

41088-5-II
COURT OF APPEALS
DIVISION II

FILED
JAN 23 2017
STATE OF WASHINGTON
BY
DEPUTY

OF THE STATE OF WASHINGTON

PAM and DEAN ROCKWOOD

Husband and Wife, Respondent

v.

JOHN J. HADALLER

An individual, appellant

APPELLANT'S REPLY BRIEF

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Appellant Pro Se

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I. INTRODUCTION

Respondent Dean and Pam Rockwood's (Rockwood) Response requires this reply brief, to straighten the Rockwood's obfuscation of the facts and interpretation of the law.

II. RELATIVE BACKGROUND

A note of reminder is due that the Rockwood's attorney, David A. Lowe (Lowe) has personal interest in the subject property. He approached the Rockwood's in the spring of 2009 and propositioned them for an easement across the subject property to access a sub-dividable parcel he owns that he is attempting to force an easement to, contrary to RCW 58.17.215 and LCC 16.10.230. That is an issue in two other co-pending cases in the Trial Court and in the Appellate Court for review. Lowe offered and the Rockwood's accepted to trade the easement for his fees in this suit. This suit accomplished nothing more than what was already progressing as fast as it could, except Lowe received over \$50,000.00 and climbing, for creating this frivolous suit. The more he increased the costs, the less the Rockwood's and himself¹ paid Hadaller, in funds to payoff the underlying \$109,000.00 mortgage on the subject property. By August 6, 2010 an improper \$49,178.84 reduction in the Lowe R.E Contract he owed

¹ Lowe's real estate contract with Hadaller was being spent on obtaining himself an easement.

Hadaller, had gone back to the Lowes in the form of attorney fees, damages, and of course Lowe received the last piece of an easement that accesses his sub-dividable parcel that presently is accessed by a separate single family easement. Hadaller invested \$388,619.00 into building a road and utilities into phase 2 of his development under the assumed protection of a first right of refusal, Lowe sneakily befriended Hadaller then misrepresented an agreement to finish the plat together with Hadaller by Lowe buying the developable property, then behind Hadaller's back he, purports to have, organized a new Homeowners Association government and rearranged, illegally, the easements in Hadaller's plat, to his benefit, reneging on his misrepresented agreement to work together with Hadaller completing the development. The illegal easement trades and his outrageous new by-laws and CCR's and misrepresentations are the subject of Hadaller's quit title, specific performance suit and the suit brought by Lowe in the name of the Home owners Association. In other words the Courts have a royal mess to straighten out. Hadaller or whoever owns Hadaller's home, legally holds rights to access potentially 24 more new home sites to Mayfield Lake. Lowes obvious mission: own Hadaller's home by created legal actions resulting in judgments. Hadaller has invested his entire lifes worth into this project, for five years before Lowe attacked, under the assumption he had a good income to support his

family in his small rural home town. That easement trade was recorded on August 17, 2010 and is subject to a quiet title action, pending below. Lowe is acting as the Homeowners Association attorney and President². (the Rockwood's were not HOA members), that Hadaller is a member and declarant of. Lowe bought three lots from Hadaller, which was financed by Hadaller by a real estate contract. At this time he has created two suits against Hadaller with him representing the "plaintiff". Also has overburdened the easements in the plats Hadaller is developing which caused a quit title action against him, the Rockwood's and three other owners Lowe has propositioned to illegally trade their easements in the plat. So far he has created \$100,000.00 in "fees" due to him which has pretty much paid off his lots, if these appeals are upheld. Hadaller was relying on that income to pay his development cost. The Trial Court has handed them to him like Halloween candy. He reduced his debt to Hadaller³ by \$49,178.84 as of August 13, 2010 in this case. Hadaller's home is in the development and is situated so it controls the easement and is on the best part of the lakefront with 400 feet of lake front that provides

² At least until appeal No. 40426-5-II is complete.

³ Hadaller has accrued over \$88,000.00 in attorney fees on his end. He cannot afford to hire another attorney, thus he is pro- se until this is over, which is obviously going to be several more years by the time the property disputes, appeals, fallout of the RPC's and negligence is completed. Hadaller apologizes again for subjecting the Court to his ignorance of procedure and will do the best he can to comply. Hadaller writes in third person for clarity ,and to conform with the normal sound of a brief.

the only real access to the Mayfield lake in the development. Lowes obvious goal is to create enough judgments against Hadaller to foreclose on that. The more judgments he creates by causing suits, this is one, for his benefit i.e. improperly claiming control over the Homeowners Association, challenging the ownership of Hadaller's water systems, illegally trading rearranging the easements, rewriting the CCR's and creating by-laws in the plat that purport his authority to simply walk in and assume Hadaller's investment without due compensation, give him a steady venue of cases, those will be coming up most likely given his obvious favor with the only local judge⁴ that can hear the cases from conflict of interest of the two new judges. Hadaller certainly was intending to appeal this whole case and certainly felt it would have been sent back for serious revision.

At the August 7, 2010 summary judgment in this case, the Court refused the proposed order inferring a different form would work better in case of appeal. Then in April 26, 2010 entered what was held by this Court to be a final judgment which was drafted as an award of attorney

⁴ On judge, when he was an attorney, camped at Hadaller's old campground Hadaller's, which was managed by his wife who befriended him Hadaller approached him about representing his divorce and they had a difference of opinion, he was also a partner in the firm opposing Hadaller in the first right of refusal case, Hadaller recused him. The other judge assisted Hadaller against Tacoma power in his quest to obtain dock rights. He recused himself

fees, in the midst of the suit. There was still much at issue. Substantial rights were determined and several hearings were held after the order was entered. The Court virtually doubled the "Damages" and handed out fees in that time . Included in the "damages" was an \$8,000.00 award to the Rockwoods, at Hadaller's expense for what they claimed was for the loss of the first time home buyers IRS rebate. At the time the option was created and then exercised five years later, the IRS program was not even in effect yet. It was in effect at the time the sale closed and according to the rules the sale may not qualify because it wasn't in effect when the sale consummated or was elected to purchase otherwise they were eligible and Hadaller should not have had to pay that. Also the Rockwood's brought a motion to hire a third party agent, who was the surveyor, the plat was totally physically complete by Hadaller, the surveyor, Butler surveying, had to prepare the final plat map and have it approved by the several County agencies. That was probably one of the most closely scrutinized reviews done by the County everything was reviewed and commented by the prosecutor to reduce the risk of suit to the County. That was the only work left to be done and was in the surveyors contract anyway, except the extra time dealing with David Lowe, virtually weekly sometimes daily basis, which Hadaller received a \$775.00 bill for . Hadaller did not object to the Court making Butler the third party agent, other than to clarify he

was to not create extra expense. However, the order placing the third party agent, was not served to Hadaller with the motion, in it was a provision granting the Rockwood's a \$100.00 a day penalty as damages. That provision was not mentioned in the motion, nor was a word pled by Lowe for it at the hearing. Hadaller did not sign off or obtain a copy of the order entered that day, which was his usual practice, then. At the subsequent hearing two months later the award was mentioned, already awarded in the final accounting and attorney fees order. " Hadaller objected, filed a motion to vacate but was denied. That typical Lowe, sneaky action rewarded Lowe , reduced Rockwood's price, further paid Lowes easement, and Cost Hadaller \$8,800.00.

This case arose out of an option to purchase leased real estate contract described on Pages 3-8 of Appellants Opening Brief.

The thing that sticks in the craw of Hadaller is, the option agreement contained an obvious provision, by the asterisks shown on the document, (CP 383-386) to provide the short plat procedure time agreed upon. The Rockwood's submitted fraudulently altered copy with the asterisks removed⁵(CP 209,210 Ex C of complaint). The Court by summary judgment viewed that document and argument that, the home was being

⁵ There were two originals each had a notarized copy. Hadaller has his original that can confirm

sold exactly as the option provided, the Court found specific performance of something already happening, That is like dripping yoke on a yellow bib, there was no finding of improper procedure of Hadaller. Then the Court provided for fees and damages for what Hadaller was already doing per contract .

Hadaller finally⁶ received his permit from the County public works Dept. to build the road on September 28, 2009 and began construction of that and the water system, on October 10, 2009 he had those physically completed and approved by his engineers and submitted to the County for approval by December 21, 2009. During the time Hadaller was constructing those facilities the Rockwood's and their interested neighbor Randy Fuchs, who is in cohorts with Lowe,⁷ did everything in their power to stop or delay his progress, through David Lowe. Lowe brought and was granted motions in the Court to require Hadaller to obtain permission from the Court to work on the water system, which they opposed when Hadaller did apply for permission, his motion was denied "because the

⁶ This road suffered review and comment regarding eagle nest, crossing wetlands, and a stream that empties into a lake within several hundred feet, Lewis County public works concentrates on their own road repair in th summer months developing takes a back seat. Hadaller and the Rockwood's, like all others has, is subject to those facts and have no control of them.

⁷ Fuchs pronounced "fox "owns a lot in the plat contiguous to the west side of the Rockwood's and a large developable parcel contiguous to the east that would at least double in value if and when it obtains access through or becomes part of the plat to the Lake. There is little doubt in Hadaller, that Fuchs brought Lowe and they have a common end.

relief requested was in his declaration, not his motion, requiring subsequent hearings to properly proceed , Hadaller proceeded and was found in contempt and fined \$1400.00. They succeeded at obtaining stop work orders that had to be proven improper, delaying road construction. The County and Surveyors would have completed their work much faster without Lowe breathing down their neck causing concern for a suit against them if it was not letter perfect. This suit actually delayed the process that would have been completed months prior. Why was this an appropriate case to award all those fees and “damages”? Suffice it to say, Hadaller was definitely going to appeal!!! But the craftiness of the final judgment unknowingly, to this unaware forced Pro Se defendant, was going to prevent that appeal.

III. REPLY SPECIFIC TO APPEAL

This Appeal is unfortunately reduced to beginning at the June 18, 2010 hearing, which resulted in an order the Court later found Hadaller was in contempt of. (unless the Appellate Court has authority to allow a full appeal at its discretion, in which case Hadaller moves for that relief)

In Reply to Rockwood’s version of the events, regarding the contempt. The June 18, 2010 hearing was scheduled to argue the \$8,0000.00 first time home buyers credit and compel Hadaller to sign a

new purchase and sale agreement to meet the needs of Rockwood's lender. Hadaller would not sign the proposed new purchase and sale agreement because it stated a price that was not correct. It stated the court ordered reduced price was the agreed upon amount without any reference to the offsets regardless of anything else .(Appl. Brief Pg. 9-10) As stated Hadaller was certain of appeal and was hopeful the awards of damages and or fees would be reversed. Hadaller was very concerned about the Rockwood's being able to provide a cash return if the appeal was successful and if he needed to take action against the Rockwood's to recoup his those expenses his rights to do so would have been seriously prejudiced if their lender had a purchase and sale agreement in their file stating he had actually agreed to the reduced amount of sale, period. Also the option agreement contract that created the sale was appropriate to legally to sell the property, as far as the closing agent was concerned and there was no provision to change anything to meet the needs of the Rockwood's lender. Therefore there really was no legal or equitable reason to sign such an agreement. As is stated in Hadaller's brief, he did say he would agree to a purchase and sale agreement stating, as he and the Court both agreed should read.(Brief Pg 9,10).. The Court concluded the language in the new agreement would state the offsets, Hadaller readily stated he would sign such an agreement. The courts language pointed

out in the Rockwood's response Brief (@ pg 9,10,11, 12, 15) was not warranted by the facts, Mr. Lowe either has Judge Brosey completely buffaloeed or something else is causing his prejudice that he displayed through this case from the every beginning. The Court's misguided improper view supplemented the bases for the unwarranted awards of fees and "damages" and ultimately contempt. Hadaller had a right to have a purchase and sale agreement that reflected the true conditions of sale and he had a right to argue whether the first time home buyers credit penalty, the Rockwood's had placed into each order without even arguing for several hearings, was warranted., the award of that is flabbergasting. It is especially relevant that by the June 18, 2010 hearing unbeknown to Hadaller the Court and Rockwood's had considered Hadaller had no right to appeal those awards. When he did try to appeal he was refused for an untimely appeal.

However important to considering contempt is the Rockwood subsequent June 25, 2010 proposed purchase and sale agreement, as per the June 18 hearing, contained the exact same language as the first proposed purchase and sale agreement. It did not reflect what the Court found it to state and Hadaller agreed to in the June 18, 2010 hearing See Pg 11-12 of Appellate Brief.

Contrary to Rockwood's response, on June 18, 2010 the Court increased the awards to the Rockwood beyond Hadaller's expected and ability to pay. The Rockwood's statement in its response, [Hadaller admitted having the ability to pay in the June 18, 2010 hearing then immediately claimed he did not.] is misleading. Actually Hadaller was sure he could obtain the amount due to pay off the offset at the time of the hearing but at the end of that hearing, after Hadaller stated he could pay the amount due, the Court increased that amount by \$17,797.00 which made it impossible for Hadaller to obtain, Pg 10- 11. of brief. Hadaller was not totally aware of that fact until after the final loan refusal, on July 1.

David Lowe took a notice of absence for late June – mid July causing a great delay at Hadaller's \$100 per day expense.

The real facts ,about the "facts," set out by the Rockwood's response regarding: [Hadaller transferred his assets to his "girl friend"] . The asset referred to is a real estate contract that paid Hadaller monthly payments made between Hadaller and David and Sherry Lowe. Lowe had a penchant to create ways to prevent him having to pay that contract. He garnished it in June of 2009 and February of 2010. That contract was getting to be a headache for Hadaller, it attracted law suits. When it was garnished in February, Hadaller attempted to sell the contract to Skip Foss et al a

broker that transfers them to investment groups, he gave a \$73,743.87 preliminary offer for the estimated \$80,000.00 balance. When Skip Foss looked closer their price dropped to \$40,000.00. That was too large a discount to take. At that time Hadaller was indebted to Deborah Reynolds for the labor and investments she had placed into the development from January 2004 to the present. That work was done under an agreement she would receive 30% of the receipts of the lots sold from the plat she was to (and did) refinance her property with the intent of helping to purchase lot two of survey.

Lowe bought lot 2 of survey with Hadaller's and Reynolds road and utilities in place from the owner who had a first right of refusal to sell that property to Hadaller. Reynolds had worked for years without receiving the pay anticipated from the end of the plat or consideration of a matritious relationship on the property that was disappearing before her eyes she realized she may never see her return for her great investment. Accordingly she offered and Hadaller accepted her offer to take the real estate contract as trade for part of her investment. They agreed upon a price in April and Hadaller was to transfer it as soon as the garnishment was removed again. That was accomplished in June of 2010 and on June 18, 2010 the real estate contract was transferred to Reynolds and recorded.

Lowe was noticed, contrary to his statements made in his brief and in open court at the August 6, 2010 hearing.

The Courts summary finding that was a fraudulent transfer based on Lowes five minute false statement with no supporting documentation, was improper, **Especially when Hadaller held and offered other good and valuable consideration** as security for the debt found to be owed pending appeal at that time. The “fraudulent transfer” issue is for an upcoming trial. (Appellant Brief Pg. 15-16)

In a previous law suit brought by Lowe; Hadaller at the same time as attempting to sell the real estate contract had pled to use the real estate contract for supersedeas in, April –May of 2010 (2 months prior to this Rockwood case), at that time, Lowe opposed and the Court adamantly found, the real estate contract was not going to be used for supersedeas. In the previous suit, the Court, after Hadaller’s argument to use the final portion of the principle of the real estate contract, accepted a deed of trust on two of Hadaller’s building lots for supersedeas. That is why Hadaller in this case, led with the same ready to use lots with \$79,000.00 remaining balance left, proven. That equity was proven, before the same Judge, by title report and appraisal in the Mayfield Cove Estates H.O.A. v. Hadaller in May, the Court allowed entry of that by deed of trust for \$65,000.00 as

alternate supersedeas .(CP 32 L. 21- CP 34 L2) Hadaller had no means to gather from that history in May of 2010, they would change their position in August of 2010. (App Brief Pg 13-15)

The August 6, 2010 hearing, in this case, for contempt was the first hearing regarding how the great short fall created by the June 18, 2010 hearing was going to be financed. Contempt, at that time, was not appropriate. (Appellant Brief Pg. 15- 16)

The Rockwood's draft of the August 6, 2010 order, which they state is what the Court ordered:. The Courts exact words from his findings regarding how Hadaller was to close that sale by August 13,2010 is stated (RP 8/6/10 Pg 26 L. 16- 24) Hadaller did comply with those findings on August 12, 2010. Again, at that August closing the purchase and sale agreement language it was contrary with what the Court held on June 18 Contrary to hadaller's argument and what the Court held on June 18, it still read that Hadaller agreed that \$61,238.00 was the correct agreed upon sales price, it should have, but did not, include reference to the offset amount. Rather that jeopardize his right to preserve his ability to recoup that from the lender, if it came to that, Hadaller used the option provided by the Courts August 6, finding (RP 8/6/10 Pg 26 L. 16-24) of the attorney. He called and arranged the attorney in fact and paid the attorney

in fact specifically for that purpose. (CP 63, 59, 61) The sale closed on August 12, 2010. Within the time required by the August 6, 2010 order. **If** Hadaller was in contempt it was purged at that time.

The Rockwood's (their attorney actually) wasn't satisfied with that, he filed a motion for more damage to Hadaller to forward his cause he has been on since January of 2009, to create enough judgments to own Hadaller' lakefront property, with all the easement control it holds.

He brought a motion docketed for September 3, 2010 claiming the contempt was not purged and the actions taken by Winston Quarry and Deborah Reynolds were Hadaller's design to prevent the sale.

Deborah Reynolds is a 50 something year old, educated, obstinate, self minded individual with her own cause, bank account, phone, property and bills. Hadaller has business relations with her, but no control over her actions, she could is likely to live in her own owned separate house in another county at any time. Nor can he be held responsible for her actions, he did not cause her to file a claim on her contract with the Court she did that on her own, in her own interest. Hadaller should not be held accountable for her actions.(Cp 51 L. 7-14)

Bart Lyons, Winston Quarry, judgment was for supplies to the property, he had his own interest. Hadaller had no control over him either. Hadaller received no notice of the judgment, Bart Lyons and him had an agreement to worked out for less than half what the judgment amount became far as he knew. (Appellants Brief Pg. 19,20) (CP 51 L. 15 – CP52 L 7)⁸

Hadaller also had no control over the closing “funds.” The Court ordered the Lowes to place the required amount and reduce it off their contract. The Lowes were in complete control of that. Hadaller caused no contempt there either.

Hadaller’s lis pendens was not filed prior to the transaction closing, The sale closed the morning of August 12, 2010 Hadaller filed his notice of appeal and recorded his Lis Pendens subsequent to the closing that same day. That did not impede the close of the sale. (Appellant’s brief Pg 17)

Hadaller met with Lewis County Prosecutor Brad Meager, (360) 740-1240 ,who confirmed the repeated requests Lowe made for a charge of

⁸ Prior to about that time Hadaller had a thirty year credit history without a single 30 day late payment. He had a Performance bond for his construction company , Lowes actions has damaged that seriously. Hadaller’s CPA prepared 2009 prepared financial report to his bond confirmed Hadaller’s net assets to be over \$700,000.00. Now they are below \$100,000.00 (Hadaller no longer can afford a CPA) partially because of Construction contract losses and devaluation of real property due to the economic recovery period the country is in. But mostly because of this hostile takeover attempt by Lowe Fuch’s

contempt. Hadaller was told he referred the cause to a sheriff detective who interviewed Judge Brosey, the detective reported it wasn't wanted to be pursued, Meager told Hadaller "I wouldn't worry about it." What does that mean?

IV. CONCLUSION

The law and argument set forth in the Appellants brief cites the same law as the Rockwood's response law and citations. The only difference is the interpretation of the law. How the law is applied is a job left for the Court.

The Rockwood's interpretation sums up the law that upholds due process for contempt as "nonsensical" for a law system, like the United States enjoys, to require an accused contemtor of contempt to receive a trial by jury, prior to being punished by fine as well as jail.

The question whether Hadaller was actually in contempt of the June 18, 2010 order is in the discretion of the Trial Court and this Court is being asked to decide whether the Court abused its discretion when Hadaller:

(a) had a valid argument regarding the language the Court found (not Rockwood's interpretation of it) the purchase and sale agreement should read which argument needed resolution fairly for the closing?

(b) did Hadaller have the means within his control to finance the sale on June 30, 2010 considering the \$17,797.00 sudden increase on June 18, 2010? Did it amount to contempt to go into Court on August 6, 2010 to have the Court find the same asset would be used to indemnify the offset as was ,two months previous, used in a co-pending case in an argument over the same two assets, which neither were within Hadaller's control to use to pay the offset on June 30, 2010 . He had two options In April-May, he argued to use the real estate contract then, the Court chose the lots then, finding the Real estate contract was not good security because the Lowes could default or it could change in many ways to become insufficient value. .(CP 32 L. 21- CP 34 L2)

This Court is asked to find as a matter of law:

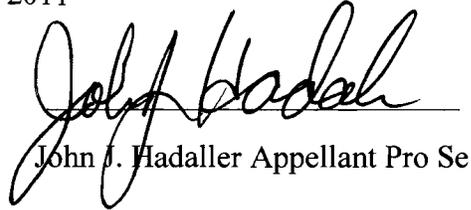
(c) did the imposition of the \$10,000.00 fine upon Hadaller become a criminal contempt by law, when the sale closed by the provisions of the August 6, 2010 order? The Coercive effect was accomplished At that time any finding of contempt should be purged, the question then becomes whether the events surrounding that closing was caused by Hadaller? And

did they violate the August 6, 2010 order to a degree to become contempt?

Are not these questions for a jury per the Washington Constitution?

Those are not “nonsensical” questions in Hadaller’s opinion. The Court should find Hadaller cannot be fined until a jury finds he did not purge the contempt.

Respectfully submitted March 26, 2011



John J. Hadaller Appellant Pro Se

COURT OF APPEALS OF THE STATE OF WASHINGTON
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PAM and DEAN ROCKWOOD) Court of Appeals No. 41088-5-II
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v.) DECLARATION OF SERVICE
JOHN J. HADALLER)
An individual)
Appellant)

FILED
MARCH 29 2011 2:00 PM
CLERK OF COURT
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 26 ,day of March 2011 I served the following documents:

- *DECLARATION OF SERVICE*
- *APPELLANT'S REPLY BRIEF*
- *FOURTH SUPPLEMENTAL DESIGNATION OF CLERK'S PAPAERS*

On the following, by the indicated method of service.