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No. 70694-2-1

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION I

GEORGE R. AYDELOTTE, an individual,
Plaintiff/Appellant,

v.

TOWN OF SKYKOMISH, a Washington municipal corporation,
et al.

Defendants/Respondents,

APPELLANT GEORGE R. AYDELOTTE'S OPENING BRIEF

GEORGE R. AYDELOTTE
5145 Jefferson Place
Oak Harbor, WA 98277
(425) 239-4087
Appellant, pro se

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I. INTRODUCTION

This case originally began when Appellant Aydelotte gathered a petition to compel the elected officials (the 'Elected Officials') of Defendants/Respondents Town of Skykomish, et al. ('Respondent Town') to disclose their finances. Subsequently, the public disclosure commission ruled in Appellant Aydelotte's favor, ordering the Elected Officials to disclose agreements and money received from BNSF railway.

Threats from Respondent Town council person Darrell Joselyn, former Respondent Town Mayor Charlotte Mackner and her husband Robert Mackner, and others soon followed.

Respondent Town claimed to have a right of way which Appellant Aydelotte disputed, claiming his home was built prior to the Respondent Town being incorporated. No right of way exists on any maps or surveys, nor was any such right of way ever dedicated.

Subsequently, Respondent Town claimed the land area beneath Appellant's garage, located at Appellant's residence at 307 W. River Drive, Skykomish, WA, was needed for a retention pond related to BNSF Railway's environmental cleanup in Skykomish.

The land was never previously used for any retention pond or other use related to the cleanup. In fact, the land sits to this day unused just as it was left by the Respondent Town the day after the demolition. Retention ponds were installed and even though they were later enlarged, they never came within 30 feet of the footprint of where the garage was demolished. This was clearly shown by photographs in the Court file. The demolition was an act of retribution, related to Appellant Aydelotte going to the Public Disclosure Commission, requesting public disclosure and is arbitrary and capricious. Further, the demolition was an act of Intentional Harassment and a denial of Appellant Aydelotte's civil rights.

The debris from the Appellant's garage was piled on his property blocking the rear exit to the home which was being used as a rental at the time. There is ample and sufficient photographic evidence of this in the Court file.

Appellant Aydelotte also owned the home next door 305 W. River Drive where a tool shed and carport were also demolished.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred in denying Appellant Aydelotte's Amended Complaint to be admitted.
2. The Trial Court erred in granting Summary Judgment to Respondent Town by concluding no material facts remained.

3. The Trial Court erred in not allowing Appellant Aydelotte's responses to requests for admissions to be entered into the record.
4. The Trial Court erred in erroneously striking Appellant Aydelotte's Declaration of June 24, 2013.

III. ISSUES

1. Where there remaining questions of material fact concerning whether the Respondent Town's actions were arbitrary and capricious?
2. Was the Summary Judgment against Appellant Aydelotte justified under the circumstances?
3. Was Appellant Aydelotte's Freedom of speech, as guaranteed under Article 1 Section 5 of the Washington State Constitution violated when Respondent Town demolished Appellant Aydelotte's garage, which he asserts was in retribution to his public disclosure filing and no other purpose?
4. Did Respondent Town engage in witness tampering and/or malicious harassment?

Appellant Aydelotte filed the underlying Complaint for Injunctive Relief on March 1, 2011

Subsequently, Appellant Aydelotte attempted but the Trial Court refused to allow the Amended Complaint. (CP51)RP pg 10

Respondent Town subsequently served Requests for Admissions which, as a result of Appellant Aydelotte mail being diverted by the local

U.S. Postal Service Clerk, CP32 pg6 whose spouse serves on town council, were not received in a timely manner.

As a result, Respondent Town filed responses to the admissions which the Trial Court accepted. However, the Trial Court would not accept Appellant Aydelotte's Responses despite evidence of his mail being diverted CP 41, CP32pg6, RP pg 6 line9

The only answers relied upon were those supplied by Respondent Town through its attorney. They do not represent the true facts of this case. A Motion to Admit (RP pg. 5) into record the Appellant's responses to Respondent Town's Request for Admissions propounded to Appellant was filed with the Court and served on Respondent's legal counsel, Carson Law Group as required. This Motion was denied(CP51).

A. Respondents answers and admissions should have been admitted.

The answers relied upon were those supplied by Respondent Town of Skykomish through their attorney. These answers were not those of Appellant Aydelotte. They do not represent the true facts of this case. A Motion to Admit (CP 41) into record the Appellant Aydelotte's answers to defendants request for admission propounded to Appellant Aydelotte were

sent to the Carson law firm, and filed with the court and served on the Carson law office. (CP41 ,42) These were served on The Carson Law Group as required.

B. The issue is whether the Trial Court erred when granting Summary Judgment to the Respondent Town of Skykomish by (1) concluding no material facts remained.

Because the denial of Appellant Aydelotte's motion to his admissions entirely precluded a resolution of the case on its merits, and because the Respondent Town of Skykomish's case was not prejudiced, Appellant Aydelotte's request for Appellant Aydelotte answers to admissions should have been granted, as was instructed in the United States Court of Appeals Ninth Circuit in *Hadley v. U.S.*, 1057, 95-1 USTC P 50,094, 31 Fed.R.Serv.3d 1441; 45 F.3d 1345 (9th Cir. 1995).

There exists questions of material fact concerning whether the Respondent Town's actions were arbitrary and capricious, due to the threats as attested to by Kathrine Sullivan (see Ex. A) amount to a confession of the Respondent Town's true intent in demolishing Appellant Aydelotte's garage.

By Ruling Untimely by Judge Lum re Declaration erroneously stricken. The Declaration contained events and occurrences too recent to as it contained an email from Respondent Town directly relating to this action and amounts to new evidence.

Cause of action

1. It is Appellant Aydelotte's assertion the Garage in question was demolished in retribution to his public disclosure filing¹ and no other purpose.

2. This action violates Freedom of Speech, Article 1 section 5 of the Washington state constitution.

3. Additionally, violating Appellant Aydelotte's rights under Section 4:

- (a) Right of Petition and Assemblage of the Washington state constitution

By dumping the debris on Appellant Aydelotte's private property (CP 27) blocking his rear entrance to the home violated his right under SECTION 7, INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED to be secure in his home and trespass

¹State of Washington Public Disclosure commission April 7 2006 case No 06-097

RCW4.24.470

Liability of officials and members of governing body of public agency —

Definitions.

RCW77.15.098

Willful misconduct/gross negligence — Civil liability.

(1) An authorized state, county, or municipal officer may be subject to civil liability under RCW 77.15.070 for willful misconduct or gross negligence in the performance of his or her duties.

RCW42.23.050

Prohibited contracts void — Penalties for violation of chapter.

This is the statute the respondents were convicted of. It clearly states:

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office.

RCW9A.36.070

Coercion.

(1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter

has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

RCW9A.36.083

Malicious harassment — Civil action.

In addition to the criminal penalty provided in RCW 9A.36.080 for committing a crime of malicious harassment, the victim may bring a civil cause of action for malicious harassment against the harasser. A person may be liable to the victim of malicious harassment for actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys' fees and costs incurred in bringing the action.

Facts disputed.

Respondent Town relies on admissions entered into evidence on February 8, 2013. These were admitted due to Appellant Aydelotte not responding to request for admission. The Trial Court was provided with proof that Appellant Aydelotte mail was being returned to sender CP32 pg7 photograph of letter returned) at and around the time the admissions were entered.

Appellant Aydelotte requested at the summary judgment hearing his answers be admitted (RP pg 5). These are truthful answers and not some theory of what the Respondent Town wished.

Requirement for Puget Sound Air Control Asbestos Survey was never completed or filed for the demolition of the garage² behind 307 W. River Dr., Skykomish, WA 98288

No right of way exists for the area where the garage was as alleged in demolition order.

The question as to whether the action was arbitrary and capricious especially since photographic CP 27 and Appellant Aydelotte's Declaration CP20, 41, 47, 45 proves the Respondent Town of Skykomish never used or had any need to use the property as stated in their complaint.

It is incumbent on the courts that harassments, denial of mail and threats not prevent disputed facts to be placed before a jury. Aggravating factors indicating Respondent Town's Causing destruction of Garage and showing the real their intent of original complaint. These should have been considered.

² No permit was found when requested from town of Skykomish

C. Witness tampering, harassment

RCW 9A.36.070 Coercion.

(1) A person is guilty of coercion if by use of a threat he or she compels or induces a person to engage in conduct which the latter has a legal right to abstain from, or to abstain from conduct which he or she has a legal right to engage in.

RCW 9A.36.083

Malicious harassment — Civil action.

In addition to the criminal penalty provided in RCW 9A.36.080 for committing a crime of malicious harassment, the victim may bring a civil cause of action for malicious harassment against the harasser. A person may be liable to the victim of malicious harassment for actual damages, punitive damages of up to ten thousand dollars, and reasonable attorneys' fees and costs incurred in bringing the action.

The issue is whether the trial Court erred when granting summary judgment to Respondent Town by concluding no material facts remained (CP 51 RP pg 8)

Because the denial of Appellant Aydelotte's Motion to Admit his responses to the Respondent Town's admissions Cp 41 entirely

precluded a resolution of the case on its merits; *and because* Respondent Town's case was *not prejudiced*. *Appellant Aydelotte's* Motion to Admit *should have been granted, as was instructed in the United States Court of Appeals Ninth Circuit in Hadley v. U.S.-1057, 95-1 USTC P50,094, 31 Fed.R.Serv.3d 1441, 45 F.3d 1345 (9th Cir. 1995).*

V. AGRUMENT

A. When reviewing an order granting summary judgment, this court engages in the same inquiry as the trial court. *Mountain Park Homeowners Assn., Inc. v. Tydings*, 125 Wash.2d 337, 341, 883 P.2d 1383 (1994). Summary judgment is appropriate when the pleadings, depositions, admissions, and affidavits, if any, show that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. CR 56(c). "The facts and all reasonable inferences are considered in the light most favorable to the nonmoving party, and all questions of law are reviewed de novo." *Hollis v. Garwall, Inc.*, 137 Wash.2d 683, 690, 974 P.2d 836 (1999)

B. There is legal sufficiency to show Appellant Aydelotte is entitled to relief under his Complaint³. A Complaint should not be dismissed for

³ Original complaint filed 3/1/2011

failure to state a claim, unless it appears beyond a doubt that the Appellant can prove no set of facts in support of his claim which would entitle him to relief. See *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); see, also *Neitzke v. Williams*, 109 S. Ct.1827, 1832 (1989). (My emphasis)

C. Proof of dumping debris on Appellant Aydelotte's private property blocking the rear entrance to his home is trespassing and harassment. There is photographic evidence in the court's file of this dumping of debris (CP27) on Appellant Aydelotte's rear stairs. It should be up to a jury to decide the intent and factual nature and damages of this action by the Respondent Town of Skykomish.

1. Photographic evidence on file (CP27),
2. Declaration of Appellant Aydelotte (CP 41,45)
3. Witnesses will testify who and when the debris was piled.

D. Arbitrary and Capricious, and intentionally malicious nature of demolishing the garage in question. Especially considering the Declaration of Kathy Sullivan indicating there would be retribution for Appellant Aydelotte's efforts to get legally required disclosures ordered by the Public Disclosure Commission. Additional witnesses will testify at trial confirming these threats. The Town of Skykomish followed through

with these threats in a continual and ongoing nature up to just days prior to the summary judgment hearing 6/26/2013 (CP 50).

The Town of Skykomish refuses to follow the same rules it requires its citizens to comply with.

No permits or required asbestos survey were secured by the Town of Skykomish⁴ denying Appellant Aydelotte the opportunity to challenge them. Yet the Town requires these same permits from Appellant Aydelotte, creating separate standards for Citizens and Respondent Town.

Photographic evidence of land area not being used or needed as stated by Respondent (CP27)Town of Skykomish

...15 To repeat, agency action is **arbitrary** and **capricious** if it is willful and unreasoning and **taken** without regard to the attending facts or circumstances.... This is a question what a reasonable person would do and should be determined by a jury.

E. Conditional point of compliance⁵

⁴ No Permits exist

⁵ Aydelotte v town of Skykomish No 08-28689-4 SEA Summary Decision

1. Defined conditional point of compliance as a lesser water ground water quality standard by Superior Court Judge Ru, King County Superior court case No 08-2-28689-4

2. RCW 42.23.050 Prohibited contracts void Penalties for violation of chapter.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of this chapter may be grounds for forfeiture of his or her office (emphases added).

The civil penalties referred to in this action makes available compensatory losses due to a lesser ground water quality.

The cost of damages to Appellant Aydelotte of a lesser ground water quality will and does adversely impact Appellant Aydelotte's property values. Appellant Aydelotte ability to grow a garden on his property is negatively impacted. This fact should be determined by a jury. It is a factual question unavailable to summarydismal.

This further allows the School two blocks from Appellant Aydelotte's home to remain listed as a toxic site⁶ impacting entire neighborhood property values the cost values of these facts should be determined by a jury and not are not summary dismissible.

F. Amended complaint should have been admitted. As it was timely served on opposing counsel^{xx} after Appellant Aydelotte's mail was being diverted at the time the Admission propounded were made.

CR37 C states 4) there was other good reason for the failure to admit. The good reason in this case is the Appellant Aydelotte had no opportunity to respond Due to mail being diverted CP32, RP pg 6 line 9).

The purpose of requests for **admission** is to eliminate from controversy factual matters that will not be disputed at trial. *Santos v. Dean*, 96 Wash.App. 849, 861, 982 P.2d 632 (1999); *Brust v. Newton*, 70 Wash.App. 286, 295, 852 P.2d 1092 (1993). A party is not required to concede either factual matters central to the lawsuit or legal conclusions. *Puget Sound Nat'l Bank v. St. Paul Fire & Marine Ins. Co.*, 32 Wash.App. 32, 49, 645 P.2d 1122 (1982); see, also, *Reid Sand & Gravel, Inc. v. Bellevue Props.*, 7 Wash.App. 701, 704, 502 P.2d 480 (1972) ("It is not a

⁶ Undisputed Fact

proper use of CR 36 to request an adversary to admit, in effect, the truth of the assertion that he should lose the lawsuit.”).

Additional Pretrial Procedure Subject Matter. It is not a proper use of rule pertaining to admissions to request adversary to admit, in effect, the truth of the assertion that he should lose lawsuit. CR 36.

The requests at issue here, and their **answers**, are as Stated in G. By Ruling as untimely by judge LUM re Declaration of 6/24/2013 RP pg 10 erroneously stricken. The Declaration contained events and occurrences too recent to as it contained an email from Respondent Town directly relating to this action and amounts to new evidence of harassment and continuing original intent ⁷

The Declaration contains special extra ordinary circumstances. That Appellant Aydelotte must endure in the form of harassment. Harassment is a central element to this case.

1. Garage and out buildings Demolished.
2. Appellant Aydelotte mail was diverted CP32 from his post office box he has had for more than 30 years By the wife of councilman Michael Janaz is the postal clerk Deborah Janaz.

⁷ The most Recent is A town employees wife and daughter of the town Clerk has requested a Temporary restraining order restraining me from using a portion of the very property. King county District court case #145-00561

3. Appellant Aydelotte's vehicles have been repeatedly ticketed with impound threats CP50 by Respondent Town while sitting on his private property.

4. Appellant Aydelotte has had to chase away tow trucks called by the Respondent Town shortly after he parked on his private property, in the front of his home Cp 50.

5. The Respondent Town has misappropriated Appellant Aydelotte building permit applications funds⁸.

6. The Respondent Town has ordered him to remove Appellant Aydelotte political signs and face fines⁹. Again this is evidence of intentional harassment for political purposes.

7. The Respondent Town sent Appellant Aydelotte an email saying he did not need a permit to build a fence on his property (CP 50). Then when Appellant Aydelotte starts to build the fence, meeting all Respondent Town regulations, The Respondent Town sends a backhoe, demolishing the fence. (CP 50)

8. The Building Inspector just stopped by on a Sunday and informed Appellant Aydelotte he was going to be treated like Dieter Benz

⁸ Not in court file yet too new

⁹ Nov 21 2013 hearing before Skykomish Building inspector

the Skykomish Hotel owner(Cp 50 CP 32)who had his building condemned by the same inspector, following an illegal Building Department meeting.

9. Michael Pierce, member of Skykomish Design Review Board threatened to have Appellant Aydelotte storage container removed (CP32) at Appellant Aydelotte's expense due to a brand new law the Respondent Town just passed. This threat was made via Facebook.

10. The latest harassment is a Temporary Restraining Order Appellant Aydelotte was served with on 3/24/2014¹⁰. The Restraining Order is requested by an employee of Respondent Town with supporting documents supplied by Respondent Town's Clerk,

11. Defendant Darrell Joselyn's wife threatens me on Facebook "**TORICK. LEAVE JOSH OUT OF YOUR PERSONAL ATTACKS OR I WILL LET EVERYONE KNOW YOU TRIED TO GET ME TO GO OUT WITH YOU AT A COUNCIL MEETING.**"(CP 32)

¹⁰ The most Recent is A town employees wife and daughter of the town Clerk has requested a Temporary restraining order restraining me from using a portion of the very property. King county District court case #145-00561

The last one was a significant factor in relationship difficulties and ultimately the loss of my mate. Infidelity even falsely accused is very damaging.

There is proof in the Superior Court file of all except the most recent of these harassments¹¹ They constitute continuing and ongoing extra ordinary circumstances no litigant should endure. The very ability to prosecute this case is severely hampered by the constant and ongoing harassment.

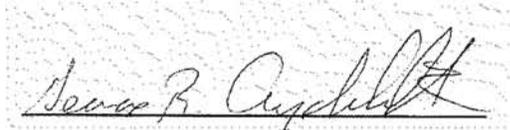
Ongoing and continued harassment is ample reason for amending Complaint, as this is the same Plaintiff, the same Defendants and the same real properties involved.

¹¹ The most Recent is A town employees wife and daughter of the town Clerk has requested a Temporary restraining order restraining me from using a portion of the very property. King county District court case #145-00561

VI. CONCLUSION

Based on the foregoing, Appellant Aydelotte respectfully requests the Court of Appeals return this action to Superior Court for trial; allow Appellant Aydelotte's Responses to Discovery to be entered into the Courts record; strike and remove Respondent Town's admissions propounded; and reverse Summary Judgment dismissal and remand for further proceeding.

DATED: This 13th day of April, 2014

A handwritten signature in cursive script, reading "George R. Aydelotte", is written over a horizontal line. The signature is enclosed within a rectangular border with a dotted pattern.

George R. Aydelotte
Appellant pro se

EXHIBIT A

At the April 10 2006 Skykomish Town Council meeting I Witnessed Councilman Darrell Joselyn look at Mr. Aydelotte and stated "there will be a lot of flat tires in Skykomish". He then Stormed out of the meeting, prior to the meeting beginning. This was the first meeting after Rick Aydelotte had got a ruling from the public disclosure commission.

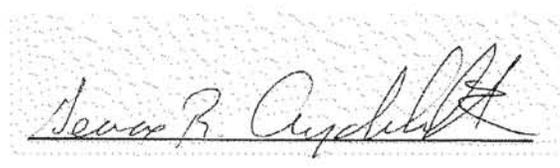
Signed Kathy Sullivan Date 6/2/13

Printed Name KATHY Sullivan

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14nd day of April, 2014, I caused to be served a true and correct copy of the foregoing document to the following:

Carlson, McMahon & Sealby, PLLC
37 South Wenatchee Avenue, Suite F
P.O. Box 2965
Wenatchee, WA 98807-2965



George R. Aydelotte

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