

FILED
COURT OF APPEALS
DIVISION II
2017 AUG -8 AM 10:28
STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

NO. 49586-4-II

JOHN WALKER AND JENNIFER WALKER, husband and wife,

Defendants/Respondents

vs.

JAMES CIACIUCH AND KIMBERLY CIACIUCH, husband and wife,
AND OLYMPIC PENINSULA DEVELOPMENT CO., LLC,
A Washington State Limited Liability Co.

Plaintiffs/Appellants

BRIEF OF RESPONDENTS

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Attorney for Plaintiffs/Appellants

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I. INTRODUCTION

Appellants filed an appeal of an Order Granting Respondents' Motion for Summary Judgment, claiming a genuine issue of material fact existed. However, the trial court accepted as verities all of Appellants' proffered facts. On appeal Appellants challenge no substantive law applied by the Trial Court, or any legal conclusion reached by the Trial Court. They cite no relevant authority. As such, the appeal is frivolous on its face.

II. STATEMENT OF THE CASE

Respondents loaned Appellants \$75,000 in 2011, for a business purpose. CP 66, lines 19-24. On April 16, 2011, the parties drafted their own loan agreement, money was delivered, and Appellants promised to repay Respondents \$125,000 when certain referenced real property was sold, or upon settlement of a certain California lawsuit, simply described as "Case No. PC 042373." CP 69.

The properties sold, and the California case resolved, but the debt was never satisfied in any way. CP 67, lines 9-11.

Appellants induced Respondents to settle for \$80,000 instead, if paid by July 1, 2014, though no consideration for this modification was recited or given. RP 17, lines 1021, CP 77-79.

July 1, 2014, came and went, and no money in any amount was paid towards the debt. The only money paid on the note to date, 14,939.45, was realized from a first deed of trust foreclosure sale initiated by the primary mortgagee on the Fey Road property sometime in 2015. CP 68, lines 3-11.

The agreement required the parties to resolve any conflicts by arbitration. CP 69, bottom paragraph. However, Respondents filed twice, and Appellants derailed the process both times by refusing to participate. CP 68, lines 12-16.

When Respondents filed their motion for summary judgment, the only evidentiary response filed on Appellants' part was the so-called "Ciaciuch's Declaration and Response to Summary Judgment Motion and Response to Walker Declaration as of 8/29/16." CP 56-59. Respondents moved to strike essentially the entire document as hearsay or irrelevant (CP 44-50), which motion the court granted, except for objection #6, as pertains to page 2, paragraphs 4, 5, 6, 7 and 8, except the last sentence of paragraph 8, which allowed solely the following portion of said declaration (RP 9, lines 8-18):

(4) After a few more meetings and discussions where the friendship began to get back on track between Walker and I, we had a discussion where we agreed that the both of us were just frustrated and not communicating very well

with each other. Subsequently, after one of these discussions Walker agreed to provide a written document to me indicating that he would forgive any balance owed to him over \$80,000. The \$80,000 amount was what he wanted so to make sure that it included his arbitration fees that he paid to his previous attorney.

(5) In November of 2013 I had a new tenant move into the Fey Road house on which Walker had the 2nd Deed of Trust. After the tenant was there for a period of time the tenant indicated that they wanted to purchase the house.

(6) In mid-December I opened escrow with the tenant of the house for them to purchase it. I had called Walker and relayed the news to him about his buyer and I asked Walker to provide me with a written document backing up our verbal agreement of him accepting \$80,000 as payment in full, thus lowering our loan agreement amount.

(7) On January 10, 2014 Walker provided me with a document lowering the amount he would take for the note between us to \$80,000.00. With the sale price to the tenant of \$160,000, and Singhose being owed \$58,000, Walker would have received all of his money back.

(8) Within a short period of time the escrow fell through with the tenant buying the house and at the same time Cookie Singhose decided that she needed the money on the note she was holding.

These facts were accepted as verities by the trial Court. RP 17, lines 2-21.

No appeal was taken on the order striking portions of Appellant's declaration.

III. SUMMARY OF THE ARGUMENT

No error was assigned to any conclusion of law. There is no fact at issue.

IV. ARGUMENT *Assignment of Error*

RAP 10.3 recommends a concise statement identifying each error which the Appellants contend the trial court made. In their Brief, Appellants assign merely a single error to the trial court, to wit, that there was a genuine issue of material fact on the amount of money owed by Appellants to Respondents. Brief of Appellants, page 2, Assignment of Error. This would have to be based upon the evidence before the trial court, composed solely of Respondent's declaration (CP 66-73), and paragraphs 4-8 of page 2, except the last sentence, of Appellant's Declaration found at CP 57. As such, no error has been assigned to any legal conclusion reached by the trial court.

There is no Issue of Material Fact

None of the evidence is at issue. Respondents and Appellants haven't disagreed with one another on any fact whatsoever. They are in total agreement.

On the contrary, they apparently disagree solely upon the legal effect of the facts. However, where Appellants have declined to suggest an error pertaining to the Court's legal conclusions, or to cite any authority suggesting that the trial court was in error in applying the law to the undisputed facts, Respondents elect not to tread where they have not been led.

V. CONCLUSION

Appellants have declined to point out in the record a single fact upon which the parties disagree. They did not because they cannot. If Appellants had authority to the effect that a contingent contract modification supported by no consideration or satisfied contingency were enforceable, they would have provided argument. They have not because they cannot. No law has been suggested that would lead this Court to a conclusion contrary to that reached by the trial court.

This appeal has no merit, and should accordingly be summarily dismissed.

Attorneys Fees – RAP 18.1

RCW 4.84.185 allows for the Court of Appeals to award reasonable expenses and attorney fees to the prevailing party upon a

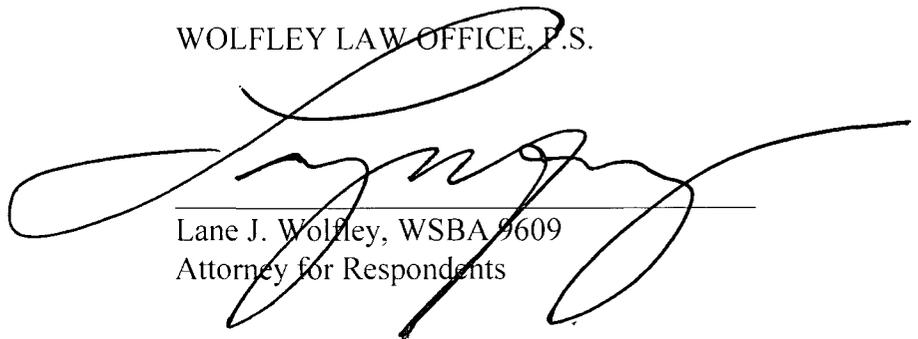
written finding by this Court that the appeal was frivolous in its entirety. *Escude ex rel. Escude v. King County Public Hosp. Dist. No. 2*, 117 Wash. App. 183, 69 P.3d 895 (2003). An appeal is frivolous if there are no debatable issues, no issue upon which reasonable minds might differ, and the appeal is so devoid of merit that no reasonable possibility of reversal exists. *State v. Parada*, 75 Wash. App. 224, 877 P.2d 231 (1994).

Appellants claim that a genuine issue of material fact exists. Then they fail to cite any evidence in conflict. Finally, they assign no error to the trial court's application of law to the facts, or cite law which would tend to lead to a conclusion at odds with the trial court. No reasonable person would consider for a moment that this appeal could result in a reversal.

DATED this 6 day of August, 2017.

Respectfully submitted,

WOLFLEY LAW OFFICE, P.S.



Lane J. Wolfley, WSBA 9609
Attorney for Respondents

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DECLARATION OF
MAILING

KM GERDTS declares under penalty of perjury of the laws of the State of Washington, that on this day she deposited in the mails of the United States of America a properly stamped and addressed envelope containing an original and one copy of Brief of Respondents addressed to the following:

Derek Byrne
WA State Court of Appeals - Division Two
950 Broadway, Ste 300
Tacoma WA 98402-4454

Stan Myers, The Law Office of Stan Myers
332 E 5th, Ste 250
Port Angeles WA 98362

DATED at Port Angeles, Washington, this 7 day Aug, 2017.



KM Gerdts, legal secretary to Lane Wolfley,
Attorney for Respondents

DECLARATION OF MAILING