FILED
Court of Appeals
Division II
State of Washington
4/16/2019 10:23 AM

COA No. 52313-2-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

JAMES BETOURNAY and JUDITH BETOURNAY,
Plaintiff/Respondent,
vs.
AMMAR MANNA'A et ux, et al,
Defendants/Appellant,
and
PRISCILLA STEVENS,
Intervenor/Respondent.

INTERVENOR/RESPONDENT'S BRIEF

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April 16, 2019

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COMES NOW the Respondent herein and submits for the Court's consideration this Response Brief:

I. INTRODUCTION

This is a hard brief to write. The appellant supplied no verbatim report of any witness yet is challenging findings of fact. The appellant is citing to declaration testimony that may not have been in front of the trial court. The facts of the case and what the trial judge did is grossly misstated by the appellant. For instance, the words "Reformation" and "Novation" never came up in in any pleading before the trial court, yet appellant tries to recast what happened to try to fit it (poorly) into some cognizable legal theory.

Superior Court Edmund Murphy found that appellant breached. He found appellant operated in bad faith and had no intent of performing the contract. He found that appellant's lawyer met with a loan broker for the purpose of dissuading such lender from getting involved and making a loan. He found that appellant's agent harassed and threatened a lender. He found that appellant was operating out of greed and bad blood. Those were just some of his findings of facts.

But you would not know that reading the opening brief. Despite Judge Murphy never saying (let alone finding) Priscilla Stevens attempted to perpetrate a fraud, appellant plasters his brief with her supposed fraud. Despite appellant working to undermine the escrow for the loan closing – as the trial judge found – all this court hears about is how the escrow officer quit and that no money was placed in escrow.

This is a crazy case. However, the trial judge was right. The case was one about greed and revenge by Mr. Manna. He wanted to hurt Mrs. Steven's grandfather, Ron Steve, who lived in the house and appellant and his friends lied, cheated, and intimidated whoever was in their path to their attempt to steal the house at issue.

Getting back to difficulties in writing this. It is not the respondent's duty to provide the record. Given no record is provided, case law says that the findings are verities and the issue becomes if the findings support the decision. Still, as will be discussed, other cases simply dismiss the appeal when the court is not provided an adequate basis to review what was before the trial court. This is one of those times.

II. RESPONSE TO ASSIGNMENT OF ERRORS

a. The Appellant misstates the record by claiming a reformation when the court found the appellant in breached and fashioned a judgment for specific performance.

b. The Appellant misstates the terms of the option, misstates the terms of the claimed judgment and misstates the law related to options and judgments.

c. The Appellant misstates the record, does not provide the record and misstates the relevant authority related to the award of damages which includes attorney fees.

d. The Appellant misstates the record as to the wanton and intentional conduct that also would support an award of attorney fees.

e. The Appellant should not be allowed to make any claim of error of the findings of fact as it has not supplied any transcript of trial testimony and has not provided this court an adequate record on review.

f. The conclusions of law are supported by the findings of facts and should not be overturned as the Appellant has the obligation to place an adequate record before this court and has not done so.

III. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENT OF ERROR

a. Does this court have an adequate record to review this appeal?

b. Should the findings of fact be treated as verities on appeal?

c. Has the appellant grossly misstated the record, the trial court decision and ignored his own conduct and the conduct of his attorney and agent in the events surrounding the exercise of the option?

d. Do the findings of fact support the conclusions of law?[1]

e. Is the Appellant raising issues never raised to the trial court in arguing reformation, novation and issues as to the Respondent's prayer for relief?

f. Has the appellant further misstated the record by claiming fraud by Respondent that the trial judge did not so find and which is not supported by any transcript?

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[1] Interestingly, despite in the Statement of Arrangements where Manna expressed an intention not to challenge fact but only conclusion, the brief is the opposite. In fact, in the Argument section there is only reference to Conclusion #5. Meanwhile, the Findings are argued extensively.

g. Should further fees be granted as Appellant is further causing damages to respondent and has, and is, misrepresenting this case to this court?

IV. STATEMENT OF THE CASE

A. Procedural History

Appellant was sued by Betournay as to a fraudulent conveyance of the subject property in an effort to avoid the attachment of a judgment. CP 1-3. Respondent moved to intervene and filed an Intervenor's Complaint as the action would affect her interest in the subject property. CP 6-12; 70-73; Finding #2; CP 127. Betourney was later dismissed. Finding #7; CP 128. This left Intervenor/Respondent and Defendant/Appellant. For trial purposes, Stevens was redesignated the plaintiff and went first. Finding #7; CP 128.

Now, in the course of the proceedings, the undersigned moved to disqualify J. Mills as he was a witness and a participant in the interference with the option at issue. FF #4; CP 128. That motion was denied. Id. Then J. Mills tried to have the undersigned disqualified for having information on Mr. Manna when it was undisputed the undersigned had never spoken with, let alone met, Mr. Manna. Id.; Court of Appeals Case # 49685-2-II, 1/31/17 Ruling Denying Review p. 2, 3. When that motion was denied. Mr. Mills sought discretionary review and this court's commissioner in Court of Appeals Case # 49685-2-II denied the review and sanctioned Manna labeling the effort "tit-for-tat". See 1/31/17 Ruling Denying Review p. 9. That decision was taken up to the three judge panel where more fees were imposed. 4/18/17 Order Denying Motion to Modify

and Granting Intervenor's Request for Attorney Fees. Still not satisfied, Manna took it to the Supreme Court and got sanctioned further in Supreme Court Case #94532-2 "Ruling Denying Review."

Also Manna had tried to get summary judgment. CP 101-118. It too was denied. CP 119-120. The matter proceeded to trial which occurred from April 18, 2018, to April 19, 2018. Eight (8) witnesses were called, one stipulation entered, and 33 exhibits were offered of which all 33 were admitted. CP 127-506. At the end of the trial Judge Murphy wrote his own findings of facts and conclusions of law. CP 127-134. Upon motion and supporting documents, Stevens moved for attorney fees. CP 135-138; CP 139-250. The request was granted over Manna's opposition. CP 251-254. A judgment was entered granting a monetary judgment of $67,384.35 being $2,500 of principal, $64,884.35 in attorney fees and costs. CP 255-259. The court voided claimed late fees/penalties and awarded specific performance of the option and gave an additional six months to close. CP 129-258. No record of any objections to any of the judge's findings or conclusions has been presented to this court. The record is devoid of any supersedeas bond and as mentioned in many of the requests for filing the opening brief, the option was exercised and the sale completed when another lender was found for Stevens. This appeal follows.

B. <u>Factual History</u>

1. OBJECTION TO APPELLANT'S STATEMENT OF FACT.

As a preliminary matter, deficiencies and violations in the Appellant's brief should be pointed out. Objection is made with a request to strike the Appellant's statement of facts. It is not factual. For instance, with no citation to the record, on page 7 it says:

> **Findings of Fact. See Id. However, it's not a real mystery why Ms. Keck withdrew from the transaction. She had suspected what was clearly a fraudulent Purchase and Sale Agreement signed by Ms. Stevens on behalf of 2nd Half LLC despite the fact that Ms. Stevens was not even a member of 2nd Half let alone have authority to sign for the company.**

This speculation and not supported by citation to the record. The next paragraph on 7-8 says:

> **Notwithstanding all of this, 2nd Half, unaware of the Stevens-Garlington deal, had already lawfully sold the property on April 19, 2016 to Mr. Manna. Therefore, it became impossible to close a sale from 2nd Half LLC to the Garlingtons after April 19, and any escrow for that transaction would have been futile.**

Again, no citation to the record and it is conjecture – and bad conjecture given that the underlying lawsuit was a Uniform Fraudulent Transfer Act claim which could have the effect of setting aside such transfer. CP 1-3. On Page 8-9 the lack of citation continues:

> **In order for the option to be exercised in compliance with the option agreement, a transaction would either need to be signed by Stevens and the estate of Sara Ristick, or Sara Ristick would have needed to assign her rights in the option to Stevens. Ms. Ristick never assigned her option rights during her lifetime, and no probate of her estate has ever been opened.**

This is not supported in the record supplied to this court. And just seems to be part of a "wing and hope the court believes this is true" approach. But it gets worse. Page 9 is an uncited tome:

> A practical and fundamental problem with opening a probate for Ms. Ristick is that Ms. Ristick has substantial judgments entered against her. See Pierce County Cause No. 12-2-15448-7, which contains a $60,000 judgment against Ms. Ristick entered April 30, 2013. Therefore, the effort to exercise the option in the name of Priscilla Stevens only, by-passing entirely the estate of Sara Ristick, was simply a fraud being perpetrated on the creditors of Sara Ristick by Ms. Stevens. If such a transfer was to be permitted, it would transfer the property without Ms. Ristick ever acquiring any interest in the real estate, and therefore her creditors would have no way to collect their judgment. Mr. Manna refused to sign the new purchase and sale agreement drafted by Jim McConville because he would have become exposed to lawsuits from the creditors of Ms. Ristick. *Finding of Fact 28;* CP 131. As mentioned above he also had a lawful judgment against Ms. Ristick for which he was entitled to collect. There is no legal or equitable principle that obligates Mr. Manna to work cooperatively to somehow remove Ms. Ristick from the chain of title under the option agreement.

Finding of Fact 28 says no such thing. Here is the actual language:

28. On May 17, 2016, Mr. Adkins took the new agreement to Mr. Mills' office and left it there with a note to call him to discuss it. However, Mr. Mills showed up at Mr. Adkins' office unannounced, and for a period of twenty to twenty-five minutes discussed the bad history between the parties, said negative things about Ron Steve, and discouraged Adkins from getting involved and making a loan to Ms. Stevens, telling Mr. Adkins to the effect of "don't waste your time or money." At the same time, Mr. Mills insisted Mr. Manna would close if the transaction closed in the name of the deceased Sara Ristick. Such meeting was accompanied by a letter from Mr. Mills (Exhibit 49) that while it claimed Mr. Manna would honor the option agreement also said "Ammar isn't interested in selling the property and is not going to sign your Purchase and Sale Agreement."

The Appellant is just making stuff up as to what Manna's intentions were. The motion also distorts the claimed judgment as will be discussed below. Every reference to Mr. McConville's testimony is to a Declaration (CP 88-100) filed at summary judgment, not the trial testimony where he was crossed examined and challenged. Such summary judgment declaration was not made part of the trial record. CP 506-509. There are other uncited references to "facts" however, the above demonstrates how the appellant is not following the rules and how this court should not trust a single fact recited by the appellant without substantial verification. "The failure to cite to the record is not a formality. It places an unacceptable burden on opposing counsel and on this court." Lawson v. Boeing Co., 58 Wn. App. 261, 271, 792 P.2d 545, 551 (1990).

2. FACTUAL HISTORY

Given the lack of a transcript, the findings are taken as verities. Haberman v. Ellege, 42 Wash. App. 744, 745-6, 713 P.2d 746 (1986). Per the findings (CP 127-133):

On June 5, 2013 an option agreement were executed between Priscilla Stevens and Sarah Ristick as "Grantees" and Jeff Graham – stipulated to be 2nd Half LLC related to 4302 South Thompson Street in Tacoma. Findings 8-9. On August 1, 2013 a lease agreement was entered into related to the Thompson Street house. Finding 10. The option went until May 30, 2016. Sarah Ristick died on July 25, 2015. Finding 14. Priscilla relied on Ron Steve, her grandfather. Finding 14. Mr. Steve was involved in negotiations but not a party due to financial difficulties due to Mr. Mills, Graham, and Manna – all three of whom are friends. Id. The option price was for $116,000, and had a $5,000 penalty for late payments. Finding #15. The court found no evidence of late payments. Id.

Ms. Stevens signed a listing agreement to sell the house and was represented by Jim McConville. Finding #17. Mr. McConville opened escrow immediately with Rainier Title. Finding #19. Days later, Second Half transferred the property to Mr. Manna. Finding #22. Mr. Manna acknowledged he took title subject to the option. Id.

A loan broker, Shawn Adkins, was assisting in getting a loan. Finding #24. Mr. Adkins also went to Rainier Title and told the escrow agent that escrow needed to be opened on the option agreement purchase. Finding #24. Ms. Stevens got a loan with Pinnicle Equity Group with the assistance of Chris Unger. Finding #25. Such loan was for $150,000 which was more than enough to close. Id. When Mr. Unger submitted his loan documents and deed of trust to Rainier Title, he was informed Rainier had resigned from the transaction. Finding #25. Mr. Adkins dropped off a

Purchase and Sale Agreement (to assist in closing agreement) at Mr. Mills' office only to have Mr. Mills show up at Mr. Adkins' office, disparaged Ron Steve and told Mr. Adkins to not waste his time and then wrote a letter (Exhibit 49) which said "Ammar isn't interested in selling the property and is not signing your Purchase and Sale Agreement." Finding #28. Manna then entered into a Purchase and Sale Agreement with the same people Stevens had agreed to sell to. Finding #29.

This was not Manna and Ron Steve's first interaction as they had a bad past history including bankruptcy, and Manna buying a judgment against Steve to try to execute against the property at issue. Finding #30. Manna was motivated in the transaction at issue by revenge and greed. Finding #31. His friends tried to influence lenders to not give loans by actions toward Mr. Adkins (Finding #28) and Mr. Graham's threats against Mr. Unger to publically release his social security number, disclosing past bankruptcy to his employer, threatening to offer $5,000 to Mr. Unger's Facebook friends to serve him while Mr. Mills offered to "friend" him on Facebook, buy him beer, and urged Mr. Unger to sign a false declaration. Finding #33.

Ms. Stevens was ready, willing, and able to close the option but was stymied by Mr. Manna. Finding #32. It was Mr. Manna, Mills, and Graham that killed the escrow at Rainier Escrow. Finding #32.

V. ARGUMENT

A. <u>The record on review is insufficient for review and the appeal should be dismissed.</u>

Obviously, there is no verbatim report. There were eight witnesses called. The trial took two days. Only a fraction of what was before the trial court is before this court. "An appellant has the burden of providing an adequate record for review, and the trial court's decision must stand if this burden is not met. *Stevens County v. Loon Lake Prop. Owners Ass'n,* 146 Wn.App. 124, 131, 187 P.3d 846, 849 (2008). Because the record provided is insufficient to determine whether the verdict is within the range of the evidence, Kinsely's appeal fails." Kinsley v. Barnett, 162 Wn. App. 1013 (2011). So too must this appeal fail. Regardless of the dearth or depth of of a judge's findings, the paper document cannot approximate or substitute for days of testimony. One cannot just "challenge" a finding – the challenge has to be supported by citation to the record. "Counsel is obligated to demonstrate why specific findings of the trial court are not supported by the evidence and to cite to the record in support of that argument. *In re Estate of Lint,* 135 Wash.2d 518, 532, 957 P.2d 755 (1998)." In re Estate of Palmer, 145 Wn. App. 249, 265, 187 P.3d 758, 766 (2008). The undersigned is having a hard time responding with such a limited record. It is hard to imagine how this court could pass judgment on Judge Murphy's decision when it is not provided what Judge Murphy considered. It is akin to a school principal being asked to review a teacher's grading of a test without having the test in question. If appellant will not follow the rules and provide a transcript, neither this respondent nor this court should have to essentially guess at what happened below. The undersigned has a decent memory and took notes at

trial, but that hardly substitutes for a verbatim report. This court recently wrote in an unreported decision (cited per GR 14.1): "Scannell has provided a limited record on appeal and has not provided verbatim reports of the superior court proceedings. An appellant must provide 'argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record.' RAP 10.3(a)(6). The appellant must also provide a record sufficient to review the issues raised on appeal. RAP 9.2(b); *Stiles v. Kearney*, 168 Wn. App. 250, 259, 277 P.3d 9 (2012). The failure to do so precludes appellate review. *Stiles*, 168 Wn. App. at 259." Bulkhak v. Scannell, 50997-1-II, 2019 WL 211115, at *2 (Wash. Ct. App. Jan. 15, 2019). Division 1 previously held: "An insufficient record on appeal precludes review of the alleged errors. *Allemeier v. UW,* 42 Wash.App. 465, 472–73, 712 P.2d 306 (1985), *review denied,* 105 Wash.2d 1014 (1986). Bulzomi has failed to provide this court with an adequate record on review." Bulzomi v. Dep't of Labor & Indus., 72 Wn. App. 522, 525, 864 P.2d 996, 998 (1994). This appeal should be dismissed outright as there is no meaningful way to assess the credibility (or more precisely, the incredibility) of the arguments presented.

B. The findings of facts must be taken as verities.

In the event this court wants to try to discern what happened below without a transcript, then at the very least, the findings have to be treated as verities. "We note initially that Elledge has not submitted a verbatim transcript of the record below; nor has he assigned error to any of the trial

court's findings. The findings are therefore verities and binding on appeal. *Morris v. Woodside,* 101 Wash.2d 812, 815, 682 P.2d 905 (1984). Consequently, our review is limited to determining whether the findings support the trial court's conclusions of law and judgment. *Washington State Bar Ass'n v. Great W. Union Fed. Sav. & Loan Ass'n,* 91 Wash.2d 48, 53, 586 P.2d 870 (1978)." Haberman v. Elledge, 42 Wn. App. 744, 745–46, 713 P.2d 746, 747 (1986). Accordingly, the claimed error related to findings of facts must be ignored altogether. The appellant does not explain how this court can review the findings of the trial court without having the evidence in front of it.

This brings up another issue. Appellant is citing to affidavits provided to the trial court in denied summary judgment motions. Appellant Declaration of Jim McConville (CP 88-100) Declaration of Jim Hoagland (CP 83-87). This is inappropriate as it was not part of the trial record. "Affidavits used in the trial court are not a part of the record, and will not be considered on appeal, unless brought into the record by a statement of facts, except that, where an affidavit is clearly identified as a part of a motion to which it is attached, or is referred to and identified in the order determining the motion to which it relates, it may become a part of the record by inclusion in the transcript certified by the clerk. *Whittaker v. Weller,* 21 Wash.2d 716, 152 P.2d 957, 155 P.2d 284." Pierce Cty. v. King, 48 Wn.2d 43, 46, 290 P.2d 462, 464 (1955). Afterall, summary judgment was actually head by another judge (CP 119-120) in this case and there is nothing in the record that Judge Murphy ever read such

affidavits. Moreover, as the summary judgment was denied, the then-judge certainly was not convinced by the affidavits. So this puts another burden on the respondent and this court not only to guess what Judge Murphy saw, but to try to excise what he did not see or was not made part of the trial record from what Appellant has dropped into our laps. This is not how appeals are supposed to take place.

Sadly, there is another problem with the record. Not a single pleading or transcript has been provided to this court to show that Appellant in any way objected to the specific findings or conclusions. It is long standing law that courts of appeal will not review alleged error not brought to the attention of the trial court wherein the trial judge is given an opportunity to fix such error. "The trial court must be given an opportunity to correct error and failure to afford the trial court this opportunity which constitutes a waiver of the right to assert the error on appeal. State v. Fullen, 7 Wn. App. 369, 389, 499 P.2d 983 (1972).

If this court knocks out all the improperly advanced topics, the Appellate Brief is reduced to a cover page and a signature. This appeal should be dismissed as unreviewable given the absence of a transcript and an insufficient record. Still, in an abundance of caution, the respondent slogs onward. It is acknowledged that when complaining of an insufficient record, the undersigned has an obligation to appraise the court of the significance of the missing record. Favors v. Matzke, 53 Wn. App. 789, 794, 770 P.2d 686, 689 (1989). Frankly, that causes a problem as the undersigned will be working from memory and trial notes. Still, to do this

without muddling the brief up too much, the significance and the general nature of the missing content will be provided in the footnotes. It is said "that the truth lies in the footnotes." Maybe – the footnotes are counsel's recollections of the trial testimony, nothing more and nothing less.

C. <u>The findings of fact support that Appellant breached the option and actively interfered in its exercise.</u>

Putting aside all of the technical problems of objecting to findings without providing a sufficient record, the appellant's claimed errors are convoluted and vapid to say the least. Technically the objections are to Finding of Facts 31, 32 and 33. Which are:

31. Mr. Manna's interest in obtaining the property was motivated, in part, by revenge against Ron Steve for past business and legal problems. Mr. Manna was also motivated to not perform on the option agreement by greed. He and his friends/ business partners worked both before and after the option deadline to impede the exercise of the option by trying to influence loan brokers and lenders, conveying the property away from 2nd Half LLC, entering into another contract to sell to the Garlingtons, and refusing to cooperate with Ms. Stevens and the people assisting her.
32. Ms. Stevens was ready, willing and able to perform her obligations under the option agreement until stymied by Mr. Manna's actions. While her actions, and those of Mr. Steve, in holding herself out as 2nd Half LLC in the Purchase and Sale Agreement with the Garlingtons in April, 2016, are not condoned in any way by this Court, that act did not kill the ability to make the option agreement work. Those acts involved a transaction to sell the property, which couldn't happen unless and until Ms. Stevens was able to exercise the option agreement. It also was not clear in the testimony that those acts were what caused Rainier Title to resign. The acts that killed the ability to make the option agreement work were done by Mr. Manna, Mr. Graham, and Mr. Mills.
33, Mr. Manna had no intention of closing on the option. Such lack of intention to cooperate in good faith and close on the option was further and starkly demonstrated after the court in this case ordered disclosure of Ms. Stevens' lender, which occurred

by court filing on Friday, August 5, 2016. On Monday, August 8, 2016, the disclosed lender, Mr. Unger, was subjected to a sustained barrage of harassment and intimidation by both Mr. Graham and Mr. Mills on behalf of Mr. Manna. Such conduct included, *inter alia*, implied threats by Mr. Graham by text to release Mr. Unger's social security number to the public, inserting Mr. Unger's home address into the demands, causing concern for Mr. Unger's family, threatening to give any of Mr. Unger's Faceboo friends $500 to serve Mr. Unger with a subpoena to a deposition, disclosing Mr. Unger's past bankruptcy to his employer, and threatening to examine and expose the business dealings of Mr. Unger's employer. Some of these threats were made late at night. Mr. Mills' conduct included efforts to "friend" Mr. Unger on Facebook, which was disconcerting to Mr. Unger since he did not know Mr. Mills and his Facebook account related to his personal life, Mr. Mills' offer to take him out for a beer, and Mr. Mills sending a communication explaining that Mr. Unger could avoid such "hassle" by simply signing a declaration which Mr. Unger believed to be false.

So…on the minimal record before us, Trial Exhibits 49, 50, 52, 58, 62, 63, 64, and 65 support Finding 31.[2] Tied to the exhibits was testimony that despite there being thousands of unpaid judgments in Pierce County, Manna bought the one against Mr. Steve and tried to execute on it.[3] Exhibits 21, 37, 38, 39, 40, 44, 45, 49, 50, 52, 53, and 62 show how J.

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[2] Sean Adkins testified how Attorney J. Mills tried to dissuade him from getting involved and talking down Ron Steve. Chris Unger testified to being threatened by Jeff Graham (who admitted in testimony to being sanctioned labeled deceptive and lacking in candor by the bankruptcy court, as well as being sued for millions in the infamous Thurston County Lost Lake RV development) by disclosures of personal matters to his employer, threats to release his social security number publicly, raising hell at his office and then J. Mills playing good cop/bad cop with him offering to take him out for a beer and trying to friend him on Facebook. Also, Mr. Unger testified to Mr. Mills attempting to bribe him couched as paying for Unger's time to go over his previously sworn testimony despite fact Mr. Mills had already taken Mr. Unger's deposition.

[3] The escrow officer was also chased off the transaction which was designed to be a simultaneous closing which she admitted was legitimate but that she had never done one. She also was concerned that 2nd Half already conveyed to Mr. Manna after title was opened. The testimony was that Mr. Unger's company was ready, willing and able to submit loan documents and money into the escrow to close the option when Ms. Keck abruptly "resigned" leading to a humorous email from the loan officer congratulating her on her retirement only to learn she was resigning only from this transaction.

Mills and Jeff Graham have been intricately involved in this property on many levels, owner, optionor, attorney, etc. [4] The fractional record the court has is sufficient to see that Judge Murphy was on the right track in making Finding 31. It is interesting that Finding 31 is challenged but Finding 14 is not challenged. Finding 14 discusses some of the bad history between Ron Steve and Manna ("and his associates, including Mr. Mills and Mr. Graham"). The challenged Finding 31 is supported by Finding 14 which, being unchallenged, is taken as a verity on appeal. Similarly, the unchallenged Finding 28 sets forth how Mr. Mills talked down Ron Steve to a loan broker telling him "don't waste your time or money" and then wrote a letter saying Manna "isn't interest in selling the property and is not going to sign your Purchase and Sale Agreement." Again, this finding is a verity and supports Judge Murphy's further finding that Manna was motivated by revenge and refused to cooperate to get the transaction closed.

Finding 32 is a bit unfair to Ms. Stevens about signing a purchase and sale agreement for 2nd Half, LLC. Judge Murphy rightly noted in Finding 14 about how Ms. Stevens relied heavily for assistance on her grandfather. Still, there was ample testimony of the conduct of Manna and friends which gave rise to Rainier Title resigning. There was ample evidence and testimony that the name on the purchase and sale agreement

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[4] Mr. Graham and Mr. Manna both spoke of how they and Mr. Mills were friends, would have dinner together and were all businessmen in the local community. Graham served as Mills' process server in Manna's failed eviction

that Ms. Stevens signed was not intentional by her and not really a big problem in the transaction.[5] The problem, Judge Murphy noted in Finding 32 was the actions "by Mr. Manna, Mr. Graham and Mr. Mills." Undisputed Findings 27, 28, 29 and 30 also support the findings in Finding 32. Exhibits 6, 7, 19, and 33 all support such finding. Disputed Finding 33 supports Finding 32 as it details Mr. Manna's intent to not close the option (as his lawyer said is a letter, Exhibit 49). Finding 33 details also the egregious behavior or Mr. Graham towards Mr. Unger as well as the efforts of Mr. Mills to get Mr. Unger to sign a declaration Mr. Unger believed to be false.[6]

Finding of Fact 33 – the intimidating conduct of Mr. Mills and Mr. Graham is well supported in the bit of the record this court has been provided. It is supported by Exhibits 49, 50, and 58 admitted in trial.[7]

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[5] Ms. Stevens testified to being a young single mother. This was her first real estate deal and she was relying on the real estate agent. The real estate agent testified he filled out the owner line on the sales agreement from the tax record. Ms. Stevens who reads poorly accepted what was presented to her by her agent and paid no mind to who was listed as the seller. In testimony – I believe with the escrow closer – it became clear that this was to be a double closing where Ms. Stevens would come into title only momentarily as she purchased and both sold simultaneously. The escrow officer testified there was nothing wrong with a simultaneous closing but she had never done one. Given that she would be in title at the time she conveyed her deed, it was not a big deal and, as Judge Murphy found, it would work. Finding 32. Still the evidence reflected an error caused by the broker, not an intent to defraud as insinuate by appellant.

[6] Mr. Unger also talked about what he perceived to be a bribe for his testimony which is corroborated by an email from Mr. Mills offering to pay him to meet and go over his testimony (Exhibit 58) – after Mr. Mills had already taken Mr. Unger's deposition and knowing exactly what Mr. Unger knew and would testify to.

[7] In testimony, Mr. Graham admitted to his conduct. Mr. Adkins testified to Mr. Mills conduct and such testimony was not rebutted in any way as Mr. Mills did not take the stand being the lawyer trying the case. While that brings up RPC 3.7 implications, the undersigned had raised this prior to trial and Mr. Mills did not withdraw and the judge

Judge Murphy's finding are supported by copies of texts and emails in addition to significant testimony. The finding is well supported. However, this court should remain mindful that it is not the respondents burden to show the disputed findings are supported in the record...it is the appellant's burden to show there is not adequate support in the record. The absurdity of what appellant is trying to do should not be lost on the court. Mr. Manna is claiming that certain matters are not supported by the record but are refusing to give this court the full record. Apparently we are just supposed to take appellant's arguments at face value. Neither the rules so provide nor is this respondent willing to do so.

D. <u>The Appellant's argument as to reformation is inappropriate, a distortion and not raised to the trial court.</u>

A review of the underlying Superior Court file does not mention reformation. The intervenor's complaint does not mention reformation in the prayer for relief. CP 70-74. The trial brief submitted by the undersigned never mentioned reformation. CP 491-504. The trial brief submitted by Manna never mentioned reformation. Supp. Clerk's Paper ___ (being supplemented). Judge Murphy's Findings of Facts and Conclusions of Law do not mention reformation nor does the judgment. The undersigned has no recollection of the words "reformation" ever being brought up below but given that Appellant did not order the transcript, it's hard to be 100% sure. However, there is nothing at all

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then hearing the case did not remove him. The result was that all of the testimony by Mr. Adkins and Mr. Unger as to the conduct of Mr. Mills was completely unrebutted.

before this court showing that some error related to "reformation" was raised to the trial court. "We will not consider an issue or theory raised for the first time on appeal. *People Nat'l Bank v. Peterson*, 82 Wash.2d 822, 514 P.2d 159 (1973); *State v. Tradewell*, 9 Wash.App. 821, 515 P.2d 172 (1973)." Dawson v. Troxel, 17 Wn. App. 129, 131, 561 P.2d 694, 695 (1977).

The whole "reformation" argument is a red-herring. Judge Murphy did not "reform" the option. He found Manna breached the option and ordered specific performance. CP 133, Conclusion 2, and CP 258. Instead of appealing what Judge Murphy did, appellant is appealing something the Judge did not do because it was never asked of him. Even if the appellant had properly challenged the order of specific performance, such challenge would be futile. "Because the trial court has broad discretionary authority to fashion equitable remedies, we review such remedies under the abuse of discretion standard. *SAC Downtown Ltd. P'ship,* 123 Wash.2d at 204, 867 P.2d 605. An abuse of discretion occurs when the trial court's decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. *Gildon v. Simon Prop. Group, Inc.,* 158 Wash.2d 483, 494, 145 P.3d 1196 (2006)." (footnote omitted) Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship, 158 Wn. App. 203, 221, 242 P.3d 1, 11 (2010).

Moreover, even if the issue of reformation was properly before this court, "...reformation is an equitable remedy reviewed for abuse of discretion." (citation omitted) Glepco, LLC v. Reinstra, 175 Wn. App.

545, 563, 307 P.3d 744, 753 (2013). How can a court review for abuse of discretion without the testimony presented to the trial court? Still, the exhibits provided well support the trial court's determination of breach including all of the egregious activity that would not only be a breach of the implied duty of good faith and fair dealing, but the option itself as Mr. Manna had no intention of performing. Findings 28, 33. CP 131, 132. No argument is presented to this court that the terms of the specific performance violate any existing case law. It is not the respondent's duty to rebut arguments not made by appellant. The court should not let the appellant try to correct this distortion of the record by arguing as to specific performance the first time in the reply brief. "An issue raised and argued for the first time in a reply brief is too late to warrant consideration. *In re Marriage of Sacco,* 114 Wash.2d 1, 5, 784 P.2d 1266 (1990)." Cowiche Canyon Conservancy v. Bosley, 118 Wash.2d 801, 809, 828 P.2d 549 (1992).

The entire reformation claim is bizarre and hard to brief. There is no such record below as it was never part of the trial court case, is not what happened and simply is a dodge from challenging what the trial court actually ruled: Manna breached the option. Such argument attempts to dodge the remedy ordered: Specific performance. What Judge Murphy did is support in the partial record appellant provided and the judge was well within his discretion.

E. The Appellant's argument as to a novation is improper, a distortion of the lease and not raised to trial court.

Here we go again. Novation was never mentioned before the trial court. All the same arguments related to reformation and how one cannot raise things for the first time on appeal apply. At no point in any proceeding did Appellant argue to Judge Murphy "hey, that is an improper novation…you can't do that." Nope. This is a shiny new issue for this appellate court to review. Or not.

Apparently the argument, if this court were to consider it, is that because the option had two optionors and the trial court allowed only one of the optionors to close (the other one being dead) – that the trial court effectively did a novation. The appellant then theorizes (incorrectly, of course) that in doing so the trial court side-stepped a judgment against the deceased Sarah Ristick supposedly owed. Appellate Brief page 9. So let's unpack the errors. First, the claimed judgment was in favor of a Bret McCausland – not Mr. Manna. Exhibit 62. Second, the underlying documents were drafted by Mr. Mills and there was a CR 2A in a prior action wherein Ron Steve agreed to a judgment – not Sarah Ristick. Exhibit 44. The judgment then grants a judgment against "defendants" of which there was three. Exhibit 62. The judgment summary then lists only two of the three defendants, Ron Steve and Sarah Ristick. Id. The judgment references the CR 2A stipulation and that only was signed by Ron Steve. Exhibits 44 and 62. Sarah Ristick never agreed to a judgment be entered against her. Given the poor legal drafting of the documents (by Mr. Mills) and the fact that Sarah Ristick had not signed the CR 2A, Judge Murphy was completely within in his discretion to ignore such a claim to a

judgment. Moreover, App. Brief p. 9 cites Finding 28 for the proposition that Mr. Manna would have been exposed to lawsuits of "the creditors of Ms. Ristick," if he closed only to Stevens. Finding 28 says no such thing. It speaks of Mr. Mills badmouthing Ron Steve and a letter saying Manna was not interested in selling.

The next problem is that the Appellant displays ignorance as to the effect of a judgment on an unexercised option. An option is not an interest in real property. Options are defined by the option contract and is a privilege to buy property. Hopkins v. Barlin, 31 Wn.2d 260, 266, 196 Wn.2d 347 (1948). This brief is not a treatise on real property and Appellant does not brief his theories. It is Respondent's position that a judgment does not attach to a personal property absent execution/attachment under RCW Title 6. Upon such a levy, a judgment holder might execute, force a sheriff sale, and buy the option but it does not automatically attach as a superior court judgment does against real property. Now, if a an option was exercised by an option holder who also was a judgment debtor, then upon obtaining a real property interest, the judgment likely would attach to the interest in real property – absent issues of abstracting judgments to different counties and homestead issues. So Appellant is just wrong on its analysis underlying this latest distortion. Nevermind that Appellant provides zero legal authority for such theory. "Failure to provide argument and citation to authority in support of an assignment of error precludes appellate consideration." Bulkhak, *supra.*

Putting all that aside and the failure to raise claimed error before the trial court, the appellant does not hardly reference what the option actually says. Nothing in the option says it must be exercised by both grantees. Exhibit 1.[8] While the option discusses both Priscilla Stevens and Sarah Risdtick as "Grantee," when it comes to Section e. and f. of the option, it then changes to use the term "Grantee/Buyer" which is indicative of the fact that the grantee that actually is the buyer might not be the "Grantee." Otherwise it would simply say "Grantee" and not use the term "Grantee/Buyer." Exhibit 1. There would be no reason to change such designation. Further the option section f. discuss the "buyer" – singular – not plural. Unlike other terms that are made "terms of art" in the contract, the term "buyer" was not a term of art so it would preserve its normal definition and be constrained by its plain meaning. Moreover, as Judge Murphy pointed out, the lease to which the option pertained, was signed only by respondent while option was also signed by Sarah Ristick. Finding 11. The point is, the option was not the most clear document in the world and was written by Jeff Graham – Mr. Manna's associate. Courts "construe written contracts against their drafters such that they cannot later benefit from 'mistakes' that they were in a position to prevent. *See Pierce County v. State,* 144 Wash.App. 783, 813, 185 P.3d 594 (2008) (ambiguous contracts are generally construed against the drafter);

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[8] The option was drafted by Jeff Graham. Ron Steve and Priscilla Steve did not draft the option.

Emter v. Columbia Health Servs., 63 Wash.App. 378, 384, 819 P.2d 390 (1991)(drafter cannot take advantage of ambiguities it could have prevented with greater diligence); *Cont'l Ins. Co. v. PACCAR, Inc.,* 96 Wash.2d 160, 167, 634 P.2d 291 (1981)(party who created the contract is in better position to prevent ambiguous language or mistakes)." (footnotes omitted) McKasson v. Johnson, 178 Wn. App. 422, 429–30, 315 P.3d 1138, 1142 (2013).

The entire "novation" is a misguided effort to recast what happened, ignores the law and is not based on the language of the contract. Beyond that, it is raised for the first time on appeal and is not supported with citations to the records showing that somehow Judge Murphy abused his discretion in construing a vague contract.

F. The Appellant's arguments as to "unclean hands" is a matter of discretion for the trial court and there is an insufficient record for review.

Here is another new issue raised on appeal. The answer by Manna filed never raises any affirmative defenses…let alone unclean hands. (CP being supplemented). The doctrine of uncleans hands is an affirmative defense. Matter of Estate of Heinzinger, 49771-9-II, 2018 WL 721384, at 5 (Wash. Ct. App. Feb. 6, 2018)(Cited per GR 14.1). A party waives affirmative defenses by not raising them in their answer. CR 8(b). Bickford v. City of Seattle, 104 Wash. App. 809, 813, 17 P.2d 1240 (2001). Additionally Manna's trial brief never raised unclean hands. (CP being supplemented). So, apparently, Judge Murphy was to sua sponte

plead such waived defense at trial on behalf of Mr. Manna and then consider it and apply it despite never being asked. That is an interesting legal proposition. Forgive the undersigned for not finding legal authority supporting such interventionist judicial role.

Still, even if the defense was properly before the trial court, Manna simply yelling "fraud" (also not pled or decided by the judge) does not show an abuse of discretion. Unclean hands is an equitable defense. "The District also argues that the equitable doctrine of unclean hands should have also worked to relieve it of its duty to pay the Ricks' attorney fees. We review equitable decisions for abuse of discretion; the District does not explain why the ruling amounts to an abuse of discretion. *Esmieu v. Hsieh,* 92 Wn.2d 530, 535, 598 P.2d 1369 (1979)." Rick v. Prosser Sch. Dist. No. 116, 178 Wn. App. 1017 (2013)(cited per GR 14.1). In the present case, Manna explained the abuse of discretion by pointing to supposed fraud by Stevens. But Judge Murphy found no such fraud. Judge Murphy acknowledged Ms. Stevens was relying "heavily" on others. Finding 14. The errors on the purchase and sale agreement did not make the transaction unworkable. Finding 32. Appellant does not explain how such innocent error by a young lady relying on her grandfather and a real estate broker in anyway equates to a lawyer interfering with a lender, a friend threatening a lender with disclosing personal items, the lawyer possibly bribing a witness to sign an incorrect declaration and an expressed unwillingness to sell the option property. The exercise of equity involves a trial judge considering all the evidence and all the testimony. It

is hard to see how this court can properly overturn such decision without the testimony. However, given what this court does have…the threatening emails and court findings…affirming the trial court should be easy.

But that would all assume uncleans hands was raised.

G. <u>The interference claim is well supported in the record.</u>

Again, there is no record of Manna taking exception to the tortious findings interference findings before the trial court. Still, the court should not lose track of the fact that the initial claim between Betournay, 2nd Half and Manna was based on a violation of the Uniform Fraudulent Transfer Act. RCW 19.40. CP 1-3. This is because Manna & Associates try to avoid meeting their legal responsibilities. Now, they did pay off Betournay[9] who exited the litigation. CP 7. But that is after being sued and essentially forced to pay up. The same occurred here. Despite legal rights being clear, Manna and his associates did everything they could to interfere in Steven's ability to perform and recognize on the benefit of her contract. 2nd Half transferred the Property to Manna to avoid a judgment to Betournay and poisoned the escrow as 2nd Half was no longer the owner in the escrowed transaction. Manna's friends intimidated a loan broker, they chased away the escrow officer and they threatened/bribed and attempted to solicit false testimony from another loan broker. Not only did they interfere with the performance of the option with 2nd Half, they

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[9] At a court hearing the Betournays were present and acknowledged their judgment was paid off but that their underlying cause was on appeal and they were worried about prejudicing their claim if there was a reversal or remand.

sought actively interfered with Ms. Stevens' lenders. On top of that, they contracted to sell to Steven's buyer – the Garlingtons.

Judge Murphy was right. The option was with 2nd Half. Manna, who does not contest the bad blood and contentious history between he and Ron Steve, had bought a judgment to try to foreclose the house. Finding 30. When that did not work, he took this property subject to the option then intended not to perform the option which he knew he purchased "subject to." Finding 31, 33. His conduct was wrongful. His associate's conduct was wrongful. So let's walk through the elements and the evidence in the record. (1) The existence of the contract. That obviously is met with the option with 2nd Half, LLC. (2) Manna's knowledge of the relationship. Clearly Manna knew of the option – he has never denied knowing of the option. (3) Intentional interference. These facts have been laid out several times and are memorialized in Mr. Mills' letter "Amarra has not intention of selling the property." Exhibit 49. (4) Improper purpose. There was the past attempts to take the house, the bad blood, the expressed unwillingness to sell… and the revenge and greed. (5) Resultant damages. That is pretty obvious as Stevens was unable to close on the option, lost her loan deposit and faced losing significant equity given the option price was $116,000 and the agreement with the third party was $230,000.00. Exhibit 19. Manna and his associates did in fact interfere and caused damage to Stevens who was unable to buy the property. Such conclusion of tortious interference was well supported.

H. <u>The attorney fee award was appropriate on multiple grounds and the record is insufficient to review such matter.</u>

The trial court's decision regarding awarding attorney fees is correct on two grounds. First, as explained in Conclusion of Law 5, they were a component of damages and, second, for wanton, bad faith conduct. Appellate courts have recognized that findings need not be made as to every issue that comes before he trial court. "This rule does not require the trial court to make findings in regard to every item of evidence introduced in a case." (citations omitted) Bowman v. Webster, 42 Wn.2d 129, 134, 253 P.2d 934, 937 (1953). As sort of a corollary of such rule, this court "may affirm on any ground supported by the record. *Wash. Fed. Sav. & Loan Ass'n v. Alsager,* 165 Wash.App. 10, 14, 266 P.3d 905 (2011)." Hoover v. Warner, 189 Wn. App. 509, 526, 358 P.3d 1174, 1183 (2015). The findings were replete with egregious behavior. A further finding was not needed specifically saying "wanton."

The notion of attorney fees as damages has been approved by the Washington Supreme Court and the Court of Appeals:

> "[W]hen the natural and proximate consequences of a wrongful act by defendant involve plaintiff in litigation with others, there may, as a general rule, be a *recovery of damages* for the reasonable expenses incurred in the litigation, *including compensation for attorney's fees." Wells v. Aetna Ins. Co.,* 60 Wash.2d 880, 882, 376 P.2d 644 (1962); *Manning v. Loidhamer,* 13 Wash.App. 766, 769–74, 538 P.2d 136 (1975). *See also Tri–M Erectors, Inc. v. Donald M. Drake Co.,* 27 Wash.App. 529, 531, 618 P.2d 1341 (1980) (noting that attorney fees incurred in defending suit against third party were recoverable pursuant to contractual indemnity provision as damages,

> the measure of which was determined by the jury). Pursuant to this rule, such attorney fees are considered to be damages rather than costs.

(footnotes omitted) Jacob's Meadow Owners Ass'n v. Plateau 44 II, LLC, 139 Wn. App. 743, 759–60, 162 P.3d 1153, 1162–63 (2007).

> We hold that when an intentional tort causes damage that requires legal action to repair the damages, then the attorney fees for the legal action to defend can be considered as damages in a different and subsequent proceeding.

Maytown Sand & Gravel LLC v. Thurston Cty., 198 Wn. App. 560, 592, 395 P.3d 149, 166 (2017), review granted, 404 P.3d 480 (Wash. 2017), and aff'd in part, rev'd in part, 191 Wn.2d 392, 423 P.3d 223 (2018), as amended (Oct. 1, 2018). The Washington Supreme Court made it even more clear:

> An award of attorney fees is proper under the bad faith exception when the fees were incurred as a result of the "intentional and calculated action" of the defendant that "[left] the plaintiff with only one course of action: that is, litigation." *Rorvig,* 123 Wash.2d at 862, 873 P.2d 492. In other words, where "the defendants actually know their conduct forces the plaintiff to litigate" and the ability of the plaintiffs to prove actual damages is difficult, an award for attorney fees may be granted. *Id.* "Fairness requires the plaintiff to have some recourse against the intentional malicious acts of the defendant." *Id.*

Maytown Sand & Gravel, LLC v. Thurston Cty., 191 Wn.2d at 442–43. The Supreme Court case discussed the notion and power of a court to grant prelitigation attorney fees – noting it exceeds the authority of the court. Id. However, the court differentiated between sanctioning parties

and compensating parties damaged. "Compensating aggrieved parties for harm caused by malicious, prelitigation conduct fits more naturally within the meaning of damages and is therefore limited to that context. *Ring,* 198 Vt. at 125, 112 A.3d 754." Id. The court did not apply attorney fees for the prelitigation costs in that tortious interference claim "raised in this [the Maytown case] case". In the present case, the attorney fees detailed in the fee affidavit from the undersigned's firm and the Morton McGoldrick firm which did the intervention before Burns Law substituted in. Given the level of deplorable conduct on the Manna side of this dispute, Judge Murphy was well within his discretion for following existing law and awarding attorney fees as damages. He further could be upheld on the "bad faith and wanton" type of cases also discussed in Maytown.

These cases hold that when the natural and proximate consequences of a wrongful act by defendant involve plaintiff in litigation with others, there may, as a general rule, be a recovery of damages for the reasonable expenses incurred in the litigation, including compensation for attorney's fees. The notion of having to have multiple lawsuits (which by the ways, there were) as argued by Mr. Manna is wrong:

> Defendant cites the case of Choukas v. Severyns, 3 Wash.2d 71, 84, 99 P.2d 942, 103 P.2d 1106 (1940) as applicable here. We distinguished the Curtley and Murphy cases, supra, stating:
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> > '* * * it should again be noted that the liability for the attorney's fees recovered was incurred in an action between the person claiming the fees and a party other than the

> one whose original wrongful act caused the litigation in which the attorney's fees had been paid.' (p. 84, p. 947 of 99 P.2d).
>
> Defendant urges that plaintiffs do not meet this test because the wrongful act of Bargain Spot, Inc. did not involve them in litigation with others; that there is only one lawsuit; hence, plaintiffs are only entitled to statutory costs. We do not agree.
>
> It is the object and purpose of our liberal rules of joinder to encourage the adjudication of the rights and claims of all parties in one proceeding. Plaintiffs were required to defend their right to the automobile against the claim asserted in the cross-complaint of Hayden Mills & Associates, Inc., as well as in the interpleader action of defendant. For this, they are entitled to reasonable attorney's fees. The fees are a loss occasioned by the action of the wrongdoer.

Wells v. Aetna Ins. Co., 60 Wn.2d 880, 882–83, 376 P.2d 644, 645–46 (1962). Remember, there was a separate eviction action. This case was a three party action wherein respondent had to intervene instead of filing multiple lawsuits. The conduct in this case is consistent with the "liberal rule of joinder". The legal maneuvering in this case to impair Ms. Steven's rights was done intentionally and much of it with the active participation of a licensed attorney. This case involves litigation with third parties, intervention and with the involvement of third parties all to protect a legal interest. Courts allow legal fees as damages in protecting legal rights. Sigman v. Stevens-Norton, Inc., 70 Wn.2d 915, 923, 425 P.2d 891, 897 (1967). Additionally, "fees can be awarded on a finding of bad faith and or wantonness." (citation omitted). Piper v. Dep't of Labor & Indus., 120 Wn. App. 886, 891, 86 P.3d 1231, 1234 (2004). As previously

found, the motivation of greed and revenge tied to the conduct of Manna and his agents meets this standard and is a second, independent basis, to award fees. This is tied to Exhibits 37, 40, 49, 50, and 58 where we have intimidation, interference, potential bribery, extorting people with social security numbers…it is hard to imagine much more wanton conduct.

But again, we need to step back and look at where we are. This is Manna's appeal. It is Manna's duty to provide this court a basis for claiming that the judge's decision is unsupported by the record. Manna is ignoring the record. Beyond saying the trial court "did not explain or support its conclusion" there is no substance. Appellant Brief p. 25. The partial record shows the intimidation, the threats, possible bribery, the expressed intent not to sell the property….Judge Murphy was on solid ground. All Appellant provides is a black letter citation to the elements of interference with a contractual relationship and another quote to Quadra Enterprises, Inc. v. R.A. Hanson Co., Inc., 35 Wn. App. 523, 527, 667 P.2d 1120, 1122 (1983) as to protecting one's own interests. However, Appellant does not explain how his property interest would be destroyed by Ms. Steven's exercise of the option. Mr. Manna's attorney sent a letter stating that Mr. Manna bought the property subject to the option. Finding 22, Exhibit 5. So, the exercise of the option would not destroy the property interest…it would fulfill what Manna knowingly purchased. The brief then goes on for about three pages without any legal citation and is raw argument. Appellant's Brief pages 22-24. "We need not consider arguments that are unsupported by meaningful analysis or authority.

Cowiche Canyon Conservancy v. Boslev, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments must be supported by authority)." (further citations omitted) State v. Tsimerman, 188 Wn. App. 1047 (2015)(Cited per GR 14.1).

The legal authority cited is, again, just black letter references to the general "American Rule". But that ignores the authority cited to this court and the more recent Supreme Court decision related to Maytown – which extensively discusses the American Rule and the applicable exception thereto. Such authority was available to Appellant in drafting the opening brief. The fee award as damages is well supported in the record and well supported by authority. The skimpy legal analysis and lack of record provided by Appellant is not enough to even review the matter, let alone reverse it.

Moreover, the arguments raised are silly. They ignore that Judge Murphy found a breach. Essentially they are arguing that the contractual relationship ended because it did not close on time and Manna could not interfere with a defunct contract. No. It did not close on time because Manna breached. Conclusion 2. Besides, this whole timing issue ignores the fact that some of the interference was prior to the option exercise date such as Mr. Mills intimidating a loan broker, writing a letter saying Manna does not want to sell the property and 2nd Half conveying the property to Manna. It also ignores that it did not close because Manna breached and was the cause of chasing away the escrow company. Findings 28 and 32. Appellant would have this court thinking he sat back and calmly sipped

coffee as the option deadline slipped by. That is not the facts of the case. Manna got the property from insiders trying avoid the attachment of a pending judgment against 2nd Half by Betournay. CP 1-3. Manna's attorney dissuaded lenders who would fund the option. Finding 28. It was Manna's associates who chased away the escrow company. Finding 32. The point is, the appellant's arguments do not match the facts.

I. Additional attorney fees should be awarded in this appeal.

To paraphrase the Supreme Court decision in Maytown citing to Rorvig, as set forth more fully above, fees are award when there is "intentional and calculated action" which forces them to sue to protect their rights This is such a case. Judge Murphy cited to the continued, calculated action to try to take this house away: The purchase of the judgment; Attempts to attach the option; The unlawful detainer action; and this action. The conduct in this litigation of witness tampering, intimidation, efforts to get signatures on false declarations were not accidental. Mr. Mills did not accidently stumble into the loan broker's office. Jeff Graham did not accidently threaten to make Mr. Unger's past financial difficulties known to his employer or inadvertently threaten to make his social security number public. Mr. Manna did not buy up a questionable judgment and attempt an attachment by happenstance. This was very concerted efforts all designed to attack a legal right which was to allow Ms. Stevens to buy, to have and to hold this house.

As cited in the Maytown, 198 Wash. App 592 "RAP 18.1(a) allows a prevailing party to recover attorney fees on appeal if 'applicable law

grants to a party the right to recover reasonable attorney fees.'" Applicable law, as discussed above, allows for the award of attorney fees.

But there are other reasons. RAP 18.9 allows for fees for violation of the rule which are used for (1) delay; (2) is frivolous; or (3) fails to follow the rules. As to delay and failure to follow the rules...look at the months of delays in getting the opening brief. In such requests, the notion of the exercise of the option was critical to how this was going to be briefed. Really? How would that have changed any of the arguments made? How would it have changed any finding or conclusion? How would it have changed the decision on attorney fees? The judgment would still have existed. The undersigned repeatedly pointed this out in objecting to continuances and lo and beyond – that entire reason for delay was all a canard. Besides, the appellant has not followed the rules for providing a record. RAP 9. The appellant misrepresented the issues on appeal in declining to order transcripts in his Statement of Arrangements. See Statement of Arrangements filed with this court on October 5, 2018. The citations to the underlying record includes summary judgment material – not trial material. And let's not forget that the appellant has be thrice sanction by appellate courts during this case in the discretionary review. Admittedly, frivolousness is a high bar. A "frivolous appeal is one which, when all doubts are resolved in favor of the appellant, is so devoid of merit that there is no chance of reversal." (footnote omitted) Fid. Mortgage Corp. v. Seattle Times Co., 131 Wn. App. 462, 473, 128 P.3d 621, 627 (2005).

In truth, this may be a bar that this court might decide not to try to clear. If the court awards fees under the exception to the American Rule and awards the fees as damages, finding frivolousness is not required. Still, this was an egregious case and the conduct of witness tampering, frivolous appeals, delays, and misrepresentation to this court to then get such a sketchy brief with no in-depth analysis of any precedent…is grounds for sanctions. Frankly, the court can award fees on both grounds as both are warranted. The undersigned is not an attorney who screams "sanctions" at the drop of a hat. However, in looking what this young woman went through (and is still going through) to simply exercise an option is incredible. The court should tie the frivolousness also to the bad faith displayed in this case. This court should be mindful that an attorney – the appellant's attorney – was an active participant in all of this maneuvering and scheming. It was the attorney dissuading the loan broker. It was the attorney playing "good cop/bad cop" with Mr. Graham as they threatened to release damaging information on Mr. Manna while inviting to pay him, buy him beer and friend him on Facebook. It was the attorney trying to extract a false declaration. It is a highly unusual situation and one that should draw the attention of this court. Fees can be awarded to "a prevailing party attorney fees on a finding that the losing party acted in bad faith or wantonness. *See, e.g., Miotke v. City of Spokane,* 101 Wash.2d 307, 338, 678 P.2d 803 (1984); *Pub. Util. Dist. No. 1 of Snohomish County v. Kottsick,* 86 Wash.2d 388, 390, 545 P.2d 1 (1976)." Piper v. Dep't of Labor & Indus., 120 Wn. App. 886, 891, 86

P.3d 1231, 1234 (2004). "A court may grant attorney fees to the prevailing party if the losing party's conduct constitutes bad faith or wantonness. *State ex rel. Macri v. Bremerton*, supra at 113, 111 P.2d 612." Pub. Util. Dist. No. 1 of Snohomish Cty. v. Kottsick, 86 Wn.2d 388, 390, 545 P.2d 1, 3 (1976).

Litigation is expensive. Appeals are expensive. They are not to be engaged in lightly and should be used as part of a scheme between friends to try to steal equity in property. The undersigned really has no idea what Mr. Mills fee arrangement are with Manna and Graham (they have yet to win anything so as to require disclosing such arrangement) but the fact that these friends undertake such conduct wherein an attorney – who clearly was a participant and a witness – litigates the case is odd, to put it kindly. It is not a normal attorney/client relationship. It is essentially a conspiracy to take someone else's equity in property with Mr. Mills providing the legal services. It appears to be a game to them. It is not a game to Ms. Stevens. This court should look at the odd, totality of what happened here and send a message to theses cohorts to not do this again.

VI. CONCLUSION

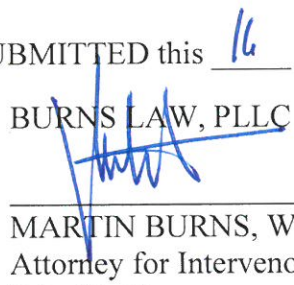
This is a frustrating case for many reasons. It was rewarding that Judge Murphy saw through the smoke these three associates have tried to hide in. The case has been akin to playing three card monte. The appellant has tried to divert and confuse what happened and what is on appeal. In some ways it could be said that they are seeking reformation to novate their prior arguments. In the end, there is just nothing here. There

is an insufficient record. There are new issues raised on appeal. There is scant authority beyond broad citations to laws with many exceptions. There is citations to summary judgment material not part of the trial record. And that is just the appeal – this court can only imagine what Judge Murphy had to go through…partially because appellant provided no transcript.

This is a bad faith appeal based on a bad faith lititation based on bad faith conduct to interfere and deny a young woman the benefit of her contract. It is deplorable in many ways and this court should so find. Please affirm the trial court and allow additional attorney fees and costs to be awarded Ms. Stevens.

RESPECTFULLY SUBMITTED this 16 day of April, 2019.

BURNS LAW, PLLC



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CERTIFICATE OF SERVICE

I certify that on the 16th day of April, 2019, I caused a true and correct copy of ***Intervenor/Respondent's Brief*** to be served on the following to:

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- ☒ Electronic Mail
- ☒ E-Service via Court of Appeals
- ☐ Facsimile

DATED this 16th day of April, 2019, at Tacoma, Washington.

BURNS LAW, PLLC

By: _____
Sheila Gerlach, Paralegal

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April 16, 2019 - 10:23 AM

Transmittal Information

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Appellate Court Case Title:	James Betournay, et al., Respondents v. 2nd Half, LLC, et al., Appellants
Superior Court Case Number:	16-2-08513-5

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