

NO. 68-112-5-I

COURT OF APPEALS OF
THE STATE OF WASHINGTON
DIVISION I

FRED PALIDOR,

Appellant,

v.

DAVID HOVDE, HARVEY AND JUDITH FLAX
LIVING TRUST, JUDITH FLAX, HARVEY
FLAX and their marital community, KEYWEST
LOCK SERVICE, INC., GREGORY PURCELL,
JANE DOE PURCELL, and their marital
Community,

Respondents.

Appeal from Whatcom County Superior Court
No. 10-2-03266-1

APPELLANT FRED PALIDOR'S
OPENING BRIEF

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STATE OF WASHINGTON
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I. INTRODUCTION

Self-help eviction has been against the law for over 100 years in Washington . In May, 2010, without authorization, court order, or any cognizable legal claim of right, defendants entered premises rented to Nancy Taylor and changed the locks, locking out Ms. Taylor and her business. Defendant David Hovde, on behalf of the Flax defendants, demanded payment of \$20,000 from in back rent. Under duress, Ms. Taylor's husband, plaintiff Fred Palidor negotiated with Hovde and ultimately paid \$10,000 of his own money in order to get his wife and her business back on the premises. The trial court granted defendants' motion to dismiss the action on the grounds that Fred Palidor was not a real party in interest. The court should reverse the ruling of the trial court.

II. ASSIGNMENTS OF ERROR

A. Assignment of Error

1. The trial court erred in entering its order of December 2, 2011, granting defendants' motion to dismiss the case.

B. Issues Pertaining to Assignment of Error

1. Is a person subjected to unlawful coercive pressure, who provides funds for his wife's creditors as a direct result of that pressure, a real party in interest for a claim of unjust enrichment to recover those funds?
2. Is a person subjected to unlawful coercive pressure, who provides funds for his wife's creditors as a direct result of that pressure, a real party in interest for a claim of violation of the Consumer Protection Act?
3. Is a person subjected to unlawful coercive pressure, who provides funds for his wife's creditors as a direct result of that pressure, a real party in interest for a claim of civil conspiracy?
4. If a trial court determines in a contested motion that a plaintiff is not a real party in interest, does the court err by dismissing the case without first providing an opportunity to have the real party substitute, join, or formally ratify the existing litigation?

III. STATEMENT OF THE CASE

A. Procedural Background

Plaintiff Fred Palidor filed this case against defendants in Whatcom County Superior Court on December 27, 2010, alleging claims of unjust enrichment, violation of the Consumer Protection Act, and civil conspiracy. On November 4, 2011 the Flax defendants served and filed a motion to dismiss the case alleging Fred Palidor was not the real party in interest. The other defendants later joined in the motion. Fred Palidor opposed the motion, and his wife Nancy Taylor, submitted a declaration opposing the motion. On December 2, 2011, at the hearing on the motion, the court dismissed the action with prejudice, and did not allow Palidor additional time to effect the joinder, substitution or ratification of the action. . Fred Palidor filed his notice of appeal on December 21, 2011.

B. Factual Background

Nancy Taylor is the sole owner and officer of Dream on Futon, a Washington State corporation incorporated in 1987. Declaration of Nancy Taylor, CP 11. Ms. Taylor ran Dream on Futon for over 28 years. Id. In 2004 she entered into a lease for commercial space at 119 W. Chestnut St., Bellingham, Washington (the “Property”). The lease was between herself personally and the landlord at that time.

Declaration of David Hovde, Ex. A, CP 32. The lease requires disputes between the parties to be addressed through arbitration, with the sole exception of action under RCW 59.12, the unlawful detainer statute. Id.

In 2005 the building was purchased by the Harvey and Judith Flax Living Trust (“Trust”), and the lease was assigned to the trust. Taylor Dec., CP 12. In 2007 Dream On Futon began to struggle as the economy faltered, with income falling over 33% from 2007 – 2009. In 2008 Ms. Taylor began to fall behind on rent payments. Id. As of May, 2010, Ms. Taylor was in negotiations with the Flax defendants concerning the rent shortfall, and had no idea that defendants were planning to take drastic action with respect to the lease. Id.

At about 8:00 p.m. on the evening of May 13, 2010, David Hovde called Ms. Taylor and told him that he had changed the locks to the Property, and posted notices on all the doors. Id. Hovde told Taylor that she would no longer have access to her business inventory, equipment or records, and would not be allowed to continue her business. Id. Ms. Taylor was shocked, as negotiations had been continuing, and there had been no suggestion that such action would be taken. Id.

After looking into her options, Ms. Taylor called Hovde back about an hour later, informed him that his actions were illegal, and

demanded to be allowed back on the Property. Taylor Dec., Id. Hovde became angry and hung up. Id.

Ms. Taylor didn't have the money to make a payment. Id. Her husband, Fred Palidor had never provided financial assistance to her or her business previously. Declaration of Fred Palidor, CP 14. Palidor saw how distressing this situation was for her and told her that if it turned out to be necessary, he could come up with \$10,000 to help get back into the Property. Id.

Taylor arranged for a locksmith to meet her and Fred Palidor at the Property the next morning in order to get back in. Taylor Dec., CP 12. When they arrived around 9:00 a.m., Hovde was already there, and had barred Dream On Futon employees from the building. Id. The locksmith Taylor had arranged to meet them refused to get drawn into the dispute. Id.

Palidor began removing the notices that Hovde had placed on the building. Palidor Dec., CP 15. Hovde posted replacement notices and Palidor removed those. Id. Hovde continued to demand \$20,000 to get back in the premises. Id. At this point, Palidor called the police. Id. The police officer confirmed that it was illegal for Hovde and the Flaxes to lock out Nancy and her employees without a court order, and that any lock-out had to be enforced by the Sheriff. Palidor Dec., CP 15. Palidor passed the phone to Hovde, who spoke briefly with the

officer, then claimed that the police officer stated that the law only applies to residential lock-outs and not commercial. Id. The officer later denied telling Hovde that commercial lock-outs were legal. Id.

While this was happening, Ms. Taylor was becoming distraught as to the effect the lockout was having on her business. Id. Because of his concern for her welfare, Palidor negotiated to get access to the property, advising Hovde that he could only come up with \$10,000, not \$20,000. Id. After making some phone calls, Hovde eventually agreed to unlock the building in exchange for payment of \$10,000, but demanded a cashier's check. Id. Palidor informed Hovde he would have to go get the funds from his bank. Id.

Throughout this time, customers and other members of the public approached the building and looked in the windows. Taylor Dec., CP 13. Numerous customers had orders ready for pick-up, and one showed up while the lock-out was still in effect. Id.

Palidor went to his bank and obtained a cashier's check for \$10,000 from his personal account. Palidor Dec., CP 15. Palidor had the check made payable to Dream On Futon, to be certain it would be credited as a rent payment. Id. The check identifies Fred Palidor as the remitter. Hovde Dec., CP 45. When he showed Hovde the check, Hovde was upset that the check was made payable to Dream On Futon. Palidor Dec., CP 16. Taylor simply endorsed the check over to

Harvey and Judith Flax. Id. Hovde accepted the check and allowed Nancy Taylor and her business back onto the Property. Taylor Dec.

IV. ARGUMENT

A. THE STANDARD OF REVIEW IS DE NOVO.

A trial court may grant dismissal for failure to state a claim under CR 12(b)(6) only if "it appears beyond doubt that the plaintiff can prove no set of facts, consistent with the complaint, which would entitle the plaintiff to relief." Bowman v. John Doe Two, 104 Wash.2d 181, 183, 704 P.2d 140 (1985); Orwick v. Seattle, 103 Wash.2d 249, 254, 692 P.2d 793 (1984). CR 12(b)(6) motions should be granted "sparingly and with care". Orwick, at 254, 692 P.2d 793.

A plaintiff's factual allegations are presumed true for purposes of a CR 12(b)(6) motion. Lawson v. State, 107 Wash.2d 444, 448, 730 P.2d 1308 (1986); Bowman, at 183, 704 P.2d 140. The submission and consolidation of materials outside of the pleadings converts a CR 12(b)(6) motion to one for summary judgment, adjudicated pursuant to CR 56. CR 12(b).

The burden is on the moving party to demonstrate that there is no genuine issue as to any material fact and that the moving party is

entitled to a judgment as a matter of law. CR 56(c); Atherton Condominium Apartment-Owners Assoc. Bd. of Directors v. Blume Development Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990). The Court considers all the facts submitted, and the inferences therefrom, in the light most favorable to the nonmoving party. Atherton, p.516. Any doubts as to the existence of a genuine issue of material fact are resolved against the moving party. Id.

In meeting the burden of establishing their right to summary judgment, the moving party may only use admissible evidence, submitted by persons testifying based on personal knowledge. CR 56(e). It is only upon the production of such evidence establishing the right to summary judgment that the opposing party is then obligated to provide material beyond the allegations in the pleadings. Id.

The standard of review for either motion is *de novo*.

B. THE POLICIES OF CR 17 WERE NOT SERVED BY DISMISSING THIS CASE.

CR 17(a) requires that claims be brought by the real party in interest, stating:

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a

party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

The rule serves two purposes: (1) to protect the defendant against a subsequent action by the party actually entitled to recover; and (2) to “expedite litigation by not permitting technical or narrow constructions to interfere with the merits of legitimate controversies.” Beal for Martinez v. City of Seattle, 134 Wn.2d 769, 777-8, 954 P.2d 237 (1998). The trial court’s ruling did not serve either purpose—to the contrary it seems directly contrary to the purpose of expediting litigation by not permitting technical constructions to interfere with the merits of legitimate controversies.

As is discussed in further detail below, the trial court also erred by dismissing the action without providing plaintiff the opportunity to have the court’s perceived real party in interest join, substitute, or formally ratify the litigation. “Dismissal under the rule is appropriate only when the trial court has allowed the plaintiff a reasonable time to bring the real party in interest into the suit and joinder, substitution,

or ratification cannot be effected.” Rinke v. Johns-Manville Corp., 47 Wn.App. 222, 227, 734 P.2d 533 (1987).

C. FRED PALIDOR IS THE REAL PARTY IN INTEREST.

Defendants’ motion, and presumably the court’s ruling, was based on the theory that because Fred Palidor’s check was made out to Dream On Futon it constituted a loan from Fred Palidor to Dream On Futon, not a payment by Fred Palidor to any of the defendants, and he therefore cannot have a claim to recover those funds. This position is contrary to Washington law.

1. **Defendants Violated Washington Law by Trespassing on Nancy Taylor’s Leased Premises, Changing the Locks Without her Knowledge or Consent, and By Excluding her from the Premises.**

Defendants violated long-established Washington law by engaging in self-help eviction, illegal since at least 1902. Spencer v. Commercial Co., 30 Wash. 520, 71, P. 53 (Wash. 1902). Self-help eviction is illegal whether the lease is residential or commercial. Id. It is forbidden even if the terms of the lease purport to allow it. Id.

The lease here did *not* allow defendants to exercise self-help eviction. The lease required the parties to arbitrate any dispute other than actions brought through RCW 59.12—the unlawful detainer statute. Defendants did not proceed pursuant to RCW 59.12 or involve

the courts in any way. They simply trespassed onto Ms. Taylor's leasehold, changed the locks, and excluded Ms. Taylor and her business from the property. Their actions in doing so were contrary to Washington law and the terms of the lease. Of that there is no serious dispute.

2. Fred Palidor is the Real Party in Interest on the Restitution Claim.

a. Duress Provides a Recognized Ground for Recovery in Restitution.

The common law action of restitution, sometimes referred to as "money had and received" (among other names), employs unjust enrichment as an independent basis of substantive liability. Davenport v. Washington Ed. Ass'n, 147 Wn.App. 704, 725, 197 P.3d 686 (2008). Washington Courts have traditionally looked to the Restatement of Restitution for guidance in interpreting the law of restitution and unjust enrichment, and have fully embraced the recent Restatement of the Law Third, Restitution and Unjust Enrichment, 2010 (hereinafter, "Restatement (Third)"), including its definition of unjust enrichment. Davenport at pp. 726-28; Nelson v. Appleway Chevrolet, Inc. 160 Wash.2d 173, 157 P.3d 847 (2007).

The courts recognize that the law of restitution (including the law of unjust enrichment) is its own body of law, independent from contract and torts. Davenport, p. 726. Unjust enrichment is a concept

that is notoriously difficult to define with precision. The underlying principle is that a person who receives a benefit by reason of an infringement of another person's interest, or of loss suffered by the other, owes restitution to that person in the manner and amount necessary to prevent unjust enrichment. The modern formulation is that any transaction not adequately supported by law is voidable under a restitution claim. Nelson v. Appleway Chevrolet at pp.187-88; Davenport, citing Restatement (Third).

One of the cornerstones of the law of restitution and unjust enrichment is that people are not permitted to profit by their own wrongs. Restatement (Third), §3, p.22. Where a party uses duress to acquire property, restitution and unjust enrichment provide the proper avenue to reverse those transactions. Transactions entered as a result of duress are void or voidable. Id. §14, at p. 181.

Palidor provided his cashier's check as a direct result of the duress exercised by David Hovde by unlawfully excluding Nancy Taylor and her business from the Property. While the threat of injury was against a third party, that is not a bar to recovery in restitution. A party may reverse a transaction based on duress, even though the threat is made against another party. Restatement (Third) §14, at p. 184; 28 Williston on Contracts, 4th Ed. (2003) §71:16; *see also* Meylink v. Minnehaha Co-op Oil Co., 66 S.D. 351, 283 N.W. 161 (1938) (Father

entitled to restitution of payments made by his surety to party threatening criminal prosecution of son for embezzlement).

b. *There is no Requirement of Privity to Recover in Restitution.*

There is no requirement of privity in an unjust enrichment/restitution claim. A claim in restitution “lies against anyone who has money in his hands which he is not entitled to hold as against another, and want of privity between the parties is no obstacle to its recovery.” Pacific Coal & Lumber Co. v. Pierce County, 133 Wash. 278, 233 P. 953 (1925); Soderberg v. King County, 15 Wash. 194, 45 P. 785 (1886) (County argued that plaintiff had no claim against it because County did not receive the money from plaintiff, but from the sheriff who wrongly charged and withheld fees from the plaintiff); Fidelity Nat. Bank of Spokane v. Henley et al., 24 Wash. 1, 63 P. 1119 (1901) (“there need be proved no privity of contract other than such as arises out of the fact that the defendant has received the plaintiff’s money under circumstances which make it against conscience that he should retain it.”)

This is the rule generally applied in the law. “If a party’s manifestation of assent is induced by one who is not a party to the transaction, the contract is voidable by the victim unless the other party to the transaction in good faith and without reason to know of the duress either gives value or relies materially on the transaction.”

28 Williston on Contracts, 4th Ed. (2003), §71:17, citing Restatement (Second) of Contracts §175.

Palidor provided his cashier's check as a direct result of the duress exerted by David Hovde. The Palidor check was deposited directly into the Flax Defendants' account, as insisted upon by Mr. Hovde, who negotiated directly with Fred Palidor concerning the payment, and knew the funds were coming from his account. Palidor made the check payable to Dream On Futon in order to insure that it was credited as a rent payment. Even if that actually meant he is not in privity with defendants, Washington law is clear that does not affect his remedy in restitution.

c. A Claim in Restitution may be Asserted Against Third Parties.

Where a party receives property with knowledge of the facts that give rise to a claim in restitution, they are liable. Bailie Communications, Ltd. v. Trend Business Systems, 53 Wn.App. 77, 85, 765 P.2d 339 (1988). This is consistent with, indeed based upon, the rules in the Restatement. Id. A claimant entitled to recover in restitution from property may obtain restitution from any traceable product of that property. Restatement (Third), §58, p.379. That right may be asserted against any subsequent transferee who is not a bona fide purchaser or a bona fide payee. Id. A person with notice of facts

underlying a restitution claim cannot be either a bona fide purchaser or a bona fide payee. Id. §66-67.

Here there is no question whatsoever that Fred Palidor's cashier check in the amount of \$10,000 was deposited in the Flax account. As a cashier's check, those funds went directly from Fred Palidor's account to that of the Flax defendants. Fred Palidor may recover on this claim, and may trace his funds to any party who received them with notice. The defendants were all complicit in the unlawful conduct that resulted in the damage to Fred Palidor, and cannot claim status as bona fide payees. In short, there is absolutely no basis for defendants to retain Fred Palidor's funds against his claim, and Palidor is the real party in interest.

3. Fred Palidor is the Real Party in Interest for the Consumer Protection Act Claim.

Washington's Consumer Protection Act forbids unfair or deceptive acts or practices in the conduct of any trade or commerce. RCW 19.86.020. The purpose of the CPA is to "complement the body of federal law governing restraints of trade, unfair competition and unfair, deceptive and fraudulent acts and practices in order to protect the public and foster fair and honest competition." RCW 19.86.920; Haberman v. Wash. Pub. Power Supply Sys., 109 Wash.2d 107, 169,

744 P.2d 1032, 750 P.2d 254 (1987). "Trade" and "commerce" are defined under the CPA to "include the sale of assets or services, *and any commerce directly or indirectly affecting the people of the state of Washington.*" Panang v. Farmers Ins. Co. of Washington, 166 Wn.2d 27, 39, 204 P.3d 885 (2009), citing RCW 19.86.010(2)[emphasis in Panang]. The CPA is to be "liberally construed that its beneficial purposes may be served." RCW 19.86.920; Short v. Demopolis, 103 Wash.2d 52, 61, 691 P.2d 163 (1984).

"To prevail in a private CPA claim, the plaintiff must prove (1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person's business or property, and (5) causation." Panang at 39. There is no standing requirement independent of establishing the 5 elements of the claim. Id.

Defendants argued, and apparently persuaded the trial court, that Palidor could not establish the fourth element of injury to a person's business or property. "Palidor was not injured by the lockout. Palidor did not even have a business or consumer relationship with the Defendants. Palidor was injured...by his wife, to whom he gave

the \$10,000.”¹. Flax Defendants’ Motion to Dismiss on the Ground that Plaintiff is Not the Real Party in Interest, p. 7. CP 171.

First, of course, Washington courts have made clear that they will enforce the plain language of the statute—there is no requirement that the plaintiff be a consumer or in a business relationship with the actor. Panang, p.39 “The CPA allows ‘[a]ny person who is injured in his or her business or property by a violation’ of the act to bring a CPA claim. RCW 19.86.090.” Id. [emphasis in Panang].

Defendants behaved unlawfully and unfairly when they trespassed on Ms. Taylor’s leased premises, changed the locks, and locked-out her and her business. They further acted wrongfully by demanding \$20,000 in order to release the premises. Hovde negotiated directly with Fred Palidor, knew that Palidor was providing his own funds to get his wife and her business back into their premises, and knew that all of this was being accomplished through defendants’ actions in unlawfully engaging in self-help eviction. Fred Palidor called the police in an attempt to avoid defendants’ coercion. Hovde lied to Palidor about his conversation with the police officer, and insisted he would still not allow Ms. Taylor or her business back on

¹ Defendants at times characterize Palidor’s payment as a loan to Dream On Futon and at other times to Nancy Taylor personally. The facts are indisputable that the check was provided for payment to the Flax Defendants, was made payable to the corporation Dream On Futon. Nancy Taylor never personally received the proceeds from the check, nor was the check ever made payable to her.

the premises. Seeing the effect of this on his wife, Palidor finally yielded and provided \$10,000 of his own funds to stop the unlawful conduct. It is hard to imagine a more clearly unfair course of conduct. To claim under these facts that Palidor was only hurt by his wife is appalling.

Palidor suffered a direct loss of \$10,000 as a result of defendants' coercion, which was directly exercised on him. Moreover, even if he was only harmed indirectly, through another party, he still has suffered compensable injury. The CPA addresses actions in trade and commerce that directly or indirectly affect the citizens of Washington, and its provisions are to be liberally construed—there is no basis for introducing a sixth element of privity.

4. Fred Palidor is the Real Party in Interest for the Civil Conspiracy Claim.

To establish a claim for civil conspiracy, a party must establish that “(1) two or more people combined to accomplish an unlawful purpose, or combined to accomplish a lawful purpose by unlawful means; and (2) the conspirators entered into an agreement to accomplish the object of the conspiracy.” Wilson v. State, 84 Wn.App. 332, 350-51, 929 P.2d 448 (1996). The unlawful actions need not be criminal, but may be based on violation of contract rights or other civil

matters. A party's conduct need not be criminal to establish liability for civil conspiracy. Newton Insurance Agency v. Caledonian Insurance Group, 114 Wn.App. 151, 52 P.2d 30 (2002) (Defendants joint and severally liable on summary judgment for tortious interference with business expectancy).

Defendants argued, and the trial court apparently agreed, that Fred Palidor was not the real party in interest for the civil conspiracy claim because any unlawful conduct was "directed to and damaged Nancy Taylor as the tenant of the Property, not Palidor." Flax Defendants' Motion, CP 171.

There were multiple agreements to accomplish lawful purposes by unlawful means. The purposes of changing the locks on the premises or evicting Ms. Taylor and her business from the premises are not unlawful. It is, however, unlawful to accomplish those purposes by trespassing on the premises and changing the locks without the tenant's consent or an order of the court. It is unlawful to evict Ms. Taylor and her business from the premises without a court order or her consent. It is of course unlawful to use the leverage gained by that conduct in order to coerce payment of \$10,000. Fred Palidor has established the elements of a civil conspiracy claim, and has established he was damaged by those conspiracies. He is clearly the real party in interest for recovery of his \$10,000.

Even if defendants were correct in their argument that only persons who conspirators direct their unlawful conduct at have a claim against them, Fred Palidor would still be a real party in interest. David Hovde and the other Flax defendants may not have originally intended to coerce payment from Fred Palidor, but when the opportunity presented itself they pursued it with vigor, and accepted the payment knowing the funds came from Fred Palidor.

D. IN THE ALTERNATIVE, THE COURT ERRED BY DISMISSING THE CASE WITHOUT ALLOWING A REASONABLE TIME TO SUBSTITUTE, JOIN, OR OBTAIN FORMAL RATIFICATION FROM THE REAL PARTY IN INTEREST.

Dismissal under CR 17(a) is appropriate only when the trial court has first allowed the plaintiff a reasonable time to bring the real party in interest into the suit and joinder, ratification, or substitution cannot be effected. Rinke 47 Wn.App. at p. 227. “The rule is not intended as a method by which the trial court may sanction dilatory plaintiffs; rather, it is meant to insure that the real party in interest will be made a party to the suit at a time when the interests of the defendants will be protected.” Id. at 226. As long as no prejudice is shown, the real party in interest may be added at any time, even after

trial. Id., citing Betchard-Clayton, Inc. v. King, 41 Wash.App. 887, 707 P.2d 1361 (1985).

Modern rules of procedure are intended to allow the court to reach the merits, not to dispose of cases on technical niceties. "Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." See James S. Black & Co. v. F.W. Woolworth Co., 14 Wa.App. 602, 604-06, 544 P.2d 112 (1975) (reading CR 17(a) in conjunction with CR 21, and ruling the court acted properly in not dismissing action, but instead allowing plaintiff time to join real parties in interest). "CR 17(a), in particular, is designed to expedite litigation, not to allow narrow constructions or technicalities to interfere with the merits of a legitimate controversy." Rinke, at 227 (citations omitted).

Here Fred Palidor pointed out in his responsive papers that if the court agreed with defendants, he would need to be provided time to accomplish substitution, ratification, or joinder of any of the other parties prior to the hearing. Fred Palidor's Memorandum in Opposition to Motion to Dismiss, CP 158. He did not seek to accomplish that before the hearing because he believed the court should, and would, deny the defendants' motion. Moreover, if the court was persuaded that Fred Palidor was not in fact the real party in

interest, it was not at all certain that the court would accept the defendants' argument that the real party in interest was Nancy Taylor, since Fred Palidor's check was written to Dream On Futon, then simply endorsed over to defendants. The check was never made payable to Nancy Taylor, or deposited in her personal accounts. Defendants did not plead or attempt to establish a theory of piercing Dream On Futon's corporate veil.

Fred Palidor did receive a declaration from Nancy Taylor in support of his opposition to the motion to dismiss. This could have been deemed an informal ratification of Fred Palidor's action, whether by Ms. Taylor personally, or by Dream On Futon, the business for which she is the sole owner and officer. Instead the court granted the motion and refused to provide Palidor time to accomplish joinder, substitution, or ratification. It is hard to see what purpose was served by denying Fred Palidor that opportunity.

E. RAP 18.1 REQUEST FOR ATTORNEY FEES.

Plaintiff Fred Palidor requests that the court grant him his costs and attorney's fees incurred with respect to this appeal, pursuant to RCW 19.86.090, which states in pertinent part:

Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to

accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in superior court to enjoin further violations, to recover the actual damages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee.

V. CONCLUSION

For the reasons stated above, plaintiff requests that the Court reverse the decision of the trial court dismissing plaintiff's complaint, award plaintiff his attorney's fees incurred in bringing this appeal, and remand to the Superior Court for further proceedings consistent with the Court's decision.

Respectfully submitted,

SEYMOUR LAW OFFICE, P.S.

A handwritten signature in black ink, appearing to read 'T. Seymour', is written over a horizontal line.

Thomas J. Seymour, WSBA # 39629
Attorney for Appellant Fred Palidor

CERTIFICATE OF SERVICE

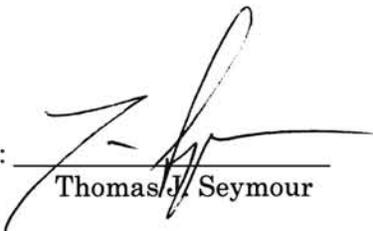
I certify that on the 22nd day of May, 2012, I caused a true and correct copy of this Opening Brief to be served on the following by electronic transmission and U.S. Mail:

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