

67621-1

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No. 67621-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

King County, a political subdivision of the State of Washington,
Respondent,

v.

F. Raymond Haversat, Appellant

BRIEF OF APPELLANT
F. Raymond Haversat

F. Raymond Haversat
Pro-Se, as Appellant)
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*Motion filed to supplement Clerk's Papers with these two items

I. INTRODUCTION

On appeal from a summary judgment order, the court must accept as true, all disputed facts most favorable to the non-moving party, and must accept as true, all reasonable inferences from the facts, both admitted and disputed, most favorable to the non-moving party. *Scott Galvanizing, Inc. v. Northwest Enviro. Svcs., Inc.*, 120 Wn.2d 573, 580, 844 P.2d 428 (1993); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982); *Tanner Elec. Co-op v. Puget Sound Power & Light*, 128 Wn.2d 656, 911 P.2d 1301 (1996).

II. Assignments of Error

1. The trial court erred in entering the order of July 27, 2011, denying appellant's motion to vacate the judgment entered on June 8, 2010.
2. The Trial court erred in treating appellant's CR60 Motion to Vacate as a CR59 Motion for Reconsideration.
3. The trial court erred in determining that no other irregularities existed that merited revisiting the Summary Judgment.

III. Issues Pertaining to Assignments of Error

Should the trial court have granted the motion to vacate under CR60(a), (assignment of error 1,3).

Should the trial court have granted the Motion to vacate Under CR 60(b)(1) (assignment of error 1, 3).

Should the trial court have granted the Motion to vacate Under CR 60(b)(5) (assignment of error 1, 3).

Should the trial court have granted the Motion to vacate Under CR 60(b)(4) (assignment of error 1, 3).

Should the trial court have granted the motion to vacate under CR 60(b)(11) (assignment of error 1, 3).

Did the court abuse its discretion in treating the motion to vacate as a CR59 action and not as a CR 60 action as intended and presented. (assignment of error 2)

IV. STATEMENT OF THE CASE

April 15, 2009 King County filed suit against the appellant for code violations on property owned by the appellant.

March 4, 2010 King County filed a motion for Summary Judgment.

June 8, 2010 a Summary Judgment was entered in favor of King County.

V. ARGUMENT

A. The order entered should be void under CR 60(b)(5) as the order did not reflect the actual proceedings:

- 1) Lists Defendant as "pro-se, not appearing" demonstrating the Courts own confusion in the matter. Defendant's Council advised him on May 20th 2010 that he was withdrawing from the case. Defendant was unaware that

his Council did not file withdrawal in a timely manner. The Court itself apparently was not aware of this until it was pointed out in the *Declaration of F. Raymond Haversat in Support of Motion to Vacate (CP 9)* and indicates in its *Order Denying Motion to Vacate (CP 88)* that Appellant was still represented.(assignment of error 1,3)

- 2) Lists the hearing date as May 20, 2010 (assignment of error 1,3)
- 3) States that Oral arguments were heard when they were not (*LCR 56(c) (1) Argument. The court shall decide all summary judgment motions after oral argument, unless the parties waive argument.*) (assignment of error 1,3)
- 4) Lists the signing date as June 7, 2010 corrected to June 8, 2010 by *Order Denying Motion to Vacate (CP 89)*(assignment of error 1,3)

An entry of a Summary Judgment Order was not appropriate as the appellant did not appear and no oral arguments were heard. (assignment of error 1,3)

- B.** The order entered should be void under CR 60(b)(1). Appellant was denied due process (*CP9*). Appellant was not advised of a confirmed hearing date by his withdrawing council. There was neither a motion for a continuance nor a re-note filed for the June 8th Hearing date. (*CP 13; CP 88*) In addition June 8th did not meet the Summary Judgment 28

day requirement for noting (re-noting) Hearing (assignment of error 1,3)

C.The trial court abused its discretion in treating the motion as a CR59 action. The motion to Vacate was filed as a CR60 and should be treated as such. To be a CR59 it would have had to be filed within 10 days of the judgment filing. It was filed in the time allotted for CR 60 in the form of a CR60. It was a request to vacate the order based on the criteria of CR60.(assignment of error 1,2)

D.The Trial court erred by not granting the motion to vacate the judgment under CR 60(b)(4). The Complainant violated the Appellants property rights by trespassing on the Appellant's property.(*CP 77*) The county also is shielding the complainant from questioning and possible legal action by withholding his/her name. The County (James Toole accompanied by one unnamed person) was given permission by appellant for a **one time** visit on the property in 2005, but was explicitly excluded from entering the house. On examining the case file it shows that on more than one occasion county employees went on the property without permission or a court order (*decl of Mary Impson in Support of King County's Motion for Summary Judgment ex D, ex G*) (assignment of error 1,3)

E. The Trial court erred by not granting the motion to vacate the judgment under CR 60(b)(11). The appellant has suffered considerable financial loss and stress as the result of repeated ongoing theft and vandalism. The county (Ms Derraitus) admitted that boarding up the buildings would not stop anyone if they wished to get in. (*CP 82-86*) (*decl of Raymond Haversat filed Mar 15, 2010*) The county is adding insult to injury with the Summary Judgment. Appellant is being penalized for being a victim; because neither he nor the King County Police have been able to stop the thefts and vandalism. The county in its declarations reiterated that the violations still existed; but did not the reference the considerable effort being done to achieve compliance or the ongoing problems with theft and vandalism hampering efforts (*CP 82-86*) (*decl of Raymond Haversat filed Mar 15, 2010*). Even though the property is now in compliance and occupied; the problem still persists. The latest incident being June 10, 2012 when his pickup truck was destroyed by an arson fire.

VI. CONCLUSION

The ruling denying the motion to vacate should be reversed

August 17, 2012

Respectfully submitted,

F. Raymond Haversat

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Signature

Pro-Se