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COURT OF APPEALS
DIVISION II
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No. 44154-3-II

No. 45264-2-II (consolidated)

Cowlitz County Superior Court Cause No. 12-2-00237-2

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

KATALIN K. NYITRAI

Appellant,

vs.

JEREMY GOODSON, dba GOODSON PROPERTIES,

Respondent.

Respondent's Brief

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TABLE OF AUTHORITIES

Cases

1. Cook v. Vennigerholz, 44 Wn.2d 612, 269 P.2d 824 (1954).
2. Nguyen v. Sacred Heart Medical Center, 97 Wn. App. 728, 987 P.2d. 634 (1999).
3. Saunders v. Lloyd's of London, 113 Wn.2d 330, 779 P.2d 249 (1989).
4. McDaniels v. Carlson, 108 Wn.2d 299, 308, 738 P.2d 254 (1987).
5. Myers v. Cook, 87 W.Va. 265, 104 S.E. 593 (W.Va. 1920).
6. Smyth Worldwide Movers, Inc. v. Whitney, 6 Wn.App. 176, 491 P.2d 1356 (1971).
7. Spokane v. Spokane County, 158 Wn. 2d 661, 146 P.3d 893 (2006).

Statutes and Court Rules

1. CR 2A
2. RCW 59.18.270
3. RCW 19.36.010
4. CR 81
5. RAP 8.9

ii.

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3 I. STATEMENT OF THE CASE

4 Respondent does not dispute the factual recitation in Appellant's Brief, but to clarify,
5 although the Order of Default, Judgment and Order Granting Specific Performance, entered by the
6 Cowlitz County Superior Court on April 6th, 2012 [CP 9] was vacated in May, it was reinstated
7 and incorporated into the Settlement Agreement and Order Quieting Title and Dismissal, entered
8 September 18th, 2012 [CP 35], which is the Order here under appeal.

9 On the morning trial was to begin, on August 20th, 2012, an oral settlement of the case was
10 reached, and recited into the record. A verbatim transcript is on file. Shortly after this August 20th
11 record was made, on August 22nd, 2012 in fact, counsel for Respondent prepared a proposed
12 Settlement Agreement [CP 32] restating the terms of the August 20th oral agreement on record.
13 Citation for its entry was set for September 4th [CP 31]. Both citation and proposed order were
14 served on Appellant and filed with the Superior Court on August 23rd, 2012 [CP 32].
15

16 Judge Bashor cancelled his September 4th, 2012 docket. An Amended Citation [CP 33]
17 was filed and served [CP 34] re-setting the hearing for presentation to September 18th. Putting this
18 timeline in context, Appellant had from August 23rd, 2012, to September 18th, 2012, to review and
19 object to any provision in the proposed Settlement Agreement which she found unacceptable.
20 Appellant is not now, nor has ever, denied that she had adequate notice and opportunity to respond,
21 yet she made no attempt to contact the Court, or Respondent's counsel, to advise of her objections
22 to any aspect of the proposed Order prior to its entry. To this day, she gives no explanation for
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1 her lack of response to the proposed settlement Order [CP 32].

2 II. ARGUMENT – ISSUE 1

3 The first issue on appeal is that the Trial Court acted without authority when it signed a
4 written “agreed” Order of Settlement [CP 35] when the Order did not bear the signature of
5 Defendant or her attorney. Appellant’s argument centers on the interpretation of CR 2A. CR 2A
6 states:

7 “No agreement or consent between parties or attorneys in respect to the proceeding in a
8 case, the purport of which is disputed, will be regarded by the court, **unless the same**
9 **shall have been made and assented to in open court on the record**, or entered in the
10 minutes, or unless the evidence thereof show in writing and subscribed by the attorneys
11 denying the same”. (Emphasis added).

12 Appellant’s argument focuses on the last portion of this rule, “subscribed by the
13 attorneys” and ignores the first portion.

14 In the present case, the Settlement Agreement and Order [CP 35] fully complied with CR
15 2A. It was put on the record, in open court. An Agreement, once so memorialized in accordance
16 with CR 2A, is binding on the parties and the court. *Cook v. Vennigerholz*, 44 Wn.2d 612, 269
17 P.2d 824 (1954); and will not be reviewed on appeal unless the order was procured by fraud or
18 by an attorney who overreached his authority. *Nguyen v. Sacred Heart Medical Center*, 97 Wn.
19 App. 728, 987 P.2d. 634 (1999). Appellant has made no claim of fraud, nor that her attorney
20 overreached. Indeed, she was present when the agreement was negotiated and her attorney put it
21 on record.
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1 Appellant is not claiming that she did not have the opportunity to review the proposed
2 written Agreement; nor that she was unaware of the presentation hearing [CP 32 and 34]. If she
3 did not agree with the proposed order [CP 32], she had an obligation to speak. Her silence
4 implies consent. Saunders v. Lloyd's of London, 113 Wn.2d 330, 779 P.2d 249 (1989);
5 McDaniels v. Carlson, 108 Wn.2d 299, 308, 738 P.2d 254 (1987); Myers v. Cook, 87 W.Va. 265,
6 104 S.E. 593 (W.Va. 1920).

7 Neither of the two cases cited by Appellant, in support of her contention that an unsigned
8 agreement is not enforceable, are applicable. Both Bryant v. Palmer Coking Coal Co. and Long
9 v. Harrold involved agreements that were negotiated outside of the court, and were never put on
10 any record in open court. Both cases involved agreements which one party believed had been
11 mutually assented to, but when reduced to writing, were not signed. The rulings in those cases
12 held, correctly and consistently, that neither agreement complied with CR2A and, therefore, was
13 unenforceable.

14 The difference between those cases and the present one is obvious. In the present case,
15 an agreement was negotiated in an anteroom outside the courtroom on the morning of trial. That
16 agreement was immediately thereafter put on the record in the presence of the court. The written
17 embodiment of that agreement [CP 35] incorporated the terms put on the record. Thus the
18 September 18th, 2012 order precisely complied with CR2A. There were however, some
19 additional terms and clarifications introduced in the written agreement which is the subject of
20 Appellant's ISSUE 2.
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III. ARGUMENT – ISSUE 2

The second issue argues that the September 18th Order must be vacated because it did not correctly state the substance of the August 20th agreement. The September 18th Order [CP 35] contains provisions which allegedly deviate from the record made the morning of August 20th, 2012. Appellant numbers five, but actually presents seven such provisions. We will address each of these in turn, but four overarching points should be kept in mind. First, it is rare that settlement discussions negotiated on the proverbial “courthouse steps”, resolve every aspect of a case. Afterward, when these other aspects are considered, refinement and sometimes additional terms are necessary for a comprehensive resolution. As a result, the written embodiment of an oral agreement is seldom, if ever, a line by line recitation of the court record.

Second, as previously established, her silence implies her consent to the Order as proposed and, on September 18th, 2012, presented to the court. She made no objection to any of the provisions of this Order deviating from the oral settlement put on the record, in spite of the fact that she had almost a month to consider them.

Third, none of the added provisions contradicted or altered the basic oral agreement. They were directed solely toward issues overlooked, or that were necessary to fulfill the agreed obligations. They changed nothing of what had been put on record.

Fourth, if the added provisions were entered without authority, the remedy is to strike the added provisions, not void the entire Order.

Turning now to each of the alleged discrepancies: the first two are not specifically numbered, but are introduced in Appellant’s brief. They are that, in the oral agreement of

1 August 20th, Appellant's counsel was to prepare the transfer documents for the so called "fourth
2 property" (the fourth property is described in paragraph #2 of the 9/18/12 Order [CP 35]); and
3 would review the closing documents regarding the first three properties (these three are
4 identified in the April 6th, 2012 Order [CP 9]).

5 The closing documents to the first three had been prepared by Cowlitz County Title
6 Company in the aftermath of the Order of Default entered the previous April 6th, 2012 [CP 9].
7 Respondent did not prepare nor had copies of these documents. Appellant's counsel only needed
8 to contact Cowlitz County Title Company, any time after August 20th, and request copies for his
9 review. It is unknown whether any such contact was attempted, but the Order of September 18th
10 in no way precluded Appellant's counsel from obtaining and reviewing said documents.

11 As to preparation of documents regarding transfer of the fourth property, terms of the
12 transfer were specifically set forth on the record of August 20th. The Order of September 18th
13 accurately reflects these terms. Nothing in the September 18th order precluded Appellant's
14 counsel from drafting the transfer documents. Appellant's counsel had from August 20th to
15 September 18th, and, in fact, any time after September 18th, to prepare what documents he felt
16 were proper. Appellant's counsel's firm chose not to prepare these documents, or if they did
17 intend to prepare them, they did not advise Respondent or Cowlitz County Title Company as to
18 when the documents would be done. Thus, Appellant's argument is disingenuous on both these
19 points. Appellant wants the Order [CP 35] vacated because neither she nor her attorneys did
20 what they said they would do.
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22 As to the enumerated additions:
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1 1. Start date of payments – The Settlement Agreement incorporated the April 6th Order. [CP
2 9]. Neither it [CP 9] nor the August 20th oral agreement fixed a start date for
3 Respondent’s payments. This again is one of those issues that was not addressed, or even
4 considered, by the parties, negotiating the settlement on the morning of August 20th. To
5 clarify and resolve this issue, which was essential to the overall settlement, a start date for
6 payments was included in the Settlement Order [CP 35], to coincide with the closing on
7 the fourth property.

8 2. Rents - Under the April 6th Order [CP 9], title to the first three properties vested in
9 Respondent. All four properties involved in this proceeding are rentals. At the time the
10 settlement was put on the record on August 20th, neither party thought to address the
11 issue of rents for the preceding six months. After the oral agreement was put on the
12 record, and the court adjourned, while the parties were exiting the courtroom, Respondent
13 asked about rents. Appellant denied that she had received any rents (which was untrue).
14 Counsel for Respondent advised counsel for Appellant that he would look into what had
15 been happening to the rents and address them in the written agreement.
16

17 It was subsequently learned that, contrary to her assertion, Appellant had been
18 collecting rents on all four properties since the April 6th Order [CP 9] was vacated on
19 May 18th, 2012 [CP 18]. The August 20th, 2012 agreement (and reflected in the
20 September 18th Order [CP 35]) reinstated the April 6th Order [CP 9]. Respondent could
21 have taken the position that he was entitled to all rents from April 6th, 2012 onward.
22 However, as a concession to Appellant, the Order as presented to Judge Bashor [CP 35]
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1 allowed Appellant to retain the rents she had collected, rather than disgorge them. This
2 provision is clearly favorable to Appellant, but she is now using it as a basis to undermine
3 the entire Agreement.

4 3. Security deposits - It is Landlord's statutory obligation to transfer tenant's security
5 deposits as part of the sale of residential rental property. RCW 59.18.270. These are
6 tenant's money, not the landlord's. The landlord must hold these monies in a separate
7 trust account and account to the tenant for these deposits upon termination of the tenancy.
8 When a landlord sells or otherwise disposes of leased property, the tenant's deposits must
9 transfer to the new landlord. This is necessary for a smooth and equitable transition. The
10 addition of this statutory mandate into the September 18th, 2012 Order [CP 35] is hardly
11 grounds to vacate it.

12 4. # 6 of I. SETTLEMENT AGREEMENT [CP 35]. This provision was not specifically
13 included in the August 20th record. On the other hand, neither does it contradict any of
14 the terms of the August 20th agreement. It simply extends the alternate mechanism for
15 closing to the fourth property, which mechanism was already contained in the April 6th
16 Order (CP 9) and which was, by express agreement on August 20th, incorporated into the
17 August 20th settlement.

18 5. #3 of II. ORDER [CP 35]. This inclusion is nothing more than a restatement of the
19 Court's inherent power to resolve disputes and award fees in appropriate circumstances.
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21 IV. ARGUMENT - ISSUE 3

22 The third issue being urged to void the September 18th, 2012 Order [CP 35] is that it fails
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24 -7-

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1 to conform to the statute of frauds, RCW 19.36.010, because some of its obligations cannot be
2 performed in one year. Parenthetically, the agreement also involves the conveyance of real
3 property, yet another species of agreement falling under this statute, but Appellant makes no
4 mention of this.

5 This is a novel argument. After extensive research, no case has been found wherein a CR
6 2A agreement, put on the record in open court, and subsequently formalized into a written order
7 of court, was held unenforceable because of the statute of frauds. Indeed, Appellant cites none.
8 The primary case cited by Appellant is Klinke v. Famous Recipe Fried Chicken, Inc., 24
9 Wn.App. 202, 600 P.2d 1034 (Wash.App. Div. 2 1979). However, that was primarily a case
10 involving estoppel. There is discussion of the statute of frauds and the requirement of a writing
11 for contracts that cannot be performed in one year, but its facts have no similarities to the case at
12 hand. The negotiations between Mr. Klinke and Famous Recipe Fried Chicken, Inc. were never
13 put on a court record and never became an order of court. There is no guidance whatsoever in
14 this, or any other case cited by Appellant, to apply the statute of frauds to CR 2A agreements.
15

16 Beyond the lack of judicial precedent, or any cited authority, applying the statute of
17 frauds to agreements under CR 2A would undermine the very purpose of CR 2A. Under
18 Appellant's reasoning, any agreement, put on the record in open court, which contains provisions
19 which violate the statute of frauds, could never later be reduced to an enforceable written order,
20 if one party has a change of heart and refuses to sign the written order.

21 CR 2A stipulations are looked upon with favor by the courts. Smyth Worldwide Movers,
22 Inc. v. Whitney, 6 Wn.App. 176, 491 P.2d 1356 (1971). To allow a party to disregard a
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1 stipulation made in open court, and approved by the court, renders CR 2A meaningless.

2
3 The statute of frauds, RCW 19.36.010, et seq., is a statutory enactment. CR 2A is a court
4 rule. CR 81, another court rule, states:

5 Rule 81 – APPLICABILITY IN GENERAL (b) **Conflicting statutes and rules:**

6 Subject to the provisions of sub-section (a) of this rule, these rules supersede all
7 procedural statutes and other rules that may be in conflict.

8 Thus, CR 2A supersedes RCW 19.36.010. Case law supports CR 81. When a court
9 rule conflicts with a statute, the court rule will prevail. *Spokane v. Spokane County*, 158 Wn. 2d
10 661, 146 P.3d 893 (2006).

11 V. REQUEST FOR ATTORNEYS FEES

12 Appellant's entire argument, and indeed the appeal itself, lacks any basis, in law or fact.
13 It is, by any definition of the term, frivolous. Frivolous appeals should be sanctioned. RAP 8.9.
14 An appropriate sanction here is an award of attorneys fees in favor of the Respondent.
15

16 If the appellate court does not find the entire appeal frivolous, then, at the very least, the
17 second consolidated appeal, No. 45264-2-II, the portion dealing with Judge Bashor's denial of
18 appellant's motion for reconsideration, most certainly is. So lacking in substance was that
19 second appeal, that Appellant did not even attempt in her brief to argue its merits.

20 VI. CONCLUSION

21 The first issue on appeal should be decided in favor of Respondent. The procedure
22 leading up to the Settlement Agreement and Order of September 18th, 2012 [CP 35], is a classic
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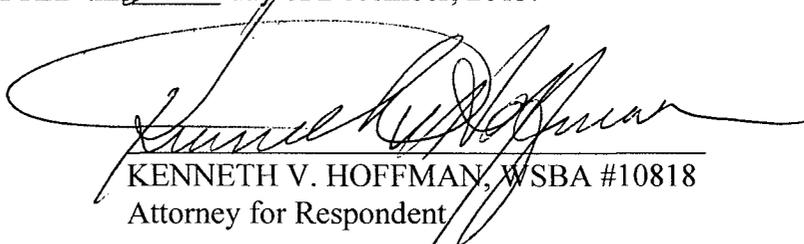
1 example of how CR2A agreements, intended to save trial time, are to be handled. The Order [CP
2 35] was properly entered as an order of court, and should be upheld.

3 As to Issue #2, admittedly there were minor inclusions in the final order which were not
4 specifically set out in the oral record of August 20th. However, none of these additions altered
5 the terms of the August 20th; they facilitated consummation of the agreement of August 20th on
6 the record; were not objected to by Appellant, in spite of having a month to consider them; and,
7 even if these additions are somehow improper, the remedy is to void those additions, not vacate
8 the entire agreement.

9 The third issue has no judicial precedent. CR2A overrides Washington's statute of
10 frauds. To hold otherwise abrogates the purpose of CR2A, in some contexts.

11 The appeal should be dismissed. The order of September 18th [CP 35] should be
12 affirmed. Respondent should be awarded his costs and reasonable attorneys fees in having to
13 respond to this meritless presentation.
14

15 RESPECTFULLY SUBMITTED this 20th day of December, 2013.

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17 
18 KENNETH V. HOFFMAN, WSBA #10818
19 Attorney for Respondent

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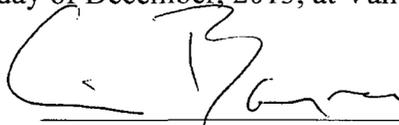
AFFIDAVIT OF MAILING

I, Erika Barnes, under penalty of perjury under the laws of the State of Washington, declare that the following is true and correct:

That I am a citizen of the United States of America and of the State of Washington, living and residing in Clark County, in said State; that I am over the age of 18 years, not a party to the above-entitled action and competent to be a witness herein; that on the 20th day of December, 2013, regular mail, postage prepaid, I mailed a true copy of a RESPONDENT'S BRIEF to the following named individual:

John A. Hays
Attorney at Law
1402 Broadway St.
Longview, WA 98632

DATED this 20th day of December, 2013, at Vancouver, Washington.



Erika Barnes