756 P.2d 1303. A prosecutor must file a complaint or an information to seek a punitive sanction. RCW 7.21.040(2)(a). In criminal contempt cases, the contemnor is afforded “those due process rights extended to other criminal defendants,” King, 110 Wash.2d at 800, 756 P.2d 1303, and has a right to a jury trial, State v. Boatman, 104 Wash.2d 44, 46, 700 P.2d 1152 (1985).

The punitive action of the court does not have to be in the form of jail to be punitive. See:

State v. John 69 Wash.App. 615, 849 P.2d 1268 Wash.App. Div. 3,1993. “Here, the State sought to hold Mr. John in contempt for his violation of a consent decree. It requested a jail sentence for a definite period of time and reinstatement of a \$2,000 fine. **Although the court did**

not impose a jail sentence, the proceeding was nevertheless punitive.^{FN3} The State was not attempting to coerce Mr. John, but to punish him for past behavior. *See State v. Boatman, supra* (appellants **1271 who had repeatedly failed to pay child support held to be in civil contempt); *In re Marriage of Haugh, supra* (court's order sentencing defendant to 10 days in jail, suspended on condition he comply with previously ordered visitation schedule, held to be civil). The consent decree suspended \$2,000 of the fine imposed. Even though there was a criminal complaint and a guilty plea in 1989, **Mr. John was entitled to an evidentiary hearing on whether he is in contempt. Because the proceeding was criminal in nature, Mr. John was entitled to those rights afforded criminal defendants, including *620 the right to a jury trial. King at 800, 756 P.2d 1303. The contempt order is therefore reversed**".

Like those cases Hadaller was deprived of the same due process of law in the same manor and summarily fined by the Trial Court for issues of fact the Court assumed without due process. As in *Smith* and *John* the above described actions in the Trial Court amount to an irregularity of the court, the punitive contempt issue heard on September 3, 2010 was not properly before the Court. It should have been brought by a complaint from the prosecutor's office, under RCW 7.21.040, through due process of criminal law. The Court erred when it made the finding summarily that Hadaller's actions taken, surrounding the close of the subject property sale made Hadaller guilty of contempt and owed the sanction as a fine payable to the court.(RP 8/6/10 Pg. 27 L. 2-4) The Trial Court had the authority under CR 60 (b) to correct that irregularity and Hadaller respectfully requested the relief of his constitutional right to a trial, by jury on this

issue, or alternately dismissal. (CP 158 ¶ 1) (C P 158- 162) At the December 17, 2010 hearing Hadaller requested the Court to dismiss the fine and require the contempt be tried through the prosecutor's office.(CP 158 ¶1)(Cp 160 L. 35 – Pg. 161 L. 2) The Trial court made a finding summarily deciding that Hadaller had taken actions that were deserving of the \$10,000.00 fine/sanction.(RP 12/17/10 Pg.10 L. 8- Pg 11 L. 22) That was made even though Hadaller argued he had complied with terms of the June 18, 2010 and the August 6, 2010 orders by arranging for the attorney in fact to sign the closing document timely. (12/17/10 Pg. 10 L. 8- Pg. 11 L. 22) Thus this appeal continued to be necessary.

Although Hadaller did not raise the defense that the fine / sanction was criminal at the September 3, 2010 hearing, his right to a trial was a right that the Court is responsible to provide without the accused asserting his right prior to proceeding a finding of guilt and shall remain inviolate.
RCW Const. Art. 1, § 10”

See: *State v. Boatman* 104 Wash.2d 44, 700 P.2d 1152 Wash.,1985.

“In a criminal contempt proceeding the accused contemnor is entitled to a jury trial. *State v. Heiner, supra*. Here, neither appellant was offered a trial by jury. Since a person cannot waive his or her right to a jury trial by not requesting it, *47 Seattle v. Crumrine, 98 Wash.2d 62, 653 P.2d 605 (1982), the trial court's action cannot be upheld on this basis”.

In *Boatman* the Trial Court also found the defendant(s) were guilty of a contempt that fit the definition of criminal contempt without providing the right to a trial, In the instant case the Trial Court did exactly the same at the September 3, 2010 hearing when it made the summary finding that Hadaller did everything he could to stop the sale of the subject property when that was not even a true fact. By the Trial Court's summary action Hadaller was deprived of his right to prove his innocence. That was an error that Hadaller asserts should be reversed and the \$10,000.00 fine quashed until properly found.

At the September 3, 2010 contempt hearing, the contempt findings of the Trial Court relied heavily on the fact Hadaller filed this appeal⁷ and the

⁷ This appeal was filed to appeal the merits of the entire findings of damages and fees awarded. The appeal was based on the fact the property was already being sold specifically per the option agreement and was done so, This suit was brought by and benefitted only David Lowe the attorney that solicited it. He recorded the easement across the subject property, he sought, on August 17, 2010. At the August 7, 2009 summary judgment hearing, (which Hadaller appealed and was deemed premature) the Trial Court unilaterally found for the provision of fees and stated it was reserving making certain findings to compromise Hadaller's ability to appeal the decision, (which most likely would not have been affirmed) The Court was brief and evasive of the facts and Hadaller, being a carpenter by trade not an attorney, did not become aware of what was being discussed until after his appeal was denied as untimely. They crafted the "award of attorney fees and final accounting" as the final judgment which was in the middle of the case, Hadaller was unwary it was the final judgment. There were substantial issues left after that order was entered on April 23, 2010. Consequentially Hadaller was charged of what will amount to possibly over \$75,000.00 by the time we are through, it is over \$60, 00.00 now. That for providing a couple the opportunity for the American Dream that would not have qualified to buy a house any other way. Hadaller is facing foreclosure of his own home as a result of the co-pending, David Lowe brought / Lewis County department 3 found, law suit decisions. There is several appeals pending in both courts. (see Appeal # 40426-5-II for more of Lowes craftiness)

subsequent Lis pendens with it.(RP 9/3/10 Pg 27 L. 13-Pg 28 L. 22) The notice of appeal was filed after the sale was closed on August 12, 2010 and the Lis Pendens was recorded in the Auditor's office after the notice of appeal had been filed. Hadaller had a legal right to file an appeal and also had a legal right to file a Lis Pendens to tell the world of his appeal. Those legal rights were consciously applied in a manner that did not prevent the close of the sale.

See: *South Kitsap Family Worship Center v. Weir* 135 Wash.App. 900, 146 P.3d 935 Wash.App. Div. 2, 2006. "Under the lis pendens statute, claimants who provide no evidence of a legal right to the property may be liable for damages and attorney fees to a party who prevails in defense of the action, but where the claimants have a reasonable, good faith basis in fact or law for believing they have an interest in the property, a lis pendens is substantially justified. RCW 4.28.328(3)".

In the instant case Hadaller had filed an appeal of the trial Court's decision regarding the award of the damages and fees. As well as the contempt. There can be no argument against Hadaller having an interest in the condition of the title to the property before the mortgage. In fact if Hadaller had not done so, he would have sacrificed any legal remedies to protect his rights. See:

Armstrong v. May 33 Wash.2d 112, 204 P.2d 510 WASH. 1949 "In *Pacific Manufacturing Co. v. Brown*, 8 Wash. 347, 36 P. 273, 275, in discussing whether or not the respondent had actual knowledge of the

pendency of a prior suit, this court said: ‘* * * The plaintiff in the suit to foreclose said mortgage might have reduced its rights to a certainty, and set all such questions at rest, by filing a notice of lis pendens under the statute. Not having done so, we would not find in appellants' favor on the question of actual knowledge, unless there was a very clear preponderance of proof in their favor.’..... “Here, the respondent, when she commenced her suit against Cheplak, could have protected herself against subsequent purchasers or encumbrancers of the taxicab business by attaching the property which was the subject matter of the suit. Such action would have been notice to all the world that she claimed an interest in the property. Having failed to do so, she cannot now be heard to say that the appellant had notice of her claim”.

According to RCW 4.28.328, *Weir* and *Armstrong* Hadaller was clearly within his rights to file the lis pendens. Did it prevent the sale? No! Should the Court have punished Hadaller for doing so? No! Did the Court have the legal authority to do so without a trial? No! Hadaller was clearly in a spot where the Trial Court obviously expected him to sacrifice his legal rights or face contempt charges. Hadaller had a fine line to walk between the two requirements. The course of action he took stayed on the line without preventing the sale which should have purged the contempt. While at the same time RCW 4.28.328 provided Hadaller the right to file the lis pendens. The filing of this appeal was delayed and lis pendens recorded in specific order to not interfere with the closing of the sale and in fact **did not interfere with the closing of the sale.** Even if the Lis Pendens had interfered Hadaller had a day to decide to cancel the Lis Pendens or not to prevent the block of the sale. The Court erred by

summarily finding Hadaller intentionally attempted to prevent the sale of the subject property all of the events complained about were at issue with genuine material facts that should have been found by a trial. Our state constitution and statues under it provides the right of due process. Hadaller was denied that due process and this Court should reverse that decision.

B. Argument specific to whether Hadaller was in contempt in the first place..

An issue of whether a party is in civil contempt is reviewed for a matter of abuse of discretion. The Courts have a wide discretion that will not be reversed without a clear showing of abuse of that discretion. Or the relief was awarded on untenable grounds.

However, there is still a question in Hadaller's mind of the issues of facts regarding why the Trial Court found him in contempt. These issues before this Court for resolution are of the facts that on June 18, 2010 at a motion hearing brought by Rockwood's to compel Hadaller to either sign the new proposed purchase and sale agreement that clearly stated he agreed that the sale price of the subject property was \$67,000.00 or have

the Trial Court find a proposed order that did itemize the original purchase price and the offsets to show the final purchase price found to be due by the Court. The hearing also was to request the Trial Court to grant the Rockwood's an \$8,000.00 award to provide them with the first time tax credit refund from Hadaller instead of the I.R.S⁸. and to resolve who owed the outstanding Homeowners association assessments against the subject property. At that time Hadaller was under the expectation he could obtain the financing necessary to pay the offset, he had not had trouble borrowing \$20-\$30,000.00 up to that time thus how the offset was going to be financed was not at issue. At that hearing the court stated :

The Court:*"There are two different concepts, and what's happening here is this Court is going to sign an order that mandates either that you sign the document that says this is the bottom line as determined by the Court for the sale to close, , or as far as I'm concerned the order is going to do the job by itself. As I mentioned earlier."(RP 6/18/10 Pg7 L. 5-10)**"You are not agreeing to sell this Property for \$67,000.00 and you are not being asked to sign a document that says that. You are being asked to sign a document that says: the original sale price was \$135,000.00, here's the credits, and here's what the Court determined are the credits and offsets, therefore, the bottom line is the \$67,000.That's not the same as signing a voluntary agreement to sell the property for \$67,000, so that's apples and oranges"*

⁸ Which unfortunately was found to be not appealable due to a final judgment that was crafted in to the middle of the proceedings and brought as an award of attorney fees, which Hadaller unwarily overlooked until it was too late to appeal. That after he appealed the summary judgment order, which was deemed not appealable because it was not the final order thus Hadaller sacrificed his ability appeal the merits of this case.

Hadaller: *I would have no problem signing an order, under the description you just stated.....*” (RP 6/18/10 Pg 8 Line 15- 25)

Hadaller did sign the order that itemized the offsets with the reasonable understanding that was part of the terms of the closing of the sale.(RP 6/18/10 Pg.2 L. 21-24)

Then when Hadaller’s, expected, financing fell through on June 30,2010, he informed and discussed the alternatives with the opposing council (CP 1-4 L.2) (CP 7,9,20,22) Lowe responded by e-mail with a proposition of options that were asking substantially more than what was appropriate for the payment.. Thus a hearing regarding how the offset was going to be financed manifested for the first time at that time. David Lowe was out of town with a leave of Court which delayed the hearing, while Hadaller was being charged \$100.00 per day damages, accordingly the hearing was not able to be set until August 6, 2010. That hearing should have been simply for resolution of the financing quagmire. Hadaller had signed the Courts order sufficing as the purchase and sale agreement (CP 171-173) However the Rockwood’s moved for contempt of the June 18, 2010 order. But there was no contempt by the definition of RCW..7.21.010. The contempt was found to center on the fact Hadaller had assigned an asset the Lowes subsequently decided to offer as a means of financing the offset. (RP 9/3/10 Pg. 25 L. 20 -23) The June 18, 2010

order did not even consider any type of finance consideration August 6, 2010 hearing was the first hearing regarding financing of the offset of the subject property. (CP 171-173)

See: *Graves v. Duerden* 51 Wash.App. 642, 754 P.2d 1027 Wash.App.,1988.

“Washington courts have consistently applied a “strict construction” rule for interpretation of judicial decrees, violation of which provides the basis for contempt proceedings.”

“In contempt proceedings, an order will not be expanded by implication beyond the meaning of its terms when read in light of the issues and the purposes for which the suit was brought. The facts found must constitute a plain violation of the order. *State v. International Typographical Union*, 57 Wn.2d 151, 158, 356 P.2d 6 (1960); 17 C.J.S. Contempt § 12 (1963).”

Johnston v. Beneficial Management Corp., 96 Wash.2d 708, 712-13, 638 P.2d 1201 (1982).

The purpose for this rule is to protect persons from contempt proceedings based on violation of judicial decrees *648 that are unclear or ambiguous, or that **fail to explain precisely what must be done**. See *International Longshoremen's Ass'n v. Philadelphia Marine Trade Ass'n*, 389 U.S. 64, 88 S.Ct. 201, 19 L.Ed.2d 236 (1967) (“unintelligible” decree “defie[d] comprehension”); *State v. International Typographical Union*, 57 Wash.2d 151, 356 P.2d 6 (1960) (act complained of not specifically prohibited by decree).”

Hadaller did not violate the terms of the June 18, 2010 order. The issue of how the offset was going to be financed was not addressed in the June 18, 2010 order. Hadaller had never been refused a loan for that amount in recent history before that time, he was in his right to expect he could have obtained the \$20- \$30,000.00 required for the offset before

June 18, 2010. However on June 18, 2010 the Court added -\$17,797.00 in one day to the required offset financing that also was unexpectedly increased the required cash to pay the offset to \$40,417.90.00 and Hadaller raised the issue at that hearing whether he could provide for that as well as the Court questioned it. Hadaller did not learn for certain until the July 1, 2010 he could not finance the offset amount, that was not within in his ability to provide.(CP 1, 7) (CP 30 L. 10-12)

On August 6, 2010 the Trial Court found Hadaller in contempt, of the June 18, 2010 order, mainly for assigning the Hadaller /Lowe real estate contract to a prior creditor⁹. (RP Pg. 26 L. 8-Pg 27 L. 13) (RP Pg. 25 Line 20-23) There is no provision in the June 18, 2010 (CP 1171-173) nor any other order addressing how the offset would be paid, whether the Rockwood's would need to finance it, as the original contract agreed for, and obtain a judgment, as Hadaller argued for, or some other form or financing such as the Hadaller Lowe contract had not been raised before the response and reply for that July 14, 2010 motion. Hadaller attempted and expected to borrow the cash but was finally refused on July 1, 2010. The court considered the issue for the first time on August 6,

⁹ Deborah Reynolds is Hadaller's associate, that is no legal relation, she has invested several thousand dollars and hours of labor into the properties involved in these law suits, there is an issue for trial in March on this. She deserves, equitably and legally, to recoup her investment before Lowe cleans out the rest of Hadaller for his own personal greed.

2010 and at the same time found Hadaller in contempt of an order that had no provision for financing the offset to even comply with or had even discussed the subject of how it was to be financed.

See . : *Graves v. Duerden* 51 Wash.App. 642, 754 P.2d 1027 Wash.App.,1988.” Here, Judge Luscher specifically found that the April 18, 1986 judgment required Mr. Musso to pay the money in his firm's trust account to the Duerdens. However, the judgment does not include such an express order. Therefore, the judgment holding Mr. Musso in contempt for failure to pay the funds to the Duerdens was based on an untenable ground”

Just as in *Graves* the Trial Court in the instant case has based its decision on untenable grounds when it found Hadaller in contempt of violating an order for assigning a contract interest that theretofore had not even been considered as an issue nor was a provision in the order as to any respect for financing.

Similarly, also See: *Johnston v. Beneficial Management Corp. of America* 96 Wash.2d 708, 638 P.2d 1201 (1982).

“Although contempt proceedings are appropriate means to enforce court's orders, since results are severe, strict construction is required”.

“In contempt proceedings, an order will not be expanded by implication beyond meaning of its terms when read in light of issues and purposes for which suit was brought; facts found must constitute plain violation of the order”.

The August 6, 2010 hearing should have simply resolved the argument of which asset would provide for the offset and whether Lowe

would be able discount Hadaller's assets as he proposed to do prior to the hearing. In previous judgments of co-pending suits with Lowe, the Lowe contract was jealously guarded as off limits by the Lowes ,as well as the Trial Court. Hadaller had no legal right nor reason to expect the Lowe contract would be available prior to Lowe proposing it by an e-mail on July 13, 2010 (CP 22 last four lines) Hadaller had previously assigned the contract upon it being garnished for the second time in April of 2010 and as soon as it was freed from Lowe's 2nd garnishment of it in June the assignment was recorded with the Auditor's. (RP 8/6/10 Pg 13 L 10- Pg 22 L. 12)

On September 3, 2010 David Lowe, in representation of the Rockwood's, complained that Hadaller did not sign the purchase and sale agreement, but instead requested the attorney in fact sign for him. Wasn't that what the June 18, 2010 order was entered for? "(Part. RP 6/18/10 Pg7 L. 5-10) PR..... " (RP 6/18/10 Pg 8 Line 15- 25) .(RP 6/18/10 Pg.2 L. 21-24) The Rockwood's seem to have forgotten all about the resolution of that issue in June when they provided the escrow agent a purchase and sale agreement exactly as the one that caused the June 18, 2010 hearing. (CP 59) However being under the threat of a \$10,000.00 fine/sanction, during closing, Hadaller did not raise the argument considering the August 6, 2010 order did provide for an attorney in fact to sign the documents in

his place. (CP 59) Hadaller complied with that provision and arranged and paid the attorney in fact to sign the closing documents timely on August 11, 2010. (CP 56, 63)(CP 134, 135) They were signed and closed on August 12, 2010 (CP 59, 135) and recorded in the County Auditor's office on August 13, 2010. As per the order.(CP Aug 6 order)

Hadaller did not cause Deborah Reynolds to attempt to obtain a temporary restraining order on August 12, 2010. A trial would prove that. The Lowe/ Hadaller Real estate contract was used to pay the offset on August 12, 2010.

Hadaller was unaware Winston Quarry filed a default judgment in mid August that became due at the Rockwood's sale.(CP 145-148) Hadaller and the owner of the rock pit had an agreement in July that their attorney was to be called off after they discussed that debt after the complaint was served. Hadaller accordingly did not answer the complaint nor file an appearance based on the discussions with Lyons. Hadaller did not cause that nor was it in his control to prevent nor should that issue be grounds for contempt. That too would be proven by a trial.

Hadaller filed the notice of appeal then a lis pendens immediately after the sale had closed, per his legal right of RCW 4. 28.328 and the holdings of *South Kitsap Family Worship Center* and *Armstrong*, cited above, support this argument as well. That lis pendens did not stop the sale

from closing nor was it designed to in fact Hadaller risked his position by waiting until after the sale was closed. That may have compromised his personal position but it allowed the sale to close. Therefore considering the holdings of *Graves*, *Johnston* and RCW 7.21.010, Hadaller did not create a condition of contempt by that action as the Trial Court stated on September 3, 2010 when it summarily found Hadaller in what amounts to criminal contempt and sanctioned him as a fine \$10,000.00 payable to the court

In comparing the terms of the August 6, 2010 order with events surrounding the closing of the sale of subject property, RCW 7.21.010 and the holdings on *Johnston* and *Graves* this Court should find that there was no “*plain violation of the order*”. And as such the Trial Court abused its discretion and ruled on untenable ground when he found Hadaller in contempt of the June 18, 2010 or August 6, 2010 order.

IV. CONCLUSION

The Trial Court sanctioned John Hadaller \$10,000.00 as a fine. That sanction was either purged on August 12, 2010, or the contempt became an action that should have provided Hadaller due process. The finding on September 3, 2010 amounted to a criminal contempt charge, which should have been brought per RCW 7.21.040 which required the

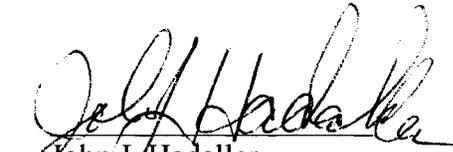
prosecuting attorney to file a criminal contempt complaint and Hadaller would be due a trial by jury. Accordingly Hadaller respectfully requests this Court to review the issue of whether the September 3, 2010 finding of contempt was criminal and accordingly reverse the trial court's finding of contempt and the \$10,000.00 fine, remand the case back to the trial court with directions to dismiss and/or request the prosecutor to bring the charge under the criminal statute 7.21.040.

That, is if this Court finds the original contempt finding of the Trial Court was properly found. Hadaller questions whether the Trial Court should have found him in contempt for what it summarily found to be a fraudulent transfer of an asset that was not the only asset Hadaller had available to satisfy the judgment. Hadaller further feels the Trial Court erred when it found Hadaller was in contempt of the June 18, 2010 order which was totally silent about any finance arrangement. Then at the first hearing regarding that issue he was found in contempt for proposing using a different asset than the Rockwood's proposed, which the Rockwood's first proposed shortly before the hearing on contempt and well after the hearing entering the order that Hadaller was found in contempt of.

Accordingly Hadaller respectfully asks this Court to review and reverse the Trial Courts findings of contempt of the June 18,2010 order

and/or also review the August 6, 2010 and September 3, 2010 order and
reverse the sanction /fine.

Respectfully submitted:



John J. Hadaller
135 Virginia Lee Lane

Mossyrock, Wa. 908564
(360)- 985-2252

Dated: January 7, 2011

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

PAM and DEAN ROCKWOOD) Court of Appeals No. 41088-5-II

Husband and wife) Lewis County No. 09-2-00711-8

Respondents)

v.) DECLARATION OF SERVICE

JOHN J. HADALLER)

An individual)

Appellant)

COURT OF APPEALS
DIVISION II
11 JAN 10 AM 9:29
STATE OF WASHINGTON
BY
DEPUTY

Clarence J. Hadaller, Declares as follows;

That I am now and all times here-in mentioned, was a citizen of the United States of America and a resident of the state of Washington over the age of eighteen (18) years, and not a party to the above action and competent to be a witness therein.

That on the 7th day of January 2011 I served the following documents:

- *DECLARATION OF SERVICE*
- *APPELLANT'S OPENING BRIEF*

On the following, by the indicated method of service.

To:

David A. Lowe

Black,Lowe & Graham pllc

701 5th Ave. STE 4800

Seattle, Wa. 98104-7009

e.-Mail U.S.Mail Personal service

The fore-going statements are made under the penalty of perjury under the laws of the state of Washington and are true and correct.

Signed this 7th day of January 2011 at Mossyrock, Wa.



Clarence J. Hadaller