

No. 49128-1-II

THE COURT OF APPEALS, DIVISION II

State of Washington

2ND HALF LLC and AMMAR MANNA'A,

APPELLANTS

Vs.

JAMES AND JUDITH BETOURNAY, and GMAT
LEGAL TITLE TRUST 2014-1, US BANK, NATIONAL
ASSOCIATION,

RESPONDENTS,

RESPONDENT'S BRIEF

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I. INTRODUCTION

Appellant Manna'A and his disqualified Attorney John Stratford Mills ("Attorney Mills") appeal issues in two separate severed cases. The issues relating to disqualification of Attorney Mills and contempt of Attorney Mills were determined in an agreed order on summary judgment stipulated to by Appellant on January 22, 2016, and thus are not timely appealed and must be dismissed. They are also moot. To the extent they are not dismissed, the conflict order and contempt order were clearly within the discretion of the Trial Court and supported by the record.

II. RESTATEMENT OF THE ISSUES

1. Is the appeal of the disqualification and contempt timely when the severed action wherein the rulings occurred was disposed of on Summary Judgment on January 22, 2016, but an appeal of the issues in the severed case was not filed until June 22, 2016?
2. Does Appellant have standing to raise the issues on disqualification and contempt when he stipulated to Summary Judgment that all claims and issues in the severed action had been resolved?
3. Did the Trial Court error in disqualifying Attorney Mills from representing his former process server in the case, as the purchaser of a Property in a Sheriff's Sale orchestrated by Attorney Mills and challenged as void?
4. Did the Trial Court properly find Attorney Mills in contempt for continuing to represent Appellant after disqualification, both before this Court in Case Number 483513, and in the Trial Court?

5. Does Attorney Mills Still Owe Money Pursuant to the Contempt Order, as the Contempt Order Monetary Award Was Not Purged Due to Continuing Violations By Attorney Mills?

III. RESTATEMENT OF THE CASE

A. Appellant Manna'a and Respondent Both Had Competing Ownership Claims To Real Property Purportedly Sold in A Sheriff's Sale Orchestrated by Attorney Mills

Respondent GMAT became the owner of the real property commonly known as 1913 North Oakes Street, Unit C, Tacoma, WA 98406 (the "Property"), by virtue of its successful bid at a trustee's foreclosure sale held on January 9, 2015. CP 486-487. The Trustee's Deed was recorded on January 16, 2015 in the official records of Pierce County under Auditor's File No. 201501160771. *Id.* GMAT was the successor beneficiary in a Deed of Trust dated September 13, 2011, recorded September 21, 2011 under Auditor's No. 201109210505 (the "Deed of Trust"). CP 432- 435. GMAT was the assignee to the Deed of Trust as of April 18, 2014, pursuant to an Assignment of Deed of Trust recorded in Pierce County under Auditor's No. 201406180705. CP 432-435.

Appellant Manna'a claimed ownership of the Property as an assignee to a purchaser at a February 27, 2015 Sheriff's Sale Orchestrated

by Attorney Mills almost two months after GMAT took fee title to the Property. CP 705. GMAT claimed the initial purchaser George Wu and assignee Appellant were not bona fide purchasers pursuant to their association with Attorney Mill's client Graham. CP 642-644. The Trial Court did not rule on this issue and Attorney Mill's Statement that Wu was disinterested is not supported by the record.¹

The Sheriff's Sale was conducted on behalf of North Oakes Condominium Association (the "Condo Association"), while it was represented by Attorney Mills. CP 144-145. Later, the Condo Association replaced Attorney Mills with the Condominium Law Firm and they opined that Attorney Mills Sheriff's Sale of GMAT's Property was improper. CP 612. This is important because it illustrates that when the Condo Association obtained independent legal counsel to review the details of the Sheriff's Sale, they came to the conclusion that the Sheriff's Sale orchestrated by Attorney Mills was void. Id. Later, the Condo Association retained new counsel, and they stated, in relation to the Sheriff's Sale of the Property: "As GMAT's counsel is aware, the [Condo Association's] position is that Mr. Graham and [Attorney] Mills were never lawfully acting on behalf of the [Condo Association], and the

¹ Graham details his relationship with both Wu and Manna in his declaration. CP 714-718.

[Condo Association] will be litigating that position.” CP 654.² The Condo Association President also complained to the Washington State Bar Association that Attorney Mills was not counsel for the Condo Association when he moved on their behalf to sell GMAT’s Property. CP 143. The attorney for the Condo Association President also objected to Attorney Mills having any authority to set a Sheriff’s Sale. CP 155. In continuing to claim that the Sheriff’s Sale was valid, Attorney Mills was taking a hostile position as to his former client in arguing that the Sheriff Sale was valid. The Condo Association later stipulated that the Sheriff’s Sale was voidable and that the resulting Sheriff’s Deed and Certificate of Title were void and of no effect. CP 680-691.

GMAT moved to intervene in the litigation and an order was entered to that effect. CP 472-473. GMAT then filed a counterclaim and third party claim against the Condo Association, Attorney Mill’s former client, and Appellant, as Attorney Mill’s current client. CP 136. GMAT then moved to sever the action as to the Property, and the Court entered an order to that effect. CP 580-81. For ease of reference, all actions taken thereafter in the case are referred to as “The Quiet Title Severed Action.”

² In related cases, motions to disqualify Attorney Mills from representing both the Condo Association and Graham have been filed, and may be illustrative. CP 622-628; CP 282-283.

The Betournay action was severed into a different action pursuant to an Order of the Court entered on September 8, 2015. CP 578-79.

B. Attorney Mills Initially Represented CEJ Properties In The Case, the Party That Executed An Unacknowledged Confession of Judgment Improperly Used as a Basis to Set a Sheriff's Sale of GMAT's Property

The Sheriff's Sale of the Property was based on a Stipulated Judgment and Order of Lien Foreclosure by CEJ Properties, LLC ("CEJ"). CP 413-417. CEJ was the original co-plaintiff in the underlying litigation, and as with almost everyone else having anything to do with the Sheriff's Sale, was represented by Attorney Mills. CP 401-405. CEJ originally took an interest in the Property based on a Quit Claim Deed (the "2012 Quit Claim Deed") to the Property recorded in the official records of Pierce County under Auditor's File No. 201211070294, well after the recording of the Deed of Trust.

On May 28, 2014, Attorney Mills, representing CEJ, still listed as a co-Plaintiff in the litigation, filed an amended complaint. CP 406-412. While CEJ was still of record as a Plaintiff at that point, the Amended Complaint stated that it added "Jeff Graham as plaintiff in his capacity as the duly elected President of the [Condominium Association]" CP 408. Graham was also the managing member of CEJ and was represented in

various actions by Attorney Graham throughout the underlying case and in related cases. CP 443.

On July 3, 2014, GMAT recorded a Notice of Trustee's Sale as to the Property, setting the Trustee Sale on November 7, 2014. CP 457-461. Notice of the Trustee Sale was provided to CEJ. CP 457-461. Approximately two weeks later, on July 23, 2014, while CEJ was still named as Plaintiff in the lawsuit, Attorney Mills worked with CEJ to have a "Stipulated Judgment and Order of Lien Foreclosure by CEJ Properties" (the "Stipulated Judgment") entered against itself as Plaintiff. CP 413-417. The Stipulated Judgment states that it was a judgment against CEJ only and states that any party claiming through CEJ, or under CEJ has their rights foreclosed forever, regardless of whether they were named as a party in the litigation. Id. The Stipulated Judgment is signed by CEJ by Graham, CEJ's managing member. Id. At the time, Graham was also a Plaintiff in the litigation in his role as Condo Association President. CP 408. The Stipulated Judgment, presented to the Court by Attorney Mills, was not acknowledged, as required by RCW 4.60.040, as was therefore not valid. Nowhere in the Stipulated Judgment did Attorney Mills disclose to the Court that he represented or previously represented the party (CEJ) purporting to stipulate to a judgment.

On September 26, 2014, Attorney Mills filed a Second Amended Complaint, and CEJ changed from being a Plaintiff to being a named Defendant, and the Condo Association became the Plaintiff. CP 3-8 It was then for the first time that Plaintiff sought an “Order of Sale” to sell the Property. CP 144-145. The Order of Sale explicitly states that it is based on a judgment against CEJ, a party that was represented by Attorney Mills. Id.

In moving to sell the Property, Attorney Mills obtained a title report that stated that necessary parties to be made defendants in any action to be brought to foreclose a lien included the Deed of Trust holder. CP 445-455 (emphasis on p. 454). Despite this, at no time did Attorney Mills name GMAT while directing the Sheriff to sell GMAT’s Property. CP 629-630 (Order – “GMAT was not named as a defendant in this lawsuit prior to theSheriff’s Sale”). Nor did Attorney Mills record a lis pendens as to the Property, thereby preventing GMAT from having any constructive notice of the Sheriff’s Sale or lien foreclosure action.

On January 9, 2015, GMAT foreclosed the 2011 Deed of Trust and became the Property Owner of Record. CP 486-487. The January 9, 2015 Trustee Sale extinguished any interest CEJ had in the Property pursuant to its junior 2012 Quit Claim Deed. In a Related Appeal, Attorney Mills, on behalf Graham, agreed that GMAT’s foreclosure reduced the number of

Condo Association units controlled by Graham. CP 587-605. Despite the foreclosure by GMAT, eliminating any interest CEJ had in the Property, Attorney Mills directed the Pierce County Sheriff to sell GMAT's Property. CP 463-466. Notice was mailed to GMAT's predecessor but not to GMAT. CP 467-468. Had Attorney Mills run a date down of the title report, he would have known that the predecessor had not had any interest in the Property in some time. After the Sheriff's Sale, Attorney Mills advised GMAT that it would need to pay to redeem its own Property, with steep interest, even though GMAT was never provided with notice of the Sheriff's Sale. On October 23, 2015, the Trial Court issued an Order that GMAT could not redeem the Property, as they were not a proper redemptioner under the governing statute and had not been provided notice of the Sheriff's Sale. CP 632-633. This ruling was never appealed.

GMAT then moved for summary judgment against both the Condo Association, and against Appellant, asserting at least three reasons why the Sheriff Sale orchestrated by Attorney Mills was invalid, unenforceable and had no legal effect. CP 635-648. Each basis to challenge the sale concerned improprieties in the sale process because of actions taken, or not taken, by Attorney Mills. Id. The Condo Association agreed the Sheriff's Sale was invalid and that Attorney Mills had no authority to

order the Sheriff's Sale on behalf of the Condo Association. CP 654. Appellant then retained separate counsel in the Quiet Title Severed Action. CP 657-660. New counsel continued to represent Appellant until a final disposition of the Quiet Title Severed Action in January 2016.

In summary, Attorney Mills represented 1) the party that confessed to the judgment used as a basis to set the Sheriff Sale; 2) the Condo Association that purported to utilize the Stipulated Judgment to set the Sheriff's Sale; and then 3) Appellant - the assignee to the purchaser at the Sheriff's Sale, and Attorney Mill's former process service in this case. The minefield of conflicts inherent in representing all of these parties at various stages of the litigation was readily apparent to the Trial Court. A summary of acts taken by Attorney Mills was summarized to the Court by GMAT. CP 59-61. Moreover, Attorney Mills has previously used Appellant to issue service of process in this case. CP 620. This raised additional questions as to Appellant's personal relationship to Attorney Mills.

In looking at the procedural background of this case, GMAT claimed that Attorney Mills' representation of Appellant as the claimed owner under a Sheriff's Sale orchestrated by Attorney Mills was a clear conflict of interest. CP 55-66. The Trial Court agreed and found that

Attorney Mills was in fact disqualified from representing Appellant in the Quiet Title Severed Action. CP 179-180.

After Disqualification, Attorney Mills continued to represent Appellant even after Appellant communicated with GMAT's counsel informing them that he was was unrepresented and was interviewing alternative counsel to represent him in the Quiet Title Severed Action. CP 181-187; 237-248. Attorney Mills then inserted himself into the case again and was found in contempt for violating the Disqualification Order. CP 300-304. The Trial Court found that an immediate judgment of \$1,000.00 would be entered against Attorney Mills, as well as \$4,493.50, but that Attorney Mills could purge all but \$1,000 of the contempt by complying with the Disqualification Order and not representing Appellant in the Quiet Title Severed Action was completed. CP 303-304. Attorney Mills ignored this order. Specifically, on December 7, 2015, Attorney Mills then further engaged in contempt by filing a motion in this Court and attending an "emergency" hearing in this Court (Case No. 483516) on Appellant's behalf, without any advance notice to GMAT.³ The motion by Attorney Mills, on behalf of Appellant, in clear violation of the contempt order, was denied by this Court on December 15, 2015. Based

³ The Court can take judicial notice of the pleadings and actions taken by Attorney Mills in Case No. 483513, on December 11, 2015.

on the actions taken by Attorney Mills, the Contempt Order was not purged and the Trial Court must be directed to issue a Judgment against Attorney Mills for \$4,493.50. Appellant then retained separate counsel to represent him in the Quiet Title Severed Action. CP 675-679.

B. ARUGMENT

A. Standard of Review

A trial court's ruling disqualifying counsel is reviewed for abuse of discretion. Foss Mar. Co. v. Brandewiede, 190 Wn. App. 186, 192, 359 P.3d 905, 908 (2015). A trial court's exercise of its contempt powers is also reviewed for abuse of discretion. Truancy of Perkins, 93 Wn. App. 590, 593, 969 P.2d 1101, 1103 (1999) (citing King v. Department of Soc. Servs., 110 Wn.2d 793, 798, 756 P.2d 1303 (1988)). A finding of contempt will be upheld as long as a proper basis can be found. Id. (internal citations omitted).

B. Appellant's Appeal of The Disqualification and Contempt Rulings is Not Timely and Must be Dismissed. Nor Does Either Appellant Have Standing to Raise This Issue.

A party that stipulates to an Agreed Order on Summary Judgment, entirely disposing of the Quiet Title Severed Action on January 22, 2016, can not appeal any rulings in that severed action pursuant to an appeal filed on June 22, 2016, a full five months after the Summary Judgment disposing of the Quiet Title Severed Action. Significantly, the Stipulation

of the Parties and Dismissal of the Quiet Title Severed Action, entered into by Appellant, provided:

ORDERED, ADJUDGED, AND DECREED as follows:

2. All remaining claims and issues in the Severed Action have been resolved between the stipulation parties.

3. Upon entry of the Agreed Order on Summary Judgment, all causes of action in the Severed Action not resolved by said Order are hereby dismissed with prejudice, with all parties to bear their own fees and costs.

CP 687 (emphasis added); CP 680-687.

Appellant Manaa'a, after stipulating to the final orders disposing of the Quiet Title Severed Action on January 22, 2016 and stating that all issues therein were resolved and dismissed with prejudice, can not timely appeal any ruling in the Quiet Title Severed Action, not at any time after the stipulated judgment, but certainly not as of the date of the appeal on June 22, 2016, more than five months later. Moreover, at the time of the Appeal, Appellant was still represented by alternate counsel. CP 692-94.

Nor does Appellant have standing to file an appeal in the Quiet Title Severed Action based on the stipulation. The other Appellant, 2nd HALF LLC, was not a party to the Quiet Title Severed Action, had no interest in the Property, and absolutely has no standing to appeal any matters relating

to the Quiet Title Severed Action, but is only an Appellant as to the separate Bourtenay severed action.

When a party or claims are severed pursuant to CR 21, a separate action is created. The newly created action proceeds to its own final judgment, independently of any judgment that may be entered in the original action from which the party was severed. Maki v. Aluminum Bldg. Products, 73 Wash. 2d 23, 436 P.2d 186 (1968). Severed claims become entirely independent actions to be tried, and judgment entered thereon. Zamora v. Mobil Corp., 104 Wash. 2d 211, 221, 704 P.2d 591, 597 (1985). Consistent with this, the Bourtenay matter went to trial and Appellant 2nd Half LLC is appealing that judgment governing trespass claims to a separate property, but Appellant can not at the same time timely appeal the separate Quiet Title Severed Action that was finalized back in January of 2016.

CR 21 is substantially the same as Fed. R. Civ. P. 21. See 3A Wash. Prac., Rules Practice CR 21 (6th ed.) Thus, federal cases may be helpful in interpreting the Washington rule. Id. Severing claims “creates two discrete, independent actions, which then proceed as separate suits for the purpose of finality and appealability. Kitchen v. Heyns, 802 F.3d 873, 874–75 (6th Cir. 2015) (citing Gaffney v. Riverboat Servs. of Ind., Inc., 451 F.3d 424, 441 & n. 17 (7th Cir.2006) (collecting cases); 7 Wright &

Miller, Federal Practice & Procedure § 1689 (3d ed.2015)). We have appellate jurisdiction over an appeal from a final order in a severed action, and all non-final orders in the severed case, including the Rule 21 order, merge into the final order. Id. (internal citations omitted). Where a single claim is severed out of a suit, it proceeds as a discrete, independent action, and a court may render a final, appealable judgment in either one of the resulting two actions notwithstanding the continued existence of unresolved claims in the other. Gaffney v. Riverboat Servs. of Indiana, Inc., 451 F.3d 424, 442 (7th Cir. 2006). Thus, while an appeal by 2nd Half LLC as to a separate severed action may be timely, an appeal by Mana'a relating to the earlier Quiet Title Severed Action is not timely and must be dismissed.

Under RAP 2.2(a)(1) and (2), a final judgment is subject to appeal, as is a decision determining action. In Appellant's Statement of Arrangements, as to the disqualification and contempt issue, Appellant stated that "the case involves an appeal of a decision made by summary judgment or motion." See Appellant's Statement of Arrangements. Once the Agreed Order on Summary Judgment was agreed to by Appellant Manna'a, dismissing the Quite Title Severed Action with prejudice, pursuant to the terms above, the appeal period expired in 30 days, long before the June 22, 2016 Appeal.

C. The Appeal of These Issues is Moot.

A case is moot if a court can no longer provide effective relief. Orwick v. City of Seattle, 103 Wn.2d 249, 253, 692 P.2d 793 (1984). Generally, courts should dismiss cases that involve only moot questions. Client A. v. Yoshinake, 128 Wn.App. 833, 841, 116 P.3d 1081 (2005). The court may raise issues of mootness *sua sponte*. See In re Det. Of C.W., 105 Wn.App. 718, 723, 20 P.3d 1052 (2001), aff'd, 147 Wn.3d 259, 53 P.3d 979 (2002). It no longer matters whether Attorney Mills should have been disqualified as Appellant hired substitute counsel, and a stipulated Summary Judgment disposing of all issues in the Quiet Title Severed Action was entered by Appellant, disposing of the case entirely. The Property was awarded to GMAT, and GMAT has now sold the Property to a third party. See RWR Mgmt., Inc. v. Citizens Realty Co., 133 Wn.App. 265, 280, 135 Wn.App. 265 (2006) (declining to consider challenge to disqualification order that became moot after able substitute counsel tried the matter to completion).

D. Respondent Had No Notice of Sheriff's Sale Despite Appellant's Unsupported Claims To the Contrary:

Appellant falsely states that GMAT had notice of a Sheriff's Sale of its Property orchestrated by Attorney Mills on behalf of the Condo Association:

Following the foreclosure by GMAT, the Association set up a sheriff's sale to collect its judgment. The sale occurred **with** notice to GMAT, however, GMAT did not attend. A disinterested investor, named Mr. Wu, bought the condominium at a Sheriff's sale for \$50,000, receiving a Sheriff's Certificate.

Appellant's Opening Brief, pg. 5 (emphasis in original).

In the Verbatim Report of Proceedings, Attorney Mills conceded that GMAT did not in fact have notice of the Sheriff's Sale:

The Court: Was there service of process on these people are not?

Mr. Mills: No. They were never served.

The Court: Were they ever named a party before the Sheriff's sale?

Mr. Mills: No.

The Court: So the sale did not affect their interest, right?

Mr. Mills: The judgment did not affect their interest, but the sale might have...

October 23, 2015 Verbatim Transcript of Proceedings, p. 11, l. 25; p. 12, ll. 1-7; 19-25; CP 200.

Attorney Mills would like this Court to agree that exchanging general emails (devoid of any specifics as to a date and time of a Sheriff's Sale, or even a mention of a Sheriff's Sale!) with an agent for the Respondent's somehow constitutes legal notice before selling a party's property. CP 721-726. That is not the case.

E. The Trial Court Did Not Abuse Its Discretion When It Disqualified Attorney Mills From Representing Appellant Manaa'a In The Quiet Title Severed Action.

The Trial Court did not abuse its discretion in exercising its supervisory authority over members of the bar to enforce the ethical standard requiring an attorney to decline multiple representations. In re In re Marriage of Wixom & Wixom, 182 Wash. App. 881, 904, 332 P.3d 1063, 1072 (2014) review denied sub nom, 353 P.3d 632 (Wash. 2015). The exercise of such authority was recognized in Wixom and has not been affected by Burnett v. Department of Corrections, 187 Wn. App. 159, 349 P.3d 42 (2015), a Division 3 Court of Appeals case limited to the facts of the case and addressing whether the Washington Attorney General's office could act as counsel in that case. The court in Bennett also noted a distinction between a private law firm as counsel and those of the Attorney General (ethical rules and case law treat the state Attorney General's Office differently from a private law firm). Id. at 169. Nor does the Burnett case prevent the Court from exercising its inherent supervisory duty when an attorney is implicated as a witness and is attempting multiple representation.

Even if this Court finds that standing issues as to disqualification of counsel are generally brought by clients or former clients, it is also generally recognized that this does not apply to the Court's overall authority or limit standing to bring disqualification motions to clients or former clients. See e. g. Kennedy v. Eldridge, 201 Cal. App. 4th 1197,

1204, 135 Cal. Rptr. 3d 545, 550 (Cal. App. 3d Dist. 2011) (finding that a nonclient might meet the standing requirements to bring a motion to disqualify based upon a third party conflict of interest or other ethical violation). As stated in Kennedy, it makes no sense for a court to stand idly by and permit conflicted counsel to participate in a case merely because neither a client nor former client has brought a motion. Id. The court has an independent interest in ensuring the ethical standards of the profession and that legal proceedings appear fair to all that observe them. Id. at 1205 (emphasis added). Where an attorney's continued representation threatens an opposing litigant with cognizable injury or would undermine the integrity of the judicial process, the trial court may grant a motion for disqualification, regardless of whether a motion is brought by a present or former client of recused counsel. Id. See also 7A C.J.S. Attorney & Client § 212 (the standing doctrine is subject to exceptions); State Comp. Ins. Fund v. Drobot, 192 F. Supp. 3d 1080, 1089 (C.D. Cal. 2016) (summarizing leading cases on the issue and finding that almost all courts recognize that the standing rule as to disqualification is subject to exceptions where the ethical violation is manifest and glaring or open and obvious and confronts the court with a plain duty to act) (internal citations omitted). State Comp. Ins. Fund recognized that despite standing

concerns, courts have an inherent obligation to manage the conduct of attorneys that appear before them. Id. at 1090.

These decisions are consistent with Wixom and support the disqualification of Attorney Mills. Moreover, Attorney Mills directed the Sheriff to sell GMAT's Property and then sought to advocate on the validity of that Sheriff's Sale on behalf of the Purchaser, when the Condo Association that Attorney Mills purported to represent at the time of the Sheriff's Sale agreed that the Sheriff's Sale was void and opined that it would be bringing litigation against Attorney Mills for his actions. In doing so, the former client of Attorney Mills supported disqualification, so the standing issue was in fact met.

The nexus of the Quiet Title Severed Action was the Sheriff's Sale and as the owner of the Property sold under direction from Attorney Mills, GMAT had independent standing to raise that issue. As a party grievously injured by the actions of Attorney Mills, GMAT had standing to raise the disqualification issue and note the many contradicting actions taken by Attorney Mills in attempting multiple representation in the case, on an extreme scale.

The Rules of Professional Conduct ("RPC") 1.16 require withdrawal if a lawyer's representation will result in violation of the RPCs. In re marriage of Wixom, 182 Wn.App. at 889-98. Where an

attorney declines to withdraw, the court may disqualify him or her. Id. at 904-05. In arguing against disqualification, Attorney Mills stated that his client Graham was told that initial purchaser George Wu was not happy with the Sheriff's Sale so Graham (current client of Mills) convinced Appellant (current client of Mills) to buy the Property as GMAT would have to redeem and pay Appellant 12% interest, or Appellant would be awarded ownership of the Property. October 23, 2015 Verbatim Report of Proceeding, pg. 20, ll 1-6; CP 209. Attorney Mills also confirmed that he actually introduced Graham to Appellant. October 23, 2015 Verbatim Report of Proceeding, pg. 20, ll 3-5. Id. As we know, Appellant did not get redemption interest or ownership of the Property, such that the Trial Court found Appellant could have a cause of action against Graham (potential conflict between two current clients) and that Appellant needed independent representation:

MS. PHILLIPS: [Appellant] has an interest in getting independent legal counsel to look at what the Condo Law Group said, to look at the facts of what Mr. Mills did in this case...

THE COURT: I have to agree with Ms. Phillips. And I don't do this lightly, but I think you're a fact witness, Mr. Mills. You represent the condo owners association, various independent condos, Mr. Graham who's kind of a ghost quality here. You've represented Mr. Manna. I don't know if you ever actually represented Mr. Wu, but in any event, I just can't -- it seems to me you're -- you're the one that drafted the initial lawsuit. You're the one that amended pleadings. You're the one that was involved in condo

owners fight. You're involved in conducting the sheriff's sale without given notice to a party of interest.

October 23, 2015 Verbatim Report of Proceeding, pg. 20, l. 25-p. 21, ll. 1-17; CP 211-212 (emphasis added). The Court, under its authority in Wixon, found Attorney Mills was not independent:

THE COURT: But you are clearly bound up with the facts of this case just by -- that's why I said I don't do this lightly. There's just no doubt about it, Mr. Mills.

October 23, 2015 Verbatim Report of Proceeding, pg. 25, ll. 20-23; CP 213.

MS. PHILLIPS: And [Appellant] should get independent counsel, not counsel from the attorney that structured this entire --

THE COURT: I think that's true.

MR. MILLS: Well, then we'll draft an order to that effect.

October 23, 2015 Verbatim Report of Proceeding, pg. 26, ll. 17-22; CP 214.

In Wixon, the court noted that a lawyers' interest arising from the lawyer's exposure to culpability, can create a conflict whether or not the court later issues a ruling rendering the conflict moot. Wixon, 182 Wash. at 898. The Trial Court found that Attorney Mill's interest did in fact expose him to culpability, especially since the Condo Association stated they planned to bring litigation against him for ordering the Sheriff's Sale in their name:

THE COURT: I don't think that I said 3.7. I did mention that you are likely to be a witness.

MS. PHILLIPS: Among other things.

THE COURT: I think I also said that you might likely be a potential defendant in a case by [Appellant].

MR. MILLS: Okay, that's true, but --

THE COURT: I think that I said that, too.

MR. MILLS: That's true of every lawyer, right?

THE COURT: No...

November 25, 2015 Verbatim Report of Proceedings, pg. 9, ll 16-25

(emphasis added).

Additionally, under RPC 1.7, governing conflicts as to current clients, a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if...

(2) there is a significant risk that the representation of one or more clients will be materially limited ...by a personal interest of the lawyer. RPC

1.7(a)(2). The Trial Court found that Attorney Mills could not act independently:

THE COURT: I indicated, clearly, [Appellant] might sue you over this whole thing. You have another reason for conflict of interest and for steering this litigation in a certain direction, which might also include what counsel [Appellant] might choose to --

November 25, 2015 Verbatim Report of Proceedings, pg. 14, ll 1-5.

Attorney Mills attempted to represent Appellant despite the fact that Attorney Mills used Appellant to effectuate service of process in the case, and despite the fact that Attorney Mills moved for, arranged to have the

Sheriff's Sale of the Property, and moved to confirm the Sheriff's Sale, which was so improperly conducted that it was challenged as void, and led multiple parties to claim ownership of the Property. This was prohibited under RPC 1.7 because Attorney Mills had a personal interest in the Sheriff's Sale, as he moved for it and moved to confirm it, and failed to name Respondent in doing so.

Attorney Mills was also representing Graham at the same time (in the related appeal in Case 47651-7-II before this Court, CP 586-605) and the Trial Court properly found that Appellant (a current client of Attorney Mills) could have a cause of action against not only Attorney Mills, but against Graham (a current client of Attorney Mills):

THE COURT: It may well be that it is in [Appellant's] best interest to sue the condo association, which may involve Mr. Graham, which may involve Mr. Wu in an additional lawsuit. All of whom have been your clients. Maybe he is going to sue Mr. Graham's corporations because of the whole thing or that the condo owners association will sue them. All of whom you have represented. All of which are conflicts potentially. How one comes out compared to another is, you know, sometimes, it is a zero some game. Somebody wins; somebody loses. You are on both sides of it at the same time. That's the problem.

November 25, 2015 Verbatim Report of Proceedings, pg. 20, ll 2-13

(emphasis added).

Although the Trial Court also found that Attorney Mills was implicated as a witness, it was abundantly clear that this was just one of many reasons that Attorney Mills was disqualified by the Trial Court:

THE COURT: It has to do with the fact reasons that there are more reasons that you're possibly a witness in this thing.

November 25, 2015 Verbatim Report of Proceedings, pg. 11, ll 22-24
(emphasis added).

[Appellant] is in an oddball position. He needs an independent counsel to look at this whole thing. You are a fact witness, indeed, but you are more than that. As I say, you are a potential litigant as the way this thing goes, I think, if [Appellant] finds himself very unhappy with how this whole thing all went down...

November 25, 2015 Verbatim Report of Proceedings, pg. 17, ll 16-22
(emphasis added).

In essence, the Trial Court properly found that no purchaser would hire an attorney to take a position on the merits of a Sheriff's Sale purchase when his own attorney's actions may have led to the Sheriff's Sale being invalid. The Trial Court, after presiding over the entire litigation for well over a year, and the multiple severed actions, clearly had superior knowledge and did not abuse its discretion in finding that Attorney Mills was disqualified from representing the purchaser at the disputed Sheriff's Sale of the Property:

THE COURT: What I'm saying is, because you've structured all of this, because you were involved with every one of these folks, you were involved with the sale of all of this, you were in an intimate position to advise anybody about what the pitfalls might be in terms of buying an interest of anybody who bought at the sale. You're in a position that almost no one else in the world would have been in. You are in a position to advise Mr. Manna about that.

November 25, 2015 Verbatim Report of Proceedings, pg. 10, ll 12-20
(emphasis added).

Finally, the Court stressed that although it did not enter the disqualification lightly, (“I don’t do it lightly” - November 25, 2015 Verbatim Report of Proceedings, pg. 22, l. 11.), the disqualification of Attorney Mills wasn’t a close call:

It was just so much more than that which is the reason why I didn't leave this to just Mr. Manna because it seemed to me that Mr. Manna was in a very awkward place in terms of how he came into this thing, what your role was, and your role as it shifted from one thing to another. Initially, you are representing this corporation, not Mr. Graham, but the corporation. You have this other lawsuit going about who runs the condominium owners association. You bring a foreclosure action on behalf of tenants, not the condominium owners association, but then you do on behalf of the condominium owners association, then you are no longer -- Mr. Graham is no longer in control of that. You amend the lawsuit. You change the parties upside down. It was the most unbelievable set of procedural history I have almost ever heard of. Now, after all of that and the sale that goes down after this property -- after the bank is already foreclosing on the same condominium association -- condominium, rather, and has not been notified of the sale -- I realize there is an issue about if they

got notice or not by an e-mail. They weren't provided -- they weren't sued in the matter. They weren't given a summons in the matter. They weren't given formal notice in the matter, and then the sale goes down. Not only does the condominium owners association not buy it, but this friend of the hard money lender, Mr. Graham, buys it and then in turn [Appellant] buys it. All of whom you are intimately associated with. This is an unbelievable set of circumstances. I can't believe that you are having difficulty understanding why you shouldn't be running from this.

November 25, 2015 Verbatim Report of Proceedings, pg. 14-14, ll 1-5

(emphasis added).

Finally, Attorney Mills was clearly prohibited from representing Appellant under RPC 1.9, because the Condo Association was his former client and they indicated and stipulated that the Sheriff's Sale was invalid, such that Attorney Mills was prohibited from taking an adverse position to them. Clearly, if the Sheriff's Sale, orchestrated by Attorney Mills, was found to be wrongful, the Condo Association could have a malpractice or other claim against Attorney Mills such that he had an interest in the Sheriff's Sale. Finally, if the sale was found to be wrongful, Appellant could have a claim against Attorney Mills, as recognized by the Trial Court.

No principle of law excuses an attorney from a conflict with a client because a court may later issue a ruling that renders the conflict moot. Wixom, 182 Wn.App at 901. In Wixom, the court found that the

fact that the acting attorney could be personally sanctioned created a potential for conflict and opined that “some conflicts are nonconsentable, meaning that the lawyer cannot properly ask for a waiver or provide representation on the basis of the client's consent.” *Id.* This is the case here, where Attorney Mills has represented CEJ as Plaintiff, HOA as Plaintiff, CEJ and Graham in a concurrent Related Appeal, and then attempted to represent Appellant as third party purchaser.

E. The Trial Court Did Not Abuse Its Discretion In Finding Attorney Mills in Contempt And The Contempt Judgment Was Not Purged Such That The Trial Court Should Be Directed to Enter an Additional Judgment As to Attorney Mills.

After disqualification, Appellant emailed GMAT’s counsel on at least six occasions, stating in the initial email that “I am unrepresented.” CP 240-248. Attorney Mills then inserted himself and interfered. On November 9, 2015, Attorney Mills notified GMAT that he was only disqualified from representing Appellant under RPC 3.7(a). CP 238. Attorney Mills argued this despite the fact the Trial Court clearly ruled that was just one of many reasons. *Supra*. Nor did Attorney Mills seek a Court Order delineating his total disqualification from acting as Appellant’s counsel in the Quiet Title Severed Action.

Attorney Mills stated that he remained [Appellant's] "general counsel" and was working with [Appellant] to find litigation counsel, despite the fact that the Trial Court found Attorney Mills could have an independent interest in what counsel that would be. The email to GMAT's counsel also made it clear that Appellant was forwarding his emails with GMAT's counsel to Attorney Mills. Attorney Mills asked GMAT's counsel not to communicate directly with Appellant even though Appellant and GMAT were engaged in settlement negotiations. Finally, Attorney Mills indicated that he would "talk" with Appellant about the Motion for Reconsideration that Appellant had recently filed in this case. By talk, GMAT presumed that Attorney Mills would legally advise Appellant as to these filings.

The Trial Court did not abuse its discretion in finding Attorney Mills in contempt of the Disqualification Order, and subject to sanction/ The contempt order was issued verbally on November 25, 2015 and in doing so, the Court stated:

I'm going to impose \$4,493.50 which may be purged if there is no further violation of the court's order not to contact Mr. Manna between now and the time this case is resolved.

Verbatim Report of Proceedings, pg. 23, ll 5-10. The Trial Court issued the written Contempt Order on November 30, 2015. CP 668-672.

Pursuant to the Contempt Order, the judgment was for \$4,493.50 and Attorney Mills could purge the \$4,493.50 only by complying with the disqualification order. Id.

Remarkably, Attorney Mills continued to represent Appellant in violation of the Contempt Order. Specifically, on December 7, 2015, Attorney Mills filed a motion for emergency relief in this Appeals Court, in Case Number 483513. No advance notice was given to GMAT of this motion. This Court denied Attorney Mills motion on behalf of Appellant. CP 664-667. As Attorney Mills did not comply with the Contempt Order he has not purged the Contempt Order to pay \$4,493.50 and as he has only paid \$1,000, he still owes at least \$3,393.50 on the Contempt Order, which judgment must be affirmed by this Court. The Trial Court should be ordered to enter a judgment to this effect. Finally, Appellant's substituted counsel recently filed a declaration agreeing that Attorney Mills continues to be in violation of the Contempt Order. CP 692-695. "Mills appears to have again, and now overtly, violated the Disqualification Order." CP 694.

C. CONCLUSION

Respondent respectfully asks this Court to dismiss the appeal of the disqualification and contempt issues as untimely and moot, or to affirm

the Trial Court's order on these issues, and direct the Trial Court to issue the additional monetary award against Attorney Mills.

Dated: April 20, 2017

ALDRIDGE PITE, LLP

/s/ Julia A. Phillips

JULIA A. PHILLIPS
Attorneys for Defendant
GMAT LEGAL TITLE
TRUST 2014-1, U.S. BANK,
NATIONAL
ASSOCIATION, AS LEGAL
TITLE TRUSTEE

ALDRIDGE PITE LLP
April 21, 2017 - 3:09 PM
Transmittal Letter

Document Uploaded: 3-491281-Respondent's Brief.pdf

Case Name: 2ND HALF LLC and AMMAR MANNA'A, v JAMES AND JUDITH
BETOURNAY, and GMAT

Court of Appeals Case Number: 49128-1

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: ____

Answer/Reply to Motion: ____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

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Petition for Review (PRV)

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Comments:

No Comments were entered.

Sender Name: Cynthia Barnes - Email: cbarnes@aldridgepite.com

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WASHINGTON STATE OF COURT OF APPEALS
DIVISION II

2nd HALF LLC and AMMAR MANNA`A

Case No. 14-2-06599-5

Appellants,

DECLARATION OF SERVICE

vs.

JAMES AND JUDITH BETOURNAY, and
GMAT LEGAL TITLE TRUST 2014-1, U.S.
BANK, NATIONAL ASSOCIATION, AS
LEGAL TITLE TRUSTEE

Respondent(s).

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 4375 Jutland Drive, Ste. 200, P.O. Box 17935, San Diego, California 92177-0935.

On April 21, 2017, I served the following document(s):

RESPONDENT’S BRIEF
THIS DECLARATION OF SERVICE

on the parties in this action addressed as follows:

<p>James and Judith Betournay 16258 S Holcomb Blvd. Oregon City, OR 97045-8290 Served via FedEx only</p>	<p>J. Mills 201 Atrium Court, 705 South 9th Tacoma, WA 98405 jmills@jmills.pro</p>
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_____ **BY MAIL:** I placed a true copy in a sealed envelope addressed as indicated above. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

 X **E-MAIL;**

_____ **BY FACSIMILE:** I personally sent to the addressee's facsimile number a true copy of the above-described document(s). I verified transmission with a confirmation printed out by the facsimile machine used. Thereafter, I placed a true copy in a sealed envelope addressed and mailed as indicated above.

 X **BY FEDERAL EXPRESS:** I placed a true copy in a sealed Federal Express envelope addressed as indicated above. I am familiar with the firm's practice of collection and processing correspondence for Federal Express delivery and that the documents served are deposited with Federal Express this date for overnight delivery.

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

Executed this 21th day of April, 2017, at San Diego, California.

/s/ Cynthia A. Barnes

CYNTHIA A. BARNES

ALDRIDGE PITE LLP
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BETOURNAY, and GMAT

Court of Appeals Case Number: 49128-1

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Petition for Review (PRV)

Other: Declaration of Service

Comments:

No Comments were entered.

Sender Name: Cynthia Barnes - Email: cbarnes@aldridgepite.com