

FILED

AUG 25 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, DIVISION III

OF THE STATE OF WASHINGTON

RONALD C. LANDBERG, SR.

AND

KATHLEEN L. LANDBERG, Appellants,

V.

CASE # 291405

BRIAN H. WOLFE, TRUSTEE

AND

EQUITY TRUST, ET.AL. , Respondents

REPLY BRIEF OF APPELLANTS

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TABLE OF AUTHORITIES

Table of Cases

- I. Court of Appeals Division I, 63353-81, State of Washington v. Va-tinh-Tran. Hearing Continues because of inclement weather.
- II. Court of Appeals Division II, 39173-2-11, Cowlitz County, November 3, 2010. Hearing rescheduled because of inclement weather.
- III. Pierce County Superior Court, 08-1-01130-2, To Court of Appeals re weather.

- IV. U.S. Supreme Court, *Pioneer Inv. V. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380 (1993). "Excusable neglect" under Fed. R. Civ. P. 60(b) re under control of movant and in good faith.
- V. *United States v. Raines*, 362 U.S. 17, 27, 4 L. Ed.2nd 524, 80 S. Ct. 519 (1960). Standing as personal interest or representative capacity.
- VI. *Vovos v. Grant*, 87 Wn.2nd 697, 699, 555 p. 2nd 1010 (1993). Protectable interest adversely affected.

Constitutional Provisions:

- I. United States Constitution, Amendments 5 and 14, Cannot be deprived of property without due process.
- II. Washington State Constitution, Article I Section 3, Personal Rights

Statutes:

- I. Federal Rules of Civil Procedure, Rule 6(3) (A). Inaccessibility of clerk's Office for Computing and Extending Time.
- II. D. Kan Rule 5.4.11 (Inability to file electronically to meet filing deadline).
- III. Federal Rule of Bankruptcy Procedure Rule 9006(3) (A). Amended 2009, Inaccessibility of Clerk's Office to Meet Filing deadline.

I. **Argument**

The issue of filing Ron's bankruptcy. One of the Appellant's primary lines of defense in stopping the December 19, 2008, Foreclosure sale of their Pend Oreille County property, was filing of bankruptcy by Appellant Ron Landberg. The lenders recognized an ownership interest and required Mr. Landberg to be a signer on the loan papers and the Promissory Note. CP 18-28. And CP 77-101. RP 2-page 5. The entire week before the Foreclosure sale the weather had been very bad. Passes were closed and people were warned to stay off the roads. During this time the Landbergs were still attempting to negotiate with Trustee Wolfe to extend the Foreclosure sale date. Because of the weather the new financial backers could not get to the property to see what an asset it was. Trustee Wolfe had indicated that an extension could be obtained if he had the right information about such a proposal. CP 32-34 and Case Study #2 Court of Appeals Court of Appeals Division II, 39173-2-11, Cowlitz County, November 3, 2010. Hearing rescheduled because of inclement weather. *Vovos v. Grant*, 87 Wn.2nd 697, 699, 555 p. 2nd 1010 (1993). Protectable interest adversely affected.

The Appellants filed the initial Complaint to Restrain the Foreclosure sale on December 12, 2008, and a hearing on the case was scheduled for December 18, 2008. That hearing included an Emergency Motion to restrain the sale for up to 60 days

because of the poor road conditions and the health of appellant Ron Landberg.

Respondent Wolfe was contacted about continuing the hearing to the next available Court date which was January 8, 2009. Trustee Wolfe was agreeable to this delay. However, would not commit to the extension of the foreclosure sale.

Although the hearing on restraining the sale was delayed, Judge Baker acted on the Motion for an Emergency Injunction and denied the Injunction. At that point the only other immediate recourse by the Appellants was the filing of the bankruptcy of Appellant, Ronald Landberg. Mr. Landberg was at the Federal Courthouse in Tacoma at 8.00 a.m., however, every Federal Courthouse in the Northwest was closed that day because of the weather. Mr. Landberg did file his bankruptcy at the first available opening of the Federal Courthouse. Federal Rules of Civil Procedure, Rule 6(3) (A). Inaccessibility of clerk's Office for Computing and Extending Time and Federal Rule of Bankruptcy Procedure Rule 9006(3) (A). Amended 2009, Inaccessibility of Clerk's Office to Meet Filing deadline.

Trustee Wolfe was contacted about the delay in filing and Appellants were told the holding of the sale was up to the discretion of attorney McLaughlin in Newport, WA.

2. The issue of weather arises as concerns of when Appellant Ron Landberg's

bankruptcy was filed, **Statute I.**(Federal Rules of Civil Procedure), access to the Sale

location at the Newport Courthouse and access to the sale property. Despite what

3. Mr. Wolfe alleges, for at least a week before the scheduled foreclosure sale date, the Pacific Northwest experienced one of the worst winters of the decade. It is a statement of fact that the property involved in the foreclosure sale was accessible at that time, only by a narrow, mile-long road that dropped two hundred feet into a canyon, where the Spokane River runs south toward Spokane. Snow and poor weather conditions often make this road impassible for days or weeks, if not regularly plowed before the snow gets too deep. That winter had almost record snow falls.

Respondent Wolfe's Brief alleges that the trial court would have known if the weather was bad. That may have been the case to a point, however, the weather was bad enough that roads had been close between Spokane and Newport earlier in the week, and on December 18, 2008, the Pend Oreille County Courthouse closed early, after Judge Baker's order was signed denying the Emergency Restraint of the Foreclosure sale. There was no way anyone could plan to get to Newport, WA, a city 40 miles Northeast of Spokane, for the Foreclosure sale, and still have a promise of get out of town the same day. Just because there was a glimmer of light for Mr. Wolfe's representative to navigate in, did not mean that anyone else could even get to this remote area. CP-32-34 and CP 48-50. Also, Mr. Wolfe stated that the decision

whether to postpone the sale was ultimately his. If that was the case, then why did he spend so much time and effort in his brief attempting to say that the weather was okay on the day of the sale? The Appellants argue that weather was a factor to be considered in whether the Foreclosure sale was properly held.

4. Res Judicata argument: The two complaints mentioned in this brief are clearly different, although 2 of the 4 criteria for res judicata are met as stated in the respondent's brief. The parties and the subject of the Foreclosure sale are the same, but the other 2 points, especially the issues were not met. There are several different issues. Also, by not going to trial on the first case, the issues of the case currently before this Court were either not addressed or were not clearly settled.

The acceptance of the res judicata agreement is the most significant of the Judicial errors in this case. Judge Nielson was influence by other cases involving the Landbergs and was unwilling to recognize that this case addressed several different issues that were not part of the first case. RP-1 page 15.

5. Trustee Wolfe states no potential buyers or investors contacted him directly and that is true. The Landbergs were speaking on their behalf. It was the Landbergs'

responsibility to get the necessary information relayed between our investors and Trustee Wolfe and his clients. The question of obtaining financial information was hindered by Trustee Wolfe. There were actually two separate questions the Landbergs had in reference to the costs involved related to the Foreclosure sale. However, in Trustee Wolfe's Declaration of March 4, 2010 CP 9-17, he encloses a copy of letter from Barbara Kendall expressing her initial interest in assisting the Landbergs in their refinancing effort.

6. The Landbergs' request for additional financial information was divided into two parts, separate from the general breakdown provided in the Notice of Foreclosure.

First there was the request for a breakdown of the actual expenses incurred as a result of the foreclosure procedure. Although the dollar amount was stated on the Notice of foreclosure there was never a response to the request for a specific breakdown of attorney and other such related expenses.

The second, and more important issue, was that Trustee refused to provide the Landbergs with any requested financial information on what it would take to buy-back the property during the alleged 6-month redemption period that he alluded to during the phone conference in April 2011 on this appeal?

If there was in fact a 6 month redemption period as Trustee Wolfe stated in that teleconference, why was this never brought up at that time during the that time ? The Landbergs made numerous calls to Trustee Wolfe, and also to PrePaid Legal, during that 6 months. Why was this never mentioned? Time was wasted by this deceptive and stalling practice. Whether or not this was Trustee Wolfe's duty to mention this statute, the Landbergs consider this unethical practice a stalling technique, as was his refusal to grant an option with specific parameters for completion of a sale.

7. Trustee Wolfe alleges that the Landbergs dropped the ball on the first case and should not have another chance. That is untrue. The first case was about restraining the sale date for up to 60 days. Once the judge denied the request for an emergency injunction there was really no sense in following up on that issue when the sale was an accomplished fact. It was only after the negotiations with Trustee Wolfe broke down, in regard to buying back the property, that the Landbergs resorted to filing the complaint currently being reviewed. The issues of this case occurred before, during and after the foreclosure sale.

8. In Trustee Wolfe's brief he questions of validity of the Landbergs' affidavits. He states they are merely unsubstantiated hearsay. That is untrue. The Landbergs'

declarations were made from their personal knowledge through observation or experience as defined in *The Legal Dictionary*, by Farlex.

“declaration n. 1) any statement made, particularly in writing. 2) a written statement made "under penalty of perjury" and signed by the declarant, which is the modern substitute for the more cumbersome affidavit which requires swearing to its truth before a Notary Public.”

“An affidavit is based upon either the personal knowledge of the affiant or his or her information and belief. Personal knowledge is the recognition of particular facts by either direct observation or experience. Information and belief is what the affiant feels he or she can state as true, although not based on firsthand knowledge.”

Nowhere does it state that information provided in a declaration or affidavit has to include printed references to statements made in such documents.

9. The appellants argue that their rights were not waived as respondent Wolfe argues on page 11 of his brief. Trustee Wolfe states that the Landbergs waived rights regarding restraint action, which by the way is not part of this case, by not filing payment with Court. RCW 61.24.130. That was not an issue in this case. However, it might have been an issue if the first case ever went to hearing. That case 08-00218-3 CP 102-104 never got that far. Then the property was sold. Also, how much would

have been needed to pay into the court if that was the issue? The contract on the property had a balloon payment and if the Landbergs had had that money available when the first case was filed, there would not have been a need for the second case 09-00242-4, CP 1-6, that we are reviewing now. That rule may apply to catching up with payments in arrears, but did not apply in the first case and has no place in this second case.

10. Issue of denied access. Trustee Wolfe claims that he has no responsibility for actions taken to block prevent the Landbergs from accessing their remaining property. That is no true. It was because Trustee Wolfe improperly held the foreclosure sale despite unreasonable weather conditions and the filing of Mr. Landberg's bankruptcy, that the neighbors were encouraged, either directly or indirectly, to block the Landbergs from any of their currently or previously owner property. There is only one true road and two deeded easements to the Landberg property. These blockages were established by the three adjacent neighbors who formed the partnership to buy the Landberg property from Trustee Wolfe. By blocking access the Landbergs were unable to adequately show potential investors the property and were unable to access the property they still owned. These disputes were brought up in RP-1 page 8 by opposing counsel.

11. Although these issues were referred to in RP-8 the Court Commissioner, after the

phone conference in April 2011, refused to allow into the supplemental clerk's papers, the input from the case with neighbor Cesar Clavell. This case is where Judge Nielson also erred in refusing to require Mr. Clavell to complete his deposition regard the purchase of the Landberg property.

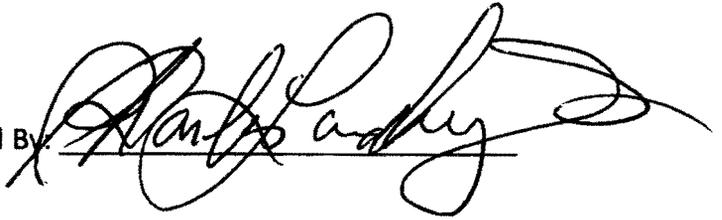
II. CONCLUSION: The appellants pray for relief from the Court and asked that the Summary Judgment be set aside. We asked that the sale of the property be voided and that this case be sent back to the trial court for full trial.

III. APPENDIX:

Spokesman Review story of December 30, 2008.

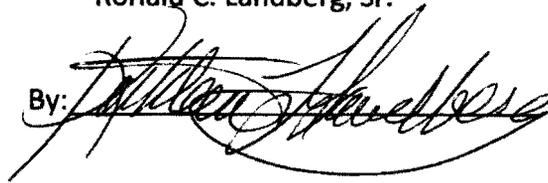
Dated this 24th day of August, 2011.

Submitted By



Ronald C. Landberg, Sr.

By:



Kathleen L. Landberg

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Spokane Weather Report
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December 30, 2008 in City

Monday's inundation pushes month past snowfall record

Monday's inundation pushes month past snowfall record

Mike Prager
Staff writer

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Tags: winter storm 2008



From left, Olga Major, Andrei Galynine and Yuliya Burdeyna make the leap across a berm in the middle of the 900 block of West Riverside Avenue during a snowstorm Monday. [\[Full-size photo\]](#)

The latest in the ongoing succession of snowstorms closed roads and left Spokane covered in an all-time record: the most snow in any month since record keeping began in 1881.

More snow is expected through the weekend, beginning again tonight.

On Monday, much of the Inland Northwest came to a near standstill as heavy snow turned the morning commute into an all-day crawl, and afternoon winds threatened to close outlying roads. Traffic on Interstate 90 through Spokane moved at only 25 mph in some places.

Officially, 8.3 inches of snow fell Monday at Spokane International Airport, bringing the December total to 59.7 inches and breaking the monthly all-time record of 56.9 inches set in January 1950.

More snow was reported at other locations, including 11 inches at the National Weather Service office on North Rambo Road northwest of Airway Heights.

"I heard we were going to get 13 inches in three days. I didn't know we were going to get it all today," joked Everett Wright, of Spokane.

Temperatures above freezing in Spokane allowed for traffic to pack the heavy snow into a thick layer of slippery snow and ice.

Winds gusting to 46 mph or more blew snow across roadways and closed Airport Drive between U.S. Highway 2 and Spokane International Airport as well as U.S. Highway 195 near Spangle, state troopers said.

Spokane plows retreated to major arterials at midday, including Francis, Wellesley, Second, Third, 29th and 37th avenues; Maple, Ash, Stevens, Division, Market, Thor and Ray streets; and the South Side corridor of Grand Boulevard, Stevens and Bernard streets.

Spokane County crews returned to plowing primary arterials and emergency routes with help from the Washington Air National Guard's 141st Refueling Wing, county officials said.

Around noon, two streets were closed in Spokane: the Monroe Street hill on the South Side and Browne Street from Fifth Avenue to Sacred Heart Medical Center, officials said.

A firetruck got stuck in front of Station No. 1 at Riverside Avenue and Browne Street, a police car got stuck downtown, and two Spokane Transit Authority buses were involved in accidents, including one at Division Street and Mission Avenue this morning.

Traffic lights were reportedly not working at some intersections.

The afternoon commute got even more difficult in exposed locations as winds began blowing. A gust of 46 mph was recorded in Coeur d'Alene. Airports in Spokane and Pullman saw gusts of 41 and 52 mph, respectively.

The Spokane Fire Department reported that the weight of accumulating snow and rain was taking its toll on some buildings and gas lines.

Prior to the Monday afternoon collapse of a roof at a Ross's store at Five Mile, the department

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

THE COURT OF APPEALS
OF THE
THE STATE OF WASHINGTON
DIVISION III

| | | |
|-------------------------|---|---------------------|
| RONALD C. LANDBERG, SR. |) | Court of Appeals |
| And |) | Case # 291405 |
| KATHLEEN L. LANDBERG |) | |
| Appellants, |) | NO. 09-2-00242-4 |
| |) | PEND OREILLE COUNTY |
| VS. |) | SUPERIOR COURT |
| |) | |
| |) | |
| EQUITY TRUST COMPANY |) | RETURN OF SERVICE |
| AND TRUSTEE |) | |
| BRIAN H. WOLFE |) | |
| Respondents, |) | |

I certify under penalty of perjury under the laws of the State of Washington that the foregoing statement is true and correct (RCW 9A.72.085). I am a person who is not a party, is over 18 years of age and who is competent to witness this action.

On August 24, 2011, I served Respondent Brian H. Wolfe with a Reply Brief. The service was made, by first class US Mail, at 105 West Evergreen Blvd, Suite 200, Vancouver, WA 98660.

Signed on 24th day of August, 2011 at Fife, Washington.

Lisa M. Kendall
Signature

Tacoma, WA
Address

Lisa M. Kendall
Print Name

RETURN OF SERVICE