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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By

**COURT OF APPEALS, DIVISION THREE
STATE OF WASHINGTON**

**WSU and the State of Washington, Plaintiff/Respondent
v.
Sandra Bernklow, Defendant/Appellant**

COURT OF APPEALS CASE NO.: 319105

APPELLANT'S BRIEF
(RESUBMITTED MARCH 30, 2016)

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INTRODUCTION

Defendant/Appellant Sandra Bernklow and Plaintiff/Respondent are hereinafter referred to as “Sandra” and “WSU”, respectively, per RAP 10.4(e). Although assertions herein are cited individually as required, Sandra advises reading the Affidavit (CP 48-52) in its entirety both for intelligibility here and for “absorbing” as the trial court theoretically did.

This case stemmed from the medical care provided by WSU's veterinary clinic at the end of 2007 and the first few weeks of 2008 to Sandra's only family, her chow-shows, “Smudgie” and “Shami”. Sandra had numerous grievances as to both the direct and the indirect medical treatment of Smudgie which culminated in the extreme emotional agony she experienced during Smudgie's recovery which was far more painful to him than it should have been due to the huge T-cut made in his abdomen, the downward portion of which was surpurfluous to the cut needed to expose the liver to investigate the liver cancer. (CP 48#5;49#6) Her regular vet commented, “its a teaching hospital” and Sandra realized she had in effect been duped into allowing the cut to be grossly larger than any ethical surgeon would have opted to do. (CP50#14) His exacerbated pain in recovering only to deteriorate into death destroyed Sandra, literally. In tears, Sandra clashed with a doctor-in-training at WSU. (CP49#8)

Pet insurance existed and WSU was paid in full on the other chow-

chow, "Shami", also dying of liver cancer and not the subject of any dispute. (CP49#10) Several issues arose due to WSU's internal miscommunications- including misplaced lab results that almost caused them to refuse to treat Smudgie and eliminate any possibility of saving his life, (CP48#2) however Sandra only found out a month later, when trying to get her 3rd chow, who also died of liver cancer, into WSU, that WSU was refusing service to any of her pets- a termination of services never provided in writing. Sandra also found herself being denied access to the chows actual WSU doctor when she had questions on Shami's prescriptions. (CP 49#9,11;50#12,13 This doctor informed Sandra that he had argued with the director about the "eviction" decision- the result being that he was then ordered not to communicate with Sandra at all....not even to meet his legal duty to answer questions as to the medications he had just prescribed! That communication only occurred after several calls attempting to reach him. (CP49#9)

All invoices relevant to the other chow, "Shami", were paid in full before the termination of services to any pet of Sandra's was communicated to her only as she attempted to bring a 3rd canine in for treatment. (CP49#9,10) Obviously WSU hoped to be paid in full and therefor had not informed her of their withdrawal of care, a typical business tactic doubly unworthy in the scenario of a fiduciary context and a "no-cure" managing death-by-cancer situation as to *all* one's canine family.

WSU Director Rogers demanded payment immediately and in effect accused Sandra of lying about the payment schedule they had granted her....until she supplied a copy. (CP 50, 14,15,16- see also 52#26) No profuse apology ensued and by then Sandra was witnessing the extra pain Smudgie was experiencing recovering from the extensive T-cut and was being denied contact with the WSU doctor that had recognized the wrongfulness of WSU's decisions. (CP50,12,13) No further payment was made.

In a phone call from WSU collections, Sandra mentioned malpractice and the appropriateness of a professional complaint as to the chows doctor being denied his desired ability to continue caring for her babies, or even to advise her as to the medications already prescribed and provided by WSU, not that she was emotionally or financially capable of pursuing a legal action but that they should not be charging her. (CP50,17) The collection person stated that it was their practice to simply wait out the pet owner's statute of limitations and then file suit. Sandra, a licensed attorney in California, pointed out that besides the ethical problem of such conduct, the doctrine of laches exists to protect the public against exactly such unjustifiable delay even when the delay is inadvertent, certainly when it is an ugly calculated strategy. The response: "our attorneys have informed us that we are immune from laches or any related defense." (CP50,17,18) This comment eventually resulted in Sandra engaging in the

major research/drafting project of state immunity anticipating “state sovereignty” being argued to defeat a clear laches situation just to have WSU (through counsel's unattested assertion) deny having ever made the comment and counsel mooted the argument with an unexplained “state immunity does not apply here.” (WSU's Response, CP 65)

Back on track- WSU sent out one demand letter stating that if payment was not received forthwith they would pursue the matter “immediately”, but actually dropped pursuit for almost 4 years...no more letters, no more calls. (CP 51, #19; WSU letter CP 156) Sandra had kept all the chows medical records and billing records for several years as it was too painful to “trash” Smudgie and Shami by discarding any of those records, but had finally disposed of them about 6 months before WSU resurfaced. (CP 51#19) Sandra did contact the insurance company to clarify for herself what they had and had not paid as to Smudgie, but Sandra had left the company after her canines died despite other canines being acquired and they reported having no records. (One reason the laches doctrine exists.)

WSU caused Sandra to be served with what appeared to be a complaint on Nov. 12, 2012, but a call to the court confirmed that it had not been filed yet. It was so poorly drafted as to be unintelligible, but it clearly stated that the debt was derived from her being a student at WSU (not correct) and it had no attachments. (CP51#20) Sandra knew as an attorney that a complaint with no attachments was unlikely given the

fondness of collection agencies in obtaining defaults against parties who never had a bill in dispute and/or don't have the means to respond, and knowing the necessity of the court having documentation to support even a default judgment.

Court staff confirmed that indeed 36 pages of attachments were attached to the filing and Sandra drove to the court to obtain copies of them *informa pauperis*. (CP51#20) Since she was working seven days a week full time rehabilitating her only source of income, a rental home, and had neither internet nor access to free legal assistance, she could not research how to procedurally Answer when a laches argument needed to be lodged. Sandra therefor filed a request for a 10 day time extension to Answer pointing out not only her own conflict urgently needing to finish rehab the property to get a paying tenant installed and lack of internet or other means to research how to respond to a matter WSU itself deemed unimportant enough to wait almost 4 years to act upon, and which involved a dispute of only \$3,000 sans the interest caused by their delay, but also the missing 36 pages of the complaint not obtained from WSU at all, and the fact of the served document actually being an unfiled pleading; the date of service of process provided to the court thus being incorrect.

Judge Acey denied the request; the proverbial "writing on the wall" which foreshadowed constant abuse of the case including but not limited

to: allowing the opposition to the far-in-advance filed motion the subject of this appeal to be filed a couple days before the original hearing date (no time to research/draft/file a Reply) and scheduling the matter on a 10 minute calendar requiring Sandra to appear to move for reset, totally ignoring the entire motion at hearing (it did not appear that this motion which obviously involved over 100 hours of research/drafting had been read at all), refusing any explanation for denying laches or any of the pleading/service matters raised, going off record to mimic WSU's attorney's unprofessional comment, "Red herrings to avoid payment'", (NR 6) refusing to forward Sandra's well researched, time consuming Motion to Recuse for Predetermined Bias to another judge or to simply transfer the case to an alternate judge, calendaring it in an empty courtroom and refusing, actually bellowing, that he would not allow the motion to be read into the record, denying the motion, at trial denying even that mitigation of damages and common sense dictate against granting years of interest to a claimant choosing to avoid small claims court and to delay pursuit as to a readily available "debtor" (not to mention problems with the proof of amount sought itself), and refusing to obey a simple statutory mandate that indigent parties cannot be denied appellate filing fee waiver and court expenses by the very judge that ruled against them- that for- to the Supreme Court of Washington for their determination is required. (Documented in this Court's own records both in pleadings and per oral

argument.) This blatant disregard of Sandra's basic rights caused numerous trips to the University of Idaho law library to research indigency law and how to present the issue to the appellate court; in a just world the state of Washington would reimburse Sandra, ideally through Judge Acey's personal pocket.

Sandra told court staff immediately after Judge Acey denied the motion labelled as a motion to dismiss and/or for summary judgment now before this Court that she needed to arrange a transcript to acceleratedly appeal his ruling at that time. (Judge Acey had calendared the matter too late for regular appeal refusing to delay the trial date.) The staff informed her that Judge Acey told them that Sandra had to wait until the trial itself was over and then consolidate all issues on appeal; no CD/transcript now.

Admission to the appellate court was granted as-of-right after an appellate clerk erroneously informed Sandra, and it was put in writing, that she needed to file a discretionary motion which caused excessive hours of research/drafting to cover both bases of access.

Most potential appeal issues have been dropped as Sandra cannot invest any further time/trips to the University of Idaho law library, or money she does not have...not to mention the stress of knowing that the state of Washington will never reimburse Sandra in apology for the WSU veterinary clinic, Judge Acey, and an opposing counsel who served only

part of a complaint (supra) and lodged an Opposition to “the motion” totally nonsequitish as it kept referring to the “no genuine issue of material fact” type motion when lached is and was discussed as a question of law motion, and actually perpetrated fraud on the court with cases undisputedly off point...all with no comment by Judge Acey, of course. (NR 2, 5)

This nightmare case began four years after WSU should either have initiated action promptly as stated in its own letter, or explicitly walked away from it in accommodation for WSU's many failings- both as a matter of law and as a matter of professional ethics.

Sandra now presents the primary issue, laches, and in the limited manner now possible, the pleading/service and other issues. This Court will also have the opportunity to consider the denied recusal motion as well as the problem of allowing a creditor to sit on rights for years intentionally allowing small claims court to be avoided and interest to accrue. Sandra is also requesting that the Court exercise its power to refund her \$300 filing fee/costs, award her attorney fees, and of course to deny any attorney fees/costs to WSU on this appeal.

ASSIGNMENTS OF ERROR

1. The trial court erred in not barring the action under the doctrine of laches.

2. The trial court erred in neither transferring the case to an alternate adjudicator or in allowing another judge to determine the Motion to Recuse for Predetermination Bias.

3. The trial court erred in not dismissing the Complaint for failing to serve any of the attachments, for incorrectly claiming student debt as the debt source, for including 36+ pages of attachments that failed to explain page one's balance brought forward and in fact showed payment made on the documents supplied, for unintelligibility, and in not dismissing or transferring to small claims court.

STATEMENT OF THE CASE (abbreviated)

Sandra was personally served with unfiled summons and complaint papers on October 16, 2012; the actual pleading filed November 15, 2012. Neither contained any attachments. Judge Acey denied Sandra's request for a 10 day extension. Sandra filed a Motion to Dismiss or for Summary Judgement (defective service, defective content, laches, etc.) on March 27, 2013; Opposition filed May 14, 2013; hearing scheduled May 20, 2013. Reset for May 30, 2013. Reply read into the record; trial court entered

judgment denying all grounds nonspecifically and sans comment at hearing on any grounds other than laches. Sandra filed a Motion to Recuse for Predetermination Bias and continuence of trial date; motion denied. (Judge Acey refused to allow said motion to be read into the record; motion and opposition attached herein.) Judgement entered against Sandra at trial, notice of appeal filed August 13, 2013. Sandra qualified as financially indigent but Judge Acey refused to refer the request for indigency assistance to the Supreme Court.

A motion for discretionary review was filed September 26, 2013, as to Judge Acey's dereliction of duty on the indigency matter and the appellate court ordered the trial court to forward the matter to the Supreme court; opposing counsel did not answer the Court's conference call but the motion was denied. Filing fee and cler's papers paid....narrative report of proceedings herein filed December 16, 2015 and unopposed.

ERROR #1: DENIAL OF LACHES DEFENSE

PROCEDURE/STANDARDS OF REVIEW

By any objective standard, there was no Opposition to **any** of the grounds stated in the motion entitled “Motion to Dismiss or for Summary Judgement”, in fact no response either in writing or verbally at hearing ever appeared at all as to the pleading/service issues- but before those merits can be discussed it must be noted that although the words “dismissal” and “summary judgment” appear in the title, labels are not controlling. Said discussion necessary as timeline prohibitions/standards of review affect appeal rights.....although it was previously discussed in depth in the discretionary review motion that the appellate court has extensive authority to put substance over any rule or policy in order to effectuate justice. Ignoring that broad discretion, since case law exists stating both that summary judgement motions are reviewed de novo and that denied summary judgement motions are generally unappealable, consider-:

1. Summary judgement cases routinely involve “no genuine issue of material fact” motions not relevant to a laches argument.
2. The doctrine of laches (“laches”) is an oddity in the law. It appears on Washington's list of affirmative defenses and need not be raised until trial, yet it should be malpractice not to bring any defense that moots all underlying facts, if it applies, to any court's attention instantly as no trial preparations should be engaged if there can be no trial.

3. A laches motion can be framed under words such as “dismissal” and “summary judgement”, an indeed reviewing court's have done so, but both terms are actually wrongfully applied. A successful laches argument causes the case to be deemed “stale” and therefor unacceptable for adjudication....”barred” from the court altogether. Not being admitted to the court, such a case cannot be dismissed or summarily judged; no “judgement” of any type can be entered although forms and custom may not include the word “barred”.

It is thus apparent that a laches argument is not a summary judgment/dismissal motion, is logically placed at the inception of the case, and is an affirmative defense not requiring expedited review. Judicial economy dictates that when combined with procedural arguments all issues be deferred until after trial when trial issues may also exist.... ironically this position negates the appearance of the trial court having simply prevented review as was done later on the indigency issue.

Supporting law: the best summary of the “label not controlling” policy is found in Corpus Juris Secundum, V71, sec. 162:

“The name or a title given to a pleading or answer ordinarily is not controlling since the nature or character of a pleading or answer is determined by its essential features and subject matter. A court normally will consider the substance of a motion rather than its title in determining the proper nature of a pleading or motion.”

Consider also *State ExRel Bond v. State*, 383 P2nd, 288 (1963):
“.....even though in a trial on the merits, the moving party would have the burden of proving the defense of laches, the reverse is true in a motion for summary judgment. Where uncontroverted facts raise a reasonable inference of laches and laches is properly raised, the opposing party must establish that laches does not apply.” This of course is a burden of proof case relevant to determining whether or not Judge Acey erred in his “no laches” finding, but it also demonstrates the willingness of courts to accept the argument under summary judgement language despite the academic impossibility of a judgment of laches. At first blush transferring the burden of proof to the party opposing laches seems inconsistent with general summary judgment law requiring all facts and inferences to be viewed in favor of the responding party- but again laches cannot truly be the subject of summary judgement, **and** when facts unarguably supporting laches (such as years of delay not even slightly related to the debtor's conduct) are uncontroverted, laches is rebuttably presumed, hence the shift in burden.

The point here is that even when the wrong label is accepted, a laches argument is a defense of barring- no standard of review as to summary judgment/dismissal can apply. The only logical conclusion is that de novo review must apply and immediate review cannot be mandatory in a jurisdiction allowing postponement until trial and so clearly banishing summary judgment/dismissal law from usurping the common sense of asking first, “Were uncontroverted facts of laches presented?” before even determining who has the burden of proof. It is also true that trial courts cannot be allowed to defeat expedited review either on record or off record, and that the appellate court must review when **“manifest error affects a constitutional right” (RAP 2.5) such as the right not to be hauled into court on a stale matter one has made no attempt to avoid litigating when the creditor has no excuse not to promptly pursue legal action.**

ARGUMENT

Hereinafter “Defendant's Motion for Dismissal or Summary Judgement” appears simply as “the Motion”. Pages 29-43 of the Motion are omitted here as they address the anticipated state immunity position which opposing counsel mooted with “does not apply.”

Although filed weeks before necessary, no Response was filed until immediately before the initial hearing date but Judge Acey rejected the argument of untimeliness claiming a local rule of court allowed filing a Response too late for a Reply...and reset only as the matter appeared on a 10 minute calendar as if one of his typical family law cases. (NR page 1) The Reply was read into the record at hearing and is the vast bulk of the narrative report.

There is no substitute for reading the Motion, Response and Narrative Report/Reply. The motion's laches discussion is 8 pages long, CP 22-30, and since a motion is correctly the content of a pleading since a high volume of research/drafting frequently goes into a written motion, as was evident here, and oral argument is a privilege, the pleadings were Judge Acey's duty of diligence to analyze, ditto this Court. These are the summarized points of the Motion which Judge Acey is deemed to have reviewed before oral argument but never commented on at all:

1. The time lapse between WSU's "Final Notice or We Proceed Against You Immediately" and filing is 4 years 2 months; 4 years 8 months using Sandra's last date of payment. CP22

2. Traditional elements are knowledge of the facts supporting a cause of action, unreasonable delay, and damage caused by the delay. (WPCP 44.15)...on the question of how long a delay is too long and just exactly what constitutes damage-

3. DELAY: "reasonable diligence in bringing the action", "change of position of the defendant", "even one month can be unreasonable", ***"...unless he has shown himself ready, desirous, prompt and eager...the parties must come promptly, as soon as the nature of the case will permit...the great weight of authority is against the statute of limitations {protecting the delaying party}....Stewart v. Johnston, 30 WN.2n 925, 935-36 (1948) citing Federal Untied Corp. v. Havendar, 17 Del.App.Ch 318,345, and Hogan v. Kyle, 7 Wash.595, (1894).*** CP 24, lines 1-20.

3. DAMAGE: "a defendant cannot be said to be damages simply by having to do now that which was legally obligated to do years ago so long as the parties are in the same position", *Crodie v. Dodge, 99 Wash 121, 131 (1917)*. "In the same position" has since been found impossible to demonstrate with any unreasonable delay. The seminal case is *Hayden v. Port Townsend, 93 Wash. 2D 870, 874-75 (1980)* as the Court rejected the state's argument that damage requires "material prejudice", not merely the

historical reasons for the existence of the doctrine of laches, reduced defensive ability as time passes. *Hayden* held that “**damage is not a question of whether or not the harm from the delay is materially prejudicial but a question of whether or not the ability to defend is trampled upon...**” or otherwise phrased, any loss of defensive ability is materially prejudicial. *Hayden* refused to budge from the strict requirement that actions be filed as soon as the nature of the case permits or not at all.

CP 24, line 21; CP 25, line 10.

4. POLICY: There is actually a 4th prong in laches elements: public policy or innocent 3rd parties- in those cases it is proper to balance the harm to the party injured by delayed action against the harm to the party dealying the action. *Stewart (supra) and In re Marriage of Sanborn, 55 Wash. App 124, (1989).* CP 25, line 11-26, line 6.

5. ANALYSIS: the delay is a minimum of 3 years, 10 months using the date WSU resurfaced demanding payment, over 4 years using the filing date, almost 5 years using the date the cause of action accrued. WSU did not “come promptly as soon as the nature of the case would permit”. Sandra no longer has any relevant documents, perfect moemory, etc., etc.,. Even in 1894 failure to move promptly was sufficient with no further inquiry to support laches, and in 1980 Washington's Supreme Court reconfirmed that the state could not delay and argue that a defendant must demonstrate material prejudice; in fact damage is presumed from unreasonable delay, hence the need for the doctrine. CP 26, lines 8-25.

unreasonable delay, hence the need for the doctrine. CP 26, lines 8-25.

AND- WSU switched from “we will proceed immediately” to “we will wait out the statute for malpractice” and stated that laches could not be asserted against them as a state entity....bad faith in the context of a fiduciary relationship between a veterinarian and a pet owner. Any bad faith delay is unreasonable per se.

Sandra's conclusion on that point is that “deliberate calculation of guaranteed inability to defend eradicates any need for a pursued party to demonstrate damage since the delaying party negates that element in assuming the inability to defend”, CP 27, line 10-13. Sandra then pointed out that such conclusion is not necessary as *Hayden* refused to dislodge “don't dally” policy unless both an overriding public policy and balancing of interests applies. CP 27, line 14; CP 28, line 4. Therefore it matters not whether or not WSU is viewed as acting in bad faith, the result is the same either way....laches applied long before pursuit was resumed.

BALANCING INTERESTS: any judgment against Sandra, a low income person, might as well be a million dollar judgment....there are legitimate underlying grievances and yet a judgement will damage her credit report....the harm to WSU in not being allowed to pursue the matter of a \$3,000 dispute is negligible. Sandra is legally and financially unable to properly defend, and a state entity such as WSU cannot be allowed to abuse citizens in this manner. CP 28, line 26- CP 29, line 10.

SUMMARY: the delay is unreasonable at best, reprehensible if calculated to defeat defense, damage exists on multiple levels of inability to defend and in the emotional difficulty of revisiting the nightmare of losing the chows and the nightmare of WSU, and in the over \$1,500 of value in her time researching/drafting with no legal assistance....allowing any veterinary practice to do this to anyone is abhorrent....and is a demand that the Court be inequitable and oppressive. Sandra should be awarded a refund of all monies paid to WSU even if only for bailing on her as her babies were dying without telling her until a 3rd chow needed treatment, and never in writing. CP 29, line 12-CP 30, line 9.

WSU'S RESPONSE (CP 60-70)

Jumping to the section on laches, this is WSU's only response: "Defendant's motion is without merit...Sandra cites no authority for laches barring the complaint...Sandra provides the court with no legal analysis", and 3 cases: "Laches is an implied waiver...elements are knowledge, unreasonable delay, and damage....none of the elements alone alone raises the defense of laches". *Buell v. City of Bremerton*, 80 Wash.2d 518, 522 (1972). "***As a general principle, where both parties are equally at fault in creating the delay, neither can successfully assert laches against the other.***" *Rutter*, 59 Wash.2d, 785. (*emphasis added.*) "Factors to be considered include the nature of the case, any circumstances justifyingfying delay, and whether the rights of defendant or {the public} will be

prejudiced by the suit.” *Lopp v. Peninsula Sch. Dist.* 401, 90 Wash.2d 754 (1978).

WSU concluded with “defendant simply asserts that somehow she is damaged...yet the statute of limitations is 6 years... the only possible damage is the interest accrued yet she caused the loss by not paying earlier....WSU disputes the allegation that they delayed to avoid the potential for a veterinary malpractice claim...her cases do not support her position...*the remainder of this section is a redundant rant...no meaningful legal or factual analysis is provided.*” (Emphasis added.)

SANDRA'S REPLY/(Oral Hearing- see narrative report)

Again, there is no substitute for reading the document. There is an unopposed introduction which refers to the late Response being accepted by Judge Acey, the tape ending early as Judge Acey silently ordered the clerk to turn off the tape when he demanded that I demonstrate special damages and I reiterated the manypages in the Motion dedicated to that very subject despite the law so clearly not requiring it...I pointed out that opposing counsel perpetrated a fraud on the court in citing cases standing solely for the proposition that he who causes delay cannot argue laches when it is undisputed that I did absolutely nothing directly or indirectly to cause the delay. Judge Acey ignored the issue and mimicked opposing counsel's comment, “You just don't want to pay the bill.” Judge Acey

announced early retirement shortly after this case was lodged in this Court.

These comments were off the record but as unopposed narrative report material should be deemed accurate.

Sandra's Reply to the above WSU Response, NR page 3, line 3-Page 5-end: - WSU offered no rebuttal at all to any issues other than laches.

-WSU cited cases that do not apply: *Buell* merely cited the traditional 3 prongs of laches with no discussion and the moving party had grossly delayed....Sandra did not delay. *Rutter* also involved a delaying moving party and the case supports Sandra in requiring that the circumstances justifying delay be disclosed and that balancing the interests of the parties be done; both thoroughly discussed in Sandra's motion. *Gilliam* also has no laches discussion other than citing the 3 prongs and it supports Sandra as WSU states no reason at all for the delay. *Peninsula Sch. District* squarely supports Sandra" it stands for the proposition that acquiescence by the creditor is sufficient to support laches, no change in position required.

Two years later *Hayden* pointed out that one month can be unreasonable delay (no relevance to the statute of limitation) and that no special injury need be shown.

-Policy consideration: a creditor, even without a fiduciary duty, cannot be allowed to sit 4 years allowing interest to accrue, defensive ability to falter, avoidance of small claims court.

-WSU did not dispute any of Sandra's cited law, including the

holding that no palpable damage need be shown or that the parties must come as soon as the nature of the case will present...and that the great weight of authority is that laches need not fall outside the statute of limitations (and modernly could not.)

-Neither did WSU dispute that the 3 prongs are not the end of the inquiry, policy must be considered.

-WSU lodges not a hint of support for conclusions such as “her cases do not support her”....Sandra's Motion contains 8 pages of analysis on why laches applies. **WSU alleges that laches is complicated. It is not. Either one acts promptly s soon as the nature of t he case allows, or one does not. Either it is an anomaly of a case where defensive ability would increase, or it is not.** WSU cannot argue that filing within the statute is automatically reasonable as that defeats the very purpose of laches and has been repeatedly rejected. WSU cannot argue that Sandra need show anything more than reduced defensive ability as th at argument has been rejected. WSU cites cases of parties being equally at fault being denied laches yet it is undisputed that WSU unilaterally delayed.

WSU has not offered any reason for the delay. Sandra did not need to allege any facts of specific damage yet did so over 3 pages....interest, credit report, emotional pain, lower financial means to defend, no records, etc.

-WSU's statement that Sandra caused the interest to accrue

makes no sense in the context of delayed action allowing interest to accrue. WSU did not supply an affidavit as to WSU's denying their conversation of waiting out malpractice statutes and being immune to any laches argument; that assertion is not before the court.

-SUMMARIZING: AVOIDING EXPLAINING HOW THE LACHES DISCUSSION IS WITHOUT MERIT EITHER AS TO THE LAW OR AS APPLIED LEAVES THE COURT NOTHING TO CONSIDER...AND OFFERING CASES SQUARELY NOT APPLICABLE IS SANCTIONABLE.

-Sandra asks the court to supply as much explanation as possible on the record should the court deny her motion.

WSU'S RESPONSE (NR page 6, lines 1-13)

-Sandra caused delay by failing to pay; interest in her fault.

-Running to court immediately is not reasonable for any creditor. Sandra refused to communicate with the collection agency.

-laches cannot apply with this short delay.

-This motion is a simple attempt to avoid paying a \$3K debt.

-of course I'm not going to respond to a 50 page brief on a \$3K debt....this is a simple demand for debt owed with no evidence that the debt is not owed. All issues are red herring to avoid payment, Sandra delayed as much as P.

Handwritten signature or initials, possibly "BZ", in black ink.

SANDRA'S REPLY (NR page 6, lines 14-end)

-The complaint would lead anyone to believe WSU has been pursuing me all these years; the Court already knows from my affidavit that WSU dropped pursuit, repeatedly mentioned in the Motion, and sent a letter in 2008 saying, "pay now or we will pursue immediately."

-Counsel avoided explaining delay by creating a falso impression that they have been pursuing me all these years...the reason for those repeated reminders of nonpursuit.

-P did not argue in his Opposition that because they filed within the statute laches does not apply, but I have that issue briefed and can present that law here now if it is needed.

-WSU's comment that I was "ranting" is RUDE when someone has spent a huge number of hours researching an issue WSU lead her to believe would apply.

JUDGE ACEY'S RULING (NR page 7)

"The statute of limitations not running does not automatically preclude laches but as to Sandra's 3 arguments: 1, the argument that P dropped pursuit, Sandra did nothing to pursue malpractice so that's not relevant. 2, By waiting to file interest accrued and collection costs, not appropriate to laches. 3, not solvent now, was then, not relevant. Motion denied on all grounds.

SANDRA: explanation on all issues denied is needed- the court just skipped over the most important issue of laches, the explanation for the delay, Sandra not being required to show damage but reasons for delay are critically important.

JUDGE ACEY: Washington law does not require the court to supply findings of fact or conclusions of law when denying or granting a summary judgement motion to dismiss therefor I decline your invitation.

(That is how the CD reads, but return to the narrative report cover page to know the unopposed off record comments including “you just don't want to pay the bill” and the ignored fraud in WSU's cited cases.)

***WHY SHOULD THE APPELLATE COURT REVERSE THE DENIAL
OF LACHES?***

Although it almost seems like insulting the appellate court's intelligence to state what is mostly obvious, especially if the Court entered Judge Acey's presumed shoes and fully read the pleadings/narrative report, but one cannot merely summarize documents....

1. Late Opposition...motion practice envisions Reply time...the allowance evidences lack of judicial integrity/predetermination bias not cured by reset on other grounds.
2. Judge Acey had no actual Opposition before him. “Of course I'm not going to respond...simple debt case....red herring...doesn't want to pay”-

comments both 100% lacking in explaining why laches would not apply and unprofessionally rude as to a lay opposition party; worse than unprofessional as to a member-of-the-Bar opposing party. Again, the court's failure to address that attitude evidences total lack of integrity.

3. WSU/Judge Acey did not rebut any of Sandra's points and authorities.

4. WSU's "no facts and analysis" are so inconsistent with the Motion as to leave one wondering how the drafter dared make such comments. Boilerplate applied in every case no matter how obviously false?

5. WSU stated that Sandra refused to communicate with the collection agency despite not only her contrary affidavit but their own documentation ending in 2008.

6. WSU's conclusory characterizations ("no facts and analysis") are so inconsistent with page after page of both legal analysis and factual analysis as to leave one wondering how the drafter dared make such comments. The only imaginable explanation- boilerplate automatically inserted into any Response no matter how blatantly false.

7. WSU's "no creditor cannot reasonably move immediately" is (again) inconsistent with undisputable facts. They did not fail to move "immediately", they failed to move **at all** for 4 years, longer using the filing date. To state that this is a "short" delay insults anyone's intelligence.

8. It goes far beyond knowing one has the judge's favor and need not

address any points and authorities, need not expend time on research/drafting, to actually pull cases from a list and cite them apparently without reading them. All WSU's cases were either totally inapplicable as they dealt with moving parties who truly had nerve arguing laches when they themselves caused the delay with their own affirmative conducts- and/or they fully supported Sandra in stating that the court must know the reasons for the delay, must consider public policy ramifications, etc.; exactly Sandra's arguments.

9. WSU refused to offer any explanation for the delay either in writing or orally, yet in effect accused Sandra of lying as to her sworn statement of WSU's comments.....which lacks logic as Sandra certainly would not have engaged in the horrendous project of researching/drafting statute immunity, a far greater challenge than laches, sans those WSU comments.

10. Judge Acey refused to inquire into the reason for the delay....and since that is the quintessential first step in determining laches, he actually clearly established his bias in refusing to do so. Furthermore he demanded Sandra demonstrate special damages ignoring all the law presented to him long before oral hearing insisting that the court cannot do that- no exception for the state of Washington being the attempting party. And he appeared to have no knowledge of the long section of damages nonetheless listed by Sandra in the Motion.

11. Judge Acey statement that WSU dropping pursuit 4 years had no relevance because Sandra did not file malpractice is unintelligible as dropping pursuit addresses the primary question, “How long was the delay and why”, not damages. Judge Acey is presumed to have known by the Motion before hearing that *Hayden* and *Hogan v. Kyle* squarely focus on whether or not the creditor moved “as fast as the nature of the case allows” and in accepting the general decline in defensive ability as damages -- rejecting “material prejudice” or any other attempt to effectively curtail laches as a viable defense.

12. Judge Acey's “interest accruing not appropriate to laches”: Why not? And is not Judge Acey presumed to recognize mitigation on damages policy? When delay is unjustified and pursuit is dropped as to a nonavoiding party the creditor unilaterally causes the interest to accrue; any court refuse to allow the state to benefit from wrongdoing.

LACHES SUMMARY AND CONCLUSION

Judicial discretion assumes more than a reasonably prudent person standard as it assumes a judicial mind. A judge is either already thoroughly versed in the subject at hand or educated by the pleadings. Sandra invested the time, *oodles* of it, and thoroughly educated Judge Acey not only with the law but with application of the law to the facts. WSU snubbed the matter as low-dollar and with a familiar and favorable judge at hand, unworthy of even a perfunctory attempt to rebut the law or

of refraining from citing cases not only blatantly off-point but fully supporting Sandra.....grounds for censure. Delaying filing allowed interest to accrue and judge shopping while avoiding small claims court.

Judicial discretion also assumes fairness and impartiality, even the willingness to obey thoroughly documented and uncontroverted law when that law disagrees with one's own viewpoint. WSU was confident enough of Judge Acey's bias to unprofessionally "just doesn't want to pay...red herring" even as to a fellow member of the Bar....and with Judge Acey micking the same words off-record and ignoring the wrongly cited cases and the substandard quality of the Response, that confidence was well placed.

This Court knows there is no validity in a laches denial when the creditor offers no explanation for the delay and the judge refuses to inquire as to the reason even with repeated attempts by the moving party. This Court knows there is no validity to a laches judgement when the moving party's points and authorities are unopposed and uncontrovertedly inapplicable cases are cited without judicial sanction.

This Court knows it has the power to avoid procedural obstacles and to protect the public from unfair judges in every case, and most emphatically when a case should never have been lodged at all due to unjustified passage of time....and when actual judicial bias was argued

below and indeed appears to have permeated the entire case.

For all the foregoing reasons Sandra moves the Court to reverse the denial of laches, vacate the trial judgment, and issue any other rulings necessary to undo the error and “make Sandra whole”.

ERROR #2, DENIAL OF RECUSAL MOTION

(Motion for Recusal, CP 71-123; Response, CP 124-126; Reply 127-133)

If laches applies, all other issues are mooted. Ideally this Court would have insisted that laches be briefed in advance to avoid everyone's wasted time if laches applies since laches is not a simple defense but an entirely different creature as it moots all aspects of the underlying controversy if found to apply.

Attacking the integrity of any court, even as to a retired judge, may be viewed as a sensitive matter. All the more reason there is no substitution for reading the pleadings in their entirety and thus no reason to engage in “dissection” here...suffice it to say this Court already knows of questionable conduct in the trial court and has the duty to protect against judicial abuse which tarnishes the integrity of the proceeding even if the result below can somehow be justified or at least rationalized. This community has alternate judges; transfer to another judge or commissioner would have been easy; Judge Acey simply wanted the pleasure of imposing his will without interference.

As for Judge Acey calendaring the recusal hearing in an empty room and aggressively refusing to allow the motion to be read into the record, yet calendaring Sandra' indigency matter on a crowded docket- how sad that Washington doesn't follow the lead of other jurisdictions that keep all

indigency matters confidential, something an honorable judge might do even without legal mandate.

ERROR#3, PLEADING AND SERVICE ISSUES

(Complaint, CP 1,2, Attachments CP143-185, Sandra's Motion, CP 9-14)

Sandra argues that the cumulative effect of the long list of defects in the complaint and service sans attachments rendered dismissal without leave to refile the only appropriate solution in the face of a matter undisputedly 4 years old with underlying grievances by the debtor who did nothing to avoid service of process or otherwise delay action.

WSU did not rebut any of the law in this section. Judge Acey did not even acknowledge the existence of the arguments. With no opposition before him, Judge Acey was faced with, ***“it is not the mere attachment of material to a pleading that makes it part of the pleading but the basic legal principle that a copy of any written instrument which is an exhibit to a pleading is a part thereof for all purposes”*** and ***“a copy of a written instrument which is an exhibit to a pleading must be annexed thereto.”*** Washington Practice rules sec. 5133, Mosbrucker v. Greenfield Implements, 45 Wash.App.647, 774 (1989).

Other issues: content errors: attorney general authorization was as to a delinquent student account and the complaint states that the sum

sought is for educational services beginning on or around February 2, 2008. (CP 1,2). The attached veterinary invoices are inconsistent with that theory. (CP 143-185). The only invoice referencing the sum sought is a “balance brought forward” invoice at the top of the stack, CP 145. All further documents are as to dates *after* that unexplained sum and as to a different canine and would not have supported a default judgment.

Sandra argues personal knowledge of student debt v. veterinary debt irrelevant: “due process and common sense require that the pleading stand on its own...legal theories of recovery can be inconsistent...key facts cannot...at the very least any attachments must not disprove written portion of the complaint”. This complaint went way past the policy of liberal interpretation of pleadings. (CP 12, lines 10-20; CP 13, lines 8-9.)

Judge Acey knew from the attachments supplied by WSU that even before receiving Sandra's Motion that WSU had no evidence of how their demanded sum originated and had lodged 36 pages of irrelevant material in the file. He also knew the source of the sum sought as explained in the complaint and in the attachments were literally from two different planets even without a motion.

Sandra invested many hours of research on principles all attorneys understand quite well....attachments are part of a pleading, no serving part of a pleading only on opposition, make sure the complaint and any

attachments aren't wholly inconsistent. The fact that WSU was comfortable filing suit with zero evidence of how the sum sought was arrived at, and with a huge stack of unarguably unrelated documents attached (which include recognition of a \$1,200 payment and a \$609. payment rendered even after Sandra learned of WSU's undisclosed refusal to allow her dying pet's doctor to do as he wished and continue being as helpful as possible; CP 147, 153), informs the Court of the caliber of the court below.

Gross defects on an aged case the filing party did not care enough about to pursue earlier dictate that dismissal with prejudice applies when the issues are "front and center" for any court.

CONCLUSION

Sandra has been forced to truncate or eliminate entirely numerous issues; for example, the statutory collection fee of \$1,500 certainly did not have improper conduct by a state veterinary agency either in their practice or in their lack of supporting invoices and submission of documents amounting to fraud, or in a state appointed attorney's improper lodging of cases, all actions pointing to "rubber stamp" verdicts, as the justification for any fee at all, let alone a \$1,500 one.

Sandra prays the Court acknowledge Washington's strong loyalty to laches law, Washington's rejection of efforts to take the teeth out of "do it now or lost it" policy while adding new paths to laches relief beyond the

traditional 3 elements, and of course the ultimate goal of achieving justice no matter how many procedural hurdles can be used to block justice.

Sandra prays the Court deny any attorney fees sought by WSU no matter what the verdict given the shocking quality of WSU's practice below (and failure to even answer a conference call from the Supreme Court)- and grant any compensation to Sandra possible.....undoubtedly this Court has the power to both uphold an unjust result below and compensate for hours lost researching/drafting matters that should not have been necessary, such as all those discretionary review/indigency hours attributable to a trial court judge unwilling to even obey the simply mandate of forwarding the matter to the Supreme Court.

No one is more burdened by this case than Sandra who hopes the Court remembers that while the sum in dispute is minimal by judicial standards the issues are critical to all Washingtonians....we all deserve the protection of laches, intelligible and competent pleadings, fair judges, and *of course*, waiver of the filing fee for indigent parties needing to appeal.

Dated: March 30, 2016.

Respectfully resubmitted,



Sandra Bernklow, appellant.

PROOF OF SERVICE BY MAIL

WSU v. Sandra Bernklow, case #319105

I, Sandra Bernklow, Appellant-Defendant, declare under penalty of perjury of the laws of the state of Washington that on March 30, 2016, I deposited in the U.S. mail, in the county of Nex Perce, state of Idaho, with proper postage affixed, the following document(s):

Appellant's Brief (resubmitted March 30, 2016)

mailed to the appellate court and to Plaintiff's attorney of record, Jason Woehler, at the address of:

Jason Woehler, Esq.
705 2nd Avenue, Suite 605
Seattle, WA 98104-1715

A handwritten signature in cursive script, appearing to read 'S Bernklow', is written over a horizontal line.

Sandra Bernklow, declarant.
2115 6th Avenue, Space 21
Clarkston, WA. 99403

Date: March 30, 2016