

72735-4

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No. 72735-4-1

**COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON**

KARL BENZ and CATHERINE RILEY,

Appellants

v.

TOWN OF SKYKOMISH,

Respondent

APPELLANTS' REPLY BRIEF

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON
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ARGUMENT

A. The Trial Court Erred in Denying Benz and Riley's Motion to Vacate (Ordered entered October 31, 2014): The Town misstates Benz and Riley's issue. Benz and Riley are not asserting 'legal error' against Judge Linde, but rather abuse of discretion. Nor did Benz and Riley 'ignore the order appealed from as asserted by the Town (Town's Brief, pg. 15). In subsection C 4 of App's Brief, pg. 35, discussion included Judge Spector's legal error to provide a full understanding of the issue. The point is that without ruling from the appellate court and based on Dickson's implied CR 60(b)(11) motion in Dickson's Brief (CP-F 146-161), Judge Spector granted his motion, reversed her earlier sanctions ruling and vacated against Dickson, thereby setting the precedent for Judge Linde to vacate against Benz and Riley. Judge Linde had already acknowledged that the judgment against Benz and Riley was duplicative but failed to effectuate justice.

Benz and Riley's argument is clear with regard to 'extraordinary circumstances' (App's Brief, subsection 3, pg. 34). Contrary to the Town's assertion that the extraordinary circumstances were due to the unjust enrichment afforded to the Town by denial of Benz and Riley's motion to vacate (Town's Brief, page 17), the argument includes and refers more specifically to the precedent set by Judge Spector in ruling to vacate

against Dickson (App's Brief, *Id.*). If justice is to be served, the precedent set by Spector to vacate against Dickson in granting his implied CR 60(b)(11) motion, must be utilized in ruling on Benz and Riley's motion, properly brought before the court, to vacate against them as well.

The Town asserts that CR 60 (b)(11) was not the proper remedy to vacate the judgment against Benz and Riley. CR 60 (b), by its very wording 'newly discovered evidence' (in this case being the precedent by Judge Spector) and 'etc.', and under subsection (11), 'any reason justifying relief' was designed for just this type of situation and provided the trial court wide latitude to mete out justice.

Compellingly, as discussed in App's Brief, Judge Spector finding that her earlier judgment was unfounded (the grounds on which the Town's sanctions motion hinged being shown to be invalid (CP 153, ln. 25, thru CP 154, line 5), and then reversing the earlier ruling on Dickson's CR 60 (b)(11) motion setting the precedent must surely constitute more than sufficient 'reason justifying relief from the operation of the judgment' and, in this case, compelling grounds for Judge Linde to have granted Benz and Riley's motion to vacate.

(b) Mistakes; Inadvertence; Excusable Neglect; **Newly Discovered Evidence**; Fraud; **etc.** On motion and upon **such terms as are just**, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(11) **Any other reason justifying relief from the operation of the judgment.** (Emphasis added.)
CR 60 (b)(11)

It is clear that the Town is the recipient of enrichment and profit not due it. The market value of the Historic Skykomish Hotel (‘Subject Property’) upon which the judgments held by the Town were executed, far exceed the judgments then held by the Town.

Regarding the value of the subject property, the Town states “*By all reasoning and the admittance of Benz and Riley it needs a complete remodel*” (Town’s Brief, pg. 19). The subject property was purchased by Benz’s entity in 2000 and was in need of a full renovation and economic repurposing at that time. Despite the present condition of the property, the investment required has not changed, except as adjusted for inflation and generally increased property valuations.

Both the failed market condition sale (the failure of which was caused solely by the Town (App’s Brief 33) and King County Assessor both confirm the value of the subject property to be far in excess of the judgments.

The Town continues to perpetuate its lie that Judge Spector vacated the Dickson judgment stating that, after allowing him to withdraw nunc pro tunc, she “*removed the judgment for sanctions against him as the conduct occurred after his withdrawal was effective.*” (Town’s Brief, pg. 21). See discussion

refuting the Town's faulty understanding on this issue in App's Brief, pgs. 15-16.

The Town then embarks on yet another lie to this Court. It states judge Spector specifically found that the sanctions would stay as to Benz and Riley "*for their intentional conduct*" (Town's Brief, pg. 21). This is blatantly untrue. The Clerk's Minutes of the hearing clearly state that "*The Court does not vacate sanctions against Ms. Riley and Mr. Benz, as not properly before the Court.*" (CP 1548-1549) The order granting Dickson's withdrawal and vacating against him make no mention of the sanctions remaining against Benz and Riley (CP 170). A careful review of the transcript (CP 209-214) reveals that Judge Spector was confused as to what to do with Defendants' response submitted to the Dickson Brief, which contained request for the judgment to be vacated against Benz and Riley as well. She clearly states that she would not rule on Benz and Riley's request for the judgment to be vacated against them **because their motion was "not properly before the court"**, *with no mention whatsoever as to their conduct* (CP 1548-1549).

The Town references the "order granting sanctions" (prepared by the Town's legal counsel, David Carson ('Carson')) as listing "all the findings of fact" (Town's Brief, pg. 22). All of their purported 'facts' hinged on one thing: that Evergreen Florida was not a bona fide lienholder. The Alvarez Declaration

(CP 312-314) and Dickson's Brief (CP 153, ln. 25, thru CP 154, line 5), specifically showing that RCW 61.24.020 provided that Evergreen Florida was a bona fide lienholder, negated entirely the Town's support for any finding of sanctionable behavior against Defendants, Benz or Riley. The Town's subsequent dismissal of Evergreen Florida confirmed that their allegations of sanctionable conduct were unfounded.

Judge Linde had the authority and the grounds on which to justifiably vacate the judgment against Benz and Riley. Moreover, she had an obligation to right the wrongs that had gone before her and ensure that justice was done. She failed to do so. Her denial was manifestly unreasonable and an abuse of discretion.

The Town attempts to show evidence of Benz and Riley's 'lack of respect for the judicial system and the judiciary in particular' (Town's Brief, pg. 25) by quoting from a pleading filed by Benz, taking particular offense to the penultimate sentence therein: "If overt rebellion is to be avoided, the courts must perform as intended, expected and demanded." (Town's Brief, pg. 26). The Town demonstrates a very shallow understanding of the Rule Law and the relationship between government and the governed. The quote cited shows not only an absence of disrespect; on the contrary, a deep and thorough understanding of the judiciary, the judicial system and more importantly a deep respect for the Rule of Law. With all due respect to the

Court, the judiciary and the judicial system serve the people. When recognition of that fails, the government begins to lose the consent of the governed. Judge Linde's acknowledgement of the duplicative judgments and then denying Benz and Riley's motion to vacate is a prime example of 'remedies that ignore the spirit of the law'.

Judge Linde acknowledged the duplicative nature of the judgments in her own handwriting; there was sufficient evidence that the sanctions were unfounded; she had the precedent set by Judge Spector vacating against Dickson and she had the authority under CR 60(b)(11) to grant Benz and Riley's motion to vacate which was properly before the court. She abused her discretion in denying Benz and Riley's motion to vacate. It is only just that the judgment against Benz and Riley be vacated.

B. The Trial Court Erred in Granting the Town's Motions For Contempt (Order entered 2014-10-31) and for Sanctions (Order entered 2015-01-02): The Town's statement that "*Benz and Riley failed to provide complete and truthful answers to the interrogatories and requests for production from the Town*" (Town's Brief, pg. 27) is untrue. The Town provided no evidence of untruthful answers and the trial court failed to address the objections for unanswered questions, including the unavailability of their records.

The Town's allegation of 'incomplete and untruthful' information hinges on information regarding a settlement from BNSF received by Defendant Skykomish Hotel, with payments between 2008 and 2010 (six years prior to the discovery requests) which the Town received directly from BNSF in 2012.

Benz and Riley informed the Town in their responses to discovery (CP 746-952 and CP 1158-1192), and later to the trial court (CP 1109-1120 and CP 1252-1263), that they were providing what was available to them, as is required by CR 33(a), and that responses would be updated upon the Town's return of their documents over which the Town took exclusive possession and control (CP 1110). Most of the documents are irreplaceable and contain private and attorney-client privileged documents.

Civil Rule 33 provides:

Availability; Procedures for Use. Any party may serve upon any other party written interrogatories to be answered by the party served or, [...], who **shall furnish such information as is available to the party.**

Civil Rule 33(a)

Many of the interrogatories were objected to on several grounds including the unavailability of the records (CP 746-952, including general objections at CP 787-788 and CP 917-918). Judge Linde failed to address all of the objections in her findings on both motions and thereby lacked sufficient factual basis to rule as she did, thereby abusing her discretion.

Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in lieu of an answer.

Civil Rule 33(a)

In its unpublished opinion filed April 27, 2015, in the case of Socius Law Group, PLLC, et al v. Mark Britton, et al, Case No. 71556-9-I, this Court ruled, based on the failure of the respondents to address appellants' objections, and the trial court's failure to make findings concerning the appellants' objections and the respondents' failure to challenge them, that the court's conclusions lacked "sufficient factual basis" and absent "a finding on a material issue is deemed a finding against the party having the burden of proof", i.e. demonstrating the grounds for sanctions. The Appellate Court concluded therefore that the trial court abused its discretion.

"[...]The trial court, however, made no findings concerning SLG's objections or the Brittons' failure to challenge them. Absent such findings, the court's conclusion that SLG improperly withheld Smiths identity and statement lacks a sufficient factual basis. In addition, the absence of a finding on a material issue is deemed a finding against the party having the burden of proof." Pacesetter Real Estate, Inc. v. Fasules, 53 Wn.App. 463, 475, 767 P.2d 961 (1989). It was the Brittons' burden to demonstrate grounds for sanctions. The court therefore abused its discretion in awarding sanctions for the alleged improper withholding."

The same situation exists here. The Town failed to challenge Benz and Riley's objections. The trial court failed to make findings concerning

those objections as well as the Town's failure to address them. Judge Linde's ruling therefore was absent a finding on a material issue and therefore lacked sufficient factual basis resulting in the abuse of her discretion.

Contrary to the Town's assertion, no objection was made on the grounds that the Town had 'other access' to the information sought (Town's Brief, pg. 27). However, the Town had the only access to the information that was unavailable to Benz and Riley. The Town had admitted that it illegally broke into the building and changed the lock to the only access door to the building (CP 1088, Ins. 3-9). All other doors were secured from the interior.

Throughout Benz and Riley's follow up responses (CP 1158-1192), it was offered that the Town, failing to return Benz and Riley's well organized and labeled documents to them as requested, could turn them over to its legal counsel, and specifically at CP 1163 and 1176, item #28 on each. CR 33(c) provides for production of business records in lieu of answers to the interrogatories.

Option To Produce Business Records. Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit or inspection of such business records, or from a compilation, abstract or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to

such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit or inspect such records and to make copies, compilations, abstracts or summaries.

Civil Rule 33(c)

Despite that, the Town and Carson completely ignored this overture and instead filed its motion for sanctions (CP 1149).

The Town then references the CR 37(d)(3) exception to failure to make discovery, that the party could have obtained a protective order (Town's Brief, Pg. 28). That was not the case here. Benz and Riley did not 'fail' to provide nor desire to withhold information. Rather, they were prevented from replying more fully due to the unavailability of their records caused by the Town who was withholding their documents and refusing to turn them over them or to Carson as authorized.

Furthermore, Carson had already demonstrated his blatant and careless disrespect for the judicial system and judiciary by disregarding the seriousness of his violating a Protective Order (CP 1372-1374), going so far as to call it a 'non-disclosure agreement', and then absurdly blaming Benz (Town's Brief, pg. 12). The Town and Carson clearly cannot be trusted to abide by a Protective Order.

The Town states that '*[B]enz and Riley were asked to provide information on all monies received for previous six (6) years. **Benz and***

Riley answered that they had received no income or monies for the past several years.” (Town’s Brief, pg. 29, emphasis added). This is yet another lie from the Town. Benz and Riley’s responses were very clear. In their initial responses, they disclosed to the best of their recollection that their only source of income for the previous four years, that being Mr. Benz’s social security income. (CP 746-952). In the follow up responses, they clarified the use of the funds received from BNSF over four years prior and further stated that the funds had been exhausted years prior (CP 1158-1192). No other information was or is available.

The Town states that “*[B]enz and Riley completely failed to mention any money received between 2008 and 2010*” (Town’s Brief, pg. 29). Benz and Riley provided the information that was available to them. They stated that the responses would be updated upon the return of their documents which the Town had taken exclusive possession and control of more than a year prior. The Town was already in possession of the information regarding funds received from BNSF Railway, having received it in 2012 as the result of discovery as outlined in the Protective Order (CP 1372-1374). Without the documents which the Town was refusing to return, being expected to remember detailed information from over four years prior is unrealistic.

The Town then commits its next lie. It stated in a footnote on page 30

regarding the lawsuit filed against Carson and others for perjury and conspiracy that “*Benz and Riley sought over five million dollars in damages.*” (Town’s Brief, pg. 30). The Complaint in that case sought damages for two causes of action of \$100,000 plus costs of \$5,431.69 (CP 814-820).

The Town then references the declaration provided by its Mayor, Tony Grider (CP 1087), stating that the “[T]own did not bar access to the other exterior doors. In the spring of 2014 the Town gave the key to that one door to the agent of the Hotel who did not return it. *id.* Benz and Riley provided no information to refute this except to state that the mayor was lying.” (Town’s Brief, pg. 31). Access to the other exterior doors was barred by being locked from the inside. The only access to the building was through the door that the Town changed the locks to when it broke in as admitted by Grider in his declaration, (CP 1087). Grider’s comments were refuted (App’s Brief, pg. 24; CP 1479, ln 20 thru CP 1484, ln. 9). Any reasonable person reading Grider’s declaration and doing simple math can see that it was impossible for events to have occurred on the timeline Grider described. (CP 1481, lns. 21-24). Grider’s lying about those events not only constitutes perjury, but must cause his declaration to be disregarded in its entirety. The key loaned to the real estate agent was in fact returned to the Town the same day it was loaned and no other key

was provided to him or to Benz and Riley (CP 771).

The Town went from suggesting that six years of documents be obtained from outside sources (although many of the documents are irreplaceable), to suggesting that a locksmith be called to provide access to the building (knowing however that Benz and Riley had been and remained out of the State and lacked the ability to return) to then creating a fantasy time travel story regarding the Town's taking possession of the documents. It begs the question, why did the Town refuse to return the documents as requested, the simplest, most cost and time efficient solution?

Significantly, the important facts to remember are that the Town took possession of Benz and Riley's documents and in so doing took responsibility for them and for returning the documents intact as requested.

The Town discusses Civil Rule 37 stating that Benz and Riley could have obtained a protective order to be excused for withholding information. Aside from the fact that Benz and Riley were not 'withholding' information, while a protective order could have been applied for, there was no guarantee that even if Benz and Riley had been successful in obtaining one that their bank account with only social security funds would not have been tampered with by the Town or more likely Carson resulting in serious financial hardship to Benz and Riley.

Carson proved Benz and Riley's fears were well founded when he

violated the BNSF Protective Order (CP 1372-1374 and even as late as the Town's Brief, refers to the Protective Order as a 'non-disclosure agreement' which he also obviously feels would be okay to violate (Town's Brief, pg 12).

Carson has a documented history of flagrant disregard for the law, and reckless, underhanded and devious behavior. Benz and Riley, based on their well-founded fear that Carson would tamper with their limited sole source of income (social security funds not attachable for satisfaction of judgments) initially withheld only their personal bank account number into which Benz's social security funds were deposited while providing printout of bank account activity. Bank account numbers were provided to the Town in the follow up responses. Other information remained unavailable to Benz and Riley as a result of the Town's continuing to hold their documents. Benz and Riley were not desirous of withholding any information making a protective order irrelevant, especially in light of Carson's behavior.

In addition to the responses to discovery, Benz and Riley, in their responses to the motions, discussed at length the reasons not only why they were unable to retrieve the documents, but more importantly why it was incumbent upon the Town to turn over the documents, for which it had taken responsibility, to Benz and Riley or in the alternative, to Carson as authorized. (CP 741, ln. 7 thru CP 742, ln. 11). Judge Linde also failed to consider Benz and Riley's objections as well as the Town's failure to

address those objections as to why Benz and Riley had not gone to the building to retrieve documents.

Judge Linde failed to consider all of facts, failed to address Benz and Riley's objections, and the Town's failure to address those objections. The court's rulings lacked sufficient evidence, resulting in Judge Linde abusing her discretion.

C. The Trial Court Erred in Granting the Town's Motion Determining Benz and Riley to be Vexatious Litigants (Order filed (2015-01-02): While "[A] court may, in its discretion, place reasonable restrictions on any litigant who abuses the judicial process" (*In re Marriage of Giordano*, 57 Wn. App. 74, 78, 787 P.2d 51 (1990)), and while "[O]ur courts have the right, in equity, to limit the right of a litigant's access to courts", *Id. At 77*, abuse of the judicial process must be shown to have occurred. The record offered up by the Town lacks any showing of abuse of the judicial process by Benz and Riley.

Turning our attention to the 'record' of judicial abuse purported by the Town, over the course of this lawsuit the Town, has been clear in separating the Defendant entities from Benz and Riley personally. However, in order to attempt to obtain a vexatious litigant ruling against Benz and Riley, the Town attributed actions to have been filed by Benz and Riley which were either completely outside of the judicial

process and/or not filed by Benz or Riley personally.

The following is a list of the actions purportedly constituting the Town's 'sufficient record of abuse' claim (Town Brief, pg. 37-39), along with notes showing why they do not support a vexatious litigant finding against Benz and Riley (see also CP 1254-1257):

1. Counterclaims in this lawsuit (Note: these were filed by Defendant entities through their then legal counsel, not Benz and Riley who are not parties to this lawsuit; Benz and Riley never filed any counterclaims in this lawsuit filed by the Town.)
2. Sanctions for pleadings 'in this matter for improper purpose, to delay proceedings, for harassment, and for actually delaying proceedings' (Note: the 'pleadings' the Town refers to were prepared by then legal counsel, were filed by the Defendant entities and not Benz or Riley, and also include the counterclaims listed in item 1 above. Furthermore, these sanctions have been proven to be unsupported as discussed in Section A of this Reply Brief.
3. Separate lawsuit in Snohomish County (Note: against different parties based on different facts, in which no charge of vexatious litigation was made by the defendants Carson et al.,)
4. Pleadings on behalf of their defendant entities. Benz and Riley had reason to believe they could file on behalf of one of their defendant

entities. Not only was there case law supporting Benz and Riley's filing of documents on behalf of Defendant Skykomish Hotel, and King County Pro Se Litigant Handbook showing the Court has discretion to allow such filings, legal counsels for the Town and the Defendant entities had both previously requested that the Court allow Benz and Riley to represent their entities. However, once Benz and Riley filed documents incriminating to the Town and/or Carson, the Town objected. (See Note for #5 below for the voluntarily resolution of this issue.)

5. Appeal on behalf of one of their defendant entities. (Note: this is included in item #4 above. Benz and Riley, while feeling they had a basis upon which they could overcome the trial court disallowing their filing documents on behalf of Defendant Skykomish Hotel, reassessed their position and voluntarily withdrew this appeal, resolving this issue. See also Note for #4 above.)

6. Two bar complaints. (Note: this is untrue. Benz only filed one bar complaint against Carson for violating a Protective Order (CP 1372-1374); Riley filed no bar complaints against Carson and Carson never produced the purported 'second' complaint).

7. Complaint to the Northwest Multiple Listing Service. (Note: this is untrue; the real estate agent for Defendant Skykomish Hotel filed that complaint (CP 1173) as is required by NWMLS rules when

wrongdoing is uncovered as in this case).

8. Six FOIA requests (Note: Requests made under Freedom of Information Act is a right guaranteed by both Federal and State laws, and is clearly outside the judicial system.)

Of the above list, #6, #7 and #8 are outside of the 'judicial system' entirely to which 'vexatious litigation' applies, aside from which #7 was not filed by Benz and/or Riley.

For purposes of demonstrating yet another lie in the Town's Brief, Carson complains that one of the FOIA requests '*alleges*' that he was not qualified to represent the town during the Burlington Northern Santa Fe environmental remediation project (Town's Brief, pg. 39. That is untrue. That request sought information surrounding the termination of the Town's special environmental legal counsel, Riddell Williams P.S. (CP 1242-1243). In contrast, Carson himself admitted in writing that he had no such environmental legal experience or expertise (CP 1297).

Item #3 does not pertain to the parties in this lawsuit and is based on entirely separate facts.

Of the remaining items, #1 and #2 (the same issue) were not filed by Benz and Riley, but rather by Defendant entities as prepared by their legal counsel for those entities.

For items #4 and #5, as discussed above, were voluntarily

resolved by Benz and Riley, making a finding of vexatious litigants against them pointless (see Benz & Riley's 'Motion to Dismiss Appeal, Case No. 72633-1).

All of the cases cited by in the Town's Brief to support its charge of vexatious litigation by Benz and Riley have to do with court cases involving numerous actions, unlike this case.

The Town relies *In re Marriage of Giordano*, 57 Wn. App. 74, 77, 787 P.2d 51 (1990), dealing with a moratorium on motions, to support its argument for the validity of the pre-filing order against Benz and Riley.

"Ms. Giordano filed numerous motions to enforce the agreed order and to modify [marital settlement agreement]. The number of motions threatened to preempt the family law motions calendar and to involve all 39 superior court judges (court's comment).

"The court also issued a written moratorium on motions barring motions until trial on a separate issue, at which time trial would be conducted "on all issues brought to the attention of the Court". Id., at 76.

Benz and Riley have not filed numerous motions. No moratorium on motions was issued to Benz and Riley and thus, none were violated.

Next, the Town references the four part test outlined in *DeLong v. Mansfield*, 912 F.2d 1144 (9th Cir. 1990) to determine the validity of a pre-filing order. The Town states that "[I]n *DeLong* the plaintiff filed a

motion to vacate after being imprisoned for contempt in a meritless action.” (Town’s Brief, pg. 34). More than that, DeLong, Id., strongly stresses that the use of a pre-filing order should be rarely used and outlines cases, and with particular caution against pro se litigants.

We recognize that “[t]here is strong precedent establishing the inherent power of federal courts to regulate the activities of abusive litigants by imposing carefully tailored restrictions under the appropriate circumstances.” *Tripathi v. Beaman*, 878 F.2d 351, 352 (10th Cir.1989).

Nonetheless, **we also recognize that such pre-filing orders should rarely be filed**. See, e.g., *Oliver*, 682 F.2d at 445 (an order imposing an injunction “is an extreme remedy, and should be used only in exigent circumstances”); *Pavilonis v. King*, 626 F.2d 1075, 1079 (1st Cir.) (“The use of such measures against a pro se plaintiff should be approached with particular caution.”), cert. denied, 449 U.S. 829, 101 S.Ct. 96, 66 L.Ed.2d 34 (1980); *In re Powell*, 851 F.2d 427, 431 (D.C.Cir.1988) (per curiam) (such orders should “remain very much the exception to the general rule of free access to the courts”) (quoting *Pavilonis*, 626 F.2d at 1079). (Emphasis added.)

DeLong v. Mansfield, 912 F.2d 1144 (9th Cir. 1990)

An adequate record for review **should include a listing of all the cases and motions that led the district court to conclude that a vexatious litigant order was needed**. See *Martin-Trigona*, 737 F.2d at 1270-74. At the least, the record needs to show, in some manner, that the litigant's activities were numerous or abusive. See, e.g. *Wood*, 705 F.2d 1515, 1523, 1526 (**35 related complaints filed**); *Oliver*, 682 F.2d at 444 (**over 50 frivolous cases filed**); *In re Green*, 669 F.2d 779, 781 (D.C.Cir.1981) (per curiam) (**over 600 complaints filed**). (Empahsis added.)

DeLong, Id.

The 'record for review' submitted in the Town's motion for a pre-filing order and in the Town's Brief lists one lawsuit (against different parties based on different facts than this lawsuit); no lawsuit or counterclaims filed by Benz or Riley against the Town; and no motions by Benz and Riley against the Town. There is no record, much less and 'adequate record' to support the pre-filing order against Benz and Riley.

The Town's purported 'substantive record' of abusive litigation by Benz and Riley does not comport with the cases cited in DeLong, *Id.* There were no 'exigent circumstances' in this case. The few pleadings Benz and Riley filed pro se were proper attempts to exercise their rights and/or to defend themselves against the Town's numerous actions and were filed in good faith.

In citing *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (2007), the Town again likens Molski's filing of over 400 lawsuits to the rather miniscule record presented against Benz and Riley, which is clearly wanting for 'substantive' and 'adequate'.

The Town cites *Burdick v. Burdick*, 148 Wash. 15, 22, 267 P. 767 (1928), a case dealing with successive lawsuits involving the same issues between the same parties and the trial court's judgment perpetually enjoining the defendants from proceeding with a certain action for claimed services rendered and board furnished to the plaintiff

by the defendants. That opinion states in pertinent part:

"It must be admitted that the power of injunction to stay a pending law suit should be, and it is to the credit of the courts that it is, sparingly used. Yet it is a vital right to those sought to be brought before the court, and one which, in a proper case, should not be denied because of its frugal use. The rule is well stated in 32 C.J., p. 94:

Burdick, Id. at 22

These are all cases involving tens to hundreds of court actions, i.e. lawsuits, motions, etc., each involving the either same parties or the same issues against numerous parties in the case of *Molski, Id.*. None of these cases are similar to the facts of this case.

With regard to the trial court's denial of Benz and Riley's due process by refusing them the opportunity to present their oral argument on this motion, see argument in section D below.

There was simply no record of abuse of the judicial system by Benz and Riley. The Town failed to overcome the second prong (the record must be sufficiently developed to show the abuse of the judicial system) which thereby undermined the third prong (the order must include substantive findings of the litigants vexatious behavior) of the four part test outlined in *DeLong, Id.* The court's findings were not supported by the facts.

Judge Linde was not familiar with the file, and admitted she had

not reviewed the entire file, stating that “*and considering all of the written materials in addition to the existing court file with which this Court is particularly familiar in the last year, not as familiar prior to the cases being transferred from another Judge to this Court*” (RP #2, pg. 5, lns. 11-15). She clearly relied on Carson’s proposed order to have reflected the facts of the case which clearly it did not.

The order was based on untenable grounds and was manifestly unreasonable. In addition to denying Benz and Riley’s due process, Judge Linde also abused her discretion by attributing the numerous inapplicable actions, including actions outside the judicial system and those not filed by Benz and Riley to them in wrongfully ruling Benz and Riley to be vexatious litigants requiring a pre-filing order.

D. The Trial Court Violated Benz and Riley’s Right of Due Process (Hearing on 2015-01-02). The Court granted oral argument on this motion and had already granted Benz and Riley’s telephonic appearance based on their motion for same, and the reason for the request, contained in their response to the motion (CP 1252). (There was a second motion not related to Benz and Riley was heard that day that was without oral argument.)

At the first occasion where Benz and Riley sought permission from the Judge Linde’s Bailiff to appear and give oral argument telephonically,

the Bailiff directed them to make the request in their pleading. As directed, Benz and Riley included in their pleading to the court for such permission. Permission was granted and no other documentation or support was requested.

Subsequent similar requests were made and granted without any requirement for additional supporting documentation from Benz and Riley.

On one such prior occasion, the Town objected to Benz and Riley's presentation of oral argument which Judge Linde overruled, stating "*the Court did read and review all of the materials, the Court did allow Mr. Benz his argument, which is -- you know, I did that so that there'd be the opportunity for a day in court*" (RP #1, pg. 43, lns. 12-15).

Judge Linde didn't just grant Benz permission for oral argument. Over the Town's objection, she stressed that she wanted Benz and Riley to have their day in court. Her reversal of this position at the January 2, 2015 oral argument hearing was arbitrary, unreasonable and demonstrated clear bias and prejudice. She abused her discretion and violated Benz and Riley's right of due process.

According to the Notice of Motion and the Motion itself, the hearing was noted as 'With Oral Argument' (CP 1149).

While "*There is no guaranteed right to oral argument in our*

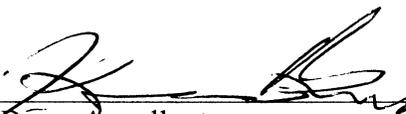
courts” (Town’s Brief, pg. 42-43), oral argument was granted. Having already granted permission to Benz and Riley to appear telephonically at the hearing on the motion where oral argument was granted, and then at the commencement of the hearing when they were already on the telephone, refusing their oral argument, while allowing the Town’s oral argument, Judge Linde abused her discretion, violated the appearance of fairness doctrine, denied their due process and clearly demonstrated bias and prejudice.

The January 2, 2015, order for monetary sanctions and a pre-filing order against Benz and Riley should be reversed.

CONCLUSION

The trial court's order granting contempt against Benz and Riley, the order denying Benz and Riley’s motion to vacate, the order for sanctions and a pre-filing order requirement against Benz and Riley should all be reversed for extreme abuse of discretion, violation of the appearance of fairness doctrine, a clear showing of bias and prejudice, and for violation of due process. The trial court should be mandated to enter their orders effectuating same.

Respectfully submitted this 16th day of September, 2015.


Karl Benz, Appellant pro se


Catherine Riley, Appellant pro se

CERTIFICATE OF SERVICE

I certify that I sent out or caused to be sent out for service by U.S. Mail postage prepaid a copy of Appellants' Reply Brief on the 16th day of September, 2015, to the following counsel of record at the following address:

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[X] By Seattle Legal Messengers
service on September 16, 2015, for
mailing on September 16, 2015.

Dated: September 16, 2015


Karl Benz