

No. 48078-6-II

FILED
COURT OF APPEALS
DIVISION II
2016 AUG 12 AM 11:01
STATE OF WASHINGTON
BY DEPUTY

COURT OF APPEALS
DIVISION II
OF THE STATE OF
WASHINGTON

Milo D. Burroughs, Appellant Petitioner,

v.

Western Airpark Association, Defendant

SUBSTITUTE BRIEF

Table of Contents

RAP 10.3(a)(3) Introductions.	Page 3
RAP 10.3(a)(4) Assignments of error.....	Page 4
RAP 10.3(a)(5) Statement of case.....	Pages 3 &4
RAP 10.3(a)(6) Argument.....	Pages 4 & 5
RAP 10.3(a)(7) Conclusion.....	Pages 5 & 6
Table of Authorities.....	Page 7
Written record.....	Page 8

Table of authorities

Statutes;

Aiken, 460 U.S. 711, 714 (1983)

42 USC 3601

38 USC 4311(b)

42 USC 3612(d)

42 USC 3612(o)

42 USC 3611(a)(2)(C)

42 USC 3610(a)

UAB v. Harry F. Gillman, 223 VA. 752: 292 S.E.2d 378: 1982

42 USC 3612(a)(c), (g)(3)

42 USC 3611(c)(2)

42 USC 3617

Johnson v. Pointe Community Association, 1 CA-CV-02-0160, ¶17

RCW 49.60.227

42 USC 3602(f)

Written record trial court.....Pages 1 - 43

Written record appeals court.....Pages (1) – (26)

RAP 10.3(a)(3)

38 USC 4311(b), *Discrimination/retaliation*, under USERRA, DISCRIMINATION and REPRISAL:

The Walking on runway letter states, last paragraph, “The Board of Directors has no other choice but to restrict your use of the Western Air Park runway and/or Lot 24 common areas. The Board henceforth, will assess a fine of \$500 (Five Hundred US Dollars) each time you walk on the runway un-escorted by an adult.” See 24-20.

Defined under 38 USC 4311(b) as *Anti-Discrimination and Anti Retaliation*, in this case in the same paragraph ---restrict your use of the Western Airpark runway and/or Lot 24 common areas. (discrimination, no one else, just the appellant) and --- \$500 (Five hundred US Dollars) each time you walk on the runway--- (retaliation, no one else just the appellant), get even time.

REQUESTED AJUDICAION ON THE WRITTEN RECORD:

The HOA failed to counter *Aikens*, 460 U.S. 711, 714 (1983). “If the defendant failed to counter this evidence, the claimant’s proof establishes that the adverse action was likely motivated by unlawful reasons” a given unlawfulness 2004 judicial, Congressional mandate.

The failure of the trial judge to adjudicate the appellant’s claim under *Akens* as to “motivation by unlawful reasons or for that matter even to recognize that the appellant made a claim under *Akens*.”

28 USC 1764, *Affidavit*.

RAP 10.3(a)(4)

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant’s Evidence v, Respondent’s Hearsay. See Page 1, May 20, 2016 of the written record.

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant's Evidence v, Respondent's Hearsay.

RAP 10.5(a)(5)

For 3 years now ever since the Appellant requested a written record adjudication of the issues at hand has it become absolutely clear that the written record rendered by the Trial Judge, Counsel Strickler, and the custodian of records for Thurston County Superior Court represents a prima facie case of constructed, self-incrimination.

The written records of these judicial elements have collectively, and precisely excluded any mention of any evidence related the Appellant's adverse actions claims to the point of ZERO.

Exclusion so intense, that they resorted to the forgery of official documents.

A complete review of the attached record of 43 pages is required by reviewing authorities to grasp the interlocking and conspiratorial impact of thousands of pages actually in the record reference the Trail Judge, Counsel Strickler, and the custodian of records for Thurston County Superior Court.

RAP 10.3(a)(6)

EVIDENCE:

There are only two elements of the record submitted by the HOA in the record that presents testimonial facts; VERBATIM REPORT OF PROCEEDINGS dated March 18, 2016, and the HOA "Walking on runway," dated July 20th, 2013.

The Verbatim Report of Proceedings presented in the record by Clerk of the Court of Appeals is absent the exhibits that were present at the hearing and as such diminishes the value of truthfulness of a less than complete report without due notice to reviewing authorities that the record was not complete.

The Clerk was proactive and gratuitous in favor of the HOA when he ordered up the trail transcript not requested by the HOA, the judge

conducted a hearing not requested by the appellant, but a judgment on the record, a hearing absent the appellant's presences.

The HOA does not have standing in this Court having failed to counter the Appellant's claims under 38 USC 4311(b), surely this Courts order directing the Appellant to pay for a HOA/Court trial transcript is without standing.

With the Trail Judges permission the HOA scarfed up all of the exhibits as soon as the hearing was over, and now the exhibits are not available this is contrary to Administrative Law Appeals before settlement.

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant's Evidence v, Respondent's Hearsay.

RAP 10.3(a)(7)

RELIEF SOUGHT UNDER FEDERAL APPEALS COURT LAW

1. Refund of Trial Court wrongful award of Attorney fees and fines of \$7,287.96 dated June 25, 2015 + 12% interest since. See 8-24, 15-27, 18-11, 23.1 & 43.
2. In accordance with 42 USC 3217 damages of \$2500 (2) each for the unprovoked attack while walking on the runway. See 8-26, 11-1, 19-16.
3. An award of \$25 dollars per day + liquidated damages for compensation after the HOA denied the appellant use of the runway and/or Lot 24 for walking starting on July 20, 2013 until a date to be determined. See 9-1.
4. A return of all fees associated with adjudication under; 20 CFR PART 1002.310, "No fees or court costs may be charged or taxed against you if you are claiming rights under the Act." Uniformed Services Employment and Service Employment Act of 1994 (USERRA) 38 USC 4311(b).

RELIEF SOUGHT UNDER CRIMINAL LAW

In our appeal of 13-2-01581-9 dated 7/28/2015 we established a filing date of 2015 JUL AM 11:16 to document the date it was filed.

The Clerk's office in Olympia forged a date later than as documented as above.

We contested that forgery with the Court of Appeals in the person of Commissioner Schmitd who found we had timely filed.

IAW 42 USC 3611(c)(2) "any person who willfully mutilates, alters, or by other means falsifies any documented evidence; shall be fined not more than \$100,000---" See 8-8.

Appropriate remedy under 42 USC 3601 is \$10,000 in damages from each conspirator specifically the Trail Judge, counsel for the HOA Strickler, and the custodian of the records for Thurston County Supreme Court. See 3-13

The appellant demands \$100,000 US Dollars in damages from the Thurston County Court for a total lack of supervision and oversight of their legal system. See Pages 3/4 of May 20, 2016. written record.

RAP 10.3(a)(1)

See preceding page.

RAP 10.3(a)(2)

38 USC 4311(b), *Discrimination/retaliation*, under USERRA, DISCRIMINATION and REPRISAL:

The Walking on runway letter states, last paragraph, "The Board of Directors has no other choice but to restrict your use of the Western Air Park runway and/or Lot 24 common areas. The Board henceforth, will assess a fine of \$500 (Five Hundred US Dollars) each time you walk on the runway un-escorted by an adult." See 24-20.

Defined under 38 USC 4311(b) as *Anti-Discrimination and Anti Retaliation*, in this case in the same paragraph ---restrict your use of the Western Airpark runway and/or Lot 24 common areas. (discrimination, no one else, just the appellant) and --- \$500 (Five hundred US Dollars) each time you walk on the runway--- (retaliation, no one else just the appellant), get even time.

REQUESTED AJUDICAION ON THE WRITTEN RECORD:

The HOA failed to counter *Aikens*, 460 U.S. 711, 714 (1983). "If the defendant failed to counter this evidence, the claimant's proof establishes that the adverse action was likely motivated by unlawful reasons" a given unlawfulness 2004 judicial, Congressional mandate.

The failure of the trial judge to adjudicate the appellant's claim under *Akens* as to "motivation by unlawful reasons or for that matter even to recognize that the appellant made a claim under *Akens*."

28 USC 1764, *Affidavit*

RAP 10.3(a)(3)

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant's Evidence v, Respondent's Hearsay. See Page 1, May 20, 2016 of the written record.

(2)

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant's Evidence v, Respondent's Hearsay.

RAP 10.3(a)(4)

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant's Evidence v, Respondent's Hearsay.

RAP 10.5(a)(5)

For 3 years now ever since the Appellant requested a written record adjudication of the issues at hand has it become absolutely clear that the written record rendered by the Trial Judge, Counsel Strickler, and the custodian of records for Thurston County Superior Court represents a prima facie case of constructed, self-incrimination.

The written records of these judicial elements have collectively, and precisely excluded any mention of any evidence related the Appellant's adverse actions claims to the point of ZERO.

Exclusion so intense, that they resorted to the forgery of official documents.

A complete review of the attached record of 43 pages is required by reviewing authorities to grasp the interlocking and conspiratorial impact of thousands of pages actually in the record reference the Trail Judge, Counsel Strickler, and the custodian of records for Thurston County Superior Court.

RAP 10.3(a)(6)

EVIDENCE:

There are only two elements of the record submitted by the HOA in the record that presents testimonial facts; VERBATIM REPORT OF PROCEEDINGS dated March 18, 2016, and the HOA "Walking on runway," dated July 20th, 2013.

The Verbatim Report of Proceedings presented in the record by Clerk of the Court of Appeals is absent the exhibits that were present at the hearing and as such diminishes the value of truthfulness of a less than complete report without due notice to reviewing authorities that the record was not complete.

The Clerk was proactive and gratuitous in favor of the HOA when he ordered up the trail transcript not requested by the HOA, the judge conducted a hearing not requested by the appellant, but a judgment on the record, a hearing absent the appellant's presences.

The HOA does not have standing in this Court having failed to counter the Appellant's claims under 38 USC 4311(b), surely this Courts order directing the Appellant to pay for a HOA/Court trial transcript is without standing.

With the Trail Judges permission the HOA scarfed up all of the exhibits as soon as the hearing was over, and now the exhibits are not available this is contrary to Administrative Law Appeals before settlement.

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant's Evidence v, Respondent's Hearsay.

RAP 10.3(7)

RELIEF SOUGHT UNDER FEDERAL APPEALS COURT LAW

1. Refund of Trial Court wrongful award of Attorney fees and fines of \$7,287.96 dated June 25, 2015 + 12% interest since. See 8-24, 15-27, 18-11, 23.1 & 43.
2. In accordance with 42 USC 3217 damages of \$2500 (2) each for the unprovoked attack while walking on the runway. See 8-26, 11-1, 19-16.
3. An award of \$25 dollars per day + liquidated damages for compensation after the HOA denied the appellant use of the runway and/or Lot 24 for walking starting on July 20, 2013 until a date to be determined. See 9-1.
4. A return of all fees associated with adjudication under; 20 CFR PART 1002.310, "No fees or court costs may be charged or taxed against you if

you are claiming rights under the Act.” Uniformed Services Employment and Service Employment Act of 1994 (USERRA) 38 USC 4311(b).

RELIEF SOUGHT UNDER CRIMINAL LAW

In our appeal of 13-2-01581-9 dated 7/28/2015 we established a filing date of 2015 JUL AM 11:16 to document the date it was filed.

The Clerk’s office in Olympia forged a date later than as documented as above.

We contested that forgery with the Court of Appeals in the person of Commissioner Schmidt who found we had timely filed.

IAW 42 USC 3611(c)(2) “any person who willfully mutilates, alters, or by other means falsifies any documented evidence; shall be fined not more than \$100, 000---“ See 8-8.

Appropriate remedy under 42 USC 3601 is \$10,000 in damages from each conspirator specifically the Trail Judge, counsel for the HOA Strickler, and the custodian of the records for Thurston County Supreme Court. See 3-13

The appellant demands \$100,000 US Dollars in damages from the Thurston County Court for a total lack of supervision and oversight of their legal system. See Pages 3/4 of May 20, 2016. written record.

RAP 9.1(a)(4) Record Composition, certified record of administrative adjudicative proceedings.

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant’s Evidence v, Respondent’s Hearsay. Page 4, May 20, 2016 written record.

AFFIDAVIT

Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS states upon his oath that the following information is true to his personal knowledge.

Total pages including tabs 6 *Milo D. Burroughs 8-24-16*
Milo D. Burroughs
MILO DODD BURROUGHS

STATE OF WASHINGTON
COUNTY OF THURSTON

Sworn to and subscribed before me this the 22nd day of May 2012.

[Signature]
NOTARY PUBLIC *Karon L. Whitford*
My commission expires:
3-29-14



5

MILO D. BURROUGHS
WENJIN JIA
11244 AERO LN. SE. 360-458-8775
YELM, WA 98597

4896
19-854/1250 307
0218837698

8/4/2016 Date

Pay to the Order of *W.H. ST. COURT OF APPEALS II* \$ *200.00*
Two Hundred & 00/100 Dollars

For *WENJIN PROTEST* *Milo D. Burroughs*

1250085672 0218837698 01888

(6)

WRITTEN RECORD

OF

NO. 13-2-01581-9 and COA NO. 48078-6-II

(7)

In affect our acceptance of Mr. Ponazoha arbitrary and capricious edict was so out of order contrary to 5 USC 706(2) the controlling legal standard we assumed reviewing authorities would discount that threat.

We were wrong!

1. None of the RAP rules specified by Mr. Ponazoha gives the Clerk the authority to impose a mandatory formal brief on the appellant whose case was conducted from the very beginning of this case for a decision by the judge on the written record.

All of the RAP's are prefaced by the word "MAY."

It is uncontested that everyone involved has accepted without prejudice for the past 3 years a decision on the written record in accordance with 5 USC 701-706.

2. Although Mr. Ponazoha is not the only problem in the case at hand, he is part and parcel of the discriminatory/reprisal factor that the appellant faced from this court system as a whole.

5 USC 706

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall—

- (1) compel agency action unlawfully withheld or unreasonably delayed; and
- (2) hold unlawful and set aside agency action, findings, and conclusions found to be—
 - (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
 - (B) contrary to constitutional right, power, privilege, or immunity;
 - (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;
 - (D) without observance of procedure required by law;
 - (E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed on the record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 393.)

Mr. Ponzoha's first contempt of 5 USC 706 occurred on June 15, 2016 after the appellant presented a sworn, clear prima fascia case of forgery by the office of the Thurston County Superior Court.

The evidence submitted by the appellant was so convincing that it was obvious that Mr. Ponzoha had not considered the contents of his evidence contrary to 5 USC 706(1), (2)(A), (B), (C), (D), and (F).

The Commissioner was not fooled by Mr. Ponzoha pleading and ordered a finding that indeed the appellant petition was timely filed.

Comes now the specific instance at bar;

Once again Mr. Ponzoha has convinced your Honor that this appellant is in violation of court rules.

As before this is error!

This matter closed upon receipt of our response dated July 7, 2016.

"We accept your onerous and contemptable challenge of June 15, 2016."

FOOD FOR THOUGHT

Lest reviewing authorities mistakenly think that Mr. Ponzoha is the only unacceptable performer in the judicial process administered in this case, the appellant's motion for Summary Judgment at 8 09-16-2013 of the case record of the trial court would convince you otherwise.

The appellant moved for summary judgment more than 3 years ago receiving no response from the trial court Judge or the HOA and is a direct violation of 5 USC 706;

“To the extent necessary to decision and when presented, the reviewing court **shall** decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.”

This failure alone to adjudicate our request for summary judgment caused a de nova review of several months to be extended several years contrary to 5 USC 706(1)(A) is justification for a finding of prejudicial error in favor of the appellant’s claims.

SUM

To cover all of our bases we submit herein a copy of our appeal that covers all of the issues demanded by the Clerks letter dated June 15, 2016 and a \$200 check to cover requested sanctions.

RELIEF REQUESTED

Per page 3 & 4 of the appellants record brief that covers RAP 10.3 through RAP 9.1 dated May 20, 2016 Tab 3.

Respectfully Submitted,



Milo D. Burroughs
11244 Aero Ln SE
Yelm, WA 98597
360-458-8775

Leslie C. Clark
Phillips Burgess PLLC
505 Broadway Unit 408
Tacoma, WA 98402-3998

Cc: MFR

AFFIDAVIT

Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS states upon his oath that the following information is true to his personal knowledge.

Total pages including tabs 3 Milo D. Burroughs 7/1/2016
Milo D. Burroughs
MILO DODD BURROUGHS

STATE OF WASHINGTON
COUNTY OF THURSTON

Sworn to and subscribed before me this the 22nd day of May 2012.

[Signature]
NOTARY PUBLIC Karon L. Whitford
My commission expires:
3-29-14



MILO D. BURROUGHS
WENJIN JIA
11244 AERO LN. SE. 360-458-8775
YELM, WA 98597

4893

19-854/1250 3071
0218837698

8/1/2016
Date

Pay to the Order of COAST OF WA TRV II \$ 200.00
Two hundred and 00/100
Dollars



For UNDERWRITER Milo D. Burroughs MP

⑆ 25008547⑆ 0218837698⑆ 04893

(12)

5



Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS: 9-12, 1-4**

June 15, 2016

Leslie C Clark
Phillips Burgess PLLC
505 Broadway Unit 408
Tacoma, WA 98402-3998
lclark@phillipsburgesslaw.com

Milo Burroughs
11244 Aero Lane SE
Yelm, WA 98597
Bmb2002@fairpoint.net

CASE #: 48078-6-II
Milo Burroughs, Appellant v. Western Airpark Association, Respondent
Case Manager: Cheryl

Mr. Burroughs

The brief you submitted to this court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reasons:

Brief does not include a title page. RAP 10.3(a)(1)

Brief does not include Tables. RAP 10.3(a)(2)

Brief does not include assignments of error together with issues pertaining to assignments of error. RAP 10.3(a)(4).

Brief does not cite to the record. RAP 10.3(a)(5).

Brief does not include an Argument. RAP 10.3(a)(6)

Brief does not include a Conclusion. RAP 10.3(a)(7)

Attachments to the brief are not part of the record on review and, therefore, this Court cannot consider them. RAP 9.1.

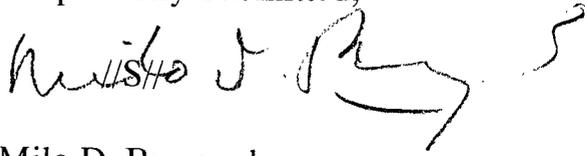
The Court will not file the brief as part of the official record but will stamp it and place it in the pouch without filing. Therefore, you must submit and re-serve a corrected brief by **June 30, 2016**. I have attached a sample brief for your convenience.

If you have any questions, please contact this office.

U3)

TAB-1

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Milo D. Burroughs". The signature is fluid and cursive, with a long horizontal stroke at the end.

Milo D. Burroughs
11244 Aero Ln SE
Yelm, WA 98597
360-458-8775

Leslie C. Clark
Phillips Burgess PLLC
505 Broadway Unit 408
Tacoma, WA 98402-3998

Cc: Heads up, MFR



Washington State Court of Appeals Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454

David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)

General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> **OFFICE HOURS:** 9-12, 1-4.

June 15, 2016

Leslie C Clark
Phillips Burgess PLLC
505 Broadway Unit 408
Tacoma, WA 98402-3998
lclark@phillipsburgesslaw.com

Milo Burroughs
11244 Aero Lane SE
Yelm, WA 98597
Bmb2002@fairpoint.net

CASE #: 48078-6-II

Milo Burroughs, Appellant v. Western Airpark Association, Respondent
Case Manager: Cheryl

Mr. Burroughs

The brief you submitted to this court in this matter does not conform to the content and form requirements set out in the Rules of Appellate Procedure for one or more of the following reasons:

Brief does not include a title page. RAP 10.3(a)(1)

Brief does not include Tables. RAP 10.3(a)(2)

Brief does not include assignments of error together with issues pertaining to assignments of error. RAP 10.3(a)(4).

Brief does not cite to the record. RAP 10.3(a)(5).

Brief does not include an Argument. RAP 10.3(a)(6)

Brief does not include a Conclusion. RAP 10.3(a)(7)

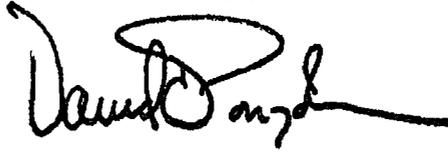
Attachments to the brief are not part of the record on review and, therefore, this Court cannot consider them. RAP 9.1.

The Court will not file the brief as part of the official record but will stamp it and place it in the pouch without filing. Therefore, you must submit and re-serve a corrected brief by **June 30, 2016**. I have attached a sample brief for your convenience.

If you have any questions, please contact this office.

(17)

Very truly yours,

A handwritten signature in black ink, appearing to read "David Ponzoha". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

David C. Ponzoha
Court Clerk

DCP:c

Fax Send Report

Date & Time : JUN-20-2016 08:11AM MON
Fax Number :
Fax Name :
Model Name : WorkCentre 3210

No	Name/Number	Start Time	Time	Mode	Page	Result
589	12539265435	06-20 08:09AM	01' 30	G3	004/004	O.K

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MILO D. BURROUGHS)
 PLAINTIFF,) CASE NUMBER
 VS.) 48078-6-II
WESTERN AIRPARK)
 ASSOCIATION) RESPONSE TO LETTER FROM
 DEFENDANT) WSCA DATED JUNE 15, 2016
)
)

June, 18, 2016

Honorable Justices of the Court of Appeals, Division II, Tacoma, WA,

For the record the Plaintiff is a pro se, honorable discharged veteran of WW II, Korean War, and Vietnam who has conducted an informal brief on the written record for more than 3 years.

To date reviewing authorities and the HOA have failed to allege fault with that process.

Comes now the Clerk of this Court, Mr. Ponzoha on June 15, 2016 Tab 1, at the 11th hour, acting as counsel for the HOA, threatening the appellant with if he does not formalize his written record in accordance with this order he will simply; "stamp it and place it in the pouch without filing"

We take that to mean he will not forward our informal pleading to this Court to review.

Of course we object to that obvious lack of authority on the part of Mr. Ponzoha to do so!

With all due respect we request that this Honorable Court after it convenes to order up our informal pleading, adjudicate our claims on the sworn record, and render a decision.

253-926-5435

(19)

Fax Send Report

Date & Time : JUN-20-2016 08:20AM MON
Fax Number :
Fax Name :
Model Name : WorkCentre 3210

No	Name/Number	Start Time	Time	Mode	Page	Result
590	12535932806	06-20 08:17AM	02'04	G3	004/004	O.K

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MILO D. BURROUGHS)
) PLAINIFF,) CASE NUMBER
) VS.) 48078-6-II
WESTERN AIRPARK)
ASSOCIATION)) RESPONSE TO LETTER FROM
) DEFENDANT) WSCA DATED JUNE 15, 2016
))
))

June. 18, 2016

Honorable Justices of the Court of Appeals, Division II. Tacoma, WA.

For the record the Plaintiff is a pro se, honorable discharged veteran of WW II, Korean War, and Vietnam who has conducted an informal brief on the written record for more than 3 years.

To date reviewing authorities and the HOA have failed to allege fault with that process.

Comes now the Clerk of this Court, Mr. Ponzoha on June 15, 2016 Tab 1, at the 11th hour, acting as counsel for the HOA, threatening the appellant with if he does not formalize his written record in accordance with this order he will simply: "stamp it and place it in the pouch without filing"

We take that to mean he will not forward our informal pleading to this Court to review.

Of course we object to that obvious lack of authority on the part of Mr. Ponzoha to do so!

With all due respect we request that this Honorable Court after it convenes to order up our informal pleading, adjudicate our claims on the sworn record, and render a decision.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MILO BURROUGHS,
Appellant,
v.
WESTERN AIRPARK
ASSOCIATION,
Respondent.

No. 48078-6-II

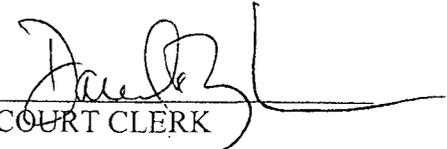
CONDITIONAL RULING OF DISMISSAL

FILED
COURT OF APPEALS
DIVISION II
2016 JUN 13 PM 1:03
STATE OF WASHINGTON
BY  DEPUTY

THIS MATTER comes before the undersigned upon a motion by the clerk of this court to dismiss the above-entitled appeal for failure to file the Appellant's Brief, due since June 2, 2016. It appears that dismissal is warranted, but that a brief grace period is also warranted. Accordingly, it is

ORDERED that the above-entitled appeal will be dismissed without further notice unless the Appellant's Brief and \$200 sanctions are on file with the Clerk before the close of business on June 23, 2016.

DATED this 13th day of June, 2016.


COURT CLERK

Leslie C Clark
Phillips Burgess PLLC
505 Broadway Unit 408
Tacoma, WA 98402-3998
lclark@phillipsburgesslaw.com

Milo Burroughs
11244 Aero Lane SE
Yelm, WA 98597
Bmb2002@fairpoint.net

EVIDENCE:

There are only two elements of the record submitted by the HOA in the record that presents testimonial facts; VERBATIM REPORT OF PROCEEDINGS dated March 18, 2016, and the HOA "Walking on runway," dated July 20th, 2013.

The Verbatim Report of Proceedings presented in the record by Clerk of the Court of Appeals is absent the exhibits that were present at the hearing and as such diminishes the value of truthfulness of a less than complete report without due notice to reviewing authorities that the record was not complete.

The Clerk was proactive and gratuitous in favor of the HOA when he ordered up the trial transcript not requested by the HOA, the judge conducted a hearing not requested by the appellant, but a judgment on the record, a hearing absent the appellant's presences.

The HOA does not have standing in this Court having failed to counter the Appellant's claims under 38 USC 4311(b), surely this Courts order directing the Appellant to pay for a HOA/Court trial transcript is without standing.

With the Trial Judges permission the HOA scarfed up all of the exhibits as soon as the hearing was over, and now the exhibits are not available this is contrary to Administrative Law Appeals before settlement.

Contrary every pleading by the Appellant was sworn testimony (best evidence) under 28 USC 1764 in Affidavit format. See 16-3.

In short it is the Appellant's Evidence v, Respondent's Hearsay.

DISCRIMINATION and REPRISAL:

The Walking on runway letter states, last paragraph, "The Board of Directors has no other choice but to restrict your use of the Western Air Park runway and/or Lot 24 common areas. The Board henceforth, will assess a fine of \$500 (Five Hundred US Dollars) each time you walk on the runway un-escorted by an adult." See 24-20.

Defined under 38 USC 4311(b) as *Anti-Discrimination and Anti Retaliation*, in this case in the same paragraph ---restrict your use of the Western Airpark runway and/or Lot 24 common areas. (discrimination, no one else, just the

appellant) and --- \$500 (Five hundred US Dollars) each time you walk on the runway--- (retaliation, no one else just the appellant), get even time.

REQUESTED AJUDICAION ON THE WRITTEN RECORD:

The HOA failed to counter *Aikens*, 460 U.S. 711, 714 (1983). "If the defendant failed to counter this evidence, the claimant's proof establishes that the adverse action was likely motivated by unlawful reasons" a given unlawfulness 2004 judicial, Congressional mandate.

The failure of the trial judge to adjudicate the appellant's claim under *Akens* as to "motivation by unlawful reasons or for that matter even to recognize that the appellant made a claim under *Akens*."

RELIEF SOUGHT UNDER FEDERAL APPEALS
COURT LAW

1. Refund of Trial Court wrongful award of Attorney fees and fines of \$7,287.96 dated June 25, 2015 + 12% interest since. See 8-24, 15-27, 18-11, 23.1 & 43.
2. In accordance with 42 USC 3217 damages of \$2500 (2) each for the unprovoked attack while walking on the runway. See 8-26, 11-1, 19-16.
3. An award of \$25 dollars per day + liquidated damages for compensation after the HOA denied the appellant use of the runway and/or Lot 24 for walking starting on July 20, 2013 until a date to be determined. See 9-1.
4. A return of all fees associated with adjudication under; 20 CFR PART 1002.310, "No fees or court costs may be charged or taxed against you if you are claiming rights under the Act." Uniformed Services Employment and Service Employment Act of 1994 (USERRA) 38 USC 4311(b).

RELIEF SOUGHT UNDER CRIMINAL LAW

In our appeal of 13-2-01581-9 dated 7/28/2015 we established a filing date of 2015 JUL AM 11:16 to document the date it was filed.

The Clerk's office in Olympia forged a date later than as documented as above.

(24)

We contested that forgery with the Court of Appeals in the person of Commissioner Schmitd who found we had timely filed.

IAW 42 USC 3611(c)(2) “any person who willfully mutilates, alters, or by other means falsifies any documented evidence; shall be fined not more than \$100, 000---“ See 8-8.

Appropriate remedy under 42 USC 3601 is \$10,000 in damages from each conspirator specifically the Trail Judge, counsel for the HOA Strickler, and the custodian of the records for Thurston County Supreme Court. See 3-13

The appellant demands \$100,000 US Dollars in damages from the Thurston County Court for a total lack of supervision and oversight of their legal system.

Respectfully Submitted,



Milo D. Burroughs
11244 Aero Ln SE
Yelm, WA 98597
360-458-8775

Certificate of Service
Strickler Law Office, LLC
303 Cleveland Ave SE Ste 201
Tumwater, WA 98501-3340
mas@stricklerlawoffice.com

Leslie C. Clark
Phillips Burgess PLLC
505 Broadway Unit 408
Tacoma, WA 98402-3998

AFFIDAVIT

Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS states upon his oath that the following information is true to his personal knowledge.

Total pages including tabs 44 Milo D Burroughs 5/23/2011
Milo D Burroughs
MILO DODD BURROUGHS

STATE OF WASHINGTON
COUNTY OF THURSTON

Sworn to and subscribed before me this the 22nd day of May 2012.

[Signature]
NOTARY PUBLIC Karen L. Whitford
My commission expires:
3-29-11



(26)

TRIAL COURT RECORD

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MILO D. BURROUGHS)	
PLAINTIFF,)	CASE NUMBER
VS.)	48078-6-II
WESTERN AIRPARK)	
ASSOCIATION)	CONSPIRACY
DEFENDANT)	
)	
)	

March 25, 2016

TRI-CONSPIRACY

The recent re-introduction of "transcription of the trial hearing" into this case by the appeals court clerk brings another matter to be decided by this court.

The trial court demanded a trial hearing in spite of a request by the appellant for a decision on the written record.

After 2 years of contemplation and disagreement with the appellant the trial court Judge convened a hearing trial in 2014.

A few days before trial counsel for the HOA petitioned the court without explanation to take possession of the trial record after the hearing.

On the date of the trial the Judge granted possession of the record without limitations.

As soon as the trial was over, that very afternoon as a matter of fact the HOA took possession of the trial records.



1 The appellant requested a copy of the trial record a couple days later without
2 any response from the HOA or the trial Judge. Total silence, contrary to;
3 *Aiken*, 460 U.S. 711, 714 (1983).

4 "If the respondents fail to counter this evidence, the claimant's proof
5 establishes that the adverse action was likely motivated for unlawful reasons,"
6 2004 judicial, Congressional mandate.

7 The fix was in!

8 See attached record.

9
10 SUM

11 The Judge and counsel for the HOA conspired to arrange the elements of the
12 hearing prior to the convening of the court in such a manner to favor the
13 HOA position absent any input from the appellant.

14 The appellant had no knowledge of and was not a party to the discussions.
15 The appellant did not receive notification that these discussions took place
16 and was not aware that the HOA came prepared with an order for the judge
17 to sign until he received some time much later a copy of the Judges brief
18 summary remarks which did not include reference to the official record.

19 Specifically the HOA sought to segregate the official court record from the
20 Judges summary remarks of a general nature of the Judge's decision.

21 The HOA came to trial with a completed order for the Judge to sign
22 releasing the official court record of evidence without limitations that was
23 signed by the Judge at the end of the hearing.

24 It is undisputed that the appellant was not present at the trial hearing yet the
25 Judge went forward in a one sided hearing where only the HOA evidence
26 was developed.

27 The testimony of the HOA witness is a crucial element to the appellants
28 case, now the Thurston County Superior court cannot produce the record
after requesting copies from the controlling individual authorities, the Judge,
Custodian of records and HOA counsel Strickler.

1 The only true evidence that was produced in this whole case by Strickler and
2 the HOA has been massacred by judicial conspiracy orchestrated by
3 Strickler and inside legal authorities involving the testimony of the principal
4 advisories of the appellant in the HOA.

5 If we manage to get a copy of the whole record one can be assured an
6 analysis will reveal a wonton mountain of legal corruption on the part of
7 those involved.

8 If the custodian of records can secure a complete copy of the official record
9 we will pay the transcription fee, please advise us when it is received so that
10 we do not miss the time line ordered by the clerk of the court.

11 The perpetrators of this conspiracy must personally pay a severe penalty;

12 **APPROPRIATE REMEDY**
13 **42 USC 3601**

14 The appellant demands \$10,000 US Dollars in damages from each
15 conspirator specifically the trial Judge, counsel for the HOA Strickler and
16 custodian of the records for Thurston County Superior Court.

17 The appellant demands \$100,000 US Dollars in damages from the Thurston
18 County Superior Court for a total lack of supervision of their legal system.

19 Respectfully Submitted,

20 

21 Milo D. Burroughs
22 11244 Aero Ln SE
23 Yelm, WA 98597
24 360-458-8775

25 Certificate of Service
26 Strickler Law Office, LLC
27 303 Cleveland Ave SE Ste 201
28 Tumwater, WA 98501-3340
mas@stricklerlawoffice.com

1 Leslie C. Clark
2 Phillips Burgess PLLC
3 505 Broadway Unit 408
Tacoma, WA 98402-3998

4
5
6
7 AFFIDAVIT

8 Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS
9 states upon his oath that the following information is true to his personal knowledge.

10 Total pages including tabs 4

11 Milo D. Burroughs 2/28/2010
12 MILO DODD BURROUGHS

13 STATE OF WASHINGTON
14 COUNTY OF THURSTON

15 Sworn to and subscribed before me this the 22nd day of May 2012.

16 [Signature]
17 NOTARY PUBLIC KAREN L. Whitehead
18 My commission expires:
19 3-29-14



WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MILO D. BURROUGHS)
PLAINTIFF,) CASE NUMBER
VS.) 48078-6-II
WESTERN AIRPARK)
ASSOCIATION) RESPONSE TO LETTER FROM
DEFENDANT) WSCA DATED MARCH 17, 2016
)
)

March 18, 2016

See attachment # 1 for most recent communication.

See attachment # 2 most recent brief after closure of 13-2-01581-9 for the courts consideration on review in accordance with 42 USC 3601, under 48078-6-II.

Respectfully Submitted,

//S//

Milo D. Burroughs
11244 Aero Ln SE
Yelm, WA 98597
360-458-8775

Certificate of Service
Strickler Law Office, LLC
303 Cleveland Ave SE Ste 201
Tumwater, WA 98501-3340
mas@stricklerlawoffice.com

5

WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

MILO D. BURROUGHS)
PLAINTIFF,) CASE NUMBER
VS.) 48078-6-II
WESTERN AIRPARK)
ASSOCIATION) RESPONSE TO LETTER FROM
DEFENDANT) WSCA DATED DECEMBER 8, 2015
)
)

December 14, 2015

Attention: Commissioner Schmidt, ET all

EMAIL REVOCATION

I revoke my authorization to use the Email system because my Email skills are less than satisfactory to meet the requirements effective with this pleading dated December 13, 2015. //S// Milo D. Burroughs.

ANSWER TO CLERK'S LETTER

Mr. Ponzoha's letter of December 8, 2015 constitutes a threat. He implies that a Pro se appellant who submits a pleading by Email must be letter perfect to be heard at this Court or he is not going to pass it forward to the full court for adjudication on the written record.

"Emails such as the one on December 5, 2015, does not comply with the rules." Even the local rules frown on that kind of strictness for a Pro se appellant, and certainly the federal rules speak to that factor with considerable leeway.

The implication here is that a filing process by Email is a different breed of cat. If that is the case he failed to identify precisely what the requirement is for a pro se appellant.

6

TAE-2

1 He sums it up by stating, "If the documents are not filled by that date and
2 substantially comply with the rules, the appeal will be dismissed." Tab 2

3 It is difficult to understand if he knows what he is doing, selling Statement
4 of Arrangements or Designation of Clerk's Papers, because both elements
5 were covered in detail in our notice of appeal 13-2-01581-9 dated 7/28/2015.
6 Tab 3.

7 Our December 5, 2015 did not ask for advice about Statements of
8 Arrangements (SA) or Designation of Clerk's Papers (DCP) and he failed to
9 respond to; "Our Apologies, we erred when transmitting our copy by
10 Email,.... If sanctions are still justified: please so state then we will remit
11 payment forthwith. //S// M. Burroughs."

12 The time to dismiss on the grounds of SA and DCP is long since past and the
13 Clerk's threat to Dismiss at such a late date are without justification.

14 A ruling before the court (Judges) on the written record is all that is required.

15 On October 27, 2015 the Court notified Counsel stating specifically that the
16 AS and DCP was due by November 30, 2015, THE HOA HAS REFUSED
17 TO ANSWER. That is a specific violation contrary to 3610(a)(1)(A)(D) and
18 is to be adjudged a failure to counter evidence and is unlawful under 38 USC
19 4311(b) . Now, if Mr. Ponzoha wants to dismiss a real opportunity on the
20 basis of timing once again in this case he can do so.

21 With all due respect we request that Mr. Ponzoha recuse himself from this
22 case because it would appear he has a conflict of interest and total lack of
23 impartiality on at least 2 occasions reference timing.

24 CASE SUMMARY IN REVIEW

25 The appellant has pursued this case under 42 USC 3601.

26 42 USC 3601 clearly establishes the federal administrative law process as
27 the preferred process for adjudication under 3601.

28 The federal law process recommends for savings in time and effort of legal
resources, hence our request was for adjudication on the written record
without a trail was most appropriate. 3612(d)



1
2 The trail court not only ignored our request it steadfastly refused for more
3 than 2 years our request for adjudication under the federal process. 42 USC
4 3612 (o).

5 In addition to the foregoing the Trail court and the HOA proceeded under a
6 trial process in unison of holding a trial court hearing absent the presences of
7 the appellant, 2 ex part conversations absent the appellant's presences, and
8 the forgery attempt by the clerk's office at the Thurston County Superior
9 Court to assist the HOA.

10 42 USC 3611(c)(2)(C) (2) Any person who, with intent thereby to mislead
11 another person in any proceeding un der this subchapter—
12 (C)
13 willfully mutilates, alters, or by any other means falsifies any documentary evidence;
14 shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

15 "The initial burden of proving discrimination or retaliation rests with the
16 person alleging discrimination (the claimant)." For a second time the HOA
17 has intentionally failed to counter sworn evidence presented by the appellant.
18 The claimant's proof established that the adverse actions were more likely
19 than not was motivated by unlawful reasons. Citing *Gummo*, 75 F.3d at 106,
20 *Aikens*, 460 U.S. at 716. The respondent must demonstrate that it would
21 have taken the same adverse action for legitimate reasons regardless of the
22 complainant's status.

23 REMEDY

24 In accordance with, (IAW) 42 USC 3610(a) and our notice of appeal to this
25 court under 13-2-01581-9 and the trial court we challenged the HOA as
26 follows.

27 Please adjudicate and decision in turn each challenge with a specific
28 response;

1. Reimbursement of \$7,287.96 plus interest for wrongfully demanded fees
awarded by the trial court. *UAB v. Harry F. Gillman*, 223 VA. 752: 292
S.E.2d 378: 1982.

2. IAW 3217 damages of \$2500 (2) each plus interest for the unprovoked
attack while walking on the runway.



1 3. An award of \$25 a day + liquidated damages for compensation after the
2 HOA denied the appellant use of the runway for walking starting on July
3 20th, 2013 until a date to be determined.

4 TEMPORARY CHANGE OF CONTACT
5 INFORMATION

6 TAKE NOTE!

7 From 12/19/2015 until 12/25/2015 our contacts will be;
8 Mail 1431 East Main Street Phone number 1-206-304-9981
9 Kerrville, TX 78028

10 FOR THE RECORD

11 The appellant filed for the appeal under 13-2-01581-9 not 480786 and under
12 the federal admin rules the case closed on 7/28/2015 when the HOA failed to
13 respond under 3910(a)(1)(A)(D).

14 3612(a)(c) (c) Rights of parties

15 ...The Federal Rules of Evidence apply to the presentation of evidence in such hearing as they
16 would in a civil action in a United States district court.

17 3612(g)(3) (3) If the administrative law judge finds that a respondent has engaged or
18 is about to engage in a discriminatory housing practice, such administrative law judge shall
19 promptly issue an order for such relief as may be appropriate, which may include actual damages
20 suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to
21 vindicate the public interest, assess a civil penalty against the respondent—

22 (A)
23 in an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed
24 any prior discriminatory housing practice;

25 (B)
26 in an amount not exceeding \$25,000 if the respondent has been adjudged to have committed one
27 other discriminatory housing practice during the 5-year period ending on the date of the filing of
28 this charge; and

(C)
in an amount not exceeding \$50,000 if the respondent has been adjudged to have committed 2 or
more discriminatory housing practices during the 7-year period ending on the date of the filing of
this charge;

For a second time the Clerk of the AC Mr. Ponzoha went overboard to
support the HOA position. 42 USC 3611((c)(2)

His December 8, 2015 opinion of "At this time, the Statement of
Arrangements and Designation of the Clerk's Papers are due December 21,
2015." Is not only error but is discriminatory. There is no parallel order in
administrative federal law in a case of adjudication on the written record.

9

1 The appeal closed on 7/28/2015 and there is no such a request by the HOA
2 in the record.

3 He references our Email dated December 5, 2015.

4 He references our error in filing between coa2fillings@courts.wa.gov and
5 coafilings@court.wa.gov to identify an error that is at most copy error for
6 severe sanctioning.

7 On the same document, October 27, 2015, the Counsel was ordered "If
8 counsel does not intend to file a verbatim report of proceedings counsel
9 should notify this court, in writing, by that date. RAP 9.2(a)."

10 How can it be that copy error on the part of the Appellant rates severe
11 sanctioning while a failure of the HOA to answer an order in writing of the
12 Court is not also sanction-able? Clearly, continued discrimination by Mr.
13 Ponzoha.

14 Indeed the Appellant correctly informed the Thurston Court clerk by FAX at
15 #553 13607544060 on December 5, 2015 (Tab 1) with the correct address at
16 coa2fillings@courts.wa.gov which should have been "manually" passed on
17 to the Email accountant as a filling in person, or by US mail.

18 SUM

19 We filled a sworn copy of our notice of appeal to the court of appeals on
20 7/28/2015 No. 13-2-01581-9 in accordance with Federal Administrative
21 Court Procedures as directed by 42 USC 3601 that contained a copy of the
22 court record, designation of clerks record among other records.

23 We moved for de nova review on the written record not receiving a response
24 from the court or HOA.

25 Absent a response from the HOA under federal administrative law that
26 terminates the case, and indeed closes the case as for as the HOA is
27 concerned. A non-response is tantamount to consent and so described by
28 *Governors v. Aikens*, 460 U.S. at 716 for unlawful reasons.

A decision is rendered by the Court on the sworn information at hand
submitted by the Appellant.

10

1 Both Court Clerks continue to argue under local rules and have refused to
2 address our claims under 42 USC 3601 it is time an adjudicator (Judge)
3 decide the issue of locale rule v. 3610(a)(1)(A) and 3611(c)(2)

4 "3615...any law of a State, a political subdivision, or other such jurisdiction
5 that purports to require or permit any action that would be a discriminatory
6 housing practice under this subchapter shall to that extent be invalid."

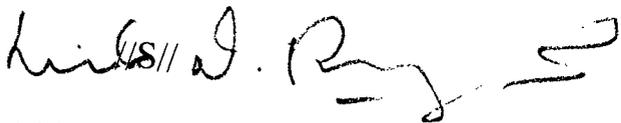
7 It shall be unlawful to coerce, intimidate, threaten, or interfere with any
8 person in the exercise or enjoyment of, or on account of his having exercised
9 or enjoyed, or on account of his having aided or encouraged any other
10 person in the exercise or enjoyment of, any right granted or protected by
section 3603, 3604, 3605, 3606 or 3617 of this title.

11 In particular when two Board members attacked the Plaintiff while he was
12 walking on the Runway they violated 3617, Page 4, Notice of Appeal
13 7/28/15.

14 APPEAL REVIEW EVIDENCE LIMITATION

15 No issue may be raised by the parties in this case can be used to decision this
16 case by the appeals court may be used in the adjudication process without
17 proof that the issue was raised prior to the closing of the record.

18 Respectfully Submitted,

19 

20
21 Milo D. Burroughs
22 11244 Aero Ln SE
23 Yelm, WA 98597
24 360-458-8775

25 Certificate of Service
26 Strickler Law Office, LLC
27 303 Cleveland Ave SE Ste 201
28 Tumwater, WA 98501-3340
mas@stricklerlawoffice.com

11

Cc, J. Johanson, Acting Chief Judge

AFFIDAVIT

Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS states upon his oath that the following information is true to his personal knowledge.

Total pages including tabs 39 *MILO DODD BURROUGHS* 12-16-15

MILO DODD BURROUGHS
MILO DODD BURROUGHS

STATE OF WASHINGTON
COUNTY OF THURSTON

Sworn to and subscribed before me this the 22nd day of May 2012.

[Signature]
NOTARY PUBLIC *KARON L. Whitehouse*
My commission expires:
3-29-14

Fax Send Report

Date & Time : DEC-05-2015 08:13AM SAT
Fax Number :
Fax Name :
Model Name : WorkCentre 3210

No	Name/Number	Start Time	Time	Mode	Page	Result
553	13607544060	12-05 08:10AM	02'17	G3	005/005	O.K

**CLERK
THURSTON COUNTY**



BMB

From: BMB <bmb2002@fairpoint.net>
 Sent: Saturday, December 05, 2015 7:33 AM
 To: 'Moreno, Cheryl'
 Cc: 'mas@stricklerlawoffice.com'
 Subject: RE: D2 480785--MILO BURROUGHS, APPELLANT V. WESTERN AIRPARK ASSOCIATION, RESPONDENT--Sanction Letter

coa2filings@courts.wa.gov

Washington State Court of Appeals
Division Two

December 5, 2015

Strickler Law Office, LLC
 303 Cleveland Ave SE Ste 201
 Tumwater, WA 98501-3340
mas@stricklerlawoffice.com

Milo D. Burroughs
 11244 Aero Lane SE
 Yelm, WA 98597
Bmb2002@fairpoint.net

CASE #: 48078-6-11
 Milo Burroughs, Appellant v. Northwest Airpark Homeowners Association, Respondent.

Dear Parties:

Our Apologies, we erred when transmitting our copy by Email, the correct address is coa2filings@courts.wa.gov. If sanctions are still justified; please so state then we will remit payment forthwith. //S// M. Burroughs

Corrected copy follows:

coa2filings@courts.wa.gov

Washington State Court of Appeals
Division Two

November 11, 2015

Strickler Law Office, LLC

Milo D. Burroughs
 11244 Aero Lane SE

1 B
TAB-1



Washington State Court of Appeals
Division Two

950 Broadway, Suite 300, Tacoma, Washington 98402-4454
David Ponzoha, Clerk/Administrator (253) 593-2970 (253) 593-2806 (Fax)
General Orders, Calendar Dates, and General Information at <http://www.courts.wa.gov/courts> OFFICE HOURS: 9-12, 1-4.

December 8, 2015

Mary Ann Strickler
Strickler Law Office, LLC
303 Cleveland Ave SE Ste 201
Tumwater, WA 98501-3340
mas@stricklerlawoffice.com

Milo Burroughs
11244 Aero Lane SE
Yelm, WA 98597
Bmb2002@fairpoint.net

CASE #: 48078-6-II
Milo Burroughs, Appellant v. Western Airpark Association, Respondent

Dear Mr. Burroughs:

This Court is in receipt of an email dated December 5, 2015. Mr. Burroughs has been requested to send all filings to coa2filings@courts.wa.gov. For example, where it indicates "To" at the top of the email, it should indicate coafilings@court.wa.gov and not indicate to Moreno, Cheryl. Therefore, the email is being deleted. Also, emails with attached word documents in PDF form that substantially comply with the rules may be filed. Emails such as the one sent on December 5, 2015, does not comply with the rules. At this time, the Statement of Arrangements and Designation of Clerk's Papers are due December 21, 2015. If the documents are not filed by that date and substantially comply with the rules, the appeal will the dismissed without further notice. > KBT



Very truly yours,

David C. Ponzoha
Court Clerk

DCP:c

14
TAB-2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF
THURSTON COUNTY

MILO D. BURROUGHS

PLAINTIFF,

VS.

WAP HOME OWNERS ASSOCIATION
DEFENDANT

) No. 13-2-01581-9
) NOTICE OF APPEAL TO THE
) COURT OF APPEALS
)
) RESPONSE TO ORDER FOR
) SUPPLEMENTAL
) PROCEEDINGS

A copy of the decision is attached to this notice.

July 13, 2015

MOTION

1. The Plaintiff Moves for a De Nova review on the Written Record.
2. The Plaintiff Moves for discovery of testimony given, of Stricklers address to the court and opening statement, Mr. Fernalid testimony, Mr. Callons testimony, Mr. Weston testimony, and all exhibits presented on October 20, 2014 under sub. 45 thru 48 and certification by the court that it is a true and correct list and of all components adjudicated on October 20, 2014.

HISTORY

The crux of the problem is as stated at Tab 1, paragraph 4, more than 2 years ago.

We challenged this specific paragraph at Tabs 2, 3, 4 under Sworn Affidavits not receiving a response from either the Court or the Corporate HOA.

The HOA request for Attorney's fees which was adjudicated with speed and dispatch. A classic example of an arbitrary and capricious act, *Irvin v. Hobby*, 131 F. Supp. 851 (1955).

Except the approved amount grew from; \$4,393 to \$7,287.96 due to miscellanies costs, not approved.

15
TAB-3

1 Under section 706 of the Administrative Procedure Act, a court shall set
2 aside an agency's action, findings, or conclusions determined upon review to
3 be arbitrary.

4 The record documents that the HOA presented no evidence prior to the trial
5 on 10/20/2014 which excluded the Plaintiff because of untimely notice,
6 while the Petitioner presented Sworn Affidavits (evidence) in every matter
7 before 10/20/2014. The HOA and the Court used the unsolicited request for
8 a trial by the Petitioner to cover the lack of evidence by the HOA, and
9 granted the HOA to take charge of the record and exhibits' immediately
10 after trial. *Johnson v. Pointe Community Association*, 1 CA-CV-02-0160,
11 ¶17

12 The Court eventually found for the HOA as a matter of Safety that it could
13 "fine" the Plaintiff and restrict him from walking in the Common Areas
14 without ever recognizing the Plaintiff's claim for compensation by issuing a
15 settlement order dated JUL 1- 2015.

16 Neither the HOA or the Court addressed our claim of Compensation for the
17 loss of use of walking in the Common areas.

18 One of the issues at hand, "Is the Plaintiff entitled to relief for the loss of
19 access to the common areas while walking?"

20 ORDER FOR SUPPEMENTAL 21 PROCEEDING

22 The Court granted the HOA a request for Supplemental Proceeding (SP) a
23 continuance of case number 13-2-01581-9 on 2015 JUN -2 to increase the
24 collection of additional costs and fee's by exercising their illegal "fining"
25 process.

26 Since the record does not contain what factors were considered in granting
27 continuance in an ex parte manner without limits reopens all of 01581-9 to
28 appeal.

DISCUSSION

It is obvious that the Court dealt with HOA request for Attorney's fees much
more differently than the Plaintiff's request for relief applicable to "loss of
access." In deed neither the Court nor the HOA gave the Complainant the
courtesy of a response.

TAB 1

16

1 On the date that Tab 1 was generated July 20th, 2013 fining the Plaintiff the
2 Board did so contrary to RCW 49.60.227;

3 **RCW 49.60.227 declaratory judgment action to strike discriminatory provision of
4 real property contract.**

5 **Intent -- 1987 c 56 § 2:** "The legislature finds that some real property deeds
6 and other written instruments contain discriminatory covenants and restrictions that are
7 contrary to public policy and are void. The continued existence of these covenants and
8 restrictions is repugnant to many property owners and diminishes the free enjoyment of
9 their property. It is the intent of RCW 49.60.227 to allow property owners to remove all
10 remnants of discrimination from their deeds." [1987 c 56 § 1.]

11 The amendment, Tab 1 was clearly discriminatory on its face yet the Board
12 went forward intentionally with its enforcement fining the Plaintiff \$1500.

13 ONE FOR THE ROAD

14 What goes around comes around!

15 In 1982 the Supreme Court for Virginia issued a Judgment in Unit Owners
16 Association of Buildamerica (UOAB) v. Harry F. Gillman (HFG) finding
17 unanimously for HFG. 223 Va. 752: 292 S.E.2d 378: 1982

18 This precedent setting case on HOA fining was the most complete and
19 specific of several state HOA's on the matter of Association Fines, but all
20 are similar.

21 This particular case parallels the case at issue here;

- 22 1. The cause of this action in each case, UOAB and Western Airpark (WAP)
23 was precipitated by a lack of the Covenants allowing the association to fine
24 its members for failure to obey an order issued by the Board.
- 25 2. Both Boards conjured up a fining system that would force their members
26 to pay a fine for disobeying a Board order, a policing order if you will, and
27 amended their rules to include a fining process.
- 28 3. In the case at issue WAP fined the Plaintiff \$500 each time he walked on
the common area of the associations property, the UOAB fined the
membership each time they parked their Garbage trucks on their common
area \$25.
4. In each case the fines increased proportionally over time with interest that
when in due course they were not paid thousands of dollars accrued causing
HFG and the Petitioner to sue for justice.

17

1 5. In both cases the Plaintiffs lost at the first level of adjudication.

2 In due course the SC of VA heard the case.

3 At page 8 the UOAB frankly admitted, "getting rid of the Gillmans' trucks"
4 was the purpose of the fining which parallels the Petitioners Sworn evidence
5 that except for a small number of members (6) the purpose for fining the
6 Petitioner was to force him off of walking on the common areas and
7 retaliating against him for ignoring their threats.

8 At page 7, "[4] The imposition of a fine is a government power. The
9 sovereign cannot be preempted of this power, and the power cannot be
10 delegated or exceeded other than in accordance with the provisions of the
11 Constitutions of the United States and of Virginia. Neither can a fine be
12 imposed disguised as an assessment."

13 [15]... "According, we affirm the decree of the court below directing fines
14 levied on the Gillmans by the Association be set aside and vacated, and
15 assessment liens released of record... The trail court's allowance of a fee to
16 counsel for the Association is reversed."

17 In this decision; we concur.

18 FOR THE RECORD

19 Crucial to every element of the record is that Landings and takeoffs on a
20 runway are a Flight Operation conducted by the Pilot.

21 The FAA controls landings and take offs by a Pilot at WAP, not the HOA.

22 The FAA established by regulation more than 50 years ago that a PILOT
23 may not land or take off on a runway occupied by People or Equipment
24 under fear of loss of licenses.

25 §91.13 Careless or reckless operation.

26 (a) *Aircraft operations for the purpose of air navigation.* No person may operate an aircraft in
27 a careless or reckless manner so as to endanger the life or property of another.

28 In short every landing and/or takeoff made by a PILOT at WAP who
testified at the Courts trial on October 20, 2014 violated FARS when doing
so, NOT THE PLAINTIFF!

1 That does not mean that the HOA cannot restrict the runway to people from
2 walking on the runway (ground operations) to decrease the likelihood of an
3 accident, but they cannot deny ONLY the Plaintiff from walking on the
4 runway because that is clearly direct, Discrimination.

5 Like it or not, that is contrary to 42 USC 3610(a) as defined in 42 USC
6 3602(f)

7 (f) "Discriminatory housing practice" means an act that is unlawful
8 under section 3604, 3605, 3606, or 3617 of this title, and enforced in
9 accordance with 42 USC 3615

10 42 U.S. CODE § 3615 - EFFECT ON STATE LAWS

11 ... but any law of a State, a political subdivision, or other such jurisdiction
12 that purports to require or permit any action that would be a discriminatory
13 housing practice under this subchapter shall to that extent be invalid.
14 Emphasis added. Which is the case at hand.

15 In particular when two Board members attacked the Plaintiff while he was
16 walking on the Runway they violated 3617;

17 "It shall be unlawful to coerce, intimidate, threaten, or interfere with
18 any person in the exercise or enjoyment of, or on account of his having
19 exercised or enjoyed, or on account of his having aided or encouraged any
20 other person in the exercise or enjoyment of, any right granted or protected
21 by section 3603, 3604, 3605, 3606, or 3617 of this title."

22 SUM

23 The Petitioner seeks redress as in *UAB v. HFG*, individual and collective
24 awards of damages as appropriate for the two people who attacked me on the
25 runway individually, and the HOA.

26 Order the HOA to remove the Plaintiffs restriction from use of the runway
27 and the common areas ~~XXXXXXXXXXXXXXXXXXXX~~.

28 Respectfully Submitted,

W. S. D. [Signature]

19

FILED

JUL - 1 2015

Superior Court
Linda Myhre Enlow
Thurston County Clerk

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

MILO D. BURROUGHS,

Plaintiff,

vs.

WESTERN AIRPARK ASSOCIATION,

Defendant.

No. 13-2-01581-9

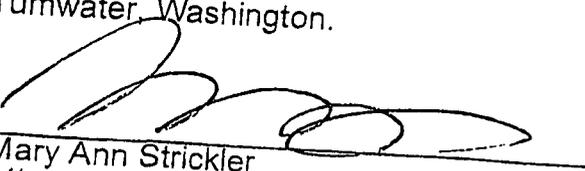
FULL SATISFACTION OF
JUDGMENT

(CLERK'S ACTION REQUIRED)

KNOW ALL MEN BY THESE PRESENTS, that Western Airpark Association, the judgment creditor in an action in the SUPERIOR Court of the State of Washington for the County of THURSTON, wherein MILO D. BURROUGHS was plaintiff and WESTERN AIRPARK ASSOCIATION was defendant, hereby acknowledges full satisfaction as to that judgment entered and filed against plaintiff Milo D. Burroughs on October 20, 2014, in the sum of \$4,393.00, including costs and fees.

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated: June 30, 2015, at Tumwater, Washington.


Mary Ann Strickler
Attorney for Judgment Creditor
WSBA No. 25294

FULL SATISFACTION OF JUDGMENT
PAGE 1

STRICKLER LAW OFFICE, LLC
303 CLEVELAND AVE SE STE 201
TUMWATER, WA 98501
TELEPHONE: (360) 539-7156
FAX: (360) 539-7205

21

1 Milo D. Burroughs
2 11244 Aero Ln SE
3 Yelm, WA 98597

4 Certificate of service: By Fax and/or 1st class Mail
5 Mary Anne Strickler
6 303 Cleveland Ave SE Suite 201
7 Tumwater, WA 98501
8 360-539-7205

9 7/28/2017 Milo D. Burroughs
Date Milo D. Burroughs

11
12
13
14 AFFIDAVIT

15 Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS
16 states upon his oath that the following information is true to his personal knowledge

17 Total pages including tabs 21 Milo D. Burroughs 7/28/2017
18 Milo D. Burroughs
19 MILO DODD BURROUGHS

20 STATE OF WASHINGTON
21 COUNTY OF THURSTON

22 Sworn to and subscribed before me this the 22nd day of May 2012.

23
24 NOTARY PUBLIC KAREN L. W. Thomas
My commission expires:

25 3-29-14
26
27
28

120

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2014 OCT 20 AM 9:35

BETTY J. GOULD, CLERK

IN THE SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY

MILO D. BURROUGHS,

Plaintiff,

vs.

WESTERN AIRPARK ASSOCIATION,

Defendant.

01581-9

No. 13-2-~~01585-9~~

ORDER AND JUDGMENT

JUDGMENT SUMMARY:

- 1. Judgment Creditor: Western Airpark Association
- 2. Judgment Debtor: Milo D. Burroughs
- 3. Principal Judgment Amount: \$ 0
- 4. Interest to Date of Judgment: n/a
- 5. Attorney Fees: n/a
- 6. Costs: \$ 4393.-
- 7. Total Judgment Amount: n/a
- 8. Principal Judgment Amount Shall Bear Interest at 12% per annum.
- 9. Attorney Fees, Costs and Other Recovery Amounts Shall Bear Interest at 12% per annum.
- 10. Attorney for Judgment Creditor: Mary Ann Strickler
- 11. Attorney for Judgment Debtor: Pro se

This matter was regularly scheduled for trial and called on October 20, 2014, by this Court, sitting without jury. Defendant was represented by Mary Ann Strickler, Attorney at Law. Plaintiff Burroughs was not represented by counsel, and did/old not appear at the trial.

Not

NOW THEREFORE, the Court enters the following:

ORDER AND JUDGMENT
PAGE 1

STRICKLER LAW OFFICE, LLC
303 CLEVELAND AVE SE, STE 201
TUMWATER, WA 98501
PHONE (360) 539-7156
FAX (360) 539-7205

ORIGINAL

22

clld Atty

14-9-00887-5

1 Dated: October 20, 2014.

3 Attorneys for Plaintiff/Petitioner:

Attorneys for Defendant/Respondent:

4 Plaintiff failed to appear

[Signature]

5 Address _____

Address 303 Cleveland Ave Ste #201

6 Phone _____

Townsend Ave #301
Phone 360 539-9156

9 Address _____

Address _____

10 Phone _____

Phone _____

12 III. ORDER

13 IT IS ORDERED that the exhibits be disposed of as outlined above without further order of this
14 Court.

15 DATED this 20th day of October, 2014.

Carol Murphy
JUDGE CAROL MURPHY

18 Document 4, 3/14/2005

0006952 11-24
Office # 1210(8)

Remitter: WENJIN JIA
Purchaser: WENJIN JIA
Purchaser Account: 0218837698
Operator I.D.: u316708 wash0971
Funding Source: Electronic Items(s), Paper Items(s)

PAY TO THE ORDER OF ***WESTERN AIRPARK ASSOCIATION***

CASHIER'S CHECK

SERIAL #: 0695201455
ACCOUNT#: 4861-512952

June 25, 2015

Seven thousand two hundred eighty-seven dollars and 96 cents

\$7,287.96

Payee Address:
Memo:

WELLS FARGO BANK, N.A.
1010 SLEATER KINNEY RD SE
LACEY, WA 98503
FOR INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER—IF THIS INSTRUMENT IS LOST,
STOLEN OR DESTROYED, YOU MAY REQUEST CANCELLATION
AND REISSUANCE. AS A CONDITION TO CANCELLATION AND
REISSUANCE, WELLS FARGO & COMPANY MAY IMPOSE A
FEE AND REQUIRE AN INDEMNITY AGREEMENT AND BOND.

VOID IF OVER US \$ 7,287.96

NON-NEGOTIABLE

Purchaser Copy

FB004 M4203 50109079

Tumwater, WA 98501

Re: Burroughs v. Western Airpark Association
Thurston County Superior Court Cause No. 13-2-01581-9

Dear Ms. Strickler:

Enclosed please find the following documents for settlement of the above-referenced matter:

1. Check Number _____ in the amount of \$7,287.96

Please have your client file a release of all liens and satisfaction of judgment within three (3) business days after receipt of the settlement funds. Please send our office a copy of the letters sent to release all liens and satisfaction of judgment as well as copies of the release of liens and satisfaction of judgment once they have been filed.

The enclosed check payable to Western Airpark Association is to be negotiated only upon agreement that the release of liens and satisfaction of judgment will be filed within three (3) business days.

Please contact our office if you have questions.

Sincerely,

JACK W. HANEMANN, P.S.

Jack W. Hanemann
Attorney at Law

JWH/sw
Enclosures
cc: client

23,41

July 20th, 2013

From: Board of Directors
Western Air Park Homeowners Association

To: Mr. Milo Burroughs
11244 Aero Lane SE
Yelm, WA 98597

Subject: Walking on runway

Milo:

The Board of Directors (BoD) has previously discussed with you the hazards of walking on the runway at Western Air Park. You have been asked to not walk on the runway as you have caused about 9 near misses/go-arounds by aircraft landing or departing. During your walks on the runway: 1) you are continually looking down, 2) you wear a hooded sweatshirt/jacket, 3) you appear to not be able to hear approaching aircraft, 4) you are not wearing a bright colored vest, 5) you are not looking around for landing/departing aircraft and, 6) you do not have another adult accompanying you when on the runway.

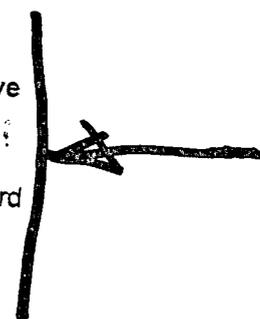
You have caused aircraft to go-around and when told by other residents of the airport, you have become hostile and belligerent toward them. A Board member and a homeowner delivered a letter to you dated February 24, 2013 explaining the hazard you are creating. You were asked to walk on Aero Lane and you have refused. The Board has also sent a letter to all residents and condo hangar owners expressing the need for more vigilance when in or near the runway environment. The BoD has also installed signs explaining the hazards associated with the runway environment. Milo, our runway is an active aircraft runway. No one in this airport community wants to have you or someone else injured or killed due to a person on the runway. You have not acquiesced to our suggestions regarding walking on the runway and continue doing so daily.

The BoD has the responsibility to insure the safety of aircraft arriving and departing our airport. Article VII, Section 1 (a) & (b) of the Amended By-Laws of Western Airpark Association, dated 4/01/1992, state the powers and duties of the Board of Directors.

The Board of Directors has no other choice but to restrict your use of the Western Air Park, runway and/or Lot 24 common areas. **The Board, henceforth, will assess a fine of \$500 (Five Hundred US Dollars) each time you walk on the runway un-escorted by an adult.** The fine will be added to your annual WAP Homeowner assessment. You have 30 days to appeal this decision by requesting in writing to the BoD that you would like to appeal their decision. The board will then schedule a board meeting where you may present your appeal.

Yours truly,
WAP Board of Directors

Signature of
Acceptance



24

Sum-7

SUPERIOR COURT OF THURSTON COUNTY

FILED SUPERIOR COURT THURSTON COUNTY, WA

2013 AUG 16 AM 11:29

BETTY J. GOULD, CLERK

MILO D. BURROUGHS

Plaintiff,

vs.

WAP HOME OWNERS ASSOCIATION

Defendant

No. 13-2-01581-9

MOTION FOR SUMMARY

JUDGMENT

August 17, 2013

PLAINTIFF MOVES FOR SUMMARY JUDGMENT

On July 25, 2013 the plaintiff requested a bench decision to save time and effort.

To date the HOA has declined to answer the plaintiff's request for relief dated July 23, 2013.

A review of the record clearly shows that the actions taken by the HOA are arbitrary, and capricious, and not in keeping with a predictable set of standards required by law.

RELIEF SOUGHT

An ORDER sanctioning the HOA for issuing an unconstitutionally, discriminatory order without the benefit of due process, plus costs, and award of damages as appropriate having been denied daily use of the runway.

Respectfully Submitted,

[Signature]

Milo D. Burroughs
11244 Aero Ln SE
Yelm, WA 98597

Certificate of service:

Mary Anne Strickler
303 Cleveland Ave SE Suite 201
Tumwater, WA 98501

Date

8/15/13

[Signature]
Milo D. Burroughs

25
TAR J

SUPERIOR COURT OF
THURSTON COUNTY

FILED
SUPERIOR COURT
THURSTON COUNTY, WA

2013 SEP -4 AM 11:42

BETTY J. GOULD, CLERK

MILO D. BURROUGHS

Plaintiff,

vs.

WAP HOME OWNERS ASSOCIATION

Defendant

No. 13-2-01581-9

MOTION FOR DEFAULT

JUDGMENT

September 2, 2013

PLAINTIFF MOVES FOR JUDGMENT
BY DEFAULT

On August 17, 2013 the plaintiff moved for Summary Judgment.

The Defendant has failed to plead its case, and has failed to counter the plaintiff's evidence.

WAP has failed to support any of their assertions with evidence.

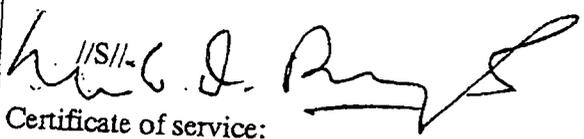
RELIEF SOUGHT

An ORDER sanctioning the HOA for issuing an unconstitutionally, discriminatory order without the benefit of due process, plus costs, and award of damages as appropriate having been denied daily use of the runway for 46 days.

Note; The HOA penalized the plaintiff \$1500 for one day of walking on the runway; damages by the day requested should be awarded accordingly.

Respectfully Submitted,

Milo D. Burroughs
11244 Aero Ln SE
Yelm, WA 98597



Certificate of service:
Mary Anne Strickler
303 Cleveland Ave SE Suite 201

26

TAB-3

1 Turnwater, WA 98501

2 Date

9/3/13

Milo D. Burroughs

Milo D. Burroughs

7 AFFIDAVIT

8 Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS
9 states upon his oath that the following information is true to his personal knowledge.

10 Total pages including tabs 2

11 *Milo D. Burroughs*
12 MILO DODD BURROUGHS

13 STATE OF WASHINGTON
14 COUNTY OF THURSTON

15 Sworn to and subscribed before me this the 22nd day of May 2012.

16 *Karen L. Whitcomb*
17 NOTARY PUBLIC
18 My commission expires:
19 3-29-14



SUPERIOR COURT OF
THURSTON COUNTY

MILO D. BURROUGHS

Plaintiff,

vs.

WAP HOME OWNERS ASSOCIATION

Defendant

No. 13-2-01581-9

CLERK

Missing records and
Dismissal of Bench

January 27, 2015

Western Air Park Homeowners Association Info

A Washington non-profit corporation and the bench have without authority denied Plaintiff compensation for use of the runway for 600+days on which to walk, which is Discriminatory and not in accordance with 42 USC 3601.

Well it has been almost 2 years or 600 days x 2 times each day that I have been denied walking on the runway.

Indeed of the 200 people living on this airport the Plaintiff is the only person not permitted to walk on the runway.

It's payback time, for this test period. 600 days ago I was a regular person and could exercise twice daily by walking on the runway for my health.

All of a sudden I became dangerous and became a safety problem that had to stop walking on the runway,

The bench denied a reasonable request for a stay of time without an explanation, it just could not wait, keep in mind that was 600 days ago!

COMPLAINT UNDER 42 USC 3601

28
TAB-4

1 Our complaint described detailed acts of "Discrimination". Etc., Etc, Ect.

2 The Bench, and WAP never mentioned in any manner, or opposed our
3 Discrimination claim in the 600 days since.

4 THE ISSUE

5 The Plaintiff established Discrimination with sworn evidence under 42 USC 3610.

6 The WAP established hearsay evidence based on safety as their principle issue.

7
8 Now that the 600 day test by the WAP is complete as they designed and configured
9 it to improve safety by banning the plaintiff from walking on the runway what is
10 the result.

- 11 1. Proof positive that the Plaintiff has been denied 600 days of not being
12 ~~unable~~ to exercise twice a day on the runway.
- 13 2. Proof positive that WAP has keep the Plaintiff from walking on the runway.

14 Test SUM;

- 15 1. The Plaintiff has lost an entitlement to a part of his personal claim in WAP corp.
16 for 600 days.
- 17 2. With the aid and assistance of an erroneous Bench decision the WAP has
18 stolen a portion of the Plaintiff WAP Corporate assets without compensation.

19 Among other things the bench has failed to comply with;

- 20 1. 42 USC 3610(f)(2)(A), and 3612(f)(g), etc.

21 RESULT

22 The airport is not any safer today than it was 600 days ago, more importantly there
23 is no showing of proof of such a claim.

24 The bench failed to adjudicate our claim of Discrimination as required by 42 USC
25 3610 which was our sworn issue from the get, go, but adjudicated WAP issue of
26 safety finding for the respondent that the Plaintiff was a danger when walking on
27 he runway, a claim they were unable to prove after 600 days.

1 If one takes Discrimination as having not been proven it matters not, it is the
2 results that count, and the argument presented by the Board with the 6 elements at
3 July 20th 2013 are accepted at face value today as discriminatory as a matter of
4 course. Tab 1.

- 5 1. For 600+ days the Bench and Respondent have colluded to deny the Plaintiff
6 his property rights contrary to 42 USC 3601. 42 USC 3601(2) still
2015
- 7 2. The Bench has failed to conduct a Bench decision on the record and the
8 WAP has refused to allow the Plaintiff to walk on the runway.
- 9 3. Its plainly factual that the WAP Corporation and the Bench have in unison
10 Discriminated against one of the co-owners of a legally regestrated US
11 Corporation for more than 600 days denying him his corporate entitlements
12 in the most unconventional legal and litigate process not using 42 USC 3601.
- 13 4. One does not want to adjudicate a bench case on the record as requested,
14 paid for. and waits 1.5 years to hold a 1.5 hour Bench decision by trial
15 without the Plaintiff in attendance etc., etc. Now that may be in her power all
16 to do, but very confusing.
- 17 5. Than the Corporation writes a perfect Discrimination confession in defense
18 of their position without the Bench or the Corporation mentioning
19 "Discrimination" in all their arguments.

20 DISCRIMINATION and 42 USC 3601 eta all!

21 Those are the 2 issues clearly presented to the Respondent and Bench from the get
22 go, in several hundred pleading pages over 2 years from the Plaintiff.

23 Silence and invisibility was the response from Respondent & Bench for over 2
24 years, **NOT ONE WORD**, one suggestion, one picture, one argument, one
25 challenge to the 2 words by either the Respondent or the Bench.

26 Intended or not, matters not, the result was clear cut Discrimination as reflected by,
27 42 USC 3601 this perfection of absence could not occur by accident, it was
28 INTENTIONAL. The Bench went all the way in lockstep to a perfect example of
record discrimination and jurisdictional malfeasants, also contrary to 42 USC 3601
and punishable under law individually, and job related wise.

MOTION

30

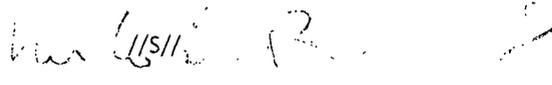
1 We respectfully "Move" that the Judge be relieved with "Prejudice" of any further
2 litigation involving the Plaintiff.

3 SUM

4 A true and correct Bench record must be prepared, Please tell us when a complete
5 record will be available so that we can finish our response to the initial decision,
6 how/who is going to do that?

7 A response by e-mail would be appreciated, hard of hearing, 20 miles on east side
8 of county, thanks.

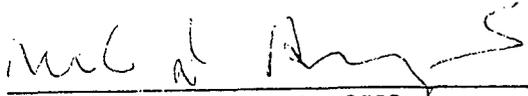
9 Respectfully Submitted,

10 
11 Milo D. Burroughs
12 11244 Aero Ln SE
13 Yelm, WA 9597
14 Bmb2002@fairpoint.net

15
16
17 AFFIDAVIT

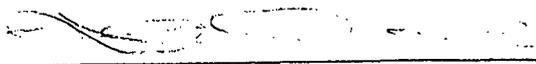
18
19 Pursuant to 28 USC 1764 and under penalty of perjury, MILO DODD BURROUGHS
20 states upon his oath that the following information is true to his personal knowledge.

21 Total pages including tabs 5

22 
23 MILO DODD BURROUGHS
24 1-21-2015

25 STATE OF WASHINGTON
26 COUNTY OF THURSTON

27 Sworn to and subscribed before me this the 22nd day of May 2012.

28 
NOTARY PUBLIC Karen L. Whitford
My commission expires:

3-29-14

31

4-2-13

Association Fines

Unit Owners Association of Buildamerica-1, A Condominium v. Harry F. Gillman

Unit Owners Association of Buildamerica-1, A Condominium v. Harry F. Gillman, et ux.; Harry F. Gillman and Sandra K. Gillman v. Unit Owners Association of Buildamerica-1, A Condominium, John R. Pflug, Jr., Trustee, and Board of Managers of the Unit Owners Association of Buildamerica-1

Record Nos. 800180, 800171

SUPREME COURT OF VIRGINIA

223 Va. 752; 292 S.E.2d 378; 1982

June 18, 1982

COUNSEL:

David C. Canfield (Tolbert, Smith, FitzGerald & Ramsey, on brief) for appellant. (Record No. 800180).

Fredrick H. Goldbecker for appellees. (Record No. 800180).

Fredrick H. Goldbecker for appellant. (Record No. 800171).

David C. Canfield (Tolbert, Smith, FitzGerald & Ramsey, on brief), for appellees. (Record No. 800171).

JUDGES:

Carrico, C.J., Cochran, Poff, Compton, Stephenson, and Russell, JJ., and Harrison, Retired Justice. Harrison, R.J., delivered the opinion of the Court.

OPINION BY: HARRISON

OPINION:

[*756] [**379] The Unit Owners Association of BuildAmerica-1, a condominium, filed its bill to enforce liens recorded against condominium units owned by Harry F. Gillman and Sandra K. Gillman based upon fines it had levied [***10] for alleged violations by them of its rules and regulations. It also sought to enjoin the Gillmans from bringing their garbage trucks onto the common elements of the condominium. The Gillmans filed their bill against the Board of Managers of the Association, seeking a declaratory judgment of their rights under the bylaws of the Association, injunctive relief, and the recovery of damages. The causes were consolidated, and upon trial, the lower court found the provision in the

32

1 bylaws of the Association providing for the collection of fines to be unlawful,
2 unconstitutional, and therefore unenforceable. The court did grant the
3 Association certain injunctive relief and a judgment for \$ 1250, representing
4 counsel fees incurred by it. The Association and the Gillmans noted appeals.

5 The Association contends here that Article III, paragraph 2(m) of its bylaws,
6 providing for the levying of fines, is not unlawful or unconstitutional as violative of
7 the due process guarantees of either the federal or state constitutions, and that
8 the award made by the trial court of counsel fees is unreasonably low. The
9 Gillmans contend on appeal that the trial court failed to construe properly the
10 bylaws, [***11] rules, and regulations of the Association as applied to them;
11 erred in not applying the equitable defense of laches and estoppel against the
12 Association; and erred in granting an injunction order which lacked standards for
13 compliance or ascertainable scope and which, because of its vagueness, will
14 give rise to further litigation.

15 The condominium involved is located in the southern part of Fairfax County and
16 is described as a single, large industrial structure comprised of twenty-six small
17 warehouse or garage-type units, surrounded by a parking area. The paved,
18 blacktop parking [*757] area, which is a common element of the condominium,
19 is designed to allow vehicles to drive around the entire length of the structure
20 and to facilitate on-site parking in spaces which were lined off but undesignated.
21 The condominium was established under the Condominium Act, Code § 55-
22 79.39, et seq., by master deed of John R. Pflug, Jr., dated August 16, 1974, and
23 recorded in Fairfax County along with the bylaws of the Association. Article 6 of
24 the deed provides [**380] that "[a]ll present and future owners, tenants, visitors
25 and occupants of units shall be subject to, and shall comply [***12] with the
26 provisions of this deed, the By-Laws and Rules and Regulations ... [of the
27 condominium] as they may be amended from time to time." The deed stipulates
28 that the condominium shall be administered by an Association whose
membership is comprised of unit owners.

Article III, Section 2 of the bylaws of the Association prescribes the powers and
duties of its Board of Managers to include the operation, care, upkeep, and
maintenance of the common elements, controlling the general use of all
common elements, and taking all other necessary action for the sound
management of the condominium. Article V, Section 11(c) enumerates certain
restrictions on the use of units, and provides that "[n]o nuisances shall be
allowed on the Condominium nor shall any use or practice be allowed which is a
source of reasonable annoyance or which unreasonably interferes with the
peaceful possession or proper use of the Condominium by its owners and
occupants." Regulation 15 for the Condominium provides that "[n]o noxious or
offensive activity shall be carried on in any Unit or in the common elements, nor
shall anything be done therein, either willfully or negligently, which may be or
become an [***13] annoyance or nuisance to the other Unit Owners or
occupants."

By deed dated July 12, 1976, the Gillmans purchased Unit 17, and one year
later, on July 13, 1977, purchased Unit 21 of the condominium. In each deed are
the following provisions:

SUBJECT TO the reservations, restrictions on use, and all covenants and
obligations set forth in the Master Deed, dated August 16, 1974 and recorded in

33

1 Deed Book 4088 at page 266 and as set forth in the By-laws of the Unit Owners
 2 Association attached thereto and as it may be amended from time to time, all of
 3 which restrictions, payments of charges and all [*758] other covenants,
 4 agreements, obligations, conditions and provisions are incorporated in this Deed
 5 by reference and shall constitute covenants running with the land, to the extent
 6 set forth in said documents and as provided by law and all of which are accepted
 7 by the Grantees as binding and to be binding on the Grantees and their
 8 successors, heirs and administrators, executors and assigns or the heirs and
 9 assigns of the survivor of them, as the same may be.
 10 AND the Grantors do hereby covenant and agree that the purpose for which the
 11 Unit may be used is for such uses as may [***14] be permitted under the zoning
 12 ordinances subject to such limitations as may be contained in the Master Deed
 13 and the By-laws of the Unit Owners Association.

14 The Gillmans, trading as Gillmans Five Star Trash Service, owned and operated
 15 a fleet of trash-collecting-trucks. From the date of their purchase of the units,
 16 and in the course of operating their business, they have been using these units
 17 and the common elements of the condominium as a location on which to repair,
 18 clean, and park overnight several of their vehicles. The Gillmans testified that
 19 they purchased the condominiums for this express purpose and that this
 20 purpose was clearly stated to Pflug, the grantor and declarant in the master
 21 deed, as well as to his employee, Roger Thornton. While this testimony was
 22 contradicted, it does appear that when the Gillmans purchased the last unit from
 23 the Association, Thornton wrote a letter for the Gillmans to sign, requesting a
 24 loan from a local bank to finance their purchase, and setting forth in the letter
 25 that the intended use of the condominium was for a storage facility for the
 26 Gillmans' commercial vehicles and trash receptacles used in their business.
 27 Further, to encourage [***15] the Gillmans' purchase of the second unit, Pflug
 28 accepted a second deed of trust on the unit.

The Gillmans apparently conducted their operations out of their units without
 incident or complaint until the spring of 1978. Between May 2 and August 10,
 1978, they received a series of four letters from the Association complaining
 about the manner in which they were parking vehicles, of oil and gas leakage
 from their trucks, and of [**381] offensive odors which emanated from the
 vehicles. They were finally ordered to remove their trucks from the
 condominium on or before June 12, 1978, or have the trucks physically [*759]
 removed by the Association and be subjected to a special assessment for the
 cost of removal.

On August 10, 1978, the Association, by its attorney, notified the Gillmans that it
 had imposed a fine on their units based upon their continuing violation of the
 bylaws, rules, and regulations of the Association. The fines were imposed
 pursuant to Article III, Section 2(m) of the bylaws, which gives the Board of
 Managers the power to:

[Levy] fines against Unit owners for violation of the Rules and Regulations
 established by it to govern the conduct of [***16] the Unit owners, provided,
 however, that no fine may levied in an amount in excess of \$ 25 for any one
 violation. But for each day a violation continues after notice, it shall be
 considered a separate violation. ... Where a Unit owner is fined for an infraction

B4

of the Rules and Regulations and fails to pay the fine within 10 days after notification thereof, the Board may levy an additional fine or fines to enforce payment of the initial fine.

The Board of Managers imposed a fine of \$ 25 against each truck for each day that such truck had allegedly "produced noxious odors on the Common Elements of the Condominium." The fine imposed for five trucks was \$ 125 a day, a total of \$ 8000 for the period June 7 through August 10, 1978. The Gillmans were also advised that if they did not pay the \$ 8000 within ten days, an additional fine of \$ 8000 would be imposed; and further, that the Managers would impose a similar \$ 25 fine for each day that any truck continued to generate an intolerable odor while parked on the common elements. This action by its counsel was formally ratified at a special meeting of the Board of Managers held August 31, 1978. At that meeting, counsel explained [***17] Virginia's Condominium Act to the Managers, with particular reference to "the right of assessment and the right to lien for failure to pay assessments based on the unit owners pro rata portion of condominium expenses." It was his opinion that the Association had "a sound foundation for assessing against Gillmans' and [recovering] the cost of attorney's fees if we do prevail." However, he advised the Board that "it's a matter of Gillmans' attorney's theory versus our theory of the condominium act." At this meeting, the Board also amended the Association's [*760] rules and regulations to provide that no unit owner be allowed to maintain on the condominium property more than three trucks per unit with an empty weight of 10,000 pounds or over.

The Gillmans did not pay the \$ 8000 fine within ten days, and the Board levied an additional fine of \$ 8000. Ultimately it levied fines totaling \$ 20,500 on the Gillmans for their alleged violations and filed memoranda of liens in that amount in the Clerk's Office of Fairfax County, pursuant to Code § 55-79.84(a) (1979 Cum. Supp.), which provides, in part:

The unit owners' association shall have a lien on every condominium unit [***18] for unpaid assessments levied against that condominium unit in accordance with the provisions of this chapter and all lawful provisions of the condominium instruments. ...

On November 2, 1978, the Association filed its suit to enforce the liens and enjoin the Gillmans from parking their trucks on the common elements. The next day the Gillmans filed suit for a declaratory judgment. The condominium is built in a zone that permits the operation of a trash-and-garbage-collection-business such as that conducted by the Gillmans. There is nothing in the master deed, or in the bylaws, which prohibited a sale by Pflug of one or more units for use by a purchaser in conducting such a business, and in using, repairing, and storing vehicles in connection therewith. Purchasers of other units from Pflug were charged with knowledge of the permitted uses. [**382] Although it may have been planned originally that each unit owner would be allocated four parking spaces per unit, this understanding admittedly was not observed by the various unit owners. Prior to August 31, 1978, there were no restrictions or limits on the number of vehicles that each unit owner could own, use, store, [***19] or park in the units or on the common elements. The

35

1 Association fined the Gillmans because their trucks caused an "odoriferous
 2 nuisance" in that they "produced noxious odors on the common element of the
 3 condominium," which were "offensive and intolerable to the other unit owners."
 4 The Gillmans deny that they operated their business or trucks in the manner
 5 alleged by the Association; admit that they have parked their trucks on the
 6 common elements of the condominium; [*761] and claim that they have a
 7 vested property right to do so. They testified that the Association had made no
 8 objection for more than two years to the manner in which they had operated their
 9 business, and emphasize the conveyance to them of a second unit after they
 10 had been conducting a garbage-and-trash-collecting-business from their first unit
 11 for a full year. They further say their business was being operated in compliance
 12 with the zoning laws of Fairfax County and consistent with uses of other unit
 13 owners and owners of surrounding properties. At trial, the Gillmans introduced
 14 copies of numerous inspection reports made by representatives of Prince
 15 William and Fairfax Counties reflecting the cleanliness [***20] of the trucks and
 16 full compliance with all health regulations.

17 John T. Summers, an inspector for the Fairfax Health Department, was accepted
 18 as an expert witness. He had inspected the Gillmans' operation some twenty-five
 19 times. He said the Gillmans had cooperated fully with the Health Department,
 20 and he found no violations and observed no significant health hazards. When
 21 asked to evaluate the cleanliness of the Gillmans' trucks in comparison to those
 22 of other such companies, Summers stated they "were no better nor no worse"
 23 than other trash trucks. He testified that on warm humid days he had noted
 24 some odor from the trucks, but this was only when one was close to a truck, and
 25 even then he found the odor slight.

26 Four unit owners, members of the Board of Managers, testified that they
 27 detected offensive odors emanating from the Gillman trucks. Carl Moorefield
 28 said that he could smell "rotten garbage" from the front of his unit even when the
 29 Gillman trucks were not on the premises. He also said that the trucks leaked oil
 30 and hydraulic fluid and caused damage to the surface of the driveway area.
 31 Moorefield admitted that he had seen heavy vehicles, other than those of the
 32 Gillmans', [***21] on the common elements of the condominium, and that he
 33 routinely had ten or eleven employee automobiles associated with his operation
 34 parked on the common elements during the day.

35 Board member William Crawford testified that to his knowledge "at least five
 36 trucks were parked [by the Gillmans] on the premises every day." Crawford said
 37 the trucks were leaking oil and hydraulic fluid on the parking area and they were
 38 often parked and repaired in the driveway area, thereby interfering with other
 39 vehicles. He complained of an odor emitted by the trucks [*762] and said that
 40 he had seen maggots on the pavement which he attributed to the Gillman
 41 trucks.

42 William Rydell, unit owner, operated a retail automobile glass shop. He said that
 43 the odor of the Gillman trucks bothered his customers more than it bothered
 44 him. He admitted that while the Gillman trucks sometimes leaked oil and
 45 hydraulic fluid, his own trucks "leaked some of the same," the difference
 46 apparently being one of degree. He said that while the Gillman trucks caused
 47 congestion, everyone at the condominium caused congestion to others at some
 48 time or another. Rydell regularly used seven or eight trucks in his business.
 [***22]

36

Pflug testified that he then owned only one unit of the condominium and that it was rented. He said that when the Gillmans' problem was brought to this attention, he visited the condominium and found the odor nauseating. In characterizing the Gillman trucks, he said "they stink."

[**383] [1] No condominium shall come into existence in Virginia except on the recordation of condominium instruments pursuant to the provisions of Chapter 4.2 of the Code of Virginia, cited as the Condominium Act. Code § 55-79.39, et seq. The entire condominium concept, and all pertaining to it, is therefore a statutory creation. For a review of the historical background and nature of this method of real estate ownership, Virginia's present Condominium Act, and its predecessor, the Horizontal Property Act, Acts 1962, c. 627, reference is made to Mr. Justice Compton's opinion in *United Masonry v. Jefferson Mews*, 218 Va. 360, 237 S.E.2d 171 (1977).

We consider first the Association's assignment which questions the action of the trial court in setting aside as unlawful the fines levied against the Gillmans. The Association argues that the requirement of the Condominium Act (Code [**23] § 55-79.73(a)) that "a set of bylaws providing for the self-government of the condominium by an association of all the unit owners" is designed to foster the evolution of a condominium into "a self-governing community" and a "fully self-governing democracy." It argues that there is no limitation inherent in the Condominium Act on the powers that may be created by the condominium documents, relying upon Code § 55-79.80(c), which provides: "This section shall not be construed to prohibit the grant, by the condominium instruments, of other powers and responsibilities to the unit owners' association or its executive organ."

[*763] The Association further contends that consistent with "the deference to the condominium documents" that appears throughout the Condominium Act, Virginia Code § 55-79.84 does not limit the lien it permits to assessments levied "in accordance with the provisions of this chapter," but extends the lien also to assessments levied "in accordance with the provisions ... of the condominium instruments." It maintains that since the bylaws of the Association give its Board of Managers the power to levy a fine against a unit owner, and to collect such fine as [**24] if it were a common charge, every unit owner purchased subject to this power.

[2] We do not agree that it was ever the intent of the General Assembly of Virginia that the owners of units in a condominium be a completely autonomous body, or that such would be permitted under the federal and state constitutions. Admittedly, the Act is designed to and does permit the exercise of wide powers by an association of unit owners. However, these powers are limited by general law and by the Condominium Act itself. Code § 1-13.17 provides that "[w]hen ... any ... number of persons, are authorized to make ... bylaws, rules, regulations ... it shall be understood that the same must not be inconsistent with the Constitution and laws of the United States or of this State." The Condominium Act also sets limits on the powers that may be created by the Condominium documents. All unlawful provisions therein are void. Code § 55-79.52(a). "Common expenses" mean expenditures lawfully made or incurred. Code § 55-79.41(b).

37

[3] We find no language in the Condominium Act which authorizes the executive or governing body of a condominium to levy fines, impose penalties, or exact forfeitures [***25] for violation of bylaws and regulations by unit owners. Code § 59-79.83 provides in detail the various circumstances under which common expenses associated with the maintenance, repair, renovation, restoration, or replacement of any common element shall be assessed. Code § 55-79.84 provides that a unit owners' association shall have a lien on every condominium unit for unpaid assessments levied against that condominium unit in accordance with the provisions of the Condominium Act and all lawful provisions of the condominium instrument.

The Condominium Act provides the manner in which an association shall compel compliance with condominium instruments. Code § 55-79.53 reads as follows:

[*764] The declarant, every unit owner, and all those entitled to occupy a unit shall comply with all lawful provisions of this chapter and all provisions of the condominium [**384] instruments. Any lack of such compliance shall be grounds for an action or suit to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, maintainable by the unit owners' association, or by its executive organ or any managing agent on behalf [***26] of such association, or, in any proper case, by one or more aggrieved unit owners on their own behalf or as a class action.

The statute does not purport to grant an association the power to secure compliance with its bylaws, rules, and regulations by the imposition of a fine or the exaction of a penalty. The accepted definition of "fine" is found in Black's Law Dictionary 569 (5th ed. 1979), and is as follows:

To impose a pecuniary punishment or mulct. To sentence a person convicted of an offense to pay a penalty in money.

A pecuniary punishment imposed by lawful tribunal upon person convicted of crime or misdemeanor. A pecuniary penalty. It may include a forfeiture or penalty recoverable in a civil action, and, in criminal convictions, may be in addition to imprisonment.

The Condominium Act authorizes assessments, not fines. The term "assessment" is in no way synonymous with the word "fine" or the word "penalty." Assessment is defined in Black's, supra, at p. 106, as follows:

In a general sense, the process of ascertaining and adjusting the shares respectively to be contributed by several persons towards a common beneficial object according [***27] to the benefit received. A valuation or a determination as to the value of property. ...

[4] The imposition of a fine is a governmental power. The sovereign cannot be preempted of this power, and the power cannot be delegated or exercised other than in accordance with the provisions of the Constitutions of the United States and of Virginia. Neither can a fine be imposed disguised as an assessment.

[*765] [5] The controversy here arose over the alleged objectionable manner in which the Gillmans were conducting their business from their privately owned

1
38

units and on the common elements in which they jointly had an interest with other unit owners. The trucks emitted an offensive odor, as would be expected of trucks that haul garbage and are periodically disinfected. However, the Gillmans were operating a lawful business in a permitted zone and apparently to the satisfaction of the health authorities of two counties. They maintained that they were complying with the law and with the bylaws, rules, and regulations of the Association. Assuming that the Gillman trucks, and their mode of operation, created noxious and offensive odors and amounted to a nuisance, Code [***28] § 55-79.53 provided the Association with a remedy to correct the condition and obtain compliance with its bylaws and regulations. Instead of proceeding in that manner and having the rights of the respective parties determined as provided by law, the Board of Managers called a special meeting, the four members who attended decided what they objected to was a "nuisance," fined the Gillmans \$ 20,500, and encumbered their property. The mischief that could be wrought if it were constitutionally permissible for a condominium association to levy fines on and exact penalties of unit owners is dramatically illustrated by this case. Pflug frankly admitted that he regretted selling any units to the Gillmans, and said the sale was "... a bad deal ... the worst one I've ever made" and that the only way to solve the pavement problem was "to get rid of all Gillmans' trucks." Moorefield, another member of the Board "fining" the Gillmans, testified that the imposition of fines better served the purpose of getting the Gillmans out of the condominium since the only way this could be accomplished was to "ruin them." We think it clear that the Gillmans were being punished, not assessed, and [***29] hold the action of the Association to have been impermissible. We now turn our attention to the Gillmans' assignments of error in which they question the action of the Association in amending its rules and regulations. They [**385] allege that their purchases of units were made after full disclosure of their intended use to the declarant Pflug, that their use of the property was in accordance with the zoning ordinance and with the understanding they had of permitted uses, and that their continued and alleged reasonable use of the common elements for the repair and parking of their trash collection vehicles was ratified by the Association. They argue [*766] that their business has been conducted in compliance with "industrial standards" and that to now apply the words "noxious" or "nuisance" to such operation amounts to a retrospective reinterpretation of the condominium documents. They object to the amendment to the rules and regulations attempting to reduce the number of trucks the Gillmans are allowed on the parking area. They regard such amendment as destructive of their alleged vested right to continue to use the same number of spaces as they were permitted to use [***30] at the time of their respective purchases. The specific regulation or restriction of which the Gillmans complain is that enacted by the Managers of the Association on August 31, 1978, decreeing that no unit owner be allowed to maintain on the condominium property more than three trucks per unit with an empty weight of 10,000 pounds or over.

[6] The narrow issue is the right of a condominium association to amend its rules, regulations, and bylaws from time to time. As we have heretofore pointed out, the bylaws of the Association recorded with the master deed expressly provide for such amendments. And the master deed conveyed the units to the Gillmans with the express understanding that the rules, regulations, and bylaws

39

1 of the Association were subject to amendment. The power exercised by the
 2 Association is contractual in nature and is the creature of the condominium
 3 documents to which all unit owners subjected themselves in purchasing their
 4 units. It is a power exercised in accordance with the private consensus of the
 5 unit owners. While the unit owners are vested with an undivided interest in the
 6 common elements, the authority to control the use of the common elements is
 7 vested [***31] in the Association by the condominium documents and such
 8 amendments thereof as may thereafter be adopted.

9 [7-9] A regulation which restricts the use of parking spaces and the weight of
 10 vehicles permitted to occupy such spaces is in no sense a zoning regulation
 11 adopted under the police power. Rather, when adopted lawfully and reasonably,
 12 it becomes a mutual agreement entered into by the condominium unit owners. A
 13 prospective purchaser of a unit is charged with notice of the contents of the
 14 master deed and of the bylaws and therefore has the option at the time of
 15 purchase to determine whether to sign an agreement and purchase a unit with
 16 such a restriction or limitation. It has been universally held that reasonable
 17 restrictions concerning use, occupancy, and transfer of condominium units are
 18 necessary [*767] for the operation and protection of the owners in the
 19 condominium concept. The necessity for such restrictions on condominium
 20 living was aptly explained in Hidden Harbour Estates, Inc. v. Norman, 309 So.
 21 2d 180, 181-82 (Fla. Dist. Ct. App. 1975). The court adopted a test of
 22 reasonableness to determine the validity of association regulations and said:

23 It [***32] appears to us that inherent in the condominium concept is the principle
 24 that to promote the health, happiness, and peace of mind of the majority of the
 25 unit owners since they are living in such close proximity and using facilities in
 26 common, each unit owner must give up a certain degree of freedom of choice
 27 which he might otherwise enjoy in separate, privately owned property.
 28 Condominium unit owners comprise a little democratic sub society of necessity
 more restrictive as it pertains to use of condominium property than may be
 existent outside the condominium organization. ... Certainly, the association is
 not at liberty to adopt arbitrary or capricious rules bearing no relationship to the
 health, happiness [**386] and enjoyment of life of the various unit owners. On
 the contrary, we believe the test is reasonableness. If a rule is reasonable the
 association can adopt it; if not, it cannot. It is not necessary that conduct be so
 offensive as to constitute a nuisance in order to justify regulation thereof. Of
 course, this means that each case must be considered upon the peculiar facts
 and circumstances thereto appertaining. *

* Subsequent to its opinion in Norman, that court took occasion to protest the
 manner in which the word "reasonable" used in its decision had been
 interpreted. In Hidden Harbour Estates, Inc. v. Basso, 393 So. 2d 637, 639-40
 (Fla. Dist. Ct. App. 1981), the court pointed out that there are essentially two
 categories of cases in which a condominium association attempts to enforce
 rules of restrictive uses. It said that in the first category dealing with restrictions
 found in the declaration of condominium itself, "the restrictions are clothed with a
 very strong presumption of validity which arises from the fact that each individual
 unit owner purchases his unit knowing of and accepting the restrictions to be
 imposed. ..." It held that "[s]uch restrictions are very much in the nature of

AO

1 covenants running with the land and they will not be invalidated absent a
 2 showing that they are wholly arbitrary in their application, in violation of public
 3 policy, or that they abrogate some fundamental constitutional right. ..."
 4 Continuing, it held that in the second category of cases, "where a use restriction
 5 is not mandated by the declaration of condominium per se, but is instead
 6 created by the board of directors of the condominium association, the rule of
 7 reasonableness comes into vogue. The requirement of 'reasonableness' in
 8 these instances is designed to somewhat fetter the discretion of the board of
 9 directors. ..."

10 [***33]

11 [*768] A condominium restriction or limitation, reasonably related to a legitimate
 12 purpose, does not inherently violate a fundamental right and may be enforced if
 13 it serves a legitimate purpose and is reasonably applied.

14 While our attention has not been drawn to any Virginia case in point, a number
 15 of cases in other jurisdictions have upheld the right of a unit owners' association
 16 to add or to change its rules and regulations governing activities within the
 17 condominium. See also Code § 55-79.73. In Norman, supra, an association
 18 adopted a rule prohibiting the use of alcoholic beverages in certain areas of the
 19 common elements. Ritchey v. Villa Neuva Condominium Ass'n, 81 Cal. App.3d
 20 688, 146 Cal. Rptr. 695 (1978), approved the prohibition of residents under
 21 eighteen years old. In Ryan v. Baptiste, 565 S.W.2d 196 (Mo. App. 1978), a
 22 regulation provided for the installation of locks on common elements to restrict
 23 access. And in Coquina Club v. Mantz, 342 So. 2d 112 (Fla. Dist. Ct. App.
 24 1977), and Riley v. Stoves, 22 Ariz. App. 223, 526 P.2d 747 (1974), age
 25 restrictions on the occupants of condominiums withstood attack. In Riley
 26 [***34], the court found the age restrictions reasonably related to a legitimate
 27 purpose and declined to hold that their enforcement violated the defendant's
 28 right to equal protection.

In the instant case, there was originally no limitation or restriction on the size,
 type, or weight of vehicles that could be parked on the common elements of the
 condominium. However, this fact did not give each unit owner the unfettered and
 vested right to use the common elements in whatever manner he chose, or to
 occupy an unlimited number of spaces. The necessity for a regulation governing
 the number of spaces to which each unit owner is entitled and the weight of
 vehicles was probably not of importance at a time when all the units were not
 occupied. But with the sale and occupancy of all units, and with changes in
 methods of operation, it may become necessary and reasonable for some rules
 and regulations to be adopted concerning the allocation and use of parking
 spaces and possibly the weight of vehicles to be parked on the common
 elements.

[10] It is our conclusion that amendments to condominium restrictions, rules, and
 regulations should be measured by a standard of reasonableness, and that
 courts [***35] should refuse to enforce regulations that are found to be
 unreasonable. In doing so, inquiry must be made whether an association has
 acted within the scope of its authority as defined under the Condominium Act
 and by its [*769] own master deed and bylaws, and whether it has abused its
 discretion by [**387] promulgating arbitrary and capricious rules and
 regulations bearing no relation to the purposes of the condominium.

41

1 The condominium involved in the instant case is not a residential condominium
 2 but one designed for industrial uses. Any rule or regulation adopted by the
 3 Association cannot ignore the purposes for which the condominium was created
 4 and the intended uses by the purchasers of units in the condominium. Whether a
 5 regulation restricting each unit owner to three parking spaces is reasonable
 6 depends upon the number of spaces that are available in the parking area, the
 7 traffic in and around the condominium, and numerous other factors. In
 8 determining the reasonableness of a weight restriction, the Association would
 9 necessarily have to consider, among other things, the type, size, and weight of
 10 vehicles normally used in the businesses conducted therefrom by the [***36]
 11 unit owners, as well as the potential damage such vehicles could do to the
 12 common elements. A unit owner could be regulated out of business by an
 13 unreasonable and unrealistic weight restriction imposed on his vehicles by other
 14 unit owners or their boards of managers.

15 [11] By the same token, the operator of a business out of a condominium must
 16 operate with due regard to the rights of neighboring unit owners and the effect
 17 his operation has on the business of others. While some odor from the
 18 disinfectant or otherwise will most likely emanate from any garbage truck,
 19 nevertheless it is obvious that a trash-collecting-business cannot be operated
 20 from a condominium with the same freedom as from an isolated rural area.
 21 Because of varying facts and circumstances in each case, the courts have
 22 universally adopted the standard of reasonableness in their review of
 23 condominium rule making.

24 In its bill of complaint, the Association sought to permanently enjoin the Gillmans
 25 from allowing their garbage trucks on the common elements of the condominium
 26 "for any purpose whatsoever." The trial court enjoined the Gillmans from (1)
 27 "maintaining, parking, or retaining their trash collecting vehicles [***37] on the
 28 premises or common areas until the trucks had been washed thoroughly with a
 disinfectant/insecticide substance designed to reduce odor and kill insects," and
 (2) "from having, keeping, parking, or maintaining at any given time any vehicles
 in any Unit or Common Area of ... [the] Condominium in excess of the number
 permitted by the Rules and Regulations of the Condominium."

[*770] [12] An injunction is an extraordinary remedy. An injunctive order must
 be specific in its terms, and it must define the exact extent of its operation so
 that there may be compliance. It should set forth what is enjoined in a clear and
 certain manner and its meaning should not be left for speculation or conjecture.

[13] We are unable to determine from the record before us the reasonableness
 of the regulation adopted by the Board of Managers of the Association restricting
 the number and weight of vehicles that may be parked on the common
 elements. We cannot tell from any rule or regulation in the record, or from the
 trial court's order, whether the Gillmans are permitted vehicles in their two units
 as well as in six parking spaces, or whether their number of vehicles is restricted
 [***38] to a maximum of six under any circumstances. Further, it appears that
 at the time the regulation was adopted, the Gillmans' business required the use
 of eleven vehicles, nine having an empty weight of more than 10,000 pounds. It
 may be impossible for the Gillmans to operate a business if the number and
 weight of vehicles that they could service, or have available to inspect or service
 in any one day, were unduly restricted. This must be considered in making any
 determination of reasonableness and whether the regulation serves a legitimate

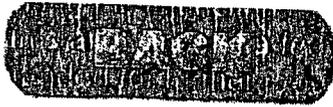
42

purpose or is arbitrary and oppressive in its application.

[14] The order of the lower court enjoining the Gillmans from maintaining or parking their vehicles on the premises or common elements until the trucks have been washed thoroughly with a disinfectant/insecticide substance "designed" to reduce odor and kill insects provides no realistic [**388] standard for compliance. We cannot conceive of any disinfectant or insecticide, however worthless or ineffective it may be, that is not "designed" to reduce odor or kill insects. How many washings and how often would amount to compliance with the order? And would running a garbage truck [***39] through a car-wash be thorough enough? The order would inevitably promote litigation and possibly a contempt proceeding. Further, there has been no finding of fact by the court below that the Gillmans' operation created "the intolerable nuisance" which resulted in "the irreparable loss by the members of the Association of the use and enjoyment of their property," as alleged in the Bill.

[15] We find no merit in the Gillmans' assignment which raises the equitable defense of laches and estoppel against the Association. We do not address the question of the adequacy of attorney's fees, the Gillmans having substantially prevailed. Accordingly, we [*771] affirm the decree of the court below directing that fines levied on the Gillmans by the Association be set aside and vacated, and the assessment liens released of record. The action of the court below granting the injunctions is reversed, and the injunctions are dissolved. The trial court's allowance of a fee to counsel for the Association is reversed. The case is remanded for further proceedings not inconsistent with the views expressed in this opinion.

Affirmed in part, reversed in part, and remanded.



43