

COURT OF APPEALS, DIVISION TWO
OF THE STATE OF WASHINGTON

RICHARD SORRELS and CHRISTOPHER SORRELS, Appellants,

v.

SAM CHUI, et al, Respondents.

APPELLANTS' OPENING BRIEF AMENDED

Richard Sorrels and
Christopher Sorrels
Appellants, Pro Se
9316 Glencove Road
Gig Harbor, Wa 98329
1-253-884-4649

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I. ASSIGNMENTS OF ERROR

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II. STATEMENT OF THE CASE

In August of 1992, Appellant Richard Sorrels provided purchase money for David Brown to purchase real property located at 9410 Glencove Road from the estate of a third party who had died. Brown gave R Sorrels Deed of Trust and Promissory Note (AFN 9208040744). Provisions in the Promissory Note gave R Sorrels the right to possess and use the property until the debt was paid in full. Subsequently, Brown issued numerous additional deeds of trust for the same property, one of which was assigned to the RES Trust (The Trust). Brown defaulted on the debt to The Trust, and gave deed in lieu of foreclosure to The Trust in November of 1995 (AFN 9511130390).

In June 2002, The Trust granted deed of trust and promissory note to Westar in return for loan (AFN 200206210932)(cp 298). Westar was well aware that they held a second position behind R Sorrels. Westar assigned the Deed of Trust to Chui (AFN 200207020376)(cp 299). The Trust defaulted and Chui received Trustee's Deed in April 2007 (AFN 200704300862)(cp 298-300). The only entity identified in the foreclosure documents was The Trust (AFN 200703121140)(cp 299). The Trust Beneficiaries were not identified or provided with any notice. The Trustee's Deed contained the customary language that the sale was done "without any warranties of any kind, expressed or implied" (cp 299).

R Sorrels attempted to foreclose his senior Deed of Trust, but the Courts found that the statute of limitations had run under RCW 7.28.300. In such case, the case law states that the "outlawed" mortgage is void back to its creation, and that Sorrels' possession is adverse from that date, i.e., since August 1992. R Sorrels' cause of action for adverse possession did not arise until after judgment was entered in case no. 07-2-07660-9.

R Sorrels had maintained open, notorious, continuous, and exclusive possession of the property from 1992 thru 2013, and paid all property taxes from 1992 through the date of the Trustee's Sale in 2007 (cp 2-7, 17-23).

Christopher Sorrels had been a Beneficiary of The Trust since 1995, with a Beneficiary's right to use trust property. C Sorrels was never informed and never gave consent for the mortgage obtained from Westar in 2002. Chui never gave notice to C Sorrels that the property was being foreclosed. C Sorrels made frequent use of the subject property because he had beneficial rights under The Trust which he believed still owned the property (cp 291-330).

At deposition, Chui testified that he did not research title or possession (cp 152), never gave notice to the persons in possession (cp 159), and that the first and only time he had ever visited the property was in October 2012 (cp 157-158). Chui contracted with Mavi Macfarlane and instructed her to change the locks and remove personal property from the subject property (cp 163-164). Macfarlane hired Eastwoods to "haul the stuff to the dump" (cp 237-243).

Richard Sorrels had been working at the property every day during the end of December and discovered that somebody had broken doors, windows, and locks to the structure on the property, and removed a lot of his valuable property (cp 21-22). As R Sorrels finished re-securing the property, Eastwoods approached and identified that they had been hired by Macfarlane to remove the personal property (cp 71-72). Macfarlane arrived and stated that she had been hired by "the new owners", identifying Gintz and Toner. It was later determined that Gintz and Toner were not involved.

R Sorrels immediately had attorney assist with Summons, Complaint, and restraining

order (cp 1-23). All parties were served. Complaint was for forcible entry, detainer, and adverse possession (cp 2-7 and 17-23).

Defendant Chui filed Complaint for ejectment under case no 11-2-17078-6 and set a show cause hearing. The Court denied the Writ of Restitution, and Chui later requested and received a dismissal as a non-suit.

Chui files motion for summary judgment (cp 29-47). At the same time that Sorrels' response is due, Sorrels' attorney withdrew for unspecified "personal reasons". A stipulation is entered to continue the hearing (cp 60-61).

R Sorrels served Notices of Deposition upon Chui, Macfarlane, and Eastwoods (cp 128-136). Macfarlane appeared and deposition was taken (cp 119-122, 230-265). Chui had his wife call the Court Reporter and cancel the deposition, falsely claiming to be acting on behalf of R Sorrels (cp123-127). Neither Chui nor Eastwoods appeared for their depositions (cp 120). Second Notices of Deposition were served on Chui and Eastwoods (cp 128-136). Chui appeared and deposition was taken (cp 119-122, 138-158). Eastwoods again did not appear (cp 120).

Despite a quick response, Deposition transcripts were not received until two days after the response for summary judgment motion was due (cp 119-122). Sorrels' response to motion for summary judgment, filed on or before the due date, included Motion for Continuance (cp 56-59) (citing Defendants interference with discovery, and more time needed to receive transcripts), Motion for Partial Voluntary Dismissal under CR41 (cp 75-79)(to dismiss adverse possession claim due to legal conflict with forcible entry/detainer claim), and Motion for Severance of Claims (cp 269-276)(alternative re legal conflict re adverse possession claim).

At hearing for the summary judgment motion, the Trial Court Judge refused to consider Sorrels' responsive motions, and granted summary judgment as if the motion was unopposed (RP 11/09/2012, p 2-5). The summary judgment dismissed "Plaintiff's Complaint in its entirety with prejudice as to defendant Chui," but had no affect on the other Defendants (cp 279-281).

Shortly before the hearing for the summary judgment motion, Chui filed motion for Writ of Restitution (cp 90-112), to be heard at the same time as the summary judgment motion. Again the trial Court judge refused to consider any response from Sorrels (cp 289-290), even lack of service and lack of jurisdiction (RP 11/09/2012, p 7-9). Writ of Restitution was granted (CP 277-278).

Motion to Reconsider summary judgment and Writ of Restitution was filed (cp 282-288) along with Memorandum (cp 291-330 and 336-343) and Declarations (cp 119-122, 123-265, 331-335). Motion was denied without comment (cp 363-364).

Sorrels filed motion for sanctions against Chui for interfering with discovery (cp 344-345), which was also denied (cp 359-360).

Sorrels filed Note for Arbitration and hearing was set (cp 361-362).

Court enters order allowing the Sorrels to retrieve their personal property (cp 405). Heavy continuous winter rains and steep slippery clay driveway delayed date toward end of the time window, at which time Chui refuses to allow Sorrels entry unless a hold harmless agreement is first signed (cp 424-428). Sorrels' attorney says "don't sign". Court rules Chui in the wrong and new dates are set (cp 434).

Sorrels obtains keys from Chui to retrieve property, heavy garage door sections crash on Sorrels' head sending him to emergency room with concussion, head injury, and

scrambled brains. Rollers had been removed from door tracks to sabotage. Sorrels unable to participate in legal process henceforth. (cp 453-457).

Chui fabricates stories to obtain TRO to use driveway that belongs to the adjoining landowner (cp 381-382).

Chui sells property in May 2013, still tries to maintain bogus right to driveway to deceive new property owner (cp 391-394).

Sorrels affects cancellation of arbitration, as he knows he is medically unable to participate.

Case is dismissed, with prejudice (cp 450-452). Valuable assets lost.

III. ARGUMENT

ASSIGNMENT OF ERROR NO. 1 – The trial court erred in entering the order of November 9, 2012 granting Defendant Chui’s motion for summary judgment.

ISSUE NO. 1. Trial Court should have considered Plaintiffs’ responsive motions.

A. Motion to Continue. The Supreme Court has emphasized that, regarding discovery, prejudice occurs not only for not obtaining a fair trial, but also in preparing for trial. (*Magana v. Hyundai Motor*, 167 Wn 2d 570, 589, 220 P3d 191 (2009)) Plaintiffs motion to continue the summary judgment hearing date is one of the lesser sanctions that could have been sought by Plaintiffs for Defendants failure to provide discovery

Defendants Eastwood failed twice to appear for deposition testimony in response to properly and timely served Notices of Deposition.

Defendant Chui failed once to appear for deposition testimony in response to properly and timely served Notice of Deposition. Chui’s failure to appear was also accompanied with having another person make phone calls to the Court Reporter, falsely claiming to

be representing the Plaintiff who had sent out the Notices of Deposition, and then canceling said depositions for all three deponents. This was an especially calculating and egregious interference with the discovery process. The person making the phone calls and sending the emails was Defendant Chui's wife, Michelle Wang. (see Declaration of Dan Quaintance (cp 123-136).

The result of Defendant Chui's interference was that the transcripts did not become available until 2 days following the deadline for filing Plaintiffs' response to summary judgment (cp 119-122). The result of Defendants' Eastwood failure to twice appear for depositions was the inability to obtain needed sworn testimony to respond to Defendants' summary judgment motion.

When trial court has been shown good reason why affidavits of material witness cannot be obtained in time for summary judgment proceeding, court has a duty to accord parties reasonable opportunity to make the record complete before ruling on motion for summary judgment. (Lewis v. Bell, 45 Wn App 1q92, 724 P2d 425 (1986); Sternoff Metals Corp v. Vertels Corp, 39 Wn App 133, 693 P2d 175 (1984); CR 56(f)).

The language of CR56(f) is not discretionary. Plaintiffs made timely motion to continue the hearing due to inability to obtain affidavits, i.e., Plaintiffs' refusal to appear for deposition and give testimony. Having filed the motion, CR56(f) allows the Court with only two options, either deny the request for judgment, or continue the hearing. The Court did neither, instead it rewarded the offending parties by dismissing Plaintiffs' case with prejudice. This was error, and contrary to existing law and Due Process.

B. Motions to Dismiss. This case concerns a claim of forcible entry and detainer, which precludes any argument, evidence, or claim regarding possession. The Court's

limited jurisdiction invoked by a forcible entry and detainer claim is severely limited by well-established law. (*Angel v. Ladas*, 143 Wash 622, 625 (1927)).

Plaintiffs had a licensed attorney help prepare the Complaint in this matter, but it ended up including both a claim for forcible entry and detainer, and also a claim for adverse possession, which claims are incompatible in the same case. To fix this problem, Plaintiffs filed both a Motion for Partial Voluntary Dismissal under CR 41, and also an alternative Motion for the Severance of Claims under CR 21. Both motions were made and filed well before the hearing for motion for summary judgment, and bench copies were delivered to the trial judge before the hearing.

“Under Civil Rule 41, the Plaintiff may withdraw the suit so long as the Plaintiff moves for dismissal prior to resting at the conclusion of his or her opening case. This procedure is termed voluntary and is available in both jury and nonjury trials. The procedure is available as a matter of right. So long as the Plaintiff’s motion is timely, the court has no discretion to deny a voluntary dismissal. *Goin v. Goin*, 8 Wn App 801, 508 P2d 1405 (1973). The Plaintiff may take a voluntary dismissal without giving notice to the Defendant. *Greenlaw v. Renn*, 64 Wn App 499, 824 P2d 1263 (1992).” (4 Washington Practice, p 48). “In a case involving multiple claims or defendants, a plaintiff who is entitled to a voluntary dismissal may take a partial voluntary dismissal, i.e., a dismissal only as to designated claims or parties. The courts have rejected the argument that the rule puts the plaintiff to the choice of dismissing all or nothing. *Seattle First Nat. Bank v. Westwood Lumber*, 59 Wash App 344, 796 P2d 790 (1990).” (4 Washington Practice, p 49.) When a motion for voluntary dismissal is filed and called to the attention of the trial court before the hearing on the summary judgment gets started,

the motion is timely and must be granted as a matter of right. (Greenlaw v. Renn, 64 Wn App 499, 824 P2d 1263 (1992)).

Both motions were made, filed, and served well before the hearing for motion for summary judgment, and bench copies were delivered to the trial judge before the hearing. An observed common practice has been to simply verbally state a desire to voluntarily dismiss (a nonsuit) without any written documents and it is automatically granted.

The trial judge erred when she “struck” Plaintiffs’ motions and did not allow them to be heard (RP 11/08/2012, p 2-5).

ASSIGNMENT OF ERROR No 2. – Trial court erred in entering the order of November 9, 2012 granting Defendant Chui’s motion for Writ of Restitution.

ISSUE NO 2. Court did not have jurisdiction.

A. Res Judicata. Shortly after Sorrels filed this case against Chui, Chui filed a suit for unlawful detainer and ejectment under case no 11-2-17078-6. A show cause hearing was held and the trial court denied Chui’s request for Writ of Restitution. A second request for Writ of Restitution is not allowed due to Res Judicata. The matter has already been decided. The suit was later dismissed in it’s entirety.

B. Summons and Complaint. The Court is without jurisdiction to enter a Writ. A Writ of restitution is a specific cause of action with specific process mandating Show Cause hearing upon proper service (RCW 59.12.070). Additionally, the summons provided in an unlawful detainer action to seek a writ is very specific, and is the only mechanism to confer jurisdiction. (Pine Corporation v. Richardson, 12 Wn App 459, 462, 530 P2d 696 (2002)).

The Amended Complaint for cause number 11-2-17078-6 presents claims for unlawful entry and detainer, forcible detainer, unlawful detainer, ejectment,

abandonment, and Writ of Restitution, tenancy by sufferance, damages, etc. Most of these are “peace statutes” with limited jurisdiction, which must exclude all evidence and discussion outside of the very narrow subject addressed by the specific statute that applies. For example, in a cause of action for forcible entry and forcible detainer the only issue is whether the occupant was in peaceable possession of the property for at least five days, with all evidence of title and the right to possession excluded from consideration (Randolph v. Husch, 159 Wash 490, 491-492, 294 Pac 236 (1930)).

In a cause of action for unlawful detainer, the superior court sits as a special tribunal, limited to deciding the primary issue of right o possession (Kessler v. Nielsen, 3 Wn App 120, 472 P2d 616 (1970)). All question concerning possession and title, and other subjects, must be excluded when an action is for forcible detainer (Angel v. Ladas, 143 Wash 622, 625 (1927)). Alleging two, or more, incompatible reliefs in the same cause of action such as ejectment and quiet title and unlawful detainer are not to be construed as in pari materia (Petsch v. Willman, 29 Wn 2d 136, 138, 185 P2d 992 (1947)).

Because of the limited jurisdiction and strict compliance statutes, a person wanting to pursue unlawful detainer or a Writ of Restitution must do so as a Plaintiff, not as a defendant. The special purpose Summons must be used, which requires status as Plaintiff. The special purpose Complaint must be used, which also requires status as Plaintiff.

In the case at bar, Chui is a Defendant in a forcible entry and detainer action against Chui. Chui has not even filed an answer or affirmative defenses. Chui is not in a position to file Summons or Complaint, and has not done so.

Issuance of summons is necessary to commencement of action. (Big Bend Land Co

v. Huston, 98 Wash 640, 168 P 470 (1917)). To obtain unlawful detainer jurisdiction, a plaintiff must prove that the defendant was properly served with a statutory unlawful detainer summons; compliance with statutory requirements is jurisdictional. (Canterwood Place LP v. Thande, 106 Wash App 844, 25 P3d 495 (2001)).

Even if Chui had used the proper Summons and Complaint (which he did not), he failed to serve timely. The only document filed and served was Motion for Writ of Restitution which has a sub-joined Certificate of Service which cites service by mail only, mailed on October 31, 2012 for a hearing on November 9, 2012. This is insufficient for at least three reasons: (1) No special Summons and Complaint used, (2) insufficient time when you include the additional time required for mailing, and (3) mailing alone is insufficient, the statute requires “personal service” for notice for Writ (see RCW 59.12. 040).

C. RCW 59.16 requires upon contested evidence and rights to property, the matter will NOT be decided upon sworn statements (such as summary judgment is decided), but with a trial where the Court may decide what rights the parties have and the credibility of the parties. (RCW 59.16.030).

ISSUE NO 3. Cited authority does not support issuance of Writ.

A. In support of Chui’s motion for Writ of Restitution, Chui cites a single case, but that case DOES NOT support issuance of a Writ. The case was very new and bears only the COA case number (30333-1-III), (Excelsior v. Schroeder).

Chui apparently failed to read the very first sentence for the case, “When a landowner fails to remove personal property following foreclosure of his real property AND A DETERMINATION THAT HE IS IN DETAINER does a trial court act within its

jurisdiction to . . .”. This case as presented deals only with property on site AFTER an unlawful detainer has been determined. The case deals with what to do with personal property left behind after an unlawful detainer wherein the owner claims an interest.

The entire case is predicated upon the fact that the court had already found the party “in detainer”. In the case at bar, there has not yet been a determination of unlawful detainer. In fact, when the motion was heard, the Judge had already “dismissed Sorrels’ Complaint against Chui in its entirety.” (RP 11/09/2012, p 5-7 and cp 279-281). Chui was not even a party in this lawsuit any longer.

ASSIGNMENT OF ERROR NO 3. – The Trial court erred in entering the order of December 12, 2012 denying Plaintiffs’ Motion for Reconsideration of the orders entered on November 9, 2012 which granted Motion for Summary Judgment and Writ of Restitution.

ISSUE NO 4 – Summary judgment cannot be granted if issues of material fact remain.

A. Standards. To prevail at summary judgment, Chui must prove that “there is NO genuine issue as to any material fact and that the moving party is entitled to a judgment as a mater of law.” (CR 56). Additionally, if Sorrels is able to show that “there is a material issue of fact,” then the summary judgment motion must be denied and the matter proceeds to trial.

B. Claims of trespass, unlawful entry and forcible detainer, and conversion. At deposition, Chui testified that he had contracted with Mavi Macfarlane and instructed her to change the locks and remove personal property (cp 163-164). Macfarlane testified that she had contracted with Chui to sell the property, and that Chui instructed her to change the locks and remove the personal property, and that Macfarlane had hired a person to enter the property and change the locks, and that Macfarlane hired Eastwoods to “haul

the stuff to the dump”. (cp 237-243).

Chui further testified that he did not research title or possession (cp 152), that he never gave any notice to persons in possession (cp 159), that the first and only time that he had visited the property was in October 2012 (cp 157-158), and he was not aware of who was using the property (cp 153). The neighboring property owner provided a declaration when the case was first filed, saying that she observed R Sorrels occupying the property almost every day for years. (cp 8). The Complaint identifies that Sorrels had occupied the property continuously since 1992 (cp 21), and that it was Sorrels’ personal property that was taken by Defendants (cp 19-21).

Chui failed to prove that there is no genuine issue of fact, and has instead help prove the elements of trespass, unlawful entry and forcible detainer, and conversion.

C. Claims of adverse possession. R Sorrels and C Sorrels swear upon oath that they have occupied the property since 1992, in an open, notorious, actual, uninterrupted, exclusive and hostile manner, and that they paid taxes for more than the seven years required by statute during those same years, thereby establishing adverse rights long before Chui first set foot on the property in 2012. (cp 22 and cp 331).

R Sorrels had a record interest in the real property as the beneficiary of a deed of trust and promissory note with contractual rights to use and possess the land starting in 1992, and ending when a court decision determined that that mortgage was outlawed due to the statute of limitations having run. In such case, the Washington Supreme Court has ruled that “a mortgage that is permitted to expire by limitations places them in the same position as though the mortgage had never been given. The period of adverse position began to run from the time possession was taken” (Hornley v. Andrews, 40 Wash 580,

587, 83 P2d 899 (1905)). For this case Sorrels' adverse possession began to run in 1992.

C Sorrels is a Beneficiary of the trust that Chui foreclosed from ownership. The Trustee's Deed issued to Chui specifically makes NO warrantee of any kind (cp 299). The Trustee's Deed transfers no more interest than what the prior owner (the deed of trust Grantor) held (RCW 61.24.050; Udall v TD Escrow Services, 159 Wn 2d 903, 909-910, 154 P3d 882 (2007)).

The Grantor of the deed of trust that was foreclosed was the Trustee for the RES Trust. A fundamental characteristic of a trust is that legal and equitable ownership of the trust property is divided between two parties: the Trustee holds "bare legal title" for the trust Beneficiaries, who hold the equitable or beneficial ownership.

Under the Washington State Constitution and statutes, a common law trust has NO rights, status, or legal standing. A common law trust is NOT a suable entity. It cannot sue or be sued. (State nex rel Range v. Hinkel, 581, 586-587, 219 Pac 41 (1923); Elson v. Tafft, 140 Wash 586, 591 250 Pac 346 (1926); Denny v. cascade Platinum Co. 133 Wash 436, 439,232 Pac 409 (1925)).

A Trustee of a common law trust is allowed, under contractual provisions of the trust document, to maintain an action on behalf of the trust beneficiaries, but there is NO such authorization for a Trustee to defend on behalf of the trust beneficiaries. The trust beneficiaries must defend for themselves. (Elson, at 591; Denny, at 440; Eichner v. Cahill, 11 Wn 2d 198, 111, 118 P2d 419 (1941); Title and Trust Co v. Columbia Basin Land Co, 136 Wash 64, 65, 238 Pac 992 (1925); Board of natural Resources v. Brown, 992 F2d 937 (1933); CR 17(a); RCW 11.98.070(27)(d)).

The US Supreme Court definitively determined that in cases such as this, where the

proceeding is one in which the beneficiary may be deprived of property rights, the proceeding must measure up to the Fourteenth Amendment standards of Due process for the beneficiaries. (Mullane v. Central Hanover Bank and Trust Co, 339 US 306, 313-314, 70 SCt 652 (1950)). This case recognizes that the trustee may actually become an adversary to the beneficiaries which would interfere with notice to the beneficiaries. The beneficiaries are therefore proper and necessary parties to receive notice. (90 CJS, Trusts, section 5; Am Jus 2d Trusts, sections 1,3,609, and 619; Kincaid v. Hensel, 185 Wash 502, 505, 55 P2d 1050 (1936)).

The Notice of Trustee Sale (AFN 200703121140) lists all persons given notice. The beneficiaries, who held 100% of the equitable ownership were NOT listed. When there is a failure to provide a party with notice, the Trustee's sale is void WITH RESPECT TO THAT PARTY. (Udall v. TD Escrow Services, 159 Wn 2d 903, 916, 154 P3d 882 (2007)).

The most that could have been conveyed to Chui by the Trustee's Deed is the "bare legal title" that was held by the Trustee that executed the deed of trust that was foreclosed. The equitable and beneficial ownership (including possession) remains with the Trust Beneficiaries.

When there is a failure to provide the notices required under RCW 61.24.040 and RCW 61.24.060, the court has NO jurisdiction over an unlawful detainer action (RCW 59.12.032).

Additionally, there is no language in the trust document that grants authority to the Trustee, authorizing him to mortgage the subject property. Without such authority, even the "bare legal title without any right to possession" DOES NOT pass through the

Trustee's Deed to Chui.

ASSIGNMENT OF ERROR NO. 4 – The trial court erred in entering the Orders of May 24, 2013 granting Motion for Declaratory Judgment Re Abandonment and Final Judgment.

ISSUE NO. 5. Orders conflict and res judicata.

A. Both of these orders were brought before the Court upon the same motion, a Motion for Declaratory Judgment, signed by Sam Chui who has not been a party in this case since the Order Granting Motion for Summary Judgment was entered on Nov 9, 2012, which Order “dismissed Plaintiffs’ complaint in its entirety with prejudice as to Defendant Sam Chui.” A second person to sign was Michelle Wang, Chui’s wife, who is not a named party, and was never joined as a party.

None of the remaining parties (R Sorrels, C Sorrels, Marfarlane, or KP Realty) were a party to the motion that resulted in these orders.

Neither Chui nor Wang have any further interest in the property since they sold it in May of 2013. Moegling and Partner Fund appeared, but are also NOT parties.

A major discrepancy exists between the two orders. The Order Granting Motion (cp 447-449) contains language that quashes a Temporary Restraining Order, while the Final Judgment (cp 450-452) contains injunction language on the second page. It should be noted that some of the very last words from the judge for this hearing were “I’m going to hand you back the final judgment that I did not sign.” (RP 5/24/2013, p 22).

B. A second item to consider is that there was never any intention to “abandon” any property. Back’s Law dictionary and Washington case law all have an element of intent for all definitions for “abandonment”. See declarations of Richard Sorrels (cp 453-457). There have been a lot of un-just happenings in this case. The Sorrels were only allowed

two opportunities to retrieve their valuable property: The first was stopped when, at the last minute, Chui demanded that a “hold harmless agreement” be signed before the property could be retrieved and Sorrels’ attorney said “don’t sign”. The second was stopped when somebody sabotaged the lift-up garage door by removing all of the rollers for the door track, which caused the garage door to crash onto R Sorrels’ head, putting him in the emergency room with concussion, head injuries, and scrambled brains, for which he still hasn’t recovered.

ASSIGNMENT OF ERROR NO 5 – The trial court erred in entering the order of November 9, 2012 granting Defendant Chui’s motion for summary judgment with prejudice, and granting the May 24, 2013 Final Judgment with prejudice.

ISSUE NO. 6 – Dismissal with prejudice is inappropriate when there has not been a decision on the merits.

Sorrels was precluded from discovery due to Defendants failure to appear for duly noticed depositions, and Defendants having taken it upon themselves to “cancel” the deposition hearings, without authorization to do so (see Issue 1, above).

The Court denied Sorrels motion to continue the summary judgment hearing due to Defendants interference with discovery. The Court refused to consider Sorrels’ response to motion for summary judgment, and actually threw those responses in the trash without considering them (RP 11/08/2012, p 2-5). The Order Granting Summary Judgment was granted without a full hearing on the merits. The Judge treated it as if Sorrels had not responded at all.

The Final Judgment, likewise, was not a hearing on the merits. There was no abandonment (see Issue 5, above). The Court was apparently acting on Sorrels’ Motion for voluntary dismissal under CR41 when it dismissed all remaining claims with

prejudice. The “remaining issues” were to be determined at arbitration (cp 403-405, 407-412). The Arbitration had been cancelled. There was never any determination on the merits.

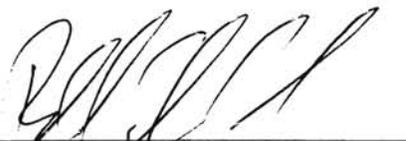
When a court dismisses a lawsuit without reaching the merits of the controversy, the dismissal should be without prejudice (Former RCW 4.56.120(8)(1929); Parker v. Theubet, 1 Wn App 285, 291, 461 P2d 9 (1969); Linton v. State, 185 Wash 97, 99-100, 52 P2d 1239 (1936)).

IV. CONCLUSION

Plaintiffs Sorrels never had their day in court. The trial Judge erred numerous times, making decisions contrary to statute and established law. The COA should acknowledge the jurisdictional problems and the great affront to the court system, as a whole, that occurs when discovery rules are flagrantly violated to sabotage established procedures and a party’s right to a fair trial.

The Courts should take special umbrage with persons who refuse to provide discovery and even go so far as to cancel their opponents depositions, and are then awarded with having all claims against them dismissed as a result of their mischief. A fair and just fix would be to remand to the trial court to strike the orders granting summary judgment and writ of restitution and all that follows.

Dated this 14th day of March 2013.



Richard Sorrels
9316 Glencove Road
Gig Harbor, WA 98329
1-253-884-4649

Respectfully submitted,



Christopher Sorrels
9316 Glencove Road
Gig Harbor, WA 98329
1-253-884-4649

relating particularly to mater of costs” (In re Baby Girl Doe, 45 Wash 2d 644, 647, 277 P2d 321 (1954).

Respondents’ Brief has not yet been filed in this matter.

Appellants are pro se, and trying to do the best that they can. The ends of justice would be served to allow the filing of the amended opening brief.

Dated this 30th day of January 2014.



Richard Sorrels
Appellant, Pro Se
9316 Glencove Road
Gig Harbor, WA 98329
1-253-884-4649

Respectfully submitted,



Christopher Sorrels,
Appellant, Pro Se
9316 Glencove Road
Gig Harbor, WA 98329
1-253-884-4649

PROOF OF SERVICE

Richard Sorrels certifies that on January 31, 2014, he did mail one copy of the above to each of the following:

Jason Henry, 601 Union Street, Suite 2600, Seattle, WA 98101.

Mavi Macfarlane, 11607 State Route 302, Gig Harbor, WA 98329.

Sam Chui, 4422 SDomerset Blvd SE, Bellevue, WA 98006.

Dated this 31th day of January 2014 in Pierce County WA.



Richard Sorrels